UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF:	)	
	)	
Cheerful Cesspool Service	)	
	)	
18758 Surface Creek Road	)	
Cedaredge, CO 81413	)	**Docket No. CWA-08-2009-0017**
	)	
	)	
	)	
Respondent.	)	
	)	

INITIAL DECISION AND DEFAULT ORDER

This proceeding arises under the authority of section 309(g) of the Clean Water Act (CWA or the Act), 33 U.S.C. § 1319(g). 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. Complainant has moved for a Default Order finding Respondent, Cheerful Cesspool Service, liable for violation of section 308 of the CWA, 33 U.S.C. §1318. Complainant requests assessment of a civil penalty in the full amount of $6,200 as proposed in the Administrative Complaint and Notice of Opportunity for Hearing.

I. BACKGROUND

Cheerful Cesspool Service (Respondent) owns and operates a domestic septage pumping and disposal service in Cedaredge, Delta County, Colorado. On November 16, 2007, U.S Environmental Protection Agency (EPA or Complainant) initiated this matter by sending Respondent a request for information pursuant to section 308 of the Act, 33 U.S.C. §1318. The request sought information necessary to determine if Respondent was in compliance with Section 405 of the Act, 33 U.S.C. § 1345, and the regulations promulgated thereunder (40 C.F.R. part 503) relating to the disposal and use of sewage sludge. See, Motion for Default and Memorandum in Support (Memo in Support), Ex. 2. Respondent failed to reply after EPA followed up with numerous opportunities to confer in 2008. See, Memo in Support at 2, Ex. 4, 6 and 8.

On June 18, 2009, EPA filed an Administrative Complaint and Notice of Opportunity for Hearing (Complaint) against Respondent. In its Complaint, EPA alleged that Respondent violated Section 308 of the Act, 33 U.S.C. §1318, for failure to provide information in response to a request made by Complainant pursuant to Section 308 (a) of the Act, 33 U.S.C. 1318(a).

Complainant sent the Complaint to Respondent on June 18, 2009, however it is not clear the Complaint was properly served.[1] Memo in Support, Ex. 10. 40 C.F.R. § 22.5 states that the Complaint must be served upon the Respondent or a representative authorized to receive service on Respondent's behalf. Service can be made personally, by certified mail with return receipt requested, or by any reliable commercial delivery service that provides written verification of delivery. The term "representative" may be broadly construed to include a person who regularly receives and signs for certified mail on behalf of Respondent. *See In the Matter of Herman Roberts*, Docket No. OPA 99-512, 2000 EPA RJO LEXIS 211 (April 14, 2000)(held that a person who signs a certified mail receipt green card and picks up mail at a respondent's business post office box is authorized to receive service of process under the Rules of Practice). However, there must be some showing that the person signing for the delivery has some representative relationship to the Respondent. *In re C.W. Smith*, 2002 EPA ALJ Lexis 7 (Feb. 6, 2002). Based on all the information in the record before the court, Mr. Merl Reynolds is the authorized representative for Respondent. As of June 18, 2009, the Complaint was not properly served.

On August 6, 2009, Complainant made a telephone call to Respondent requesting a response to the 308 request and an answer to the Complaint. See, Memo in Support at 2. EPA then sent a letter, via Federal Express (FedEx), on August 7, 2009, enclosing a copy of the Complaint and reminding Respondent that its answer was overdue. See, Memo in Support at 3, Ex. 11. Respondent received the letter and enclosed Complaint on August 10, 2009. See, Memo in Support at 3, Ex. 11.[2] Therefore, on August 10, 2009, service of the Complaint, pursuant to 40 C.F.R. § 22.5, was valid.

The Complaint explicitly stated on pages 7 and 8 that:

> Failure to admit, deny, or explain any factual allegation contained in the Complaint constitutes an admission of the allegation. 40 C.F.R. §22.15(c).
>
> IF RESPONDENT FAILS TO REQUEST A HEARING, IT WILL WAIVE ITS RIGHT TO CONTEST ANY OF THE ALLEGATIONS SET FORTH IN THE COMPLAINT.
>
> IF RESPONDENT FAILS TO FILE A WRITTEN ANSWER WITHIN THE THIRTY (30) DAY LIMIT, A DEFAULT JUDGMENT MAY BE ENTERED PURSUANT TO C.F.R. § 22.17. THIS JUDGMENT MAY IMPOSE THE FULL PENALTY PROPOSED IN THE COMPLAINT.

