**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
**REGION 8**

2013 AUG -8 AM 8:19

FILED
EPA REGION VIII
HEARING CLERK

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| IN THE MATTER OF: | ) | |
| | ) | |
| **Mountain Village Parks, Inc.** | ) | |
| Pig Piney, WY | ) | **Docket No. SDWA-08-2012-0026** |
| PWS ID #WY5600221 | ) | |
| | ) | |
| Respondent | ) | |
| | ) | |

## REMAND ORDER ON DEFAULT INITIAL DECISION

This proceeding arises under the authority of section 1414(g)(3) of the Safe Drinking Water Act, 42 U.S.C. §300(g)(3), also known as the Public Water Supply Program. This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation or Suspension of Permits ("Consolidated Rules" or "Part 22"), 40 C.F.R. §§ 22.1-22.32.

## I. BACKGROUND

On February 26, 2013, the Environmental Appeals Board (EAB) issued an order remanding the September 28, 2012 Default Initial Decision[1] in this matter. The EAB remanded the decision back to the Presiding Officer (PO) for "clarification of liability findings, and determination of a penalty consistent with such findings and [the EAB's] decision." Order Rem. to Pres. Off. at 1. The EAB held: 1) that both Complainant and the PO failed to notice discrepancies in the dates of reporting violations and underlying substantive violations alleged in Counts II and III of the Complaint, resulting in the assessment of a higher penalty than the liability allegations support; 2) the penalty determination contained calculation and other errors; 3) the use of the *New Public Water System Supervision Program Settlement Penalty Policy*

[1] *See* September 28, 2012 Default Initial Decision for a detailed description of the facts and background.

(Penalty Policy) to calculate the penalty in this case was "inconsistent with the express terms of the policy"; and 4) the use of a "standard increase for pleading purposes" was without legal support. *See id.*

The EAB correctly noted in its Order the failure of the Region and myself to notice certain discrepancies in the dates of reporting violations and underlying substantive violations alleged in Counts II and III of the Complaint. This resulted in a penalty unsupported by the alleged violations. In addition, the EAB correctly noted that the penalty determination contained calculation and other errors. The EAB called into question the use of the Penalty Policy to calculate the penalty in this case. In particular, the EAB questioned the use of a "standard increase for pleading purposes."

To clarify liability findings and determine a penalty consistent with the EAB's decision, the Presiding Officer issued an Order to Supplement the Record (Order to Supplement) to Complainant on March 11, 2013. *See* Order to Supplement. In the Order, the Presiding Officer requested that Complainant: 1) clarify the discrepancy between Count II and Count III in the Complaint; 2) clarify the discrepancy between the gravity penalty assumptions in the Declaration and in the Memorandum in Support of Default; 3) provide a breakdown of the total economic benefit calculation for each Count in the Complaint; and 4) justify the basis for the "standard increase for pleading purposes." *Id.*

On March 22, 2013, Complainant filed a Motion for Extension of Time to File Supplemental Penalty Information. *See* Order on Motion for Extension of Time to Supplement the Record. On March 25, after good cause was shown, the Motion was granted. *See id.* On April 12, 2013, Complainant submitted Supplemental Penalty Information. *See* Complainant's Supp. Penalty Info.

Complainant addressed each of the Presiding Officer's requests in turn. First, it explained the discrepancy between Count II and Count III. *See id.* at 4. Complainant agreed with the EAB that the inclusion of the July 1 to December 31 six-month period in Count III was in error. *Id.* at 5. However, Complainant explained, "the violation and penalty timeframes [were] not the same." *Id.* at 4. Rather than using the January 1 to June 30 timeframe found in Count II when calculating a duration of noncompliance, as a matter of Water Technical Enforcement Program protocol, separate thirty-day durations of noncompliance were used for each "failure-to-report" type violation. *Id.* at 5. Second, Complainant explained that the discrepancy between the gravity penalty assumptions in the Declaration of Mario Mérida and the Memorandum in Support of Default was a mistake. *Id.* at 5. However, Complainant concluded that this "discrepancy [did] not impact the total proposed penalty amount." *Id.* Third, Complainant expounded on the reasoning behind the total economic benefit component. *Id.* Fourth, Complainant explained the "standard increase for pleading purposes." *Id.* at 6. Complainant explained that, as a matter of Water Technical Enforcement Program protocol, "a standard upward adjustment of 20% to the settlement figure [was applied] to arrive at a slightly higher pleading amount to allow for negotiation above the EPA's bottom-line penalty." *Id.* at 7.

