UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2009 JUL 30

IN THE MATTER OF:	)	
	)	**Docket No. SDWA-08-2008-0038**
Lincoln Road RV Park, Inc.	)	**Proceeding under Section 1414(g)(3)**
	)	**of the Safe Drinking Water Act,**
Helena, Montana	)	**42 U.S.C. § 300g-3(g)(3)**
PWS ID # MT0003679	)	
	)	
Respondent.	)	
	)	

DEFAULT INITIAL DECISION AND ORDER

This proceeding arises under the authority of section 1414(g)(3) of the Safe Drinking Water Act, 42 U.S.C. § 300g-3(g)(3), also known as the Public Water Supply Program. This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation or Suspension of Permits (" Consolidated Rules" or "Part 22"), 40 C.F.R. §§ 22.1-22.32.

I. BACKGROUND

Lincoln Road RV Park, Inc. ("Lincoln Road" or "Respondent") is a Montana Corporation that owns and operates a Public Water System in Lewis and Clark County, Montana. The Public Water System ("PWS" or "System") provides piped water for human consumption from a ground water source via two wells to approximately 134 individuals daily through 66 service connections year round.

The Montana Department of Environmental Quality ("MDEQ") was delegated the Drinking Water Program by the United States Environmental Protection Agency ("EPA"), and therefore, has primary enforcement authority for actions taken under the Safe Drinking Water Act ("Act"), 42 U.S.C. § 300g-3(g)(3). Pursuant to section 1414(a) of the Act, 42 U.S.C. §300g-3(a), EPA issued a Notice of Violation on July 18, 2006, to the MDEQ and Respondent requesting that MDEQ pursue enforcement against Lincoln Road for violations of the Act. MDEQ elected not to commence an enforcement action against Respondent and EPA moved forward with enforcement for approximately twenty failure to monitor violations.

On September 20, 2006, EPA issued an Administrative Order ("AO"), Docket No. SDWA-08-2006-0050, to Lincoln Road pursuant to section 1414(g)(1) of the Act, 42 U.S.C. § 300g-3(g)(1), for violations of the National Primary Drinking Water Regulations ("NPDWRs") (40 C.F.R. part 141). The violations included: failure to monitor for coliform bacteria, failure to take a set of repeat samples for one violation of a positive total coliform result, failure to take five routine samples for a total coliform positive result, failure to provide public notice, and

failure to report monitoring violations to EPA and MDEQ. The AO contained specific requirements to return the System to compliance with the Act and its implementing regulations.

On April 6, 2007, EPA sent a "Violation of Administrative Order" letter notifying Lincoln Road of its failure to comply with the AO and the NPDWRs. The AO remains in effect and Lincoln Road continues to be in non-compliance.

On April 3, 2008, EPA filed a Complaint and Notice of Opportunity for Hearing (First Complaint) alleging Respondent violated the Act, NPDWRs and the AO pursuant to 42 U.S.C. § 300g-3(g)(3). The Complaint contains two counts: 1) Failure to Monitor for Total Coliform Bacteria during December 2006, July 2007, August 2007, September 2007 and November 2007; and, 2) Failure to Provide Public Notice of the Violations. The Complaint proposed a civil penalty of $3,000.

On August 15, 2008, EPA sent a letter regarding the April 3, 2008 Complaint indicating that the Agency had no record of receiving an Answer within the 30 days required by the Consolidated Rules. The letter gave notice to Respondent that the Complainant is "entitled to file a motion for default asking the Regional Judicial Officer to assess the entire $3,000." Complainant indicated it would hold off on filing a motion until September 15, 2008. Complainant also attached another copy of the Complaint to the letter.

