

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Steve Bockino, Manager
Pueblo International (La Reine)
Public Water System
PO Box 579
2 Estate La Reine
St. Croix, VI 00820

Respondent

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

Docket No. SDWA-02-2007-8404

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REGION
2
2008 OCT 30 PM 2:58
REGIONAL HEARINGS
CLERK

Status Report

The Complainant in the above captioned matter, pursuant to the Regional Judicial Officer's ("RJO") Order to Supplement the Record ("the Order") dated October 15, 2008 granting the Complainant's request for an extension until October 31, 2008 to submit a complete copy of the Complaint initially issued to the Respondent, along with a declaration from EPA's representative indicating a complete copy of the Complaint was served upon the Respondent when EPA initially issued the Complaint, and in response to RJO Ferrara's request following the October 21, 2008 teleconference held with the parties, hereby submits the following Status Report.

1. On October 21, 2008, EPA Representative Ms. Amy Lavoie submitted a signed "Declaration in Response to Order to Supplement the Record" (Attached herein as Exhibit B). In her declaration, Ms. Lavoie describes the process and manner in which the Respondent was initially served a full and complete copy of the Complaint (Attached herein as Exhibit A).

2. On October 21, 2008, Mr. Michael Sheesley, the attorney representing World Fresh Markets ("WFM"), the entity that acquired the assets of Pueblo International, Inc. ("PI"), contacted RJO Ferrara requesting a teleconference to discuss the Order to Supplement the Record. Mr. Sheesley asserted that he had not been aware of any Default proceeding in this matter until he was in receipt of RJO Ferrara's Order. RJO Ferrara indicated it would be inappropriate for her to engage in negotiations with the parties since she would be rendering a decision in this matter. Therefore, RJO Ferrara recused herself from the teleconference. Prior to leaving the conference call, RJO Ferrara indicated the Default proceeding would have to be stayed and instructed the parties to discuss the matter and provide her with a Status Report as to the next steps the parties wished to take to resolve this matter.

3. The parties discussed and agreed that Ms. Hayden, Counsel for Complainant or EPA, would meet with EPA's program representatives and advise them that Mr. Sheesley had contacted EPA to discuss the matter. The parties further discussed and agreed that Mr. Sheesley would submit via email a written request for copies of the Default Motion and accompanying documents, including the Complaint initially issued to the Respondent. Ms. Hayden, EPA Counsel, agreed to provide Mr. Sheesley with the requested documents via overnight mail upon receipt of Mr. Sheesley's written request. The parties also discussed the following assertions made by Mr. Sheesley that:

(a) his client, WFM, is not responsible for the Pueblo La Reine Public Water System ("PWS" or "the System") before July of 2007 because it acquired in July of 2007 only PI's assets, not the real property or System;

(b) after July of 2007, although it had acquired the assets of PI, his client WFM was not responsible for the System because both WFM and PI were tenants and neither owned nor operated the System;

(c) PI filed for bankruptcy sometime between August and October of 2007, and is currently in bankruptcy proceedings; and

(d) the owner or entity named PDCM Associates ("PDCM") owns the real property and Pueblo La Reine PWS, and therefore PDCM is the appropriate Respondent to whom EPA should have issued the Complaint.

Ms. Hayden indicated that she would discuss this new information provided by Mr. Sheesley with EPA's program representatives. Ms. Hayden further indicated that EPA would reserve the right to amend, withdraw or reissue the Complaint to the appropriate person or entity upon documentation or verification of this information with the Virgin Islands Department of Planning and Natural Resources and Mr. Sheesley. The parties also agreed that a second teleconference call would be scheduled with representatives of EPA and Respondent to attempt a further resolution of the matter, after Mr. Sheesley has received and reviewed the Default Motion documents. The teleconference was concluded.

4. On October 21, 2008, Mr. Sheesley submitted said request via email.

5. On October 21, 2008, following the teleconference with Mr. Sheesley, Ms. Hayden met and discussed the information provided by Mr. Sheesley with EPA's program representatives Ms. Nicole Kraft, Public Water Supply Enforcement Team Leader with the Water Compliance Branch of EPA's Division of Enforcement and Compliance Assistance, and Ms. Amy Lavoie, case manager for the Pueblo La Reine PWS matter.