On June 27, 2013, this Presiding Officer requested that Complainant supplement the record a second time by providing additional information concerning the oft cited, "Water Technical Enforcement Program protocol." *See* Complainant's Second Penalty Info. Supp. at 1. On July 12, 2013 Complainant provided a Second Penalty Information Supplement. *Id.* In the Supplement, Complainant clarified that the protocol, while not an actual written document, "include[ed] consideration of the guidelines set forth in the [Penalty Policy]" and "describ[ed] the process employed by the program for weighing and evaluating the statutory and other

appropriate factors to calculate fair, consistent, and equitable proposed penalty amounts." *Id.* at 2. However, Complainant provided no additional insight into how the Agency implements the protocol. *See id.*

After further consideration and taking into account the EAB's Order as Presiding Officer I find as follows:

## II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Pursuant to 40 C.F.R. §§ 22.17(c) and 22.27(a) of the Consolidated Rules, and based upon the record before me, I make the following revised findings of fact:[2]

1. Respondent operates a system that uses an additional two wells that may serve up to 1,000 people. At this time however, there is not adequate evidence to support assessing a penalty based on that number.
2. Respondent failed to report any NPDWR non-compliance for the CCRs and the lead and copper samples between January 1 and June 30, 2011[3], 40 C.F.R. § 141.31(b).

Pursuant to 40 C.F.R. §§ 22.17(c) and 22.27(a) of the Consolidated Rules, and based upon the record before me, I make the following conclusions of law:

3. Respondent, Mountain Village Parks, Inc., is a corporation and therefore a "person" within the meaning of section 1401(12) of the Act, 42 U.S.C. §300(f)(12) and 40 C.F.R. §141.2.
4. The System has at least 15 service connections, regularly serves an average of at least 25 individuals at least 60 days out to the year and is therefore a "public water system" within the meaning of section 1401(4) of the Act, 42 U.S.C. §300(f)(4), and a

[2] *See* September 28, 2012 Default Initial Decision for full findings of fact and conclusions of law.
[3] These dates have been correctly adjusted to repair the discrepancy in the Default Initial Decision.

"community water system" within the meaning of section 1401(15) of the Act, 42 U.S.C. §300(f)(15), 40 C.F.R. §141.2.

5. Respondent is a "supplier of water" within the meaning of section 1401(5) of the Act, 42 U.S.C. §300(f)(5), and 40 C.F.R. §141.2. Respondent is therefore subject to the requirements of part B of the act, 42 U.S.C. §300g, and its implementing regulations 40 C.F.R. part 141.
6. Respondent failed to comply with the NPDWRs, the Administrative Order, the Amended Order, and Complaint of May 9, 2012, in violation of section 1414(g) of the Act, 42 U.S.C. §300g-3(g).
7. Respondent is liable for penalties pursuant to section 1414(g)(3) of the Act, 42 U.S.C. §300g-3(g)(3) and 40 C.F.R. part 19, not to exceed $27,500 for each day of violation before January 12, 2009 and not to exceed $37,500 for each day of violation occurring after January 12, 2009, whenever the Administrator determines that any person has violated, or fails or refuses to comply with, an order under section 1414(g) of the Act, 42 U.S.C. §300g-3(g).
8. 40 C.F.R. § 22.15 provides that an answer to a complaint must be filed within 30 days after service of the Complaint.
9. 40 C.F.R. § 22.17 provides that a party may be found to be in default, after motion, upon failure to file a timely answer to the Complaint.
10. This default constitutes an admission, by Respondent, of all facts alleged in the Complaint and a waiver, by Respondent, of its rights to contest those factual allegations pursuant to 40 C.F.R. § 22.17(a).

