

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGIONAL OFFICE
2011 AUG 10 P 2:23
PUBLIC HEARING
CERAM

IN THE MATTER OF:

Great Gun Beach Public Water System
Town of Brookhaven Parks Department
1130 Old Town Road
Coram, NY 11727

PWS ID: NY5104105

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-02-2011-8401

COMPLAINT,
FINDINGS OF VIOLATION, NOTICE OF PROPOSED ASSESSMENT OF A CIVIL PENALTY
AND NOTICE OF OPPORTUNITY TO REQUEST A HEARING

I. Statutory Authority

1. This Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty and Notice of Opportunity to Request a Hearing (“Complaint”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 1414(g)(3)(B) of the Safe Drinking Water Act (“SDWA” or “Act”), 42 U.S.C. §300g-3(g)(3)(B) and duly delegated to the Director of the Division of Enforcement and Compliance Assistance of EPA Region 2 (“Complainant”).
2. Pursuant to Section 1414(g)(3)(B) of the Act, and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits” (“CROP”), 40 C.F.R. Part 22, a copy of which is attached, Complainant hereby requests that a civil penalty be assessed against the Town of Brookhaven Parks Department (“Respondent”) for the violation of an administrative order issued pursuant to Section 1414(g) of the SDWA requiring compliance with an applicable requirement of the Act at its public water system (Great Gun Beach public water system), located in Brookhaven, New York.

II. Findings of Violation

1. Respondent owns and/or operates the Great Gun Beach “public water system,” 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 Brookhaven, New York.

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. Respondent’s public water system provides piped water for human consumption and does not regularly serve at least 25 of the same persons over six months per year, and is therefore a “transient non-community water system” as defined by Section 1401(15) of the SDWA, 42 U.S.C. §300f(16) and 40 C.F.R. §141.2.
5. On November 21, 2006, USEPA promulgated the Ground Water Rule (“GWR”), 40 C.F.R. Part 141, Subpart S, to provide for increased public health protection against microbial pathogens, specifically bacterial and viral pathogens, in public water systems that use ground water. The GWR requires systems with ground water sources at risk of microbial contamination to take corrective action to protect consumers from harmful bacteria and viruses. Monitoring is a key element of this approach.
6. The New York State Department of Health (“NYSDOH”) administers the Public Water Supply Supervision Program in the state of New York pursuant to Section 1413 of the SDWA. The approval and delegation of primary enforcement responsibility from USEPA to NYSDOH was effective as of September 9, 1977. However, the NYSDOH has not yet obtained primary enforcement responsibility for the GWR. Therefore, as of the date of this Complaint, USEPA has primary responsibility for enforcement of the GWR.
7. Pursuant to 40 C.F.R. §141.400(b), public water systems that use a ground water source are required to comply with 40 C.F.R. Part 141, Subpart S (the “GWR”).
8. Respondent’s public water system uses a ground water source. Therefore, it is subject to the requirements of 40 C.F.R. Part 141, Subpart S, the GWR.
9. Pursuant to 40 C.F.R. §141.402(a)(1), a ground water system must conduct triggered source water monitoring under the GWR if the system does not provide at least 4-log treatment of viruses (inactivation and/or removal) before or at the first customer for each ground water source, the system is notified that a sample collected under 40 C.F.R. §141.21(a) is total coliform-positive, and the sample is not invalidated under 40 C.F.R. §141.21(c).
10. According to information provided by the NYSDOH, Respondent’s public water system does not provide 4-log treatment of viruses.
11. Pursuant to 40 C.F.R. §141.402(a)(2), a ground water system must collect, within 24 hours of notification of the total coliform-positive sample, at least one ground water source sample from each ground water source in use at the time the total coliform-positive sample was collected under 40 C.F.R. §141.21(a). The State may extend the 24-hour time limit on a case-by-case basis if the system cannot collect the ground water source sample within 24 hours due to circumstances beyond its control. Pursuant to 40 C.F.R. §141.402(c)(2), triggered source water

samples taken under 40 C.F.R. §141.402(a)(2) must be analyzed for one of the following fecal indicators: E. Coli, enterococci, or coliphage.

