BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

In re:	)	
Snow & Snow, Inc.	)	SDWA Appeal No. 07-03
Docket No. SDWA-03-2004-0193	)	

FINAL ORDER ELECTING TO REVIEW *SUA SPONTE*
AND REVISING INITIAL DECISION AND DEFAULT ORDER

In the 1990s-2000s, Snow & Snow, Inc. and Kerry Snow (collectively, "Snow") owned and operated two facilities in McKean County, Pennsylvania, where fluids were injected into wells to achieve "enhanced recovery" of oil from oil wells. The two facilities, called the "Windfall Hollow" and "Schoepperle/Pringle" facilities, had two and forty-five Class II enhanced recovery injection wells on site, respectively. On June 3, 2004, Region 3 of the U.S. Environmental Protection Agency filed an administrative complaint against Snow, alleging that Snow had violated the Safe Drinking Water Act ("SDWA") and regulations implementing the Underground Injection Control ("UIC") program promulgated under SDWA § 1421-1422, 42 U.S.C. §§ 300h, 300h-1. Specifically, the Region alleged that Snow had:

(1) Failed, since January 31, 2000, to submit annual monitoring reports for the wells for calendar years 1999-2003, as required by 40 C.F.R. § 144.28(h)(2)(i) (*see* Compl. ¶¶ 28-32, at 7);

(2) Failed, since May 3, 2001, to plug and abandon the injection wells at the facilities or demonstrate that the wells would not endanger underground sources of drinking

water, as required by 40 C.F.R. § 144.28(c)(2)(iv)(A)-(B) (*see* Compl. ¶¶ 33-41, at 7-9); and

(3) Failed, since May 3, 2001, to maintain the required financial responsibility for the wells, as required by 40 C.F.R. § 144.28(d)(1) (*see* Compl. ¶¶ 42-49, at 9-10).

Snow sought and received an extension of time, until September 13, 2004, to file an answer to the complaint. Snow did not meet that deadline, however, and indeed never filed an answer, even after being sent two letters from the Region warning of the danger of default for a failure to respond. On April 8, 2005, the Region filed a motion for a default order, and Snow never responded to that motion.

On December 20, 2007, Regional Judicial Officer Renée Sarajian ("RJO") issued an Initial Decision and Default Order, finding Snow to be in default and assessing the civil penalty proposed in the administrative complaint, $10,000. *See In re Snow & Snow, Inc.*, Dkt. No. SDWA-03-2004-0193 (RJO Dec. 20, 2007). The RJO also directed Snow to undertake a number of specific actions to bring the facilities into compliance with the SDWA and UIC regulations, again as had been proposed by the Region in the complaint.[1] The RJO ordered Snow to: (1) establish an acceptable level of financial responsibility (at a minimum of $1,000 per well) for all forty-seven Class II wells, pursuant to 40 C.F.R. § 144.28(d); (2) submit a plan for conducting mechanical integrity tests for any temporarily abandoned injection wells, pursuant to 40 C.F.R. § 144.28(g)(2)(iv); (3) submit a schedule for plugging and abandoning any permanently abandoned wells, pursuant to 40 C.F.R. § 144.28(c); and (4) submit annual

[1] The SDWA explicitly authorizes the issuance of orders assessing civil penalties, requiring compliance with regulations, or both. *See* 42 U.S.C. § 300h-2(c)(2). The Region and the RJO opted to do both in this case.

monitoring reports for the two facilities for the years 1998 through 2004, pursuant to 40 C.F.R. § 144.28(h)(2).

Upon review of this matter for *sua sponte* purposes pursuant to 40 C.F.R. § 22.30(b), we find this case to be a straightforward default situation, with the RJO holding, rightly, that Snow's failures to answer the complaint and respond to the motion for default constituted admissions of the facts alleged in the complaint and a waiver of Snow's right to contest those facts, in accordance with 40 C.F.R. § 22.17(a). The RJO examined the six factors set forth in the SDWA at 42 U.S.C. § 300h-2(c)(iv)(B) for assessing penalties (i.e., seriousness of violation; economic benefit; history of other violations; good faith efforts to comply; economic impact; other factors) and concluded that, on the record before her, the Region's proposed penalty was appropriate and justified. Her analysis is reasonable and well within the bounds of discretion afforded in imposing monetary penalties in this kind of case.

We note, however, that the Region limited the annual monitoring report violations alleged in the complaint to the calendar years 1999 through 2003 (i.e., to the five years immediately preceding the year the complaint was filed, in June 2004). *See* Compl. ¶ 32, at 7. The Region later specifically proposed that the annual report for calendar year 2004 also be submitted, by January 31, 2005, as part of Snow's remedial actions. *See id.* ¶ 50.E, at 11.

Upon review of the administrative record in this case, we elect to initiate *sua sponte* review for one very narrow purpose.[2] In summarizing the compliance requirements it suggested

---

[2] Under the Consolidated Rules of Practice that govern these administrative civil penalty proceedings, once the Environmental Appeals Board identifies an initial decision for *sua sponte* review, it must notify the affected presiding officer (here, the RJO), the regional hearing clerk, and the parties of its intent to initiate review. 40 C.F.R. § 22.30(b). The notice must include "a

(continued...)

be imposed on Snow, the Region appears to have made a typographical error. The Region proposed that Snow be required to submit annual monitoring reports for *1998* through 2004, not *1999* through 2004. *See* Compl. ¶ 50.D, at 11. We have found no explanation or discussion in the Region's materials of the change from 1999 to 1998, which is why we believe it to be a mistake. The RJO incorporated this requirement directly into paragraph 6.D of her Initial Decision and Order of Default, also without explanation or commentary of any kind that would provide justification for the different date.

The Board finds it prudent to address this issue via a brief corrective order. We hereby order that the last three words of paragraph 6.D of the Initial Decision and Order of Default be changed to read "1999 through 2004" rather than "1998 through 2004." All other provisions of the Initial Decision and Default Order remain unchanged, and the time frames for Snow's payment of the penalty and achievement of compliance activities must occur the specified number of days after issuance of this Final Order.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: January 31, 2005

By: Kathie A. Stein
Kathie A. Stein
Environmental Appeals Judge

---

[2](...continued)
statement of issues to be briefed by the parties and a time schedule for the filing and service of briefs." *Id.* Because the grant of review in this case is restricted to the correction of a typographical error, we believe no such briefing is necessary in these circumstances. If either party disagrees and believes briefing is in fact necessary to a proper resolution of this matter, that party should so inform the Board through the filing of a motion for reconsideration under 40 C.F.R. § 22.32.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **Final Order Electing to Review *Sua Sponte* and Revising Initial Decision and Default Order** in the matter of *Snow & Snow, Inc.*, SDWA Appeal No. 07-03, were sent to the following persons in the manner indicated:

By Certified U.S. Mail, Return Receipt Requested:

Jay Paul Kahle, Esq.
71 Main Street, Suite 201
Bradford, PA 16701

By EPA Pouch Mail:

Philip Yeany, Esq.
Senior Assistant Regional Counsel
U.S. EPA, Region 3
1650 Arch Street
Mail Code 3RC20
Philadelphia, PA 19103-2029

Lydia Guy
Regional Hearing Clerk
U.S. EPA, Region 3
1650 Arch Street
Mail Code 3RC00
Philadelphia, PA 19103-2029

The Honorable Renée Sarajian
Regional Judicial Officer
U.S. EPA, Region 3
1650 Arch Street
Mail Code 3RC00
Philadelphia, PA 19103-2029

Dated: 2/1/08

Annette Duncan
Secretary