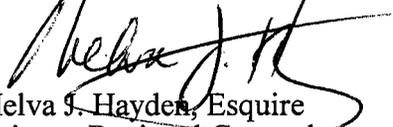
6. On October 29, 2008, EPA transmitted to Mr. Sheesley via overnight mail a copy of the Default Motion, a full and complete copy of the Complaint EPA initially issued in this matter, and accompanying Exhibits (Attached herein as Exhibit C - a copy of the cover letter transmitting documents to Mr. Sheesley without the attached documents already provided to the RJO).

Mr. Sheesley has been provided a copy of this Status Report.

COUNSEL FOR COMPLAINANT

Dated: 10/30/08

Respectfully submitted



Melva J. Hayden, Esquire
Assistant Regional Counsel
U.S. Environmental Protection Agency – Region 2
New York, NY 10007-1866
Phone: 212/637-3230
Fax: 212/637-3202

In the Matter of Steve Bockino, Manager Publeo La Reine Public Water System
Docket No. SDWA-02-2007-8404

CERTIFICATE OF SERVICE

I certify that the foregoing Status Report and Exhibits have been sent this day to the following addressees listed herein in the manner listed below:

Original & one (1) Copy by Hand:

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

Copy by Hand:

Helen Ferrara
Regional Judicial Officer
U.S .Environmental Protection Agency
Region 2
290 Broadway – 16th Floor
New York, NY 10007-1866

Copy by Facsimile & Certified Mail/
Return Receipt Requested:

Michael Sheesley, Esquire
POB 10829
St. Thomas, VI 00801

Dated October 30, 2008
New York, NY

Ana Madera



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

Exhibit A

JUN - 7 2007

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7005 3110 0000 5930 5607

*Rec'd.
6/14/07*

Mr. George Leon, Manager
Pueblo International, Inc.
P.O. Box 597
2 Estate La Reine
Christiansted
St. Croix, VI 00820

Re: In the Matter of: Pueblo (La Reine) Public Water System (PWS ID: VI0000414)
Complaint for Penalty (Docket No. SDWA-02-2007-8404)

Dear Mr. Leon:

Enclosed you will find a Complaint which the U.S. Environmental Protection Agency ("EPA" or "Agency"), the Complainant, is issuing to Pueblo International, Inc. (the "Respondent") as a result of our determination that the Pueblo (La Reine) public water system failed to comply with the requirements of the Stage 1 Disinfectants and Disinfection Byproducts Rule (Stage 1 DBPR) under the Safe Drinking Water Act ("SDWA"), as implemented by EPA's regulations at 40 C.F.R. Part 141 Subpart L, and failed to comply with the Administrative Order ("AO") (Docket No. SDWA-02-2005-8076) issued by the EPA on April 1, 2005. The Complainant requests that a penalty of \$6,000 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

Internet Address (URL) • <http://www.epa.gov>

Recycled/Recyclable • Printed with Vegetable Oil Based Inks on Recycled Paper (Minimum 30% Postconsumer)

You must also send a copy of your Answer to:

Melva J. Hayden, 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 effect 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:

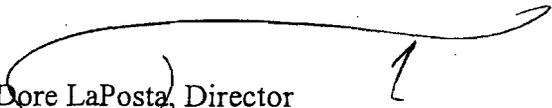
1. Submits a Stage 1 DBPR monitoring plan for the Pueblo (La Reine) public water system, within twenty (20) days, and
2. Completes the required monitoring in accordance with the Stage 1 Disinfectants and Disinfection Byproducts Rule no later than July or August 2007, and submits the results to EPA by September 10, 2007, and
3. Pays a penalty of \$925 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 with the required monitoring plan within twenty (20) 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 twenty (20) 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 the EPA by an informal conference, please immediately contact Melva J. Hayden, Esq., Assistant Regional Counsel, at (212) 637-3230.

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-02-2005-8076)
5. Monitoring Plan Template

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

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Pueblo International, Inc.
d/b/a Pueblo (La Reine)
2 Estate La Reine
Christiansted
St. Croix, VI 00820
PWS ID: VI0000414

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-02-2007-8404

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 Pueblo International, Inc. d/b/a Pueblo (La Reine) ("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 (the Pueblo (La Reine) public water system), located at 2 Estate La Reine, Christiansted, St. Croix, United States Virgin Islands 00820.

