UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2012 SEP 28 PM 4:36

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

DEFAULT INITIAL DECISION AND ORDER

This proceeding arises under the authority of section 1414(g)(3) of the Safe Drinking Water Act, 42 U.S.C. § 300g-3(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

Mountain Village Parks, Inc. ("Mountain Village" or "Respondent") is a Public Water System located in Sublette County, Wyoming. The Public Water System ("PWS" or "System") is supplied from a ground water source through two wells via 74 active service connections. The system serves approximately 150 individuals daily year round at a mobile home park. The system uses an additional two wells to serve up to 1,000 people through three active service connections for a housing facility known as a "man camp." See, Complaint, p.2.

On July 13, 2009, Complainant, U.S. Environmental Protection Agency (EPA) Region 8, issued an Administrate Order (AO), to Respondent, pursuant to section 1414(a)(2) and (g)(1) of the Safe Drinking Water Act (Act), 42 U.S.C §§ 300g-3(a)(2) and (g)(1). The AO alleged that Respondent was in violation of the National Primary Drinking Water Regulations (NPDWRs) at 40 C.F.R. Part 141 for: failing to monitor the System's water for total coliform bacteria, failing to monitor the System's water for lead and copper contamination, failing to prepare and deliver an annual Consumer Confidence Report ("CCR") to the System's customers, failing to notify the public and failing to report these violations to EPA within the required regulatory timeframes.

On September 29, 2009, Complainant issued an Amended AO to Respondent. The Amended AO added a violation for exceeding the maximum contaminant level (MCL) for total coliform bacteria in May 2009. The Amended AO required Respondent to: 1) comply with the total coliform MCL; 2) monitor the System's water for total coliform bacteria twice per month and report the results to EPA; 3) monitor the System's water for lead and copper contamination

between June 1 and September 30, 2009, and annually thereafter; 4) provide public notice of the violations within 30 days; 5) prepare, distribute and copy EPA on a CCR for calendar year 2007, and annually thereafter; 6) notify EPA by the end of the following business day after discovering a violation of total coliform MCL; 7) report to EPA any failure to comply with total coliform monitoring requirements within 10 days after discovering the violation; and 8) report to EPA any other failure to comply with NPDWRs within 48 hours. See, Complaint, p.3.

Complainant then issued an Administrative Order Violation (AOV) letter on September 16, 2010, notifying Respondent that it was in violation of the Amended AO, the Act, and the NPDWRs for failing to prepare, distribute to its customers, and copy EPA on a CCR for 2007 and 2009; and for failure to report any NPDWR violation within 48 hours. See, Complaint, p.3. On September 7, 2011, EPA issued a second AOV letter to Respondent for violation of the Amended AO citing the following: 1) failure to collect lead and copper samples between January 1 and June 30, 2011; 2) failure to prepare, distribute to its customers, and copy EPA on a CCR for 2007 and 2010; 3) failure to report any NPDWR violation within 48 hours. See, Complaint, p.4.

On May 9, 2012, Complainant filed a Complaint and Notice of Opportunity for a Hearing (Complaint) against Respondent, pursuant to 42 U.S.C. § 300g-3(g)(3), alleging violations of the Act. Respondent was served with the Complaint on May 14, 2012. See, Certified Return Receipt ("Green Card"). The Complaint charges Respondent with three counts: 1) failure to prepare, distribute to its customers, and copy EPA on a CCR for 2007, 2009 and 2010; 2) failure to collect lead and copper samples between January 1 and June 30, 2011; 3) failure to report any NPDWR non-compliance for the CCRs and the lead and copper samples; and 3) failure to report the February 2012 coliform non-compliance to EPA. The Complaint proposed a civil penalty of $5,000. A review of the record indicates that no Answer has been filed with the Regional Hearing Clerk to date.