12. On June 15, 2010, Respondent was notified of a total coliform-positive sample collected under 40 C.F.R. §141.21(a) on June 11, 2010.
13. On July 9, 2010, Respondent was notified of a total coliform-positive sample collected under 40 C.F.R. §141.21(a) on July 7, 2010.
14. According to information provided by NYSDOH, Respondent was unable to collect the required triggered source water monitoring samples due to its failure to install a raw water tap.
15. Pursuant to 40 C.F.R. §141.403(a), significant deficiencies include, but are not limited to, defects in design, operation or maintenance, or a failure or malfunction of the sources, treatment, storage or distribution system that the State determines to be causing, or have potential for causing, the introduction of contamination into the water delivered to consumers. A ground water system that is notified of a significant deficiency by the State has 120 days to either complete corrective action in accordance with applicable State plan review processes or other State guidance or direction, or be in compliance with a State-approved corrective action plan and schedule.
16. According to information provided by NYSDOH, Respondent received notification that its failure to install a raw water tap constituted a significant deficiency under the GWR during a sanitary survey conducted at the facility on July 7, 2010. Therefore, Respondent was required to complete corrective action or be in compliance with a State-approved corrective action plan no later than November 4, 2010.
17. On November 10, 2010, USEPA issued an Administrative Order, Docket Number SDWA-02-2011-8008, requiring Respondent to complete corrective action and submit certification of GWR compliance by December 15, 2010.
18. On December 6, 2010, EPA received correspondence from Respondent, dated November 30, 2010, detailing a corrective action plan and implementation schedule, with compliance projected for December 15, 2010, as required by the AO. The letter also stated that Great Gun Beach Public Water System would remain closed until Respondent achieved final compliance with the AO.
19. On March 22, 2011, EPA received correspondence from Respondent, dated March 18, 2011, stating that, due to discussions regarding permanently closing Great Gun Beach to the public, Respondent had not complied with the schedule submitted on November 30, 2010. The correspondence also included a revised corrective action plan and implementation schedule with final GWR compliance projected for May 6, 2011.
20. On April 8, 2011, USEPA issued an Administrative Order, Docket Number SDWA-02-2011-8010, requiring Respondent to complete corrective action and submit certification of GWR compliance by May 6, 2011.

21. Based on information available to EPA, as of the date of this Complaint, Respondent has neither completed corrective action nor is Respondent in compliance with a State-approved corrective action plan, in violation of 40 C.F.R. §141.403(a)(5).

COUNT 1

22. Pursuant to 40 C.F.R. §141.403(a)(5), Respondent was required to complete corrective action or be in compliance with a State-approved corrective action plan within 120 days of being notified by the State of a significant deficiency.
23. Pursuant to Part III, Paragraph 1 of the AO, Docket Number SDWA-02-2011-8010, Respondent was required to complete corrective action and submit certification of GWR compliance to Suffolk County Department of Health Services, NYSDOH and EPA by May 6, 2011.
24. Respondent failed to demonstrate compliance with the requirements specified in 40 C.F.R. §141.403(a)(5) by the date specified in the AO, and is, therefore, in violation of Part III, Paragraph 1 of the AO.

III. Notice of Proposed Order Assessing a Civil Penalty

Based on the foregoing Findings of Violation, and pursuant to the authority of Section 1414(g)(3)(b) of the Act, 42 U.S.C. §300g-3(g)(3)(B), EPA Region 2 hereby proposes to issue a Final Order Assessing Administrative Penalties ("Final Order") to Respondent assessing a penalty of **One Thousand Dollars (\$1,000.00)**. EPA determined the proposed penalty after taking into account the applicable factors identified at Section 1414(b) of the Act, 42 U.S.C. §300g-3(g)(b). EPA has taken into account the seriousness of the violation(s), the population at risk and other appropriate factors, in light of information currently available to it.

IV. Procedures Governing This Administrative Litigation

The rules of procedure governing this civil administrative litigation have been set forth in 40 C.F.R. Part 22. This proceeding will be conducted in accordance with the CROP, including Subpart I thereof; unless, in your Answer, you request a hearing on the record in accordance with Section 554 of the Administrative Procedures Act, 5 U.S.C. §554, in which case Subpart I shall not apply.

