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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of	)	
	)	
Sunbeam Water Company, Inc.,	)	Docket No. 10-97-0066-SDWA
Garden Grove Public Water System, The Estate of Rodney Parrish, and R. Michael Parrish	)	
	)	
Respondents	)	

INITIAL DECISION

Pursuant to the Safe Drinking Water Act ("SDWA") § 1414(g)(3), 42 U.S.C. § 300g-3(g)(3), the Respondents, Sunbeam Water Company, Inc., the Estate of Rodney Parrish, and R. Michael Parrish, are assessed a joint and several civil penalty of $9,000 for violating an administrative order issued pursuant to the SDWA with respect to their operation of a public water supply system serving the Garden Grove subdivision in American Falls, Idaho.

By: Andrew S. Pearlstein, Administrative Law Judge
Dated: October 28, 1999

Appearances

For Complainant: R. David Allnut, Esq.
Assistant Regional Counsel
U.S. EPA Region 10
Seattle, Washington

For Respondent: Craig W. Parrish, Esq.
Pocatello, Idaho

Proceedings

On December 11, 1997, the Region 10 Office of the United States Environmental Protection Agency (the "Complainant" or "Region") filed a Complaint against the Sunbeam Water Company ("Sunbeam"), the Garden Grove Public Water System, Rodney Parrish, and R. Michael Parrish (the "Respondents"). The Complaint charged the Respondents with violating several provisions of an administrative order that was issued to Respondents on September 16, 1996 pursuant to the SDWA § 1414(g)(1), 42 U.S.C. §300g-3(g)(1) (the "September 1996 Order"). The September 1996 Order recited a series of violations that the Respondents were found to have committed, mainly concerning their failure to conduct required monitoring of the Garden Grove water supply for various contaminants. The specific violations cited in the Order are listed in the Findings of Fact below. The Complaint charged the Respondents with failing to follow the compliance schedule set forth in the September 1996 Order. Pursuant to the SDWA § 1414(g)(3), the Complaint seeks assessment of a civil penalty of $9,000 against Respondents.

In its Answer, the Respondents denied the material allegations of the Complaint and requested a hearing.

The hearing in this matter convened before Administrative Law Judge ("ALJ") Andrew S. Pearlstein on September 22, 1998, in American Falls, Idaho. The Region produced four witnesses, and the Respondents produced two witnesses. The record of the hearing consists of the stenographic transcript of 308 pages, and 45 numbered exhibits received into evidence. The parties each submitted post-hearing briefs and reply briefs. The record of the hearing closed on April 1, 1999, upon the ALJ's receipt of the reply briefs.[(1)]

Findings of Fact

1. The Sunbeam Water Company ("Sunbeam") is an Idaho corporation that owns and operates a public water system that provides drinking water, for a fee, to the residents of the Garden Grove Estates ("Garden Grove") subdivision in American Falls, Idaho. The Garden Grove drinking water system has 37 service connections, 23 of which serve developed and occupied lots. The residents of Garden Grove served by the system include families with young children, and elderly people. The system is supplied by a groundwater source, from two wells located in the subdivision.[(2)] (Exs. 1, 29; Tr. 227).[(3)]

2. The late Rodney Parrish was the President of Sunbeam at all times relevant to this proceeding, from 1991 to 1998. His son, R. Michael Parrish was Sunbeam's Secretary during that period. Beginning around late 1993, R. Michael Parrish generally exercised day-to-day control over Sunbeam's operations. The Parrish family developed the Garden Grove subdivision in the 1970s, and family members retain nine of the fourteen undeveloped lots. (Ex. 1).

3. Under the SDWA, the Region has delegated primary enforcement authority over public drinking water systems to the State of Idaho, specifically the Idaho Department of Environmental Quality ("IDEQ"). IDEQ has, in turn, delegated some of its authority over small water systems to local health districts. There are over 2100 public water systems in Idaho. The Region oversees the IDEQ's administration of the SDWA by maintaining a database, receiving quarterly reports, and staying in frequent contact with the IDEQ. The Region, the IDEQ, and local health districts notify and coordinate SDWA enforcement actions among each other. Generally, the Region will initiate enforcement of alleged violations by sending a Notice of Violation ("NOV") to the IDEQ and water system, allowing the system 30 days to come into compliance, or be subject to a State enforcement proceeding. If the State does not bring a proceeding, the Region is then authorized to issue an administrative order ("AO") citing the violations and establishing a compliance schedule. Failure to comply with the AO then subjects the water system to a penalty action. (Tr. 34-41,90; SDWA §300g-3).