On December 4, 2008, EPA filed an Amended Complaint and Notice of Opportunity for Hearing (Amended Complaint). The Amended Complaint alleged the same violations as contained in the original Complaint. The Amended Complaint merely added references to all the notices of violation issued to Respondent by MDEQ regarding the failure to conduct monthly coliform monitoring as required by the Administrative Rules of Montana. The Amended Complaint contained the same two counts: 1) Failure to Monitor for Total Coliform Bacteria; and, 2) Failure to Provide Public Notice of the Violations. The Amended Complaint proposed the same $3,000 penalty. A review of the record indicates that no Answer was filed with the Regional Hearing Clerk.[1]

The Amended Complaint also iterates Respondent's obligations with respect to responding to the Complaint, including filing an Answer. (Amended Complaint, pp. 8-9). Specifically, the Amended Compliant states, "you must file a written Answer in accordance with 40 C.F.R. §§ 22.14(c), 22.15 and 22.42 of the Consolidated Rules within 20 calendar days after this complaint is served." (Amended Complaint, p. 8). In addition, "[f]ailure to admit, deny, or explain any material factual allegation in this complaint will constitute an admission of the allegation." (Amended Complaint, p. 9). Last, the Amended Complaint states:

[1] Based on the certified mail return receipt, Respondent's registered agent received and accepted the First and Amended Complaints. Both receipts are signed but not dated by Respondent's registered agent. With respect to the Amended Complaint, the returned certified mail receipt is proof of service of the Complaint. The case file includes a United States Postal Service confirmation that the Amended Complaint was delivered on December 8, 2008. Therefore, Respondent's Answer needed to be filed no later than December 29, 2008, twenty days after receipt of the Amended Complaint.

> **If Respondent does not file a written answer with the Regional Hearing Clerk....within twenty (20) days of receipt of this complaint, Respondent may be subject to a default order requiring payment of the full penalty proposed in this complaint**. (emphasis in original document).

(Amended Complaint, p. 9). An Answer was not filed twenty days after service of the Amended Complaint.

On March 11, 2009, Complainant filed a Motion for Default pursuant to section 22.17(b) of the Consolidated Rules, 40 C.F.R. § 22.17(b), seeking an order finding Respondent in violation for failing to file a timely answer to the Amended Complaint issued pursuant to 42 U.S.C. § 300g-3(g)(3). A Memorandum in Support of Motion for Default (Memo in Support) was attached. On June 5, 2009, Complainant filed a Supplemental Memorandum in Support of Motion for Default. In both memoranda, Complainant sets forth its argument that Respondent has failed to comply with the Administrative Rules of Montana ("ARM"), the AO issued by EPA and has failed to file an Answer to the Amended Complaint.[2] To date, an Answer has not been filed with the Regional Hearing Clerk.

II. FINDINGS OF FACT

Pursuant to 40 C.F.R. §§ 22.17(c) and 22.27(a) of the Consolidated Rules, and based upon the record before me, I make the following findings of fact:

1. Respondent Lincoln Road RV Park, Inc. is a Montana Corporation that owns and operates a public water system.

2. The Lincoln Road RV Park Water System, located in Lewis and Clark County, Montana, provides piped water for human consumption to the public.

3. Respondent operates a system that is supplied by a ground water source consisting of two wells operating year-round, and serves approximately 134 persons through 66 service connections.

4. On April 18, 2002, the MDEQ notified Respondent that the System had not submitted results of coliform monitoring as required by ARM § 17.38.215 for the month of March 2002.

5. On July 19, 2002, the MDEQ notified Respondent that the System had not submitted results of coliform monitoring as required by ARM § 17.38.215 for the month of June 2002.

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[2] In its June 5, 2009 Memorandum in Support, Complainant addresses a new violation discovered in February 2009 for failure to monitor for total coliform bacteria. This alleged violation was not included in a Complaint and therefore cannot be considered in determining Respondent's liability. The new violation is probative of Respondent's willingness to comply and can be considered as part of the penalty. See, Section IV below.

6. On September 11, 2002, the MDEQ notified Respondent that the System had not submitted results of coliform monitoring as required by ARM § 17.38.215 for the month of July 2002.

7. On December 23, 2002, the MDEQ notified Respondent that the System had not submitted results of coliform monitoring as required by ARM § 17.38.215 for the month of November 2002.

8. On February 20, 2003, the MDEQ notified Respondent that the System had not submitted results of coliform monitoring as required by ARM § 17.38.215 for the month of January 2003.

9. On March 14, 2003, the MDEQ notified Respondent that the System had not submitted results of coliform monitoring as required by ARM § 17.38.215 for the month of February 2003.

10. On June 19, 2003, the MDEQ notified Respondent that the System had not submitted results of coliform monitoring as required by ARM § 17.38.215 for the month of May 2003.

