

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

IN THE MATTER OF:

United States Army

U.S. Army Garrison Fort Buchanan
390 Double Eagle Ave. Suite 300
Guaynabo, PR 00934-4616

PWS ID. No. PR0132051

Respondent

Proceedings pursuant to Section 1447(b) of the Safe
Drinking Water Act, 42 U.S.C. Section 300j-6(b)

CONSENT AGREEMENT
AND
FINAL ORDER

Docket No.
SDWA-02-2023-8401

CONSENT AGREEMENT

PRELIMINARY STATEMENT

This Consent Agreement is entered into by the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency, Region 2 (“EPA” or “Complainant”) and the United States Army (“U.S. Army” or “Respondent”), pursuant to Section 1447(b) of the Safe Drinking Water Act (“SDWA”), as amended, 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, (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. The authority to issue this order has been duly delegated to the Regional Administrator of U.S. EPA, Region 2.

This Consent Agreement and the attached the Final Order (hereinafter jointly referred to as the “CAFO”), resolve Complainant’s civil penalty claims against Respondent under the SDWA for the violations alleged herein, with respect to the public water system (“PWS”) owned and/or operated by the Respondent at United States Army Garrison Fort Buchanan (“Fort Buchanan PWS” or “PWS PR0132051”) located in Guaynabo, Puerto Rico.

JURISDICTION

1. The Puerto Rico Department of Health ("PRDOH") administers the Public Water Supply Supervision Program in Puerto Rico pursuant to Section 1413 of the SDWA. The approval of primary enforcement responsibility from EPA to Puerto Rico was effective as of March 1, 1980. However, EPA retains primary enforcement authority for Section 1433 of the SDWA.
2. Under SDWA § 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.
3. Section 1447(a) of the SDWA, 42 U.S.C. § 300j-6(a), expressly waives any sovereign immunity otherwise applicable to the United States with respect to any substantive or procedural requirements of the SDWA, including any injunctive relief, administrative order, or civil or administrative penalty.
4. Section 1447(b) of the SDWA, 42 U.S.C. § 300j-6(b), authorizes EPA to take enforcement actions against a Federal agency whenever the Agency determines that there is a violation of any applicable requirement under the SDWA, including all Federal, State, interstate, and local requirements.
5. The EPA has jurisdiction over the above-captioned matter, as described in the Preliminary Statement, above.
6. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(9).
7. In accordance with 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), and 22.43 of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.

GENERAL PROVISIONS

8. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
9. Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CAFO.
10. Respondent hereby stipulates that EPA has jurisdiction over the subject matter alleged in this CAFO and agrees not to contest EPA's jurisdiction with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.

11. For the purposes of this proceeding only, Respondent hereby expressly waives its right to a hearing on any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
12. Respondent hereby expressly waives its right to confer with the Administrator under SDWA § 1447(b)(3), 42 U.S.C. § 300j-6(b)(3).
13. Respondent consents to the issuance and terms of this CAFO as set out herein, including the assessment and payment of the stated civil penalties, and to any conditions specified herein.
14. Each party shall bear its own costs and attorney's fees.
15. The person signing this CAFO on behalf of the Respondent certifies to EPA by their signature herein that Respondent, as of the date of execution of this CAFO, will comply with all remaining requirements of Section 1433 of the SDWA at PWS PR0132051. This certification is based on the personal knowledge of the signer or an inquiry of the person or persons responsible for the compliance of PWS PR0132051 with the SDWA, as amended.
16. The provisions of this CAFO shall apply to, and be binding upon, the Respondent and its contractors, successor agencies, departments, or instrumentalities.
17. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of Federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any Federal, state, or local permit, nor does this CAFO constitute a waiver, suspension, or modification of any requirements in 40 C.F.R. part 141 *et seq.*, the SDWA, or any other regulations promulgated thereunder.
18. Complainant shall have the right to institute further actions to recover appropriate relief if Complainant obtains evidence that the information provided and/or representations made by Respondent to EPA regarding matters at issue in the CAFO are false or, in any material respect, inaccurate.

