

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19203-2029

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EPA REGION III

IN THE MATTER OF:)	
)	Docket No. SDWA-03-2004-0193
Snow and Snow, Incorporated)	
P.O Box 67)	
Duke Center, PA 16729, and)	Proceeding under Section 1423(c)
)	of the Safe Drinking Water Act,
Kerry Snow)	42 U.S.C. § 300h-2(c)
172 Kansas Branch Road)	
Duke Center, PA 16729,)	
)	
Respondents.)	
_____)	

INITIAL DECISION AND ORDER OF DEFAULT

This administrative proceeding for the assessment of a civil penalty was initiated by the Director of the Water Protection Division for Region III of the United States Environmental Protection Agency ("EPA" or "Complainant"). On June 3, 2004, EPA issued a Proposed Order for Compliance and the Assessment of a Civil Penalty and Opportunity for Hearing ("Complaint") against Respondents Snow and Snow, Inc. ("Respondent S&S") and Kerry Snow ("Respondent Snow") (together "Respondents") pursuant to Section 1423(c) of the Safe Drinking Water Act ("SDWA"), 42 U.S.C. § 300h-2(c), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22 ("Consolidated Rules"). Subpart I and Section 22.45 of the Consolidated Rules apply to this proceeding. In the Complaint, EPA alleges that the Respondents violated 40 C.F.R. §§ 144.28(h)(2)(I), 144.28(c)(2)(iv), and 144.28(d) of the Underground Injection Control ("UIC")

Program, promulgated under Sections 1421 and 1422 of the SDWA, 42 U.S.C. §§ 300h and 300h-1.

The Motion for Default seeks an Order assessing a civil penalty in the amount of ten thousand dollars (\$10,000.00) against Respondents and requiring the Respondents to comply with the UIC Program requirements.

FINDINGS OF FACT

Pursuant to 40 C.F.R. § 22.17 and based on the entire record, I make the following findings of fact:

1. Respondent S&S has at all times relevant to the Complaint owned and operated two facilities with underground injection wells, used to inject fluids for the enhanced recovery of oil from oil wells, known as the Windfall Hollow Facility and the Schoepperle/Pringle Facility ("the facilities"). Both facilities are located in McKean County, Pennsylvania. The UIC facility identification number for the Windfall Hollow Facility is PAS2R930AMCK. The UIC facility identification number for the Schoepperle/Pringle Facility is PAS2R944AMCK.
2. At the Windfall Hollow facility, there are two Class II enhanced recovery injection wells, as defined in 40 C.F.R. §§ 144.6 and 146.5.
3. At the Schoepperle/Pringle facility, there are forty-five Class II enhanced recovery injection wells.
4. Respondent Snow has at all times relevant to the Complaint operated the facilities.
5. On June 3, 2004, EPA filed an Administrative Complaint against Respondents, in accordance with 40 C.F.R. § 22.5(a).

6. EPA served a copy of the Complaint upon Respondents on June 3, 2004, by certified mail, return receipt requested, in accordance with 40 C.F.R. § 22.5(b)(1).
7. Proof of completion of service of the Complaint was evidenced by the executed return receipt card, signed June 17, 2004, in accordance with 40 C.F.R. §§ 22.5(b)(1)(iii), 22.7(c).
8. The Complaint alleges that Respondents violated the SDWA and its implementing regulations since January 31, 2000, by: a) failing to submit the annual monitoring reports for the calendar years 1999 through 2003 as required by 40 C.F.R. § 144.28(h)(2)(I); b) failing, since May 3, 2001, to plug and abandon the injection wells at the facilities or to demonstrate the UIC wells at these facilities will not endanger an underground source of drinking water as required by 40 C.F.R. §§ 144.28(c)(2)(iv)(A) and (B); and c) failing, since May 3, 2001, to maintain the required financial responsibility for the UIC wells at the facilities as required by 40 C.F.R. § 144.28(d)(1).
9. In both the Complaint and the cover letter to the Complaint, EPA informed Respondents that an Answer must be filed within 30 days of receipt of the Complaint and that failure to file an Answer may result in entry of a Default Order imposing the proposed penalties without further proceedings. The Complaint also referred Respondents to 40 C.F.R. Part 22, a copy of which was provided to Respondents along with the Complaint, in accordance with 40 C.F.R. § 22.5(b)(1).
10. Respondents' Answer to the Complaint was due July 17, 2004, in accordance with 40 C.F.R. § 22.15(a).
11. On July 14, 2004, Counsel for the Respondents filed a Motion for Extension of Time to

file an Answer for Respondents, in accordance with 40 C.F.R. § 22.7(b).

