

IN RE MUNCE'S SUPERIOR PETROLEUM PRODUCTS, INC.

CWA Appeal No. 12-04

FINAL DECISION AND ORDER

Decided December 7, 2012

Syllabus

Munce's Superior Petroleum Products, Inc. ("MSPPI") appeals from an Initial Decision and Default Order issued by Acting Presiding Officer ("APO") LeAnn Jensen pursuant to 40 C.F.R. § 22.17(a). The default finding was based on the failure of MSPPI to file a timely answer to an administrative complaint issued by the U.S. Environmental Protection Agency ("EPA"), Region 1 ("Region"). The Region's complaint alleged violations of the requirement to respond to a request for information under Clean Water Act ("CWA") section 308, 33 U.S.C. § 1318, and the requirement to maintain and implement Spill Prevention, Control, and Countermeasure plans under 40 C.F.R. § 112.3(a) of the Oil Pollution Prevention regulations, promulgated under the authority of CWA section 311(j), 33 U.S.C. § 1321(j).

After MSPPI failed to file a timely answer to the administrative complaint, the Region filed a motion for default pursuant to 40 C.F.R. § 22.17(a). MSPPI then filed a "Suggestion of Bankruptcy and Response to Order to Clarify and Supplement the Record," informing the APO that MSPPI had filed a chapter 11 bankruptcy proceeding in the U.S. Bankruptcy Court for the District of New Hampshire and arguing that the EPA administrative penalty proceeding should be stayed pursuant to the automatic stay provision of section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a). The APO concluded that the automatic stay does not apply to bar this administrative penalty assessment proceeding, found MSPPI in default and liable for the violations as alleged in the administrative complaint, and assessed the Region's proposed penalty of \$46,403.

MSPPI's appeal asserts that the Bankruptcy Code's automatic stay provision bars the APO's determination of the amount of the administrative penalty in this proceeding.

Held: The Environmental Appeals Board affirms the Initial Decision and Default Order.

The automatic stay provision of section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a), does not apply to stay the EPA's penalty assessment against MSPPI in this proceeding. Section 362(b)(4) provides an express exception for actions or proceedings for the "enforcement of a governmental unit's police and regulatory power." That exception applies to this enforcement proceeding to assess administrative penalties for Clean Water Act violations under CWA sections 309(g)(1) and 311(b)(6)(B)(ii), 33 U.S.C. §§ 1319(g)(1), 1321(b)(6)(B)(ii), the primary purpose of which is deterrence. The automatic stay provi-

sion of section 362(a) of the Bankruptcy Code does not limit the government's power to determine the amount of the penalty, but only the government's ability to collect on a resulting money judgment outside of the bankruptcy proceeding.

Before Environmental Appeals Judges Leslye M. Fraser, Catherine R. McCabe, and Kathie A. Stein.

Opinion of the Board by Judge McCabe:

I. STATEMENT OF THE CASE

Munce's Superior Petroleum Products, Inc. ("MSPPI") appeals from an Initial Decision and Default Order ("Default Order") issued by Acting Presiding Officer ("APO") LeAnn Jensen on May 17, 2012, assessing an administrative civil penalty of \$46,403 against MSPPI for violations of sections 308 and 311 of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1318, 1321, and the Oil Pollution Prevention regulations set forth at 40 C.F.R. part 112, as alleged by Region 1 ("Region") of the U.S. Environmental Protection Agency ("EPA" or "Agency") in an administrative complaint. MSPPI failed to file an answer to the administrative complaint, and the Region filed a motion for default pursuant to 40 C.F.R. § 22.17(a). MSPPI subsequently filed a "Suggestion of Bankruptcy and Response to Order to Clarify and Supplement the Record," informing the APO that MSPPI had filed a chapter 11 bankruptcy proceeding in the U.S. Bankruptcy Court for the District of New Hampshire and arguing that the EPA administrative penalty proceeding should be stayed pursuant to the automatic stay provision of the Bankruptcy Code, 11 U.S.C. § 362(a). The APO concluded that the automatic stay does not bar this administrative penalty assessment proceeding. Pursuant to 40 C.F.R. § 22.17(a), the APO deemed MSPPI to have defaulted, thereby admitting the facts alleged in the Administrative Complaint and waiving MSPPI's right to contest those factual allegations. Initial Decision and Default Order ("Default Order") at 8-11. The APO then reviewed the Region's proposed penalty calculation under the applicable statutory factors and assessed an administrative penalty against MSPPI in the amount of \$46,403, the amount proposed by the Region.