4. The federal database records some 66 violations at the Garden Grove public water system between 1979 and 1996. In the 1990's the Region has received complaints from Garden Grove residents of gastrointestinal problems which they attributed to the quality of the water. Since 1991, the Garden Grove water system has been the subject of a series of enforcement actions and other contacts by the Region, the IDEQ, and the Southeastern (Idaho) District Health Department ("Health Department"). (Ex. 22; Tr. 43, 91, 213).

5. The Health Department conducted sanitary inspections of the Garden Grove water system in 1993, 1996, and 1997. Those inspections identified deficiencies in the physical layout and maintenance of the facilities. These included an improperly fitting lid on the storage tank; a dirty storage tank; non-functioning pressure gauges; a horse grazing on the well lot; and stagnant, dead-end water lines. These conditions could cause bacterial contamination of the water supply. These inspections gave rise, in December 1997, to an IDEQ enforcement proceeding against Sunbeam for penalties. (Exs. 11, 27, 29, 36; Tr. 215-216).

6. Between 1991 and 1996, the Region issued three Notices of Violation and two final Administrative Orders to the Garden Grove water system. The Region, IDEQ, and Health Department were in frequent contact with the Respondents during this period concerning these compliance problems, via correspondence and telephone. The SDWA violations at issue during this period included the failure to monitor for bacteriological and chemical contaminants, exceedances of the maximum contaminant level ("MCL") for total coliform bacteria; failure to conduct repeat monitoring after positive sample results; and failure to provide public notice of drinking water violations. (Exs. 4-24; Tr. 64, 82, 128).

7. Most of the Region's correspondence concerning the Garden Grove water system during this period was addressed to Rodney Parrish, as the owner of record of Sunbeam in the State and federal databases. The Region had been informed that his son, Michael Parrish had assumed day to day responsibility for the system's operations in late 1993. Generally from 1996 on, official correspondence relating to the Garden Grove system was directed to R. Michael Parrish. (Exs. 18, 19, 22; Tr. 82).

8. The continuing problems with the Garden Grove water system led the Region to issue a final Administrative Order to Sunbeam on September 16, 1996 (the "September 1996 Order," or just "Order"), under authority of the SDWA §1414(g), 42 U.S.C. §300g-3(g). The September 1996 Order cited the system for the following eight violations of the SDWA regulations:

> (1) Exceeding the MCL for total coliform bacteria, in violation of 40 CFR §141.63;

(2) Failing to monitor for total coliform bacteria, in violation of 40 CFR §141.21;

(3) Failing to sample for inorganic chemicals, in violation of 40 CFR §141.23;

(4) Failing to sample for organic chemicals and pesticides, in violation of 40 CFR §141.24;

(5) Failing to sample for volatile organic chemicals, in violation of 40 CFR §141.24(g);

(6) Failing to take initial tap samples for lead and copper, in violation of 40 CFR 141.86;

(7) Failing to notify the state of the violations, in violation of 40 CFR §141.31; and

(8) Failing to notify persons served by the system of the violations, in violation of 40 CFR §141.32.

The caption of the Order named Garden Grove Estates, Sunbeam Water Company, and Rodney Parrish, Owner, as respondents. The cover letter was addressed to R. Michael Parrish. The Region notified the IDEQ of this action, and provided copies of the September 1996 Order to the State authorities. (Ex. 24; Tr. 88-90).

