

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

U.S. Environmental
Protection Agency-Reg 2
2014 SEP -8 AM 8:53
REGIONAL HEARING
CLERK

IN THE MATTER OF:

United States Department of the Army
Fort Monmouth Main Base
Oceanport, New Jersey

PWS ID. No. NJ1311001

Respondent.

Proceeding Pursuant to Section 1447 of the Safe
Drinking Water Act, 42 U.S.C. § 300j

CONSENT AGREEMENT
AND
FINAL ORDER

Docket No.
SDWA-02-2014-8401

I. PRELIMINARY STATEMENT

1. This is a civil administrative proceeding for the assessment of a civil penalty instituted pursuant to Section 1447(a) and (b) of the Safe Drinking Water Act ("SDWA" or the "Act"), 42 U.S.C. § 300j-6(a)-(b).
2. Section 1447 of the SDWA, 42 U.S.C. § 300j-6, authorizes the United States Environmental Protection Agency ("EPA") to take an enforcement action whenever it determines that a Federal agency is in violation of any requirement of the SDWA, EPA's regulations thereunder, or any regulation of a state drinking water program which has been authorized by EPA. Pursuant to Sections 1447(a) and (b), EPA may issue a penalty order against any Federal agency that owns or operates any public water system that violates a requirement of the Act.
3. EPA is initiating and concluding this administrative proceeding for the assessment of a civil penalty pursuant to Section 1447(b)(2) of the Act, 42 U.S.C. § 300j-6(b)(2), and 40 C.F.R. § 22.13(b) of 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"), which sets forth procedures for simultaneous commencement and conclusion of administrative civil penalty assessment proceedings through issuance of a consent agreement and final order pursuant to 40 C.F.R. §§ 22.13(b)(2) and (3).
4. This Consent Agreement is entered into by the Director of the Division of Enforcement and Compliance Assistance, Region 2, United States Environmental Protection Agency ("Complainant") and the United States Department of the Army ("Respondent"), pursuant to Section 1447 of the Act, 42 U.S.C. § 300j-6(b), and in accordance with 40 C.F.R. Part 22. The authority to issue this Consent Agreement has been duly delegated to the Director of the Division of Enforcement and Compliance Assistance of EPA Region 2.

5. This Consent Agreement and Final Order (collectively “CA/FO”) resolves violations of the specific requirements under subchapter XII of 42 U.S.C. §§ 300f to 300j-26, Sections 1401 to 1465 of the SDWA, as provided for in Sections II and III below.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent owns and/or operates the Fort Monmouth Main Base “public water system” located in Oceanport, New Jersey, within the meaning of Section 1401(4) of the SDWA, 42 U.S.C. § 300f(4), and 40 C.F.R. § 141.2.
2. Respondent is a “supplier of water” as that term is defined in Section 1401(5) of the SDWA, 42 U.S.C. § 300f(5), and 40 C.F.R. § 141.2.
3. The United States Department of the Army is a “Federal agency” as defined by Section 1401(11) of the SDWA, 42 U.S.C. § 300f(11).
4. Respondent is a “person” within the meaning of Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12).
5. Pursuant to Section 1447(a) of the SDWA, 42 U.S.C. § 300j-6(a), each department, agency, or instrumentality of the executive branch of the Federal Government that owns or operates any public water system is subject to, and must comply with, all Federal, State, interstate, and local requirements, both substantive and procedural, to the same extent as any person is subject to such requirements.
6. Respondent’s public water system (“PWS”) provides water for human consumption. Respondent’s PWS regularly serves at least fifteen service connections used by year-round residents or regularly serves at least twenty-five individuals year-round, 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. Prior to being classified as a CWS, Respondent’s PWS was classified as a “non-transient non-community water system” (“NTNCWS”) serving at least twenty-five of the same individuals at least six months per calendar year, but not year-round, as defined by Section 1401(16) of the SDWA, 42 U.S.C. § 300f(16) and 40 C.F.R. 141.2. Respondent is therefore subject to the requirements of Part B of the SDWA, 42 U.S.C. § 300g, and its implementing regulations found at 40 C.F.R. Part 141.
7. The Surface Water Treatment Rule (“SWTR”), 40 C.F.R. Part 141 Subpart H applies to all PWSs using surface water or ground water under the direct influence of surface water. In order to protect consumers from microbial contaminants, Subpart H includes treatment technique requirements such as measuring the disinfectant residual within the distribution system, and maintaining a detectable disinfectant residual in the water throughout the distribution system.
8. Respondent receives finished water through a direct connection with New Jersey American Water – Coastal North (PWS ID. No. NJ1345001), and is a “consecutive system” within the meaning of 40 C.F.R. § 141.2. Surface water is the primary source of New Jersey American Water – Coastal North; therefore Respondent’s PWS uses surface water and must comply with the SWTR.

