



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, WA 98101



January 12, 2006

Reply to
Attn Of: ORC-158

Ms. Eurika Durr
U. S. Environmental Protection Agency
Environmental Appeals Board (1103B)
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

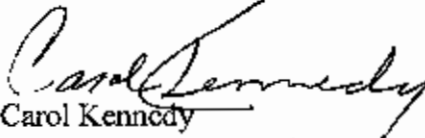
Re: **Docket File for BAR
DEVELOPMENT WATER
USERS', DOCKET NO.:
SDWA-10-2005-0135**

Dear Ms. Durr:

Enclosed is the entire docket file for the above referenced site in the case of appeal.

If you have any questions please contact me at (206) 553-0242.

Sincerely,


Carol Kennedy
Regional Hearing Clerk

Enclosure

RECEIVED
06 JAN 10 AM 10: 20
HEARINGS CLERK
EPA -- REGION 10

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington

IN THE MATTER OF)
)
Bar Development Water Users') Docket No. SDWA-10-2005-0133
Association, Patrick E. Anson,) Proceeding under Section 1414(g) of
Robert Allgood, and Maria Del) the Safe Drinking Water Act ("SDWA")
Rosario Arevalo;) 42 U.S.C. § 300g-3g
)
Respondents)
_____)

DEFAULT ORDER/INITIAL DECISION

On August 24, 2005, the United States Environmental Protection Agency, Region 10 ("U.S. EPA", "EPA", "Agency", or "Complainant") filed a motion pursuant to section 22.17(a) of the Consolidated Rules of Practice, 40 C.F.R. § 22.17(a)¹, to find Patrick E. Anson, Robert Allgood, Maria Del Rosario Arevalo, and Bar Development Water Users' Association ("BDWUA", or "Respondents") in default for failing to file a timely answer to an Administrative Complaint for Penalty and Notice of Opportunity for Hearing ("Complaint")², issued pursuant to section 1414g-3(g)(3) of the Safe Drinking Water Act ("the Act", or "SDWA"), 42 U.S.C. 300g-3(g)(3), for alleged violations of the Act and regulations promulgated pursuant thereto

This proceeding is governed by EPA's *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation or Suspension of Permits*, 40 C.F.R. Part 22, Fed. Reg./Vol. 64, N. 141/July 23, 1999 ("Consolidated Rules of Practice," "Consolidated Rules", or "the Rules").

The undersigned is delegated authority to act as the Regional Judicial Officer ("RJO") in this matter, pursuant to section 22.4(b) of the Consolidated Rules of Practice³ by the Region 10, Regional Administrator.

¹ Motion for Default

² Motion for Default, Exhibit # 1

³ 40 CFR § 22.4(b)

I. BACKGROUND

Respondents Anson, Allgood and Del Rosario Arevalo are operators of BDWUA, a drinking water system ("System")⁴. The System provides water for human consumption through pipes or other constructed conveyances⁵. It involves the pumping of groundwater from a well, and the distribution of this water to users⁶. The System includes pipes, constructed conveyances or other connections which provide drinking water to 15 or more residences and/or 25 or more individuals⁷. Therefore, the System is a "public water system" within the meaning of Section 1401(4) of the SDWA, 42 U.S.C. § 300f(4), and 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. § 141.2⁸.

As operators of a "public water system" and a "community water system", Respondents are required to maintain the System in compliance with the National Primary Drinking Water Regulations ("NPDWR"), 40 C.F.R. Part 141. These regulations were promulgated pursuant to Section 1412 of the SDWA, 42 U.S.C. § 300g-1.

The System has a long history of not being in compliance with applicable requirements of the NPDWR. On December 19, 2003, Complainant issued an Administrative Compliance Order ("ACO", or "Order") to Respondents in accordance with the authority of Section 1414(g)(1) of the SDWA, 42 U.S.C. § 42 U.S.C. 300g-3(g)(1).

Although the Order has been in effect for more than two years, a review of the record revealed that the Respondents have yet to comply with the Order. Respondents have not complied with the schedule established in the Order, have not complied with the substantive requirements of the Requirement section of the Order, and have not achieved compliance with the NPDWR following issuance of the Order⁹. Complainant attempted to notify Respondents on numerous occasions about this failure to comply with the Order¹⁰. Despite these efforts, Respondents have not brought the System into compliance with the Order¹¹.

