UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101

IN THE MATTER OF:	)	Docket No. 10-97-0090-CWA/G
	)	
LARRY RICHNER	)	Proceeding to Assess
NANCY SHEEPBOUWER	)	Class I Administrative
& RICHWAY FARMS,	)	Penalty Under Clean Water
Everson, Washington	)	Act Section 309(g)
	)	33 U.S.C. §1319
RESPONDENTS	)	
	)	

INITIAL DECISION ON PENALTY

This is a proceeding for the assessment of a Class I administrative penalty under subsection 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g). The proceeding is governed by the United States Environmental Protection Agency's (EPA) procedural rules at 40 C.F.R. Part 22, Subpart I, the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 64 Fed. Reg. 40138 (July 23, 1999). This Initial Decision on Penalty, issued as directed by the Environmental Appeals Board in its Decision and Remand Order dated July 22, 2002, is the Initial Decision under Section 22.27 of the Consolidated Rules.

I INTRODUCTION

This case originated with a National Pollutant Discharge Elimination System (NPDES) inspection conducted on March 13, 1997, by employees of the U.S. Environmental Protection Agency, Region 10, at the Rickway Farms dairy farm[1] located at 3909 Hoff Road, Everson, Washington.

As a result of the inspection, the Unit Manager of the NPDES Compliance Unit of the Office of Water, EPA Region 10 (the Complainant), filed an initial Administrative Complaint against

[1] The correct name of the dairy business operated at 3909 Hoff Road during 1995 - 1997 is Rickway Farms; the initial Administrative Complaint, the Amended Complaint, and other pleadings refer to that Respondent as Richway Farms.

Richway Farms on April 16, 1997, charging the Respondent with unauthorized discharge of pollutants into "navigable waters" in violation of Section 301(a) of the Clean Water Act, and proposing a civil penalty of $11,000.00.

Two commenters, the Lummi Nation, a federally recognized tribe of American Indians, and Puget Soundkeeper Alliance, an environmental organization, made written comments on the Administrative Complaint. The Lummi Nation also participated in the July 25, 2000, hearing.

On October 2, 1998, the Complainant moved for permission to amend the Administrative Complaint to name as additional respondents Larry Richner and Nancy Sheepbouwer. Over Mr. Richner's objection, Complainant was allowed to amend the Complaint. The Amended Complaint was served on Larry Richner approximately October 5, 1998, but was never successfully served on Nancy Sheepbouwer. Ms. Sheepbouwer did not participate in this proceeding.

A hearing was held on July 25, 2000, in Bellingham, Washington. Mr. Richner acted pro se throughout the proceeding, but received advice from a private attorney during the hearing.

The initial decision issued February 15, 2001, in this matter found Respondents Larry Richner and Richway farms not liable for the alleged violations and dismissed the proceeding as to Respondent Nancy Sheepbouwer for lack of prosecution. The decision finding Mr. Richner not liable was appealed by the Complainant to the Environmental Appeals Board.[2] In its Decision and Remand Order dated July 22, 2002, the Board found Respondent Larry Richner liable under Clean Water Act Section 301(a) and remanding this matter to the undersigned Presiding Officer for further proceedings to determine an appropriate penalty. In re Larry Richner/Nancy Sheepbouwer & Richway Farms, CWA Appeal No. 01-01, (EAB, July 22, 2002), 10 E.A.D. ____.

In accordance with procedural orders issued by the Presiding Officer, the Complainant filed Complainant's Motion for Assessment of Penalty and Complainant's Memorandum in Support of Motion for Assessment of Penalty on February 3, 2003. Mr. Richner filed Respondent's Memorandum Re: Assesment of Penalty on March 13, 2003. Complainant filed Complainant's Reply to

[2]The Complainant did not appeal the Initial Decision with respect to Respondents Richway Farms or Nancy Sheepbouwer. See the Board's Decision and Remand Order dated July 22, 2002 at footnote 3.

Respondent's Memorandum Regarding Assessment of Penalty on March 28, 2003. In addition to the motion and memoranda listed above, all of the proposed findings, conclusions, and supporting arguments of the parties and commenters previously filed in this matter have been considered in determining an appropriate penalty.

Upon consideration of the entire administrative record in this matter, for the reasons set forth below, I find Respondent Larry Richner liable for a civil administrative penalty in the amount of $5500.00.