A. Answering the Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written Answer to the Complaint, and such Answer must be filed within thirty (30) days after service of the Complaint. 40 C.F.R. §22.15(a). The address of the Regional Hearing Clerk of EPA, Region 2, is:

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

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action, 40 C.F.R. §22.15(a).

Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge. 40 C.F.R. §22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. 40 C.F.R. §22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding), (3) the basis for opposing the proposed relief and (4) whether Respondent requests a hearing. 40 C.F.R. §22.15(b).

Respondent's failure affirmatively to raise in the Answer facts that constitute or that might constitute the grounds of its defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

B. Opportunity to Request a Hearing

If requested by Respondent in its Answer, a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. §22.15(c). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. §22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. §22.15(c).

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. §22.21(d). A hearing of this matter will be conducted in accordance with the applicable provisions of the Administrative Procedure Act, 5 U.S.C. §§551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

C. Failure to Answer

If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. §22.15(d). If Respondent fails to file a timely (i.e. in accordance with the 30-day period set forth in 40 C.F.R. §22.15(a)) Answer to the Complaint, Respondent may be found in default upon motion. 40 C.F.R. §22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. §22.17(a). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. §22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings thirty (30) days after the Default Order becomes final pursuant to 40 C.F.R.

§22.27(c). 40 C.F.R. §22.17(d). If necessary, EPA may then seek to enforce such Final Order of Default against Respondent, and to collect the assessed penalty amount, in federal court.

V. Informal Settlement Conference

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. §22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in this Complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business and/or (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent, to reflect any relevant information previously not known to Complainant or to dismiss any or all of the charges, if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. §22.18.

Any request for an informal conference or any questions that Respondent may have regarding this Complaint should be directed to:

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) 637-3236

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. 40 C.F.R. §22.18(b)(1). Respondent's requesting a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. §22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. §22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written Consent Agreement. 40 C.F.R. §22.18(b)(2). In accepting the Consent Agreement, Respondent waives its right to contest the allegations in the Complaint and waives its right to appeal the Final Order that is to accompany the Consent Agreement. 40 C.F.R. §22.18(b)(2). In

order to conclude the proceeding, a Final Order ratifying the parties' agreement to settle will be executed. 40 C.F.R. §22.18(b)(3).

Respondent's entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in such Consent Agreement terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

VI. Resolution of this Proceeding Without Hearing or Conference

Instead of filing an Answer, Respondent may choose to pay the total amount of the proposed penalty within 30 days after receipt of the Complaint, provided that Respondent files with the Regional Hearing Clerk, Region 2 (at the address noted above), a copy of the check or other instrument of payment. 40 C.F.R. §22.18(a). A copy of the check or other instrument of payment should be provided to the EPA Assistant Regional Counsel identified on the previous page. Payment of the penalty assessed should be made by sending a cashier's or certified check payable to the "Treasurer, United States of America", in the full amount of the penalty assessed in this complaint to the following addressee:

Regional Hearing Clerk
U. S. Environmental Protection Agency, Region 2
P.O. Box 360188M
Pittsburgh, Pennsylvania 15251

Pursuant to 40 C.F.R. §22.18(a)(3), if Respondent elects to pay the full amount of the penalty proposed in the Complaint within thirty (30) days of receiving the Complaint, then, upon EPA's receipt of such payment, the Regional Administrator of EPA, Region 2 (or, if designated, the Regional Judicial Officer), shall issue a Final Order in accordance with 40 C.F.R. §22.18(a)(3). In accordance with 40 C.F.R. §22.45(c)(3), no Final Order shall issue until at least ten (10) days after the close of the comment period on this Complaint. Issuance of a Final Order terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Further, pursuant to 40 C.F.R. §22.18(a)(3), the making of such payment by Respondent shall constitute a waiver of Respondent's right both to contest the allegations made in the Complaint and to appeal said Final Order to federal court. Such payment does not extinguish, waive, satisfy or otherwise affect Respondent's obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

