

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

FILED

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U.S. EPA REGION 8
HEARING CLERK

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IN THE MATTER OF))
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))
Leisure Valley, Inc.,) Docket No. SDWA-08-2024-0004
))
) **MEMORANDUM IN SUPPORT OF**
) **COMPLAINANT’S MOTION**
Respondent.) **FOR DEFAULT ON LIABILITY**
))
))
(Star Valley RV Park, WY5601471) _____

I. INTRODUCTION

This memorandum is in support of the Complainant’s Motion for Default on Liability in this proceeding.

As set out in more detail below, Respondent Leisure Valley, Inc. (Respondent) has failed to file an answer in this proceeding and therefore should be held liable for the violations alleged in the Complaint and Notice of Opportunity for Hearing (Complaint) filed on October 10, 2023. This motion seeks a ruling only on liability. The Complainant reserves all available rights to request an appropriate penalty at a later time.

II. BACKGROUND

Respondent owns and operates a public water supply system known as the Star Valley RV Park (the System) in Lincoln County, Wyoming. The System operates year-round, serving approximately 50 year-round residents and approximately 700 individuals who do not use the

System year-round. The System is a “public water system” and a “community water system” as those terms are defined in section 1401(4) of the Safe Drinking Water Act (the SDWA), 42 U.S.C. § 300f(4), and 40 C.F.R. § 141.2.

On November 14, 2018, the U.S. Environmental Protection Agency (EPA) issued an Administrative Order (Order) to Respondent (Attachment 1). The Docket Number for the Order was SDWA-08-2019-0004. The Order alleged that Respondent had violated various requirements of the National Primary Drinking Water Regulations (Drinking Water Regulations) at 40 C.F.R. part 141. The violations included:

- failing to monitor the System’s water for lead and copper contamination during the June 1 – September 30, 2017 monitoring period, in violation of 40 C.F.R. § 141.86(c) and (d);
- failing to prepare and deliver annual Consumer Confidence Reports (CCRs) to the System’s customers and to the EPA for the years 2013, 2014, and 2017, in violation of 40 C.F.R. §§ 141.151-141.155;
- failing to provide a certification to the EPA of having provided a CCR to the System’s customers covering the year 2016, in violation of 40 C.F.R. §§ 141.151-141.155; and
- failing to report violations of the Drinking Water Regulations to the EPA, in violation of 40 C.F.R. § 141.31(b).

The Order directed Respondent, among other things:

- to monitor the System's water for lead and copper between July 1, 2021 and September 30, 2021 and thereafter as required by 40 C.F.R. § 141.86(a)-(d);
- within 30 days of receiving the Order to prepare annual CCRs for the System covering the years 2013, 2014, and 2017 and distribute them to the System's customers, to certify to the EPA that these CCRs and the 2016 CCR had been distributed to the System's customers, and thereafter to prepare and distribute annual CCRs and provide certifications as required by 40 C.F.R. §§ 141.151-141.155; and
- in the event of any future failure to comply with any Drinking Water Regulation, to report to the EPA within 48 hours as required by 40 C.F.R. § 141.31(b) (or within any different time period specified by the Drinking Water Regulations).

On October 10, 2023, the EPA filed the Complaint, alleging that Respondent had violated the Order. The alleged violations included:

- failing to monitor the System's water for lead and copper contamination during the June 1, 2021 to September 30, 2021 and June 1, 2022 to September 30, 2022 time periods, in violation of paragraph 14 of the Order;
- failing to submit timely CCRs for 2017, 2018, and 2021 to the EPA, in violation of paragraph 15 of the Order;
- failing to provide the EPA timely certifications of having provided the CCRs for 2019, 2020, and 2021 to the System's customers, in violation of paragraph 15 of the Order; and

- failing to report the above-referenced monitoring and CCR violations to the EPA, in violation of paragraph 16 of the Order.

On October 20, 2023, the Complaint was served on Respondent's registered agent for service of process.¹ A copy of the proof of service was filed twice with the Regional Hearing Clerk. Initially, the proof of service was filed via email on November 1, 2023 (Attachment 2). On November 16, 2023, the proof of service was filed again. A copy of the transmittal letter was sent by certified mail return, return receipt requested to the registered agent for Respondent, who signed for it on November 24, 2023 (Attachment 3).

As of the date of filing of the Complainant's Motion for Default on Liability, Respondent had not filed an answer to the Complaint. See

<https://yosemite.epa.gov/oa/rhc/epaadmin.nsf/7b598669425eac47852575400050b7e2/76ecaeba68c5d28d85258a4400798b72!OpenDocument>, last visited December 28, 2023.

III. STANDARD FOR FINDING DEFAULT

A respondent may be found in default upon failing to file a timely answer to an administrative complaint. A respondent's default constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the complaint and a waiver of the 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. 40 C.F.R. § 22.17(b). When a Presiding Officer finds that a default has occurred, s/he shall issue a default

¹ At all relevant times, Respondent's registered agent for service of process has been Nancy J. Brown, 3510 Muddy String Rd, PO Box 299, Thayne, WY 83127. (See the Wyoming Secretary of State's website <https://wyobiz.wyo.gov/Business/FilingDetails.aspx?eFNum=085157212200036109127220121191055135059014237055>, last visited December 28, 2023.)

order against the defaulting party as to any or all parts of the proceeding unless the record shows good cause why a default order should not be issued. 40 C.F.R. § 22.17(c).