II STATUTE AND REGULATIONS

Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), provides, with certain exceptions not relevant here, that the discharge of any pollutant by any person shall be unlawful. Section 502(12) of the Act, 33 U.S.C. § 1362(12), defines "discharge of a pollutant" as ". . . any addition of any pollutant to navigable waters from any point source." Section 502(6) of the Act, 33 U.S.C.§ 1362(6), defines "pollutant" to include "... agricultural wastes discharged into water."

Section 309(g)(2)(A) of the Clean Water Act, 33 U.S.C. § 1319(g)(2)(A), provides that any person who violates Section 301(a) of the Act shall be subject to a Class I civil penalty of up to $10,000 per violation, except that the maximum amount of any such civil penalty shall not exceed $25,000. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. Section 3701, and implementing regulations at 40 C.F.R. Section 19.4, the statutory maximum penalty for a violation occurring after January 30, 1997, has been increased from $10,000.00 per violation to $11,000.00.

A penalty assessed under Section 309(g) shall take into account:

> the nature, circumstances, extent and gravity of the violation, or violations, and with respect to the violator, ability to pay, any 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. Section 1319(g)(3).

Section 22.27(b) of the Considated Rules, 40 C.F.R. 22.27(b), states that

> . . . 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 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 Presiding Officer decides to assess a penalty different in amount from the penalty proposed by the complainant, the Presiding Officer shall set forth in the initial decision the specific reasons for the increase or decrease . . . .

Because EPA has not issued penalty guidelines specific to the Clean Water Act, the penalty in this case must be calculated based upon the evidence in the record and the penalty criteria quoted above from Section 309(g) of the Act. See In re Pepperell Assoc. CWA Appeal Nos. 99-1 and 99-2, slip op. at 36 n.22 (EAB, May 10, 2000), 9 E.A.D. 83, aff'd Pepperell Assoc. v. EPA, 246 F.3d 15 (1st Cir. 2001).

However, in determining a penalty under a specific statute, the Agency may also rely for guidance on general EPA penalty policies: Policy on Civil Penalties (EPA General Enforcement Policy #GM-21) (Feb. 16, 1984) and A Framework for Statute-Specific Approaches to Penalty Assessments:Implementing EPA's Policy on Civil Penalties (EPA General Enforcement Policy #GM-22) (Feb. 16, 1984). The Complainant cited to the latter policy in its Memorandum in Support of Motion for Assessment of Penalty. Under these general penalty policies, the "nature, circumstances, extent and gravity" of the violation are considered first in determining the base amount of the penalty. The remaining statutory factors are then considered as "adjustment factors" to increase or decrease the penalty. That methodology has been followed in determining the penalty in this matter.

III DISCUSSION

Complainant argues for a penalty of $11,000.00, the maximum penalty authorized by statute for a single Class I violation. Respondent's and Complainant's arguments with respect to penalty are discussed below.

A. Mandatory versus discretionary penalty Respondent argues preliminarily that certain court decisions suggest civil penalties for violations of Section 309 of the Clean Water Act may be discretionary rather than mandatory. However, I conclude,

as discussed in more detail below, that a civil penalty in some amount is appropriate on the facts of this case. It is therefore unnecessary to address Respondent's argument that Clean Water Act civil penalties may be discretionary.

B. Nature, circumstances, extent and gravity of the violation This case involves a single violation which was observed by EPA inspectors on March 13, 1997, at the dairy farm located at 3909 Hoff Road, Everson, Washington. The dairy includes a milking parlor and a fenced confinement area with a concrete floor. The milking parlor is plumbed to a manure catch basin. Manure in the confinement area is scraped to the catch basin by means of a tractor. Some time prior to the March 13, 1997, EPA inspection, the manure catch basin on the property overflowed into the pastures lying generally south of the farm buildings. At the time of the inspection, water from one of the unnamed seasonal creeks on the property was flowing through a portion of the manure which had overflowed from the catch basin. Thus, at the time of the inspection, a mixture of soil, mud, and manure from the dairy operation was contaminating the unnamed creek flowing across the southern portion of the property. See Complainant's Exh. 1, and the photographs taken during the inspection, Complainant's Exh. 2. The farm property drains generally south toward Smith Creek, which drains into the Nooksack River. A railroad embankment lies along the south edge of the property, separating it from Smith Creek. A culvert under the railroad embankment is the only passageway by which the unnamed creeks on the property could flow into Smith Creek.[3] At the time of the inspection, the culvert was blocked, but approximately two weeks later a railroad crew cleared the culvert, with the result that water from the unnamed creeks on the property could flow to Smith Creek and then to the Nooksack River.

