UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:	)	
	)	
George W. Jackson,	)	Docket No. SDWA-06-2015-1205
d/b/a Fort Jackson Mobile Estates	)	
	)	
	)	
Respondent.	)	
	)	

INITIAL DECISION AND DEFAULT ORDER

This proceeding was initiated by the Director of the Compliance Assurance and Enforcement Division, Region 6, United States Environmental Protection Agency (hereinafter, "Complainant" or "EPA") in order to assess an administrative penalty in the amount of $7,000 against George W. Jackson, d/b/a Fort Jackson Mobile Estates ("Respondent") for violations of the Safe Drinking Water Act ("SDWA"). The proceeding is governed by the procedures set forth in the revised Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination and Suspension of Permits set forth at 40 Code of Federal Regulations ("CFR") part 22, including the Supplemental Rules for Administrative Proceedings not Governed by the Administrative Procedures Act (collectively, the "Rules of Practice").

Section 22.17(a) of the CFR provides that a "party may be found to be in default: after motion, upon failure to file a timely answer to the complaint..." 40 CFR § 22.17(a). EPA filed an Administrative Complaint ("Complaint") against Respondent on January 27, 2015. To date, Respondent has not filed its Answer. On May 27, 2015, Complainant filed a Default Motion for Liability and Penalty ("Motion"), to which Respondent has not, to date, countered with a response. Therefore, based on the Rules of Practice, the record in this proceeding, and the reasons set forth below, Complainant's Motion is hereby GRANTED, this shall constitute my Initial Decision pursuant to 40 CFR § 22.17(c), and I will assess the full amount of the $7,000 penalty Complainant sought against Respondent.

I. BACKGROUND AND PROCEDURAL HISTORY

On February 14, 2014, Complainant issued an Administrative Order ("AO") against Respondent (which became final on March 18, 2014) in this matter for multiple exceedances of the maximum contaminant level ("MCL") for fluoride in its public water system ("PWS"), in violation of the SDWA and its accompanying regulations. Service was properly made in accordance with 40 CFR § 22.6. The AO did not contain a penalty provision; rather, it sought corrective action measures to resolve the noted violations. After issuing the AO, on numerous occasions in March, May, and August of 2014, EPA attempted contact with Respondent in order to explain the AO, the potential consequences of failing to adhere to the AO, to offer assistance in achieving compliance, and answer any questions. Respondent failed to remedy the violations or respond to EPA.

Consequently, Complainant filed the Complaint against Respondent on January 27, 2015, seeking a penalty in the amount of $7,000 for Respondent's failure to adhere to the AO, in violation of the SDWA. Service was properly made in accordance with 40 CFR § 22.5(b). In March of 2015, EPA again sought to reach out to Respondent to discuss the matter and Respondent did not respond to EPA's overtures. To date, Respondent has not made any filing in this matter post AO, such as its Answer.

EPA therefore filed the present Motion and accompanying Memorandum in Support of Default Motion for Liability and Penalty on May 27, 2015, seeking a default order against Respondent finding it liable for the alleged Complaint violations, as well as the full assessment of the proposed $7,000 penalty. Complainant properly served the Motion upon Respondent pursuant to 40 CFR § 22.5(b).

To date, Respondent has failed to file its Answer, a response motion, or communicate with Complainant to resolve the matter. As noted prior, Section 22.17(a) of the Rules of Practice provides that a "party may be found to be in default: after motion, upon failure to file a timely answer to the complaint..." 40 CFR § 22.17(a). Default by Respondent entails "an admission of all facts alleged...and a waiver of respondent's right to contest such factual allegations," thereby

leaving Respondent potentially liable for the entire proposed penalty if such default decision is rendered. 40 CFR § 22.17(a).

II. FINDINGS OF FACT

Pursuant to 40 CFR §§ 22.17(c) and 22.27(a), and based on the entire record, I make the following findings of fact:

1. Respondent is an individual, doing business as Fort Jackson Mobile Estates, in Lubbock, Texas.
2. At all relevant times, Respondent owned or operated a public water system ("PWS") (known as PWS number TX1520064) serving at least 25 residents on a daily and annual basis, and as such is a supplier of water pursuant to section 1401(4) of the United States Code ("USC"). 42 USC § 300f(5).
3. A PWS is a system that provides water for human consumption that contains at least 15 service connections or regularly serves at least 25 individuals daily for a minimum of 60 days out of the year. 42 USC § 300f(4).
4. A community water system is a PWS that serves at least 15 service connections used by year-round residents served by the system or regularly serves at least 25 year-round residents. 42 USC § 300f(15).
5. As an owner or operator of a community PWS that is a supplier of water, Respondent is subject to the regulations promulgated by EPA at 42 USC § 300g-1, under the SDWA.
6. The state of Texas is responsible for enforcing those provisions of the SDWA pertaining to, among others, suppliers of water through PWSs. 42 USC § 300g-2(a). However, EPA retains its authority under these provisions and Texas and EPA have agreed that EPA would pursue this enforcement action.
7. Because Respondent is subject to the SDWA and its accompanying regulations, it must comply with, among other things, the MCL for fluoride in its community PWS. 40 CFR § 141.62.
8. While under an obligation to monitor compliance for fluoride to ensure a MCL of 4 mg/L, Respondent provided results for fluoride monitoring for 4 quarters between 2008

and 2013, resulting in an annual fluoride average of 7.14 mg/L – well in excess of the MCL set forth in 40 CFR § 141.62(b)(1).