11. On September 30, 2003, the MDEQ notified Respondent that the System had not submitted results of coliform monitoring as required by ARM § 17.38.215 for the month of August 2003.

12. On February 25, 2004, the MDEQ notified Respondent that the System had not submitted results of coliform monitoring as required by ARM § 17.38.215 for the month of January 2004.

13. On March 2, 2004, the MDEQ notified Respondent that the System had not submitted results of coliform monitoring as required by ARM § 17.38.215 for the month of January 2004.

14. On May 31, 2004, the MDEQ notified Respondent that the System had not submitted results of coliform monitoring as required by ARM § 17.38.215 for the month of April 2004.

15. On August 31, 2004, the MDEQ notified Respondent that the System had not submitted results of coliform monitoring as required by ARM § 17.38.215 for the month of July 2004.

16. On January 28, 2005, the MDEQ notified Respondent that the System had not submitted results of coliform monitoring as required by ARM § 17.38.215 for the month of December 2004.

17. On April 25, 2005, the MDEQ notified Respondent that the System had not submitted results of coliform monitoring as required by ARM § 17.38.215 for the month of March 2005.

18. On July 29, 2005, the MDEQ notified Respondent that the System had not submitted results of coliform monitoring as required by ARM § 17.38.215 for the month of June 2005.

19. On December 22, 2005, the MDEQ notified Respondent that the System had not submitted results of coliform monitoring as required by ARM § 17.38.215 for the month of October 2005.

20. On February 16, 2006, the MDEQ notified Respondent that the System had not submitted results of coliform monitoring as required by ARM § 17.38.215 for the month of January 2006.

21. On May 17, 2006, the MDEQ notified Respondent that the System had not submitted results of coliform monitoring as required by ARM § 17.38.215 for the month of April 2006.

22. On July 19, 2006, the MDEQ notified Respondent that the System had not submitted results of coliform monitoring as required by ARM § 17.38.215 for the month of June 2006.

23. Each MDEQ notification to Respondent also notified Respondent that it was required to provide public notice of failing to monitor for coliform.

24. On July 18, 2006, EPA issued a Notice of Violation pursuant to section 1414(a) of the Act, 42 U.S.C. § 300g-3(a), to the State requesting that it enforce the violations at Respondent's System within thirty (30) days. The State elected not to commence an enforcement action against the System.

25. On September 20, 2006, EPA issued an Administrative Order (Docket No. SDWA-08-2006-0050) to the Respondent citing the following violations:

    1) Failure to monitor for total coliform bacteria for twenty separate months from March 20, 2002 through July, 2006, pursuant to 40 C.F.R. § 141.21(a) and ARM § 17.38.215(b).
    2) Failure to take a set of repeat samples in September, 2004 pursuant to 40 C.F.R. § 141.21(a).
    3) Failure to take five routine samples in October, 2001 and October, 2004 following a total coliform positive sample pursuant to 40 C.F.R. § 141.21(b)(5).
    4) Failure to notify the public of any NPDWR violations pursuant to 40 C.F.R. § 141.201.

5) Failure to report coliform monitoring violations to the State of Montana pursuant to 40 C.F.R. §§ 141.21(g)(2) and 141.31(b).

26. The AO required Respondent to achieve compliance with the NPDWRs.

27. On April 6, 2007, EPA notified Respondent through a "Violation of Administrative Order" letter citing Respondent's failure to comply with the Administrative Order and NPDWRs.

28. On April 3, 2008, EPA filed a Complaint and Notice of Opportunity for Hearing (First Complaint) (Docket No. SDWA-08-2008-0038).

29. On August 15, 2008, EPA sent a letter regarding the First Complaint indicating that the Agency had no record of receiving an Answer within the thirty (30) days required by the Consolidated Rules.

30. On December 4, 2008, EPA filed an Amended Complaint and Notice of Opportunity for Hearing (Amended Complaint) alleging two counts of violating the Act and the NPDWRs and proposed a $3,000 penalty.

31. Respondent failed to monitor the System's water for total coliform bacteria contamination during December 2006, January 2007, August 2007, September 2007 and November 2007 in violation of the AO and the regulations as set forth in Count 1 of the Amended Complaint.