The Complaint iterates Respondent's obligations with respect to responding to the Complaint, including filing an Answer. See, Complaint, pp. 8-9. Specifically, the Complaint states, "Respondent must file a written Answer in accordance with 40 C.F.R. §§ 22.15 and 22.42 within thirty (30) calendar days after receipt of this Complaint." See, Complaint, p. 8. In addition, "Failure to admit, deny, or explain any material factual allegation in this Complaint will constitute an admission of the allegation." See, Complaint, p. 8. Last, the Complaint states:

> IF YOU FAIL TO FILE A WRITTEN ANSWER OR PAY THE PROPOSED PENALTY WITHIN THE 30 CALENDAR DAY TIME LIMIT, A DEFAULT JUDGMENT MAY BE ENTERED PURSUANT TO 40 C.F.R. § 22.17. THIS JUDGMENT MAY IMPOSE THE PENALTY PROPOSED IN THIS COMPLAINT.

See, Complaint, p.9.

On July 23, 2012, Complainant filed a Motion for Default (Motion) against Respondent pursuant to Section 22.17 of the Consolidated Rules. Section 22.17 provides in pertinent part that, "[a] party may be found in default . . . after motion, upon failure to file a timely answer to the complaint." 40 C.F.R. § 22.17. The Motion sought a default order against Respondent for failing to file a timely answer to the Complaint and a civil penalty of $5,000. See, Complainant's Motion for Default, p. 1.

Pursuant to section 22.16(b) of the Consolidated Rules, "[a] party's response to any written motion must be filed within 15 days, after service of such motion . . . . Any party who fails to respond within the designated period waives any objection to the granting of the motion." There has been no response from Respondent.[1] Therefore, after August 6, 2012, it was appropriate for this court to address Complainant's Motion.

II. FINDINGS OF FACT

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 findings of fact:

1. Respondent, Mountain Village Parks, Inc. is a corporation that owns and operates the Mountain Village Park Public Water System.

2. Mountain Village Park Public Water System, located in Sublette County, Wyoming, provides piped water for human consumption to the public.

3. Respondent operates a system that has approximately 74 service connections and regularly supplies water to at least 150 individuals daily year round. The system uses an additional two wells to serve up to 1,000 people through three active service connections for a housing facility located adjacent to the mobile home park.

4. The source of the Public Water System is ground water supplied by two wells and operates year-round.

5. On May 9, 2012, EPA filed a Complaint and Notice of Opportunity for Hearing (Docket No. SDWA-08-2012-0026) and proposed a $5,000 penalty for:

    1) Failure to prepare, distribute to its customers, and copy EPA on a CCR for 2007, 2009 and 2010, 40 C.F.R. §§ 141.152-155;
    2) Failure to collect lead and copper samples between January 1 and June 30, 2011, 40 C.F.R. §§ 141.86(c)-(d);

[1] The green card showing proof of service, indicates that Respondent received the Motion for Default on July 27, 2012.

3) Failure to report any NPDWR non-compliance for the CCRs and the lead and copper samples, 40 C.F.R. § 141.31(b) and,
4) Failure to report the February 2012 coliform non-compliance to EPA within ten days after the system discovers the violation, 40 C.F.R. § 141.21(g)(1).

6. Respondent has not filed an Answer to the Complaint.

7. Complainant filed a Motion for Default and Memorandum in Support on July 23, 2012. The Motion seeks the assessment of a $5,000 penalty.

8. Respondent has provided no response to the Motion for Default.

III. 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 conclusions of law:

9. Respondent, Mountain Village Parks, Inc., is a corporation and therefore a "person" with the meaning of section 1401(12) of the Act, 42 U.S.C. §300(f)(12) and 40 C.F.R. §141.2.

10. The System has at least 15 service connections, regularly serves an average of at least 25 individuals at least 60 days out of 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 "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.

11. 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.

12. Respondent failed to comply with the NPDWRs, the Administrative Order, the Amended Order and the Complaint of May 9, 2012, in violation of section 1414(g) of the Act, 42 U.S.C. §300g-3(g).

13. 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 violation 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).

