



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.II

2012 JUN 21 P 3 25

REGIONAL HEARING
CLERK

JUN 21 2012

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7005 3110 0000 5330 1599

Peter Abar
ABAR's Garage, Inc.
P.O. Box 315
Heuvelton, NY 13654

Re: Consent Agreement and Final Order Docket No. SDWA-02-2012-8902

Dear Mr. Abar:

Enclosed is a copy of the executed Consent Agreement and Final Order ("Order"), Docket No. SDWA-02-2012-8902. This Order finalizes the action commenced by the U.S. Environmental Protection Agency (EPA) Region 2, on December 22, 2010, when a Complaint, Notice of Violation, Proposed Administrative Order With Civil Penalty and Opportunity to Request a Hearing was issued to ABAR's Garage, Inc.

Please note that the penalty payment is due by no later than forty-five (45) calendar days after the date the Order was signed.

If you have any questions pertaining to this matter, please contact Frank Brock of my staff at (212) 637-3762 or by e-mail at brock.frank@epa.gov.

Sincerely,

Douglas McKenna, Chief
Water Compliance Branch

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 Broadway
New York, NY 10007-1866**

IN THE MATTER OF

ABAR's Garage, Inc.
P.O. Box 315
Heuvelton, NY 13654

Respondent.

Proceedings Under Section 1423(c)
of the Safe Drinking Water Act,
42 U.S.C. §300h-2(c)

**CONSENT AGREEMENT
AND
FINAL ORDER**

DOCKET NO. SDWA-02-2012-8902

CONSENT AGREEMENT

The Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, Region 2, United States Environmental Protection Agency ("EPA"), issued a "Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty and Notice of Opportunity to Request a Hearing" ("Complaint") with Docket Number SDWA-02-2011-8903 to ABAR's Garage, Inc. ("Respondent") on December 22, 2010.

Complainant and Respondent, having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order ("CA/FO") without further litigation is the most appropriate means of resolving this matter;

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the Parties, it is hereby ordered as follows:

PRELIMINARY STATEMENT

- 1) EPA initiated this proceeding for compliance with the Safe Drinking Water Act ("Act") pursuant to Section 1423(c) of the Act, 42 United States Code ("U.S.C.") §300h-2(c).

2012 JUN 25 11:33 AM
U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

- 2) The Complaint alleges violations of the Act Part C – Underground Injection Control, as they pertain to a Class V injection well located at 4853 State Highway 812, Heuvelton, NY. The Complaint alleges that the Class V well is owned and operated by ABAR's Garage, Inc.
- 3) This action was public noticed between January 7, 2011 and February 7, 2011.
- 4) This CA/FO shall apply to and be binding on Respondent, the business officers, directors, employees, successors and assigns, including but not limited to, subsequent purchasers.
- 5) Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint. Respondent waives any defenses Respondent might have as to jurisdiction and venue, and, without admitting or denying the allegations contained in the Complaint, consents to the terms of this CA/FO.
- 6) Respondent hereby waives Respondent's rights to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Complaint or on any terms of this CA/FO.

TERMS OF SETTLEMENT

Payment of Civil Penalty

- 1) Pursuant to Section 1423(c) of the Safe Drinking Water Act, EPA has considered statutory factors, including the seriousness of the violation(s), the economic benefit (if any) resulting from the violation(s), the history of such violation(s), the good-faith efforts to comply with the applicable requirements, and other matters as justice may require.
- 2) EPA has determined that an appropriate civil penalty to settle this action is in the amount of **Four Hundred Fifty (\$450) Dollars**.
- 3) For the purpose of settlement, Respondent consents to the issuance of this CA/FO, consents to the payment of the civil penalty cited in Paragraph 2 of this section.
- 4) Not to be used for any other purpose than the one for which it was intended. Final Order

This check shall be mailed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

If Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:

- a. Amount of Payment
- b. SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045
- c. Account Code for Federal Reserve Bank of New York receiving payment: 68010727
- d. Federal Reserve Bank of New York ABA routing number: 021030004
- e. Field Tag 4200 of the Fedwire message should read "D68010727 Environmental Protection Agency"
- f. Name of Respondent: ABAR's Garage, Inc.
- g. Case Number: SDWA-02-2012-8902

Such EFT must be received on or before 45 days after the Effective Date of this CA/FO.

Whether the payment is made by check or by EFT, Respondent shall promptly thereafter furnish reasonable proof that such payment has been made, to both:

Timothy Murphy, Esq.
Assistance Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866
(212) 637-3236
and

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

- 5) Payment must be received on or before forty five (45) calendar days after the date of signature of the Final Order (at the end of this document). The date by which payment must be received shall hereafter be referred to as the "due date".