9. The September 1996 Order ordered the Respondents to take the following nine corresponding actions to bring the system into compliance:

(1) Develop and submit a written plan to prevent recurrences of exceedances of the MCL for total coliform bacteria;

(2) Develop and submit to the Region a sample siting plan for total coliform bacteria monitoring;

(3) Conduct regular monthly sampling for total coliform bacteria as required by 40 CFR §141.21;

(4) Conduct sampling for inorganic chemicals in accord with 40 CFR §141.23;

(5) Conduct quarterly sampling for volatile organic chemicals in accord with 40 CFR §141.24(f);

(6) Conduct quarterly sampling for organic chemicals (e.g. pesticides) listed in 40 CFR §141.61(c);

(7) Conduct sampling for lead and copper in accord with 40 CFR §141.86;

(8) Publish a public notice describing the Garden Grove system's violations in a daily newspaper, as required by 40 CFR §141.32(b); and

(9) Notify the IDEQ of the drinking water violations pursuant to 40 CFR §141.31.

The Order specified schedules for the required sampling, generally to be commenced within 30 days of the Respondents' receipt of the Order. The Order also required Sunbeam to submit copies of sampling results to the Region and IDEQ, generally within 10 days of receipt from the laboratory. The Order stated it would remain in effect until the Respondents satisfy its conditions and the Region determined that the Garden Grove system had returned to compliance with the SDWA and its regulations. Finally, the September 1996 Order stated that violation of any of its terms may subject Respondents to civil penalties under the SDWA §1414(g)(3).

(Ex. 24).

10. In general, the Respondents fulfilled only a portion of the sampling and monitoring requirements of the September 1996 Order. As further described below, Sunbeam did most of the required sampling for total coliform bacteria and inorganic chemicals; half of the required sampling for volatile organic chemicals; and less than a quarter of the specified sampling for synthetic organic chemicals. Most of the laboratory reports of the sampling that was done were submitted late to the Region.[(4)] The Respondents also never submitted the written plans to address coliform bacteria control and sample siting required by the order, and did not publish notice of the violations in a newspaper. (Ex. 1; Tr. 144, 147).

11. Sunbeam did not conduct routine monthly sampling for total coliform bacteria, as required by the Order, for the three months immediately following the Order (September to November 1996). However, Sunbeam did then perform such sampling for every month except one (December 1997), from December 1996 to July 1998.[(5)] Of those 19 monthly samples, 7 yielded a positive result. On 6 of those occasions, Sunbeam did not follow up the positive results with four repeat samples taken within 24 hours, as required by the regulations. (Ex. 1, Table 1).

12. Respondents conducted the system's annual sampling for some inorganic chemicals in February and March 1997, rather than within the required 30 days of their receipt of the September 1996 Order. Although the laboratory had the results at that time, they were not received by the Region until February 1998, almost a year later. In 1997, Sunbeam sampled and had analyzed 9 of the 15 required inorganic chemicals: nitrate, fluoride, barium, cadmium, chromium, mercury, nitrite, total nitrate/nitrite, and selenium. Sunbeam had not taken samples for the 6 remaining inorganic chemicals (asbestos, antimony, beryllium, cyanide, thallium, and nickel) as of the date of the hearing. The initial sample for nitrate tested at a level greater than 50% of the MCL for that contaminant, triggering a follow-up quarterly monitoring requirement. Sunbeam did then take two follow-up samples for nitrate, but at semi-annual, rather than quarterly intervals, in October 1997 and March 1998. (Ex. 1, Table 2).

13. Similarly, Sunbeam conducted two semi-annual monitoring series for the required suite of 18 volatile organic chemicals in the Garden Grove system, rather than the quarterly monitoring required by the Order. The results from these samples, taken in February and August 1997, also were not submitted to the Region until February 1998. (Ex. 1, Table 3).

14. For synthetic organic chemicals and pesticides, the Respondents conducted a single round of monitoring in March 1997, rather than the quarterly monitoring required by the September 1996 Order. On that occasion, Respondents sampled and had analyzed 26 of the 33 required synthetic organic chemicals. Respondent did not take samples of the following seven synthetic organic chemicals: aldicarb, aldicarb sulfoxide, aldicarb sulfone, diquat, endothall, glyphosphate, and dioxin. Again, the laboratory reports were not submitted to the Region until February 1998. (Ex. 1, Table 4).

