

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103**

In The Matter of)

Mr. Michael Costello)
Mr. Ronald Carter)
d/b/a Carter and Costello Tree)
Professionals)
3724 West Neck Road)
Virginia Beach, VA 23456-3821)
Respondents)

Pursuant to Section 309(g)
of the Clean Water Act,
33 U.S.C. § 1319(g)

EPA Docket No. CWA-03-2006-0104

**COMPLAINANT'S MOTION FOR DEFAULT ORDER
AGAINST RESPONDENTS**

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 ("Consolidated Rules"), the United States Environmental Protection Agency, Region III ("EPA" or "Complainant"), moves for the issuance of a Default Order against **Michael Costello and Ronald Carter d/b/a Carter and Costello Tree Professionals** ("Respondents") for failure to file a timely Answer to the Complaint. The Complaint seeks a penalty of ten thousand dollars (\$10,000) for Respondents' failure to answer a Section 308 Demand for Information. However, for purposes of this Motion for Default Judgment, Complainant seeks a penalty in the amount of \$5,000, and in support of this Motion, Complainant avers as follows:

1. Complainant issued the Administrative Complaint and Notice of Opportunity to Request a Hearing ("Complaint") to Respondents under Section 309 for violations of Section 308 of the CWA, 33 U.S.C. § 1319 and 1318. The Complaint was hand-delivered to the

Regional Hearing Clerk, EPA Region III, on May 1, 2006, and a true and correct copy of the Complaint, as well as a copy of the *Consolidated Rules* was sent by certified mail, return receipt requested, to Respondents, Michael Costello and Ronald Carter, d/b/a Carter and Costello Tree Professionals, 3724 West Neck Road, Virginia Beach, VA 23456-3821.

2. The Complaint was issued under the authority vested in the Administrator of the United States Environmental Protection Agency by Section 309(g)(2) of the Clean Water Act, 33 U.S.C. §1319(g)(2) (the "CWA" or "Act"). The Administrator has delegated this authority to the Regional Administrator of EPA, Region III, pursuant to Delegation No. 2-51 who in turn has delegated it to the Director of the Environmental Assessment and Innovation Division (Complainant) (Sept. 1, 2005).
3. Pursuant to 40 C.F.R. § 22.5(b)(1), service shall be made personally, by certified mail with return receipt requested, or by any reliable commercial delivery service that provides written verification of delivery.
4. Complainant attempted to serve the Complaint via FedEx on July 20, 2006. The package was left at the door, however since FedEx failed to procure a signature for the package, service was ineffectual. **[Exhibit "1"]**
5. A person identifying himself as Michael Costello left a voice message for Carol Petrow around 5:10 PM on July 21, 2006 asking to be contacted at a specified telephone number.
6. On July 24, 2006 Carol Petrow called the telephone number left on her voice mail on July 21, 2006. There was no answer; she left a message identifying herself and a telephone number where she could be reached.
7. On August 22, 2006, the U.S. Army Corps of Engineers ("Corps") Enforcement Officers

Randy Steffey and Robert Berg attempted to hand-deliver the Complaint to Messrs. Carter and Costello at 3724 West Neck Road, Virginia Beach, VA. However, their attempts at service were unsuccessful. **[Exhibit "2"]**

8. On December 6, 2006, Ryan Driskell of Driskell Services, Inc., served Michael D. Costello, co-owner of Carter and Costello Tree Professionals, personally at 3724 West Neck Road, Virginia Beach, VA 23456, by leaving, during office hours, copies of the Complaint with Mr. Costello. **[Exhibit "3"]**
9. A Praecipe to Enter Affidavit of Service was entered on January 10, 2007. **[Exhibit "4"]**
10. On January 10, 2007¹, counsel for Complainant wrote to Messrs. Costello and Carter, d/b/a Carter and Costello Tree Professionals, reminding the business owners that since personal service of the Complaint had been effectuated, an Answer was now due. **[Exhibit "5"]**
11. On January 10, 2007, Mr. Costello supplied answers to Complainant's Section 308 Demand for Information, seventeen months after the original request had been filed, answers to which should have been provide within fourteen (14) days of the demand letter. Mr. Costello did not file an Answer to the Complaint at that time. **[Exhibit "6"]**
12. On January 17, 2007, EPA sent Michael Costello and Ronald Carter d/b/a Carter and Costello Tree Professionals a letter stating that an Answer to the Complaint filed on May 1, 2006 was due on January 5, 2007, and that any further delay in responding to the Complaint may result in the entry of a Default Order. **[Exhibit "7"]**

