

CERTIFICATE OF SERVICE

I hereby certify that the **Default Order and Initial Decision** by Regional Judicial Officer Helen Ferrara in the matter of **Municipality of Jayuya, Santa Barbara I Public Water System, Docket No. SDWA-02-2003-8270** is being served on the parties because the respondent's mail was returned unclaimed by the post office.

This order is being reserved on the parties as indicated below:

Certified Mail  
Return Receipt  
and Regular Mail

Hon. Jorge Gonzalez Otero  
Mayor  
Municipality of Jayuya  
P.O. Box 488  
Jayuya, Puerto Rico 00664-0488

Overnight Mail -

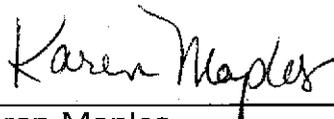
Environmental Appeals Board  
U.S. Environmental Protection Agency  
Colorado Building, Suite 600  
1341 G. Street, N.W.  
Washington, D.C. 20005  
(w/copy of official file)

Pouch Mail -

Assistant Administrator for  
Enforcement & Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W. (2201A)  
Washington, D.C. 20460

Regular Mail -

Lourdes del Carmen Rodriguez, Esq.  
Office of Regional Counsel  
USEPA - Region II  
Caribbean Field Division  
Centro Europa Bldg.  
1492 Ponce de Leon Avenue, Suite 417  
San Juan, Puerto Rico 00907



Karen Maples  
Regional Hearing Clerk  
USEPA - Region II

Dated: July 9, 2008

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 Broadway  
New York, NY 10007

**IN THE MATTER OF:**

**Municipality of Jayuya  
Hon. Jorge González Otero  
Mayor**

**Santa Bárbara I Public Water System**

Respondent

Docket No. **SDWA-02-2003-8270**

Proceeding Pursuant to § 1414(g)(3)(B)  
of the Safe Drinking Water Act, 42  
U.S.C. § 300g-3(g)(3)(B)

ENVIR. APPEALS DIVISION

2003 JUN 10 AM 10:17

RECEIVED  
U.S. EPA.

**DEFAULT ORDER AND INITIAL DECISION**

By Motion for Default, the Complainant, the Director of the Caribbean Environmental Protection Division ("CEPD") for Region 2 of the United States Environmental Protection Agency ("EPA"), has moved for a Default Order finding the Santa Bárbara I Community by its representative the Municipality of Jayuya, through its Mayor, the Honorable Jorge González Otero ("Respondent"), liable for the violation of an Administrative Order issued pursuant to Section 1414(g) of the Safe Drinking Water Act ("SDWA" or "Act"), 42 U.S.C. § 300g-3(g) and the Surface Water Treatment Rule, promulgated under the SDWA.<sup>1</sup> The Complainant requests assessment of a civil penalty in the amount of Five Hundred Dollars (\$500), as proposed in the Complaint.

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment

<sup>1</sup> The Municipality of Jayuya is the named Respondent in the Complaint, as addressed in the Discussion section below.

of Civil Penalties ("Consolidated Rules"), 40 C.F.R. Part 22, and based upon the record in this matter and the following Findings of Fact, Discussion, Conclusions of Law and Determination of Penalty, Complainant's Motion for Entry of Default is hereby GRANTED. The Respondent is hereby found in default and a civil penalty is assessed against Respondent in the amount of \$500.

### **BACKGROUND**

This is a proceeding under Section 1414(g)(3)(B) of the Safe Drinking Water Act, 42 U.S.C. § 300g-3(g)(3)(B) governed by the Consolidated Rules. Complainant initiated this proceeding by issuing a Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to Request a Hearing ("Complaint") on June 2, 2003 against Respondent. In its Complaint, the Complainant alleged that Respondent violated an Administrative Order issued pursuant to Section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g), requiring compliance with the applicable requirements of the SDWA and the regulations promulgated there under, including the filtration requirements specified in 40 C.F.R. Part 141 Subpart H.

The Complaint explicitly stated on page 5, in the section entitled *Failure to Answer*, that

If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondent fails to file a timely [i.e. in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)] Answer to the Complaint, Respondent may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all of the facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent for failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. §

22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings thirty (30) days after the Default Order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such Final Order of Default against Respondent, and to collect the assessed penalty amount, in federal court.