## III. ASSESSMENT OF ADMINISTRATIVE PENALTY

Under section 22.27(b) of the Consolidated Rules:

> [T]he Presiding Officer shall determine the amount of the recommended civil penalty based on the evidence in the record and in accordance with any penalty criteria set forth in the Act. The Presiding Officer shall consider any civil penalty guidelines issued under the Act. If the Respondent has defaulted, the Presiding Officer shall not assess a penalty greater than that proposed by Complainant in the Complaint . . . or motion for default, whichever is less.

40 C.F.R. § 22.27(b).

Section 1414(g)(3) of the Act, 42 U.S.C. § 300g-3(g)(3), authorizes the Administrator to bring a civil action if any person violates, fails or refuses to comply with an order under this subsection. The Administrator may assess a Class I civil penalty of up to $37,500 per day of violation for violation of an order. *See* 40 C.F.R. Part 19.

In accordance with 40 C.F.R. § 22.17(c), "the relief proposed in the motion for default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act." *See, e.g., In re Freeman's Group, Inc.*, Docket No. UST-06-00-519-AO (2005); *In re Glen Welsh*, Docket No. SDWA-3-00-0005 (2000). However, the courts have made it clear that, notwithstanding a Respondent's default, the Presiding Officer must consider the statutory criteria and other factors in determining an appropriate penalty. *See Katson Brothers Inc., v. U.S. EPA*, 839 F.2d 1396 (10th Cir. 1988). Moreover, the EAB has held that the Board is under no obligation to blindly assess the penalty proposed in the Complaint. *In re Rybond, Inc.*, RCRA (3008) Appeal No. 95-3, 6 E.A.D. 614 (EAB, November 8, 1996). Indeed, this lesson was made very clear in this case by the EAB's remanding opinion.

Section 1414(b) of the Act requires EPA to take "the seriousness of the violation, the population at risk, and other appropriate factors" into account when assessing a civil penalty.

42 U.S.C. § 300g-3(b).[4] In addition to the statutory factors, the Agency uses the "New Public Water System Supervision Program Settlement Penalty Policy" to determine an administrative penalty in a fair and consistent manner by incorporating the factors outlined in GM-21 and GM-22. *See* Complainant's Supp. Penalty Info. at 3. However as the EAB made clear, it is important to note that the Penalty Policy is explicitly used for settlement negotiations only and is to be used only for its instructive value. *See* Order Rem. to Pres. Off. at 7 ("This policy explicitly states that it is used to calculate 'the minimum penalty for which [the Agency] would be willing to settle a case . . .'" (quoting Office of Ground Water and Drinking Water, U.S. EPA, WSG81, *New Public Water System Supervision Program Settlement Penalty Policy*, at 13 (May 25, 1994)). The Penalty Policy offers only a steady framework around which a penalty may be calculated "fairly and consistently." *Id.*

EPA uses a similar framework in calculating Safe Drinking Water Act (SDWA) penalties for violations of the Underground Injection Control (UIC) regulations. For example, the *UIC Program Judicial and Administrative Order Settlement Policy* has been used in calculating administrative penalties, regardless of its similar reference to settlement. *See In re Environmental Disposal Systems, Inc.*, 2008 EPA App. LEXIS 34 (2008) ("[A]lthough a set Agency policy or procedure for assessing administrative penalties for violations of UIC program requirements does not exist, there is a penalty policy for settlement purposes." (citing Office of Ground Water & Drinking Water, U.S. EPA, *UIC Program Judicial and Administrative Order Settlement Penalty Policy* (Interim Final Sept. 1993))). Additionally, EPA Region 5 has used a nearly