¹ The letter is dated January 10, 2006, however, that is a typo as evidenced by the fact that the letter refers to service of the Complaint on December 6, 2006. The actual date of the letter is January 10, 2007.

13. Section 308(a) of the Clean Water Act, 33 U.S.C. § 1318(a), authorizes EPA to, among other things, require owners and/or operators of point sources to make such reports and provide such information as the Administrator (or his appropriate delegatee) shall reasonably require in order to carry out the requirements of the Clean Water Act, including determining whether such person is in violation of the Act.
14. Respondents are “persons” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
15. Property identified as 1315-1317 Mill Landing Road, Virginia Beach, Virginia, GPIN# 23197926290000 (the “Site”) contains wetlands which constitute “waters of the United States” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7); 40 C.F.R. § 232.2, and 40 C.F.R. § 122.2.
16. Upon information and belief, Respondents used equipment to discharge fill material into wetlands on the Site including loads of fill, tree debris and logs.
17. The equipment referenced in paragraph 16, above, which discharged fill material to “waters of the United States” constitutes a “point source” within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).
18. By disposing of fill material at the Cody Bedford Site, the equipment Respondents’ used constitutes a “point source” which “discharges” “pollutants” in the form of dredged and fill material into wetlands at the Site which are “waters of the United States” as those terms are defined at Sections 502(6), (7), (14) and (16) of the Act, 33 U.S.C. §§ 1362(6), (7), (14) and (16) and 40 C.F.R. § 122.2.
19. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits any person from discharging any pollutant from a point source to waters of the United States without first acquiring a

permit from the Secretary of the U.S. Army Corps of Engineers pursuant to Section 404 of the Act, 33 U.S.C. § 1344. Neither Respondents nor Cody Bedford, the owner of the Site, acquired a permit prior to disposing of fill at the Site.

20. Respondents discharge of pollutants to the waters of the United States without a permit, has violated Section 301(a) of the Act, 33 U.S.C. § 1311(a).
21. Under Section 309(g) of the Act, 33 U.S.C. § 1319(g), and 40 C.F.R. Part 19, Respondents are liable for the administrative assessment of civil penalties in an amount not to exceed \$37,500 per violation.
22. Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), EPA has provided the public notice and an opportunity to comment on the proposed civil penalty assessment. In addition, pursuant to Section 309(g)(1)(B), EPA has consulted with the Commonwealth of Virginia, Department of Environmental Quality (DEQ) regarding this action with the filing of the original complaint.
23. Complainant determined the amount of the civil penalty proposed to be assessed in accordance with Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), which requires that Complainant shall take into account the nature, circumstances, extent and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.
24. At the time of issuance of the Complaint, Respondents were actively engaged in business as Carter and Costello Tree Professionals.² Complainant has no information that would

² Since the Complaint has been filed, Complainant has determined that Respondents also do business under the name, Carter and Costello, Inc. [8]

indicate Respondents have an inability to pay. The Dun and Bradstreet report dated May 7, 2007 provides no additional information, stating that “D&B has researched this company and found no information available at this time. [9] Respondents assets are unknown. [9] Similarly, a search in Nexus and Reference USA produced no information with regard to ability to pay. [9]