Respondent was served with a copy of the Complaint by certified mail return receipt requested on June 10, 2003. To date, an Answer has not been filed by the Respondent.

On March 8, 2007, Complainant filed a Motion for Entry of Default. It was served on Respondent via certified mail return receipt requested. To date, the Respondent has not filed a response to the Motion for Entry of Default.

#### **FINDINGS OF FACT**

Pursuant to 40 C.F.R. § 22.17(c) and based upon the entire record, I make the following findings:

1. Respondent is a "person" as defined in Section 1401(12) and (13)(A) of the SDWA, 42 U.S.C. § 300(f)(12) and (13)(A) and 40 C.F.R. § 141.2.
2. Respondent is a "supplier of water" who is the owner and/or operator of a "public water system," the Santa Bárbara I Public Water System, within the meaning of Section 1401(4) and (5) of the SDWA, 42 U.S.C. § 300f(4) and (5), and 40 C.F.R. § 141.2, located in Jayuya, Puerto Rico. The Santa Bárbara I Community is composed of those community members served by the Santa Bárbara I Public Water System, and is represented by the Mayor of Jayuya, the Honorable Jorge González Otero.
3. Respondent is a "person" subject to an Administrative Order issued under Section

1414(g)(1) of the SDWA, 42 U.S.C. § 300g-3(g)(1).

4. The Santa Bárbara I Public Water System is supplied by a surface water source, and provides piped water for human consumption and regularly serves at least 15 service connections used by year-round residents and/or a population of at least 25 individuals, and is, therefore, a "community water system" within the meaning of Section 1401(15) of the SDWA, 42 U.S.C. § 300f (15), and 40 C.F.R. § 141.2.
5. On June 29, 1989, EPA promulgated the Surface Water Treatment Rule (SWTR) as required by Section 1412(b)(7)(C) of the SDWA, 42 U.S.C. § 300g-1(b)(7)(C) and regulated by 40 C.F.R. Part 141 Subpart H. The SWTR is intended to reduce the risk of waterborne disease outbreaks in public water systems utilizing a surface water source.
6. 40 C.F.R. Part 141 Subpart H requires public water systems using a surface water source, and currently not filtering, to filter their water in accordance with 40 C.F.R. § 141.73 by June 29, 1993, or within 18 months of the State's determination that the system must filter, whichever is later, unless the system can meet certain avoidance criteria as outlined in 40 C.F.R. § 141.71(a) and (b) and the disinfection criteria in 40 C.F.R. § 141.72(a).
7. The Respondent is required to filter in accordance with 40 C.F.R. § 141.73 and has failed to do so, creating the risk of infection and waterborne disease among the population that is served from the system.
8. On June 27, 1994, EPA issued an Administrative Order, Docket No. PWS-PR-AO-270F, to Carlos Diaz Morales, previous owner and/or operator of the Santa Bárbara I Public Water System, under the authority of Section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g), addressing violations of the SDWA and the regulations promulgated there under.

9. Respondent failed to provide the filtration to the Santa Bárbara I Public Water System by the June 27, 1997 deadline ordered in the 1994 Administrative Order.
10. Respondent continues to be in noncompliance and has failed to comply with the filtration requirements specified in 40 C.F.R. Part 141 Subpart H and Section 10 of the 1994 Administrative Order.
11. As set forth above, Complainant found that Respondent has violated the Administrative Order issued pursuant to Section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g), and the SWTR, promulgated pursuant to Section 1412(b)(7)(C) of the SDWA, 42 U.S.C. § 300g-1(b)(7)(C), and regulated by 40 C.F.R. Part 141 Subpart H. For these violations, Complainant filed a Complaint against Respondent, appended to the Motion for Entry of Default as Exhibit 1, pursuant to Section 1414(g)(3)(B) of the SDWA, 42 U.S.C. § 300g-3(g)(3)(B), seeking an administrative penalty of Five Hundred Dollars (\$500).
12. Respondent was served with a copy of the Complaint and a copy of the Consolidated Rules by certified mail return receipt requested on June 10, 2003. The United States Postal Service (“USPS”) Domestic Return Receipt (“return receipt”) is appended to the Motion for Entry of Default as Exhibit 2.<sup>2</sup>
13. Respondent has failed to answer the Complaint.
14. On March 8, 2007, Respondent was served by certified mail return receipt requested with a Motion for Entry of Default.
15. To date, the Respondent has failed to respond to the Motion for Entry of Default.