II. Findings of Violation

1. Respondent owns and/or operates the Pueblo (La Reine) "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 St. Croix, 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 Pueblo (La Reine) public water system provides piped water for human consumption and regularly serves a population of at least 25 individuals for over 6 months per year, and is, therefore, a "nontransient noncommunity water system" as defined by Section 1401(15) of the SDWA, 42 U.S.C. §300f(15) and 40 C.F.R. §141.2.
5. The Pueblo (La Reine) public water system adds a chemical disinfectant(s) to its water as part of the drinking water treatment process.
6. On December 16, 1998, EPA promulgated the Stage 1 Disinfectants and Disinfection Byproducts Rule ("Stage 1 DBPR"), 40 C.F.R. Part 141, Subpart L. The Stage 1 DBPR was promulgated with the intention of protecting public health from exposure to potentially harmful disinfection byproducts. The Stage 1 DBPR established criteria under which community water systems and nontransient, noncommunity water systems that add a chemical disinfectant to the water in any part of the drinking water treatment process must modify their practices to meet maximum contaminant levels ("MCL") for disinfection byproducts, 40 C.F.R. § 141.64, and maximum residual disinfectant levels, 40 C.F.R. § 141.65, and must meet the treatment technique requirements for the control of disinfection byproduct precursors listed in 40 C.F.R. §141.135.
7. 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 effected as of September 22, 1979. However, the VIDPNR has not yet obtained primary enforcement responsibility for the Stage 1 DBPR. Therefore, as of the date of this Complaint, EPA has primary responsibility for enforcement of the Stage 1 DBPR.
8. Pursuant to 40 C.F.R. §141.130(b), the Pueblo (La Reine) public water system, a nontransient noncommunity water system which uses a groundwater source and serves fewer than 10,000 persons, is required to comply with Subpart L (or the Stage 1 DBPR) beginning January 1, 2004.

9. In January 2005, the VIDPNR provided EPA with information that indicated Respondent failed to report the results of Total Trihalomethanes ("TTHM") and Haloacetic Acids ("HAA5") monitoring for 2004, for its Pueblo (La Reine) public water system.
10. On April 1, 2005, EPA issued an Administrative Order ("AO"), Docket Number SDWA-02-2005-8076, requiring Respondent to submit a copy of the monitoring plan for its Pueblo (La Reine) public water system prepared in accordance with 40 C.F.R. §141.132(f) to EPA and VIDPNR within sixty (60) days after receipt of the AO.
11. The AO also required Respondent to submit the 2004 TTHM and HAA5 monitoring results for the Pueblo (La Reine) public water system within 30 days after receipt of the AO. If sampling was not conducted in 2004, the AO further required Respondent to perform the TTHM and HAA5 monitoring in 2005, and submit the results by September 10, 2005.
12. According to EPA's records in the form of the certified mail return receipt (Article Number 7002 2030 0002 3261 0239), the AO was received by the Respondent on April 28, 2005.
13. On April 5, 2007, EPA issued an information collection request letter requiring Respondent to provide an update on the status of its compliance with the AO and the Stage 1 DBPR by May 1, 2007.
14. According to EPA's records in the form of the certified mail return receipt (Article Number 7005 3110 0000 5930 5867), the information collection request letter was received by the Respondent on April 10, 2007.

COUNT 1

15. Pursuant to 40 C.F.R. §141.132(f), Respondent is required to develop and implement a monitoring plan for its Pueblo (La Reine) public water system for all monitoring required by 40 C.F.R. Part 141, Subpart L.
16. Pursuant to Paragraph 13 of the AO, Respondent was required to submit a copy of the monitoring plan for its Pueblo (La Reine) public water system prepared in accordance with 40 C.F.R. §141.132(f) within sixty (60) days of receipt of the AO.
17. Respondent failed to demonstrate compliance with the requirements specified in 40 C.F.R. §141.132(f) by the date specified in the AO, and is, therefore, in violation of Paragraph 13 of the AO.