MSPPI filed a timely appeal before the Environmental Appeals Board ("Board") challenging the APO's authority to assess a penalty in this proceeding, citing the pending bankruptcy proceeding and the automatic stay provision of the Bankruptcy Code. For the reasons explained below, the Board affirms the APO's Default Order.

II. ISSUE ON APPEAL

MSPPI's appeal raises a single legal issue:

Does the automatic stay provision of the Bankruptcy Code, 11 U.S.C. § 362(a), apply to the APO's determination of the amount of the administrative penalty in this administrative enforcement proceeding?¹

III. FACTUAL AND PROCEDURAL HISTORY

On June 17, 2010,² the Region issued the Administrative Complaint, alleging that MSPPI had violated the Clean Water Act and its implementing regulations by failing to reply to an EPA information request issued under CWA section 308, 33 U.S.C. § 1318, and by failing to prepare and fully implement Spill Prevention, Control, and Countermeasure plans at four facilities as required by CWA section 311(j), 33 U.S.C. § 1321(j), and 40 C.F.R. § 112.3. Default Order at 4. MSPPI's answer was due within thirty days after service of the complaint, pursuant to 40 C.F.R. § 22.15(a). MSPPI failed to file an answer. *Id.* at 2-3.

On March 16, 2011, MSPPI filed for bankruptcy protection under chapter 11 of the Bankruptcy Code in the U.S. Bankruptcy Court for the District of New Hampshire. *In re Munce's Superior Petroleum Prods., Inc.*, No. 11-10975-JMD (Bankr. D.N.H.). The bankruptcy proceeding is ongoing.

On July 12, 2011, the Region filed a Motion for Default in this proceeding. Upon review of the Motion for Default, the APO issued an Order to Clarify and Supplement the Record on December 15, 2011. Default Order at 2.

On January 27, 2012, MSPPI filed a "Suggestion of Bankruptcy and Response to Order to Clarify and Supplement the Record," in which MSPPI notified the APO of MSPPI's bankruptcy filing and contended that only the bankruptcy court had jurisdiction to determine the amount of the penalty and that the EPA administrative penalty proceeding should be stayed under the automatic stay provision of the Bankruptcy Code, 11 U.S.C. § 362(a). The Region submitted its Re-

¹ MSPPI's Notice of Appeal also specifies, as a second issue on appeal, an objection that the Default Order violated the automatic stay by directing MSPPI to pay the penalty within thirty days. Notice of Appeal at 1. Since this objection is premised upon the applicability of the automatic stay, the Board addresses it within the context of the overarching question of whether the automatic stay applies to this proceeding.

² The Default Order erroneously refers to the date of the Administrative Complaint as July 21, 2010.

sponse to the APO's Order to Clarify and Supplement the Record on February 23, 2012. *Id.* at 3.

On May 17, 2012, the APO granted the Region's Motion for Default. The APO disagreed with MSPPI's argument that the bankruptcy automatic stay provision divested EPA of authority to assess a penalty against MSPPI. The APO noted that MSPPI had cited no authority for that proposition, other than the general statutory language of section 362, and that the Region had cited several legal authorities supporting its argument that section 362 stays only the collection of the penalty, not administrative assessment of the amount of the penalty. *Id.* at 6-7. The APO also noted that "[t]he continuation of [the EPA enforcement] proceeding will not undermine the bankruptcy system because enforcement of an assessed penalty must be conducted through the Bankruptcy Court of New Hampshire." *Id.* at 7.

Pursuant to the default provisions of 40 C.F.R. § 22.17(a), the APO deemed all the facts alleged in the Administrative Complaint to be admitted as alleged and concluded, based on these facts, that MSPPI had violated Clean Water Act sections 308 and 311(j), 33 U.S.C. §§ 1318, 1321(j), and 40 C.F.R. § 112.3. The APO then determined the amount of the penalty by considering the applicable statutory penalty factors, the Agency's penalty guidance, and the administrative record in this proceeding, and the Region's justification for its proposed penalty in light of the statutory factors and guidance. The APO concluded that the Region's proposed penalty amount was appropriate and assessed a civil penalty against MSPPI in the amount of \$46,403.³ *Id.* at 13-21.