9. Due to the above multiple violations, Complainant issued the AO and ordered Respondent to perform corrective actions, including: 1) informing the public of the violations in accordance with 40 CFR § 141.201, and subsequently providing Texas and the EPA copies of said notice, 2) submitting a plan to bring the PWS into compliance, which EPA must approve, 3) continued compliance with 40 CFR § 141.62(b)(1) once the PWS is compliant, and (4) progress reports regarding the corrective actions.

10. Respondent did not comply with the AO.

11. After multiple failed attempts by EPA to communicate with Respondent after the AO became final on March 18, 2014, and recognizing Respondent completely neglected its obligations under the AO and SDWA, Complainant filed the Complaint on January 27, 2015, seeking a penalty in the amount of $7,000 for Respondent's failure to comply with the AO and SDWA. Pursuant to 42 U.S.C. § 300g-3(g)(3), EPA may asses a civil penalty in this matter of not more than $37,000 per day for each day of a violation for any past or current violation.[1]

12. After filing the Complaint, EPA again attempted to contact Respondent on numerous occasions, to which Respondent never replied. To date, Respondent has also failed to file its Answer in this matter.

13. Answers are required within 30 days after service of the Complaint. 40 CFR § 22.15(a).

14. 40 CFR § 22.15(d) clearly provides that if an Answer fails to admit, deny, or explain any material allegation of fact in the Complaint, it is deemed an admission of such allegation. Respondent also waives its right to a hearing on such factual allegations if such a request is not made in the Answer. *Id.*

15. With no communication or filed Answer from Respondent, and 4 months passing since the filing of the Complaint, Complainant consequently filed the Motion described herein on May 27, 2015.

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[1] This amount is periodically adjusted by 40 CFR § 19.4.

16. Respondent must file any response to said Motion within 15 days after service. 40 CFR § 22.16(b). Respondent cannot object to the granting of the Motion if it fails to respond within the designated time period. *Id.*

17. Proper service was made upon Respondent and, to date, Respondent has not filed a response motion.

II. CONCLUSIONS OF LAW

Pursuant to 40 CFR §§ 22.17(c) and 22.27(a), and based on the entire record, I make the following conclusions of law:

18. Respondent is a "person" as defined in Section 1401(12) of the SDWA. 42 U.S.C. § 300f(12).

19. Respondent is a "supplier of water" that owns or operates the "community water system," that also serves as the "PWS," for the residents that live in Fort Jackson Mobile Estates, in Lubbock, Texas. 42 USC §§ 300f(4),(5), and (15).

20. As such, Respondent must adhere to the dictates of the SDWA, specifically in this instance, the obligation to comply with the AO (42 U.S.C. § 300g-3(g)), as well its accompanying regulations and, in particular to this case, the MCL for fluoride set forth at 40 CFR § 141.62(b)(1).

21. As set forth herein, Respondent was properly served the AO, Complaint, and Motion. CFR §§ 22.5(b) and 22.6.

22. Respondent's failure to timely file an Answer or response motion in this matter is deemed an admission of the factual allegations set forth in the Complaint and is grounds to enter this default order against Respondent assessing the full amount of the civil penalty sought and a waiver by Respondent of its right to object to the issuance of this order.

23. Respondent failed to comply with the AO discussed herein and violated the SDWA and its accompanying regulations by failing to comply with the AO and remedy the fluoride MCL violations.

24. EPA has afforded Respondent ample time and opportunity to remedy this matter, as well as made numerous attempts to contact Respondent to resolve the matter amicably.

25. Clearly Respondent has no regard for EPA, the SDWA, or the residents to whom he was obligated to supply clean drinking water, as Respondent has not only failed to make any efforts to respond to EPA in any manner, but it has completely disregarded the AO and made no attempts to remedy the violations in order to ensure the PWS is in compliance with the SDWA.

26. Section 22.17(a) of the CFR provides that a "party may be found to be in default: after motion, upon failure to file a timely answer to the complaint..." Default by Respondent entails "an admission of all facts alleged...and a waiver of respondent's right to contest such factual allegations," thereby leaving Respondent liable for the entire proposed penalty.

27. As discussed above, Respondent failed to comply with the AO and never filed an Answer or response motion in this matter.

