**BEFORE THE ENVIRONMENTAL APPEALS BOARD**
**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
**WASHINGTON, D.C.**

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| In re: | ) | |
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| Rocking BS Ranch, Inc. | ) | CWA Appeal No. 09-04 |
| | ) | |
| Docket No. CWA-06-2007-1974 | ) | |
| | ) | |

## FINAL DECISION AND ORDER

The U.S. Environmental Protection Agency ("EPA" or "Agency"), Region 6 ("Region") initiated this administrative enforcement action against Rocking BS Ranch, Inc., ("Ranch" or "Respondent") for allegedly violating section 301 of the Clean Water Act ("CWA" or "Act"), 33 U.S.C § 1311, by discharging agricultural waste into waters of the United States without a permit. On July 27, 2009, Regional Judicial Officer Michael C. Barra ("RJO") issued an Initial Decision and Default Order against the Ranch pursuant to section 22.17 of EPA's Consolidated Rules of Practice ("CROP"),[1] 40 C.F.R. part 22, which states that a respondent who, *inter alia*, fails to file a timely answer to the complaint, may be found to be in default. The Ranch, proceeding *pro se*, now comes before the Environmental Appeals Board ("Board") and appeals the Initial Decision and Default Order in accordance with 40 C.F.R. § 22.30(a).[2] For the reasons

[1] The full name of the Consolidated Rules of Practice is: "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits."

[2] The Board has construed the letter it received from the Ranch on August 25, 2009, written in response to the RJO's Initial Decision and Default Order, as a timely filed Notice of Appeal. As explained *infra*, the letter was addressed to the Clerk of the Board and the Region's attorney, but was initially received only by the Region's attorney. The Region's attorney forwarded it to the Board, which received the letter within the timeframe for the filing of an appeal.

set forth below, the Board affirms the RJO's finding of default and upholds the Initial Decision and Default Order.

## I. *BACKGROUND*

### A. *Statutory and Regulatory Background*

The Clean Water Act aims to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." CWA § 101(a), 33 U.S.C. § 1251(a). Under the CWA, a point source is prohibited from discharging a pollutant into the waters of the United States except as set forth in specific permitting provisions.[3] CWA §§ 301(a), 402(a), 33 U.S.C. §§ 1311(a), 1342(a). Section 402(a) of the Act, 33 U.S.C. § 1342(a), establishes the National Permit Discharge Elimination System ("NPDES"), a permitting program that allows for the lawful discharge of pollutants from a point source pursuant to the receipt of a valid NPDES permit. CWA § 402(a), 33 U.S.C. § 1342(a); *see, e.g.*, *In re City of Attleboro*, NPDES Appeal No. 08-08, slip op. at 8 (EAB Sept. 15, 2009), 14 E.A.D. ___. Section 309(g)(1)(A) of the CWA, 33 U.S.C. § 1319(g)(1)(A), states that on the basis of any information available, any person who violates, *inter alia*, section 301 of the CWA, 33 U.S.C. § 1311, may be assessed a civil penalty.

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[3] The Act defines a "point source" as "any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit * * * container * * * concentrated animal feeding operation, or vessel * * * from which pollutants are or may be discharged." CWA § 502(14), 33 U.S.C. § 1362(14). As relevant here, the term "pollutant" includes "agricultural waste," CWA § 502(6), 33 U.S.C. § 1362(6), and "discharge of a pollutant" means "any addition of any pollutant to navigable waters from any point source." CWA § 502(12), 33 U.S.C. § 1362(12). Federal regulations implementing the National Pollutant Discharge Elimination System ("NPDES") program define "waters of the United States" as including "intrastate lakes, rivers, [and] streams (including intermittent streams)." 40 C.F.R. § 122.2.

B. *Factual and Procedural Background*

This enforcement action arose from an on-site inspection by the Oklahoma Department of Agriculture, Food & Forestry ("ODAFF") of the Rocking BS Ranch, a swine facility located about three miles south and eight miles east of Wetumka, Hughes County, Oklahoma. Amended Administrative Complaint 3-4 (Dec. 5, 2007) ("Amended Complaint"); *In re Rocking BS Ranch*, Docket No. CWA-06-2007-1974, at 8 (RJO July 27, 2009) (Initial Decision and Default Order) ("Default Order"). The inspection took place on January 23, 2007, and was conducted by Gregory Turpin of ODAFF's Agricultural Environmental Management Services Division ("AEMS").[4] Default Order at 8; Motion for Default as to Penalty and Liability (Feb. 10, 2009) ww.gmail.("Motion for Default"), Declaration of Gregory Turpin at 1 ("Turpin Dec."). During the inspection, Mr. Turpin identified an unauthorized discharge from a lagoon located on Ranch property, which extended for approximately one mile and entered an unnamed tributary to a water of the United States known as Middle Creek, before reaching Middle Creek itself. *See* Turpin Dec. at 1; Amended Complaint at 3; Default Order at 8.