Complaint, Ex. 1 at 7-8. Respondent was clearly on notice of the requirements to file an answer as early as August 10, 2009 if not before.

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[1] On June 18, 2009, Complainant sent the Complaint via FedEx. The document was delivered on June 19, 2009. However, the package was simply left on the doorstep.

[2] Exhibit 12 verifies that M. Reynolds signed for the Complaint. The verification from FedEx states that the document was signed for by "M. Reynolds," and the signature closely resembles the signature on the "answer" sent to EPA by Merl Reynolds on July 14, 2011. In addition, according to county records, Merl Reynolds owns the home located at the address used for delivery.

On September 17, 2009, Complainant sent a letter to Respondent with another reminder to file an answer. See, Memo in Support at 3, Ex. 13. The letter set forth the potential consequences of failing to file an answer. The letter further notified Respondent that Complainant would file a motion for default judgment if an answer was not filed by October 5, 2009. The letter provided contact information for Complainant, including a toll-free number. The letter was delivered on September 18, 2009. See, Memo in Support at 3, Ex. 14.[3]

On October 5, 2009, counsel for Complainant contacted Respondent by phone and explained again the consequences of not responding to the Complaint. See, Memo in Support at 3. Counsel for Complainant also stated EPA would provide an additional two weeks before it filed a motion for default judgment, and encouraged Respondent to both file an answer and provide a response to the November 2007 request within that time. *Id.* at 3.

On October 19, 2009, EPA received a partial response to the November 2007 request. See, Memo in Support at 3. On October 21, 2009, Respondent contacted counsel for Complainant to inquire what he needed to do to answer the Complaint and counsel provided basic guidance. *Id.* at 3. Respondent contacted Complainant's counsel again on October 28, 2009, asking the same questions. *Id.* at 3.[4]

On May 10, 2011, Complainant filed a Motion for Default Order and Memo in Support. On June 17, 2011, this court issued an Order to Supplement the Record. The Order required Complainant to clarify its relief with respect to the penalty and submit an affidavit or declaration addressing the factual basis for the penalty sought in the Motion for Default by July 15, 2011.[5] On July 14, 2011, Complainant filed its response to the Order to Supplement the Record.

On July 21, 2011, the Regional Hearing Clerk received a hand written note, dated July 14, 2011, from Merl C. Reynolds. The Hearing Clerk filed the document and placed it in the record. The letter stated, "[t]his notice is to answer your request for information about Cheerful Cesspool Service dumping and or paper work. I am denying this complaint as of this 14th of July 2011." On July 27, 2011, this court issued an Order to Respondent indicating that the above note was not filed in a timely and appropriate manner pursuant to the Consolidate Rules.[6] The Order also indicated that the court did not see good cause to set aside the Motion for Default Order and was intending to proceed with ruling on the Motion. However, the court was willing to give Respondent an additional six weeks to provide the original 308 information requested by EPA. There was no response from Respondent to the court's July 27, 2011 Order.

On September 26, 2011, Complainant filed a Status Report. The Status Report indicates that on August 3, 2011, in response to the court's July 27, 2011 Order, Complainant sent a letter to Respondent which included the original 308 request for information sent to Respondent in

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[3] The letter was delivered by FedEx and First Class mail on September 18, 2009, however, it was left on the door step. Service is not required for this document, but the record is not clear whether Respondent received the letter.

[4] Counsel for Complainant again provided instructions on preparing an answer and indicated the Respondent could simply write a letter to answer the Complaint.

[5] A green card indicates that M. Reynolds signed for the June 17, 2011 Order on June 24, 2011.

[6] A green card indicates that M. Reynolds signed for the July 27, 2011 Order on August 18, 2011.

November of 2007. The letter acknowledged Respondent's partial response on October 19, 2009, and asked that the remainder of the information requested in the 308 letter be provided to EPA by September 2, 2011. To date, EPA has not received any further response from Respondent regarding the 308 information request or the Orders issued by the court.