32. Respondent failed to notice the public of the violations of the AO for failure to monitor for total coliform bacteria as well as the December 2006 failure to monitor cited in the Amended Complaint as set forth in Count 2 of the Amended Complaint.

33. Respondent has not filed an Answer to the Amended Complaint.

34. Complainant filed a Motion for Default and Memorandum in Support on March 11, 2009. The Motion seeks the assessment of a $3,000 penalty.

35. Complainant filed a Supplemental Memorandum in Support of Default on June 5, 2009.

36. Respondent has provided no response to the Motion for Default.

III. CONCLUSIONS OF LAW

Pursuant to 40 C.F.R. §§ 22.17(c) and 22.27(a) of the Consolidated Rules, and based upon the record before me, I make the following conclusions of law:

37. Respondent Lincoln Road RV Park, Inc. is a corporation and therefore a "person" with the meaning of section 1401(12) of the Act, 42 U.S.C. §300(f)(12) and 40 C.F.R. §141.2.

38. The System has at least 15 service connections or regularly serves an average of at least 25 individuals at least 60 days out of the year and is therefore a "public water system" within the meaning of section 1401(4) of the Act, 42 U.S.C. §300(f)(4), and a "non-community water system" within the meaning of 40 C.F.R. §141.2.

39. Respondent is a "supplier of water" within the meaning of section 1401(5) of the Act, 42 U.S.C. §300(f)(5), and 40 C.F.R. §141.2. Respondent is therefore subject to the requirements of part B of the Act, 42 U.S.C. § 300g, and its implementing regulations, 40 C.F.R. part 141.

40. MDEQ has primary enforcement authority for the Act in the State of Montana. The State elected not to commence an appropriate enforcement action against the System for the violations within the thirty (30) day time frame set forth in section 1414(a), 42 U.S.C. § 300g-3(a).

41. Respondent failed to comply with the NPDWRs and the AO of September 20, 2006, the First Complaint of April 3, 2008, and the Amended Complaint of December 4, 2008 in violation of section 1414(g) of the Act, 42 U.S.C. §300g-3(g).

42. Respondent is liable for penalties pursuant to section 1414(g)(3) of the Act, 42 U.S.C. §300g-3(g)(3) and 40 C.F.R. part 19, not to exceed $32,500 for each day of violation occurring after March 14, 2004, whenever the Administrator determines that any person has violated, or fails or refuses to comply with, an order under section 1414(g) of the Act, 42 U.S.C. §300g-3(g).

43. 40. C.F.R. § 22.14 provides that an answer to a complaint must be filed within thirty (30) days after service of the complaint. 40 C.F.R. § 22.14(c) provides that an answer to an amended complaint must be filed within twenty (20) days after service of the amended complaint.

44. 40. C.F.R. § 22.6(c) provides that service of a complaint is complete when the return receipt is signed.

45. 40. C.F.R. § 22.17 provides that a party may be found to be in default, after motion, upon failure to file a timely answer to the complaint.

46. This default constitutes an admission, by Respondent, of all facts alleged in the Amended Complaint and a waiver, by Respondent, of its rights to contest those factual allegations pursuant to 40 C.F.R. § 22.17(a).

IV. ASSESSMENT OF ADMINISTRATIVE PENALTY

Under section 22.27(b) of the Consolidated Rules, " . . . the Presiding Officer shall determine the amount of the recommended civil penalty based on the evidence in the record and in accordance with any penalty criteria set forth in the Act. The Presiding Officer shall consider any civil penalty guidelines issued under the Act. If the Respondent has defaulted, the Presiding Officer shall not assess a penalty greater than that proposed by Complainant in the Complaint ..., or motion for default, whichever is less." 40 C.F.R. § 22.27(b).

The courts have made it clear that, notwithstanding a Respondent's default, the Presiding Officer must consider the statutory criteria and other factors in determining an appropriate penalty. See, *Katson Brothers Inc., v. U.S. EPA*, 839F.2d 1396 (10th Cir. 1988), *U.S. v. DiPaolo*, 466 Fed. Supp. 2d 476, 484 (S.D.N.Y., 2006). Moreover, the Environmental Appeals Board ("EAB" or "Board") has held that the Board is under no obligation to blindly assess the penalty proposed in the Complaint. *Rybond, Inc.*, RCRA (3008) Appeal No 95-3, 6 E.A.D. 614 (EAB, November 8, 1996).