AEMS submitted to the Region a 2007 NPDES Annual Inspection Report dated April 4, 2007, describing the January 2007 inspection of the Ranch and the unauthorized discharge from

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[4] The Region directly implements the NPDES program in Oklahoma for discharges of pollutants from Concentrated Animal Feeding Operations ("CAFOs") into waters of the United States. *See* National Pollutant Discharge Elimination System General Permit and Reporting Requirements for Discharges from Concentrated Animal Feeding Operations, 58 Fed. Reg. 7610 (Feb. 8, 1993) (issuing federal NPDES general permit for CAFOs within the state of Oklahoma effective March 10, 1993); *see also* Extension of the Public Comment Period on the Draft NPDES General Permit for CAFOs in Oklahoma, 74 Fed. Reg. 20296 (May 1, 2009). AEMS conducts inspections of CAFOs to ensure compliance with federal and state CAFO regulations, including the NPDES program. Motion for Default as to Penalty and Liability (Feb. 10, 2009) ("Motion for Default"), Declaration of Gregory Turpin at 1 ("Turpin Dec.").

the lagoon. Amended Complaint at 2-3; Default Order at 8. On September 24, 2007, the Region filed an Administrative Complaint and sent a copy to the Ranch via certified mail in accordance with 40 C.F.R. § 22.5(b)(1). Default Order at 5. The Region filed an Amended Complaint on December 5, 2007, pursuant to 40 C.F.R. § 22.14(c), which was also properly served upon the Ranch.[5] *Id.* at 6. Both the Complaint and the Amended Complaint clearly state that "to deny or explain any material allegation * * * or to contest the amount of the penalty proposed, the Respondent must file an answer to this [C]omplaint within thirty (30) days." Complaint ¶ 14; Amended Complaint ¶ 15; *see* Default Order at 2. The Amended Complaint also clearly explains that "[f]ailure to file an answer * * * within thirty (30) days * * * shall constitute an admission of all facts alleged in the Complaint and a waiver of the right to [a] hearing." Amended Complaint ¶ 16; *see* Default Order at 2. Finally, the Amended Complaint unequivocally states that failure to file an Answer could result in the issuance of a Default Order, which, if issued, "would constitute a finding of liability." Amended Complaint ¶ 17; *see* Default Order at 2. The Ranch never filed an answer to the Complaint or the Amended Complaint. Default Order at 5.

Throughout 2008, the Region engaged in informal settlement discussions with the Ranch, evidenced by status reports filed with the Regional Hearing Clerk in April, June, and October. *See* Complainant's Response Brief in Opposition to Respondent's Notice of Appeal at 6 ("Complainant's Br."); Status Report 1 (Apr. 9, 2008) (Complainant's Br. Ex. B) ("April Status

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[5] Copies of certified mail return receipts for the Complaint, Amended Complaint, the Presiding Officer's Order Requesting a Status Update, the Motion for Default, and the Default Order demonstrate that the Ranch had received each document and that service was proper. The Board maintains a public docket where the certified mail return receipts, as well as the other documents referenced in this decision, may be accessed. *See* Environmental Appeals Board homepage, http://www.epa.gov/eab/ (click on "EAB Dockets").

Report"); Status Report 1 (June 20, 2008) (Complainant's Br. Ex. C) ("June Status Report"); Status Report 1 (Oct. 16, 2008) (Complainant's Br. Ex. D) ("October Status Report"); *see also* Default Order at 4-5. The June Status Report states that the Ranch was to submit three years of tax returns by May, and the October Status Report similarly states that the Ranch was to submit three years of tax returns by July. June Status Report at 1; October Status Report at 1. The Region sought these documents to provide it with adequate information to determine whether the Ranch had an inability to pay the proposed penalty. Complainant's Br. at 6; June Status Report at 1; October Status Report at 1. Although the informal negotiations were undertaken to reach a settlement agreement,[6] after several months, and the Ranch's repeated failure to submit the requested tax returns, the RJO ordered the Region to submit a status report no later than February 12, 2009. *In re Rocking BS Ranch*, Docket No. CWA-06-2007-1974, at 1 (RJO Jan. 15, 2009) (Order to File Status Report); *see also* Default Order at 5.