II. DEFAULT ORDER

This proceeding is governed by the Consolidated Rules of Practice, 40 C.F.R. Part 22 (Consolidated Rules). Section 22.17 of the Consolidated Rules provides in part:

> (a) *Default.* A party may be found to be in default: after motion, upon failure to file a timely answer to the complaint . . . . Default by respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the complaint and a waiver of respondent's right to contest such factual allegations. . .
>
> (b) *Motion for default.* A motion for default may seek resolution of all or part of the proceeding. Where the motion requests the assessment of a penalty or the imposition of other relief against a defaulting party, the movant must specify the penalty or other relief sought and state the legal and factual grounds for the relief requested.
>
> (c) *Default order.* When the Presiding Officer finds that a default has occurred, he shall issue a default 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. If the order resolves all outstanding issues and claims in the proceeding, it shall constitute the initial decision under these Consolidated Rules of Practice. The relief proposed in the complaint or in the 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.

It is appropriate at this juncture for this court to rule on the Default Motion.

III. FINDINGS OF FACT

Based upon the record in this proceeding and pursuant to 40 C.F.R. § 22.27, I make the following findings of fact:

1. Respondent, Cheerful Cesspool Service, is and was at all relevant times a Colorado company doing business in the State of Colorado.

2. Respondent owns and operates a domestic septage pumping and disposal service at 18758 Surface Creek Road in Cedaredge, Delta County, Colorado.

3. Respondent pumped domestic septage, as defined in 40 C.F.R. § 503.9(f), into tanks

attached to one or more trucks owned and/or operated by Respondent and disposed of the septage by land application.

4. On November 19, 2007, EPA sent to Respondent a request for information pursuant to section 308 of the Act, 33 U.S.C. § 1318, to determine compliance with section 405 of the Act. Respondent's response to the request was due within 45 days of its receipt by Respondent.

5. The request was sent via certified mail, return receipt requested. The return receipt card was signed on behalf of Respondent on November 26, 2007.

6. On March 14, 2008, EPA sent, by certified mail, a letter and opportunity to confer regarding the request to Respondent, pursuant to § 309(a)(4) of the Act, 33 U.S.C. § 1319(a)(4).

7. Respondent did not accept service of the opportunity to confer letter, and it was returned to EPA by the U.S. Postal Service on April 12, 2008.

8. On July 3, 2008, EPA sent a Notice of Opportunity to Confer and Order for Compliance with Information Request (notice and order), Docket No. CWA. 08-2008-0016, to Respondent via FedEx.

9. Naomi Reynolds signed for the notice and order on behalf of Respondent on July 8, 2008.

10. Respondent's response to the order was due within 60 days of its receipt by Respondent, allowing Respondent 60 days in which to confer with EPA regarding the information requested. Respondent did not respond to the notice and order within 60 days.

11. On November 14 and 17, 2008, EPA attempted to contact Respondent by telephone to discuss the request and notice and order. EPA left messages on both attempts and did not hear from Respondent.

12. On December 16, 2008, EPA sent a letter to Respondent via FedEx indicating that it planned to pursue an action for administrative penalties against Respondent for its non-compliance with the 308 information request unless Respondent provided a complete response to the request prior to January 9, 2009. EPA enclosed a copy of the request with the letter.

13. FedEx delivered the December 2008 letter to Respondent's place of business on December 17, 2008; however, the letter was left at the front door and not signed for by Respondent.

14. On June 18, 2009, Complainant filed the Complaint in this matter, alleging a violation of section 308 of the CWA, 33 U.S.C. § 1318, by failing to respond to the

information request and proposing that a penalty of $6,200.00 be assessed.

15. The Complaint was delivered via FedEx to Respondent on June 19, 2009; however, the Complaint was left at the front door.

16. On August 6, 2009, after Respondent had failed to timely file an answer, Complainant called Respondent's place of business. The person who answered the phone informed complainant that Merl Reynolds, the owner/operator of Cheerful Cesspool Service, was not available to answer the phone. Complainant asked the woman to remind Mr. Reynolds that both the response to the November 2007 request and an answer to EPA's Complaint in this matter were overdue and needed to be filed immediately. Complainant also gave the woman a phone number and directed her to tell Mr. Reynolds to call if he had any questions.