Section 1414(g)(3) of the Act, 42 U.S.C. § 300g-3(g)(3), authorizes the Administrator to bring a civil action if any person violates, fails or refuses to comply with an order under this subsection. The Administrator may assess a Class I civil penalty of up to $32,500 per day of violation for violation of an order. See, 40 C.F.R. Part 19.

In accordance with 40 C.F.R. § 22.17(c), "the relief proposed in the motion for default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act." See, *In the Matter of Freeman's Group, Inc.*, Docket No. UST-06-00-519-AO (2005); In the *Matter of Glen Welsh*, Docket No. SDWA-3-99-0005 (2000). Section 1414(b) of the Act requires EPA to take into account the following factors in assessing a civil penalty: the seriousness of the violation, the population at risk, and other appropriate factors. 42 U.S.C. § 300g-3(b). EPA also considered "General Enforcement Policy GM-21" (dated February 16, 1984) ("Penalty Policy") in determining the penalty.[3] The Agency did not use any other policy or guidance in calculating the penalty. Without the use of other policies, including General Enforcement Policy GM-22, the sister policy to GM-21, that sets forth an actual framework for calculating a penalty, Complainant has forced this Court to relying on and reconcile the cases provided in its Memo in Support of the Motion for Default as the only analysis for granting the penalty in this matter.[4]

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[3] The GM-21 Enforcement Policy is a policy on civil penalties establishing a single set of goals for penalty assessment in EPA administrative and judicial enforcement actions. It is not a pleading penalty policy. It sets a framework to consider the Respondent's degree of willfulness and/or negligence, history of noncompliance, if any, and ability to pay. These are considered the "other appropriate factors" under Section 1414(b) of the Act, 42 U.S.C. § 300g-3(b); and therefore, the policy is instructive in determining the penalty in that it incorporates the statutory factors. However, the policy specifically states, **" this policy statement does not attempt to address the specific mechanism for achieving the goals set out for penalty assessment.... Accordingly, it cannot be used, by itself, as a basis for determining an appropriate penalty in a specific action." (emphasis added).**

[4] No Agency penalty analysis or worksheet was provided to assist the Court in determining penalties nor was there any evidence related to penalties placed in the record due to the fact that there was no hearing in this matter. Essentially, the Agency is requesting this Court to accept at face value its $3,000 penalty.

Complainant, more than once, argues that in other cases "Administrative Law Judges have assessed a penalty of $5,000, substantially more than what EPA has proposed in this case." (Memo in Support, p. 10). These cases, relied on by Complainant to argue that a $3,000 penalty is reasonable compared to a $5,000 penalty, each have specific facts and circumstances that frame the rationale for the penalty amounts derived in those particular cases. It is not axiomatic that a penalty assessed in a case with the same violations warrants a similar or less penalty without an analysis of the facts of the present case. See, *U.S. v. DiPaolo*, at 483. See also, *In Re Phoenix Construction Services, Inc.*, 11 E.A.D. 379, 420 (EAB 2004) (EAB held to the principle cited in *In Re Newell Recycling Co.*, 8 E.A.D. 598, 642 (EAB 1999), *aff'd*, 231 F.3d 204 (5th Cir. 2000), *cert. denied*, 534 U.S. 813 (2001), "that penalty assessments are sufficiently fact- and circumstance-dependent that the resolution of one case cannot determine the fact of another."). Furthermore, in *Phoenix* the EAB upheld the Presiding Officer's decision not to base or adjust the penalty in the case based on penalties assessed in other cases. *Id.* at 420-421 and footnote 91. This Court relied on the statutory factors and the generic policy goals in GM-21, as presented by Complainant, to form the basis of the penalty as set forth below.

