

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

U.S. Environmental Protection Agency
2011 JUN 30 P 12:01
OFFICE OF HEARING
NEW YORK

IN THE MATTER OF:

Herbert Grigg Home
#19 Estate Diamond
St. Croix, VI 00840

Respondent

Proceeding Pursuant §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-02-2010-8400

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 the Herbert Grigg Home on November 24, 2009.

The Complaint charged the Herbert Grigg Home with violating the terms and conditions of an Administrative Order issued to the Herbert Grigg Home 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 the Herbert Grigg Home public water system, located in St. Croix, United States Virgin Islands.

II. Findings of Fact and Conclusions of Law

1. The Virgin Islands Department of Human Services ("Respondent") owns and/or operates the Herbert Grigg Home "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 Herbert Grigg Home public water system 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 radionuclides 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 effected as of September 22, 1979. However, the VIDPNR had not yet obtained primary enforcement responsibility for the Radionuclides Rule as of the date of this Complaint. So 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. Pursuant to 40 C.F.R. §141.26, 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 before December 31, 2007.
10. In May 2007, VIDPNR provided EPA with information that indicated Respondent failed

to report the results of radionuclides contaminants corresponding to the first quarter of 2007, for its Herbert Grigg Home public water system.

11. On July 30, 2007, EPA issued an Administrative Order ("AO"), Docket Number SDWA-02-2007-8041, requiring that Respondent submit a copy of all historical monitoring radionuclides results collected between June 2000 and December 8, 2003. If those results were not available, the AO required Respondent to monitor for radionuclides contaminants over the next quarter and to submit that quarter's monitoring results to EPA and VIDPNR within seventy five (75) days after receipt of the AO. That quarter's report was never submitted.
12. On March 5, 2008, EPA issued the Respondent an Administrative Complaint with a proposed penalty of \$6,000 for failure to monitor for radiological contaminants. On July 24, 2008, EPA and Respondent entered into an Expedited Settlement wherein Respondent agreed to pay a sum of \$250 and to submit four (4) quarters of radionuclide monitoring reports. Respondent paid the \$250 and submitted its first radionuclide monitoring report but failed to submit the remaining three reports.
13. On April 30, 2009, EPA issued an AO, requiring Respondent to submit to EPA and the VIDPNR its radionuclides monitoring results up to June 2009. DHS failed to comply with the April 30, 2009 AO.
14. On November 24, 2009, EPA issued a Complaint for Penalty, Docket Number SDWA-02-2010-8400, requiring Respondent to pay a proposed civil penalty of \$7,000 for its failure to comply with the requirements of the April 30, 2009 AO, Docket Number SDWA-02-2009-8034.

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 a total civil penalty of \$6,000 plus interest in two installments to EPA. Respondent shall pay a civil penalty to EPA in the amount of **Three Thousand Dollars (\$3,000) within 45 days of the signature date of the Final Order (the "due date")**. Then Respondent shall pay a civil penalty to EPA in the amount of **Three Thousand and Nine dollars and eight six cents (\$3009.86) within one hundred and sixty five days after the due date**. Such payment shall be made by cashier's or certified check or by Electronic Fund Transfer (EFT). If the payment is made by check, then the check shall be payable to the **"Treasurer, United States of America"**, and shall be mailed to:

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

The check shall be identified with a notation thereon listing the following: **IN THE MATTER OF HERBERT GRIGG HOME**, and shall bear thereon the **Docket Number SDWA-02-2010-8400**. Payment of the first installment of the total penalty amount must be received at the above address on or before forty-five (45) calendar days after the due date. Payment of the second installment of the total penalty amount must be received at the above address on or before one hundred and sixty five (165) calendar days after the due date.

If Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:

- a. Amount of Payment
- b. SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045
- c. Account Code for Federal Reserve Bank of New York receiving payment:
68010727
- d. Federal Reserve Bank of New York ABA routing number: 021030004
- e. Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"
- f. Name of Respondent: Herbert Grigg Home
- g. Case Number: SDWA-02-2010-8400

Such EFT must be received on or before 45 calendar days after the Effective Date of this CA/FO.

Whether the payment is made by check or by EFT, the Respondent shall promptly thereafter furnish reasonable proof that such payment has been made, to both:

Nadine Orrell, 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

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

- h. Failure to pay the amount in full within the time period set forth above may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
- i. 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. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.
- j. The civil penalty constitutes a penalty within the meaning of 26 U.S.C. §162(f).
- k. 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

- 3. 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.
- 4. 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.
- 5. 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.

6. 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.
7. 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.
8. 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.
9. The provisions of this Consent Agreement and Final Order shall be binding upon the Respondent, its officer's, directors, agents, servants, authorized representatives and successors or assigns.
10. Each party hereto agrees to bear its own costs and fees in this matter.
11. 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.
12. Respondent has agreed to undertake certain actions by dates certain in order to come into compliance with all applicable requirements of the Act and of regulations promulgated thereunder. A list of the agreed upon actions and dates by which they must be accomplished is set out in Attachment A to this Consent Agreement and Final Order.

FOR THE RESPONDENT:

Dated this 15 day of: December, 2010



Chris E. Finch, Commissioner
VI Department of Human Services
3011 Golden Rock
Christiansted, VI 00820

FOR THE COMPLAINANT:

Dated this 20th day of: January, 2011



DORE LAPOSTA

Director

Division of Enforcement and Compliance

Assistance

U.S. Environmental Protection Agency

Region 2

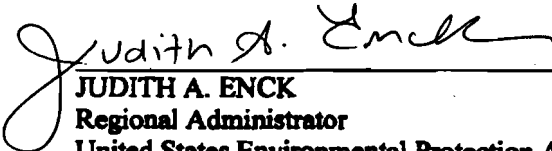
New York, NY 10007-1866

Herbert Grigg Home
SDWA-02-2010-8400

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: 1/25/11



JUDITH A. ENCK
Regional Administrator
United States Environmental Protection Agency
Region 2
290 Broadway
New York, NY 10007-1866

To: Chris E. Finch, Commissioner
VI Department of Human Services
3011 Golden Rock
Christiansted, VI 00820

Docket No. SDWA-02-2010-8400

Herbert Grigg Home
SDWA-02-2010-8400

ATTACHMENT A

**Herbert Grigg Home
#19 Estate Diamond
St. Croix, VI 00840
PWS ID: VI3000477**

Compliance Actions

**Provide January 2010
Radionuclide monitoring data results**

Compliance Dates

June 15, 2010

**Herbert Grigg Home
SDWA-02-2010-8400**

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Herbert Grigg Home
#19 Estate Diamond
St. Croix, VI 00840
PWS ID: VI3000477

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-02-2010-8400**

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 "CONSENT AGREEMENT AND FINAL ORDER" to the following person at the address listed below:

Chris E. Finch, Commissioner
VI Department of Human Services
3011 Golden Rock
Christiansted, VI 00820

I sent by inter-office mail the original and a copy of the foregoing Consent Agreement and Final Order to the office of the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.



New York, New York

Date: June 30, 2011

Herbert Grigg Home
SDWA-02-2010-8400