9. The New Jersey Department of Environmental Protection (“NJDEP” or “State”) administers the Public Water Supply Supervision Program in New Jersey pursuant to Section 1413 of the SDWA, 42 U.S.C. § 300g. The approval of primary enforcement responsibility from EPA to NJDEP was effective as of July 13, 1979. NJDEP is the primacy agency, as that term is defined in 40 C.F.R. § 142.2. On September 28, 2012, NJDEP referred the Fort Monmouth Main Base PWS to EPA for further investigation and appropriate action.
10. Pursuant to Section 1414(i)(4) of the SDWA, 42 U.S.C. § 300g-3(i)(4), the implementing regulations for New Jersey’s Safe Drinking Water Program (N.J.A.C. 7:10) are applicable requirements of the SDWA.
11. N.J.A.C. 7:10-1.3 defines “detectable disinfectant residual” as a chlorine residual of at least 0.05 mg/L (free chlorine, combined chlorine or chlorine dioxide), or a heterotrophic plate count of 500/ml or less at the point of collection.
12. On October 18, 2012, EPA conducted a file review and inspection (“file review/inspection”) to evaluate Respondent’s compliance with the requirements of the SDWA, the National Primary Drinking Water Regulations, and applicable NJDEP regulations.
13. The SWTR, 40 C.F.R. § 141.74(c), provides that the residual chlorine concentration must be measured at least at the same points in the distribution system and at the same time as total coliforms are sampled, as specified in 40 C.F.R. § 141.21. Failure to comply with this requirement is a treatment technique violation. Based on information obtained during the file review/inspection, Respondent failed to measure the disinfectant residual at the same points and at the same time as the total coliform samples in July, August, and September of 2011.
14. The SWTR, 40 C.F.R. § 141.72(b)(3)(i), provides that the residual disinfectant concentration in the distribution system, measured as total chlorine, combined chlorine, or chlorine dioxide, as specified in 40 C.F.R. §§ 141.74(a)(2) and (c)(3), cannot be undetectable in more than 5 percent of the samples each month, for any two consecutive months that the system serves water to the public. Water in the distribution system with a heterotrophic bacteria concentration less than or equal to 500/ml, measured as heterotrophic plate count (“HPC”), as specified in 40 C.F.R. § 141.74(a)(1), is deemed to have a detectable residual for purposes of determining compliance. Failure to comply with these requirements is a treatment technique violation. Based on information obtained during the file review/inspection, the residual disinfectant concentration in the distribution system was undetectable in more than 5 percent of the samples collected during consecutive months from September 2011 to September 2012.
15. Pursuant to 40 C.F.R. §§ 141.203(b)(1) and (2), PWSs with treatment technique violations must provide public notice as soon as practical, but no later than thirty days after the system learns of the violation. The system must repeat the notice every three months as long as the violation or situation persists, unless the primacy agency determines that appropriate circumstances warrant a different repeat notice frequency. Based on information obtained during the file review/inspection, Respondent failed to notify the public of the treatment technique violations described above in paragraph 13 (September only) and paragraph 14.

16. On November 23, 2012, EPA issued an Administrative Order (“AO”), Docket No. SDWA-02-2013-8002, to place Respondent on an enforceable schedule to comply with the requirements of the SDWA, 40 C.F.R. Part 141 and NJDEP applicable regulations. Among other things, the AO required Respondent to take immediate steps to ensure a detectable residual throughout the distribution system; conduct monitoring for HPC every time the residual disinfectant concentration measurements are non-detectable, in accordance with 40 C.F.R. § 141.74; notify consumers of the failure to maintain a detectable residual during the months of September 2011 through September 2012; and to submit copies of total coliform monitoring, residual disinfectant concentration measurements in the distribution system, and HPC results to EPA until otherwise notified by EPA (by regulation Respondent is required to routinely report this information to NJDEP).
17. Based on disinfectant residual monitoring data submitted by Respondent to EPA in response to the AO, the residual disinfectant concentration in the distribution system was undetectable in more than 5 percent of the samples collected from October 2012 through February 2013, and July 2013 through August 2013.
18. On May 23, 2013, Respondent submitted to EPA an updated flushing plan, dated March 22, 2013, to achieve compliance with the disinfectant residual concentration requirements. On May 23, 2013, Respondent also submitted a copy of the public notice that was distributed to consumers for the failure to maintain a disinfectant residual throughout the distribution system from September 2011 through February 2013.
19. On September 26, 2013, Respondent submitted to EPA a copy of the public notice that was distributed to consumers for the failure to maintain a disinfectant residual throughout the distribution system from July 2013 through August 2013.