### **DISCUSSION**

Before proceeding to the findings of a violation, it is necessary to determine whether service of process was proper and effectual, for if service was invalid then default cannot enter.

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<sup>2</sup>The sufficiency of the service of the Complaint is addressed in more detail in the Discussion section below.

I note that there has been no challenge by the Respondent to the service of process of the Complaint in this matter. However, default judgments are not favored by modern procedure (*See In the Matter of Rod Bruner and Century 21 Country North*, EPA Docket No. TSCA-05-2003-0009, May 19, 2003), and an entry of default may be set aside for good cause shown (40 CFR § 22.17(c)). Therefore, I will briefly consider the fact that the named representative of Respondent, Honorable Jorge González Otero, Mayor of the Municipality of Jayuya, was not the person who signed the return receipt on behalf of Respondent. The relevant facts and applicable regulatory requirements are summarized herein.

By Motion for Entry of Default ("Motion"), the Complainant seeks entry of a default order "against the Santa Barbara I Community, by its representative, Municipality of Jayuya, through its Mayor, Hon. Jorge González Otero ("Respondent")" (Motion, page 1).

However, on page 2 of the Complaint (Exhibit 1 to Motion), Complainant requested that "a civil penalty be assessed against the Municipality of Jayuya ("Respondent")".

Also in its Motion, currently before the undersigned, the Complainant, in paragraph 3 on page 1, describes the Respondent as follows:

Respondent is a "supplier of water" who is owner and /or operator of the "public water system" of Santa Bárbara I, within the meaning of Section 1401 of the SDWA, 42 U.S.C. § 300f(4) and (5), and 40 C.F. R. § 141.2. The Santa Bárbara I Community is composed of those community members served by the Santa Bárbara I public water system.

Complainant sent a Complaint, addressed to Hon. Jorge González Otero, Mayor, Municipality of Jayuya, at P.O. Box 488, Jayuya, Puerto Rico 00664, by certified mail return receipt requested on June 2, 2003. On June 10, 2003, an individual identifying himself as

Francisco Bennett signed the return receipt, also printing his name and indicating the date of receipt of the Complaint.

In evaluating this service issue, I note that the Federal Rules of Civil Procedure are not binding on administrative agencies, and such agencies are free to fashion their own rules for service of process so long as these rules satisfy the fundamental guarantees of fairness and notice. *See Katzson Bros., Inc. v. U.S. EPA*, 839 F.2d 1396, 1399 (10th Cir. 1988).<sup>3</sup> The court in *Katzson Brothers* concluded that the Consolidated Rules and the requirements of due process alone determine whether EPA's service of process is proper. See *In the Matter of C.W. Smith, Grady Smith, & Smith's Lake Corporation, Respondent*, Docket No. CWA-04-2001-1501, 2002 EPA ALJ LEXIS 7 (ALJ, February 6, 2002). EPA has established its own rules of procedure in its Consolidated Rules.

The Consolidated Rules, 40 C.F.R. Part 22, provide that:

Complainant shall serve on respondent, or a representative authorized to receive service on respondent's behalf, a copy of the signed original of the complaint, together with a copy of these Consolidated Rules of Practice. Service shall be made personally, by certified mail with return receipt requested, or by any reliable commercial delivery service that provides written verification of delivery. 40 C.F.R. § 22.5(b)(1).

When the Motion is read together with the Complaint, it becomes clear that the Municipality of Jayuya (Municipality), and not the Santa Bárbara I Community, is the Respondent. As to such municipalities, the Consolidated Rules provide:

Where respondent is a...local unit of government...,

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<sup>3</sup> Although *Katzson Brothers* analyzed the former version of the Consolidated Rules, the minor differences between the applicable sections of the Consolidated Rules and the former version are insignificant for purposes of the current analysis.

complainant shall serve the chief executive officer thereof, or as otherwise permitted by law. 40 C.F.R. § 22.5(b)(1)(ii)(C).