15. Sunbeam took an initial round of tap samples for lead and copper in the Garden Grove water system in February 1998, rather than within the required thirty days after its receipt of the September 1996 Order. Sunbeam took another set of lead and copper samples in September 1998. The Respondents had not submitted the final calculations of lead and copper levels required by the regulations to the Region as of the date of the hearing. (Exs. 1; 2, Attachment L; Tr. 146).

16. Sunbeam saved at least approximately $3500 to $4000 by not doing all the monitoring required by the September 1996 Administrative Order. By far the most expensive monitoring is that for synthetic organic chemicals, which costs about $1000 per round of sampling. While ordinarily such monitoring is required only once every three years after the initial testing, the Order required Sunbeam to perform quarterly monitoring for synthetic organic chemicals. Since Sunbeam conducted only one round of such monitoring, about $3000 of its economic benefit were incurred by failing to perform the testing for synthetic organic chemicals during the three remaining quarters during the period before the hearing. (Ex. 37; Tr. 148-151, 206-207).

17. During the spring of 1998, Sunbeam constructed improvements to the Garden Grove water system that brought it into compliance with the IDEQ regulations and resolved the IDEQ enforcement action referred to in Finding of Fact #5 above. Respondents cleaned the water tank, installed a properly fitting cover and pressure gauges, flushed all water lines, and installed a chlorinator. Sunbeam obtained a grant from the U.S. Department of Housing and Urban Development to fund part of the cost of these improvements. These improvements have helped protect the system from further bacterial contamination. (Ex. 36; Tr. 127, 274-275, 294, 298).

18. On August 12, 1998, the Southeastern (Idaho) District Health Department issued a revised monitoring schedule and a series of monitoring waivers to Sunbeam. The cover letter stated that these schedules complied with minimum state requirements, but did not relieve the Respondents from other requirements that may be imposed by other state or federal authorities. If given effect, the waivers would relieve Respondents from conducting much of the monitoring required by the September 1996 Order for synthetic organic chemicals ("SOCs"). The waivers, where monitoring is required at all for SOCs, generally require the sampling to be done only at long intervals (such as once every three years), rather than quarterly as required by the September 1996 Order.

19. As stated above (in Finding of Fact #2), the late Rodney M. Parrish was the President of Sunbeam, and R. Michael Parrish (referred to as "Michael") was its secretary. Beginning in late 1993, Michael Parrish assumed day-to-day responsibility for operation of the Garden Grove water system. Before that, a succession of residents of the subdivision were delegated the responsibility for taking samples. They received free water service for performing this duty. Rodney Parrish was aware that the Garden Grove water system had problems and was the subject of frequent contacts from the IDEQ, Southeastern Health District, and Region 10 of the EPA. In 1993, he delegated to Michael the authority for dealing with the water system's problems on a regular basis. (Tr. 272-273, 282-284).

20. In addition to Sunbeam, Rodney Parrish was also the President of the Parrish Company and another corporation called Parrish Realty. The family's main business, run by the Parrish Company, is the ownership and operation of a retail and wholesale building supply store located in Pocatello, Idaho. Michael Parrish works there in a number of capacities, including as a salesman, a foreman, and as a bookkeeper. The Parrish Company had gross annual revenues of approximately $350,000 to $400,000 in 1998. (Ex. 39; Tr. 280, 286, 297).

21. The Sunbeam Water Company derives its only regular income from service connection fees. These average about $300 to $350 per month. Total gross receipts from 1995 to 1997 ranged from about $3200 to $3900. The company usually operates at a loss, since yearly expenses for electric power, property taxes, maintenance, and water testing exceed Sunbeam's annual gross receipts. In order to cover some of these expenses, Rodney Parrish, through Parrish Realty, loaned Sunbeam $5900 in 1996, and another $1200 in 1997. This $7100 debt (without interest) has not been repaid. Michael Parrish does not get paid by Sunbeam for the work he does at the Garden Grove water system. His salary is paid by the Parrish Company, and is understood to compensate him for all his duties with respect to all Parrish family businesses. (Exs. 43-45; Tr. 266-267, 274, 279, 287-290).

