



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

MAY 13 2013

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.11
2013 MAY 17 A 7:29
REGIONAL HEARING
CLERK

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7005 3110 0000 5952 6071

Robin Lepore, Senior Attorney
Office of the Solicitor
United States Department of the Interior
One Gateway Center – Suite 612
Newton, MA 02458-2881

Re: In the Matter of: U.S. Department of Interior, Fish and Wildlife Service, Edwin B. Forsythe National Wildlife Refuge Visitor Contact Station Public Water System, Docket No. SDWA-02-2012-8403

Dear Ms. Lepore:

Enclosed you will find a fully executed Consent Agreement and Final Order (“CA/FO”) which settles the above referenced action. The original and one copy of the CA/FO are being filed with the Regional Hearing Clerk with a copy of this letter.

Please do not hesitate to contact me at (212) 637-3231 should you have any questions. Thank you for your efforts to resolve this matter.

Sincerely,

for Lauren Fischer
Assistant Regional Counsel

Enclosures

cc: Karen Maples, Regional Hearing Clerk w/ original and copy

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



IN THE MATTER OF:

United States Department of the Interior
Fish and Wildlife Service
Edwin B. Forsythe National Wildlife Refuge
Visitor Contact Station Public Water System
Oceanville, NJ 08231

PWS ID. No. NJ0111454

Respondent.

Proceeding Pursuant to Section 1447 of the
Safe Drinking Water Act, 42 U.S.C. §330j

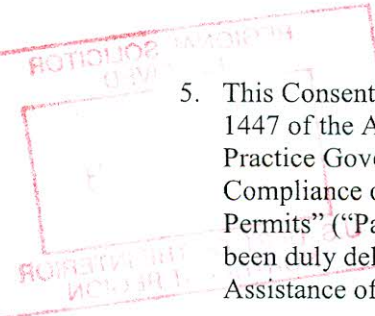
**CONSENT AGREEMENT
AND
FINAL ORDER**

Docket No.
SDWA-02-2012-8403

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.11
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I. PRELIMINARY STATEMENT

1. This is a civil administrative proceeding for the assessment of a civil penalty instituted pursuant to Section 1447(a)-(b) of the Safe Drinking Water Act ("SDWA" or the "Act"), 42 U.S.C. § 300j-6(a)-(b).
2. Section 1447 of the SDWA, 42 U.S.C. § 300j-6, authorizes the United States Environmental Protection Agency ("EPA") to take an enforcement action whenever it determines that a Federal agency is in violation of any requirement of the SDWA, EPA's regulations thereunder, or any regulation of a state drinking water program which has been authorized by EPA. Pursuant to Section 1447(a) and (b), EPA may issue a penalty order assessing a penalty against any Federal agency that owns or operates any public water system which violates an applicable requirement of the Act.
3. The Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, Region 2, United States Environmental Protection Agency ("EPA" or "Complainant"), issued a "Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty and Notice of Opportunity to Request a Hearing," ("Complaint") against the United States Department of the Interior, Fish and Wildlife Service ("Respondent"), on September 20, 2012.
4. The Complaint alleges violations of the Safe Drinking Water Act, 42 U.S.C. §§ 300f to 300j-26, at the Edwin B. Forsythe National Wildlife Refuge-Visitor Contact Station Public Water System ("the Visitor Contact Station"). Respondent owns and/or operates the Visitor Contact Station.

