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Southern District of New York
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X	:	
UNITED STATES OF AMERICA,	:	ECF CASE
	:	
Plaintiff,	:	¹⁴ 13 Civ. 1299 (NSR)
	:	
v.	:	<u>STIPULATION OF SETTLEMENT</u>
	:	<u>AND JUDGMENT</u>
EDWARD A. EHERTS and PAINTED	:	
APRON WATER COMPANY, INC.,	:	
	:	
Defendants.	:	
----- X	:	

WHEREAS, Plaintiff United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), has filed a complaint in this action ("Complaint") concurrently with this Stipulation of Settlement and Order, alleging that Defendants Edward A. Eherts and Painted Apron Water Company, Inc. ("Defendants") violated the Safe Drinking Water Act ("SDWA"), 42 U.S.C. § 300f *et seq.*, its implementing regulations, and an administrative order issued by the EPA in connection with their operation of a public water system in Deerpark, New York (the "Water System");

WHEREAS, the New York State Public Service Commission issued an Order Appointing a Temporary Operator and Approving a Rate Increase and Surcharge on July 22, 2013, which appointed the Painted Apron Water Committee (the "Committee") to operate the Water System in lieu of Defendants;

WHEREAS, the United States has reviewed the financial information submitted by Defendants to determine whether they are financially able to pay civil penalties for the violations alleged in the Complaint. Based upon this financial information, the United States has determined that Defendants have limited financial ability to pay any civil penalties.

WHEREAS, the United States and the Defendants (the "Parties") agree that settlement of the United States' claims against Defendants, without further litigation, is in the public interest;

WHEREAS, the Parties further agree that the Court's approval of this Stipulation of

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DATE FILED: 3/3/2014

Settlement and Judgment ("Judgment") is an appropriate means of resolving the claims in this action;

NOW THEREFORE, THE PARTIES AGREE, AND THE COURT ORDERS, AS FOLLOWS:

1. This Court has jurisdiction over the parties to, and the subject matter of, this action pursuant to 28 U.S.C. §§ 1331, 1345 and 1355, and Sections 1414(b) and (g) of the SDWA, 42 U.S.C. § 300g-3(b) and (g). Venue is proper in this district under 28 U.S.C. §§ 1391(b) and (c), and 1395(a). Notice of the commencement of this action has been given to New York State pursuant to 42 U.S.C. § 300g-3(a)(1)(B). Defendants waive any and all objections they may have to the Court's jurisdiction, waive service of process in accordance with the requirements set forth in the Federal Rules of Civil Procedure, and, for purposes of the Complaint and this Stipulation submit to the Court's jurisdiction.
2. Defendants admit that they violated the SDWA, its implementing regulations and an administrative order issued by the EPA, by failing to monitor and treat water, make reports, take corrective action, and maintain a certified operator as required by applicable requirements of the SDWA and the administrative order. As a result of these violations of the law, Defendants' customers have been subjected to boil-water notices for multiple years.
3. Defendants consent to the entry of a judgment in favor of the United States for \$50,000, ("Judgment Amount"). Defendants further consent to the filing by the United States of a notice of judgment lien or other appropriate papers to perfect a judgment lien (the "Lien") for the Judgment Amount on the property on which the Water System is located ("Property"), which is located at 6 Painted Apron Terrace and is identified as Section 61, Block 4, Lot 1 on the tax map for Deerpark, New York. ✓
4. The United States agrees that, provided that Defendants comply with their commitments under this Stipulation, the United States will not attempt to collect the Judgment Amount from Defendants by any means other than through this judgment lien (including by foreclosure upon the lien). In the event that the United States chooses to foreclose upon the judgment lien, Defendants consent to jurisdiction and venue in the United States of District Court for the Southern District of New York for the filing of a foreclosure action.
5. Defendants shall, within 30 days of the entry of this Judgment ("Effective Date"), provide to the Committee all records regarding the Water System that are in Defendants' possession, custody or control.
6. Defendants shall not interfere in any way with the operation of the Water System after the Effective Date.
7. Defendants shall not serve as owners or operators of any public water system after the Effective Date.
8. Each party shall bear its own costs and attorneys' fees in this matter, provided, however, that if the United States brings an action to enforce this Judgment, Defendants shall

reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

9. The obligations of Defendants to pay amounts owed the United States under this Stipulation are joint and several. In the event of the failure of any one or more Defendant to make the payments required under this Stipulation, the remaining Defendant shall be responsible for such payments.

10. This Judgment resolves the civil claims of the United States for the violations alleged in the Complaint through the Effective Date.

11. Notwithstanding any other provision of this Judgment, the United States reserves, and this Judgment is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Judgment, if the financial information provided by Defendants, is false or, in any material respect, inaccurate.

12. The United States reserves, and this Judgment is without prejudice to, all rights against Defendants with respect to all other matters not asserted by the United States in the Complaint, including, but not limited to, any criminal or tax liability.

13. The undersigned representatives of Defendants and the United States each certify that he or she is fully authorized to enter into the terms and conditions of this Judgment and to execute and legally bind Defendants and the United States, respectively, to it.

14. This Judgment constitutes a final judgment between and among the United States and Defendants. The Court enters this Judgment as a final judgment under Fed. R. Civ. P. 54 and 58. ✓

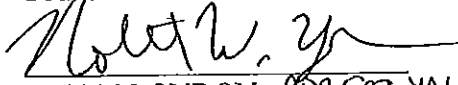
SO ORDERED THIS DAY OF , ~~2013~~²⁰¹⁴.

~~UNITED STATES DISTRICT JUDGE~~

FOR THE UNITED STATES OF AMERICA:

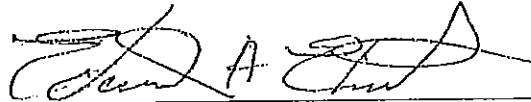
PREET BHARARA
United States Attorney for the
Southern District of New York

February 27, 2014
November __, 2013

By: 
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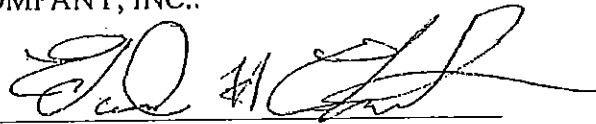
FOR DEFENDANT EDWARD A. EHERTS:

November 30, 2013


Edward A. Eherts

FOR DEFENDANT PAINTED APRON WATER
COMPANY, INC.:

November 30 2013


Edward A. Eherts
President, Painted Apron Water Company, Inc.

FOR THE UNITED STATES OF AMERICA:

February
January 27, 2014



ELLEN M. MAHAN
Deputy Section Chief
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Washington, D.C. 20044-7611

So Ordered:

Dated: March 3, 2014

White Plains, Ny



3/3/14
U.S. D.J.
Nelson S. Román