In response to the RJO's order, on February 10, 2009, the Region filed its Motion for Default, a copy of which was served on the Ranch. Motion for Default at 1-2. The Ranch did not respond to the RJO's order by February 12, or to the Region's Motion for Default. The RJO issued the Default Order on July 27, 2009, finding the Ranch to be in default and adjusting the penalty, proposed at $16,800 in the Amended Complaint, to $11,000, to bring it into compliance with Class I penalty rules.[7]

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[6] Informal settlement discussions do not forestall the need to file an answer and otherwise fulfill procedural obligations as set forth in the CROP. *See* 40 C.F.R. § 22.18(b)(1).

[7] In his decision, the RJO discusses the relief proposed in the Amended Complaint and requested in the Motion for Default, assessed at $16,800 for the single violation of CWA section 301, 33 U.S.C. § 1311. Default Order at 9-11. The RJO correctly notes that the Region (continued...)

On approximately July 30, 2009, the Assistant Regional Counsel, Ellen Chang Vaughan, received a letter from Bert Bishop, owner and operator of the Ranch. The letter's intended recipients, as evidenced by the names listed in the letter's inside address, were Ellen Chang Vaughan, Assistant Regional Counsel, and Eurika Durr, Clerk of the Environmental Appeals Board. Rocking BS Ranch Notice of Appeal 1 (Aug. 25, 2009) ("Ranch Appeal"). The Region received the letter, and upon contacting the Clerk of the Board and the Regional Hearing Clerk on the same date, discovered that neither of them knew of, or had received a copy of, the letter. Complainant's Br. at 9. In the letter, the Ranch denies that any unauthorized discharge into Middle Creek took place. Ranch Appeal at 1. While the letter refers to a small amount of discharge from the lagoon, the Ranch states that the discharge never left the property, and that it has easements or agreements over "more than enough land to handle the spill." *Id.* at 3. The Ranch refers more than once to its inability to pay the proposed fine.[8] *Id.* at 2-3. Finally, the Ranch references communications with the Region over the phone and through the mail, although the Ranch does concede that some letters were either not sent "regestered [sic]," not sent at all, or may have been lost in the mail. *Id.* at 1, 3.

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[7](...continued)
chose to pursue this case as a Class I penalty action, which pursuant to CWA section 309(g)(2)(A), 33 U.S.C. § 1319(g)(2)(A), may not exceed $11,000 for a single violation, for violations occurring after March 14, 2004 through January 12, 2009. *See* 40 C.F.R. § 19.4 tbl. 1 (containing Table of Civil Monetary Penalty Inflation Adjustments that raises maximum Class I penalty for a single violation from $10,000 to $11,000); Default Order at 11. Because the penalty proposed by the Region exceeded the maximum allowable amount for a single violation under the CWA, the RJO exercised his authority under 40 C.F.R. § 22.17(c) to lower the penalty assessed against the Ranch to $11,000. Default Order at 11.

[8] The Ranch letter also states that its accountant was supposed to send a financial report to the Region for its consideration, but that the accountant refused to send the report until he was paid for preparing it. *See* Ranch Appeal at 2.

In response to the Ranch's letter, the Region filed a brief opposing the Ranch's appeal. The Region contends that in addition to the Ranch's failure to adhere to the procedural requirements set forth in the CROP, the Default Order establishes the facts alleged in the Amended Complaint, and thus the Ranch's claim that the unauthorized discharge did not happen is "untimely and improper under the Consolidated Rules." Complainant's Br. at 12. The Region also argues that Board precedent regarding *pro se* petitioners, while allowing for some leniency, does not excuse any party, including the Ranch, from compliance with the CROP. *Id.* at 14.