12. On July 19, 2004, the Regional Judicial Officer granted the Respondents' Motion and gave Respondents until September 13, 2004, to file their Answer.
13. Respondents did not file an Answer by September 13, 2004.
14. After September 13, 2004, EPA sent two letters to the Respondents' Counsel warning him that Respondents' failure to file an Answer would put them in default.
15. On April 8, 2005, EPA filed a Motion for Default Order, in accordance with 40 C.F.R. § 22.17, stating that Respondents failed to file an Answer to the Complaint.
16. On April 8, 2005, EPA served the Motion for Default Order to Respondents via first class mail, in accordance with 40 C.F.R. § 22.5(b)(2).
17. Respondents' response to the Motion for Default Order was due within 15 days after service of the Motion for Default Order in accordance 40 C.F.R. § 22.16(b).
18. Respondents did not respond to the Motion for Default Order and have not filed an Answer to the Complaint.

CONCLUSIONS OF LAW

Pursuant to 40 C.F.R. § 22.17 and based on the entire record, I make the following conclusions of law:

1. The Complaint in this action was lawfully and properly served upon Respondents in accordance with 40 C.F.R. §§ 22.5(b)(1) and 22.7(c).
2. Respondents were required to file an Answer to the Complaint within the extended period, in accordance with 40 C.F.R. §§ 15(a) and 22.7(b).
3. Respondents failure to file an Answer to the Complaint or otherwise respond to the

Complaint within the extended period constitutes an admission of all facts alleged in the Complaint and a waiver of Respondents' right to a hearing on such factual allegations, in accordance with 40 C.F.R. § 22.17(a).

4. Complainant's Motion for Default Order was lawfully and properly served on Respondents, in accordance with 40 C.F.R. §§ 22.5(b)(2) and 22.7(c).
5. Respondents were required to file any response to the Motion for Default Order within 20 days of service, in accordance with 40 C.F.R. § 22.16(b).
6. Respondents failure to respond to the Motion for Default Order constitutes an admission of all facts alleged by Complainant in the Complaint and a waiver of Respondents' right to contest such factual allegations, in accordance with 40 C.F.R. § 22.17(a).
7. Respondent S&S is a corporation organized under the laws of Pennsylvania and authorized to do business in Pennsylvania. Therefore, Respondent S&S is a "person" within the meaning of Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12).
8. Respondent Snow is an individual. Therefore, Respondent Snow is a "person" within the meaning of Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12).
9. As owner and operator of the wells at issue, Respondent S&S is subject to the requirements of the SDWA, the UIC Program, and its implementing regulations at 40 C.F.R. Parts 144, 146, and 147.
10. As operator of the wells at issue, Respondent Snow is subject to the requirements of the SDWA, the UIC Program, and its implementing regulations at 40 C.F.R. Parts 144, 146, and 147.
11. 40 C.F.R. § 144.28(a) requires all owners and operators of Class II wells to comply with

the applicable requirements of 40 C.F.R. Part 144, Subparts B and C.

12. 40 C.F.R. § 144.28(h)(2)(I) requires owners or operators of Class II wells to submit annual disposal and injection well monitoring reports to the Director. The Director means the Regional Administrator of EPA Region III under 40 C.F.R. §144.3 because Pennsylvania has not acquired primacy over the UIC program pursuant to Section 1422(c) of the SDWA, 42 U.S.C. § 300h-1(c).
13. Respondents violated 40 C.F.R. § 144.28(h)(2)(I) since January 31, 2000, by failing to submit annual disposal and injection well monitoring reports for the calendar years 1999 through 2003.
14. Respondents violated 40 C.F.R. §§ 144.28(c)(2)(iv)(A) and (B) since May 3, 2001, due to their failure to either plug and abandon the injection wells or to demonstrate non-endangerment for these wells.
15. Respondents violated 40 C.F.R. § 144.28(d)(1) since May 3, 2001, by failing to maintain the required financial responsibility.
16. Respondents' failure to comply with the requirements of 40 C.F.R. § 144.28(h)(2)(I), 40 C.F.R. §§ 144.28(c)(2)(iv)(A) and (B), and 40 C.F.R. § 144.28(d)(1), are violations for which Respondents are liable for civil penalties under Section 1423(c)(2) of the SDWA, 42 U.S.C. § 300h-2(c)(2).
17. Respondents' failure to file a timely Answer to the Complaint or otherwise respond to the Complaint is grounds for entry of a Default Order against the Respondents assessing a civil penalty for the violations described above. 40 C.F.R. § 22.17(a).
18. Respondents' failure to file a response to Complainant's Motion for Default Order is

deemed a waiver of Respondents' right to object to the issuance of the Order. 40 C.F.R. § 22.16(b).