In this case, the Complainant has designated the Municipality which owns and/or operates the water system, through its Mayor, Hon. Jorge González Otero, as the Respondent. An issue as to the adequacy of service arises because the person signing the return receipt was not the Mayor, and did not indicate his relationship either to the Mayor or the Municipality when signing the return receipt. In addition, it is unclear whether the address at which service was attempted was the Municipality's official place of business or the Mayor's private residence. If service was attempted at the designated place of business of the Municipality, it may be reasonable to assume that an individual accepting service at that location was authorized to receive service on behalf of the Municipality. However, if the address was the Mayor's private residence, there is no way to know, short of a written indication by the person signing the return receipt or the person serving the Complaint, as to whether the person signing was authorized to receive service on behalf of the Municipality or Hon. Jorge González Otero in his official capacity as Mayor.

While one could assume that Mr. Bennett was authorized to receive service on behalf of the designated representative, and hence, the Respondent, it is preferable that the record supporting a Motion for Entry of Default be as complete and conclusive as possible. Therefore, the undersigned issued an Order to Supplement the Record dated July 31, 2007, directing the parties to provide any information to clarify the service issue, including information addressing the relationship between the Mayor and Mr. Bennett and/or the Municipality and Mr. Bennett, whether the Municipality was served at offices specifically designated as its official place of

business, and any other information which the parties believe would have a bearing on the question of whether service in this case complied with the applicable regulations.

On September 13, 2007, the Complainant's Attorney filed a Motion in Compliance with Order to Supplement the Record indicating that the Municipality was served at the offices specifically designated as its official place of business and that therefore, Mr. Francisco Bennett should be presumed to be authorized to receive service on behalf of the Municipality. However, based on additional information provided by Complainant's Attorney, set forth below, the undersigned need not rely on this presumption in determining whether service of the Complaint was adequate under Part 22 and the requirements of due process.

Complainant's Attorney states that EPA representatives, including Complainant's Attorney, met personally with the named representative of the Municipality, Hon. Jorge González Otero, at the offices of the Municipality on February 23, 2006. During that meeting, the allegations and conclusions of law presented in the Complaint were discussed with the Mayor. In an attached sworn statement, Cristina Maldonado, an EPA employee who also met with the Mayor on this occasion, sets forth the circumstances of the meeting and states that an additional copy of the Complaint was given to the Mayor during this meeting.

The fact that the parties met to discuss the Complaint provides strong support for the Complainant's position that service of process in this matter was adequate. *In the Matter of C.W. Smith, Grady Smith, & Smith's Lake Corporation, Respondent*, Docket No. CWA-04-2001-1501, 2002 EPA ALJ LEXIS 7 (ALJ, February 6, 2002), the Court, considering a case in which Respondents challenged service of process after entering into settlement negotiations with the Complainant EPA and otherwise acknowledging receipt of the Complaint, discussed actual, as

opposed to sufficient, service of process, stating:

Considering the facts in the light most favorable to respondents, the Court find that actual service of process of the Complaint was achieved on both respondents... The achievement of actual service of process obviates the failure of Complainant to strictly comply with the service of process procedures of the Rules of Practice.

As stated above, applicable legal precedents and the fundamental guarantees of fairness and notice mandate that the undersigned establishes that service of process upon the Respondent was sufficient under the controlling regulations, ensuring that jurisdiction over the Respondent is clear, before a default order can be issued. Upon review of the facts, the regulations and the applicable legal precedents, the undersigned concludes that service of process was adequate in this case.

In summary, the facts indicate that the Complaint was mailed by certified mail return receipt requested to the designated official place of business of the Respondent Municipality, and the return receipt was signed and dated by someone accepting certified mail at that official place of business. More significantly, a long time employee of the Complainant, as well as the Complainant's Attorney, hand delivered a copy of the Complaint to the named representative of Respondent on February 23, 2006, and discussed that Complaint with the Mayor. The fact that the meeting occurred indicates that the Mayor was aware of the Complaint, as he met to discuss its contents with the Complainant's Attorney and Ms. Maldonado. More importantly, if the fact of the earlier receipt of the Complaint by Respondent's representative was ever put in doubt, Respondent's named representative was personally served with a copy of the Complaint as of the date of the meeting, February 23, 2006. Respondent has certainly had adequate time to respond

to the Complaint since that meeting, over two years ago, and over a year prior to the filing of the Motion for Entry of Default in this matter.

