

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

U.S. ENVIRONMENTAL PROTECTION
AGENCY
2010 JUL 13 AM 11:48
DECA-WATER COMPLIANCE

IN THE MATTER OF:

Fairway Village
1301 Fairway Village
St. Thomas, VI 00803

Respondent

Proceeding Pursuant §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 No.
SDWA-02-2010-840

U.S. ENVIRONMENTAL
PROTECTION AGENCY
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NATIONAL HEARING
OFFICE

I. Preliminary Statement

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 "SDWA" or "Act"), 42 U.S.C. §300g-3(g)(3)(B).

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 Fairway Village ("Respondent") on APR 16 2010.

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 Fairway Village public water system, located in St. Thomas, United States Virgin Islands.

II. Findings of Fact and Conclusions of Law

1. Respondent owns and/or operates the Fairway Village "public water system," ("PWS") within the meaning of Section 1401(4) of the SDWA, 42 U.S.C. §300f(4), and 40 C.F.R. §141.2, located in St. Thomas, United States Virgin Islands.
2. Respondent is a "supplier of water" within the meaning of Section 1401(5) of the SDWA, 42 U.S.C. §300f(5), and 40 C.F.R. §141.2.

3. Respondent, is a "person" as defined in Section 1401(12) of SDWA, 42 U.S.C. §300f(12), and 40 C.F.R. §141.2, and is subject to an Administrative Order issued under Section 1414(g)(1) of the SDWA, 42 U.S.C. §300g-3(g)(1).
4. The Fairway Village PWS provides piped water for human consumption and regularly serves a population of at least 25 individuals, and is therefore a "community water system" ("CWS") as defined by Section 1401(15) of the SDWA, 42 U.S.C. §300f(15) and 40 C.F.R. §141.2.
5. On December 7, 2000, EPA promulgated the Radionuclides Rule (40 C.F.R. §§141.25, 141.26, 141.55 and 141.66) to improve public health by reducing exposure to radionuclide contaminants in drinking water. The Radionuclides Rule establishes monitoring and compliance requirements (40 C.F.R. §141.26), establishes a Maximum Contaminant Level ("MCL") for Uranium of 30 micrograms per liter (30 ug/L), and retains existing MCLs for combined radium-226/228, gross alpha particle, beta particle and photon radioactivity (40 C.F.R. §141.66). The Radionuclides Rule also establishes Maximum Contaminant Level Goals ("MCLGs") for radionuclide contaminants in drinking water (40 C.F.R. §141.55).
6. The Virgin Islands Department of Planning and Natural Resources ("VIDPNR") administers the Public Water Supply Supervision Program in the U.S. Virgin Islands pursuant to Section 1413 of the SDWA. The approval of primary enforcement authority from EPA to the VIDPNR was effective on September 22, 1979. However, the VIDPNR has not yet obtained primary enforcement responsibility for the Radionuclides Rule. Therefore, EPA has primary responsibility for enforcement of the Radionuclides Rule.
7. 40 C.F.R. §141.26 requires all CWSs to comply with the radionuclide contaminants monitoring.
8. 40 C.F.R. § 141.26 (a)(1) requires CWSs to conduct initial monitoring to determine compliance with 40 C.F.R. §141.66 (b)(c), and (e) by December 31, 2007. CWSs are required to sample at every entry point to the distribution system that is representative of all sources of water being used under normal operating conditions. The system must take each sample at the same sampling point unless conditions make another sampling point more representative of each source or the State has designated a distribution system location.
9. CWSs with State-approved historical monitoring data collected between June 2000 and December 8, 2003, may use this data to satisfy the initial monitoring requirements. CWSs without acceptable historical monitoring data, as defined in 40 C.F.R. §141.26(a)(2)(ii), are required to collect four (4) consecutive quarterly samples at all sampling points described in paragraph 8 above before December 31, 2007.
10. Respondent's Fairway Village PWS is a CWS and, therefore, was required to comply with 40 C.F.R. § 141.26 beginning January 2007. Pursuant to 40 C.F.R. § 141.26(a)(2), Respondent was required to begin the initial monitoring for radionuclide contaminants

during the first quarter of 2007 or to submit State-approved historical monitoring data collected as defined in paragraph 9 above.

11. In March 20, 2007, the VIDPNR provided EPA the results of the first quarter of radionuclide contaminants monitoring data for the Fairway Village PWS.
12. On April 11, 2008, EPA issued an Administrative Order ("AO"), Docket Number SDWA-02-2008-8038 to the Fairway Village PWS, for failure to submit the remaining three (3) quarters of radionuclide contaminants monitoring data. The AO required Respondent to submit radionuclide contaminants monitoring results by July 10, 2008, October 10, 2008 and January 10, 2009.
13. On September 26, 2008, Respondent submitted to EPA, via facsimile, the second quarter of radionuclide contaminants monitoring data. Respondent has failed to submit to EPA the remaining two (2) quarters of radionuclide contaminants monitoring data as required by the Radionuclides Rule.
14. Based on information available to EPA, the Respondent has failed to demonstrate compliance with the requirements specified in 40 C.F.R. §141.25 and §141.26 and violated Paragraph 15 of the AO.