VII. Filing of Documents

1. The Answer and any Hearing Request and all subsequent documents filed in this action should be sent to:

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

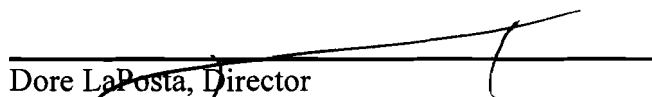
2. A copy of the Answer, any Hearing Request and all subsequent documents filed in this action shall be sent to:

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) 637-3236

VIII. General Provisions

1. Respondent has a right to be represented by an attorney at any stage of these proceedings.
2. This Complaint does not constitute a waiver, suspension or modification of the requirements of the Act, regulations promulgated thereunder, or any applicable permit.
3. Neither assessment nor payment of an administrative civil penalty pursuant to Section 1414(g)(3)(B) of the Act, 42 U.S.C. §300g-3(g)(3)(B), will affect Respondent's continuing obligation to comply with the Act, and with regulations promulgated thereunder.

ISSUED THIS 5th DAY OF AUGUST 2011.



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
United States Environmental Protection Agency – Region 2
290 Broadway
New York, New York 10007-1866

To: MR. EDWARD MORRIS
Town of Brookhaven Parks Department
1130 Old Town Road
Coram, NY 11727

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

IN THE MATTER OF:

Great Gun Beach Public Water System
Town of Brookhaven Parks Department
1130 Old Town Road
Coram, NY 11727

PWS ID: NY5104105

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-02-2011-8401

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 "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 the Town of Brookhaven Parks Department ("Respondent"), on July 10, 2011.

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 public water system (Great Gun Beach public water system) in Brookhaven, New York.

II. Findings of Fact and Conclusions of Law

1. Respondent owns and/or operates the Great Gun Beach "public water system," 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 Brookhaven, New York.

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. Respondent’s public water system provides piped water for human consumption and does not regularly serve at least 25 of the same persons over six months per year, and is therefore a “transient non-community water system” as defined by Section 1401(15) of the SDWA, 42 U.S.C. §300f(16) and 40 C.F.R. §141.2.
5. On November 21, 2006, USEPA promulgated the Ground Water Rule (“GWR”), 40 C.F.R. Part 141, Subpart S, to provide for increased public health protection against microbial pathogens, specifically bacterial and viral pathogens, in public water systems that use ground water. The GWR requires systems with ground water sources at risk of microbial contamination to take corrective action to protect consumers from harmful bacteria and viruses. Monitoring is a key element of this approach.
6. The New York State Department of Health (“NYSDOH”) administers the Public Water Supply Supervision Program in the state of New York pursuant to Section 1413 of the SDWA. The approval and delegation of primary enforcement responsibility from USEPA to NYSDOH was effective as of September 9, 1977. However, the NYSDOH has not yet obtained primary enforcement responsibility for the GWR. Therefore, as of the date of this Complaint, USEPA has primary responsibility for enforcement of the GWR.
7. Pursuant to 40 C.F.R. §141.400(b), public water systems that use a ground water source are required to comply with 40 C.F.R. Part 141 Subpart S (the “GWR”).
8. Respondent’s public water system uses a ground water source. Therefore, it is subject to the requirements of 40 C.F.R. Part 141 Subpart S, the GWR.
9. Pursuant to 40 C.F.R. §141.402(a)(1), a ground water system must conduct triggered source water monitoring under the GWR if the system does not provide at least 4-log treatment of viruses (inactivation and/or removal) before or at the first customer for each ground water source, and the system is notified that a sample collected under 40 C.F.R. §141.21(a) is total coliform-positive, and the sample is not invalidated under 40 C.F.R. §141.21(c).
10. According to information provided by the NYSDOH, Respondent’s public water system does not provide 4-log treatment of viruses.
11. Pursuant to 40 C.F.R. §141.402(a)(2), a ground water system must collect, within 24 hours of notification of the total coliform-positive sample, at least one ground water source sample from each ground water source in use at the time the total coliform-

positive sample was collected under 40 C.F.R. §141.21(a). The State may extend the 24-hour time limit on a case-by-case basis if the system cannot collect the ground water source sample within 24 hours due to circumstances beyond its control. Pursuant to 40 C.F.R. §141.402(c)(2), triggered source water samples taken under 40 C.F.R. §141.402(a)(2) must be analyzed for one of the following fecal indicators: E. Coli, enterococci, or coliphage.