## II. *DISCUSSION*

### A. *Standard of Review for Entry of Default Judgment and to Overturn a Default Judgment*

A party may be found to be in default upon failure to file a timely answer to a complaint. 40 C.F.R. § 22.17(a). A default by the respondent constitutes an admission of all facts alleged in the complaint and a waiver of the respondent's right to contest such factual allegations in the pending proceeding. *Id.*

Default judgments are generally disfavored as a means of resolving Agency enforcement proceedings. *E.g.*, *In re Las Delicias Cmty.*, SDWA Appeal No. 08-07, slip op. at 8 n.7 (EAB Aug. 17, 2009), 14 E.A.D. ___; *In re Four Strong Builders, Inc.*, 12 E.A.D. 762, 766 (EAB 2006); *In re JHNY, Inc.*, 12 E.A.D. 372, 384 (EAB 2005) (stating general principle); *In re Thermal Reduction Co.*, 4 E.A.D 128, 131 (EAB 1992) (same). Although the Board prefers to resolve close default cases in favor of allowing adjudication on the merits, it has not hesitated to affirm or enter default orders in cases where it is clear a default judgment is warranted. *E.g.*, *Las Delicias Cmty.*, slip op. at 8 n.7, 14 E.A.D. ___; *Four Strong Builders*, 12 E.A.D at 762-63,

766-72; *JHNY*, 12 E.A.D. at 374, 382-83, 385-401; *In re Pyramid Chem. Co.*, 11 E.A.D. 657, 664-68, 675-82 (EAB 2004); *In re B & L Plating, Inc.*, 11 E.A.D. 183, 191-92 (EAB 2003); *In re Jiffy Builders, Inc.*, 8 E.A.D. 315, 320-21 (EAB 1999); *In re Rybond, Inc.*, 6 E.A.D. 614, 625-38 (EAB 1996); *Thermal Reduction*, 4 E.A.D. at 130-32. Failure to adhere to the procedural requirements set forth in the CROP constitutes grounds for entry of a default judgment. *See, e.g.*, *In re Tri-County Builders Supply*, CWA Appeal No. 03-04, at 7 (May 24, 2004) (Order Dismissing Appeal) ("The filing requirements specified in 40 C.F.R. § 22.30 are not merely procedural niceties. Rather, they serve an important role in helping to bring repose and certainty to the administrative enforcement process."); *see also* Complainant's Br. at 8. Where, as here, a respondent has multiple opportunities to comply with the procedural requirements of the CROP, and takes no action, even to timely clarify its obligations, until entry of a default judgment, a default order is proper given the respondent's inattention to its responsibilities under the CROP. *See, e.g.*, *Rybond*, 6 E.A.D. at 625-28 (citing respondent's failure to comply with three separate procedural orders issued over the course of a year as a reason for affirming default order).

The instant appeal comes to the Board as a direct appeal of the Initial Decision and Default Order under 40 C.F.R § 22.30. *See Jiffy Builders*, 8 E.A.D. at 319-20 n.8; *Rybond*, 6 E.A.D. at 624. The Ranch did not file a motion to set aside the default order with the Regional Hearing Clerk pursuant to 40 C.F.R. § 22.17(c). Although the Region's attorney sent to the Regional Hearing Clerk a copy of the Ranch's letter addressed to the Clerk of the Board and the Region's attorney, this does not transform the letter into a motion directed to the RJO. Because the Ranch addressed its letter to the Clerk of the Board rather than to the Regional Hearing Clerk, the Board interprets the Ranch's letter as a direct appeal of the Default Order pursuant to

40 C.F.R. § 22.30, rather than a motion to set aside the default order directed to the RJO.

In considering an appeal of a default order, the Board applies a "totality of the circumstances" test to determine whether the default order has properly been entered.[9] *See JHNY*, 12 E.A.D. at 384; *Jiffy Builders*, 8 E.A.D. at 319; *Rybond*, 6 E.A.D. at 624. While the Board considers a number of factors in weighing the totality of the circumstances, "first and foremost" the Board will examine the nature of the alleged procedural omission that led to the issuance of a default order, including whether a procedural violation actually occurred, whether a particular procedural violation is proper grounds for a default order, and whether there is any valid excuse for failing to adhere to the procedural requirement. *JHNY*, 12 E.A.D. at 384; *see Jiffy Builders*, 8 E.A.D. at 320 & n.8; *Rybond*, 6 E.A.D. at 625.

The Board may also consider whether a defaulting party would likely succeed on the merits if a hearing were held. *JHNY*, 12 E.A.D. at 384; *Pyramid Chem.*, 11 E.A.D. at 662; *see Jiffy Builders*, 8 E.A.D. at 319; *Rybond*, 6 E.A.D. at 628 & n.20. Respondents bear the burden of establishing that there is more than a mere possibility of a defense, but rather that there is a "strong probability" that litigating the defense will produce a favorable outcome. *JHNY*, 12 E.A.D. at 384; *Pyramid Chem.*, 11 E.A.D. at 662; *Jiffy Builders*, 8 E.A.D. at 322; *Rybond*,

