

protecting public health; and WHEREAS on November 1, 2004, ATA entered into the “*Agreement in Principle Between EPA and the Member Airlines of the Air Transport Association for Interim-Administrative Orders on Consent Governing the Regulation of Drinking Water Onboard Commercial Passenger Aircraft*”; ATA and EPA have agreed to enter into the following REQUEST FOR INFORMATION and ADMINISTRATIVE ORDER ON CONSENT which is intended to address ATA’s alleged noncompliance with the Safe Drinking Water Act and National Primary Drinking Water Regulations via a phased monitoring program.

I. STATUTORY AUTHORITY

Enforcement authority over public water systems on carriers that convey passengers in interstate commerce is solely vested with the United States Environmental Protection Agency (EPA) under 40 CFR Section 142.3(b)(1). Under the authority vested in the Administrator of the EPA by Sections 1445(a) and 1414(g) of the Safe Drinking Water Act (the Act or SDWA), 42 USC Sections 300j-4(a) and 300g-3(g), the following FINDINGS are made and the following REQUESTS FOR INFORMATION and ADMINISTRATIVE ORDER ON CONSENT (ORDER) are issued. The Administrator of the U.S. EPA has delegated the authority to take these actions to the Assistant Administrator for the Office of Enforcement and Compliance Assurance who in turn has re-delegated this authority to the Division Director of the Water Enforcement Division.

II. INTRODUCTION

1. This ORDER is issued upon consent of ATA Airlines, Inc. (Respondent). The EPA alleges that Respondent has failed to fully comply with the Act, and the regulations promulgated pursuant thereto, in particular the monitoring, analytical, public notice, and

reporting requirements at 40 CFR 141 subparts C, D, H, Q, and T.

2. Respondent agrees not to contest the EPA's jurisdiction or authority to enter into or enforce this ORDER. Respondent also agrees not to contest the validity of any terms and conditions of this ORDER in any action to enforce, or in any action arising from this ORDER and specifically waives any such defenses.
3. The EPA's decision or actions in entering into and pursuant to this ORDER are not subject to judicial review prior to the United States's initiation of judicial action to compel Respondent's compliance with this ORDER or to assess civil penalties for non-compliance with this ORDER.
4. The scope of this ORDER is limited to Respondent's actions with respect to the aircraft in its operating fleet that are subject to this ORDER.

III. DEFINITIONS

5. A "watering point" means a facility where water is transferred from a water supply to the aircraft. These facilities may include water trucks, carts, cabinets, and hoses.
6. A "sample" means a volume of water collected from a cold water tap and/or spigot from the aircraft lavatory or galley. If the only sampling point in the galley is the coffee maker and/or hot water tap, a "sample" includes a volume of water from this location. Although the quality or result of the sample may be altered by collecting it from a coffee maker or hot water tap, EPA may consider these sample results in conjunction with the evaluation of the data collected in the first twelve months of monitoring.
7. A "repeat sample" in accordance with 40 CFR 141.21(b) means the collection of samples from onboard the aircraft after an initial total coliform positive sample result and prior to

coliforms are sampled as specified in §141.21, except as otherwise provided by Part 141.

40. Respondent did not measure and report residual disinfectant concentrations for each aircraft in its operating fleet as required by 40 CFR 141.74(a)(2) and 141.74(b)(6)(i) and/or (c)(3)(i) and 141.31 for the five year period proceeding the date of this ORDER.
41. Public water systems are required by 40 CFR 141 subpart Q to provide public notification for failure to perform any water quality monitoring required by the NPDWRs.
42. Respondent did not provide public notification or provide EPA with certification and copies of the public notices as required under 40 CFR 141 subpart Q and 141.31 for the five year period proceeding the date of this ORDER.

V. ORDER

Based upon the foregoing FINDINGS, EPA issues this ORDER. Respondent, without admitting to or denying these findings, consents to the issuance of this ORDER and is hereby ORDERED to comply with the following provisions for each of its aircraft:

43. Within forty-five (45) calendar days of receipt of the electronic formatting instructions from EPA and Appendix A, which are hereby incorporated by reference as an enforceable part of this ORDER, Respondent shall provide EPA with an inventory of the operating fleet, identifying each individual aircraft by tail or nose number, serial number, make and model in accordance with the formatting instructions and Appendix A. In addition, for each individual aircraft in the operating fleet, Respondent shall provide the following information to EPA in the abovementioned format:
 - a. Seating capacity;

corresponding third party. If Respondent has any contractual relationship with the third party regarding O&M for the watering points, Respondent shall also provide a description of those contractual agreements, and either include copies of the relevant parts of those contracts or provide the name and address of the location where such contracts may be made available for EPA review in accordance with Appendix C.

49. Within forty-five (45) calendar days of the effective date of this ORDER and solely for the purpose of informing, in addition to the data collected in Monitoring Period I, the determination of monitoring and disinfection practices in Monitoring Period II in Paragraph 73, Respondent shall provide to EPA a description of all current and past drinking water monitoring programs and/or monitoring performed by Respondent, including monitoring performed for Respondent by Respondent's contractors, agents, and consultants, on the aircraft and watering points for total coliform, *E. coli*, fecal coliform, disinfectant residual, turbidity, nitrate, nitrite, and heterotrophic plate count, including frequency and results of all sampling performed, within the last five (5) years for the purpose of determining a monitoring frequency for Monitoring Period II in Paragraph 73 in accordance with Appendix C. This includes monitoring results for aircraft and watering points that are currently not owned and/or operated by Respondent, but were owned and/or operated by Respondent and monitored by Respondent within the past five (5) years. The monitoring data shall be submitted in accordance with the electronic formatting instructions to be sent by EPA and Appendix D, which are incorporated by reference as an enforceable part of this ORDER.
50. If Respondent has a recordkeeping practice under which copies of company records are

well as the corrective actions that were taken in accordance with Appendix G.