The Respondent argues that there has been no showing of any environmental harm to Smith Creek or the Nooksack River from the violation, and that Washington State Department of Fisheries surveys have not found salmon in the unnamed creeks on the farm side of the railroad embankment. Respondent's Memorandum at p.5. Respondent also argues that tests of water wells in the area conducted in 1997 by the Washington State Department of Ecology found no fecal coliform contamination, although some nitrate contamination was found. Accordingly, the Respondent argues that no connection has been shown between the violation observed by

[3]An undetermined amount of water from the creeks probably reaches Smith Creek by percolating underground.

the EPA inspectors and any harm to the environment or to the public. Respondent's Memorandum at pp.5-6.

In response, the Complainant argues correctly that actual environmental harm need not be established in order to warrant a substantial civil penalty: threat of harm is sufficient. United States v. Smithfield Foods, Inc., 972 F.Supp. 338, 344 (E.D. Va 1997). The record in the present case demonstrates that dairy wastes can cause poor water quality, including in particular high temperatures and reduced oxygen levels, that can be harmful to spawning salmon as well as to fry and juvenile salmon. See the testimony of Michael McKay, a senior biologist employed by the Lummi Nation. Transcript, pp. 53-68. Smith Creek and the Nooksack River are used for spawning by several species of salmon, including two stocks of threatened Chinook Salmon. See testimony of Michael McKay, transcript, pp. 53-68. The record thus demonstrates sufficient threat of environmental harm to warrant a substantial civil penalty.

Similarly, the Complainant argues that it is not necessary to establish that a violation caused actual harm to human health in order to warrant a substantial civil penalty; threat of harm is sufficient. In the present case, water samples collected from the creeks on the farm property during the inspection contained fecal coliform bacteria in concentrations of up to 50,000 MPN/100ml. Complainant's Exhibit 2. Fecal coliform bacteria are an indicator of the presence of harmful microorganisms such as E.coli, cryptosporidium parvum, salmonella, and Giardia lamblia; E.coli can survive in surface waters for up to 76 days, while cryptosporidium parvum can survive in surface waters up to six months. See the testimony of Dr. Stephanie Harris, a Public Health Service veterinary officer assigned to EPA. Transcript, pp. 89-94. The record thus demonstrates sufficient threat of harm to human health to warrant a substantial civil penalty.

Although the Respondent argues that no fecal coliform contamination was found in local water wells, the presence of nitrates in the wells is a possible indicator of contamination from dairy wastes, and consequently indicates a potential for harm to human health. Also, since the culvert connecting the creeks on the farm property to Smith Creek and the Nooksack River was opened by a railroad crew approximately two weeks after the EPA inspection, contaminated water from the property had the potential to flow to Smith Creek and the Nooksack River at that

time, possibly carrying pathogens commonly found in dairy waste.[4]

However, while the violation clearly has the potential for harm to the environment and to human health, it is noted that the Complainant is seeking the maximum penalty allowable in a Class I proceeding. On the facts of this case, such a relatively high penalty does not appear justified.

In a factually similar case, In re Robert Wallin dba Bob Wallin Dairy, EPA Docket No. 10-98-0069-CWA/G (RJO Smith, May 9, 2000), the presiding officer imposed a gravity-based penalty of $5500.00, rather than the $11,000.00 sought by the Complainant, where he found that the Complainant had

> failed to show that the discharge posed a potential risk of harm to the White River, which would warrant imposition of the maximum statutory penalty for a single discharge.

In re Robert Wallin dba Bob Wallin Dairy, supra, p.11. In that case, very high levels of fecal coliform bacteria were found in samples taken in pastures on the dairy property,[5] but the inspectors did not sample near the point one and one-half miles away at which the creek on the property flowed into the White River.

The presiding officer's gravity penalty determination was upheld on appeal to the Environmental Appeals Board,[6] which stated

> . . . because of its limited sampling information, we conclude that the Region has not presented sufficient evidence to support its argument that the penalty should be increased because waste that entered the

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[4]Dr. Harris did not testify whether, in the specific physical setting of the Richner property, pathogens from the manure observed by the EPA inspectors on March 13, 1997, would be likely to flow off the property to Smith Creek at the time the culvert was opened. Transcript, pp. 91-2, 94.