COUNT 2

18. Pursuant to 40 C.F.R. §141.132(b)(1), Respondent is required to monitor for TTHM and HAA5. Specifically, the Pueblo (La Reine) public water system must collect one TTHM sample and one HAA5 sample per year per treatment plant during the month of warmest water temperature, in accordance with the monitoring plan prepared in accordance with 40 C.F.R. §141.132(f).
19. Pursuant to 40 C.F.R. §141.134(b), Respondent is required to report the following information to the State (VIDPNR) within 10 days after the end of each monitoring period: the number of TTHM and HAA5 samples taken during the last year; the location, date, and result of each sample taken during the last monitoring period; the arithmetic average of all samples taken in the last year; and whether the MCL was violated.
20. Pursuant to Paragraph 13 of the AO, Respondent was required to perform all monitoring required by 40 C.F.R. Part 141, Subpart L, as specified by the monitoring plan developed in accordance with 40 C.F.R. §141.132(f), and to report the results to the VIDPNR as required by 40 C.F.R. §141.134(b).
21. Pursuant to Paragraph 14 of the AO, Respondent was required to submit the TTHM and HAA5 monitoring data obtained in 2004, for the Pueblo (La Reine) public water system, to EPA and VIDPNR within thirty (30) days of receipt of the AO.
22. Pursuant to Paragraph 15 of the AO, if Respondent did not perform the TTHM and/or HAA5 monitoring in 2004, then Respondent was required to complete the TTHM and HAA5 monitoring during July or August 2005, for the Pueblo (La Reine) public water system, and submit the results to EPA and VIDPNR by September 10, 2005. Respondent failed to submit 2005 annual monitoring results for the TTHM and HAA5 monitoring by September 10, 2005.
23. Respondent failed to demonstrate compliance with the requirements of 141.132(b)(1) by the dates specified in Paragraph 14 and 15 of the AO, and is, therefore, in violation 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 **Six Thousand Dollars (\$6,000.00)**. 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:

Melva J. Hayden, 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) 637-3230

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:

Melva J. Hayden, 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) 637-3230

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 7th DAY OF JUNE 2007.


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. GEORGE LEON
Manager
Pueblo International, Inc.
P.O. Box 579
2 Estate La Reine
Christiansted
St. Croix, VI 00820

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

IN THE MATTER OF:

Pueblo International, Inc.
d/b/a Pueblo (La Reine)
2 Estate La Reine
Christiansted
St. Croix, VI 00820
PWS ID: VI0000414

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-02-2007-8404

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 Pueblo International, Inc., d/b/a Pueblo (La Reine) ("Respondent"), on June 7, 2007.

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 (Pueblo (La Reine) public water system) in St. Croix, United States Virgin Islands.

II. Findings of Fact and Conclusions of Law

1. Respondent owns and/or operates the Pueblo (La Reine) "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 St. Croix, 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 Pueblo (La Reine) public water system provides piped water for human consumption and regularly serves a population of at least 25 individuals for over 6 months per year, and is therefore a "nontransient noncommunity water system" as defined by Section 1401(15) of the SDWA, 42 U.S.C. §300f(15) and 40 C.F.R. §141.2.
5. The Pueblo (La Reine) public water system adds a chemical disinfectant(s) to the water as part of the drinking water treatment process.
6. Pursuant to 40 C.F.R. §141.130(b), the Pueblo (La Reine) public water system, a nontransient noncommunity water system that uses a groundwater source and serves fewer than 10,000 persons, is required to comply with Subpart L (or the Stage 1 DBPR) beginning January 1, 2004.
7. In January 2005, the VIDPNR provided EPA with information that indicated Respondent failed to report the results of Total Trihalomethanes ("TTHM") and Haloacetic Acids ("HAA5") monitoring for 2004, for its Pueblo (La Reine) public water system.
8. On April 1, 2005, EPA issued an Administrative Order ("AO"), Docket Number SDWA-02-2005-8076, requiring Respondent to submit a copy of the monitoring plan for its Pueblo (La Reine) public water system, as specified in 40 C.F.R. §141.132(f), to EPA and Virgin Islands Department of Planning and Natural Resources ("VIDPNR") within sixty (60) days after receipt of the AO. The AO also required Respondent to submit the 2004 TTHM/HAA5 monitoring results for its Pueblo (La Reine) public water system within 30 days after receipt of the AO. If Respondent did not conduct the required sampling in 2004, the AO directed the Respondent to perform the required TTHM/HAA5 monitoring in 2005, and submit results by September 10, 2005. EPA has documented evidence in the form of the certified mail return receipt (Article Number 7002 2030 0002 3261 0239) indicating that the Respondent received the AO on April 28, 2005.
9. On April 5, 2007, EPA issued an information collection request letter requiring Respondent to provide an update on the status of its compliance with the AO and the Stage 1 DBPR by May 1, 2007. According to EPA's records in the form of the certified mail return receipt (Article Number 7005 3110 0000 5930 5867), the information collection request letter was received by the Respondent on April 10, 2007.
10. Based on information available to EPA, the Respondent has failed to demonstrate compliance with the requirements specified in 40 C.F.R. §141.132(b) and (f) and violated Paragraphs 13, 14, and 15 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, by cashier's or certified check, a civil penalty in the amount of **Nine Hundred Twenty-Five Dollars (\$925.00)** payable to the "Treasurer of the United States of America." The check shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. Such check shall be mailed to:

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

Respondent shall also send copies of this payment to each of the following:

Melva J. Hayden, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 2
290 Broadway - 16th Floor
New York, NY 10007 -1866

and

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

Payment must be received at the above address on or before 30 calendar days after the date of signature of the Final Order at the end of this document (the date by which payment must be received shall hereafter be referred to as the "due date").