IV. **ARGUMENT**

A. **Respondent Failed to File an Answer**

According to 40 C.F.R. § 22.15(a), a respondent must file an answer to a complaint with the Regional Hearing Clerk within 30 days after service of the complaint.

As mentioned above, the Complaint was served on Respondent on October 20, 2023, but Respondent did not file an answer.

On November 29, 2023, the EPA wrote to Respondent, stating that the EPA had received no answer to the Complaint and was therefore entitled to file a motion for default. The letter stated, however, that the EPA would elect not to file a motion for default if Respondent were to file an answer by December 15, 2023 (Attachment 4).

To date, however, as noted above, Respondent has not filed an answer.

B. **Prima Facie Case of Liability**

A respondent's default constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the complaint and a waiver of that respondent's right to contest the complaint's factual allegations. 40 C.F.R. § 22.17(a); see also In the Matter of: Alvin Raber, Jr., and Water Enterprises Northwest, Inc., 2004 EPA RJO LEXIS 188 (July 22, 2004, RJO Alfred C. Smith).

To prove a *prima facie* case of liability in this matter, the Complainant must prove that Respondent is a person that owns and/or operates a public water supply system, that

Respondent was issued an administrative order under section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g), and that Respondent violated that order.

The facts alleged in the Complaint establish liability. By failing to answer the Complaint, Respondent has admitted all factual allegations in the Complaint, including but not limited to the following:

1. Respondent is a Nevada corporation (Complaint, par. 3).
2. Respondent owns and/or operates the System (Complaint, par. 6).
3. The System provides water for human consumption to the public through pipes or other constructed conveyances (Complaint, par. 7).
4. The System has at least 15 service connections used by year-round residents or regularly serves at least 25 individuals daily at least 60 days out of the year (Complaint, par. 9 and 10).
5. On November 16, 2018, citing section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g), the EPA issued the Order to Respondent. The Order alleged that Respondent had violated certain requirements of the Drinking Water Regulations (Complaint, par. 15).
6. Respondent received the Order on November 20, 2018 (Complaint, par. 16).
7. Respondent did not monitor the System's water for lead and copper contamination during the June 1, 2021 to September 30, 2021 and June 1, 2022 to September 30, 2022 time periods (Complaint, par. 20 and 24).
8. Respondent did not provide the EPA with a copy of the 2017 or 2018 CCR for the System until October 30, 2019 (Complaint, par. 29 and 31).
9. Respondent did not provide the EPA with a copy of the 2021 CCR for the System until October 18, 2022 (Complaint, par. 32).
10. Respondent did not provide the EPA with certifications of having delivered the 2019, 2020, and 2021 CCRs for the System (Complaint, par. 38-40).

11. Respondent did not report to the EPA within 48 hours of Respondent's failures to monitor for lead and copper in 2022, Respondent's failures to provide CCRs for 2018 and 2021 by the required deadlines, or Respondent's failures to certify having distributed the 2019, 2020, and 2021 CCRs to the System's customers (Complaint, par. 44-46).

Based on Respondent's factual admissions, the following *prima facie* case has been established: the System, which provides water to the public for human consumption through pipes or other constructed conveyances to at least 25 year-round residents (and with at least 15 service connections used by year-round residents) is a "public water system" and a "community water system" as those terms are defined in section 1401(4) of the SDWA, 42 U.S.C. § 300f(4); Respondent, being a corporation, is a "person" as that word is defined in section 1401(12) of the SDWA, 42 U.S.C. § 300f(12); Respondent owns and/or operates the System; due to the EPA's findings that Respondent violated the Drinking Water Regulations, each of which is an "applicable requirement" as defined in section 1414(i) of the SDWA, 42 U.S.C. § 300g-3(i), the EPA issued the Order to Respondent, pursuant to section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g); and Respondent has violated the Order.

Respondent's violations of the Order include failing to monitor the System's water for lead and copper contamination during the 2021 and 2022 monitoring periods (Complaint, par. 25); failing to provide the EPA with a copy of the 2017, 2018, and 2021 CCRs by December 20, 2018, July 1, 2019, and July 1, 2022, respectively (Complaint, par. 33); failing to submit certifications to the EPA of having distributed the 2019, 2020, and 2021 CCRs for the System to the System's customers (Complaint, par. 42); and failing to report these violations to the EPA within 48 hours (Complaint, par. 47).

V. CONCLUSION

Respondent has failed to an answer to the Complaint in this proceeding. For the reasons set forth above, the Complainant requests that the Presiding Officer find Respondent liable for the violations alleged in the Complaint. A proposed order is being filed with this memorandum.

Respectfully submitted,

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CERTIFICATE OF SERVICE

See the Certificate of Service for the Motion for Default on Liability.