- a. Failure to pay the penalty in full according to the above provisions will result in a referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
 - b. Further, if payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of Treasury pursuant to the Debt Collection Act, 31 U.S.C. §3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15.00 will be assessed for each 30 day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty will be applied on any principal amount not paid within 90 days of the due date.
 - c. In addition, pursuant to Section 1423(c)(7) of the Act, 42 U.S.C. §300h-2(c)(7), if payment is not received by the due date, a civil action may be commenced in Federal District Court to recover the amount assessed, plus costs, attorneys' fees and interest at currently prevailing rates from the date the order is effective. In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.
 - d. Respondent also may be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.
 - e. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from the Respondent's federal or state taxes.
- 6) Violations of the terms of the CA/FO after its effective date or date of final judgment as described in Section 1423(c)(6) of the Act, 42 U.S.C. §300h-2(c)(6), may subject Respondent to further enforcement action, including a civil action for enforcement of the Final Order under Section 1423(b) of the Act, 42 U.S.C. §300h-2(b), and civil and criminal penalties for violations of the compliance terms of the Final Order under Section 1423(b)(1) and (2) of the Act, 42 U.S.C. §300h-2(b)(1) and (2). Failure to act in accordance with this Order truthfully and accurately within the time provided may subject Respondent to sanctions authorized by federal law. In addition, making a knowing submission of materially false information to the U.S. Government may be a criminal offense.

GENERAL PROVISIONS

- 1) Respondent waives any right Respondent may have pursuant to 40 C.F.R. §22.8 or statute to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that the Administrator accept this CA/FO.

- 2) Violations of the terms of the Final Order after its effective date or date of final judgment as described in Section 1423(c)(6) of the Act, 42 U.S.C. §300h-2(c)(6), may subject Respondent to further enforcement action, including a civil action for enforcement of the Final Order under Section 1423(b) of the Act, 42 U.S.C. §300h-2(b), and civil and criminal penalties for violations of the compliance terms of the Final Order under Section 1423(b)(1) and (2) of the Act, 42 U.S.C. §300h-2(b)(1) and (2).
- 3) This CA/FO shall not relieve Respondent of Respondent's obligations to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.
- 4) Nothing in this Consent Agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Consent Agreement or of the statutes and regulations upon which this Consent Agreement is based, or for Respondent's violation of any applicable provision of law.
- 5) Issuance of the Final Order is not an election by EPA to forego any civil or criminal action otherwise authorized under the Act.
- 6) This CA/FO constitutes a settlement by EPA of all claims for civil penalties pursuant to the Safe Drinking Water Act for the violations alleged in the Complaint. Nothing in this CA/FO is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent. Compliance with this CA/FO shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.
- 7) Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.
- 8) Each party shall bear its own costs and attorney's fees in connection with the action resolved by this CA/FO.

RESPONDENT:

BY: *Honore L. Abar V-Pres*
 Peter Abar, *General Manager*
 ABAR's Garage, Inc.

DATE: *4-23-2012*

(Owners)
Francis V. Abar
Honore L. Abar

COMPLAINANT:

BY: 

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. EPA, Region 2
290 Broadway, 21st Floor
New York, New York 10007-1866

DATE: 6/18/12**FINAL ORDER**

The Regional Administrator of the U.S. EPA, Region 2, ratifies the foregoing Consent Agreement. The Regional Administrator has delegated the authority to issue such actions to the Regional Judicial Officer of EPA Region 2. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as a Final Order. The effective date of this Final Order shall be 30 days after the date of signature.

DATE: 6/19/12

HELEN S. FERRARA
Regional Judicial Officer
United States Environmental
Protection Agency - Region 2
290 Broadway
New York, New York 10007-1866

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 Broadway
New York, New York 10007-1866

IN THE MATTER OF:

ABAR's Garage, Inc.
P.O. Box 315
Heuvelton, NY

Proceedings under Section 1423(c)
of the Safe Drinking Water Act,
42 U.S.C. §300h-2(c)

CONSENT AGREEMENT
AND
FINAL ORDER

DOCKET NO.
SDWA-02-2012-8902

CERTIFICATE OF SERVICE

I certify that on _____, I served the above-cited Consent Agreement
And Final Order for Compliance, bearing the above referenced docket number, on the persons
listed below, in the following manner:

Original and One Copy

By Hand:

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection
Agency - Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

Copy by Certified Mail, Return

Receipt Requested:

Peter Abar
ABAR's Garage, Inc.
P.O. Box 315
Heuvelton, NY 13654

Dated: JUN 21 2012

Ana Madeira