On May 9, 2005, the Complainant filed a Complaint against the Respondents under Section 1414(g)(3)(A) of the SDWA, 42 U.S.C. § 300g-3(g)(3)(A)¹², for alleged violations of the Order. Pursuant to Section 22.15 of the Consolidated Rules, 40 CFR § 22.15, the Respondents were required to file their answer to the Complaint within 30 days of service of the Complaint, by June 8, 2005. A review of the record revealed that the

⁴ Motion for Default, Ex. 1 at ¶s 11-17

⁵ *Id.* at ¶ 7

⁶ *Id.* at ¶ 8

⁷ *Id.* at ¶s 9-10

⁸ *Id.* At ¶s 33-34.

⁹ Motion for Default, Ex. 1 at ¶s 23-25

¹⁰ *Id.* at ¶s 28-29; Ex. 5; Ex. 6; Ex. 7 and Ex. 8

¹¹ *Id.* at ¶s 23-25

¹² Motion for Default, Ex. 1

Respondents have yet to file and answer to the Complaint – more than six months after the date of service.

On August 24, 2005, pursuant to Section 22.17 of the Consolidated Rules of Practice¹³ the Complainant filed a Motion to find the Respondent in default for failing to answer the Complaint.

On December 4, 2005, the Presiding Officer issued Complainant an Order to Show Cause and to provide further information as to how it calculated the civil penalty. The Complainant was also requested to provide further information pertaining to the Respondents. On December 6, 2005, the Complainant filed its Supplemental Memorandum in Support of Motion for Default Order¹⁴ responding to said Show Cause Order.

For the alleged violations of the SDWA, the Complainant is requesting the assessment of an administrative penalty, in the amount of Fifteen-thousand dollars (\$15,000.00). For the reasons set forth below, the Complainant's Motion for Default is granted and the Respondents are assessed a civil penalty in the amount of \$15,000.00 for their violations of the Act, and regulations promulgated pursuant thereto.

II. STATUTORY/REGULATORY FRAMEWORK

Statutory Framework

Section 1414(g)(1)(a)(A) of the SDWA, 42 U.S.C. § 300g-3(g)(1)(a)(A), provides in part that: "Whenever the Administrator finds during a period during which a State has primary enforcement responsibility for public water systems . . . that any public water system . . . does not comply with any applicable requirements . . . he shall notify the State and such public water system . . . , and

(B) If beyond the 30th day after the Administrator's notification . . . the State has not commenced appropriate enforcement action, the Administrator shall issue an order . . . requiring the public water system to comply with such applicable requirement"¹⁵

Section 1414(g)(3)(A) of the SDWA, 42 U.S.C. § 300g-3(g)(3)(A), provides in part that: "Any person who violated or fails or refuses to comply with an order under this subsection shall be liable to the U. S. for a civil penalty of not more that \$25,000 per day of the violation"¹⁶

¹³ 40 CFR, § 22.17(a)

¹⁴ Supplemental memo with Ex. A - D

¹⁵ State requested EPA intervene

¹⁶ As a result of the Debt Collection Improvement act of 1996(DCIA), and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 61 FED Reg. 69,360 (December 31, 1996), violations of section 1414(g)(3)(A) of the SDWA which occur between January 30, 1997, and March 15, 2004, will be subject to a statutory maximum civil penalty of \$27,500.00 for each violation.

Regulatory Framework

Pursuant to Section 1412 of the SDWA, 42 U.S.C. § 300g-1, the Agency promulgated National Primary Drinking Water Regulations (“NPDWR”) that apply to public water and community water systems. See 40 CFR, Part 141.

Consolidated Rules of Practice

Section 22.15(a) of the Consolidated Rules¹⁷, requires that an answer to the complaint be filed with the Regional Hearing Clerk within thirty (30) days after service.

Section 22.17(a) of the Consolidated Rules¹⁸ authorizes a finding of Default, upon failure of the Respondent to timely answer a Complaint. The Rules further provide that default by Respondent constitutes, for purposes of the pending proceeding, an admission of all facts alleged in the Complaint and a waiver of Respondent’s right to a hearing on such factual allegations¹⁹.