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[9] Although the "totality of the circumstances" test is also used to determine whether there is "good cause" to set aside a default order when a motion is filed before the RJO pursuant to 40 C.F.R. § 22.17(c), the "good cause" standard itself does not apply to direct appeals of an initial decision under 40 C.F.R. § 22.30(a). *See Jiffy Builders*, 8 E.A.D. at 320 n.8 ("While * * * the 'good cause' standard in 40 C.F.R. § 22.17[c] technically does not apply to a case like this, which does not involve review of a motion filed under that provision, we would ordinarily expect some articulation of the 'cause' of the default to be part of a well-framed appeal of a default order."); *Rybond*, 6 E.A.D. at 625 n.19 (stating that when deciding a direct appeal of a default order, the Board is not bound by the "good cause" standard in 40 C.F.R. § 22.17[c], "which applies to [Administrative Law Judges] and Regional Administrators").

6 E.A.D. at 628. As part of this inquiry, the Board has also examined whether the penalty assessed in the default order is reasonable. *JHNY*, 12 E.A.D. at 384.

B. *Totality of the Circumstances*

The Ranch offers both procedural and substantive arguments as to why the Default Order should not stand. None of these arguments represent a valid reason to overturn the Default Order or mitigate the penalty assessed.

1. *Procedural Requirements*

In its appeal, the Ranch refers to several calls and letters exchanged between the Ranch and the Region. However, failure to file a timely answer to a complaint constitutes grounds for a finding of default, 40 C.F.R. § 22.17(a), and these "participatory acts" do not amount to a properly filed answer or a response to a motion for default under the CROP. *Jiffy Builders*, 8 E.A.D. at 320. As the cover letters to both the Complaint and the Amended Complaint make clear, any request to initiate settlement discussions did not stay the obligation to file an answer. The CROP provides that settlement discussions shall not affect the obligation to file a timely answer to a complaint. 40 C.F.R. § 22.18(b)(1).

Nonetheless, the Board shows some lenience with respect to *pro se* petitioners. *See Rybond*, 6 E.A.D. at 627 (citing *In re Envotech*, 6 E.A.D. 260, 268 (EAB 1996)) ("[T]he Board endeavors to construe petitions broadly, particularly when they are filed by persons unrepresented by legal counsel * * * ."). Although the Board affords litigants unrepresented by counsel some latitude, all litigants, including *pro se* litigants, proceeding in an administrative enforcement action are subject to the CROP. *Jiffy Builders*, 8 E.A.D. at 320 ("[P]arties who choose to proceed *pro se*, while held to a more lenient standard than parties represented by members of the

bar, are not excused from compliance with the Consolidated Rules of Practice."); *Rybond*, 6 E.A.D. at 626 (stating that "regulatory rules of procedure at 40 C.F.R. [p]art 22 [] apply to all litigants, whether they appear *pro se* or are represented by counsel"). In this instance, the Board construed the Ranch's letter as a timely filed notice of appeal, despite its lacking several elements otherwise required pursuant to 40 C.F.R. § 22.30, and that it was not sent to the Board or served upon the Regional Hearing Clerk as required by the CROP. *See supra* note 2. However, the Board cannot excuse the Ranch's abject failure to adhere to the requirements of the CROP by not providing a meaningful response to any of the pleadings filed prior to the Default Order. *E.g.*, *Pyramid Chem.*, 11 E.A.D. at 681 ("[T]he Board has made clear that it reserves its finite resources for those parties who are diligent enough to comply with EPA's procedural rules."); *Jiffy Builders*, 8 E.A.D. at 320 ("The governing rules do not support the notion that a Presiding Officer must show inexhaustible patience in reckoning with a party's inattentiveness; rather, they suggest the contrary – that default is an essential ingredient in the efficient administration of the adjudicatory process.").

Furthermore, lack of willful intent to delay the proceedings, by itself, does not excuse noncompliance with EPA's procedural rules. *Pyramid Chem.*, 11 E.A.D. at 662; *Jiffy Builders*, 8 E.A.D. at 320 & n.8 (lack of purpose in committing default is not adequate justification for failure to adhere to procedural requirements). The Region has not alleged that the Ranch has acted in a manner intending to delay the proceedings. However, the Ranch's failure to comply with procedural requirements throughout the duration of this enforcement action is nonetheless evident.