28. The requested civil penalty of $7,000 is not inconsistent with the SDWA and the record in this proceeding.

III. PENALTY DISCUSSION

Pursuant to 40 CFR § 22.27(b), 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 [SDWA]. The Presiding Officer shall consider any civil penalty guidelines issued under the [SDWA]." This determination may include (1) the seriousness of the violation, (2) the population at risk, and (3) other appropriate factors. 42 USC § 300g-3(b). In this case, the relief requested is a civil penalty in the amount of $7,000. Considering the above factors, the findings of facts and conclusions of law set forth above, and the entire record in this case, I make the following determinations regarding the proposed penalty.

1. Seriousness of the Violation

The seriousness of a violation will depend on the facts and circumstances in each specific case. Fluoride levels in drinking water that exceed the MCL can create potentially serious human health issues. 40 CFR Part 141, Subpart O, Appendix A makes that abundantly clear:

> Some people who drink water containing fluoride in excess of the MCL over many years could get bone disease, including pain and tenderness of the bones. Fluoride in drinking water at half the MCL or more may cause mottling of children's teeth, usually in children less than nine years old. Mottling, also known as dental fluorosis, may include brown staining and/or pitting of the teeth, and occurs only in developing teeth before they erupt from the gums.

Not only did Respondent regularly and knowingly expose approximately 61 residents to fluoride levels in excess of the MCL for a period that covered roughly 7 years, which is exactly what the SDWA and accompanying regulations seek to avoid in order to preserve human health, but Respondent also never informed the residents of the hazard in their drinking water. Exposure and not providing adequate drinking water was bad enough - but also not telling residents that they may want to reconsider drinking the water he provided (especially for the children who were at the most risk) when he knew of the violations and continued to provide the water shows a complete disregard for the health of the residents and is completely unacceptable, let alone a clear violation of the SDWA. Even if the residents wanted to make an informed decision, they had no ability to make one.

In addition, Respondent ignored the requirements set forth in the AO, undermining the SDWA regulatory program.

2. Population at Risk

Respondent's PWS served approximately 61 residents.

3. Other Appropriate Factors

Respondent has not made any good faith efforts to remedy the violations as it has knowingly violated the SDWA and the AO for a period covering approximately 7 years. This is evidenced by a complete failure to attempt to or actually resolve any of the issues that could threaten human health in this matter. Respondent has openly and knowingly disregarded the SDWA and the AO.

There is a clear lack of respect for the law, EPA, and the public by Respondent. Pursuant to 40 CFR § 22.17(c), the "relief proposed in the complaint...shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the [SDWA]." Complainant proposed to assess a total civil penalty of $7,000 for the violations set forth herein. After

carefully considering the statutory factors and the entire record in this case, I find the civil penalty proposed is consistent with the record in this matter and the SDWA.

IV. DEFAULT ORDER

Pursuant to 40 CFR § 22.17, Complainant's Motion is granted. Therefore, Respondent is hereby **ORDERED** to comply with all the terms herein, including as follows:

1. Respondent is assessed a civil penalty in the amount of $7,000.
    a. Payment of the full amount of the civil penalty assessed shall be made within thirty (30) days after this default order becomes final under 40 CFR § 22.27(c) by submitting a certified check or cashier's check payable to Treasurer, United States of America, and mailed to:

        Regional Hearing Clerk
        EPA – Region 6
        P.O. Box 360582M
        Pittsburgh, PA 15251

        A transmittal letter identifying the subject case and the EPA docket number, plus Respondent's name and address, shall accompany the check.

    b. Respondent shall mail a copy of the check to:

        Lorena S. Vaughn
        Regional Hearing Clerk (6RC)
        U.S. Environmental Protection Agency
        Region 6
        1445 Ross Avenue
        Dallas, TX 75202-2733

2. This Default Order constitutes an Initial Decision, as provided in 40 CFR § 22.17(c). This Initial Decision shall become a final order 45 days after its service upon the parties and without further proceedings unless (1) a party appeals the initial decision to the Environmental Appeals Board if done so within thirty (30) days from the date of service provided in the certificate of service accompanying this order, (2) a party moves to set aside the Default Order, or (3) the Environmental Appeals Board elects, *sua sponte*, to review the initial decision on its own initiative. 40 CFR §§ 22.27(c), 22.30(a).

SO ORDERED, this 21st day of August, 2015.

THOMAS RUCKI
REGIONAL JUDICIAL OFFICER

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of August, 2015, I served true and correct copies of the foregoing Initial Decision and Default Order on the following in the manner indicated below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. George W. Jackson
d/b/a Fort Jackson Mobile Estates
P.O. Box 53733
Lubbock, TX 79453-3733

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Assistant Administrator
Office of Enforcement and Compliance Assurance (2201A)
Ariel Rios Building
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Bryan Sinclair
Director, Enforcement Division
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

Linda Brookins
Director, Water Supply Division
Texas Commission on Environmental Quality
P.O. Box 13087
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COPY HAND DELIVERED

Efren Ordonez
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Lorena S. Vaughn
Regional Hearing Clerk