**Count 1: Failure to Maintain a Detectable Disinfectant Residual Concentration
in the Distribution System**

20. Respondent violated 40 C.F.R. § 141.72(b)(3)(i) by failing to have a detectable disinfectant residual concentration in the distribution system in more than 5 percent of the samples collected each month from September 2011 through February 2013 and July through August 2013.

**Count 2: Failure to Measure the Disinfectant Residual Concentration at the Same Points
and at the Same Time as Total Coliform Samples**

21. Respondent violated 40 C.F.R. § 141.74(c) by failing to measure the disinfectant residual at the same points and at the same time as total coliforms are sampled during the months of July, August and September of 2011.

Count 3: Failure to Notify Consumers of the Treatment Technique Violations

22. Respondent violated 40 C.F.R. § 141.203 from December 10, 2011 to March 25, 2013 by failing to notify consumers of the treatment technique violations as soon as practical, but no later than thirty days after the system learns of the violation. Respondent failed to repeat notice every three months as long as the violation or situation persisted.

III. CONSENT AGREEMENT

1. Section II, Paragraphs 1-19 are re-alleged and incorporated by reference.
2. EPA and Respondent agree that it is in the public interest to resolve the issues alleged in this Consent Agreement without further litigation and the expense and effort that litigation entails.
3. Based upon the foregoing and pursuant to Section 1447 of the SDWA, 42 U.S.C. § 300j-6, and Section 22.13(b) of the CROP, 40 C.F.R. § 22.13(b), it is hereby agreed by and between EPA and Respondent, and Respondent voluntarily and knowingly agrees as follows:

IV. TERMS OF SETTLEMENT

1. For the purpose of this proceeding, Respondent:
 - a. Admits the jurisdictional allegations of this CA/FO;
 - b. Neither admits nor denies the factual allegations contained herein;
 - c. Waives its right to contest the allegations, a judicial or administrative hearing, or to appeal this CA/FO; and
 - d. Consents to the payment of a civil penalty in the amount of eight thousand dollars (\$8,000.00), as stated in Section V below.

V. PAYMENT OF CIVIL PENALTY

1. Respondent shall pay a civil penalty to EPA in the amount of eight thousand dollars (\$8,000.00). 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:

United States 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 THE UNITED STATES DEPARTMENT OF ARMY, FORT MONMOUTH PWS**, and shall bear thereon the **Docket Number SDWA-02-2014-8401**. Payment of the penalty must be received at the above address on or before sixty (60) calendar days after the Effective Date of this CA/FO.

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

- a. Amount of Payment: \$8,000.00.
- b. SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045
- c. Account Code for Federal Reserve Bank of New York receiving payment: 68010727
- d. Federal Reserve Bank of New York ABA routing number: 021030004
- e. Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"
- f. Name of Respondent: Department of the Army
- g. Case Number: SDWA-02-2014-8401

Such EFT must be received on or before 60 calendar days after the Effective Date of this CA/FO. Whether the payment is made by check or by EFT, Respondent shall promptly thereafter furnish reasonable proof that such payment has been made, to both:

Lauren Fischer, 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) 637-3231

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. The civil penalty constitutes a penalty within the meaning of 26 U.S.C. § 162(f).
- j. Any requirement for the payment of funds established under the terms of this Consent Agreement shall be subject to the availability of appropriated funds, and no provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.

VI. GENERAL PROVISIONS

1. The provisions of this CA/FO shall be binding upon Respondent, its officers, directors, agents, servants, authorized representatives and successors or assigns, including but not limited to, subsequent purchasers. No transfer of ownership or operation shall relieve Respondent of its obligation to comply with this CA/FO.