12. On June 15, 2010, Respondent was notified of a total coliform-positive sample collected under 40 C.F.R. §141.21(a) on June 11, 2010.
13. On July 9, 2010, Respondent was notified of a total coliform-positive sample collected under 40 C.F.R. §141.21(a) on July 7, 2010.
14. According to information provided by NYSDOH, Respondent was unable to collect the required triggered source water monitoring samples due to its failure to install a raw water tap.
15. Pursuant to 40 C.F.R. §141.403(a), significant deficiencies include, but are not limited to, defects in design, operation or maintenance, or a failure or malfunction of the sources, treatment, storage or distribution system that the State determines to be causing, or have potential for causing, the introduction of contamination into the water delivered to consumers. A ground water system that is notified of a significant deficiency by the State has 120 days to either complete corrective action in accordance with applicable State plan review processes or other State guidance or direction, or be in compliance with a State-approved corrective action plan and schedule.
16. According to information provided by NYSDOH, Respondent received notification that its failure to install a raw water tap constituted a significant deficiency under the GWR during a sanitary survey conducted at the facility on July 7, 2010. Therefore, Respondent, the AO was received by Respondent on November 18, 2010.
18. On December 6, 2010, EPA received correspondence from Respondent, dated November 30, 2010, detailing a corrective action plan and implementation schedule, with compliance projected for December 15, 2010, as required by the AO. The letter also stated that Great Gun Beach Public Water System would remain closed until Respondent achieved final compliance with the AO.

19. On March 22, 2011, EPA received correspondence from Respondent, dated March 18, 2011, stating that, due to discussions regarding permanently closing Great Gun Beach to the public, Respondent had not complied with the schedule submitted on November 30, 2010. The correspondence also included a revised corrective action plan and implementation schedule with final GWR compliance projected for May 6, 2011.
20. On April 8, 2011, EPA issued an AO, Docket Number SDWA-02-2011-8010, requiring Respondent to complete corrective action and submit certification of GWR compliance by May 6, 2011. According to EPA's records in the form of the certified mail return receipt (Article Number 7005 3110 0000 5950 3584), the AO was received by the Respondent on April 13, 2011.
21. Based on information available to EPA, Respondent has failed to demonstrate compliance with the requirements specified in 40 C.F.R. §141.403(a)(5) and violated Section III, Paragraph 1 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 Ninety-Five Dollars (\$395.00)**. Such payment shall be made by cashier's or certified 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:

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

The check shall be identified with a notation thereon listing the following: **IN THE MATTER OF GREAT GUN BEACH**, and shall bear thereon the **Docket Number SDWA-02-2011-8401**. Payment of the penalty must be received at the above address on or before thirty (30) calendar days after the Effective Date of this CA/FO (the “due date”).

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: Town of Brookhaven Parks Department
- g. Case Number: SDWA-02-2011-8401

Such EFT must be received on or before 30 calendar days after the Effective Date of this CA/FO.

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:

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

and

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

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:

FOR THE COMPLAINANT:

Dated this ____ day of: _____, 2011

Dated this ____ day of: _____, 2011

MR. EDWARD MORRIS
Town of Brookhaven Parks Department
1130 Old Town Road
Coram, NY 11727

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: _____

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

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Great Gun Beach Public Water System
Town of Brookhaven Parks Department
1130 Old Town Road
Coram, NY 11727

PWS ID: NY5104105

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-02-2011-8401


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 "ADMINISTRATIVE COMPLAINT" and a copy of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," (40 C.F.R. Part 22) to the following person at the address listed below:

MR. EDWARD MORRIS
Town of Brookhaven Parks Department
1130 Old Town Road
Coram, NY 11727

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: 08/09/11

for 
Amy Lavoie
New York, New York