2. *Success on the Merits*

Insofar as the Ranch asserts substantive defenses in its appeal, the Board is unpersuaded that any of the Ranch's claims would lead to a "strong probability" of success on the merits. The Ranch contends that there was no unauthorized discharge of agricultural waste into Middle Creek, and that easements more than compensated for whatever waste did escape the lagoon. Ranch Appeal at 3. These claims strike the Board as inadequate and conclusory. While factual assertions could have been explored at a hearing if the Ranch had exercised its right to file an answer, these assertions, without any supporting information, fall far short of satisfying the Ranch's burden of demonstrating that it would prevail at an evidentiary hearing. Thus, the Ranch cannot show that there is a "strong probability" that litigating this case would lead to a different outcome.

3. *Penalty Assessment and Inability to Pay*

The RJO provided a detailed assessment of the penalty calculation. Default Order at 9-11. The RJO considered the statutory factors the Region used to arrive at the proposed penalty amount and ultimately agreed that the penalty proposed was not inconsistent with the record. Default Order at 11. However, the RJO also reduced the penalty amount to make it consistent with the CWA. *See supra* note 7.

In its appeal, the Ranch repeatedly refers to its inability to pay the penalty assessed in the Default Order. Ranch Appeal at 1, 3. If these arguments are intended as a challenge to the RJO's penalty determination based on the RJO's failure to take into account the Ranch's ability to pay the penalty assessed, they are particularly unavailing given the record before the Board. The record clearly reflects the Region's multiple attempts to obtain tax returns from the Ranch to

assist the Region in assessing whether the Ranch had an inability to pay the penalty. *See* Complainant's Br. at 6; July Status Report at 1; October Status Report at 1. At no point did the Ranch comply, and thus its general claims of financial instability ring especially hollow. *See, e.g.*, *JHNY*, 12 E.A.D. at 383 ("Even financially challenged entities need to toe the line of compliance, and only those entities *demonstrating* a genuine inability to pay should be removed from the compliance-inducing influence that civil penalty assessment affords." (citing *In re Steeltech, Ltd.*, 8 E.A.D. 577, 587 (EAB 1999))) (emphasis added). Similarly, the Ranch's claim that its accountant was supposed to, but did not, send a financial report to the Region is also unpersuasive because it is the Ranch's ultimate responsibility to ensure that any documentation in support of its position is properly submitted. *Cf. Pyramid Chem.*, 11 E.A.D. at 667 ("[U]nder Board precedent an attorney stands in the shoes of his or her client, and ultimately, the client takes responsibility for the attorney's failings."). Thus, the Ranch's claims of an inability to pay the penalty fall short.

## III. *CONCLUSION*

Based on the totality of the circumstances, as set forth above, the Board determines that the Ranch has failed to demonstrate why the Board should overturn the RJO's Default Order. Accordingly, the Default Order is affirmed and the Ranch is assessed a penalty of $11,000.

The Ranch's payment of the entire amount[10] of the civil penalty of eleven thousand dollars ($11,000) shall be made within thirty (30) days of service of this Final Decision and

[10] It is not uncommon for respondents in enforcement cases to work in conjunction with the Region to work out payment schedules in circumstances of verifiable cash flow difficulties. Nothing in this Order precludes the parties from discussing such a possibility.

Order, by cashier's check or certified check payable to the Treasurer, United States of America, unless the Region agrees to a different payment schedule. The check should contain a notation of the name and docket number of this case. 40 C.F.R. § 22.31(c). Payment shall be remitted to:

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

A copy of the payment shall be mailed to:

Regional Hearing Clerk (6RC)
U.S. EPA Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Failure to pay the penalty within the prescribed time frame after the entry of the final order may result in assessment of interest on the civil penalty. *See* 31 U.S.C. § 3717; 40 C.F.R. § 22.31(c).

So ordered.[11]

Dated:
April 21, 2010

ENVIRONMENTAL APPEALS BOARD

By: for Anna L. Wolgast
Kathie A. Stein
Environmental Appeals Judge

[11] The three-member panel deciding this matter is comprised of Environmental Appeals Judges Edward E. Reich, Kathie A. Stein, and Anna L. Wolgast.

## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Final Decision and Order in the matter of *Rocking BS Ranch*, CWA Appeal No. 09-04, were sent to the following persons in the manner indicated:

**By Certified U.S. Mail and Return Receipt Requested:**

Bert Bishop
Rocking BS Ranch
8644 East 127 Road
Wetumka, OK 74833

**By Facsimile and EPA Pouch Mail:**

Regional Hearing Clerk (6RC)
U.S. EPA Region 6
1445 Ross Avenue
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Ellen Chang Vaughan
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Dated: APR 21 2010

Annette Duncan
Secretary