Section 22.17(c) of the Consolidated Rules²⁰, provides that when the Presiding Officer finds that default has occurred, a default order shall be issued against the defaulting party, unless the record shows good cause why a default order should not be issued. Section 22.17(c) of the Consolidated Rules, also provides that the relief proposed in the Complaint, or the motion for default, shall be ordered unless the record clearly demonstrates that the requested relief is inconsistent with the record of these proceeding, or the Act.

Under section 22.27 of the Consolidated Rules of Practice²¹, the default order constitutes an Initial Decision, in this matter,

III. DETERMINATION OF LIABILITY

Prima Facie Case

For a default order to be entered against the Respondent, the Presiding Officer must conclude that Complainant has established a *prima facie* case of liability against the Respondent. To establish a prima facie case of liability, complainant must present evidence sufficient to establish a given fact . . . which if not rebutted or contradicted, will remain sufficient . . . to sustain judgment in favor of the issue which it supports, but which may be contradicted by other evidence”, **Black’s Law Dictionary** 1190 (6th Edition, 1990).

¹⁷ 40 C.F.R., § 22.15(a)

¹⁸ 40 C.F.R., § 22.17(a)

¹⁹ 40 C.F.R., § 22.17(a)

²⁰ 40 C.F.R., § 22.17(c)

²¹ 40 C.F.R., § 22.27

Respondents own and operate a water system located between Brewster and Bridgeport, Washington. The system is supplied by a ground water source. The system has approximately 25 service connections and regularly serves approximately 29 individuals. The BDWUA drinking water system is a "public water system" within the meaning of Section 1401(4) of the SDWA, 42 U.S.C. § 300f(4), and a "community water system" within the meaning of Section 1401(15) of the SDWA, 42 U.S.C. § 300f(15). The BDWUA is also a "community water system within the meaning of 40 CFR § 141.2. As a public water system and a community water system, the BDWUA is required to comply with NPDWR set forth under 40 CFR, Part 141. In part:

The SDWA and regulations promulgated pursuant thereto under 40 CFR, Part 141, require public water systems and community water systems to comply with National Public Drinking Water Regulations, set forth in 40 CFR, Part 141.

The facts alleged in the Complaint and Order²², establish jurisdiction over the Respondents and that the Respondents violated the Safe Drinking Water Act, 42 U.S.C. §§ 300g through 6, and the National Primary Drinking Water Regulations²³ on at least eleven occasions. These facts and allegations, set forth in paragraphs 3 – 31 of the Complaint, are incorporated herein by reference.

Based on the record of these proceedings and the facts herein admitted, I find that the Complainant has established a *prima facie* case against the Respondents for violating the SDWA and the NPDWR, set forth in 40 CFR, Part 141. Accordingly, I further find the Respondents liable for the violations of the SDWA alleged in the Complaint and set forth herein.

Default by Respondent

As stated above, under section 22.15(a) of the Consolidated Rules²⁴, the Respondent is required to file an answer to the Complaint, within 30 days after service of the Complaint. Further, section 22.17(a) of the Consolidated Rules²⁵, provides that after motion, a party may be found to be in default for failure to file a timely answer to the Complaint.

In the instant case, the Complaint was filed with the Regional Hearing Clerk on May 9, 2005. The Complaint was served on the Respondents: Del Rosario, Anson and Allgood on May 11, 2005, May 12, 2005 and May 16, 2005, respectively²⁶. Respondents' answer to the Complaint was due to be filed with the Regional Hearing Clerk, within 30 days after service of the Complaint – by June 15, 2005. To date, more than six months later, the Respondents' have yet to file an answer to the Complaint.

²² Motion for Default, Exhibits 1 & 3

²³ 40 CFR, Part 141

²⁴ 40 C.F.R., § 22.15(a)

²⁵ 40 C.F.R., § 22.17(a)

²⁶ Motion for Default

On August 24, 2005, the Complainant filed a Motion for Default with the Regional Hearing Clerk. As of the date of that motion, the Respondents had still not filed an answer to the Complaint.

Since the Respondents did not file an answer to the Complaint, they have presented no evidence to contravene the facts alleged in the Complaint. The allegations set forth in the Complaint are incorporated herein by reference. Section 22.17 of the Consolidated Rules²⁷ provides that "default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations".

