

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

U.S. Environmental
Protection Agency-Reg 2
2014 SEP 11 PM 4: 08
REGIONAL HEARING
CLERK

IN THE MATTER OF:

Emerald Beach Resort I
Emerald Beach Resort II
c/o De Lyrot Holding/Best Western, Inc.
8070 Lindbergh Bay
St. Thomas, VI 00802

Respondent.

Emerald Beach Resort I (VI1000083)
Emerald Beach Resort II (VI1000084)

Proceeding Pursuant to Section §1414(g)(3)(B) of the
Safe Drinking Water Act, 42 U.S.C. § 300g-
3(g)(3)(B)

CONSENT AGREEMENT
AND
FINAL ORDER

Docket Nos.
SDWA-02-2014-8402
SDWA-02-2014-8403

I. PRELIMINARY STATEMENT

1. This administrative proceeding for the assessment of a civil penalty was instituted pursuant to Section 1414(g)(3)(B) of the Safe Drinking Water Act (the "Act"), 42 U.S.C. §300g-3(g)(3)(B).
2. 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") to the Emerald Beach Resort I and Emerald Beach Resort II c/o De Lyrot Holding/Best Western, Inc. ("Respondent") on August 8, 2014.
3. The Complaint charged Respondent with violating the terms and conditions of an Administrative Order issued to Respondent pursuant to Section 1414(g) of the Act, 42 U.S.C. §300g-3(g), requiring compliance with an applicable requirement of the Act at Respondent's Emerald Beach Resort I and Emerald Beach Resort II public water systems, located in St. Thomas, United States Virgin Islands.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent operates the Emerald Beach Resort I and Emerald Beach Resort II “public water systems,” located in St. Thomas, United States Virgin Islands, within the meaning of Section 1401(4) of the SDWA, 42 U.S.C. §300f(4) and 40 C.F.R. § 141.2.
2. Respondent is a “supplier of water” as that term is defined in Section 1401(5) of the SDWA, 42 U.S.C. §300(f)(5), and 40 C.F.R. § 141.2.
3. Respondent is a “person” within the meaning of Section 1401(12) of the SDWA, 42 U.S.C. §300f(12).
4. According to SDWA § 1414(g)(3)(b), 42 U.S.C. §300g-3(g)(3)(B), each person that owns or operates any public water system is subject to and must comply with, all federal, State, interstate, and local requirements, both substantive and procedural, to the same extent as any supplier of water is subject to such requirements.
5. Respondent provides piped water for human consumption and regularly serves a population of at least 25 individuals for at least 6 months per year, and is therefore a non-transient non-community water system (“NTNCWS”) as defined by Section 1401(16) of the SDWA, 42 U.S.C. §300f(16), and 40 C.F.R. 141.2. Respondent is therefore subject to the requirements of Part B of the SDWA, 42 U.S.C. §300g, and its implementing regulations found at 40 C.F.R. Part 141.
6. The United States Virgin Islands Department of Planning and Natural Resources (“VIDPNR” or “State”) administers the Public Water Supply Supervision Program in the United States Virgin Islands pursuant to Section 1413 of the SDWA, 42 U.S.C. §300g. The approval of primary enforcement responsibility from EPA to VIDPNR was effective as of September 22, 1979. VIDPNR is the primacy agency, as that term is defined in 40 C.F.R. §142.2. On August 1, 2011, VIDPNR referred the Emerald Beach Resort I and Emerald Beach Resort II public water systems (“PWSs”) to EPA for appropriate action.
7. On December 16, 1998, EPA promulgated the Stage 1 Disinfectants and Disinfection Byproducts Rule (“Stage 1 DBPR”), 40 C.F.R. Part 141, Subpart L. The Stage 1 DBPR was promulgated with the intention of protecting public health from exposure to potentially harmful disinfection byproducts. The Stage 1 DBPR established criteria under which community water systems and non-transient non-community water systems that add a chemical disinfectant to the water in any part of the drinking water treatment process must modify their practices to meet maximum contaminant levels (“MCL”) for disinfection byproducts, 40 C.F.R. §141.64, and maximum residual disinfectant levels, 40 C.F.R. §141.65, and must meet the treatment technique requirements for the control of disinfection byproduct precursors listed in 40 C.F.R. §141.135.