Therefore, I determine that service of process did indeed occur and that Respondent was given sufficient time to file an Answer.

### CONCLUSIONS OF LAW

1. Jurisdiction is conferred by Section 1414 of the SDWA, 42 U.S.C. § 300g-3.
2. Section 1414(g)(3)(A) of the Act, 42 U.S.C. § 300g-3(g)(3)(A), as amended by the Debt Collection Act of 1996, implemented by the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, in effect as of December 31, 1991, provides that any person who violates, or fails or refuses to, comply with, an Administrative Order issued pursuant to the SDWA shall be liable to the United States for a civil penalty up to \$27,500 per day of violation.
3. The Complaint in this action was served upon Respondent in accordance with 40 C.F.R. § 22.5(b)(1).
4. Respondent's failure to file an Answer to the Complaint, or otherwise respond to the Complaint, constitutes a default by Respondent pursuant to 40 C.F.R. § 22.17(a).
5. Respondent's default constitutes an admission of the allegations set forth in the Complaint and a waiver of the Respondent's right to a hearing on such factual allegations. 40 C.F.R. §§ 22.17(a) and 22.15(d).
6. Respondent has failed to comply with the provisions of the Administrative Order issued pursuant to Section 1414(g) of the Act.
7. Pursuant to 40 C.F.R. § 22.17(a), Respondent's failure to file a timely Answer or

otherwise respond to the Complaint is grounds for the entry of an Order on Default against the Respondent assessing a civil penalty for the aforementioned violations.

8. As described in the penalty calculation below, I find that the Complainant's proposed civil penalty of \$500 is properly based on the statutory requirements of Section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g).

#### DETERMINATION OF PENALTY

As set forth above, Section 1414(g)(3)(A) of the SDWA, U.S.C. § 300g-3(g)(3)(A), as amended by the Debt Collection Act of 1996, provides that any person who violates, or fails or refuses to comply with, an Administrative Order issued pursuant to the SDWA shall be liable to the United States for a civil penalty up to \$27,500 per day of violation.

In both its Complaint and its Motion for Entry of Default, the Complainant seeks a civil penalty of \$500, based upon the statutory factors in Section 1414(b) of the SDWA, U.S.C. § 300g-3(b)<sup>4</sup> and in accordance with the Agency's Policy on Civil Penalties (#GM-21),<sup>5</sup> as outlined in the Motion for Entry of Default and Exhibit 3 thereto, the June 5, 2003 memorandum to file entitled *Issuance of Penalty Order to Non-PRASA System PWS-PR-CFP-SDWA-02-2003-8270*. The statutory factors under Section 1414(b) of the SDWA include the seriousness of the

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<sup>4</sup> Section 1414(b) of the SDWA, U.S.C. § 300g-3(b) specifically provides statutory guidelines for a Federal district court to consider when determining an appropriate civil penalty. While there are no equivalent statutory criteria for consideration in an administrative matter, EPA has followed the statutory guidelines set forth for courts, as well as written penalty policies, when calculating an appropriate penalty amount. See *In the Matter of Jose Oyola, Borinquen Pradera Community*, EPA Docket No. SDWA-02-2003-8280 (July 23, 2007); *In the Matter of Israel Justiniano, Perichi Community*, EPA Docket No. SDWA-02-2002-8255 (January 11, 2007).

<sup>5</sup> Complainant does not have a written penalty policy for calculating the penalty amount it would seek in an administrative or judicial action for violations of the Public Water Supply section of the Safe Drinking Water Act, as it does under other environmental statutes.

violation, the population at risk, and other appropriate factors, including the prior history of such violations, the degree of willfulness or negligence, the economic benefit accrued to the Respondent through failure to comply, and the ability of the Respondent to pay.