FACTUAL ALLEGATIONS AND CONCLUSIONS OF LAW

19. Respondent is a "Federal agency" as that term is defined in SDWA § 1401(11), 42 U.S.C. § 300f(11) as any department, agency, or instrumentality of the United States.
20. Respondent is a "person" as that term is defined in SDWA § 1401(12), 42 U.S.C. § 300f(12), and 40 C.F.R. §141.2.
21. Respondent owns or operates PWS PR0132051, a public water system located in Guaynabo, PR, and is a "supplier of water" within the meaning of SDWA § 1401(5), 42 U.S.C. § 300f(5). Respondent is therefore subject to the requirements of the SDWA, 42

U.S.C. § 300g *et seq.*, and its implementing regulations found at 40 C.F.R. Part 141 *et seq.*

22. Respondent's PWS provides piped water for human consumption and regularly serves at least 15 service connections year-round and/or a year-round population of at least 25 individuals. PWS PR0132051 is therefore a "community water system" ("CWS") as defined by SDWA § 1401(15), 42 U.S.C. § 300f(15), and 40 C.F.R. § 141.2.
23. Respondent's CWS (PWS PR0132051) serves a population of over 3,300 but less than 50,000.
24. Under SDWA § 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 PWS 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.
25. On October 23, 2018, the SDWA was amended by the America's Water Infrastructure Act ("AWIA") of 2018 (Public Law 115-270). Among other things, AWIA amended risk and resilience requirements for community water systems under SDWA § 1433, 42 U.S.C. § 300i-2.
26. Requirements under SDWA § 1433, 42 U.S.C. § 300i-2, are an "applicable requirement" as defined in SDWA § 1414(i)(1), 42 U.S.C. § 300g-3(i)(1).
27. Section 1433(a)(1) of the SDWA, 42 U.S.C. § 300i-2(a)(1) requires community water systems serving more than 3,300 persons to conduct a Risk and Resilience Assessment ("RRA") of its system, including an assessment of:
 - a. the risk to the system from malevolent acts and natural hazards;
 - b. the resilience of the pipes and constructed conveyances, physical barriers, source water, water collection and intake, pretreatment, treatment, storage and distribution facilities, electronic, computer, or other automated systems (including the security of such systems) which are utilized by the system;
 - c. the monitoring practices of the system;
 - d. the financial infrastructure of the system;
 - e. the use, storage, or handling of various chemicals by the system; and
 - f. the operation and maintenance of the system.
28. Section 1433(a)(3)(A)(iii) of the SDWA, 42 U.S.C. § 300i-2(a)(3)(A)(iii) requires a CWS serving 3,301 to 49,999 persons to submit its certification to the EPA Administrator that it has conducted its RRA on or before June 30, 2021. Instructions on how to submit a RRA certification are available on EPA's website, <https://www.epa.gov/waterresilience/americas-water-infrastructure-act-risk-assessments-and-emergency-response-plans>.

29. Section 1433(b) of the SDWA, 42 U.S.C. § 300i-2(b) requires CWS serving 3,300 or more persons to prepare or revise, where necessary, an emergency response plan (“ERP”) and certify completion of an ERP to the EPA, no later than six months after certifying completion of its RRA. Therefore, Respondent’s deadline for submitting certification to the EPA Administrator that the ERP has been completed and/or revised was December 31, 2021.
30. Respondent failed to prepare and certify completion of an RRA and ERP for the Fort Buchanan PWS, as required by SDWA § 1433, 42 U.S.C. § 300i-2, an “applicable requirement” of the SDWA. Therefore, Respondent failed to comply with the requirements of the SDWA as amended by AWIA (Public Law 115-270) as set forth in detail below.

COUNT #1

FAILURE TO CONDUCT RISK RESILIENCE ASSESSMENT OF PWS PR0132051

The allegations in paragraphs 19-30 in this CAFO are incorporated by reference.

31. Section 1433(a)(1) of the SDWA, 42 U.S.C. §300i-2(a)(1) requires community water systems serving more than 3,300 persons to conduct an RRA of its system.
32. Respondent failed to conduct an RRA of PWS PR0132051 by the June 30, 2021 deadline.
33. Therefore, Respondent violated requirements of SDWA § 1433(a)(1), 42 U.S.C. § 300i-2(a)(1).

COUNT #2

FAILURE TO PREPARE EMERGENCY RESPONSE PLAN FOR PWS PR0132051

The allegations in paragraphs 19-30 in this CAFO are incorporated by reference.

34. Section 1433(b) of the SDWA, 42 U.S.C. § 300i-2(b) requires community water systems serving more than 3,300 persons to prepare or revise, where necessary, an ERP that incorporates the findings of the system’s RRA no later than six months after completion of the RRA.
35. Respondent failed to complete an ERP for PWS PR0132051 by the December 31, 2021 deadline.
36. Therefore, Respondent violated requirements of SDWA § 1433(b), 42 U.S.C. § 300i-2(b).

COUNT #3
FAILURE TO CERTIFY COMPLETION OF RISK RESILIENCE ASSESSMENT AND
EMERGENCY RESPONSE PLAN FOR PWS PR0132051

The allegations in paragraphs 19-30 in this CAFO are incorporated by reference.