[4] *See generally,* the GM-21 and GM-22 policies detail "other appropriate factors" as including a "degree of willfulness and/or negligence, history of noncompliance, ability to pay, degree of cooperation and non-cooperation, and other unique factors specific to the violator of the case." U.S. Environmental Protection Agency, EPA General Enforcement Policy #GM-21, *Policy on Civil Penalties*, at 5 (Feb. 16, 1984); U.S. Environmental Protection Agency, EPA General Enforcement Policy #GM-22, *A Framework for Statute-Specific Approaches to Penalty Assessments: Implementing EPA's Policy on Civil Penalties*, at 3-4. (Feb. 16, 1984). The policies also state that penalties are typically calculated by adding a gravity and economic benefit component. GM-21 at 8.

identical policy that does not reference settlement. *See In re Rocky Well Service, Inc. & Edward J. Klockenkemper*, 2010 EPA App. LEXIS 5 (2010) (upholding the use of a penalty policy when calculating an administrative penalty). It is important to note that both UIC policies use a similar penalty calculation framework that is derived from GM-21 and GM-22.[5] Likewise, the Penalty Policy used in this case is used only for its calculative framework and any factors used therein are based upon GM-21 and GM-22. Therefore, the final penalty, when calculated using factors from GM-21 and GM-22, which are in turn based on applicable statutory factors, is justified within Section 1414(b).

Assessment of penalty criteria in specific cases is highly discretionary. *See, e.g., In re City of Marshall*, 10 E.A.D. 173, 188 (EAB 2001); *In re Pepperell Assocs.*, 9 E.A.D. 83, 107 (EAB 2000), *aff'd*, 246 F.3d 15 (1st Cir. 2001). But the Presiding Officer must "explain in detail in the initial decision how the penalty to be assessed corresponds to any penalty criteria set forth in the Act." 40 C.F.R. § 22.27(b).

Therefore, this Presiding Officer, consistent with statutory factors and the EAB's remanding opinion, has considered the seriousness of the violation, the population at risk, and other appropriate factors. In accordance with 40 C.F.R. § 22.17(c), this Presiding Officer hereby finds the "requested relief is clearly inconsistent with the record of the proceeding" and rejects Complainant's proposed penalty in favor of its own.[6]

**Seriousness of the Violation and Population at Risk**: The seriousness of the violation and the population at risk are each quantified and then together multiplied for each type of

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[5] Violations of the Clean Water Act are also calculated using a penalty policy based on GM-21 and GM-22. *See* U.S. EPA, *Interim Clean Water Act Settlement Penalty Policy* (Mar. 1, 1995).

[6] Through two supplemental information documents, Complainant has helped clarify some calculation procedures, which I utilize below. However, after total consideration of the Complainant's documents, I find no new evidence supportive of the original penalty, nor do I find any persuasive evidence of the Complainant's continued use of "standard increase for pleading purposes" and the resulting recommended penalty of $5,000.

violation to calculate the "gravity component" of the penalty. Penalty Policy at 4. The seriousness of the violation is quantified by assigning a numerical value ranging from 2.5 (the most serious), to 1.1 (the least serious). *Id.* at 5. The population-at-risk is calculated by multiplying the length in years a certain population was exposed by the population served by the water system in question. *Id.* at 6. The Penalty Policy notes that the last day of the compliance period should be used to estimate and calculate the duration of the violation. *Id.* at 6 n.2. The gravity component for each violation is then combined and adjusted according to other appropriate factors including the degree of willfulness and/or negligence, history of noncompliance, ability to pay, degree of cooperation and non-cooperation, and other unique factors including economic benefit. *Id.*

*Count I*

The Respondent failed to prepare, distribute, and deliver annual Consumer Confidence Reports (CCRs) for 2007, 2009, and 2010 to the system's customers and to EPA in violation of the Amended Order, the Act, and 40 C.F.R. 141.152-155. Based on my analysis, I reach the same conclusion as Complainant and ascribe a seriousness-of-violation factor value of 1.5.