8. Respondent utilizes a surface water source and serves fewer than 10,000 persons or utilizes a ground water source and, therefore, was required to comply with 40 C.F.R. Part 141 Subpart L (“Stage 1 DBPR”) beginning January 1, 2004.
9. Pursuant to 40 C.F.R. §141.132(b)(1), Respondent is required to monitor for total trihalomethanes (“TTHM”) and five haloacetic acids (“HAA5”). Specifically, the Respondent must collect one water sample per year per treatment plant at the point of maximum residence time during the month of warmest water temperature.
10. Pursuant to 40 C.F.R. §141.133(b)(i), Respondent is required to demonstrate compliance with the MCLs listed in 40 C.F.R. §141.64 for TTHM and HAA5. If the sample collected (or average of samples collected if more than one is taken), pursuant to 40 C.F.R. §141.132(b)(1), exceeds the MCL for TTHM (0.080 mg/l) or HAA5 (0.060 mg/l), Respondent is required to increase TTHM and HAA5 monitoring frequency to quarterly and must continue to monitor quarterly for TTHM and HAA5 until the average of four quarters is ≤ 0.060 mg/l for TTHM and ≤ 0.045 mg/l for HAA5.
11. Pursuant to 40 C.F.R. §141.134, systems monitoring annually are required to report to the State within ten (10) days after the end of the monitoring period (i.e. January 10). Systems required to sample quarterly or more frequently must report to the State within ten (10) days following the end of each calendar quarter (i.e. January 10, April 10, July 10, and October 10). The information that must be reported includes the location, date and result of each sample taken during the monitoring period.
12. Based on information provided by VIDPNR, Respondent exceeded the MCL for TTHM during the 2010 monitoring period and did not increase monitoring.
13. On May 4, 2012, EPA issued Administrative Orders, Docket Numbers SDWA-02-2012-8082 and SDWA-02-2012-8083, requiring Respondent to conduct four quarters of monitoring for TTHM and HAA5 in accordance with 40 C.F.R. §141.132(b)(1) beginning in the 3rd quarter of 2012. Additionally, the AOs required Respondent to comply with all public notice requirements specified in 40 C.F.R. Part 141, Subpart Q within thirty (30) days of receipt of the Orders, and to submit a copy of the public notice and certification that public notice was completed to EPA and VIDPNR within forty-five (45) days of receipt of the Order.
14. According to EPA’s records in the form of the certified mail return receipt (Article Number 7005 3110 0000 5954 8462), the AOs were received by Respondent on May 11, 2012.
15. On May 28, 2013, VIDPNR provided information to EPA indicating that Respondent collected one quarterly sample in July 2012, however, Respondent failed to conduct four consecutive quarters of monitoring in violation of 40 C.F.R. §§141.132(b)(1), 141.133(b)(i) and 141.134.

16. Based on information available to EPA, Respondent did not demonstrate compliance with the requirements specified in 40 C.F.R. §141.133(b)(ii) and §141.64 during the 2012-2013 monitoring period.
17. In addition, Respondent did not comply with the public notice requirements specified in 40 C.F.R. Part 141, Subpart Q.

COUNT 1

18. Pursuant to 40 C.F.R. §141.132(b)(1), Respondent was required to collect one TTHM sample and one HAA5 sample per year per treatment plant at the point of maximum residence time during the month of warmest water temperature and report the results of this monitoring to the State within 10 days after the end of each monitoring period.
19. Pursuant to Paragraph III.3 of the AOs, Respondent was required to conduct monitoring for TTHM and HAA5 during the month of July 2012, in accordance with 40 C.F.R. §141.132(b)(1), and report the results of this monitoring to EPA and VIDPNR by October 10, 2012 (10 days following the end of the quarter).
20. Respondent failed to demonstrate compliance with the requirements of §141.132(b)(1) by the dates specified in Paragraph III.3 of the AOs, and is, therefore, in violation of the AOs.