On June 18, 2012, MSPPI filed this appeal of the Default Order with the Board. The Region filed its response brief on July 18, 2012.

IV. STANDARD OF REVIEW

The appeal of a default order and initial decision is governed by the Consolidated Rules of Practice found at 40 C.F.R. part 22. As with other enforcement proceedings, "[t]he [Board] shall adopt, modify, or set aside the findings of fact

³ In this appeal, MSPPI has not sought the Board's review of the amount of the penalty assessed by the APO. Notice of Appeal at 1. MSPPI notes in its brief that the APO did not consider MSPPI's bankruptcy filing in analyzing the penalty factor of economic impact (of the penalty) on the violator, but MSPPI did not specifically challenge the APO's penalty calculation on that ground or deny that it had failed to provide any financial information to the APO to be considered in the penalty calculation. MSPPI App. Br. at 5, 7. While MSPPI notes in its brief that the APO was aware that MSPPI had filed for bankruptcy and that the Region had access to MSPPI's financial information provided to the Bankruptcy Court, *id.* at 7, the Board agrees with the APO that it was MSPPI's responsibility to provide its financial information to the APO if MSPPI wished to have that information considered in this proceeding.

and conclusions of law or discretion contained in the decision or order being reviewed.” 40 C.F.R. § 22.30(f); *see also* Administrative Procedure Act, 5 U.S.C. § 557(b) (“On appeal from or review of [an] initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”). In the case of default orders, the Board may assess a penalty that is equal to or lower than the amount proposed in the complaint or in the motion for default, whichever is less. 40 C.F.R. § 22.30(f).

Default is generally disfavored as a means of resolving EPA enforcement proceedings. *In re JHNY, Inc.*, 12 E.A.D. 372, 384 (EAB 2005) (stating principle); *In re Thermal Reduction Co.*, 4 E.A.D. 128, 131 (EAB 1992) (same); *see, e.g., Enron Oil Corp. v. Diakuhara*, 10 F.3d 90, 95-97 (2nd Cir. 1993) (reversing trial court’s finding of default where court failed to consider extenuating circumstances that mitigated litigant’s procedural errors). In close cases, doubts are typically resolved in favor of the defaulting party so that adjudication on the merits, the preferred option, can be pursued. *Thermal Reduction*, 4 E.A.D. at 131 (citing treatise on federal practice and procedure); *see In re Neman*, 5 E.A.D. 450, 454-60 (EAB 1994) (vacating default order where amended complaint was not properly served on defaulting party). The Board has not hesitated, however, to affirm default orders in cases where the circumstances clearly indicate that the imposition of that remedy is warranted. *E.g., In re Rocking BS Ranch, Inc.*, CWA Appeal No. 09-04, at 13 (EAB Apr. 21, 2010) (Final Decision and Order) (affirming default finding where respondent lacked an excuse for failing to file a timely answer and did not show strong possibility of likelihood of success on the merits); *In re Four Strong Builders, Inc.*, 12 E.A.D. 762, 769-772 (EAB 2006) (affirming default finding where respondent lacked excuse for repeatedly failing to comply with administrative law judge’s orders and failed to show strong possibility of likelihood of success on the merits); *In re B&L Plating, Inc.*, 11 E.A.D. 183, 191-92 (EAB 2003) (affirming default finding where respondent did not demonstrate “good faith” basis for failure to comply with presiding officer’s prehearing exchange order); *In re Jiffy Builders, Inc.*, 8 E.A.D. 315, 320-21 (EAB 1999) (same); *In re Rybond, Inc.*, 6 E.A.D. 614, 625-28 (EAB 1996) (same); *In re House Analysis & Assocs.*, 4 E.A.D. 501, 506-08 (EAB 1993) (affirming default finding where respondent failed to comply with ALJ’s prehearing exchange order); *Thermal Reduction*, 4 E.A.D. at 130-32 (affirming default finding where respondent failed to respond to motion for default order).

V. ANALYSIS

The U.S. Bankruptcy Code does not prevent EPA from determining the amount of and assessing a penalty in this administrative proceeding simply because MSPPI filed for bankruptcy protection after the proceeding was initiated. The automatic stay provision of section 362 of the Bankruptcy Code includes an express exception for actions or proceedings for the “enforcement of a govern-

mental unit's police and regulatory power."⁴ Ample case law, as well as the legislative history of section 362, support the conclusion that the APO's assessment of a default penalty against MSPPI in this proceeding falls within that exception.