Pursuant to Section 22.17(a) of the Consolidated Rules²⁸, and based on the entire record of these proceedings, I find the Respondents: **Bar Development Water Users' Association, Patrick E. Anson, Robert Allgood, and Maria Del Rosario**, in default for failing to file a timely answer to the Complaint. I hereby grant the Complainant's August 24, 2005, Motion for Default.

IV. ASSESSMENT OF ADMINISTRATIVE PENALTY

Under section 22.27(b) of the Consolidated Rules of Practice²⁹ . . . , "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."

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. **Katzson Brothers Inc. v. U.S. EPA**, 839 F. 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).

The Agency has not promulgated any specific civil penalty guidelines to be followed in assessing administrative civil penalties under the Safe Drinking Water Act. Nevertheless, the Agency's general enforcement policy for assessing civil penalties is guided by two documents: (1) *Policy on Civil Penalties ("the Penalty Policy")*, and (2) *A Framework for Statute-Specific Approaches to Penalty Assessments: Implementing EPA's Policy on Civil Penalties ("the Penalty Framework")*, both dated February 16, 1984³⁰.

²⁷ 40 CFR, § 22.17

²⁸ 40 C.F.R., § 22.17(a)

²⁹ 40 C.F.R., § 22.27(b)

³⁰ Respectively, GM 21 and 22

In calculating the appropriate penalty in this matter the Complainant relied on the above documents and the "*Public Water System Supervision Program Settlement Penalty Policy for Civil Judicial Actions and Administrative Complaints for Penalties*" ("*PWS Policy*")³¹. Although I am not required to follow the PWS Settlement Policy guidance in determining an appropriate civil penalty in this matter, I have given strong consideration to the Complainant's use of this Policy since it is based on the Agency's policies for assessing penalties set forth in GM-21 and GM-22, by which I am guided.

In determining the appropriate penalty in this matter, I first considered the maximum statutory penalty that could be obtained, in this matter³². To this amount I added the economic benefit, if any, obtained by the Respondents', to obtain the preliminary gravity amount. The gravity amount reflects the seriousness of the violation and the population at risk factors considered in a civil action by the courts³³. This amount was adjusted by other appropriate factors (i.e. mitigating factors) to arrive at a final penalty amount.

Gravity Factor

First, we will evaluate the gravity component of the penalty. The "gravity component" takes into account such factors as the "the seriousness of the violation" and the "population at risk". Once this component is determined, it may be adjusted based on such mitigating factors as: the degree of willfulness and/or negligence; the history of compliance; Ability to pay; Degree of cooperation/non-cooperation; and other appropriate factors specific to the violator, or the case. In calculating the gravity component considerable weight is given to the long history of problems associated with the System. Complainant presented information indicating that, as far back as 1993, there has been a failure of the System to monitor. Also, the Respondents made no attempt to comply with the compliance Order prior to initiation of the subject proceeding. In summary, several violations have existed unabated for years, and have resulted in the potential exposure of the System's users to a risk of harm from the consumption of contaminated drinking water. I find that this chronic disregard of drinking water requirements, by the Respondents is serious and, has endangered the health and welfare of the users of the System.

In determining the statutory maximum, penalty amount, the Complainant multiplied the \$27,500 per day statutory maximum, by 122 days of violation since

³¹ This is apparently based on EPA's Penalty Policy documents: (1) Policy on Civil Penalties ("the Penalty Policy"), and (2) A Framework for Statute-Specific Approaches to Penalty Assessments: Implementing EPA's Policy on Civil Penalties (the "Penalty Framework"), both dated February 16, 1984.

³² 28 USC § 2462 provides that: "Except as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued"

³³ See section 1414(b) of the SDWA, 42 USC § 300g-3(b), ". . . if the court determines that there has been a violation of the regulation or schedule or other requirement with respect to which the action was brought, the court may, taking into account the seriousness of the violation, the population at risk, and other appropriate factors, impose on the violator a civil penalty of not to exceed \$25,000 for each day in which such violation occurs."

January 31, 1997, to arrive a \$3,355,000. The Order initiating federal action was received by Respondents, on or about January 1, 2004. The Complainant calculated 122 days of violation from January 31, 1997. Considering 28 U.S.C § 2462, violations prior to January 1, 1999, are barred by the statute of limitations, although this appears to be moot considering the number of days of violations within the five year statute of limitations. Further, in the instant case the statute limits this action to a maximum civil penalty amount of \$27,500³⁴, and I find that this is the maximum penalty that can be obtained in this matter. I also find that this is the base penalty amount for calculations.