- a. Failure to pay the penalty in full according to the above provisions will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection. Further, if the payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of Treasury pursuant to 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.
 - b. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.
3. 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

4. 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.
5. 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.
6. 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.
7. 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.
8. 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.~~

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 the Respondent, its officers, directors, agents, servants, authorized representatives and successors or assigns.
11. Each party hereto agrees to bear its own costs and fees in this matter.
12. 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: _____, 2007

Dated this ____ day of: _____, 2007

MR. GEORGE LEON
Manager
Pueblo International, Inc.
P.O. Box 579
2 Estate La Reine
Christiansted
St. Croix, VI 00820

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: _____

ALAN J. STEINBERG
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:

Pueblo International, Inc.
d/b/a Pueblo (La Reine)
2 Estate La Reine
Christiansted
St. Croix, VI 00820
PWS ID: VI0000414

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-02-2007-8404

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. GEORGE LEON
Manager
Pueblo International, Inc.
P.O. Box 579
2 Estate La Reine
Christiansted
St. Croix, VI 00820

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: Amy Lavoie 6/8/07
Amy Lavoie
New York, New York

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE REGIONAL HEARING OFFICE

IN THE MATTER OF

STEVE BOCKINO, MANAGER
PUEBLO INTERNATIONAL (LA REINE)
PUBLIC WATER SYSTEM
ST. CROIX, U.S. VI

Docket No. SDWA-02-2007-8404

Respondent.

DECLARATION IN RESPONSE TO ORDER TO SUPPLEMENT THE RECORD

I, Amy Lavoie, Environmental Scientist, Water Compliance Branch, Division of Enforcement and Compliance Assistance, U.S. Environmental Protection Agency Region 2, declare, under penalty of perjury, that the following is true and correct to the best of my knowledge, information and belief:

1. On or about June 7, 2007, EPA issued an Administrative Complaint ("the Complaint") against the Respondent.
2. EPA served, by certified mail, return receipt requested, a true, and correct copy of the Complaint upon the Respondent pursuant to 40 C.F.R. § 22.5(b) (1).
3. The copy of the Complaint served upon Respondent was a complete and full copy. (A copy of the complete Complaint and is annexed to this Declaration as Exhibit A).

Dated: Amy Lavoie
Amy Lavoie
Environmental Scientist

10/21/08

Exhibit C

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY



REGION 2
290 BROADWAY
NEW YORK, NEW YORK 10007-1866

VIA FED EX
OVERNIGHT MAIL

October 29, 2008

Micheal Sheesley, Esq.
Time Center Bldg.
4600 Estate Charlotte Amalie
St. Thomas, VI 00802-3405

Re: In the Matter of Steve Bockino, Manager
Pueblo International (La Reine) Public Water System
Docket No. SDWA-02-2007-8404

Dear Mr. Sheesley:

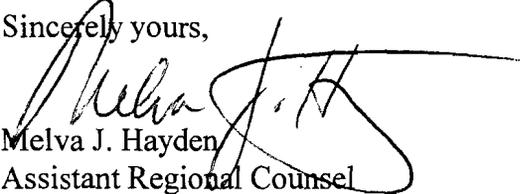
This is to follow up on our teleconference call held with the EPA Regional Judicial Officer, Ms. Helen Ferrara, on Tuesday, October 21, 2008 regarding the above referenced Pueblo LaReine Public Water System matter currently pending before EPA for a Default Motion proceeding.

As per your request and as we agreed, enclosed please find the Default Motion on Partial Liability application and the accompanying documents, including a copy of the original complaint EPA issued in this matter.

After you have had an opportunity to review the documents, I will contact you to schedule a conference call with EPA Region 2 program representatives and me.

Should you have any further questions, please contact me at (212) 637-3230.

Sincerely yours,


Melva J. Hayden
Assistant Regional Counsel
Office of Regional Counsel

Enclosures

cc: Helen Ferrara, Regional Judicial Officer
✓ Karen Maples, Regional Hearing Clerk