25. Pursuant to Consolidated Rules at 40 C.F.R. § 22.15(a), where a Respondent contests any material fact upon which the Complaint is based, contends that the proposed penalty is inappropriate or contends that it is entitled to judgement as a matter of law, it shall file an original and one copy of a written Answer to the Complaint with the Regional Hearing Clerk and shall serve copies on all other parties. Any such Answer to the Complaint must be filed with the Regional Hearing Clerk within thirty (30) days of service of the Complaint.
26. The Consolidated Rule at 40 C.F.R. § 22.7 provides that service of a Complaint is complete when the return receipt is signed. Service of all other documents may be completed either by first class mail or commercial delivery service, allowing five extra days when a response is required for service that does not require a signature. 40 C.F.R. § 22.7. In this instance, Complainant effectuated personal service which has also been contemplated by the *Consolidated Rules*. 40 C.F.R. § 22.6.
27. Respondents were required to have filed its Answer within thirty (30) days of receipt of the Complaint. Over one year passed since Respondents received the Complaint yet Respondents failed to file a timely Answer under the *Consolidated Rules* by refusing to file a written Answer with the Regional Hearing Clerk.
28. In accordance with the Consolidated Rules at 40 C.F.R. § 22.17(a)(1), a party may be

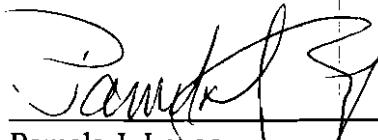
found in default, after motion, upon failure to file a timely Answer.

WHEREFORE, pursuant to the Consolidated Rules at 40 C.F.R. § 22.17(c), Complainant requests that judgment be entered against Respondents in the amount of five thousand dollars (\$5,000). Complainant requests the issuance of a Default Order against Respondents, Michael Costello, Ronald Carter, and Carter and Costello Tree Professionals, in the form attached hereto, with such penalty to become due and payable, without further proceedings, thirty (30) days after this court's Default Order regarding this matter becomes final, pursuant to the Consolidated Rules at 40 C.F.R. §22.17(d).

Respectfully submitted,

Date: _____

1/7/08



Pamela J. Lazos
Sr. Assistant Regional Counsel

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103**

In The Matter of)	
)	
Mr. Michael Costello)	Pursuant to Section 309(g)
Mr. Ronald Carter)	of the Clean Water Act,
d/b/a Carter and Costello Tree)	33 U.S.C. § 1319(g)
Professionals)	
3724 West Neck Road)	
Virginia Beach, VA 23456-3821)	EPA Docket No. CWA-03-2006-0104
Respondents)	

**MEMORANDUM OF LAW IN SUPPORT OF MOTION
FOR DEFAULT**

Complainant, the United States Environmental Protection Agency (“EPA” or the “Agency”), respectfully submits the following points and arguments in support of its Motion for Default.

I. PROCEDURAL HISTORY AND STATEMENT OF FACTS

Respondents, Michael Costello and Ronald Carter, d/b/a Carter and Costello Tree Professionals are “persons” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5). Upon information and belief, Respondents disposed of fill material at the Cody Bedford Site. Property identified as 1315-1317 Mill Landing Road, Virginia Beach, Virginia, GPIN# 23197926290000 (the “Site”) contains wetlands which constitute “waters of the United States” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7); 40 C.F.R. § 232.2, and 40 C.F.R. § 122.2. Upon information and belief, Respondents used equipment to discharge fill material into wetlands on the Site including loads of fill, tree debris and logs. The equipment

Respondents' used constitutes a "point source" which "discharges" "pollutants" in the form of dredged and fill material into wetlands at the Site which are "waters of the United States" as those terms are defined at Sections 502(6), (7), (14) and (16) of the Act, 33 U.S.C. §§ 1362(6), (7), (14) and (16) and 40 C.F.R. § 122.2.

Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits any person from discharging any pollutant from a point source to waters of the United States without first acquiring a permit from the Secretary of the U.S. Army Corps of Engineers pursuant to Section 404 of the Act, 33 U.S.C. § 1344. Neither Respondents nor the owner of the Site, Cody Bedford acquired a permit prior to disposing of fill at the Site. Respondents discharge of pollutants to the waters of the United States without a permit, has violated Section 301(a) of the Act, 33 U.S.C. § 1311(a).

As part of an ongoing investigation into the Cody Bedford Site, on August 5, 2005, EPA sent Respondents a Demand for Information pursuant to Section 308 of the Act. Although Respondents finally accepted service on September 12, 2005, and despite follow up correspondence from the Agency, Respondents did not respond to the Demand for Information which behavior resulted in the filing of an Administrative Complaint.

The Complaint was personally served on the Respondent, Michael Costello on December 6, 2006. [3] Thereafter, on January 10, 2007, Complainant sent a letter requesting an Answer to the Complaint within ten (10) days. [5] Mr. Costello responded with an answer to the Demand for Information, but not an Answer to the Complaint. [6] As of the date of filing of this Motion, Respondent has not filed an Answer to the Complaint. Therefore, Complainant moves for an Order holding Respondent in default and imposing the penalty proposed in the Complaint of \$5,000.

II. LEGAL ARGUMENT

Pursuant to the *Consolidated Rules of Practice Governing the Administrative Assessment of Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits* ("Consolidated Rules"), 40 C.F.R. § 22.24(a), [t]he Complainant has the burdens of presentation and persuasion that the violation occurred as set forth in the complaint and that the relief sought is appropriate." EPA's Administrative Complaint, filed May 1, 2006, met these burdens. Respondent failed to Answer the Complaint.

"A party may be found to be in default: after motion, upon failure to file a timely answer to the complaint.... Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the complaint and a waiver of Respondent's right to contest such factual allegations." 40 C.F.R. §22.17(a).

"A motion for default may seek resolution of all or part of the proceeding. Where the motion requests the assessment of a penalty or the imposition of other relief against a defaulting party, the movant must specify the penalty or other relief sought and state the legal and factual grounds for the relief requested." 40 C.F.R. §22.17(b)

The law of facts with regard to Respondent's violations are set forth in detail in the Complaint. [8] Respondents' failure to respond to the Complaint is a violation of Section 308(a) of the Act.

III. CIVIL PENALTY

Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), requires that EPA consider the following factors when proposing an administrative penalty: (1) the nature, circumstances, extent and gravity of the violations; (2) the economic benefit or savings resulting from the violations; (3) any prior history of such violations; (4) the degree of culpability of the violator; (4) respondent's ability to pay; and (6) other factors as justice may require. Because the Agency

does not have an administrative penalty pleading policy for CWA violations, the penalty calculation was derived using the statutory factors as well as the Agency's settlement/penalty policy, *Clean Water Act Section 404 Settlement Penalty Policy*, December 21, 2001 (*Settlement Policy*). [10] See also, *In re: General Motors Corp. CPC-Pontiac Fiero Plant*, Docket No. CWA-A-O-001-93, 1996 CWA LEXIS 6 (Oct. 31 1996) (In a case where no penalty policy exists, reference to statutory factors and Agency's general Penalty Policy is appropriate).¹ A *Settlement Policy* worksheet is attached. [11]

1. *Nature, Circumstances, Extent and Gravity Of the Violations*

The first statutory factor requires an analysis of the nature of the violation, the extent and gravity of the violations. (The *Settlement Policy* refers to this factor as "the Gravity Component.") These factors all point to the seriousness of the infractions. As discussed above, Respondent violated the CWA by failing to respond to EPA's Section 308 request. As a result, EPA's investigation of the Cody Bedford Site has been thwarted. A Complaint was filed against Mr. Bedford on October 30, 2007 in the matter of U.S. v. Cody Bedford and Bedford Tree Service, Inc., Civil Action No. 2:07cv491 (2007). However, additional parties to that lawsuit have not been named as a result of, among other things, Respondent's recalcitrance in cooperating with the Agency's investigation. The Agency's penalty policy model calculates the sum of these "A" factors as a 6.