Respondent failed to prepare, distribute, and deliver to EPA a CCR for calendar year 2007 within 30 days of the date of the first Administrative Order on July 13, 2009 to December 31, 2011 (the expected issuance date of the Complaint when the penalty calculation was initially made, i.e., the last day of the compliance period). Therefore, from August 12, 2009 (30 days after the first AO), to and including December 31, 2011, 872 days passed. *See* Complaint at 5.

Respondent failed to prepare, distribute, and submit to EPA a CCR for calendar year 2009 by July 1, 2010. *See* Amended Order at 3. Therefore, from and including July 2, 2010, to and including December 31, 2011 (the expected issuance date of the Complaint when the penalty

calculation was initially made, i.e., the last day of the compliance period), 548 days passed. *See* Complaint at 5.

Respondent failed to prepare, distribute, and submit to EPA a CCR for calendar year 2010 by July 1, 2011. *See* Amended Order at 3. Therefore, from and including July 2, 2011, to and including December 31, 2011 (the expected issuance date of the Complaint when the penalty calculation was initially made, i.e., the last day of the compliance period), 183 days passed. *See* Complaint at 5. Therefore, Respondent was in violation of Count I for a total of 1603 days, or 4.39 years.

Based on the Complaint, 150 people were served by the water system in question.[7] Multiplying 150 people by 4.39 years equals a population-at-risk factor of 658.50. This is then multiplied by the seriousness-of-violation factor of 1.5 to equal a total gravity component of $987.75.

*Count II*

Respondent failed to collect lead and copper samples between January 1, and June 30, 2011, for a total of 180 days (0.5 years). With regard to the seriousness-of-violation, based on my analysis, I reach the same conclusion as Complainant and ascribe a factor value of 1.8. Therefore, multiplying 150 people by 0.5 years equals a population-at-risk factor of 75. This is then multiplied by the seriousness-of-violation factor of 1.8 to equal a total gravity component of $135.00.

[7] The system uses an additional two wells that *may* serve up to 1,000 people through three active service connections for a housing facility located adjacent to the mobile home park. However, without further evidence of additional people served, it is appropriate to use the lower population.

*Count III*

Respondent failed to report to the EPA the 2007, 2009, and 2010 CCR violations, and the lead and copper sampling violations for the period of January 1 – June 30, 2011. As the EAB corrected, the initial Complaint was erroneous by alleging a violation of failing to report a violation for the period of July 1 to December 31, 2011. *See* Order Rem. to Pres. Off. at 5 With regard to the seriousness-of-violation, however, I agree with Complainant's initial suggested value of 2.4.

Complainant used a "thirty-day duration of noncompliance . . . in calculating the penalty for the violation based on when the Respondent should have reported to the EPA in the underlying failure to monitor violation immediately following the end of the sampling period." Complainant's Supp. Penalty Info. at 5. Therefore, four separate thirty-day durations of noncompliance will be assessed for the four separate failure-to-report violations, reaching a sum of 120 days, or 0.33 years. Multiplying 150 people by 0.33 years equals a population-at-risk factor of 49.5. This is then multiplied by the seriousness-of-violation factor of 2.4 to equal a total gravity component of $118.80.

*Count IV*

Respondent failed to report the February 2012 total coliform monitoring requirement violation to EPA within 10 days of discovering the violation. Given the extreme health risk in failing to report a bacterial monitoring requirement, I will assess a seriousness-of-violation factor of 2.4.

Consistent with Complainant's assessment, a "thirty-day duration of noncompliance [is] used in calculating the penalty . . . based on when the Respondent should have reported to the EPA the underlying failure to monitor violation immediately following the end of the sampling

period." Complainant's Supp. Penalty Info. at 5. Therefore, a thirty-day duration of noncompliance will be assessed for Count 4, or 0.08 years. Multiplying 150 people by 0.08 years equals a population-at-risk factor of 12. This is then multiplied by the seriousness-of-violation factor of 2.4 to equal a total gravity component of $28.80.

