

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. 2
2009 MAY 19 AM 11:20
REGIONAL HEARING
CLERK

IN THE MATTER OF:

Carambola Golf Course
Frederiksted, St. Thomas, Virgin Islands 00851

PWS ID: VI1000373

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-02-2009-8406

**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 Carambola Golf Course (“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 (Professional Center public water system), located in St. Thomas, United States Virgin Islands.

II. Findings of Violation

3. Respondent owns and/or operates the Carambola Golf Course “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. Thomas, United States Virgin Islands. 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.

4. 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).
5. The Carambola Golf Course public water system provides piped water for human consumption and regularly serves a population of at least 25 individuals for over six (6) months per year, and is therefore a “non-transient non-community water system” as defined by Section 1401(16) of the SDWA, 42 U.S.C. §300f(16) and 40 C.F.R. §141.2.
6. On January 22, 2001, EPA promulgated the Arsenic Rule, 40 C.F.R. §141.23, to improve public health by reducing exposure to arsenic in drinking water. The Arsenic Rule lowered the arsenic maximum contaminant level (“MCL”) from 50 micrograms per liter (ug/L) to 10 micrograms per liter (ug/L) (40 C.F.R. §141.62(b)(16)). All community water systems and non-transient, non-community water systems must comply with the arsenic monitoring and MCL requirements.
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, 42 U.S.C. §300g-2. The approval of primary enforcement authority from EPA to VIDPNR was effective as of September 22, 1979. However, the VIDPNR has not yet obtained primary enforcement responsibility for the Arsenic Rule. Therefore, as of the date of this Complaint, EPA has primary responsibility for enforcement of the Arsenic Rule.
8. 40 C.F.R. §141.23 requires all community water systems and non-transient, non-community water systems to comply with the arsenic requirements.
9. 40 C.F.R. §141.23(a)(1) requires ground water systems to take a minimum of one sample at every entry point to the distribution system after any application of treatment, or in the distribution system at a point which is representative of each well after treatment (“sampling point”). The system is required to take each sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.
10. 40 C.F.R. §141.23(c)(1) requires ground water systems to take one sample for arsenic every three years. The initial three year compliance monitoring period under the revised MCL began on January 1, 2005, and concluded on December 31, 2007.
11. 40 C.F.R. §141.62(b) requires all community water systems and non-transient non-community water systems to conduct monitoring for arsenic to determine compliance with the maximum contaminant level of 10 micrograms per liter (ug/L) as specified in 40 C.F.R. §141.62(b)(16) beginning January 23, 2006.
12. Respondent’s water system utilizes a ground water source and, therefore, was required to comply with 40 C.F.R. §141.62(b)(16) beginning January 23, 2006. Pursuant to 40 C.F.R. §141.23, Respondent was required to monitor for arsenic to determine compliance with the 10 micrograms per liter (ug/L) as specified in 40 C.F.R. §141.62(b)(16).
13. On April 3, 2008, the EPA issued an Administrative Order (“AO” or “Order”), Docket No. SDWA-02-2008-8079, requiring Respondent to submit a copy of all arsenic monitoring

results, collected as specified in 40 C.F.R. §141.23, obtained since January 2005 to EPA and VIDPNR, within thirty (30) days of receipt of the AO. If Respondent could not provide arsenic data obtained since January 2005, Respondent was required to conduct monitoring for arsenic (in accordance with 40 C.F.R. §141.23 to determine compliance with the MCL) within forty-five (45) days of the AO and was required to provide EPA and VIDPNR with the results of said monitoring within ninety (90) days of receipt of the AO. EPA was unsuccessful with mailing the AO and requested that VIDPNR hand delivered the AO to Carambola Golf Course. The AO was successfully hand delivered to Respondent by VIDPNR on July 23, 2008.

14. On October 15, 2008, EPA issued a letter to Respondent requesting immediate compliance with the requirements of the AO. EPA has documented evidence in the form of the certified mail return receipt (Article Number 7005 3110 0000 5926 6472) indicating that the Respondent received the letter on October 29, 2008.
15. Based on the information available to EPA, the Respondent has failed to conduct monitoring for arsenic, as specified in the SDWA and 40 C.F.R. Part 141.23, in violation of 40 C.F.R. §141.23 and the Administrative Order.

COUNT 1

16. 40 C.F.R. Part §141.23, requires Respondent to comply with the arsenic monitoring and MCL requirements.
17. Respondent has failed to demonstrate to EPA and VIDPNR that the required monitoring for arsenic was performed.
18. Respondent has failed, therefore, to demonstrate its compliance with the arsenic monitoring requirements specified in 40 C.F.R. Part 141.23, and the Administrative Order.

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 Five Hundred Dollars (\$6,500.00)**. 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 CRQP, 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:

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 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 thirty (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 18th DAY OF May, 2009.


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. Greg McCulloch
Carambola Golf Course
P.O. Box 718 Kingshill
72 Estate River
Frederiksted, St. Thomas, Virgin Islands 00851

Docket No. SDWA-02-2009-8406

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Carambola Golf Course
Frederiksted, St. Thomas, Virgin Islands 00851

PWS ID: VI1000373

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-02-2009-8406

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. Greg McCulloch
Carambola Golf Course
P.O. Box 718 Kingshill
72 Estate River
Frederiksted, St. Thomas, Virgin Islands 00851

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: 5/18/09


New York, New York