14. 40. C.F.R. § 22.15 provides that an answer to a complaint must be filed within 30 days after service of the Complaint.

15. 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.

16. 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).

IV. ASSESSMENT OF ADMINISTRATIVE PENALTY

Under section 22.27(b) of the Consolidated Rules, " . . . the 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).

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*, 839F.2d 1396 (10th Cir. 1988). Moreover, the Environmental Appeals Board has held that the Board is under no obligation to blindly assess the penalty proposed in the Complaint. *Rybond, Inc.*, RCRA (3008) Appeal No 95-3, 6 E.A.D. 614 (EAB, November 8, 1996).

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, *In the Matter of Freeman's Group, Inc.*, Docket No. UST-06-00-519-AO (2005); In the *Matter of Glen Welsh*, Docket No. SDWA-3-99-0005 (2000). Section 1414(b) of the Act requires EPA to take into account the following factors in assessing a civil penalty: the seriousness of the violation, the population at risk, and other appropriate factors. 42 U.S.C. § 300g-3(b). EPA also used the "Public Water System Supervision Program Settlement

Penalty Policy" (Penalty Policy) to determine the penalty in a fair and consistent manner.[2] This court took these factors into account in evaluating the penalty as set forth below.

This court evaluated the statutory factors, in conjunction with the Penalty Policy, to create gravity and economic benefit components to the penalty. [3] In addition, EPA filed the Declaration of Mario Merida to support its penalty calculation. See, Memorandum in Support of Motion for Assessment of Penalty on Default ("Memo in Support"), July 23, 2012. Based on the above, this court reached the following decision regarding the penalty:

Seriousness of the Violation: Respondent has failed to comply with the requirements of the NPDWRs and the Complaint that required Respondent, *inter alia*, to prepare, distribute and submit to EPA Consumer Confidence Reports, monitor for lead and copper and timely report monitoring results and to report coliform monitoring violations to EPA. The failure to prepare, distribute and submit CCRs occurred in 2007 and then 2009-2010. The total duration of non-compliance was 787 days or 26.23 months. This violation was given a gravity factor based on the Penalty Policy of 1.5. See, Penalty Policy, Attachment 2.

The failure to monitor for lead and copper occurred for 12 months and the failure to report occurred for 3 months. This violation was given a gravity factor based on the Penalty Policy of 1.8. The failure to report coliform monitoring violations to EPA occurred for 3 months as well. The gravity factor for a general violation as set forth in the Penalty Policy is 2.4. See, Penalty Policy, Attachment 2. [4]

Respondent's disregard for the monitoring regulations related to lead, copper and total coliform puts the System's consumers at risk by potentially exposing them without their knowledge to harmful levels of lead copper and coliform bacteria. EPA has determined that exposure to coliform bacteria can present health risks. Monitoring for coliform bacteria identifies whether the water may be contaminated with organisms that cause disease, including gastrointestinal disorders. Consumption of water contaminated with coliform bacteria may pose a risk for small children, the elderly and individuals with compromised immune systems. See, *EPA Guidance Water on Tap: What You Need to Know*, (EPA-816-K-03-007, October, 2003). In addition, consumption of lead by infants and children can cause development delays and

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[2] The Penalty Policy, dated May 25, 1994, is a settlement policy and not a pleading policy for purposes of litigating the matter. It takes into consideration the Respondent's degree of willfulness and/or negligence, history of noncompliance, if any, and ability to pay. These are considered the "other appropriate factors" under Section 1414(b) of the Act, 42 U.S.C. § 300g-3(b); and therefore, the policy is instructive in determining the penalty in that it incorporates the statutory factors.

[3] Gravity is the amount of the penalty that reflects the seriousness of the violations and the population at risk. Furthermore, the degree of willfulness/negligence, history of noncompliance, ability to pay, and duration of the violation are considered in determining the gravity portion of the penalty. Economic benefit includes the expenses the Respondent would have incurred had it complied with the Act and its implementing regulations.

