

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

IN THE MATTER OF:

Hearthstone Manor
c/o Goshen Senior Housing Associates, L.P.
480 Bedford Road, Bldg 300,
1st Floor West Wing
Chappaqua, NY 10514

Respondent.

PWS ID. NY3530122

Proceeding Pursuant to Section §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-02-2019-8402**

U.S. Environmental Protection Agency
2019 JUN 26 AM 9:00
Region 2

I. PRELIMINARY STATEMENT

1. This Consent Agreement and Final Order (“CA/FO”) is an administrative proceeding which EPA has authority to enter into pursuant to Section 1414(g)(3)(B) of the Safe Drinking Water Act (the “Act” or “SDWA”), 42 U.S.C. §300g-3(g)(3)(B).
2. EPA is also authorized to commence and conclude the assessment of an administrative civil penalty pursuant to the procedures set forth in 40 C.F.R. §§22.18(b)(2) and (3); 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”.
3. The Regional Administrator of Region 2, United States Environmental Protection Agency (“EPA”) has delegated the authority to issue this CA/FO to the Director of the Enforcement and Compliance Assurance Division of Region 2.

II. STATUTORY BACKGROUND

4. Respondent has a service line connection to the Village of Florida’s water system, and Hearthstone serves a population of at least 25 individuals year-round at its buildings complex.
5. EPA deems Hearthstone to be 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. Respondent has, however, objected to EPA’s determination.

III. ALLEGATIONS OF FACT AND LAW

6. Goshen Senior Housing Associates, L.P. (“Respondent”) owns and/or operates Hearthstone Manor, located in Goshen, New York.
7. EPA alleges as follows:

- a) Hearthstone Manor is a “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, which Respondent denies and disputes.
 - b) Respondent is a “supplier of water” as that term is defined in Section 1401(5) of the SDWA, 42 U.S.C. §300(f)(5), and 40 C.F.R. §141.2, which Respondent denies and disputes.
 - c) Respondent is a “person” within the meaning of Section 1401(12) of the SDWA, 42 U.S.C. §300f(12), which Respondent denies and disputes.
8. On November 29, 2017, EPA issued an Administrative Order, Docket Number SDWA-02-2018-8010, requiring Respondent to, among other things, submit a corrective action plan to come into compliance with the TTHM MCL and HAA5 MCL, within thirty (30) days of receipt of the Order.
 9. Respondent submitted various requests for extension of time to satisfy the compliance requirements of the Administrative Order. Respondent asserts that the delay was caused by circumstances outside the control of Hearthstone, likely caused by the Village of Florida or County of Orange, that was compounded by the Village of Florida replacing its attorney, engineer, and Mayor on April 2, 2018, all of whom were new to their positions.
 10. Respondent submitted the corrective action plan to EPA via electronic mail on May 2, 2019.
 11. Respondent protests the submission of the plan to EPA for the following alleged reasons:
 - a) Any parameter exceedances reported had been caused by parties other than Respondent;
 - b) Respondent’s role was limited to only distributing in its complex the water that had been delivered to Hearthstone from the Village of Florida public water supply; and,
 - c) That the EPA commenced this proceeding for a condition existing in the Village of Florida waters system, not contributed to by Hearthstone.
 12. With the Respondent’s submission on May 2, 2019, EPA has deemed that Hearthstone has satisfied the compliance requirements of EPA’s Administrative Order (issued on November 29, 2017), and such Administrative Order is now closed and superseded by the instant Consent Agreement/Final Order.
 13. Respondent alleges that it submitted a corrective action plan to satisfy the EPA requirements to resolve the November 29, 2017 Administrative Order, but that it reserves the right to further investigate whether the performance of or compliance with that plan is appropriate and, depending on the outcome of such investigation, to coordinate with EPA on whether the plan requires modification.

IV. CONSENT AGREEMENT

14. 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.

