5/20/92

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In Re:	)	
	)	
Village of Glendora,	)	Docket No. PWS-PAO-91-01
	)	
Respondent	)	
	)	

ORDER ON DEFAULT

PRELIMINARY STATEMENT

The Village of Glendora (Respondent) owns and operates a public water system which provides drinking water to the residents of Glendora, Mississippi. On or about December 3, 1990, the Complainant, United States Environmental Protection Agency, Region IV (EPA), filed a Complaint and Notice of Opportunity for Hearing (Complaint) against Respondent pursuant to Section 1414(g)(3)(B) of the Safe Drinking Water Act ("SDWA"), as amended, 42 U.S.C. §300g-3(g)(3)(B), for the assessment of a $5,000 penalty. The Complaint, Docket No. PWS-PAO-91-01, alleges that Respondent violated an Administrative Compliance Order issued on July 24, 1989, under the authority of Section 1414(g)(1) of the SDWA, 42 U.S.C. § 300g-3(g)(1).

Respondent answered the Complaint by letter dated January 3, 1991, addressed to Complainant's counsel. Complainant's counsel forwarded Respondent's Answer to the Regional Hearing Clerk for filing on January 15, 1991.

Complainant advised the Court on April 17, 1991, that settlement discussions had broken down and requested that the Court reissue its previously-vacated Prehearing Exchange

Scheduling Order. The Court granted Complainant's motion for reissuance of the Prehearing Exchange Scheduling Order. By Order dated April 19, 1991, the Court directed Complainant and Respondent to engage in the initial prehearing exchange of information "no later than May 10, 1991," and to reply to the initial prehearing exchange "no later that May 24, 1991." This Order was served upon counsel for Complainant and upon Respondent's representative, the Mayor, City of Glendora.

On May 10, 1991, Complainant filed its prehearing exchange disclosure with the Regional Hearing Clerk, Region IV, and served copies of it upon the Court and Respondent. Respondent has not filed its prehearing exchange.

On January 10, 1992, Complainant moved for the issuance of a Default Order based upon Respondent's failure to file its prehearing exchange as required by the Court's order. Respondent did not respond to Complainant's motion. Therefore, on February 20, 1992, I granted Complainant's motion, finding the Respondent in default for failure to comply with my Order of April 19, 1991. Further, I directed Complainant to revise the proposed Default Order submitted with its motion.

The following findings of fact and conclusions of law are made pursuant to § 22.17(c) of the Consolidated Rules of Practice:

Findings of Fact

1. The Village of Glendora ("the Village" or "Respondent"), is a "person" as that term is defined in Section 1401(12) of the Safe

Drinking Water Act ("SDWA"), 42 U.S.C. § 300f(12), and 40 C.F.R. § 141.2.

2. Respondent is a "supplier of water" within the meaning of § 1401(5) of the SDWA, 42 U.S.C. § 300f(5).

3. On July 24, 1989, the EPA issued an Administrative Order, Docket No. PWS-AO-89-11, to Respondent under authority of Section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g). On August 15, 1989, after opportunity for public hearing, that Order became effective.

4. Administrative Order PWS-AO-89-11 directed Respondent to do the following: 1) Immediately take whatever action was necessary to assure that the Maximum Contaminant Level (MCL) for coliform bacteria specified in 40 C.F.R. § 141.14 was not exceeded in the subject water supply system; 2) Perform monthly bacteriological sampling and analysis in accordance with 40 C.F.R. § 141.21; 3) Send EPA copies of all reports required by 40 C.F.R. § 141.21 within seven days after receipt of such reports from the laboratory; 4) Provide EPA with the date and method of issuance of all public notices provided to users of the system within the last three years; 5) Provide EPA with a complete list of the names and addresses of all users presently served by the subject water system; 6) Issue written public notice in accordance with 40 C.F.R. § 141.32 to each household on the water system notifying them of Respondent's failure to meet the coliform bacteria MCL and the required microbiological sampling and analysis; and 7) In the future, issue written public notice in

accordance with 40 C.F.R. § 141.32 to all users regarding any failure to comply with the MCLs or the sampling and analysis requirements set forth in 40 C.F.R. Part 141.