2. *The Economic Benefit or Savings Resulting from the Violations*

¹ Like the instant case, *General Motors Corp.* also concerned violations of the Clean Water Act. In *General Motors Corp.*, Judge Hoya extended to CWA cases the holding of the Environmental Appeals Board's ruling in *In re: Port of Oakland and Great Lakes Dredge & Dock Co.*, MPRSA Appeal No. 91-1, 1992 LEXIS 1 (Aug. 5, 1992), a case arising under the Marine Protection, Reserach and Sanctuaries Act, 33 U.S.C. §§ 1411 *et seq.*

As noted above, the CWA requires an examination of the economic benefit accruing to a violator. In addition, it is Agency policy that penalties should remove significant economic benefits resulting from failure to comply with the law. [9 at 4] To determine the economic benefit accruing to the Respondent from noncompliance, EPA began by determining what actions the company should have taken in order to come into compliance. Respondent had to respond to the Complaint which may or may not have included the cost of hiring a lawyer if the Respondent chose not to be *pro se*. Given that the Respondents are intimately familiar with their own business with regard to this Site, and able to supply the necessary information without incurring the expense of a lawyer, the Agency's BEN model calculates the overall economic benefit as \$0.

3. *The Prior Compliance History and Culpability of the Violator*

The third and fourth statutory factors are the violator's history of past compliance and good-faith efforts to comply; *See also* Exhibit "C" at 12. For purposes of the penalty calculation in this case, EPA grouped the two factors together. Respondents past history of refusal to comply with answering the Section 308 Demand for Information has continued with their failure to respond to the Complaint. Despite a series of telephone calls and letters to the Respondents, their recalcitrance continued. *See* Default Motion, above. The CWA is a strict liability statute. EPA's Section 308 Demand for Information is relevant to culpability because it placed Respondent on notice of the need to comply with the statute. Respondent's noncompliance history as well as its lack of good-faith efforts to comply with the requirements of Section 308 has resulted in a sum of B Factors equal to 4.

4. *Ability to Pay*

The statute also requires that a penalty reflect a respondent's ability to pay. [9 at 21] For

purposes of calculating the proposed penalty, EPA obtained a Dun & Bradstreet Report to learn about Respondent's financial situation. [9] According to Dun and Bradstreet, there is no evidence available on Respondents' ability to pay. [9] Similarly Nexis and Reference USA have no information regarding Respondents financial health. The penalty and this presumption has not been rebutted formally by the Respondent (*e.g.*, Respondent has not provided the government with an Answer that raises an inability to pay the penalty as an affirmative defense).

"Respondent[s'] ability to pay is not a factor that Complainant must consider as part of its prima facie case to establish the appropriateness of its proposed penalty." *In the Matter of Century Oil Acquisition Corp.*, Docket No. RCRA-03-2006-0088 (Sept. 17, 2007).² Therefore, EPA has satisfied its initial burden regarding the impact on the violator. *Cf. In re: New Waterbury, Ltd.*, TSCA Appeal No. 93-2, 5 E.A.D. 529 (Oct. 20, 1994); *In re: Andrew J. Allen d/b/a Allen Chem. Co.*, Docket No. I.F.&R. 04-94F044, 1996 FIFRA LEXIS 6 (July 31, 1996).

5. *Other Factors as Justice May Require*

EPA is not aware of any other factors that have an impact on the penalty calculation in this case.

6. *Total Penalty*

Based on the statutory factors of Section 309(g)(3) of the CWA, EPA proposes that a penalty of \$5,000 be assessed against Respondent.