[5]Three samples showed concentrations of 16,000,000, 3,000,000, and 900,000 fecal colonies per 100 milliliters, significantly higher than in the samples taken at the Rickway Farms dairy.

[6]The presiding officer reduced the penalty to $3000.00 based on ability to pay. The Environmental Appeals Board reversed that portion of the decision. In re Robert Wallin, CWA Appeal No. 00-3, slip op. at pp. 22-27 (EAB, May 30, 2001), 10 E.A.D. _____.

> White River presented a significant risk to the environment and human health. Accordingly, we decline to increase the penalty on this basis.

In re Robert Wallin, CWA Appeal No. 00-3, slip op. at p. 22 (EAB, May 30, 2001), 10 E.A.D. ____. As in the Robert Wallin case, the record here does not contain evidence of a significant risk to Smith Creek or the Nooksack River that is sufficient to justify a penalty in the amount of $11,000.00.

I therefore find that a base penalty of $5500.00 is appropriate, based on the nature, circumstances, extent and gravity of the violation.

C. Violator's ability to pay The Environmental Appeals Board has held that the complainant has the "ultimate burden of proof that a penalty it seeks to impose is appropriate," and that the complainant can discharge that burden initially by showing that it considered the Respondent's ability to pay, among all the penalty factors. In re New Waterbury Ltd., 5 E.A.D. 529, 541 (EAB 1994), cited in In re Robert Wallin, CWA Appeal No. 00-03, slip op. at pp. 23, 24 (EAB, May 20, 2001), 10 E.A.D. _____. Once the complainant satisfies its initial burden of production, the burden then shifts to the respondent to establish with specific information that it cannot pay a penalty; only when the respondent discharges this burden does the burden again shift back to the complainant to rebut the respondent's contentions. In re Wallin, supra, p. 25.

The Complainant's Memorandum in Support of Motion for Assessment of Penalty demonstrates that the Complainant has met its initial burden with respect to the statutory factor of ability to pay, in that the Complainant has considered that factor in determining the amount of penalty it would seek from Mr. Richner in this proceeding.

At the time of hearing, Mr. Richner had sufficient assets to pay the proposed penalty. He testified that in addition to owning the dairy farm which is the subject of this enforcement action, he owned a heifer raising operation in Twisp, Washington, and 13 acres adjacent to another dairy in Everson owned by his son-in-law. Transcript pp. 148-150. He also stated that he was not arguing that the penalty should be reduced by reason of inability to pay, and that he would pay a penalty, if assessed, by borrowing funds.

At the time of hearing, Mr. Richner had not provided tax returns or other comprehensive financial information which could

be used to determine whether the proposed penalty should be reduced based on his ability to pay. At hearing he confirmed that he had been offered the opportunity to submit tax returns and financial information, but had declined to submit that information.

The Respondent now argues that his sole income for the last two years has been from Social Security in the amount of about $700.00 per month; that it has been two years since he has raised heifers in Twisp, Washington; and that he is unable to work due to rheumatoid arthritis and diabetes.[7]

Assuming these assertions to be true,[8] they are not sufficient to support a reduction in penalty. Without Mr. Richner's recent tax returns or similar comprehensive financial information, it is impossible to say that he is unable to pay a civil penalty in the amount proposed. While his statement at hearing that he would borrow the funds necessary to pay a penalty suggests that he did not then have sufficient cash available, he had financial assets such as the property in Twisp, Washington, the property on which Richway Farms was operated, and thirteen acres of additional farm land in Everson, Washington.

Thus, even if Mr. Richner's current income totals only $700 per month, he has not established that he is unable to pay a penalty by selling or borrowing against his financial assets. With respect to the assets mentioned at hearing, Mr. Richner has provided no current information about whether he still owns the property in Twisp, Washington, other than to state that he no longer raises heifers there. Mr. Richner states that he still owns eight of the thirteen acres of pasture in Everson, Washington, but does not state whether he still owns the Rickway Farms property in Everson. Because he has not provided comprehensive evidence of his financial situation, the Respondent has failed to meet his burden to come forward with specific information concerning his ability to pay a civil penalty. Vague statements of financial hardship do not satisfy a respondent's burden to show through specific facts that it is unable to pay a proposed penalty amount. In re Robert Wallin, CWA Appeal No. 00-03, slip op. at p.26 (EAB, May 20, 2001), 10 E.A.D. ____. An offer of piecemeal financial information is not sufficient to

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[7]Mr. Richner was semi-retired at the time of the hearing; he had a heart attack in 1994, a knee replacement operation, and suffered from diabetes. Transcript, pp. 137-138.

