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

BEFORE THE REGIONAL ADMINISTRATOR

In the matter of:)
PUMP 8 DOMESTIC WATER) Docket No. 10-97-0129-SDWA
ASSOCIATION and TODD HURLBURT,)
Respondents.)

INITIAL DECISION AND DEFAULT ORDER

I. INTRODUCTION

By Motion for Default Order dated August 18, 1997, Complainant, the Manager of the Drinking Water Unit of the Environmental Protection Agency's Region 10 Office, moved for an Order assessing a civil penalty in the amount of five thousand one dollars (\$5001.00) against Respondents, Pump 8 Domestic Water Association and Todd Hurlburt.

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties ("Consolidated Rules of Practice") at 40 C.F.R. Part 22 and based on the record in this matter and the following findings of fact, conclusions of law, and determination of civil penalty, Complainant's Motion for Default Order is hereby GRANTED. Respondents are declared by this Default Order to have committed the violations alleged in the Complaint. For these violations, Respondents are assessed a civil penalty of \$5,001.00.

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2 II. FINDINGS OF FACT SHOWING THE GROUNDS FOR THE ORDER

3 Pursuant to 40 C.F.R. § 22.17(c) and based upon the entire
4 record, in this matter, I make the following findings of fact:

5 2.1. On September 19, 1996, EPA issued the respondents in this
6 case, Todd Hurlburt and the Pump 8 Water Association (hereinafter
7 collectively referred to as "Respondents"), an administrative
8 compliance order pursuant to Section 1414(g)(1) of the Safe Drinking
9 Water Act, 42 U.S.C. Section 300g-3(g)(1). The administrative
10 compliance order was issued in response to the failure of Respondents
11 to conduct various sampling and survey activities required under the
12 National Primary Drinking Water Regulations, 40 C.F.R. Part 141.

13 2.2. Respondents received a copy of this administrative
14 compliance order by certified mail on September 21, 1996.

15 2.3. On July 8, 1997, Complainant issued an Administrative
16 Complaint for Penalties and Notice of Opportunity for Hearing
17 (hereinafter referred to as "Complaint") based on Respondents' failure
18 to comply with the requirements of the administrative compliance
19 order.

20 2.4. Respondents received a copy of the Complaint by certified
21 mail on July 22, 1997.

22 2.5. More than 20 days has elapsed since service of the
23 Complaint on Respondents, and Respondents have failed to file an
24 Answer to the Complaint with the Regional Hearing Clerk.

25 2.6 On August 18, 1997 Complainant filed a Motion for Default
26 Order. The Motion was served on Respondents by regular mail on August
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1 18, 1997. Respondents had twenty days from the date of service to
2 reply, plus five additional days because the Motion was served by
3 mail. As of the date of this Initial Decision and Default Order,
4 Respondents have failed to reply to the Motion.

5 III. CONCLUSIONS REGARDING MATERIAL ISSUES OF LAW OR DISCRETION

6 Pursuant to 40 C.F.R. § 22.17(c) and based upon the entire record
7 in this matter, I conclude as follows:

8 3.1. Procedure for this case is governed by EPA's Consolidated
9 Rules of Practice, 40 C.F.R. Part 22. Section 22.17(a) of the
10 Consolidated Rules of Practice, applying to motions for default,
11 provides in pertinent part:

12
13 (a) Default. A party may be found to be in default
14 ... after motion, upon failure to file a timely answer to
15 the complaint.... Any motion for a default order shall
16 include a proposed default order and shall be served upon
17 all parties. The alleged defaulting party shall have
18 twenty (20) days from service to reply to the motion.
19 Default by respondent constitutes, for purposes of the
20 pending action only, an admission of all facts alleged in
the complaint and a waiver of respondent's right to a
hearing on such factual allegations. If the complaint is
for the assessment of a civil penalty, the penalty proposed
in the complaint shall become due and payable by respondent
without further proceedings sixty (60) days after a final
order issued upon default....

21 (b) Procedures upon default. When [the] Regional
22 Administrator or Presiding Officer finds a default has
23 occurred, he shall issue a default order against the
defaulting party. This order shall constitute the initial
decision, and shall be filed with the Regional Hearing
Clerk.

24 The authority of the Regional Administrator under the Consolidated
25 Rules of Practice has been delegated to the undersigned Regional
26 Judicial Officer pursuant to 40 C.F.R. Section 22.04(b).

1 3.2. The Complaint in this action was lawfully and properly
2 served upon Respondents in accordance with Section 22.05(b)(1) of the
3 Consolidated Rules of Practice, 40 C.F.R. § 22.05(b)(1).

4 3.3. Pursuant to 40 C.F.R. § 22.15(a), Respondents were required
5 to file an Answer to the Complaint within twenty (20) days of the
6 service of the Complaint.