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5. This Consent Agreement is entered into by Complainant and Respondent, pursuant to Section 1447 of the Act, 42 U.S.C. § 300j-6(b), 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” (“Part 22”), 40 C.F.R. § 22. The authority to issue this Consent Agreement has been duly delegated to the Director of the Division of Enforcement and Compliance Assistance of EPA Region 2.
 6. Pursuant to Section 1447(b) of the SDWA, 42 U.S.C. § 300j-6(b), and in accordance with Part 22, Complainant hereby requests that the Presiding Officer assess a civil penalty against Respondent for violating applicable requirements under subchapter XII of 42 U.S.C. §§ 300f to 300j-26.
 7. This Consent Agreement and Final Order (collectively “CA/FO”) resolves violations of the specific requirements under subchapter XII of 42 U.S.C. §§ 300f to 300j-26, Sections 1401 to 1465 of the SDWA, as provided for in Section II below.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent owns and/or operates the Edwin B. Forsythe National Wildlife Refuge-Visitor Contact Station (“the Visitor Contact Station”), a “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.
2. Respondent is a “supplier of water” as that term is defined in Section 1401(15) of the SDWA, 42 U.S.C. § 300f(5), and 40 C.F.R. §141.2.
3. Respondent is a “person” within the meaning of Section 1401 of the SDWA, 42 U.S.C. §42 U.S.C. § 300f(12).
4. Respondent’s public water system (“PWS”) provides water for human consumption and serves at least 25 transient individuals for at least 60 days in any given calendar year; therefore, it is a transient non-community water system (“TNC”) 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 *et seq.*, and its implementing regulations found at 40 C.F.R. Part 141.
5. Respondent is a “Federal agency” as defined by Section 1401(11) of the SDWA, 42 U.S.C. § 300f-11.
6. According to SDWA Section 1447(a), 42 U.S.C. § 300j-6(a), each department, agency, or instrumentality of the executive branch of the federal government 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 person is subject to such requirements.

7. The New Jersey Department of Environmental Protection (“NJDEP” or “State”) administers the Public Water Supply Supervision Program in New Jersey pursuant to Section 1413 of the SDWA, 42 U.S.C. § 300g-2. The approval of primary enforcement responsibility from EPA to NJDEP was effective as of July 13, 1979. NJDEP is the primacy agency, as that term is defined in 40 C.F.R. §142.2. However, on January 20, 2012, NJDEP referred the Visitor Contact Station to EPA for further investigation and appropriate action.
8. Pursuant to Section 1414(i)(4) of the SDWA, 42 U.S.C. § 300g-3(i)(4), the implementing regulations for New Jersey’s Safe Drinking Water Program (N.J.A.C. 7:10) are applicable requirements of the SDWA.
9. Pursuant to N.J.A.C. 7:10-2.1(b), whenever a PWS is established or abandoned, the owner shall notify NJDEP in writing.
10. Pursuant to N.J.A.C. 7:10-12:30, upon completion of construction of a water system, the owner of the PWS is required to sample and analyze the raw water for microbiological quality, inorganics, volatile organic compounds, radionuclides and secondary contaminants. A copy of such monitoring shall be submitted to NJDEP for evaluation, in order to determine if additional treatment is required in order to protect consumers from adverse health effects of contaminants in drinking water.
11. On August 5, 2008, Respondent submitted to the NJDEP an application for the construction of the Visitor Contact Station, a groundwater source for the provision of drinking water at the Edwin B. Forsythe National Wildlife Refuge – Visitor Center.
12. On March 3, 2009, NJDEP issued Construction Permit No. WCP08001, authorizing construction of the Visitor Contact Station. The construction permit granted by the NJDEP was limited to construction activities and did not authorize the operation or distribution of drinking water for potable purposes.
13. On November 10, 2011, NJDEP inspected the Visitor Contact Station. The inspection revealed that the PWS was in operation, without appropriate operational endorsement from NJDEP. Required monitoring results, pursuant to N.J.A.C. 7:10-12:30, were not provided to NJDEP, nor had NJDEP been informed of the operational status of the PWS.
14. On February 21, 2012, EPA issued an Administrative Order, Docket No. SDWA-02-2012-8009, ordering Respondent to comply with the requirements of the SDWA and its implementing regulations.
15. Based on information available to EPA, as generally alleged in paragraphs 18-27 of the Complaint, Respondent failed to demonstrate compliance with N.J.A.C. 7:10-2.1(b) and 12:30.

III. CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 1447(b)(2) of the Act, 42 U.S.C. § 300j-6(b)(2), and 40 C.F.R. §22.18, it is hereby agreed by and between the parties and Respondent voluntarily and knowingly agree 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.
2. Respondent hereby stipulates that EPA has jurisdiction over the subject matter alleged in this CAFO.
3. Respondent agrees not to contest EPA's jurisdiction with respect to execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of the Consent Agreement/Final Order ("CA/FO").