17. On August 7, 2009, EPA sent a letter via FedEx to Respondent enclosing a copy of the Complaint. The letter reminded Respondent that its answer was overdue. The letter was signed by M. Reynolds.

18. On September 17, 2009, Complainant sent a second letter reminding Respondent of the necessity to file an answer. This letter further notified Respondent that Complainant would file a motion for default judgment if an answer was not filed by October 5, 2009.

19. The September 17, 2009 letter was delivered on September 18, 2009 by FedEx, however, the letter was left at the front door and not signed for by Respondent.

20. On October 5, 2009, Complainant's counsel contacted Respondent by phone and explained the consequences of not responding to the Complaint. Counsel for Complainant further stated that it would wait two weeks to file a motion for default judgment and encouraged Respondent to both file an answer and provide a response to the November 2007 request within that time.

21. On October 19, 2009, EPA received Respondent's partial response to the November 2007 request.

22. On October 21, 2009, Mr. Reynolds contacted counsel for Complainant to inquire what he needed to do to answer the Complaint and counsel provided basic guidance.

23. Mr. Reynolds contacted Complainant's counsel on October 28, 2009, asking the same questions. Counsel for Complainant provided instructions on preparing an answer and indicated the he could simply write a letter to answer the Complaint.

24. On May 10, 2011, Complainant filed a Motion for Default Order and Memorandum in Support.

25. On June 17, 2011, this court ordered Complainant to Supplement the Record.

26. Pursuant to the June 17, 2011 Order, Complainant filed its supplement including the Declaration of Darcy O'Connor on July 14, 2011.

27. On July 21, 2011, Respondent filed a letter dated July 14, 2011 addressed to the Regional Hearing Clerk, indicating Respondent was denying the Complaint.

28. On July 27, 2011, this court issued an Order to Respondent indicating that the July 14, 2011 note was not filed in a timely and appropriate manner pursuant to the Consolidate Rules.

29. Neither of Respondent's letters dated October 19, 2009 and July 21, 2011 constitute an answer pursuant to 40 CFR § 22.15.

30. Respondent has provided no response to the Motion for Default or the July 27, 2011 Order.

IV. 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:

1. Respondent, Cheerful Cesspool Service is a corporation and therefore a "person" within the meaning of section 502(5) of the Act, 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.

2. Domestic septage constitutes "sewage sludge" as defined in 40 C.F.R. § 503.9 and "pollutants" as defined by section 502(6) of the Act, 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.

3. The truck(s) and other equipment used by Respondent to dispose of domestic septage each constitute a "point source" as defined by § 502(14) of the Act, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2.

4. As the owner and/or operator of equipment used to dispose of domestic septage, Respondent is the "owner or operator" of a point source as defined by, 33 U.S.C. §1345, and regulations promulgated thereunder and found at 40 C.F.R. Part 503.

5. Pursuant to section 308 of the Act, 33 U.S.C. § 1318, the Administrator of the EPA, is authorized to require the owner or operator of any point source to provide information necessary to determine, among other things, whether any person is in violation of any limitation, prohibition, or standard of performance, or to carry out section 405 of the Act, 33 U.S.C. § 1345.

6. By failing to respond in a timely manner to EPA's letter requesting information

pursuant to section 308(a) of the Act, 33 U.S.C. § 1318(a), Respondent violated section 308(a) of the Act, 33 U.S.C. § 1318(a).

7. Pursuant to 40 CFR § 22.15(a), neither letter was filed by the Respondent within 30 days of service of Complaint as required by 40 CFR § 22.15(a).

8. Pursuant to 40 C.F.R. § 22.5(b)(1), Complainant has demonstrated that it has complied with the service requirements.

9. Pursuant to 40 CFR § 22.15(b), a Respondent must "clearly and directly admit, deny, or explain each of the factual allegations contained in the complaint with regard to which respondent has any knowledge. Where respondent has no knowledge of a particular allegation and so states, the allegation is deemed denied." Neither of Respondent's letters clearly admits or denies each of the factual allegations contained in the complaint.

10. 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.