The purpose of the automatic stay in section 362(a) of the Bankruptcy Code is to halt any legal proceedings that may affect the assets of a party that has filed for bankruptcy. "By thus safeguarding the debtor estate from piecemeal dissipation, the automatic stay efficiently ensures that the assets remain within the exclusive jurisdiction of the bankruptcy court pending their orderly and equitable distribution among the creditors * * * ." *McMullen v. Sevigny (In re McMullen)*, 386 F.3d 320, 324 (1st Cir. 2004); *see also* H.R. Rep. No. 95-595, at 340 (1977),

⁴ Section 362 reads in pertinent parts:

(a) *Except as provided in subsection (b) of this section*, a petition filed under section 301, 302, or 303 of this title, * * *, *operates as a stay*, applicable to all entities, of

(1) the commencement or *continuation*, * * *, of a judicial, *administrative*, or other *action* or proceeding *against the debtor that was or could have been commenced before the commencement of the case under this title*, or to recover a claim against the debtor that arose before the commencement of the case under this title;

* * *

(6) *any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title*;

(b) The filing of a petition under section 301, 302, or 303 of this title, * * *, *does not operate as a stay*

* * *

(4) under paragraph (1), (2), (3), or (6) of subsection (a) of this section, of the commencement *or continuation of an action or proceeding by a governmental unit * * * to enforce such governmental unit's or organization's police and regulatory power*, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power.

11 U.S.C. § 362(a) and (b) (emphases added).

reprinted in 1978 U.S.C.C.A.N. 5963, 6296-97.⁵

In crafting the “police and regulatory power” exception of section 362(b)(4), Congress intended to allow government agencies to exercise their regulatory powers, particularly their enforcement authority, outside the confines of a bankruptcy proceeding. *McMullen*, 386 F.3d at 324-27 (affirming application of section 362(b)(4) exception to state regulatory agency proceeding against debtor, a licensed real estate broker); *In re Commerce Oil Co.*, 847 F.2d 291, 295-97 (6th Cir. 1988) (holding that section 362(b)(4) exception applied to proceeding assessing civil penalties and damages in state Water Quality Control Act administrative enforcement proceeding). The Senate Judiciary Committee Report states in pertinent part that “where a governmental unit is suing a debtor to prevent or stop violation of * * * *environmental protection*, * * *, safety, or similar police or regulatory laws, or attempting to fix damages for violation of such a law, the action or proceeding is not stayed under the automatic stay.” S. Rep. No. 95-989, at 52 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 5838; accord H.R. Rep. No. 95-595, at 343, reprinted in 1978 U.S.C.C.A.N. at 6299 (emphasis added).

To determine whether the “police and regulatory power” exception of section 362(b)(4) applies to a specific governmental action, courts “distinguish[] between situations in which the state acts pursuant to its ‘police and regulatory power’ and situations in which the state acts merely to protect its status as a creditor.” *Safety-Kleen, Inc. v. Wyche*, 274 F.3d 846, 865 (4th Cir. 2001); see also *McMullen*, 386 F.3d at 325 (describing appropriate inquiry as “determin[ing] whether the particular regulatory proceeding at issue is designed primarily to protect the public safety and welfare, or represents a governmental attempt to recover from property of the debtor estate”). In making this determination, courts examine whether deterrence is the primary purpose of the law that the government is attempting to enforce. *Safety-Kleen*, 274 F.3d at 865 (citing *Yellow Cab Coop. v. Metro Taxi, Inc. (In re Yellow Cab Coop.)*, 132 F.3d 591, 597 (10th Cir. 1977); *Javens v. City of Hazel Park (In re Javens)*, 107 F.3d 359, 367-68 (6th Cir. 1997); and *EEOC v. Rath Packing Co.*, 787 F.2d 318, 324 (8th Cir. 1986)) (deterrence was the primary purpose of state agency’s enforcement of financial assurance regulations, i.e., a bond order, and thus the action was a clear exercise of

⁵ The House Judiciary Committee Report explained:

The automatic stay also provides creditor protection. Without it, certain creditors would be able to pursue their own remedies against the debtor’s property. Those who acted first would *obtain payment of the claims* in preference to and to the detriment of other creditors. Bankruptcy is designed to provide an orderly liquidation procedure under which all creditors are treated equally. A race of diligence by creditors for the debtor’s assets prevents that.