Discussion

Respondents' Liability

The SDWA §1414(g)(3)(A), 42 U.S.C. §300g-3(g)(3)(A), states that "[a]ny person who violates, or fails or refuses to comply with, an order under this subsection shall be liable to the United States for a civil penalty of not more than $25,000 per day of violation." Respondents do not dispute that the Sunbeam Water Company did not fully comply with the September 1996 Order. That Order was issued under the SDWA §1414(g) and forms the foundation of this proceeding. As seen in Findings of Fact ("FFs") ##10-15, Sunbeam only fulfilled a portion of the monitoring and other requirements imposed by the order. For the most part, these facts were stipulated to in Exhibit 1. Hence, at least the corporate Respondent, Sunbeam Water Company, failed to comply with the September 1996 Order, and is therefore liable for the alleged violation of the SDWA §1414(g).

Respondents focus their argument on an attempt to avoid findings of individual liability on the part of the individual Respondents, Rodney Parrish (now the estate of Rodney Parrish) and Michael Parrish. Liability attaches to any "person" who fails to comply with an administrative order. The SDWA §1401(12), 42 U.S.C. §300f(12), defines "person" as follows:

The term "person" means an individual, corporation, company, association, partnership, State, municipality, or Federal agency (and *includes officers, employees, and agents of any corporation*, company, association, State, municipality, or Federal agency). (italics added).

Congress has expressly included officers, agents, and employees of corporations within the definition of "persons" for the purposes of the SDWA. Rodney Parrish was the president of Sunbeam, and Michael Parrish was its secretary during the relevant period. They both acted as agents of Sunbeam during this period. Hence, based solely on this statutory definition, Michael Parrish and the estate of Rodney Parrish may be held individually liable, along with Sunbeam, for the violation of the Order and the SDWA alleged in this proceeding.

By including corporate officers and employees within the definition of "person" in the SDWA, Congress may have intended to expand the liability of such persons beyond that which would ordinarily apply under the standard principles of corporate law. "A corporate officer may be held liable, in civil as well as criminal actions, for wrongful acts of the corporation in which he participated." 18B Am. Jur. 2d §1877. However, it is not necessary to address the Congressional intent in formulating the SDWA definition of "person," since both individual Respondents in this case are liable under the ordinary application of the corporate law principle cited above. Respondents' argument in their brief, which attempts to draw analogies to cases decided under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), does not change this conclusion.

Both Rodney and Michael Parrish personally participated in and had actual knowledge of Sunbeam's failure to comply with the September 1996 Order. Rodney Parrish received much of the correspondence from the Region and IDEQ concerning the Garden Grove water system, and was fully aware of its continuing problems. He acknowledged being aware of a "blizzard" of correspondence from the federal, state, and local authorities. (Tr. 282). Although Rodney Parrish denied knowing that specific required monitoring was not done, his testimony as a whole demonstrated a thorough awareness of the situation at Garden Grove and the need for more funds to conduct

the newly required tests. Indeed, he loaned over $7000 to Sunbeam expressly for that purpose. (Tr. 274).

Rodney Parrish delegated day-to-day responsibility for operating Sunbeam to his son Michael, whom he also saw daily in the course of running the family businesses. Rodney Parrish (or his estate) cannot escape liability although Michael Parrish had more specific knowledge and daily involvement in the failure to comply with the Order. As president and primary officer of Sunbeam, Rodney Parrish had the ultimate authority to control the corporation. The record amply demonstrates that both Rodney and Michael Parrish had knowledge of and participated in Sunbeam's failure to comply with the September 1996 Order.

By failing to conduct much of the monitoring required by the September 1996 Order, both Rodney and Michael Parrish "violated" or "failed or refused" to comply with that order. (FF ##10-15). They testified that they did so due to a lack of funds. (Tr. 272, 289). The SDWA imposes strict liability for failures to comply with an order, and does not make an exception for a purported lack of funding. Therefore, Michael Parrish and the estate of Rodney Parrish are liable for the violations alleged in the Complaint, along with the corporate Respondent, Sunbeam.