Adding all of the aforementioned calculations ($987.75, $135.00, $118.80, $28.80), I conclude the total gravity component equals **$1,270.35**.

**Economic benefit**: Along with the gravity component, the GM-21 policy requires an economic benefit component to be calculated. GM-21 at 8. The economic benefit addresses "costs which are delayed by noncompliance" and "costs which are avoided completely by noncompliance." GM-22 at 6. In its Supplemental Penalty Information, Complainant explained the total economic benefit amount of $259. *See* Complainant's Supp. Penalty Info. The economic benefit of Count I, failing to provide CCRs to the system's customers and to EPA, was $134. Complainant's Supp. Penalty Info. at 6. This amount represents the estimated cost of preparation, printing, and/or copying, and delivery costs. *Id.* With respect to Count II, Complainant argues the benefit for "failing to monitor lead and copper was calculated at $25 for each of the five required samples for a total of $125." These five samples represent the minimum five sample sites required by the Amended Administrative Order. Amended Order at 2. There was no economic benefit associated with Counts III and IV in the original Motion for Default nor was any ascribed in the Complaint's Supplemental Penalty Information. *See* Complainant's Supp. Penalty Info. Therefore, the total economic benefit amount remains **$259**.

**Other appropriate factors**: "After the economic benefit and gravity components are calculated, these amounts may be modified according to several adjustment components". Penalty Policy at 6. "Other appropriate factors" include "degree of willfulness and/or negligence,

history of noncompliance, ability to pay, degree of cooperation and non-cooperation, and other unique factors specific to the violator of the case." GM-21 at 5.

"If a violator has shown disregard for regulations and has been uncooperative . . . the Agency uses this component to increase the penalty by up to 100% of the gravity component". Penalty Policy at 6. Given the Respondent's inconsistent adherence to the Administrative Orders, this Presiding Officer will increase the gravity factor by a factor of 1.5 equaling $1905.50.

"The Agency must consider whether any enforcement actions had previously been taken by the Agency . . . against the water system for violations within the past five years, and whether the violator returned to compliance in response to those enforcement actions". Penalty Policy at 7. At this time, there is no evidence that Complainant took any previous enforcement actions against the Respondent. Therefore, no adjustment will be made with regard to a history of noncompliance.

"The Agency will generally not request penalties that are clearly beyond the means of the violator. EPA should consider the ability to pay a penalty in arriving at a specific final penalty assessment". GM-22 at 23. Here, there is no evidence before me that the Respondent is unable to pay. Therefore, the penalty assessed will not be reduced.

In addition to these "other appropriate factors," Complainant would have this Presiding Officer adjust the calculation with a "standard increase for pleading purposes." However, as Complainant admits, there is no case law supporting this practice, and "ultimately the PO has discretion to determine the amount of the recommended penalty . . ." Complainant's Supp. Penalty Info. at 7. Additionally, the EAB made it clear that presiding officers are required to only assess penalties which correspond to criteria set forth in the Act and that "[a] 'standard increase for pleading purposes' is not one of the penalty criteria explicitly set forth in the SDWA." Order

Rem. to Pres. Off. at 10. Therefore, a "standard increase for pleading purposes" is without legal merit and no such increase will be assessed.

In accordance with the 1994 Penalty Policy Inflation Adjustment Rule, the initial gravity component of $1905.50 is adjusted by a factor of 1.4163 and increased by the economic benefit. Therefore, based on the statute, regulations, and the administrative record, and for the aforementioned reasons, this Presiding Officer assesses the Respondent a civil penalty in the amount of **$2957.80.**

## IV. DEFAULT ORDER[8]

In accordance with the Consolidated Rules, 40 C.F.R. § 22.17, and based on the record, the findings of fact and conclusions of law set forth above, I hereby find that Respondent is in default and liable for total penalty of **$2,957.80.**

**IT IS THEREFORE ORDERED** that Respondent, Mountain Village Parks, Inc., owner and operator of Mountain Village Parks Public Water System shall, within thirty (30) days after this Order becomes final under 40 C.F.R. § 22.27(c), submit by cashier's or certified check, payable to the United States Treasurer, payment in the amount of **$2,957.80** in one of the following ways:

[8] Pursuant to 40 C.F.R. § 22.17(c), Respondent may file a Motion to set aside the default order for good cause.