The statutory factors are evaluated, in conjunction with the Penalty Policy, to create gravity and economic benefit components to the penalty. [5] This Court has reached the following decision regarding the penalty:

Seriousness of the Violation: Respondent has failed to comply with the requirements of the NPDWRs and the AO which required Respondent, *inter alia*, to monitor for total coliform bacteria, to notify the public of the failure to monitor, and to report analytical results and noncompliance with NPDWRs to EPA. The failure to monitor occurred for 20 months between March 2002 through July 2006, as set forth in the AO and then continued for 5 additional months before a Complaint was filed. Furthermore, the violations continue to occur. Affidavits from Sienna W. Paquin of Montana DEQ and Kimberly Pardue-Welch of EPA indicate that no monitoring results were submitted to DEQ for October 2008 and February 2009. (See, Memos in Support attachments). The failure to notify the public occurred for most but not all of the monitoring violations.[6]

EPA has determined that exposure to coliform bacteria can present health risks. Monitoring for coliform bacteria identifies whether the water may be contaminated with organisms that cause disease, including gastrointestinal disorders. Consumption of water contaminated with coliform bacteria may pose a risk for small children, the elderly and individuals with compromised immune systems. See, *EPA Guidance Water on Tap: What You*

[5] Gravity is the amount of the penalty that reflects the seriousness of the violations and the population at risk. Furthermore, the degree of willfulness/negligence, history of noncompliance, ability to pay, and duration of the violation are considered in determining the gravity portion of the penalty. Economic benefit includes the expenses the Respondent would have incurred had it complied with the Act and its implementing regulations.

[6] Neither the First Complaint nor the Amended Complaint allege violations of failure to report the violation to Montana DEQ within 10 days after the system discovered the violation, 40 C.F.R. §141.21(g)(2); and failure to report any non-compliance with NPDWRs within 48 hours, 40 C.F.R. §141.31(b), as set forth in the AO. Therefore, these allegations are not included in this Court's penalty analysis.

Need to Know (EPA-816-K-03-007, October, 2003). By not monitoring for this contaminant, Respondent puts water consumers of this System at risk by possibly exposing them, without their knowledge, to harmful levels of coliform bacteria.

Also important to the health of consumers of this System is the fact that, in contravention of the Act and the NPDWRs, Respondent never provided the public with notification of its failures to conduct the monitoring. If the System is not regularly monitoring and reporting any failures then the regulators, and more importantly, the consumers are unable to determine if the water is safe to drink. Congress clearly intended the Act to provide this information when it stated "...consumers served by the public water systems should be provided with information on the source of the water they are drinking and its quality and safety, as well as prompt notification of any violation of drinking water regulations." [7] Respondent's system serves approximately 134 individuals. The violations are significant and need to be available to those who are impacted. These violations cannot be taken lightly.

Furthermore, the record shows fundamental recalcitrance by Respondent. Neither the State of Montana nor EPA's enforcement efforts have had the necessary corrective effect upon the Respondent. Respondent's lack of regard for the State and EPA's authority and the repeat violations alleged in the Amended Complaint, indicate a pattern of behavior that cannot be condoned with respect to public health and safety. Addressing the penalty in order to create fairness in the regulated community as well as ensuring the credibility of the regulators is equally important. Therefore, I believe the Agency's analysis for willfulness/negligence, history of noncompliance for similar violations, and Respondent's lack of cooperation are justified.

Economic Benefit: The Complainant did not calculate economic benefit in this matter. Instead, Complainant chose to compare this matter to similar cases where an Administrative Law Judge analyzed what the economic benefit was based on evidence provided by Complainant in pleadings in the case. (See, Memo in Support, citing *In Re: Village of Glendora*, 1992 EPA ALJ LEXIS 712 (ALJ Yost, May 20, 1992)). In *Village of Glendora*, the Administrative Law Judge determined that economic benefit was $25.00 for each month of failing to sample for coliform bacteria. This calculation was based on the costs of sampling, laboratory analysis, and operator expenses that Respondent would have incurred had it performed the total coliform and sampling required by the Act and NPDWRs. This component of the penalty eliminates any economic benefit realized by the Respondent for not complying. Because the *Village of Glendora* analysis is Complainant's only basis for calculating economic benefit, it is applied, with much trepidation, in this matter. (See discussion above regarding use of case law to determine penalties). The comparative case is 17 years old and economic benefit for these types of violations likely has increased. However, given the costs for the violations at issue, (i.e., sampling, laboratory analysis, etc.) the increase in costs is probably marginal. Therefore, economic benefit amounts to $500.00 [$25.00 x 20 months = $500.00].