The Region also contends that the Parrishes may be held indirectly liable for violations by Sunbeam by "piercing the corporate veil" of that corporation. Certainly, as testified by the Region's expert witness Dr. Billy Joe Henderson, Sunbeam's corporate tax returns are problematic. They do not show any employee compensation. They show deductions for property taxes without showing assets. They show the apparently non-interest bearing loan by Rodney Parrish or Parrish Realty, as the main source of capital. And the returns are unsigned. While this might support a finding that Sunbeam was virtually the alter ego of the Parrishes, it is not necessary to resolve this issue for the purposes of this proceeding. Since Rodney and Michael Parrish participated in the violations, and were agents and officers of Sunbeam, there is already ample basis for finding them directly liable for the violations alleged in the Complaint.

Amount of Civil Penalty

The Region proposes that the Respondents pay a $9000 civil penalty for their violations of the September 1996 Order. As quoted above, violations of orders issued under §1414(g) of the SDWA are subject to civil penalties of up to $25,000 per day. Under §1414(g)(3)(B), where the penalty sought exceeds $5000, but does not exceed $25,000, the case must be brought under the adjudicatory hearing provisions of the Administrative Procedure Act, 5 U.S.C. §554. Thus the range for civil penalties in cases brought by the Region before an Administrative Law Judge, such as this proceeding, is from $5001 to $25,000.

In referring to enforcement cases brought in federal district court (generally applicable where the total penalty sought exceeds $25,000), the SDWA provides that, in imposing a civil penalty, the court must take into account "the seriousness of the violation, the population at risk, and other appropriate factors." The EPA has not promulgated a program-specific civil penalty policy for SDWA violations. In calculating the proposed civil penalty, the Region relied upon the statutory penalty factors and the EPA's General Enforcement Policy #GM-21, entitled "Policy on Civil Penalties," dated February 16, 1984.

- Population at Risk and Seriousness of the Violation

The population at risk here consists of the 23 households in the Garden Grove

subdivision, and their guests, who use the Sunbeam water supply. The residents include families with young children, as well as elderly persons. (FF #1). Although this is a relatively small number of people to be served by a public water system, they were placed at some risk to their health from these violations. The record shows that total coliform bacterial contamination was detected in the system's samples on a number of occasions dating back to the early 1980s, and that routine and repeat samples were not taken on many occasions. (Ex. 22). When coupled with the residents' complaints of gastrointestinal problems, and the physical deficiencies in the Sunbeam water system (FF ##4,5), the seriousness of these violations becomes apparent. As testified by the Region's expert witness, Dr. Eugene Mark Taylor, any public water system's failure to comply with monitoring requirements prevents making a valid assessment of the safety of the water supply. In this case, the failure to monitor is even more serious where bacterial contamination has been detected repeatedly in the past.

- Economic Benefit

In accord with the Policy on Civil Penalties, the Region also considered the economic benefit derived by the Respondents through their failure to comply with the order. The Respondents saved at least $3500 in out-of-pocket costs by failing to conduct much of the monitoring required by the September 1996 Order. (FF #16). The Region's witness, Shannon Cooper, suggested a somewhat higher figure, but her estimate did not account for some tests that Sunbeam had conducted, but of which Respondents had not yet notified the Region.

Nonetheless, the $3500 benefit from undone testing represents a minimum figure. It does not include the savings from failing to submit the site sampling plan; failing to publish notice of the violations; delaying compliance; and from interest earned on the savings. It is entirely appropriate that the civil penalty assessed in this matter fully recover this economic benefit accrued to the Respondents from their noncompliance.

- Ability to Pay

The SDWA does not specify a respondent's ability to pay as a factor to be considered in assessing a penalty. Nevertheless, as recognized in the general Policy on Civil Penalties, the ability to pay should be considered as another "appropriate factor" in assessing a civil penalty under the SDWA.

