



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

APR 16 2010

CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Article Number 7005 3110 0000 1142

Jami Pfister
Fairway Village
1301 Fairway Village
St. Thomas, VI 00803

RE: In the Matter of: Fairway Village PWS (PWS ID. No. VI1000175)
Complaint for Penalty (Docket No. SDWA-02-2010-8401)

Dear Mr. Pfister:

Enclosed you will find an Administrative Complaint (“the Complaint”) which the United States Environmental Protection Agency (“EPA” or “Agency”), the Complainant, is issuing to Fairway Village (the “Respondent”) as a result of EPA’s determination that Respondent failed to comply with the requirements of the Radionuclides Rule under the Safe Drinking Water Act (“SDWA”), as implemented by EPA’s regulations at 40 CFR §§ 141.25, 141.26, 141.55 and 141.66, and failed to comply with the Administrative Order (“AO”) (Docket No. SDWA-02-2008-8038), issued by EPA on April 11, 2008. The Complainant requests that a penalty of **\$5,000** be assessed against this public water system for these violations.

As the Respondent, you have the right to a hearing to contest the factual allegations in the Complaint. If you admit the allegations, or they are found to be true after you have had an opportunity for a hearing on them, you have the right to contest the penalty proposed in the Complaint.

Enclosed is a copy of the “Consolidated Rules of Practice” (“CROP”) (40 C.F.R. Part 22) which the EPA follows in cases of this kind. Please note the requirements for an Answer at §22.15 of the CROP. **If you wish to contest the allegations in the Complaint or the penalty proposed in the Complaint, you must file an Answer within thirty (30) days of your receipt of the enclosed Complaint with the EPA Regional Hearing Clerk at the following address:**

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

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REGION 2
2010 APR 20 4:11:35
REGIONAL HEARING
CLERK

You must also send a copy of your Answer to:

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

If you do not file an Answer within thirty (30) days of receipt of the Complaint, you may be judged to have defaulted (See, §22.17 of the CROP). If a default order is entered, the entire proposed penalty may be assessed.

You may informally confer with EPA concerning the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement as a result of such informal conference with the Agency. You may represent yourself or be represented by an attorney at any stage of the proceedings, including any informal discussions, whether in person or by telephone. Please note that a request for an informal conference does not substitute for a written Answer or affect what you may choose to say in the Answer, nor does it extend the thirty (30) days by which you must file an Answer requesting a hearing. Any hearings held in this matter 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 APA, in which case Subpart I of the CROP will not apply.

Offer of Settlement

In an effort to promptly settle this matter, enclosed for your consideration is a proposed Consent Agreement and Final Order ("CA/FO"). The Agency would be prepared to enter into the enclosed CA/FO provided the Respondent:

1. Executes and returns the CA/FO to the Complainant within thirty (30) days of receipt;
2. Completes the required third and fourth quarters of monitoring for radionuclide contaminants in accordance with the 40 C.F.R. §141.25 and §141.26 by June 30, 2010, and September 30, 2010, respectively, and submits the results to EPA 10 days after the end of each calendar quarter (July 10, 2010, and October 10, 2010), and
3. Pays a penalty of **\$300** within thirty (30) days of the effective date of the CA/FO.

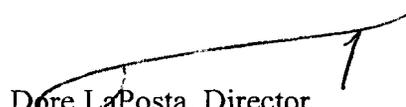
If you wish to resolve this matter without further proceedings, please sign the enclosed CA/FO and return it to EPA within thirty (30) days of your receipt of this letter. Do not submit payment to EPA until after you receive an executed CA/FO.

If EPA does not receive the CA/FO, signed by you or your authorized representative, within the thirty (30) day period referenced in the above paragraph, then the Agency's

offer of settlement is effectively withdrawn and EPA will thereafter seek the full amount of the penalty proposed in the Complaint.

EPA urges your prompt attention to this matter. If you have any questions or wish to discuss a settlement of this matter with EPA by an informal conference, please immediately contact Nadine Orrell, Esq., Assistant Regional Counsel, at (212) 637-3244.

Sincerely,



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

1. Complaint
2. Consolidated Rules of Practice
3. Consent Agreement and Final Order
4. Administrative Order (Docket No. SDWA-02-2008-8038)
5. Radionuclides Rule

cc: Karen Maples, EPA Regional Hearing Clerk (w/Complaint and CA/FO)
Harold Mark, VIDPNR

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REGION 2
2010 APR 20 PM 11:35
REGIONAL HEARING
CLERK

IN THE MATTER OF:

Fairway Village
1301 Fairway Village
St. Thomas, VI 00803

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-02-2010-8401

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 Fairway Village ("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 Fairway Village public water system, located at 1301 Fairway Village, St. Thomas, United States Virgin Islands 00803.