19. The civil penalty of \$10,000.00 proposed in the Complaint and requested in Complainant's Motion for Default Order is not inconsistent with the SDWA and the record in this proceeding.

DETERMINATION OF CIVIL PENALTY AMOUNT

EPA proposed the penalty in this case, \$10,000.00, after taking into account the appropriate statutory factors when determining penalties, including: (1) the seriousness of the violation; (2) the economic benefit accruing to a Respondent resulting from the violations; (3) a Respondent's history of other violations of Part C of the SDWA; (4) any good faith efforts to comply with the SDWA; (5) the economic impact of the penalty on a Respondent; and (6) such other matters as justice may require. In accordance with 40 C.F.R. § 22.17(c), which requires that the Presiding Officer order the relief proposed in the Motion unless it is clearly inconsistent with the record of the proceeding or the SDWA, I have taken into account the same statutory factors that the Region used in determining the proposed penalty.¹ Those factors are:

Seriousness of the violation:

Respondents' violations are serious. Respondents have failed to comply with the requirements of the UIC rules, which require them to submit annual monitoring reports, plug and abandon the injection wells at the two UIC facilities or demonstrate non-endangerment for these wells, and maintain the required financial responsibility for the UIC wells at the facilities.

¹ A court assessing penalties under Section 1423(c)(2) of the SDWA, 42 U.S.C. § 300h-2(c)(2), must take the factors set out in Section 1423(c)(4)(B) of the SDWA, 42 U.S.C. § 300h-2(c)(4)(B), into account in assessing an administrative penalty.

The purpose of the UIC rules is to prevent the contamination of underground sources of drinking water. The submission of annual reports provides EPA with the information to ensure that UIC permittees, such as Respondents, are complying with the UIC rules' requirements. The requirement to either plug and abandon the injection wells or to demonstrate non-endangerment is the most direct requirement which ensures that contamination of the drinking water sources does not take place. Respondents' failure to take either of the required steps placed the drinking water sources at great risk of contamination that is not easily corrected.

Economic benefit to Respondents:

Respondents' failure to maintain the necessary financial responsibility means that another party must bear the cost of the Respondents' dereliction of its duty to prevent possible groundwater contamination. Even in the absence of any evidence to the extent of such savings, a "token or symbolic amount may be assessed." 56 Fed. Reg. 29996, 30006 (July 1, 1991). *See also In re: Mr. William J. Fabrick, 3225 Old Westminster Pike, Finksburg, Maryland 21048*, 2000 WL 1660911 (Apr. 25, 2000).

In this matter, the Respondents received direct savings. For the failure to file annual monitoring reports, based on a five year period, Respondents saved two hundred and fifty dollars (\$250.00). *See* Complainant's Motion for Default Order, Exhibit 2, Declaration of Anthony V. Spano, Jr. ("Spano Decl.") ¶ 18. The failure to demonstrate either non-endangerment to underground sources of drinking water or plug and abandon the well resulted in savings of two thousand five hundred dollars (\$2,500.00). *Id.* Respondents saved one thousand four hundred and forty five dollars (\$1,445.00) by not maintaining adequate financial responsibility. *Id.*

History of other violations and good faith efforts to comply:

Respondents' failures in this matter are egregious in light of their non-compliance with two prior consent agreements that they entered into with EPA, dated August 31, 1989, and December 8, 1989. Spano Decl. ¶ 21. In both agreements the Respondents acknowledged and pledged to meet the requirements that they have since continuously ignored by not submitting annual reports since 1993. *Id.* The record clearly shows extreme recalcitrance on the part of the Respondents. The EPA's previous efforts have not had the necessary corrective effect upon the Respondents. Respondents' recalcitrance has led to the escalation of enforcement responses by the regulatory authorities, including the filing of the Complaint at issue here.

Economic impact of penalty on Respondents:

With respect to Respondents' ability to pay, the burden to raise and prove an inability to pay a penalty rests with the Respondents. With this record being devoid of any evidence to the contrary, the Respondents are deemed to be able to pay the maximum statutory penalty. 56 Fed. Reg. 29996, 30006 (July 1, 1991). *See also In re Fabrick.*

The Complainant searched various publically available databases for information on Respondents' financial resources but was unable to determine Respondents' financial abilities with regard to the proposed penalty. (Spano Decl. at ¶ 23). In the absence of any evidence or assertion to the contrary, I find Respondents are able to pay the proposed penalty.