5. As set forth in the Complaint and Notice of Opportunity for Hearing filed December 3, 1990, Respondent violated Administrative Order Docket No. PWS-AO-89-11 by failing to:

A) monitor and analyze for coliform bacteria pursuant to 40 C.F.R. § 141.21 for the months of September, October, November and December 1989; January, February, March, April, May, June and August 1990;

B) notify persons served by the system pursuant to 40 C.F.R. § 141.32 of its failure to monitor and analyze for the months identified in paragraph 1, immediately above;

C) take whatever action was necessary to assure that the MCL for coliform bacteria specified in 40 C.F.R. § 141.14 would not be exceeded;

D) provide EPA with a copy of all reports required by 40 C.F.R. 141.21; and

E) issue a written public notice in accordance with 40 C.F.R. § 141.32 to each household on the water system notifying them of the Respondent's past failure to meet the coliform bacteria MCL and the microbiological sampling and analysis requirements.

6. Following the issuance of the Complaint, on January 24, 1991, I was assigned as the presiding officer in this matter.

7. By motion dated April 17, 1991, Complainant requested that I

issue an order to accomplish the purposes of the prehearing conference in that settlement negotiations between the two parties had broken down.

8. On April 19, 1991, I issued an Order directing that the prehearing exchange of documents between the two parties take place no later than May 10, 1991, and that replies thereto be filed no later than May 24, 1991.

9. Complainant filed and served its prehearing exchange as required on May 10, 1991.

10. Respondent failed to file its prehearing exchange as set forth in the Order issued by this Court on April 19, 1991.

11. By motion dated January 10, 1992, Complainant moved for the issuance of a Default Order based upon Respondent's failure to file its prehearing exchange as required by the Court's Order.

12. Respondent did not respond to Complainant's January 10, 1992, motion.

13. On February 20, 1992, the Court granted Complainant's motion and directed the Complainant the rework the proposed default order which accompanied its January 10, 1992, motion.

CONCLUSIONS OF LAW

1. Complainant has been duly designated by the Administrator of EPA and has the authority to file an administrative Complaint and Notice of Opportunity for Hearing pursuant to Section 1414(g)(3)(B) of the Safe Drinking Water Act (SDWA), as amended, 42 U.S.C. § 300g-3(g)(3)(B), when the civil penalty does not exceed a total of $5,000, to any person who violates, or fails,

or refuses to comply with an order issued under this subsection.

2. Respondent is a "person" as that term is defined in Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12) and 40 C.F.R. § 141.1.

3. Complainant properly filed and served an administrative Complainant and Notice of Opportunity for Hearing against Respondent on or about December 4, 1990, alleging violations of the requirements of Administrative Order, Docket No. PWS-AO-89-11 issued under Section 1414(g) of the SDWA, 42 U.S.C. § 100g-3(g)(1).

4. The Complaint and Notice of Opportunity for Hearing filed and served on or about December 4, 1990, proposes to assess a civil penalty of $5000 under Section 1414(g)(3)(B) of the SDWA, as amended, 42 U.S.C. § 300g-3(g)(3)(B) for failure to comply with Administrative Order Docket No. PWS-AO-89-11, as set forth in the Findings of Fact, paragraph 5, above.

5. The Consolidated Rules of Practice, 40 C.F.R. Part 22, govern adjudicatory proceedings for the assessment of any civil penalty conducted under section 1414(g)(3)(B) of the SDWA, as amended, 42 U.S.C. § 300g-3(g)(3)(B).

6. I am designated by the Chief Administrative Law Judge to serve as the Presiding officer in this 40 C.F.R. Part 22 proceeding.

7. On April 19, 1991, I issued a prehearing order to the Respondent and the Complainant in conformance with the prehearing requirements set forth at 40 C.F.R. § 22.19.

8. Complainant filed its prehearing exchange on May 10, 1991.

9. Respondent failed to file its prehearing exchange no later than May 10, 1991, as required by the Court's Order of April 19, 1991. 10. Complainant filed a Motion for Default on January 10, 1992, against Respondent for Respondent's failure to respond to the Court's Order.

11. Respondent did not file a response to Complainant's motion.

12. Respondent, by its failure to respond to Complainant's motion within ten days, waived any objection to the granting of the motion, pursuant to 40 C.F.R. § 22.16(b).

13. I granted Complainant's Motion for Default on February 20, 1992, and directed Complainant to prepare a revised Default Order.