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

V. ASSESSMENT OF ADMINISTRATIVE PENALTY

Section 309(g) of the Act, 33 U.S.C. § 1319(g), authorizes the Administrator to bring a civil suit for any violation of section 308 of the Act, 33 U.S.C. § 1318. The Administrator may seek a class I civil penalty of up to $10,000 per violation with a maximum for all violations not to exceed $25,000. 33 U.S.C. § 1319(g)(2)(A). For violations that occur on or after March 15, 2004 the dollar amounts the Administrator may assess are $11,000 per violation with a maximum for all violations not to exceed $32,500. (See 40 C.F.R. Part 19).

The Consolidated Rules provide in pertinent part that:

> If the Presiding Officer determines that a violation has occurred and the complaint seeks a civil penalty, the Presiding Officer shall determine the amount of the recommended civil penalty based upon the evidence in the record and in accordance with any civil penalty criteria in the Act. The Presiding Officer shall consider any civil penalty guidelines issued under the Act. The Presiding Officer shall explain in detail in the initial decision how the penalty to be assessed corresponds to any penalty criteria set forth in the Act . . . . If the respondent has defaulted, the Presiding Officer shall not assess a penalty greater than that proposed by complainant in the complaint, the prehearing information exchange or the motion for default, whichever is less.

40 C.F.R. § 22.27(b).

Pursuant to 33 U.S.C. § 1319(g)(3), in determining the amount of any penalty assessed this court "shall take into account the nature, circumstances, extent and gravity of the violation, or violations, and, with respect to the violator, ability to pay, and prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require." 33 U.S.C. § 1319(g)(3). In both its Complaint and Motion for Default, Complainant requests a civil penalty in the amount of $6,200.00.

As noted above, Consolidated Rule § 22.17(b) provides that when a motion for default requests the assessment of a penalty, the movant must state the legal and factual grounds for the penalty requested. A conclusory allegation that the penalty was calculated in accordance with the statutory factors or penalty policy is insufficient. *See, Katzson Bros. Inc. v. U.S. EPA*, 839 F.2d 1396, 1400 (10th Cir. 1988). Submission of an affidavit by a person responsible for calculating the penalty, explaining how the category of harm/extent of deviation was arrived at and the underlying factual basis for the gravity-based and multi-day penalty components, is one way of establishing the factual basis for the proposed penalty.

On July 14, 2011, Complainant filed the Declaration of Darcy O'Connor, which sets forth the criteria considered by the Agency in calculating the proposed penalty. The Declaration states that EPA took into consideration the factors required by 33 U.S.C. § 1319(g)(3). See, Declaration of Darcy O'Connor (O'Connor Declaration), para. 5. Therefore, this court evaluates these statutory factors and reaches the following decision regarding the penalty:

Nature, Circumstances, Extent and Gravity of the Violation:

The regulatory scheme of the Clean Water Act relies heavily upon the EPA's ability to obtain the information necessary to determine compliance with the requirements of the Act. Section 308 is designed to give the Agency the authority necessary to obtain this information. See, *In re Rofor Plating Co., Inc.*, Docket No. CWA-2I-91-1112, 1993 EPA ALJ LEXIS. Failure to comply with information requests seriously undermines that portion of the regulatory scheme. See, *United States v. George Trucking Co.*, 823 F.2d 685, 689 (1st Cir. 1987). Furthermore, the Complainant sought information regarding Respondent's methods of septage disposal. Land application of septage can cause nutrient contamination of nearby surface and ground waters, and without a response from Respondent, EPA had no knowledge of whether and where Respondent land-applied septage and whether such contamination existed. As stated by Complainant, "Respondent's failure to timely provide the requested information completely undermined EPA's ability to fulfill its statutory mandate to ensure compliance with the CWA." See, O'Connor Declaration, para. 6.

Given the importance of information gathering to EPA's ability to enforce the Clean Water Act, and considering the potential risk that improper disposal of septage poses, I find that an assessment of a $3,000 penalty is appropriate for this statutory factor. Respondent's failure to timely provide the information requested in the November 19, 2007 request undermined the Agency's ability to assess compliance with the Act.

Ability to Pay:

The record contains no information regarding Respondent's financial ability to pay the penalty. Therefore, no adjustment is made to the penalty based upon this statutory factor.

Prior History of Violations:

The record shows that Respondent has failed to provide full and timely responses to Section 308 requests from 2001 to 2003. However, because EPA never filed a complaint regarding the violations for this time period, Complainant did not consider these past violations in assessing its requested penalty. No adjustment shall be made to the penalty based upon this statutory factor.