**CHECK PAYMENTS:**

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

**WIRE TRANSFERS:**

Wire transfers should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
Swift Address = FRNYUS33
33 Liberty Street
New York NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

**OVERNIGHT MAIL**

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Natalie Pearson
314-418-4087

**ACH (also known as REX or remittance express)**

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact – Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 – checking
Environmental Protection Agency
Account 310006
CTX Format

**ONLINE PAYMENT**

There is now an Online Payment Option, available through the Dept. of Treasury. This payment option can be accessed from the information below:

www.PAY.gov
Enter "sfo 1.1" in the search field
Open form and complete required fields.

Respondent shall note on the check the title and docket number of this Administrative action. Respondent shall serve a photocopy of the check on the Regional Hearing Clerk at the following address:

Regional Hearing Clerk
EPA Region 8
1595 Wynkoop St
Denver, Colorado 80202

Each party shall bear its own costs in bringing or defending this action.

Should Respondent fail to pay the penalty specified above in full by its due date, the entire unpaid balance of the penalty and accrued interest shall become immediately due and owing. Pursuant to the Debt Collection Act, 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the const of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty, if it is not paid as directed. Interest will be assessed at the rate of the United States Treasury tax and loan rate, in accordance with 40 C.F.R. § 102.13(e).

This Default Order constitutes an Initial Decision, in accordance with 40 C.F.R. § 22.27(a) of the Consolidated Rules. This Initial Decision shall become a Final Order forty-five (45) days after its service upon a party, and without further proceedings unless: (1) a party moves to reopen the hearing; (2) a party appeals the Initial Decision to the EAB; (3) a party moves to

set aside a default order that constitutes an initial decision; or (4) the EAB elects to review the Initial Decision on its own initiative.

Within thirty (30) days after the Initial Decision is served, any party may appeal any adverse order or ruling of the Presiding Officer by filing an original an done copy of a notice of appeal and an accompanying appellate brief with the EAB. 40 C.F.R. § 22.27(a). If a party intends to file a notice of appeal to the EAB it should be sent to the following address:

U.S. Environmental Protection Agency
Clerk of the Board
Environmental Appeals Board (MC 1103B)
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-0001

Where a Respondent fails to appeal an Initial Decision to the EAB pursuant to § 22.30 of the Consolidated Rules, and that Initial Decision becomes a Final Order pursuant to § 22.27(c) of the Consolidated Rules, Respondent waives its right to judicial review.

**SO ORDERED this 8th Day of August, 2013.**

**Elyana R. Sutin**
**Presiding Officer, Region 8**

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **REMAND ORDER ON DEFAULT INITIAL DECISION** in the matter **MOUNTAIN VILLAGE PARKS, INC.; DOCKET NO.: SDWA-08-2012-0026** was filed with the Regional Hearing Clerk on August 8, 2013.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Amy Swanson, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. A true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt requested on August 8, 2013, to:

Diana Alexander, Registered Agent
Mountain Village Parks, Inc.
P. O. Box 1226
Big Piney, WY 83113

And e-mailed to:

Honorable Elyana R. Sutin
Regional Judicial Officer
U. S. Environmental Protection Agency – Region 8
1595 Wynkoop Street
Denver, CO 80202

Eurika Durr, Clerk of the Board
Environmental Appeals Board (MC 1103B)
U. S. Environmental Protection Agency
William J. Clinton Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Kim White
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

August 8, 2013

Tina Artemis
Paralegal/Regional Hearing Clerk

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