

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

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2011 SEP 21 P 2:47  
REGIONAL HEARING  
CLERK

**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, New Jersey 08231

PWS ID. No. NJ0111454

Proceeding to Assess a Civil Penalty  
Under Section 1447(b) of the Safe  
Drinking Water Act

**Docket No.**  
**SDWA-02-2012-8403**

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

**I. STATUTORY AUTHORITY**

1. This Complaint, Findings of Violation, Notice of Proposed Assessment of 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”) pursuant to Section 1447(b) of the Safe Drinking Water Act (“SDWA” or “the Act”), as amended, 42 U.S.C. §300j-6(b). The Administrator of the EPA has delegated the authority to issue this Complaint to the Director of the Division of Enforcement and Compliance Assistance of Region 2 (“Complainant”).
2. Pursuant to Section 1447(b) of the SDWA, 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”) published at 64 Fed. Reg. 40137-40190 (July 23, 1999), Complainant hereby requests that the Presiding Officer assess a civil penalty against the U.S. Department of the Interior (“Respondent”), for violating applicable requirements under subchapter XII of 42 U.S.C. §§300f to 300j-26 at the Edwin B. Forsythe National Wildlife Refuge- Visitor Contact Station, located in Oceanville, New Jersey.

**II. GENERAL ALLEGATIONS**

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”)

Edwin B. Forsythe National Wildlife Refuge – Visitor Contact Station  
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- 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. §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. §300f(12).
  4. The Respondent's 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.
  5. Respondent is a "Federal Agency" as defined by Section 1401(11) of the SDWA and 42 U.S.C. §300f(11).
  6. Respondent operates three PWSs in the Edwin B. Forsythe National Wildlife Refuge, identified as: Headquarters Well (PWS ID NJ0111377), Restroom Well (PWS ID NJ0111386), and Visitor Contact Station (PWS ID NJ0111454). The PWSs named are classified as Transient Non-Community.
  7. The Visitor Contact Station PWS started operation on April 17, 2011, and serves a transient population of 160/day, as per information in the New Jersey Department of Environmental Protection ("NJDEP" or "State") database, Drinking Water Watch.
  8. The State administers the Public Water Supply Supervision Program in New Jersey pursuant to Section 1413 of the SDWA. 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. §141.2. However, on January 20, 2012, NJDEP referred Edwin B. Forsythe National Wildlife Refuge PWSs to EPA for further investigation and appropriate action.
  9. Pursuant to Section 1414(i)(4) of the SDWA, the rules implementing New Jersey's Safe Drinking Water Program (N.J.A.C. 7:10) are applicable requirements of the SDWA.
  10. 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.
  11. Pursuant to N.J.A.C. 7:10-12.30, upon completion of construction of a water system, the owner of the public water system is required to sample and analyze the raw water for microbiological quality, inorganics, volatile organic compounds ("VOCs"), 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, to protect consumers from adverse health effects of contaminants in drinking water.

12. On August 5, 2008, Respondent submitted to the NJDEP an application for the construction of the Visitor Contact Station PWS, a groundwater source for the provision of drinking water at the Edwin B. Forsythe National Wildlife Refuge - Visitor Center.
13. On March 3, 2009, NJDEP issued Construction Permit No. WCP080001, authorizing construction of the Visitor Contact Station PWS. The construction permit granted by the NJDEP was limited to construction activities, and did not include the authorization to operate or distribute drinking water for potable purposes.
14. On November 10, 2011, NJDEP inspected the Respondent's PWSs. An inspection of the Visitor Contact Station PWS 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.
15. On February 21, 2012, EPA issued an Administrative Order, Docket No. SDWA-02-2012-8009, ordering the Respondent to comply with the requirements of the SDWA and its implementing regulations.
16. In a letter dated March 22, 2012, Respondent informed EPA that the Visitor Contact Station PWS ceased to provide drinking water and that an alternate source of drinking water would be provided until an official permit and notification of compliance was received. However, on June 27, 2012, a NJDEP inspection revealed that Respondent's Visitor Contact Station PWS continued to provide water without the operational permit and notification of compliance from NJDEP.
17. On July 31, 2012, the NJDEP issued an operation permit to Edwin B. Forsythe National Wildlife Refuge - Visitor Contact Station PWS for the operation and distribution of water for potable purposes.