[8]The record does not contain any post-hearing evidence concerning Mr. Richner's present financial situation.

meet that burden. Nor is it sufficient grounds upon which to reopen the hearing to take additional evidence on the issue of ability to pay. 5 C.F.R. 22.28.

Consequently, I make no adjustment to the penalty for the statutory factor of ability to pay.

D. Violator's prior history of violations The Complainant does not argue any prior history of violations of the Clean Water Act.

E. Degree of culpability The Respondent argues that the violation occurred through no fault of Mr. Richner, because a February 8, 1997, gas pipeline explosion on property adjacent to the Rickway Farms property caused a February 20, 1997, mud slide which resulted in the filling of a catch basin and the diversion of a creek through the cattle barn and the catch basin. The Respondent argues that

> Mr. Richner and his children attempted to direct the streams back to their original course with the use of a tractor. This occurred before March 13, 1997 but was unsuccessful. [citing Hearing Transcript, p. 102]

Respondent's Memorandum, p.4.

As noted by the Complainant, the Clean Water Act is a strict liability statute. See cased cited in the February 15, 2001 Initial Decision at Section IV C. Thus, under the Clean Water Act, it may be appropriate to impose a penalty for violations even when caused by circumstances outside the operator's control. On the facts of this case, I find that Mr. Richner has a sufficient degree of culpability for the violation that a penalty should be imposed.

As noted in the original Initial Decision at footnote 10, the landslides described by Mr. Richner might be relevant to mitigation of the penalty, assuming he could show appropriate diligence in addressing the pollution caused by the slides.

However, as the Respondent acknowledges, initial efforts to remedy the violation were not successful. Respondent's Memorandum. P. 4, citing Transcript at p. 102. Since the discharge caused by the landslides was not cleaned up diligently during the approximately two weeks from the date of the overflow

to the date of the EPA inspection,[9] I find that no reduction in penalty is warranted by this factor.

Although the Respondent argues that since the inspection a catch basin, dikes, and bioswales have been built on the property in a successful effort to prevent further violations, these efforts do not appear to be so extraordinary as to warrant a reduction in penalty. Commendable as they are, they essentially address the dairy operator's continuing obligation to abide by the Clean Water Act.

I therefore make no adjustment to the penalty for the statutory factor of culpability.

F. Economic benefit or savings resulting from the violation The Complainant does not argue that the violation resulted in economic benefit to Mr. Richner.

G. Other matters as justice may require The Respondent argues that the Burlington Northern Santa Fe railroad tracks form an artificial barrier that runs the entire length of the farm on the south side, that the thirty inch culvert under the tracks has been continuously plugged for the thirty-three years that Mr. Richner has lived on the farm,[10] and that the Environmental Appeals Board's decision on appeal turned on whether or not the connecting culvert was plugged. Respondent's Memorandum, p. 8. Since Mr. Richner believes the railroad cleared the culvert shortly after the 1997 inspection and again in February, 2000, at the specific request of EPA, he argues

> Under the circumstances, it seems unjust and unfair . . . to be held strictly liable for a CWA violation when the intervention of the Environmental Protection Agency caused it to occur.

Respondent's Memorandum, p. 8.

However, the Respondent misunderstands the basis for the EAB's decision. That decision found that the blockage of the culvert under the railroad embankment was not sufficiently permanent to make the creeks on the north side of the embankment

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[9] Mr. Richner did not testify specifically as to when or how the manure observed by the EPA inspectors was actually cleaned up.

[10] In his Response to the Administrative Complaint dated June 16, 1997, Mr. Richner had stated "[t]his culvert has been plugged since October of 1994."

lose their status as "waters of the United States." The Board stated

> On balance, we conclude that the waters on the farm-side of the embankment did not lose their character as waters of the United States merely because the obstructed culvert may have blocked the flow of water to the other side for a period of time." Decision and Remand Order at p. 21.