It is difficult to place much reliance on the Sunbeam tax returns received into evidence, for the reasons discussed above. Nevertheless, the record shows that Sunbeam's gross receipts are limited to the water usage fees paid by the 23 connections, which, as shown on the returns, average less than $4000 per year. (FF #21). It is also reasonable to conclude that, as testified by Michael Parrish, normal expenses and maintenance, and routine testing for total coliform bacteria, virtually exhaust those receipts on an annual basis. (Tr. 288). Sunbeam has also received funds from loans from other Parrish family businesses. However, Sunbeam's assets and prospects are certainly limited. If it were the only liable Respondent in this proceeding, some further inquiry would be required to determine if it alone could afford to pay a civil penalty of $9000.

However, as found above, the individual Respondents, Michael Parrish and the estate of Rodney Parrish, are also liable for the violations. They did not present any evidence indicating they could not jointly, along with Sunbeam, pay a civil penalty of $9000.

The Region presented a Dun & Bradstreet report which projected annual sales of $2,250,000 for the Parrish Company in 1998. (Ex. 39). Michael Parrish vehemently

disputed that figure and testified that its annual sales were only about $350,000 to $400,000. He was unaware of any communication between the company and Dun & Bradstreet. (Tr. 296). As the bookkeeper for the Parrish Company, Michael Parrish has firsthand knowledge of these facts, and I have no basis to question his credibility. Hence, I accept the lower figure as representing the Parrish Company's gross receipts. (FF #21).

However, regardless of the lower estimate of the Parrish Company's income, neither Michael nor Rodney Parrish presented specific evidence of their respective individual abilities to pay a penalty. The evidence on the Parrish Company presented by the Region (and modified by the Respondents' testimony) constituted sufficient "*general* financial information regarding the respondents' financial status which can support the *inference* that the penalty assessment need not be reduced." *In re New Waterbury, Ltd.*, 5 E.A.D. 529, 542-543 (EAB 1994)(italics in original). If Respondents intended to show they could not pay the proposed penalty, it was then incumbent upon them to go forward with specific evidence to that effect. *New Waterbury, supra*. This they failed to do. Hence, the record supports the finding that the three Respondents, Sunbeam, Michael Parrish, and the estate of Rodney Parrish, can afford to jointly pay a civil penalty of $9000.

- Culpability and Compliance History

The long history of compliance problems at the Garden Grove public water system, which is indicative of the Respondents' past uncooperative attitude, provides no support for reducing the amount of the proposed penalty. It is apparent that, at least until recently, the Respondents did not take their responsibility to properly operate the water system in compliance with the SDWA. Indeed, Rodney Parrish testified that he thought the requirements imposed on Sunbeam were a "joke." (Tr. 283). Respondents must bear a high degree of culpability for these violations, which, for the most part, can only be characterized as wilful. The Respondents chose not to devote the necessary resources to bringing the system into compliance until after this enforcement proceeding was commenced.

The Parrishes have only themselves to blame for the situation that resulted in this enforcement action. If they had seriously addressed the Garden Grove system's deficiencies at any of several earlier junctures, virtually all the ensuing notices of violation, administrative orders, and penalty actions, could have been avoided. There is no reason that Sunbeam could not have obtained the IDEQ waivers earlier and limited the system's monitoring requirements to a level that could essentially be covered by the water service fees. The additional monitoring and accompanying extra costs imposed by the September 1996 Order would not have been necessary had the Respondents taken action to improve the system's facilities and conduct all required monitoring before 1996.

In Respondents', and particularly Michael Parrish's, favor, at least it does now appear that the system has been improved and is now operating satisfactorily. After issuance of the September 1996 Order, Michael Parrish at least took virtually all routine total coliform samples. He also undertook at least some portion of each required suite of chemical monitoring, at considerable cost, with the loan from Rodney Parrish. After constructing the physical improvements to the Garden Grove system (FF #17), the fecal contamination problem appears largely resolved. The system was then able to obtain State waivers from many of the chemical monitoring requirements imposed by the September 1996 Order. (Ex. 40).[(6)] Michael Parrish even evinced some pride in the current operation of the system and its protection from bacterial contamination. (Tr. 298-299).