37. Section 1433(a)(3)(A)(iii) of the SDWA, 42 U.S.C. § 300i-2(a)(3)(A)(iii) requires that community water systems serving a population greater than 3,300 but less than 50,000 submit to EPA a certification that the system conducted an RRA prior to June 30, 2021.
38. Section 1433(b) of the SDWA, 42 U.S.C. § 300i-2(b) requires community water systems serving 3,300 or more persons to certify to EPA completion of an ERP no later than 6 months after completion of the RRA.
39. Respondent failed to certify to EPA that it has conducted an RRA of PWS PR0132051 by the June 30, 2021 deadline.
40. Respondent has failed to certify to EPA that it has prepared or revised an ERP for PWS PR0132051 by the December 31, 2021 deadline.
41. Therefore, Respondent violated requirements of SDWA § 1433(a)(3)(A)(iii) and 1433(b), 42 U.S.C. §300i-2(a)(3)(A)(iii) and (b).

PAYMENT OF CIVIL PENALTY

42. In settlement of Complainant's claims for civil penalties for the violation alleged in this CAFO, Respondent agrees to pay a civil penalty in the amount of **TWO THOUSAND ONE HUNDRED NINETY-SIX dollars (\$2,196.00)**. Respondent shall be liable to pay in accordance with the terms set forth below. Respondent must pay the civil penalty no later than **THIRTY (30)** calendar days from the effective date of this CAFO.
43. Respondent may make the payment by either cashier's or certified check. If the payment is made by check, then the check shall be payable to the "**United States Treasury**", and shall be mailed to:

U.S. 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 UNITED STATES ARMY GARRISON FORT BUCHANAN**, and shall bear thereon the **Docket Number SDWA-02-2023-8401**. Payment of the penalty must be received at the above address no later than thirty (30) calendar days after the effective date of this CAFO.

44. Respondent may make the payment by Electronic Fund Transfer (EFT). If Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:
- a. Amount of Payment (\$2,196.00)
 - b. SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045
 - c. Account Code for Federal Reserve Bank of New York receiving payment: 68010727
 - d. Federal Reserve Bank of New York ABA routing number: 021030004
 - e. Field Tag 4200 of the Fedwire message should read: D 68010727 Environmental Protection Agency
 - f. Name of Respondent: United States Army Garrison Fort Buchanan
 - g. Case Number: SDWA-02-2023-8401

Such EFT must be received no later than thirty (30) calendar days after the effective date of this CAFO.

45. Payment may be made using the Intra Governmental Payment and Collection application (IPAC), Agency Location Code 68-01-0727. Please include the Docket Number of this action (Docket No. SDWA-02-2023-8401) in the description field of the IPAC.
46. For additional information concerning other acceptable methods of payment of the civil penalty amount see: <https://www.epa.gov/financial/makepayment>.
47. Upon payment, Respondent shall promptly thereafter furnish reasonable proof that such payment has been made to both:

Matthew Carr
Federal Facilities Enforcement Office
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington DC, 20460
carr.matt@epa.gov

and

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

48. Should Respondent fail to pay the civil penalty assessed by this CAFO in full by the date set forth above, then the entire unpaid balance of the assessed penalty and any unpaid, accrued interest shall become immediately due and owing. Should a failure to pay

occur, Respondent may be subject to an administrative action to collect payment under the federal Debt Collection Act of 1982, as amended. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

49. 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.
50. Issuance of the CAFO does not constitute a waiver by EPA of its right to enforce the substantive legal requirements underlying this penalty assessment pursuant to SDWA § 1414, 42 U.S.C. § 300g-3.

AUTHORITY TO BIND THE PARTIES

51. Each undersigned signatory to this CAFO certifies that they are duly and fully authorized to enter into the terms and conditions of this Consent Agreement and bind the Respondent thereto.

FULL AND FINAL SATISFACTION

52. Pursuant to 40 C.F.R. § 22.18(c), this CAFO constitutes a full and final resolution of Respondents' liability for Federal civil penalties pursuant to SDWA § 1447(b), 42 U.S.C. § 300j-6(b) for the specific violations and matters alleged in this CAFO.

RESERVATION OF RIGHTS

53. 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 rights and remedies available to it under SDWA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO.

ADEQUACY OF FUNDS; ANTI-DEFICIENCY ACT

54. Failure to obtain adequate funds or appropriations from Congress does not release Respondents from their obligation to comply with SDWA, the applicable regulations thereunder, or with this CAFO. Nothing in this CAFO shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.