II. Findings of Violation

1. Respondent owns and/or operates the Fairway Village “public water system,” (“PWS”), within the meaning of Section 1401(4) of the SDWA, 42 U.S.C. §300f(4), and 40 C.F.R. §141.2, located in St. Thomas, United States Virgin Islands.
2. Respondent is a “supplier of water” within the meaning of Section 1401 (5) of the SDWA, 42 U.S.C. §300f(5), and 40 C.F.R. §141.2.
3. Respondent, is a “person” as defined in Section 1401(12) of SDWA, 42 U.S.C. §300f(12), and 40 C.F.R. §141.2, and is subject to an Administrative Order issued under Section 1414(g)(1) of the SDWA, 42 U.S.C. §300g-3(g)(1).
4. The Fairway Village PWS provides piped water for human consumption and regularly serves a population of at least 25 individuals, and is, therefore, a “community water system” (“CWS”) as defined by Section 1401(15) of the SDWA, 42 U.S.C. §300f(15) and 40 C.F.R. §141.2.
5. On December 7, 2000, EPA promulgated the Radionuclides Rule (40 C.F.R. §§141.25, 141.26, 141.55 and 141.66) to improve public health by reducing exposure to radionuclide contaminants in drinking water. The Radionuclides Rule establishes monitoring and compliance requirements (40 C.F.R. §141.26), establishes a Maximum Contaminant Level (“MCL”) for Uranium of 30 micrograms per liter (30 ug/L), and retains existing MCLs for combined radium-226/228, gross alpha particle, beta particle and photon radioactivity (40 C.F.R. §141.66). The Rule also establishes Maximum Contaminant Level Goals (“MCLGs”) for radionuclides in drinking water (40 C.F.R. §141.55).
6. The Virgin Islands Department of Planning and Natural Resources (“VIDPNR”) administers the Public Water Supply Supervision Program in the U.S. Virgin Islands pursuant to Section 1413 of the SDWA. The approval of primary enforcement authority from EPA to the VIDPNR was effective on September 22, 1979. However, the VIDPNR has not yet obtained primary enforcement responsibility for the Radionuclides Rule. Therefore, as of the date of this Complaint, EPA has primary responsibility for enforcement of the Radionuclides Rule.
7. 40 C.F.R. §141.26 requires all CWSs to comply with the radionuclides monitoring.
8. 40 C.F.R. § 141.26 (a)(1) requires CWSs to conduct initial monitoring to determine compliance with 40 C.F.R. §141.66 (b)(c), and (e) by December 31, 2007. CWSs are required to sample at every entry point to the distribution system that is representative of all sources of water being used under normal operating conditions. The system must take each sample at the same sampling point unless conditions make another sampling point more representative of each source or the State has designated a distribution system location.

9. CWSs with State-approved historical monitoring data collected between June 2000 and December 8, 2003, may use this data to satisfy the initial monitoring requirements. CWSs without acceptable historical monitoring data, as defined in 40 C.F.R. §141.26(a)(2)(ii), are required to collect four (4) consecutive quarterly samples at all sampling points described in paragraph 8 above before December 31, 2007.
10. Respondent's Fairway Village PWS is a CWS and, therefore, was required to comply with 40 C.F.R. § 141.26 beginning January 2007. Pursuant to 40 C.F.R. § 141.26(a)(2), Respondent was required to begin the initial monitoring for radionuclide contaminants during the first quarter of 2007 or to submit State-approved historical monitoring data collected as defined in paragraph 9 above.
11. In March 20, 2007, the VIDPNR provided EPA the results of the first quarter of radionuclide contaminants monitoring data for the Fairway Village PWS.
12. On April 11, 2008, EPA issued an Administrative Order ("AO"), Docket Number SDWA-02-2008-8038 to the Fairway Village PWS, for failure to submit the remaining three (3) quarter of radionuclide contaminants monitoring data. The AO required Respondent to submit radionuclide contaminants monitoring results by July 10, 2008, October 10, 2008, and January 10, 2009.
13. On September 26, 2008, Respondent submitted to EPA, via facsimile, the second quarter of radionuclide contaminants monitoring data. Respondent has failed to submit to EPA the remaining two (2) quarters of radionuclide contaminants monitoring data as required by the Radionuclides Rule.

COUNT 1

14. Pursuant to 40 C.F.R. §141.26, Respondent is required to comply with the monitoring requirements of the Radionuclides Rule, by collecting four (4) consecutive quarterly samples at all sampling points before December 31, 2007.
15. Pursuant to Paragraph 15 of the AO, Respondent was required to submit radionuclide contaminants data between April 1, 2008, and December 31, 2008 and submit the results to EPA and VIDPNR within 10 days after the end of each calendar quarter (July 10, 2008, October 10, 2008, and January 10, 2009). Respondent submitted two (2) of the four (4) quarterly monitoring data for radionuclide contaminants. Therefore, Respondent has failed to submit the last 2 quarters of radionuclide contaminants monitoring data.
16. Respondent failed to demonstrate compliance with the requirements specified in 40 C.F.R. §141.26 by the date specified in the AO, and is therefore, in violation of Paragraph 15 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 **Five Thousand Dollars (\$5,000.00)**. 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 the 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:

Nadine Orrell, 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) 637-3244

The parties may engage in settlement discussions regardless 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:

U.S. 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

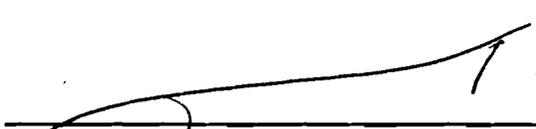
2. A copy of the Answer, any Hearing Request and all subsequent documents filed in this action shall be sent to:

Nadine Orrell, 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) 637-3244

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 16th DAY OF APRIL 2010.



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. Jami Pfister
Fairway Village
1301 Fairway Village
St. Thomas, VI 00803

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

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

Respondent

Proceeding Pursuant to
§1414(g)(3)(B) of the Safe
Drinking Water Act, 42 U.S.C.
§300g-3(g)(3)(B)

Proceeding to Assess Civil
Penalty Under Section 1414(g)(3)(B)
of the
Safe Drinking Water Act

Docket No.
SDWA-02-2010-8401

CERTIFICATE OF SERVICE

I certify that, on the date noted below, I caused to be mailed, by certified mail, return receipt requested, a copy of the foregoing "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. Jami Pfister
Fairway Village
1301 Fairway Village
St. Thomas, VI 00803

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: 4/19/10



Rosa M. Brignoni Tran
New York, New York