Finally, with respect to Respondent's ability to pay, there is no information in the record indicating Respondent is unable to pay the proposed penalty.

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[7] Pub. L. 104-182 Section 3(10). (Aug. 6, 1996).

The Consolidated Rules provide that, ". . . [the] relief proposed in the Complaint or motion for default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act." 40 C.F.R. § 22.17(c). Accordingly, based on the statute, regulations and the administrative record, I assess the Respondent a civil penalty in the amount of **$3,000.00**, for its violations of the Act.

V. DEFAULT ORDER[8]

In accordance with section 22.17 of the Consolidated Rules, 40 C.F.R. § 22.17, and based on the record, the findings of fact and conclusions of law set forth above, I hereby find that Respondent is in default and liable for a total penalty of **$3,000.00.**

IT IS THEREFORE ORDERED that Respondent, Lincoln Road RV Park Inc., shall, within thirty (30) days after this order becomes final under 40 C.F.R. § 22.27(c), submit by cashier's or certified check, payable to the United States Treasurer, payment in the amount of **$3,000.00** in one of the following ways:

CHECK PAYMENTS:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

WIRE TRANSFERS:

Wire transfers should be directed to the Federal Reserve Bank of New York

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read " D 68010727 Environmental Protection Agency "

OVERNIGHT MAIL:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

[8] Pursuant to 40 C.F.R. § 22.17(c), Respondent may file a Motion to set aside the default order for good cause.

Contact: Natalie Pearson
314-418-4087

ACH (also known as REX or remittance express)

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact – Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

ON LINE PAYMENT:

There is now an On Line Payment Option, available through the Dept. of Treasury. This payment option can be accessed from the information below:

WWW.PAY.GOV
Enter sfo 1.1 in the search field

Open form and complete required fields.

Respondent shall note on the check the title and docket number of this Administrative action. Respondent shall serve a photocopy of the check on the Regional Hearing Clerk at the following address:

Regional Hearing Clerk
EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202

Each party shall bear its own costs in bringing or defending this action.

Should Lincoln Road RV Park, Inc. fail to pay the penalty specified above in full by its due date, the entire unpaid balance of the penalty and accrued interest shall become immediately due and owing. Pursuant to the Debt Collection Act, 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty, if it is not paid as directed. Interest will be assessed at the rate of the United States Treasury tax and loan rate, in accordance with 40 C.F.R. § 102.13(e).

This Default Order constitutes an Initial Decision, in accordance with 40 C.F.R. § 22.27(a) of the Consolidated Rules. This Initial Decision shall become a Final Order forty five (45) days after its service upon a Party, 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 on initiative.

Within thirty (30) days after the Initial Decision is served, any party may appeal any adverse order or ruling of the Presiding Officer by filing an original and one copy of a notice of appeal and an accompanying appellate brief with the Environmental Appeals Board. 40 C.F.R. § 22.27(a). If a party intends to file a notice of appeal to the Environmental Appeals Board it should be sent to the following address:

U.S. Environmental Protection Agency
Clerk of the Board
Environmental Appeals Board (MC 1103B)
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-0001

Where a Respondent fails to appeal an Initial Decision to the Environmental Appeals Board pursuant to § 22.30 of the Consolidated Rules, and that Initial Decision becomes a Final Order pursuant to § 22.27(c) of the Consolidated Rules, Respondent waives its right to judicial review.

SO ORDERED This 30th Day of July, 2009.

Elyana R. Sutin
Presiding Officer

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **DEFAULT INTITIAL DECISION AND ORDER** in the matter of **LINCOLN ROAD RV PARK, INC.; DOCKET NO.: SDWA-08-2008-0038** was filed with the Regional Hearing Clerk was filed on July 30, 2009.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Margaret "Peggy" Livingston, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned document was placed in the United States mail and e-mailed on July 30, 2009, to:

Kim Harrison
Registered Agent
Lincoln Road RV Park, Inc.
850 West Lincoln Road
P. O. Box 9708
Helena, MT 59604

And hand-delivered to:

Honorable Elyana R. Sutin
Regional Judicial Officer
U. S. Environmental Protection Agency
1595 Wynkoop Street (8RC)
Denver, CO 80202-1129

July 30, 2009

Tina Artemis
Paralegal/Regional Hearing Clerk