H.R. Rep. No. 95-595, at 340, reprinted in 1978 U.S.C.C.A.N. at 6297 (emphasis added).

regulatory power to which the automatic stay exemption in section 362(b)(4) applied).

The law and the record in this case plainly establish that the primary purpose of this proceeding is deterrence. This is an enforcement proceeding to assess administrative penalties for Clean Water Act violations, brought under CWA sections 309(g)(1) and 311(b)(6)(B)(ii), 33 U.S.C. §§ 1319(g)(1), 1321(b)(6)(B)(ii). In enacting section 309(g)(1), Congress made clear that the penalty provision's purpose was to effectuate deterrence: "[S]anctions under existing law have not been sufficient to encourage compliance with the [Clean Water Act]. Therefore, the Committee [on Public Works] proposes to increase significantly the penalties * * * ." S. Rep. No. 92-414 (1972), *reprinted in* 1972 U.S.C.C.A.N. 3668, 3730-31 ("The Committee believes that if the timetables established throughout the Act are to be met, the threat of sanctions must be real, and enforcement provisions must be swift and direct.").

The authority to assess penalties for environmental law violations is one of the most important and effective deterrence tools that Congress provided to EPA. The threat of civil or administrative penalties deters the regulated community generally from violating the law. The imposition of penalties on those who violate the law deters both the violator and others similarly situated from future violations. *See* U.S. EPA, General Enforcement Policy # GM-21, *Policy on Civil Penalties* 3 (Feb. 16, 1984) ("The first goal of penalty assessment is to deter people from violating the law.").

MSPPI argues that the "only objective that could be achieved by assessing a penalty against [MSPPI], is to advance the EPA's pecuniary interest." MSPPI App. Br. at 6. This argument reflects a fundamental misunderstanding of the role of penalty assessment in enforcement of environmental laws and is unsupported by the record in this case. As one court explained, "[a]ny pecuniary benefit accruing to the government is of secondary importance to [deterrence]." *United States v. LTV Steel Co.*, 269 B.R. 576, 583 n.8 (Bankr. W.D. Pa. 2001). Moreover, this proceeding is *not* an action for penalty *collection*. It is an action for administrative penalty *assessment*. A further legal action for collection would be required to enforce and actually collect the penalty assessed against MSPPI in this proceeding, e.g., by seizure of MSPPI's property. As both the APO and the Region recognize, the automatic stay provision of section 362 of the Bankruptcy Code would apply to such a collection action during the pendency of MSPPI's bankruptcy case.⁶ EPA Resp. Br. at 6, 16; Default Order at 7.

⁶ Further, any penalty collected from MSPPI would be paid into the U.S. Treasury and would not directly benefit the Agency. *See* Miscellaneous Receipts Act, 31 U.S.C. § 3302(b) (providing that, with limited exceptions, funds properly payable to the United States must be paid to the U.S. Treasury).

Courts have construed the police and regulatory power exception in section 362(b)(4) as limiting only the government's power to *enforce* a money judgment outside of the bankruptcy proceeding, leaving intact "[t]he government's power to seek *entry* of a civil penalty judgment for violations of * * * environmental laws." *LTV Steel*, 269 B.R. at 582 (alteration in original) (citing *United States v. Nicolet, Inc.*, 857 F.2d 202, 209 (3rd Cir. 1988)); *see also Alpern v. Lieb*, 11 F.3d 689, 690 (7th Cir. 1993) ("The fact that a sanction is entirely pecuniary does not take it out of section 362(b)(4)."); *United States v. Jones & Laughlin Steel Corp.*, 804 F.2d 348, 350-51 (6th Cir. 1986) (proceeding to determine whether City is entitled to a portion of civil penalty set forth in federal Clean Air Act-related settlement agreement between EPA and respondent "neither increase[s] nor decrease[s] [the respondents'] assets nor affects its other creditors" and "falls under the rubric of the governmental regulatory power exception to the automatic stay in bankruptcy"). Decisions by the Board's predecessors, the Agency's Chief Judicial Officer and the Administrator, apply the same reasoning as the federal courts. *In re Standard Tank Cleaning Corp.*, 3 E.A.D. 642, 646 (CJO 1991) ("[T]he mere entry of a money judgment in proceedings to enforce environmental statutes and regulations is not affected by the automatic stay provision."); *In re Fisher-Calo Chems. & Solvents Corp.*, 2 E.A.D. 301, 304 (Adm'r 1987) (construing federal bankruptcy court decision that applied section 362(b)(4) to EPA penalty proceeding).⁷