OTHER APPLICABLE LAW

55. Nothing in this CAFO shall relieve Respondents of any duties otherwise imposed on them by applicable Federal, state, or local law and/or regulations.

ENTIRE AGREEMENT

56. This CAFO constitutes the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this CAFO.

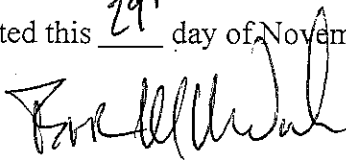
EFFECTIVE DATE

57. Respondent consents to service upon Respondent by e-copy of this CAFO by an EPA employee other than the Regional Hearing Clerk.

58. In accordance with 40 C.F.R. § 22.43(b), this CAFO shall become effective thirty (30) days after the Final Order is served on the parties.

FOR THE RESPONDENT:

Dated this 29th day of November, 2022.



Lieutenant Colonel Brian M. Mandock,
Acting Commander
U.S. Army Garrison Fort Buchanan
390 Double Eagle Ave. Suite 300
Guaynabo, PR 00934-4616

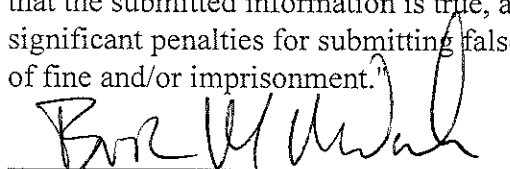
FOR THE COMPLAINANT:

Dated this 6th day of December, 2022.

For Dore LaPosta, Director
Enforcement and Compliance Assurance
Division
U.S. Environmental Protection Agency
Region 2
New York, NY 10007-1866

CERTIFICATION:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this response, and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining or compiling the information, I believe that the submitted information is true, accurate, and complete. I recognize that there are significant penalties for submitting false and/or misleading information, including the possibility of fine and/or imprisonment."



Lieutenant Colonel Brian M. Mandock
Acting Commander
U.S. Army Garrison Fort Buchanan

**In the Matter of United States Army Garrison Fort Buchanan
Docket Number SDWA-02-2023-8401**

FINAL ORDER

Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region II, and Respondent the United States Army have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidate Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. The terms on the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as fully set forth herein.

NOW, THEREFORE, PURSUANT TO Section 1447(b) of SDWA, 42 U.S.C. § 300j-6(b) and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of **TWO THOUSAND ONE HUNDRED NINETY-SIX DOLLARS (\$2,196.00)** in accordance with the payment provisions set forth in the Consent Agreement and comply with the terms and conditions of the Consent Agreement.

This Final Order constitutes the final agency action in this proceeding. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order resolves only those causes of action alleged in the Consent Agreement and does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of the SDWA and the regulations promulgated thereunder.

Pursuant to Section 1447(b)(4) of the Act, 42 U.S.C. § 300j-6(b)(4), and 40 C.F.R. § 22.43(c), EPA will provide public notice of the Consent Agreement and Final Order served on the parties, and provide public notice that any interested person may, within thirty (30) days of the final date of the final Order, obtain judicial review of the penalty order pursuant to Section 1447(b)(4) of the Act, 42 U.S.C. § 300j-6(b)(4). In accordance with 40 C.F.R. § 22.43(b), this Final Order shall become effective thirty (30) days after it is served on the parties.

Helen Ferrara
Regional Judicial Officer
U.S. Environmental Protection Agency Region 2
290 Broadway
New York, NY 10007 - 1866

Date: _____



DEPARTMENT OF THE ARMY
U.S. ARMY INSTALLATION MANAGEMENT COMMAND
HEADQUARTERS, UNITED STATES ARMY GARRISON, FORT BUCHANAN
390 DOUBLE EAGLE AVENUE, SUITE 300
FORT BUCHANAN, PUERTO RICO 00934-4614

AMIM-BCG-ZB (1b)

21 November 2022

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Assumption of Command by authority of Army Regulation 600-20 paragraph 2-5 (e)

1. The undersigned assumes command of the Headquarters, United States Army Garrison Fort Buchanan, 390 Double Eagle Avenue, Fort Buchanan, Puerto Rico 00934-4614 (W1H1AA), as acting Commander, effective 0900, 21 November 2022 to 29 November 2022 or until properly relieved.
2. The point of contact for this action is the undersigned at 787-707-3440 or email: usarmy.buchanan.usag.mbx.command-group@army.mil.

MANDOCK.BRIAN. Digitally signed by
MICHAEL.1247160 MANDOCK.BRIAN.MICHAEL.12
47160090
090 Date: 2022.11.21 11:03:25 -0400'

BRIAN M. MANDOCK
LTC, PO
Acting Commander

DISTRIBUTION:

B