COUNT 2

21. Pursuant to 40 C.F.R. §141.133, Respondent is required to demonstrate compliance with the MCLs in 40 C.F.R. §141.64 for TTHM and HAA5. For PWSs on annual monitoring, such as Respondent, compliance is demonstrated if the annual sample collected does not exceed the MCLs in 40 C.F.R. §141.64. If the annual sample exceeds the MCL, Respondent is required to increase monitoring frequency to once per quarter for one year of quarterly monitoring and compliance is based on an average of four quarterly samples and Respondent must continue quarterly monitoring until the average of four quarters demonstrates compliance with the MCLs for TTHM and HAA5.
22. Pursuant to §141.133(b)(iv), if a PWS fails to complete four consecutive quarters of monitoring, compliance with the MCL for the period is based on an average of available data.
23. Pursuant to Paragraphs III.3 and III.4 of the AOs, Respondent was required to continue to monitor quarterly for TTHMs and HAA5s until the average of four quarters demonstrated compliance with the MCLs for TTHMs and HAA5s.

24. Respondent failed to demonstrate compliance with the requirements of §§141.133 and 141.64 as specified in Paragraphs III.3 and III.4 of the AOs, and is, therefore, in violation of the AOs.

COUNT 3

25. Pursuant to 40 C.F.R. Part 141, Subpart Q, Respondent is required to give notice to persons served by the public water system for violations of the Stage 1 DBPR.
26. Pursuant to Paragraphs III.1 and III.2 of the AOs, Respondent was required to comply with the public notice requirements specified in 40 C.F.R. Part 141, Subpart Q and mail a copy of the public notice and certification of the notice to EPA and VIDPNR.
27. Respondent failed to demonstrate compliance with the requirements of 40 C.F.R. Part 141, Subpart Q by the dates specified in Paragraphs III.1 and III.2 of the AOs, and is, therefore, in violation of the AOs.

III. CONSENT AGREEMENT

1. Section II, Paragraphs 1-17 are re-alleged and incorporated by reference.
2. EPA and Respondent agree that it is in the public interest to resolve the issues alleged in this Consent Agreement without further litigation and the expense and effort that litigation entails.
3. Based upon the foregoing and pursuant to Section 1414(g)(3)(B) of the SDWA, 42 U.S.C. §300g-3(g)(3)(B), and Section 22.13(b) of the CROP, 40 C.F.R. § 2.13(b), it is hereby agreed by and between EPA and Respondent, and Respondent voluntarily and knowingly agrees as follows:

IV. TERMS OF SETTLEMENT

1. For the purpose of this proceeding, Respondent:
 - a. Admits the jurisdictional allegations of this CA/FO;
 - b. Neither admits nor denies the factual allegations contained herein;
 - c. Waives its right to contest the allegations, a judicial or administrative hearing, or to appeal this CA/FO; and
 - d. Consents to the payment of a civil penalty in the amount of **THREE THOUSAND DOLLARS (\$3,000.00)**, as stated in Section VI below.

V. PAYMENT OF CIVIL PENALTY

1. Respondent shall pay a civil penalty to EPA in the amount of **THREE THOUSAND DOLLARS (\$3,000.00)**. Such payment shall be made by check, or by Electronic Fund Transfer (“EFT”). If the payment is made by check, then the check shall be payable to the “Treasurer, United States of America,” and shall be mailed to:

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

The check shall be identified with a notation thereon listing the following: **IN THE MATTER OF EMERALD BEACH RESORT II C/O DE LYROT HOLDING/BEST WESTERN, INC. PWS**, and shall bear thereon the **Docket Numbers SDWA-02-2014-8402 and SDWA-02-2014-8403**. Payment of the penalty must be received at the above address on or before forty-five (45) calendar days after the Effective Date of this CA/FO.

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

- a. Amount of Payment: \$3,000.00.
- 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 “D 68010727 Environmental Protection Agency”
- f. Name of Respondent: Emerald Beach Resort I and Emerald Beach Resort II c/o De Lyrot Holding/Best Western, Inc.
- g. Case Numbers: SDWA-02-2014-8402 and SDWA-02-2014-8403

Such EFT must be received on or before 45 calendar 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:

Tim Murphy, Esq., Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866
(212) 637-3230

and

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

- h. Failure to pay the amount in full within the time period set forth above may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
- i. The civil penalty constitutes a penalty within the meaning of 26 U.S.C. §162(f).