15. Based upon the foregoing and pursuant to Section 1414(g)(3)(B) of the SDWA, 42 U.S.C. §300g-3(g)(3)(B), 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, as follows:
16. For the purpose of this proceeding, Respondent:
 - a. Accepts that EPA has statutory authority to issue 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 the CA/FO;
 - d. Consents to the payment of a civil penalty in the amount of **FIVE HUNDRED DOLLARS (\$500.00)**, as stated in Section V below.
17. In the event that the Orange County Department of Health or other regulatory or legal authority determines that the Respondent is not a community water system, Respondent shall not be obligated to continue performing obligations associated with the corrective action plan.
18. Respondent shall provide any determination that modifies the status of the Respondent's water system, within 10 days of issuance of any such determination.
19. To the extent that Respondent elects to discuss, consult, or coordinate with the Village of Florida the technical solution to the exceedances reported, the Respondent can choose to reconsider or modify the action items proposed in its submitted action plan, and make new engineering proposals based on any technical conclusions that result from its conversations the Village of Florida.
20. To the extent that Respondent elects to discuss, consult, or coordinate with the Village of Florida the technical solution to the exceedances reported, Respondent shall determine whether the action items or system improvements submitted in its corrective action plan need to be built, constructed or installed. Respondent, however, shall update and notify EPA of any such determination, within 10 days from making such determination.

V. PAYMENT OF CIVIL PENALTY

21. Respondent shall pay a civil penalty to EPA in the amount of **FIVE HUNDRED DOLLARS (\$500.00)**. Such payment shall be made by 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 HEARTHSTONE MANOR** and shall bear thereon **Docket Number SDWA-02-2019-8402**. Payment

of the penalty must be received at the above address on or before forty-five (45) calendar days after the Effective Date of the 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: \$500.00.
- 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: Goshen Senior Housing Associated, L.P.
- g. Case Number: SDWA-02-2019-8402

Such EFT must be received on or before 45 calendar days after the Effective Date of the 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:

Eduardo J. Gonzalez, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866
(212) 637-3223

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.

VI. GENERAL PROVISIONS

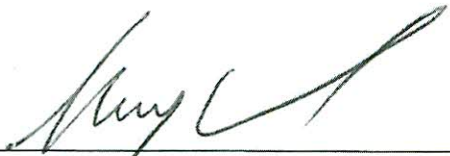
22. The provisions of the CA/FO shall be binding upon Respondent, its officers, directors, agents, servants, authorized representatives and successors or assigns, including but not limited to, subsequent purchasers. No transfer of ownership or operation shall relieve Respondent of its obligation to comply with the CA/FO.
23. Respondent has read the Consent Agreement, understands its terms, 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.
24. 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.
25. Respondent knowingly and explicitly waives its rights under Section 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 appeal of this Consent Agreement or the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.
26. 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.
27. Respondent also hereby expressly waives its right to confer with the Administrator under Section 1414(g)(3)(B) of the Act, 42 U.S.C. §300g-3(g)(3)(B) but only in this proceeding as to the Administrative Order dated November 29, 2017.
28. 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 the CA/FOs, following its filing with the Regional Hearing Clerk. Respondent's full compliance with this Consent Agreement shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. Respondent's full compliance with this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations and facts described in Section II of this Consent Agreement.
29. 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 the 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.

30. 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.
31. Respondent consents to service by a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.
32. Each party hereto agrees to bear its own costs and fees in this matter.

FOR Goshen Senior Housing Associates L.P.:

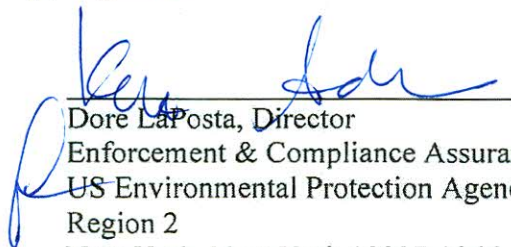
DATE: 6/27/2019



Mr. Gary Friedland
Goshen Senior Housing Associates L.P.
480 Bedford Road, Bldg 300, 1st Floor West Wing
Chappaqua, New York 10514

FOR US Environmental Protection Agency, Region 2:

DATE: JUL 19 2019



Dore LaPosta, Director
Enforcement & Compliance Assurance Division
US Environmental Protection Agency
Region 2
New York, New York 10007-1866

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VIII. FINAL ORDER

The Regional Judicial Officer for the U.S. Environmental Protection Agency, Region 2, as delegated by 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: July 23, 2019



HELEN S. FERRARA
Regional Judicial Officer
U.S. EPA, Region 2
290 Broadway
New York, NY 10007-1866

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Proceeding Pursuant to Section §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-02-2019-8402

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” (CA/FO) to the following person at the address listed below:

Gerald N. Jacobowitz
Jacobowitz and Gubits, LLP
158 Orange Ave., P.O. Box 367
Walden, NY 12586

I hand delivered the original and a copy of the foregoing CA/FO to the office of the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

Date: _____

7/26/19