Determining the amount of the administrative penalties for MSPPI's violations in this administrative proceeding will not interfere in any way with the bankruptcy case pending in the District of New Hampshire. To the contrary, establishing the amount of the EPA's penalty claim in this proceeding, in accordance with applicable law, should assist and advance the Bankruptcy Court's ability to discharge its duties efficiently. Administrative agency assessment of the amount of the penalty in this proceeding is entirely consistent with the statutory scheme of both the Clean Water Act and the Bankruptcy Code. *See CWA* § 309(g)(3), 33 U.S.C. § 1319(g)(3) (expressly providing that the amount of administrative penalties shall be determined by the Administrator of EPA); *cf. CWA* § 309(a)-(d), 33 U.S.C. § 1319(a)-(d) (providing for court assessment of civil and criminal penalties authorized by those provisions).

MSPPI further argues that "the EPA has submitted itself to the Bankruptcy Court's jurisdiction" by filing a proof of claim in MSPPI's bankruptcy proceeding, and that the Bankruptcy Court is "the proper venue for fixing the value of the EPA's claim" regardless of whether the section 362 automatic stay applies to this

⁷ Congress amended section 362(b)(4) in 1988 without significant change to the language of the police powers exception. Accordingly, case law interpreting the police powers exception prior to the 1988 amendment remains applicable. *LTV Steel*, 269 B.R. at 581 n.5 (citing *In re Mohawk Greenfield Motel Corp.*, 239 B.R. 1, 6 n.6 (Bankr. D. Mass. 1999)).

administrative proceeding. MSPPI App. Br. at 7-8. As the APO pointed out, MSPPI cites no authority to support this argument. Default Order at 6-7. Nothing in the Bankruptcy Code provides that the bankruptcy courts become the exclusive jurisdiction for establishing the amount of claims against bankrupt parties, other than the automatic stay provided by section 362, which does not apply to this proceeding.

Finally, MSPPI argues that the Default Order “violates the automatic stay by ordering the Appellant to pay the assessed penalty within thirty (30) days of the date on which the Default Order becomes final.” Notice of Appeal at 1. As the Board has concluded that the automatic stay of section 362 does not apply to this proceeding, there is no basis for this argument. To the extent that MSPPI is suggesting that the thirty-day payment provision converts this proceeding into a collection action, MSPPI is mistaken. The Default Order appropriately included a standard due date for the penalty assessed, which establishes when this debt to the United States is due and owing. As both the APO and the Region recognize, Default Order at 6-7; EPA Resp. Br. at 6, 16, collection of that debt, e.g. through seizure or execution against MSPPI’s assets, is subject to the automatic stay of section 362 and must be conducted through the Bankruptcy Court for the District of New Hampshire. Default Order at 7.

VI. CONCLUSION

Based on the foregoing discussion, the Board concludes that the automatic stay provision of section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a), does not apply to stay EPA’s assessment of the \$46,403 administrative penalty against MSPPI for violations of Clean Water Act sections 308 and 311, 33 U.S.C. §§ 1318, 1321, and 40 C.F.R. part 112 in this proceeding.

VII. ORDER

The Board affirms the APO’s Initial Decision and Default Order. MSPPI is assessed a total civil penalty of \$46,403. Payment of the entire amount of the civil penalty is due within thirty (30) days of service of this Final Decision and Order, unless otherwise agreed to by the Region. Payment may be by certified or cashier’s check, payable to the Treasurer, United States of America, and forwarded to:

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

A transmittal letter identifying the case name and the EPA docket number, plus Appellant's name and address, must accompany payment. 40 C.F.R. § 22.31(c). Appellant shall serve copies of the check or other instrument of payment on the Regional Hearing Clerk and on the Region. If appropriate, the Region may modify the above-described payment instructions to allow for alternative methods of payment, including electronic payment options. Failure to pay the penalty within the prescribed time may result in assessment of interest on the penalty. 31 U.S.C. § 3717; 40 C.F.R. § 22.31(c).

So ordered.