**Count 1: Failure to notify NJDEP of PWS Operational Status**

18. Pursuant N.J.A.C. 7:10-2.1(b), PWSs must notify NJDEP in writing of changes to the operational status of their systems (i.e., if established or abandoned).
19. On November 10, 2011, an inspection conducted by NJDEP found the Respondent's Visitor Contact Station PWS in operation and distributing drinking water. The Respondent failed to notify NJDEP of the change in operational status. Respondent's Visitor Contract Station PWS did not have certification from NJDEP to operate as a drinking water source.
20. In a letter dated March 22, 2012, Respondent indicated that the Visitor Contact Station PWS, started operation on April 17, 2011.
21. In a letter dated March 22, 2012, Respondent indicated that the documentation requesting operational endorsement from NJDEP, for the Visitor Contact Station PWS, was mailed

to NJDEP on the week of March 5, 2012. NJDEP confirmed, via electronic mail dated March 13, 2012, receipt of Respondent's Application to operate the Visitor Contact Station PWS on March 6, 2012. Through this documentation, Respondent made NJDEP aware of the intention to operate the Visitor Contact Station PWS as a drinking water source.

22. Respondent therefore, violated N.J.A.C. 7:10-2.1(b) from April 17, 2011 to March 6, 2012.

### **Count 2: Failure to submit copies of monitoring results to NJDEP**

23. Pursuant to N.J.A.C. 7:10-12.30, newly constructed PWSs are required to sample and analyze raw water for microbiological quality, inorganics, volatile organic compounds ("VOCs"), 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 to meet drinking water standards, and therefore protect consumers from adverse health effects of contaminants in drinking water.
24. In a letter dated March 22, 2012, Respondent indicated that the Visitor Contact Station PWS started operation on April 17, 2011.
25. On November 10, 2011, an inspection conducted by NJDEP found the Respondent's Visitor Contact Station PWS in operation and distributing drinking water. The Respondent failed to notify NJDEP of the change in operational status. Respondent's Visitor Contract Station PWS did not have certification from NJDEP to operate as a drinking water source. Bacteriological and nitrate monitoring was being conducted but reported under the Restroom Well PWS.
26. During the month of January 2012, Respondent's Visitor Contact Station PWS was monitored for the required contaminants (organics, VOC, radionuclides and secondary contaminants).
27. Respondent, therefore, violated N.J.A.C. 7:10-12:30, from April 17, 2011 through January 31, 2012.

### **III. PROPOSED PENALTY**

1. Section 1447(b) of the Act, 42 U.S.C. §300 j-6(b), authorizes the Complainant to seek an administrative civil penalty in an amount not to exceed \$32,500 per day per violation.
2. Based on the foregoing allegations, and the administrative record, having taken into account the serious nature of the violations, the population at risk, and other appropriate factors, including with respect to the violator, ability to pay, the past history of such violations, degree of culpability, and other matters as justice may require, Complainant seeks a penalty of **\$6,300** against Respondent for violations of subchapter XII of 42 U.S.C. §300j-26.

#### IV. CONTESTING THE COMPLAINT

1. Pursuant to Section 1447(b) of the Act, 42 U.S.C. §300j-6(b), Respondent may request a hearing on the record, in accordance with the provisions of the Administrative Procedures Act (5 U.S.C. §551 et seq.). Pursuant to Part 22, you may request a hearing in your Answer. If you do not request a hearing, the Presiding Office may hold a hearing if issues are appropriate for adjudication. Your request for a hearing may be directed to the Regional Hearing Clerk at the following address:

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

2. If Respondent contests any material fact upon which the Complaint is based, contends that the proposed penalty is inappropriate, or contends that it is entitled to judgment as a matter of law, it shall file within thirty (30) days of service of the Complaint an original and one copy of a written answer to the Complaint with the Regional Hearing Clerk, to the address listed in the preceding paragraph, and shall serve copies on all other parties.
3. Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with regard to which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. The Answer shall also state: (1) the circumstances or arguments that are alleged to constitute the grounds of any defense, (2) the facts which Respondent disputes (3) the basis for opposing the proposed relief, and (4) whether Respondent requests a hearing. Failure to admit, denies, or explains any material factual allegation contained in the Complaint constitutes an admission of the allegation. Failure to file a timely Answer to the Complaint may result in default judgment.
4. Any hearing will proceed in accordance with Subpart D of Part 22.
5. Pursuant to Section 1447(b)(3) of the Act, 42 U.S.C. §300j-6(b)(3), Respondent has an opportunity to confer with the Administrator after exhaustion of the Part 22 proceedings described above, including filing an appeal with the Environmental Appeals Board (EAB) pursuant to 40 C.F.R §22.30. Within thirty (30) days of service of the EAB's final decision, if the Respondent wishes to confer with the Administrator, a written request addressed to the Administrator must be filed to seek an opportunity to confer with the Administrator. If no written request to confer is filed within the above thirty (30) day period, this Complaint is final under the terms of Section 1447(b)(3), 42 U.S.C. §300j-6(b)(3).

## 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 the 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:

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

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 address:

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

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

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

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

### **VIII. GENERAL PROVISIONS**

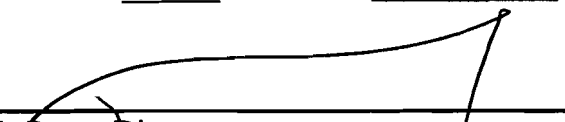
1. Pursuant to Section 22.8 of Part 22, ex parte discussion of the merit of a case with, among others, the Administrator, member of the Environmental Appeals Board, the Regional Administrator, the Presiding Officer, or any other person who is likely to advise these officials is prohibited after date that this Complaint was filed.
2. Respondent has a right to be represented by an attorney at any stage of these proceedings.
3. Pursuant to Section 22.18 of Part 22, EPA encourages settlement of the proceedings at any time after issuance of the Complaint, if such settlement is consistent with the provisions and objectives of the SDWA. Whether or not a hearing is requested, you may request a settlement conference with Complainant to discuss the allegations of the Complaint, and the amount of the proposed civil penalty. A request for a settlement conference, however, does not relieve Respondent of his responsibility to file timely Answer.
4. The provisions of this Complaint shall apply to and be binding upon the Respondent, its employees, successors and assigns. Notice of this Complaint shall be given to any successor in interest prior to transfer of the ownership or operational control of the public water system.
5. Pursuant to Section 1449(a)(3) of the Act, 42 U.S.C. §300j-8(a)(3), Respondent may be subject to a citizen suit for failure to pay the penalty, if the payment is not received within eighteen (18) months of the final order.



**IX. RESERVATION OF RIGHTS**

1. This Complaint does not constitute a waiver, suspension or modification of the terms and conditions of the SDWA, regulations, or conditions of any permit.
2. The United States specifically reserves the right to pursue criminal enforcement as well as the right to initiate an action for imminent and substantial endangerment, including the right to seek injunctive relief and the imposition of statutory penalties for those violations not addressed by this Complaint. This reservation of right does not waive any other rights the United States may have but has not stated herein.

ISSUED THIS 20<sup>th</sup> DAY OF SEPTEMBER 2012.

  
\_\_\_\_\_  
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:

Daniel M. Ashe, Director  
United States Fish and Wildlife Service  
1849 C Street, NW  
Washington, District of Columbia 20240

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

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

**IN THE MATTER OF:**

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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:

Daniel M. Ashe, Director  
United States Fish and Wildlife Service  
1849 C. Street, NW  
Washington DC, 20240

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

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: SEP 21 2012  
New York, New York