7 3.4. Respondents have failed to file a timely Answer to the July
8 8, 1997 Complaint, or to make a timely response to the Complainant's
9 Motion for Default Order.

10 3.5. Complainant has moved for this Default Order in the manner
11 prescribed by Section 22.17(a) of the Consolidated Rules of Practice,
12 40 C.F.R. § 22.17(a).

13 3.6. Respondents are therefore in default pursuant to Section
14 22.17(a) of the Consolidated Rules of Practice, 40 C.F.R. § 22.17(a).

15 3.7. In accordance with 40 C.F.R. § 22.17(a), Respondents'
16 default constitutes an admission by Respondents of all the facts
17 alleged in the Complaint, which facts are incorporated herein by
18 reference, and a waiver of Respondents' right to a hearing regarding
19 these factual allegations. Respondents are thus held to have
20 committed the violations alleged in the Complaint. Respondents'
21 default is grounds for the entry of a Default Order against Respon-
22 dents assessing a civil penalty for the violations described in the
23 Complaint.

24 **IV. DETERMINATION OF CIVIL PENALTY AMOUNT**

25 4.1. Under the Consolidated Rules of Practice, the amount of the
26 proposed civil penalty "shall be determined in accordance with any
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1 criteria set forth in the Act relating to the proper amount of a civil
2 penalty and with any civil penalty guidelines issued under the Act."
3 40 C.F.R. Section 22.14(c). Section 1414(g) of the Safe Drinking
4 Water Act does not contain penalty criteria, and EPA has not
5 promulgated civil penalty guidelines for cases under Section 1414.
6 (An EPA guideline dated May 25, 1994 is applicable only to settlement
7 of cases under Section 1414.)

8 4.2. The penalty of \$5,001.00 proposed in the Complaint was
9 calculated in consideration of the following factors: the economic
10 benefit to Respondents in failing to comply with the Safe Drinking
11 Water Act; the gravity of this violation; the service population of
12 this System; the duration of violation; Respondents' history of non-
13 compliance; and other considerations. Respondents' history of
14 disregarding requirements of the Safe Drinking Water Act and its
15 regulations extends back at least 17 years. This disregard of SDWA
16 requirements has provided significant economic benefit to Respondents
17 and has placed Respondents' water customers at risk of exposure to
18 hazardous contaminants.

19 3. A penalty of \$5,001.00 is appropriate and is hereby assessed
20 against Respondents.

21 V. ORDER

22 Accordingly, it is hereby ORDERED, that:

23 5.1. Default be entered against Respondents pursuant to Section
24 1414(g)(3) of the Safe Drinking Water Act, 42 U.S.C. § 300g-3(g)(3)
25 and the Consolidated Rules of Practice, 40 C.F.R. § 22.17.

1 5.2. No later than SIXTY (60) days after the date that this
2 Default Order becomes final, Respondents shall submit a cashier's
3 check or certified check, payable to the order of "Treasurer, United
4 States of America," in the amount of FIVE THOUSAND AND ONE DOLLARS
5 (\$5,001.00) to the following address:

6 EPA Region 10
7 P.O. Box 36090M
8 Pittsburgh, Pennsylvania 15251

9 Respondents shall note on the check the title and docket number of
10 this administrative action.

11 5.3. Respondents shall submit a photocopy of the check described
12 in Paragraph 5.2 above to the following address:

13 Regional Hearing Clerk
14 U.S. Environmental Protection Agency
15 Region 10
16 1200 Sixth Avenue, Mail Stop ORC-158
17 Seattle, Washington 98101

18 5.4. Should Respondents fail to pay the penalty specified in
19 Paragraph 5.2 above in full by its due date, Respondents shall also
20 be responsible for payment of the following amounts:

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

28 b. Handling Charge. Pursuant to 31 U.S.C. § 3717(e) (1)
and Chapter 9 of EPA Resources Management Directive 2540, a

1 monthly handling charge of \$15 shall be assessed if any portion
2 of the assessed penalty is more than 30 days past due.

3 c. Penalty Charge. Pursuant to 31 U.S.C. § 3717(e)(2),
4 Respondents shall be assessed a penalty charge of not more than
5 6 percent per year for failure to pay a portion of the penalty
6 more than 90 days past its due date.

7 5.5. Pursuant to 40 C.F.R. § 22.17(b), this Default Order is the
8 initial decision in this matter. In accordance with 40 C.F.R. §
9 22.27(c), this Order shall become final within forty-five (45) days
10 after its service upon the parties unless it is appealed to the
11 Environmental Appeals Board or the Environmental Appeals Board elects,
12 sua sponte, to review the initial decision.

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14 DATED this 14th day of November, 1997.

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16 (signed)
17 STEVEN W. ANDERSON
18 Regional Judicial Officer
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