III. Consent Agreement

Based upon the foregoing, and pursuant to Section 1414(g)(3)(B) of the Act, 42 U.S.C. §300g-3(g)(3)(B), and the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits" ("CROP") (40 C.F.R. §22.18), it is hereby agreed by and between the parties and Respondent voluntarily and knowingly agrees as follows:

Jurisdiction

1. For the purpose of this proceeding, Respondent a) admits the jurisdictional allegations of the Complaint as applied to the facility; and b) neither admits nor denies the specific factual allegations and legal conclusions contained in the Complaint and Findings of Fact.

Payment of Civil Penalty

2. Respondent shall pay a civil penalty to EPA in the amount of **Three Hundred Dollars (\$300.00)**. Such payment shall be made by cashier's or certified check or by Electronic Fund Transfer (EFT). The check shall be identified with a notation thereon listing the following: **IN THE MATTER OF FAIRWAY VILLAGE**, and shall bear thereon the **Docket Number SDWA-02-2010-8401**. 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:

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 "D 68010727 Environmental Protection Agency"
- f. Name of Respondent: Fairway Village
- g. Case Number: SDWA-02-2010-8401

Payment of the penalty must be received at the above address on or before forty-five (45) calendar days after the date of signature of the Final Order, which is located at the end of this CA/FO (the date by which payment must be received shall hereafter be referred to as the "due date").

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

Nadine Orrell, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 2
290 Broadway - 16th Floor
New York, NY 10007-1866

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. Further, if the 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 also will be applied on any principal amount not paid within 90 days of the due date.

- j. The civil penalty constitutes a penalty within the meaning of 26 U.S.C. §162(f).
- k. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from Respondent's federal or state taxes.

General Provisions

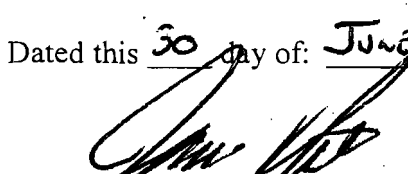
- 3. This Consent Agreement is being voluntarily and knowingly entered into by the parties in full and final settlement of the civil liabilities that might have attached as a result of the allegations contained in the Complaint. Respondent has read the Consent Agreement, understands its terms, finds 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.
- 4. 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.
- 5. Respondent knowingly and explicitly waives its right under §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 Judicial review of the Complaint or on any of the allegations therein asserted, on this Consent Agreement or the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.
- 6. 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 Order.
- 7. Issuance of the Consent Agreement and Final Order 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 Sections 1414 of the Act, 42 U.S.C. §300g-3. Issuance of or compliance with this Consent Agreement/Final Order 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.
- 8. 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.

9. The provisions of this Consent Agreement and Final Order shall be binding upon the Respondent, its officers, directors, agents, servants, authorized representatives and successors or assigns.
10. Each party hereto agrees to bear its own costs and fees in this matter.
11. Respondent consents to service upon Respondent by a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

FOR THE RESPONDENT:

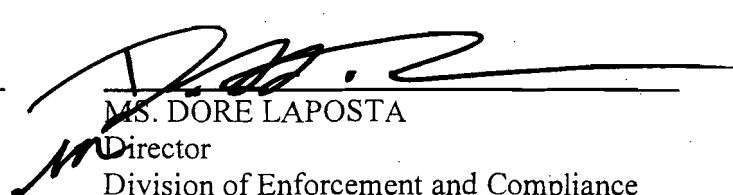
Dated this 30 day of: June, 2010



MR. JAMI PFISTER
Fairway Village
1301 Fairway Village
St. Thomas, VI 00803

FOR THE COMPLAINANT:

Dated this 11th day of: July, 2011

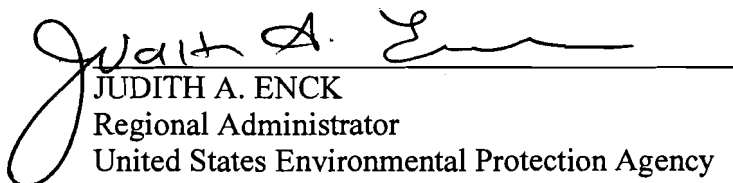


MS. DORE LAPOSTA
Director
Division of Enforcement and Compliance
Assistance
U.S. Environmental Protection Agency
Region 2
New York, NY 10007-1866

IV. 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 an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA Region 2, New York, New York.

DATE: 8/1/11


JUDITH A. ENCK
Regional Administrator
United States Environmental Protection Agency
Region 2
290 Broadway
New York, NY 10007-1866

To: MR. NEVIN PHILLIPS
Fairway Village
1301 Fairway Village
St. Thomas, VI 00803
Docket No. SDWA-02-2010-8401

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Fairway Village
1301 Fairway Village
St. Thomas, VI 00803
PWS ID: VI1000175

Respondent

Proceeding Pursuant to
§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 No.
SDWA-02-2010-8401**

CERTIFICATE OF SERVICE

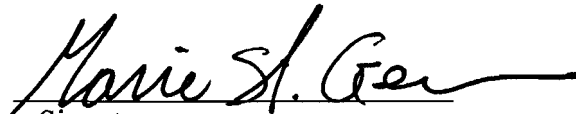
I certify that, on the date noted below, I caused to be mailed, by certified mail, return receipt requested, a copy of the foregoing "CONSENT AGREEMENT AND FINAL ORDER" to the following person at the address listed below:

MR. NEVIN PHILLIPS
Fairway Village
1301 Fairway Village
St. Thomas, VI 00803

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

Date:

8/15/11


Signature