IV. CONCLUSION

For the foregoing reasons, it is respectfully submitted that pursuant to 40 C.F.R. § 22.17(c), EPA is entitled to, as a matter of law, a default order on liability and for a penalty in the

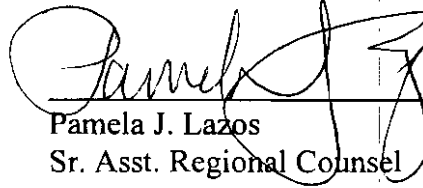
² In addition, "[P]ursuant to 40 C.F.R. § 22.27(b), an ALJ must consider any civil penalty guidelines issued under the Act...." *Id at 22.*

amount of \$5,000 for the violations alleged in the Complaint on the grounds that Respondents, for no good cause show, willfully and deliberately failed to file and Answer to the Complaint.

Respectfully submitted,

Date: _____

1/7/08



Pamela J. Lazos
Sr. Asst. Regional Counsel

**ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

In The Matter of)	
)	
Mr. Michael Costello)	Pursuant to Section 309(g)
Mr. Ronald Carter)	of the Clean Water Act,
d/b/a Carter and Costello Tree)	33 U.S.C. § 1319(g)
Professionals)	
3724 West Neck Road)	
Virginia Beach, VA 23456-3821)	EPA Docket No. CWA-03-2006-0104
Respondents)	

I. PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty was initiated by the United States Environmental Protection Agency, Region III ("Complainant"), pursuant to Section 309 and 404 of the Clean Water Act, 33 U.S.C. § 1319 and 1344, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (*Consolidated Rules*). The action was initiated by the filing of an Administrative Complaint by the Director for the Environmental Assessment and Innovation Division ("Complainant") on May 1, 2006.

II. DEFAULT ORDER

AND NOW, this ____ day of _____, 2008, under the authority of Section 309 and 404 of the Clean Water Act, 33 U.S.C. § 1319 and 1344, and the *Consolidated Rules*, and as a result of Respondent's failure to Answer the Complaint in a timely fashion, Respondent is found to be in default with regard to the Complaint filed in this matter. Furthermore, the relief proposed in the Complaint and the Motion for a Default Order in this proceeding is consistent with the record

of the proceeding or the Act. See 40 C.F.R. § 22.17(c).

THEREFORE, pursuant to the *Consolidated Rules*, Respondent is hereby ordered to pay a civil penalty of five thousand dollars (\$5,000). This penalty shall become due and payable, without further proceedings, thirty (30) days after this Default Order becomes final pursuant to the Consolidated Rules at 40 C.F.R. § 22.17(d). Payment shall be made by forwarding a cashier's or certified check, payable to:

U.S. Environmental Protection Agency
Region III
P.O. Box 371099M
Pittsburgh, PA 15251-6515

Respondent shall also send a copy of the check to:

Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
841 Chestnut Building
Philadelphia, Pennsylvania 19107

III. INTEREST AND LATE PENALTY CHARGES

The following notice concerns interest and late penalty charges that will accrue in the event that any portion of the civil penalty is not paid as directed:

Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this Default Order shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

Interest on the civil penalty assessed in this Default Order will begin to accrue on the date that a copy of this Default Order is mailed or hand-delivered to Respondent. However,

EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b).

Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each such subsequent thirty (30) days the penalty remains unpaid.

A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

IV. INITIAL DECISION

This Default Order constitutes an Initial Decision, as provided in the Consolidated Rules at 40 C.F.R. § 22.17(c). An Initial Decision becomes final within forty-five (45) days after its service upon the parties and without further proceedings unless: (1) a party moves to reopen the hearing; (2) a party appeals the Initial Decision to the Environmental Appeals Board; (3) a party moves to set aside a Default Order that constitutes an Initial Decision; or (4) the Environmental Appeals Board elects to review the Initial Decision on its own initiative. (See 40 C.F.R. § 22.27(c)).

The procedures for appealing an Initial Decision are listed in the Consolidated Rules at 40 C.F.R. § 22.30(a). A copy of the Consolidated Rules is attached.

Date: _____

Renée Sarajian
Regional Judicial Officer