59. In Monitoring Period I following any initial total coliform positive sample result, Respondent shall cease serving water from the drinking water tanks as soon as possible but no later than 24 hours from learning of the total coliform positive sample result by physically turning off the water in the galleys and lavatories on the affected aircraft. In lieu of physically turning off the water in either or both locations, Respondent may provide public notification in those locations where water remains available for human consumption (*e.g.*, in the galley or lavatory) in accordance with Appendix G until a set of total coliform negative sample results is obtained.
60. In Monitoring Period I, Respondent shall initiate disinfection of the affected aircraft drinking water system as soon as possible but no later than 24 hours of learning of any initial total coliform positive sample result, unless that time period is extended in accordance with the provisions of Appendix H, which is hereby incorporated by reference as an enforceable part of this ORDER. Following disinfection, Respondent shall collect a set of four samples. Respondent may collect these four samples immediately after disinfection. The four samples shall include the tap where the initial positive sample was collected, one other lavatory tap, one other galley tap, and one other tap on the aircraft. If there are fewer than four sampling points on the aircraft, samples are to be collected from each available sampling point for a total volume of 400 ml. If there is only one sampling point on the aircraft a 400 ml sample is to be collected from that tap.
61. In Monitoring Period I, Respondent may collect a set of repeat samples from the affected

the Office of Ground Water and Drinking Water. Respondent has ten (10) calendar days to meet with the Office Directors and present its position to EPA. If after that meeting a mutually acceptable frequency cannot be agreed upon, Respondent shall monitor and disinfect each aircraft water system at least quarterly, disinfect the watering points, excluding cabinets and associated cabinet hoses, owned and/or operated by Respondent at least monthly, report all results at least quarterly (excluding the notification within 24 hours required for any initial total coliform positive results), and follow the response procedure described in Paragraphs 59 and 60. The entire consultation period, including elevation of Respondent's position to the Office Director level within EPA shall not exceed thirty (30) calendar days, unless the Office Directors allow more time for a decision to be made when issues are elevated after the initial twenty (20) calendar day consultation period.

73. Once a monitoring, disinfection, and reporting frequency and response procedure is either agreed upon or prescribed to the Respondent in accordance with the foregoing Paragraphs 71 and 72, Respondent is to monitor, disinfect and report at that frequency for its operating fleet and watering points, excluding cabinets and associated cabinet hoses, owned and/or operated by Respondent for a second twelve (12) month monitoring period (*i.e.*, "Monitoring Period II") and adhere to the response procedures in Paragraphs 76 - 78. The monitoring, disinfection, and reporting frequencies and response procedure determined in accordance with Paragraphs 71 and 72 will be incorporated by reference as an enforceable part of this ORDER by EPA.
74. In Monitoring Period II, Respondent shall be required to use the same monitoring plan

information shall be provided in accordance with Appendix C in Paragraph 45 which is hereby incorporated by reference as an enforceable part of this ORDER.

- 87. Beginning with the effective date of this ORDER, Respondent shall use the aircraft tail or nose number when submitting any information regarding an aircraft.
- 88. Respondent shall submit a certification statement signed by the Director of Safety along with every submission of information required under Paragraphs 63, 64, and 73 of this ORDER. The certification shall be in the following form:

I certify that the information contained in or accompanying this submission is true, accurate, and complete.

As to the identified portion(s) of this submission for which I cannot personally verify its truth and accuracy, I certify as the company official having supervisory responsibility for the person(s) who, acting under my direct instructions, made the verification, that this information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

By _____
 (Name)

 (Signature)

 (Title)

 (Date)

See Appendix N.

- 89. Reporting required by Paragraphs 63, 64, and 73 of this ORDER are to be provided to the EPA in accordance with the applicable appendices at the following address:

Robert Stewart
 SAIC
 11251 Roger Bacon Drive
 Reston, VA 20190

Respondent, including its agents, consultants and contractors, (*e.g.*, terrorist attacks, loss of aircraft, FAA air traffic decisions to postpone or reroute aircraft, grounding of the aircraft fleet by the Department of Transportation, and actions taken by the pilot in command primarily for the safe operation of the aircraft under 14 CFR 91.3(a)) which delays or prevents the performance of any obligation under this ORDER. Unanticipated or increased costs or expenses associated with implementation of this ORDER and changed financial circumstances shall not, in any event be considered “Force Majeure” events.

97. The provisions in Paragraph 95 do not apply to situations where Respondent has requested a time extension under Paragraphs 60 and 77 and in accordance with Appendices H and L.

VIII. CONFIDENTIAL BUSINESS INFORMATION

98. Respondent is entitled to assert a business confidentiality claim pursuant to the regulations set forth in 40 C.F.R. Part 2, Subpart B for any information that is required to be submitted under this ORDER. If EPA determines the information you have designated meets the criteria in 40 C.F.R. § 2.208, the information will be disclosed only to the extent and by means of the procedures specified in Subpart B. Unless a confidentiality claim is asserted at the time the requested information is submitted, EPA may make the information available to the public without further notice to Respondent.
99. In the event that Respondent makes information available to the public subsequent to claiming it as confidential business information, EPA may make that same information available to the public in accordance with the procedures set forth in 40 CFR 2 subpart B.