VI. GENERAL PROVISIONS

1. The provisions of this CA/FO shall be binding upon Respondent, its officers, directors, agents, servants, authorized representatives and successors or assigns, including but not limited to, subsequent purchasers. No transfer of ownership or operation shall relieve Respondent of its obligation to comply with this CA/FO.
2. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to its issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.
3. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement and agrees to pay the penalty in accordance with the terms of this Consent Agreement.
4. Respondent knowingly and explicitly waives its rights under Section 1414(g)(3)(B) of the Act, 42 U.S.C. §300g-3(g)(3)(b), to request or to seek any Hearing on or appeal of this Consent Agreement or the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Orders.
5. Respondent waives any right it may have pursuant to 40 C.F.R. §22.8, to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator or the Deputy Regional Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the accompanying Final Orders.

6. Respondent also hereby expressly waives its right to confer with the Administrator under Section 1414(g)(3)(B) of the Act, 42 U.S.C. §300g-3(g)(3)(B).
7. EPA reserves the right to commence action against any person or persons, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the CROP. Further, EPA reserves any right and remedy available to it under the SDWA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction to enforce the provisions of this CA/FO, following its filing with the Regional Hearing Clerk.
8. Issuance of the CA/FO does not constitute a waiver by EPA of its right to enforce the substantive legal requirements underlying this penalty assessment, either administratively or judicially pursuant to Section 1414 of the Act, 42 U.S.C. §300g-3. Issuance of or compliance with this CA/FO does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable requirements of the Act, of regulations promulgated thereunder and of any legal order or permit issued thereunder.
9. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.
10. Respondent consents to service by a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.
11. This CA/FO shall become effective upon signature of the Final Order.
12. Each party hereto agrees to bear its own costs and fees in this matter.
13. Pursuant to 40 C.F.R. §22.18(c), this CA/FO constitutes a full and final resolution of Respondent's liability for Federal civil penalties pursuant to 1414(g)(3)(B) of SDWA, 42 U.S.C. §300g-3(g)(3)(B), for the specific violations and matters alleged in this Consent Agreement.
14. The person signing this CA on behalf of the Respondent certifies to EPA by his or her signature herein that Respondent, as of the date of its execution of this CA, is in compliance

with the provisions of the Safe Drinking Water Act, its implementing regulations and the Virgin Islands federally authorized Safe Drinking Water Program at the Emerald Beach Resort I and Emerald Beach Resort II public water systems referenced herein. This certification is based on the personal knowledge of the signer or an inquiry of the person or persons responsible for the PWS's compliance with the SDWA.


FOR RESPONDENT:

DATE: 08/19/14


Joel Kling, Manager
Emerald Beach Resort I
Emerald Beach Resort II
c/o De Lyrot Holding/Best Western, Inc.
8070 Lindbergh Bay
St. Thomas, VI 00802

FOR COMPLAINANT:

DATE: 9/5/14


Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
US Environmental Protection Agency
Region 2
New York, New York 10007-1866

VIII. FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. 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 effective the date of signature.

DATE: September 10, 2014

Helen S. Ferrara

HELEN S. FERRARA
Regional Judicial Officer
U.S. EPA, Region 2
290 Broadway
New York, NY 10007-1866

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Emerald Beach Resort I
Emerald Beach Resort II
c/o De Lyrot Holding/Best Western, Inc.
8070 Lindbergh Bay
St. Thomas, VI 00802
PWS ID: VI1000083
VI1000084

Respondent

Proceeding Pursuant to §1414(g)(3)(B) of the Safe
Drinking Water Act, 42 U.S.C. §300g-3(g)(3)(B)

Proceeding to Assess Civil
Penalty Under Section 1414(g)(3)(B)
of the
Safe Drinking Water Act

Docket No.
SDWA-02-2014-8402
SDWA-02-2024-8403

CERTIFICATE OF SERVICE

I certify that, on the date noted below, I caused to be mailed, by certified mail, return receipt requested, a copy of the foregoing "CONSENT AGREEMENT AND FINAL ORDER" to the following person at the address listed below:

Joel Kling, Manager
Emerald Beach Resort I
Emerald Beach Resort II
8070 Lindbergh Bay
St. Thomas, VI 00802

I sent by inter office mail the original and a copy of the foregoing Complaint to the office of the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

Date:

9/11/14



Marie St. Germain
New York, New York