[4] The Declaration of Mario Merida states he "inadvertently applied a lower gravity factor of 1.1 (Monitoring and Reporting violations of 'chronic' contaminants). This worked out in the Respondent's favor." See, Declaration of Mario Merida, ¶ 14-15.

consumption by adults can lead to kidney disorders and high blood pressure. *See, Id.* Short-term exposure to copper can cause gastrointestinal distress, while long-term exposure can cause liver or kidney damage. See, Memo in Support, p. 7.

Furthermore, the record shows fundamental recalcitrance by Respondent. EPA's enforcement efforts have not had the necessary corrective effect upon the Respondent. Residents and visitors to Sublette County, Wyoming, rely on the System for safe drinking water. See, Memo in Support, p. 6. Respondent's lack of regard for the EPA's authority indicates a pattern of behavior that is not condoned with respect to public health and safety. Addressing the penalty in order to create fairness in the regulated community as well as ensuring the credibility of the regulators is equally important. The Agency's increase in the gravity amounts for willfulness/negligence, history of noncompliance for similar violations, and Respondent's lack of cooperation are justified. See, Declaration of Mario Merida, para. 16.

An initial gravity component was calculated by Mario Merida to be $696.94. The gravity for noncompliance is based upon the gravity factor established by the Penalty Policy, the population served, and the duration of each violation and is adjusted by a factor of 1.4163 in accordance with the Penalty Policy. See, Declaration of Mario Merida, para. 16. Based on Respondents negligence and history of noncompliance the gravity component was increased by a factor of 1.5 and 2.572307, respectively, and was applied pursuant to the Penalty Policy, *Id.* at para. 17. This raised the gravity to $3,890.21.

Economic Benefit: The Complainant calculated an economic benefit of $259. This calculation was based on the costs of sampling, laboratory analysis, and operator expenses that Respondent would have incurred had it done the necessary monitoring and reporting required by the Act and NPDWRs. See, Declaration of Mario Merida, para. 18. This component of the penalty eliminates any economic benefit realized by the Respondent for not complying. Finally, with respect to Respondent's ability to pay, there is no information in the record indicating Respondent is unable to pay the proposed penalty.

Based on the Memo in Support of Default and the Declaration of Mario Merida dated July 23, 2012, the Agency has calculated a reasonable penalty. In this case, Complainant arrived at the proposed penalty by adding the economic benefit and the gravity with a standard increase for pleading purposes to arrive at a penalty of $5,000. See, Declaration of Mario Merida, at para. 19.

The Consolidated Rules provide that, ". . . [the] relief proposed in the Complaint or motion for default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act." 40 C.F.R. § 22.17(c). Accordingly, based on the statute, regulations and the administrative record, I assess the Respondent a civil penalty in the amount of **$5,000.00**, for its violations of the Act.

V. DEFAULT ORDER[5]

In accordance with section 22.17 of 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 a total penalty of **$5,000.00.**

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 **$5,000.00** in one of the following ways:

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

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

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

ON LINE PAYMENT:

There is now an On Line 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 Street
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 cost 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 Environmental Appeals

Board; (3) a party moves to set aside a default order that constitutes an initial decision; or (4) the Environmental Appeals Board 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 and one copy of a notice of appeal and an accompanying appellate brief with the Environmental Appeals Board. 40 C.F.R. § 22.27(a). If a party intends to file a notice of appeal to the Environmental Appeals Board 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 Environmental Appeals Board 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 25th Day of September, 2012.

Elyana R. Sutin
Presiding Officer, Region 8

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **DEFAULT INTITIAL DECISION AND ORDER** in the matter of **MOUNTAIN VILLAGE PARKS, INC.; DOCKET NO.: SDWA-08-2012-0026** was filed with the Regional Hearing Clerk on September 28, 2012.

Further, the undersigned certifies that a true and correct copy of the documents were delivered to, Amy Swanson, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested on September 28, 2012, to:

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

September 28, 2012

Tina Artemis
Paralegal/Regional Hearing Clerk