Other matters as justice may require:

Due to repeated non-compliance with previous agreements entered into by Respondents, justice requires a penalty that serves as a deterrent to the Respondents and to any other similarly situated persons. Therefore, it is certainly within my discretion to assess the full penalty amount the Complainant seeks.

ORDER

Pursuant to the Consolidated Rules at 40 C.F.R. Part 22, including 40 C.F.R. § 22.17, Complainant's Motion for Default Order is hereby GRANTED and Respondents are hereby ORDERED as follows:

1. Respondents, Snow and Snow, Inc., and Kerry Snow, are hereby assessed a civil penalty in the amount of ten thousand dollars (\$10,000.00) and ordered to pay the civil penalty as directed in this order. Respondents are jointly and severally liable for the \$10,000.00 penalty.
2. Respondents shall pay the civil penalty by certified or cashier's check payable to the Treasurer of the United States within thirty (30) days after this Default Order has become final. *See ¶ 7 below.* The check shall be sent by certified mail, return receipt requested, to:

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

Also, Respondents may use the following means for penalty payments:

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
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

ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format
Contact: Jesse White 301-887-6548

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.

3. A copy of the payment shall be mailed to the Regional Hearing Clerk, U.S. Environmental Protection Agency, EPA, 1650 Arch Street, Philadelphia, PA 19103. A transmittal letter identifying the name and docket number should accompany both the remittance and/or a copy of the check or a copy of Respondents' electronic wire transfer.
4. In the event of failure by Respondents to make payment as directed above, this matter may be referred to a United States Attorney for recovery by appropriate action in United

States District Court.

5. Pursuant to the Debt Collection Act, 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debt owed to the United States and to assess a charge to cover the cost of processing and handling a delinquent claim.
6. Furthermore, in accordance with 42 U.S.C.A. § 300h-2(c), Respondents are ordered to take the following actions:
 - A. Within 30 days of the effective date of this ORDER, establish and submit proof to EPA of acceptable financial responsibility for all of the Class II wells at their Facilities. Depositing additional funds to the trust account established with the Hamlin Bank and Trust Company of Smethport, PA (account number 430) to bring the total amount in the account to \$47,000.00 plus interest shall constitute acceptable financial responsibility;
 - B. Within 30 days of the effective date of this ORDER, submit to EPA a plan with a schedule for conducting Mechanical Integrity Tests for the temporarily abandoned injections wells;
 - C. Within 30 days of the effective date of this ORDER, submit to EPA a plan with a schedule for the plugging and abandonment of any well at the Facilities that Respondents have permanently abandoned; and
 - D. Within 30 days of the effective date of this ORDER, submit to EPA its annual monitoring report for the Facilities for the years 1998 through 2004.
7. This Default Order constitutes an Initial Decision, as provided in 40 C.F.R. §§ 22.17(c) and 22.27(a). This Initial Decision shall become a Final Order forty-five (45) days after it

is served upon the Complainant and Respondents unless (1) a party appeals this Initial Decision to the EPA Environmental Appeals Board in accordance with 40 C.F.R. § 22.30, (2) a party moves to set aside the Default Order that constitutes this Initial Decision, or (3) the Environmental Appeals Board elects to review the Initial Decision on its own initiative.

IT IS SO ORDERED.

12/20/07
Date

Renée Sarajian
Renée Sarajian
Regional Judicial Officer

CERTIFICATE OF SERVICE

This Initial Decision and Default Order was served on the date below, by the manner indicated, to the following people:

VIA HAND DELIVERY:

Philip Yeany (3RC20)
Senior Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103

**VIA CERTIFIED MAIL/
RETURN RECEIPT REQUESTED:**

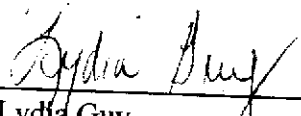
Jay Paul Kahle, Esq.
71 Main Street, Suite 201
Bradford, PA 16701

VIA POUCH MAIL:

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

DEC 20 2007

Date



Lydia Guy
Regional Hearing Clerk

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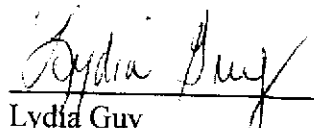
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Lydia Guy
Regional Hearing Clerk