In reaching this conclusion, the Board relied not only on the 1997 clearing of the culvert, but also on testimony that the blockage occurred "intermittently in the ordinary course of events, much the same as an intermittent stream fluctuates between wet and dry in the course of arid-land weather patterns" and that the railroad had a "policy of clearing obstructed culverts on a routine basis, although in this specific instance there may have been a breakdown in the implementation of the policy." Decision and Remand Order at p. 21. In addition, the Board relied on "the fact that the waters on each side of the embankment are immediately adjacent to each other, only separated by the width of the embankment" and that the proximity of the creeks "indicates the likelihood of a hydrological connection between the waters on the farm and navigable waters. Decision and Remand Order at pp.21-22.

Thus, the Board's decision did not turn on the 1997 and 2000 actions to clear the culverts alone, but also on the other factors explained above. In essence, the Board's decision found that the contamination by manure of the creeks on the Rickway Farms property itself constituted a violation of the Clean Water Act. Whether or not the culvert under the railroad embankment was open at a particular time was not the primary, or only, factor relied on by the Board in reaching that determination. Accordingly, on the facts of this case, any role that EPA employees may have had in the railroad's clearing of the culvert in 1997 and 2000 would not serve as a basis for a reduction in penalty.

The Respondent requests that the Presiding Officer "supplement the record by taking testimony from Mr. Richner regarding the Environmental Protection Agency's coaxing of the Burlington Northern Santa Fe railroad to unplug the culvert." Respondent's Memorandum, p.9.[11] Respondent's request appears to

[11] Apparently Mr. Richner is offering to testify as to what employees of the railroad said to him when they came to clear the culvert. See Respondent's Memorandum, p. 8.

be a motion to reopen the hearing. Section 22.28 of the Consolidated Rules provides that a motion to reopen the hearing shall, among other requirements, show that such evidence is not cumulative, and show good cause why such evidence was not adduced at hearing. Mr. Richner testified in detail at the hearing concerning the unplugging of the culvert. See, e.g., Transcript at pp. 103-104. No showing of good cause has been made why Mr. Richner did not provide more ample testimony on this issue at the hearing. The Respondent's motion to reopen the hearing will therefore be denied.

I therefore make no adjustment to the penalty for the statutory factor of other matters as justice may require.

ACCORDINGLY, IT IS ORDERED that

(1) Respondent Larry Richner having been found liable for violating Section 301(a) of the Clean Water Act by decision of the Environmental Appeals Board dated July 22, 2002, a civil administrative penalty of $5500.00 is hereby assessed against Respondent Larry Richner.

(2) The Respondent's motion to reopen the hearing is denied.

(3) No later than 30 days after the date that this Initial Order becomes final, Respondent shall submit a cashier's check or certified check, payable to the order of "Treasurer, United States of America," in the amount of $5,500.00 to the following address:

Mellon Bank
EPA Region 10
P.O. Box 360903M
Pittsburgh, Pennsylvania 15251

Respondent shall note on the check the title and docket number of this administrative action.

(4) Respondent shall serve a photocopy of the check on the Regional Hearing Clerk at the following address:

Regional Hearing Clerk
EPA Region 10
1200 Sixth Avenue, Mail Stop ORC-158
Seattle, Washington 98101

(5) Should Respondent fail to pay the penalty specified above in full by its due date, Respondent shall also be responsible for

payment of the following amounts:

A. Interest. Any unpaid portion of the assessed penalty shall bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the date this Default Order becomes final, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 60 days after this Order becomes final.

B. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1) and Chapter 9 of EPA Resources Management Directive 2540, a monthly handling charge of $15 shall be assessed if any portion of the assessed penalty is more than 30 days past due.

C. Penalty Charge. Pursuant to 31 U.S.C. § 3717 (e)(2), Respondents shall be assessed a penalty charge of not more than 6 percent per year for failure to pay a portion of the penalty more than 90 days past its due date.

(6) In the event of failure by Respondent 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.

(7) Pursuant to the Consolidated Rules, 40 C.F.R. § 22.27(c), this initial decision will become the final order of the Environmental Appeals Board within forty-five (45) days after its service upon the parties 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; or (3) the Environmental Appeals Board elects to review this initial decision on its own initiative.

(8) Under the Consolidated Rules, 40 C.F.R. § 22.30, any party may appeal this initial decision by filing an original and one copy of a notice of appeal and an accompanying appellate brief with the Environmental Appeals Board within thirty days after this initial decision is served.

SO ORDERED This 8th Day of May 2003.

/s/_____
Steven W. Anderson
Regional Judicial Officer