Degree of Culpability:

Respondent's complete disregard towards EPA's information gathering authority is evidenced by Mr. Reynolds failure to respond despite numerous contacts via FedEx, certified mail and telephone. See, O'Connor Declaration, para. 9. As outlined in the Background and Finding of Facts above, Complainant provided every opportunity for Respondent to respond to the 308 information request as did this court. This degree of noncompliance is difficult to ignore and highly culpable. See, *In Re Mario Loyola*, Docket No. CWA-02-2000-3604, 2005 EPA RJO LEXIS 337 (RJO Ferrara, Feb. 16, 2005).

Following its filing of the Complaint in this matter, Complainant made further attempts to contact Respondent. Complainant made at least two phone calls to Respondent notifying him of the necessity to file an answer to the Complaint. This was done despite the fact that the thirty (30) day deadline to file a response had since passed. Complainant sent letters to Respondent on August 7, 2009 and September 17, 2009 reminding Respondent of the necessity of filing an answer and setting forth the potential consequences of failing to do so. There were further attempts by Complainant to assist Respondent all to no avail. Respondent's "failure to reply to many formal and informal attempts by EPA to obtain a response to the Request for Information constitutes a high degree of culpability in violation section 308 of the CWA." See, *In Re Mario Loyola*, Docket No. CWA-02-2000-3604, 2005 EPA RJO LEXIS 337 (RJO Ferrara, Feb. 16, 2005) (ordering a civil penalty of $11,000 due to a high degree of culpability).

Based upon these facts and a demonstrated disregard for the statutory scheme of the Clean Water Act, I find an assessment of $3,073.00 to be an appropriate penalty for this statutory factor.

Economic Benefit:

Complainant described the economic benefit factor in its O'Connor Declaration. See, See, O'Connor Declaration, para. 10. The Agency calculated the economic benefit or savings resulting from the violation to be $127.00. The Agency estimated that it would require eight hours to gather the responsive information. An hourly wage of $15.85, the mean hourly wage for

Office and Administrative Support Occupations from the U.S. Bureau of Labor Statistics, May 2007 State Occupational Employment and Wage Estimates, was used to calculate the total of $127.00

I find that this calculation is reasonable and reflects the true amount avoided by Respondent through its violation. Therefore, I assess $127.00 towards the penalty for this statutory factor.

Other Matters as Justice May Require:

Complainant made no adjustments to the penalty for other matters as justice may require. Complainant is unaware of any such matters, and the record contains no facts that would require an adjustment to the penalty based on this statutory factor. Therefore, I make no adjustment to the penalty.

Total Penalty:

The factors listed above support a penalty of $6,200 for the failure to fully and timely respond to EPA's section 308 request for information.

DEFAULT ORDER

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." Based on the record, the Findings of Fact set forth above, the statutory factors, and the information in Complainant's declarations regarding economic benefit and economic impact on the violator, this court is awarding the full amount of the penalty proposed in the Complaint. I hereby find that Respondent is in default and liable for a total penalty of **$6,200.00**

IT IS THEREFORE ORDERED that Respondent, Cheerful Cesspool Service, 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 **$6,200.00** to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Financial Center
P.O. Box, 979077
St. Louis, MO 63197-9000

Contacts: Craig Steffan 513-487-2091
Eric Volck 513-487-2103

Or Respondent can make payment of the penalty as follows:

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
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 Respondent 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 own 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 15th Day of November, 2011.

Elyana R. Sutin
Presiding Officer

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **DEFAULT INITIAL DECISION AND ORDER** in the matter **CHEERFUL CESSPOOL SERVICE; DOCKET NO.: CWA-08-2009-0016** was filed with the Regional Hearing Clerk on November 15, 2011.

Further, the undersigned certifies that a true and correct copy of the documents were delivered to Wendy Silver, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested on November 15, to:

Respondent:

Merl Reynolds
Cheerful Cesspool Service
18758 Surface Creek Road
Cedaredge, CO 81413

And e-mailed to:

Elizabeth Whitsel
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

November 15, 2011

Tina Artemis
Paralegal/Regional Hearing Clerk