The long history of lack of cooperation and violations leading up to this point, however, compels the assessment of a substantial civil penalty. The proposed amount of $9000 imposed jointly and severally on the three Respondents, is entirely

appropriate. This figure is actually at the low end of the $5000 to $25,000 range of civil penalties that can be imposed in administrative enforcement proceedings. In consideration of the seriousness of the violation, the population at risk, economic benefit, and the other appropriate factors discussed above, the Respondents will be assessed a joint and several civil penalty of $9000.

Conclusions of Law

1. The Respondents Sunbeam Water Company, R. Michael Parrish, and the Estate of Rodney Parrish, are liable for violating the SDWA §1414(g)(3)(A), 42 U.S.C. §300g-3(g)(3)(A), by failing to comply with many of the requirements of an administrative order issued by Region 10 of the EPA pursuant to the SDWA §1414(g)(1), 42 U.S.C. §300g-3(g)(1).

2. The individual Respondents, R. Michael Parrish, and the late Rodney Parrish, are liable for this violation as officers and agents of the corporate Respondent, the Sunbeam Water Company, and as participants in committing the violation.

3. An appropriate civil penalty for this violation, assessed against the Respondents jointly and severally, is $9000.

Order

1. Respondents Sunbeam Water Company, R. Michael Parrish, and the Estate of Rodney Parrish, are jointly and severally assessed a total civil penalty of $9000.

2. Payment of the full amount of this civil penalty shall be made within 60 days of the service of this order by submitting a certified or cashier's check in the amount of $9000, payable to the Treasurer, United States of America, and mailed to EPA - Region 10, P.O. Box 360903M, Pittsburgh, PA 15251. A transmittal letter identifying the subject case and docket number, and Respondents' names and addresses, must accompany the check.

3. If Respondents fail to pay the penalty within the prescribed statutory time period, after entry of the final order, then interest on the penalty may be assessed.

4. Pursuant to 40 CFR §22.27(c), this Initial Decision shall become the final order of the Agency 45 days after its service on the parties unless a party moves to reopen the hearing, a party appeals this decision to the Environmental Appeals Board, or the Environmental Appeals Board elects to review the initial decision on its own initiative.

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Andrew S. Pearlstein
Administrative Law Judge

Dated: October 28, 1999
Washington, D.C.

1. The briefing schedule was suspended for three months due to the accidental death of one of the Respondents, Rodney Parrish, on November 7, 1998. The caption of this proceeding has been modified to name his estate as a Respondent. This proceeding for a civil penalty action survives against his estate as a "remedial," rather than "penal" action. See *United States v. One Hundred Twenty Thousand Seven Hundred Fifty One Dollars ($120,751.00)*, 102 F.3d 342, 344 (8th Cir. 1996). This proceeding is based on an order requiring the Respondents to remedy the deficiencies in their operation of a public water system, and is therefore primarily remedial in nature rather than punitive, although it also entails assessment of a civil penalty.

2. The "Garden Grove Public Water System" is named as a co-Respondent in this proceeding. However, it is not a legal entity, and not a "person" as defined in the SDWA §300f(12). Garden Grove was nonetheless the name used by the IDEQ in its database to refer to the water system operated by Sunbeam for the Garden Grove subdivision. (Tr. 48). Hence, for convenience, that name was also often used by the Region to refer to this water system, and may also be used for that purpose in this decision. The caption for this case will remain unchanged, but the Order at the end of this Initial Decision will only refer to the other three co-Respondents, who are "persons" as defined in the SDWA.

3. Citations to the exhibits ("Ex.") and the stenographic transcript of the hearing ("Tr.") are representative only, and not intended to be complete or exhaustive.

4. The record does not definitively explain why most sample results were submitted late, or whether reports were sent to the IDEQ. It may be surmised that the Respondents thought the lab would forward them to the EPA, but this was not done until after the commencement of this enforcement proceeding. (Tr. 20-25).

5. Sunbeam apparently erroneously took an extra sample on November 30, 1997 for total coliform, instead of in December 1997. (Ex. 1,¶6; Ex. 2; Tr. 200).

6. The Region's witness Dr. Taylor testified that the IDEQ waivers (Ex. 40) were issued contrary to EPA and IDEQ policy. (Tr. 230-233). However, the Region has not sought to challenge the waivers in the context of this proceeding.