2. 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.
3. 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.
4. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this CA, the issuance of the attached Final Order, or the enforcement of the CAFO.
5. Respondent knowingly and explicitly waives its rights under Section 1447(b)(3) of the Act, 42 U.S.C. § 300j-6(b)(3), to request or to seek any Hearing on or appeal of 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. Respondent also hereby expressly waives its right to confer with the Administrator under Section 1447(b)(3) of the Act, 42 U.S.C. § 300j-6(b)(3).
8. EPA reserves the right to commence action against any person or persons, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the CROP. Further, EPA reserves any right and remedy available to it under the SDWA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction to enforce the provisions of this CA/FO, following its filing with the Regional Hearing Clerk.
9. Failure to obtain adequate funds or appropriations from Congress does not release Respondent from its obligation to comply with the SDWA, the applicable regulations thereunder, or with this CA/FO. Nothing in this CA/FO shall be interpreted to require obligation or payment of funds in violation of the Antideficiency Act, 31 U.S.C. § 1341.
10. Issuance of the CA/FO 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 Section 1414 of the Act, 42 U.S.C. § 300g-3. Issuance of or compliance with this CA/FO 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.

11. Complainant shall have the right to institute further actions to recover appropriate relief if Complainant obtains evidence that the information provided and/or representations made by Respondent to EPA regarding matters at issue in the CAFO are false or, in any material respect, inaccurate.
12. 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.
13. Respondent consents to service by a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.
14. This CA/FO shall become effective 30 days after the date of signature on the Final Order.
15. Each party hereto agrees to bear its own costs and fees in this matter.
16. Pursuant to 40 C.F.R. § 22.18(c), this CA/FO constitutes a full and final resolution of Respondent's liability for Federal civil penalties pursuant to Section 1447(b) of SDWA, 42 U.S.C. § 300j-6 for the specific violations and matters alleged in this Consent Agreement.
17. This Consent Agreement and the attached Final Order constitute the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this CAFO.
18. This action shall be considered closed upon EPA's receipt of payment by Respondent.
19. The person signing this Consent Agreement on behalf of the Respondent certifies to EPA by his or her signature herein that Respondent, as of the date of its execution of this Consent Agreement, is in compliance with the provisions of the Safe Drinking Water Act, and its implementing regulations addressed in the AO. This certification is based on the personal knowledge of the signer or an inquiry of the person or persons responsible for the Fort Monmouth Main Base's compliance with the SDWA.

FOR RESPONDENT:

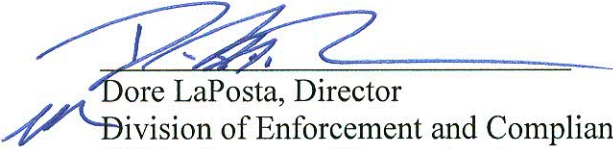
DATE: 13 August 2014



Thomas E. Lederle, Chief
Base Realignment and Closure Division

FOR COMPLAINANT:

DATE: 8/28/14

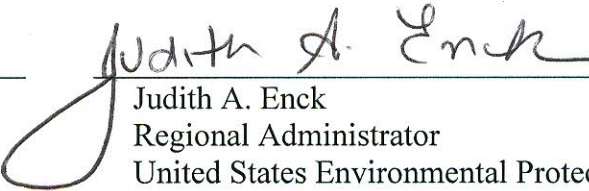


Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
US Environmental Protection Agency - Region 2
New York, New York 10007-1866

VII. 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 a Final Order. The effective date of this Final Order shall be 30 days after the date of signature.

DATE: 9/2/14



Judith A. Enck
Regional Administrator
United States Environmental Protection Agency - Region 2
290 Broadway
New York, New York 10007-1866

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

United States Department of the Army
Fort Monmouth Main Base
Oceanport, New Jersey

Respondent

Fort Monmouth Main Base (NJ1311001)

CONSENT AGREEMENT
AND
FINAL ORDER

Docket No.
SDWA-02-2014-8401

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 "CONSENT AGREEMENT AND FINAL ORDER" 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 addresses listed below:

Delight D. Balducci
Environmental Law Division
U.S. Army Legal Services Agency
9275 Gunston Rd
Fort Belvoir, VA 22060-5546

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

Date:

9/5/14

Print Name: Marie S. A.
New York, NY