Payment of Civil Penalty

4. Respondent shall pay a civil penalty to EPA in the amount of **TWENTY-FIVE HUNDRED DOLLARS (\$2,500.00)**. 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:

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 THE US DEPARTMENT OF THE INTERIOR, EDWIN B. FORSYTHE NATIONAL WILDLIFE REFUGE**, and shall bear thereon the **Docket Number SDWA-02-2012-8403**.

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 (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: Department of the Interior, Fish and Wildlife Service
- g. Case Number: SDWA-02-2012-8403

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:

Lauren Fischer, 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) 637-3231

and

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

5. 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.
6. The civil penalty constitutes a penalty within the meaning of 26 U.S.C. §162(f).
7. 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.
8. Any requirement for the payment or obligation of funds by the United States Department of the Interior, Fish and Wildlife Service established under the terms of this Consent Agreement shall be subject to the availability of appropriated funds, and no provision herein shall be interpreted to require obligation of payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. Section 1341.

IV. GENERAL PROVISIONS

1. 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.

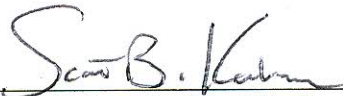
Respondent consent to the issuance of the accompanying Final Order. Respondent agree that all terms of settlement are set forth herein.

2. 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.
3. Respondent knowingly and explicitly waives its rights under Section 1447(b)(3) of the Act, 42 U.S.C. § 300j-6(b)(3), to request or to seek any Hearing on or appeal 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.
4. 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.
5. Respondent also hereby expressly waives its right to confer with the Administrator under Section 1447(b)(3) of the Act, 42 U.S.C. § 300j-6(b)(3).
6. 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 Consolidated Rules of Practice. Further, EPA reserves any right and remedies 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 CAFO, following its filing with the Regional Hearing Clerk.
7. Failure to obtain adequate funds or appropriations from Congress does not release Respondent from its obligation to comply with the SDWA, the applicable regulations thereunder, or with this CA/FO. Nothing in this CA/FO shall be interpreted to require obligation or payment of funds in violation of the Antideficiency Act, 31 U.S.C. § 1341.
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. The provisions of this Consent Agreement and Final Order shall be binding upon each Respondent, its officers, directors, agents, servants, authorized representatives and successors or assigns.
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.
12. This CAFO shall become effective 30 days after the date of signature on the Final Order.
13. Each party hereto agrees to bear its own costs and fees in this matter.
14. This action shall be considered closed upon EPA's receipt of payment by Respondent.

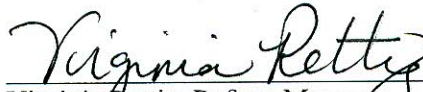
FOR RESPONDENT:

DATE: 1/31/2013



Scott Kahan, Assistant Regional Director
United States Fish and Wildlife Service
300 Westgate Center Drive
Hadley, MA 01035


DATE: January 22, 2013



Virginia Rettig, Refuge Manager
Edwin B. Forsythe National Wildlife Refuge
United States Fish and Wildlife Service
800 Great Creek Road
Oceanville, New Jersey 08231

FOR THE COMPLAINANT:

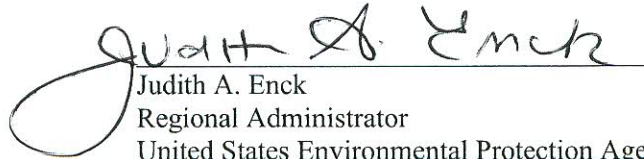
DATE: MAY 10, 2013


Ms. DORE LAPOSTA, Director
Division of Enforcement and Compliance Assistance
US Environmental Protection Agency
Region 2
New York, New York 10007-1866

I. 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 30 days after the date of signature.

Date: 5/13/13


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

In the Matter of: U.S. Department of Interior, Fish and Wildlife Service
Docket No. SDWA-02-2012-8403

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed signed CONSENT AGREEMENT and FINAL ORDER (CA/FO), bearing the above-referenced docket number, in the following manner to the respective addresses below:

Original and One Copy
BY Hand:

Office of 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:

Robin Lepore, Senior Attorney
Office of the Solicitor
United States Department of the Interior
One Gateway Center – Suite 612
Newton, MA 02458-2881

Dated: 5/16/13
New York, New York



Marie St. Germain
Secretary