14. Respondent, having failed to respond to the Court's Order of April 19, 1991, and offering no objection to Complainant's motion, is found to be in default, pursuant to 40 C.F.R. § 22.17(a).

15. Respondent, being found in default pursuant to 40 C.F.R. § 22.17(a), for purposes of this action only, admits all facts alleged in the Complaint and Notice of Opportunity for Hearing and Respondent further waives rights to a hearing on the factual allegations.

16. This Order on Default constitutes the Initial Decision of the Administrator.

Civil Penalty Assessment

Section 1414 (g)(3)(B) of the Safe Drinking Water Act, 42 U.S.C. §300g-3(g)(3)(B), authorizes the assessment of a civil penalty of up to $5,000 in administrative actions. Two EPA General Enforcement Policy Documents, "Policy on Civil Penalties" ("GM-21") and "A Framework for Statute- Specific Approaches to Penalty Assessments" ("GM-22"), provide a framework for determining the penalty amount.

In determining an appropriate penalty amount, Complainant considered the seriousness of the violation (the gravity component) and the economic benefit derived as a result of noncompliance with the law ("the benefit component"). Pursuant to GM-11 and GM-22, the penalty amount can then be adjusted depending on the degree of the Respondent's willfulness or negligence, the Respondent's history of noncompliance, its ability to pay, the degree of Respondent's cooperation or lack thereof and other factors unique to the violator or the case.

The Safe Drinking Water Act (SDWA) penalty guidance document establishes criteria that promote a coherent national enforcement policy for settlement in cases against public water suppliers. Although this document deals with settlements, its principles are derived from and consistent with GM-21 and GM-22 and are equally applicable to penalty computations. Both the "SDWA penalty guidance document" and the "Draft Penalty Policy--PWS Penalty Orders--Region IV" direct that any penalty amount reflect the economic benefit of a Respondent's noncompliance with an

Administrative Order, include an amount which reflects the gravity of the violation committed, and provide for a measure of deterrence.

Complainant's penalty calculation for the Village of Glendora reflects these policies. The factors taken into consideration in computing the penalty include an amount representing the economic benefit that Respondent derived from not spending money over a period of 11 months (during which period the Administrative Order (AO) was in effect) to conduct the required sampling of its public water supply, to mail samples to a laboratory for coliform bacteria analysis, and to notify users of the system of its failure to conduct the necessary sampling. Complainant assessed $25 per month for each of the 11 months ($275) for the failure to sample and assessed $50 per month for 11 months ($550) for Respondent's failure to notify for a total of $825.00.

The penalty assessment proposed by Complainant also includes an amount reflecting the seriousness of the violations (the "gravity Component"). For the period that the AO was in effect, Respondent failed to monitor for coliform bacteria, failed to report monitoring results to the appropriate state and federal agencies, and failed to notify users of the system that their water had not been adequately tested for the presence of coliform bacteria. Without adequate monitoring and monitoring data supplied by Respondent, EPA is unable to determine whether Respondent is supplying water to the public that does not exceed the maximum contaminant levels established by national primary

drinking water regulations. Respondent's violations of the AO as they relate to coliform bacteria testing analysis, reporting and public notification are grave. The presence of coliform bacteria in drinking water is a public health concern. Drinking water contaminated with coliform bacteria can cause disease. See 40 C.F.R. § 141.32(e) (11). Complainant assessed $100 per month for 11 months ($1,100) for the gravity component of failure to monitoring and report violations. Complainant assessed $100 per month for 11 months ($1,100) for the gravity component of failure to notify the public. An additional upward adjustment ($1,000) was made for Respondent's failure to provide EPA with the required reports for a total of $3,200.

The Complainant also factored in an adjustment, or deterrence, component for Respondent's willfulness or negligence in failing to respond to Complainant's prior directives that it bring its system into compliance with the law. Respondent has a long, documented history of noncompliance. The state of Mississippi, after years of notifying Respondent of violations committed, referred the matter to Complainant for formal enforcement action. Prior to instituting the present action, Complainant sought to have the system bring itself into compliance; compliance, and not penalties, were sought. Respondent chose to ignore the Notice of Violation that Complainant issued to it on May 30, 1989. Respondent also chose not to request a public hearing on the Administrative Order that Complainant issued to it on July 24, 1989. Due to Respondent's

willful disregard of its responsibilities under the Safe Drinking Water Act, Complainant has been forced to expend scarce resources to institute and prosecute the present penalty action. An adjustment amount for deterrence and Respondent's willfulness is appropriate in this case and an additional $925 was assessed by Complainant under the deterrence criteria. Complainant proposes a total civil penalty assessment of $5,000.