In concluding that the proposed penalty is reasonable, the undersigned took the following findings into consideration:

1. The risk to public health in this case is known and could have easily been avoided. EPA's main concern is the risk of waterborne diseases and pathogens, and the construction of a filtration system is necessary to protect the users of the system from these risks. Therefore, Respondent's failure to comply with the Act and the Administrative Order has placed the population served by the Santa Bárbara I Public Water System at risk of infectious diseases over a significant time.
2. The Respondent has continued to violate the Act for a significant period of time. Under EPA regulations, the Respondent was required to comply with the filtration and disinfection requirements no later than June 29, 1993. EPA issued an Administrative Order to the prior owner/operator of the Santa Bárbara I Public Water System on June 27, 1994 requiring compliance with the filtration and disinfection requirements of the SWTR within three years, and thereby giving Respondent a significant amount of additional time to achieve compliance. Furthermore, from 1994 thru 2002, inspections to the system were performed and compliance letters were sent to the Respondent to follow up on its efforts to achieve compliance. All efforts were unsuccessful and as of the date of issuance of the Complaint, Respondent continued to be in non-compliance.
3. Respondent was made aware of the requirements of the Act and the SWTR, as well as the

deadline contained in the Administrative Order, yet willfully remained in non-compliance.

4. The Respondent had an obligation under the law to provide disinfection and filtration to the surface water source to reduce the risk of waterborne disease outbreaks. However, the Santa Bárbara I Community that is served by the Santa Bárbara I Public Water System is a non-profit organization. The Municipality of Jayuya serves as owner and/or operator of the system. Thus the EPA's enforcement officer determined that Respondent has received no economic benefit from its non-compliance.
5. The Santa Bárbara I Public Water System serves a Community that is not organized. At the time of issuance of the complaint, the enforcement officer did not know if the users of the system collect a monthly fee to defray maintenance and operation costs of the system. Therefore, the \$500 penalty is a reasonable amount in light of the pattern of noncompliance and the health risks involved.
6. In summary, the Complainant did not propose the maximum penalty (\$27,500) allowed under the SDWA for violation of the Administrative Orders. Nevertheless, Complainant makes clear that it takes violations of its Administrative Orders and the SWTR seriously. The penalty sought in the amount of \$500 is fully supported by the application of the statutory factors for determining a civil penalty in Section 1414(b) of the SDWA and the Agency Policy on Civil Penalties. Further, the record supports this penalty. Therefore, a penalty of \$500 is hereby imposed against Respondent.

## DEFAULT ORDER

Pursuant to the Consolidated Rules at 40 C.F.R. Part 22, including 40 C.F.R. § 22.17, a Default Order and Initial Decision is hereby ISSUED and Respondent is ordered to comply with all the terms of this Order:

- (1) Respondent is assessed and ordered to pay a civil penalty in the amount of Five Hundred Dollars (\$500.00).
- (2) Respondent shall pay the civil penalty by certified or cashier's check payable to the "Treasurer of the United States of America" within thirty (30) days after this default order has become a final order pursuant to 40 C.F.R. § 22.27(c). The check shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. Such payment shall be remitted to:

Regional Hearing Clerk  
EPA Region 2  
P.O. Box 360188M  
Pittsburgh, Pennsylvania 15251

A copy of the payment shall be mailed to:

Regional Hearing Clerk  
EPA Region 2  
290 Broadway, 16th Floor  
New York, New York 10007

- (3) This Default Order constitutes an Initial Decision pursuant to 40 C.F.R. § 22.17(c). Pursuant to 40 C.F.R. § 22.27(c), this Initial Decision shall become a final order forty-five (45) days after its service upon the parties unless (1) a party moves to reopen the hearing, (2) a party appeals the initial decision to the Environmental Appeals Board,

(3) a party moves to set aside the default order, or (4) the Environmental Appeals Board chooses to review the initial decision sua sponte.

**IT IS SO ORDERED.**

Dated: July 8, 2008

A handwritten signature in cursive script, reading "Helen S. Ferrara". The signature is written in dark ink and is positioned above a horizontal line.

Helen S. Ferrara  
Presiding Officer