Pursuant to 40 C.F.R. §22.17(a), and after taking into consideration the Complainant's explanation of how Complainant arrived at the civil penalty assessment of $5,000, I find that the $5,000 penalty proposed in the Complaint is an appropriate penalty assessment.

Order

Pursuant to Section 1414(g)(3)(B) of the SDWA, 42 U.S.C. §300g-3(g)(3)(B), a civil penalty of $5,000 is hereby assessed against Respondent, the Village of Glendora, for violations of the Act found herein.

Payment of the full amount of the penalty assessed shall be made within sixty (60) days of the service of the Final Order by submitting a certified or cashier's check payable to the United States of America and mailed to:

U.S. E.P.A., Region IV
Regional Hearing Clerk
P.O. Box 100142
Atlanta, Georgia 30384

Consequences of Initial Decision

1. Pursuant to 57 Fed. Reg. 5325 (1992)(to be codified at 40 C.F.R. § 22.27(c)(1)),[1] 45 days after service upon the parties, this Order on Default (Initial Decision) becomes the Final Order of the Environmental Appeals Board without further proceedings, unless Respondent appeals the Initial Decision or the Environmental Appeals Board elects, sua sponte, to review this Initial Decision.

2. Pursuant to 40 C.F.R. § 22.17(a), if this Initial Decision is not appealed and the Environmental Appeals Board does not elect, sua sponte, to review it, the penalty assessed in the Complaint and Notice of Opportunity for Hearing ($5,000) shall become due and payable by Respondent without further proceedings 60 days after the Initial Decision becomes the Final Order.

3. Pursuant to 57 Fed. Reg. 5325 (1992)(to be codified at 40 C.F.R. § 22.30(a)(1)), any party may appeal an Initial Decision by filing a notice of appeal and an accompanying appellate brief with the Environmental Appeals Board.

5/20/92
Date

Thomas B. Yost
Administrative Law Judge

[1]A copy of the "Changes to Regulations to Reflect the Role of the New Environmental Appeals Board in Agency Adjudications" accompanies this Default Order.

CERTIFICATION OF SERVICE

I hereby certify that, in accordance with 40 CFR § 22.27(a), I have this date delivered the Original of the foregoing **DEFAULT ORDER** of Honorable Thomas B. Yost, Administrative Law Judge, to Ms. Julia P. Mooney, Regional Hearing Clerk, United States Environmental Protection Agency, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30365, and have referred said Regional Hearing Clerk to said Section which further provides that, after preparing and forwarding a copy of said **DEFAULT ORDER** to all parties, she shall forward the original, along with the record of the proceeding to:

Hearing Clerk (A-110)
EPA Headquarters
Washington, D.C. 20460

who shall forward a copy of said **DEFAULT ORDER** to the Administrator.

Dated: 5/20/92

Jo Ann Brown
Jo Ann Brown
Secretary, Hon. Thomas B. Yost

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing ORDER ON DEFAULT in the matter of VILLAGE OF GLENDORA, Docket No. PWS-PAO-91-01, on each of the parties listed below in the manner indicated:

Honorable Johnny B. Thomas
Mayor, Town of Glendora
P. O. Box 90
Glendora, MS 38928-0090

(via Certified Mail - Return Receipt Requested)

Susan R. Hilton, Esquire
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region IV
345 Courtland Street, N.E.
Atlanta, Georgia 30365

(via Hand-Delivery)

I hereby further certify that I have this day caused the original of the foregoing ORDER ON DEFAULT together with the record of the proceeding in the matter of VILLAGE OF GLENDORA, Docket No. PWS-PAO-91-01, to be delivered to the Headquarters Hearing Clerk addressed as follows:

Bessie L. Hammiel
Headquarters Hearing Clerk
U.S. Environmental Protection Agency (Mail Code A-110)
401 M Street, S.W.
Washington, D. C. 20460

(via inter-agency pouch mail)

Date: May 21, 1992

Julia P. Mooney
Julia P. Mooney
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region IV
345 Courtland Street, N.E.
Atlanta, Georgia 30365
(404) 347-1565