Other Appropriate/Mitigating Factors

As stated above, other appropriate factors may include mitigating factors, i.e. the degree of willfulness and/or negligence; the history of noncompliance; ability to pay; degree of cooperation/non-cooperation; and other unique factors specific to the case. By failing to answer the Complaint, the Respondents failed to present any information as to any mitigating circumstances. Under the "Framework", the burden to demonstrate inability to pay, as with the burden of any mitigating circumstances, rests with the Respondent³⁵.

Although I determined above that a maximum statutory penalty of \$27,500.00 may be appropriate in this matter, under section 22.17(c) of the Consolidated Rules, ". . . [the] relief proposed in the complaint or the motion for default **shall be ordered** unless the requested relief is clearly inconsistent with the record of the proceeding or the Act." In its motion for default, the Complainant requested the assessment of a civil penalty in the amount of \$15,000.00, against the Respondent for its violations of the Act. Therefore, based on the statute, regulations and administrative record, I assess the Respondents a civil penalty in the amount of \$15,000.00, for its violations of the SDWA and regulations promulgated pursuant thereto.

V. FINDINGS OF FACT/CONCLUSIONS OF LAW

1. The Respondents, Patrick E Anson, Robert Allgood, and Maria Del Anson (aka), Bar Development Water users' Association ("BDWUA",), own or operate a water system ("the System") located between Brester and Bridgeport, Washington.
2. Respondents are "persons within the meaning of section 1401(12) of the SDWA, 42 USC § 300f(12).
3. The water system owned or operated by Respondents provides water for human consumption through pipes or other constructed conveyances, and regularly

³⁴ Section 1414(g)(3)(C), 42 U.S.C. § 300g-3(g)(3)(C), provides that: "Whenever any civil penalty sought by the Administrator under this subsection for a violation of a applicable requirement exceeds \$25,000, the penalty shall be assessed by a civil action brought by the Administrator in the appropriate United States district court . . ."

³⁵ See "Framework", p. 23

serves an average of at least twenty-five (25) individuals at least sixty (60) days of the year. As a result, this water system is a "public water system" within the meaning of section 1401(4) of the SDWA³⁶, and a "community water system", within the meaning of section 1401(15) of the SDWA³⁷. The BDWUA public water system is also a "community water system", within the meaning of 40 C.F.R. § 141.2.

4. By owning or operating a "public water system", Respondents are subject to Part B of the SDWA, 42 U.S.C. §§ 300g through 300g-6, and the regulations under 40 C.F.R. Part 141.
5. Based on paragraphs 1 – 4 above, the EPA has jurisdiction over the Respondents in this matter.
6. On December 22, 2003, the EPA issued an Administrative Compliance Order ("ACO", "Order") to the Respondents under 1414(g)(1) of the SDWA, 42 USC § 300(g)(1) requiring compliance with the SDWA and regulations promulgated pursuant thereto.
7. A Copy of the Order was served on the Respondents on or about January 1, 2004.
8. Respondents violated paragraph 24 of the Order by failing to begin sampling for total coliform bacteria within 14 days of the effective date of the Order, and repeat the sampling at least five (5) times every month in accordance with 40 CFR § 141.21(d).
9. Respondents violated paragraph 26 of the Order by failing to begin nitrate sampling within 30 days of receipt of the Order and repeat sampling annually in accordance with 40 CFR § 141.23(d).
10. Respondents violated paragraph 27 of the Order by failing conduct sampling for Volatile Organic Compounds within 30 days of receipt of the Order, as required by 40 CFR § 141.28.
11. Respondents violated paragraph 28 of the Order by failing to conduct monitoring for lead and copper within 30 days, as required by 40 CFR § 141.86(d)(4).
12. Respondents violated paragraph 31 of the Order by failing to provide EPA with copies of their Consumer Confidence Reports covering calendar years 2000, 2001 and 2002, required by 40 CFR § 141.155(c).
13. Respondents violated paragraph 32 of the Order by failing to correct sanitary survey deficiencies and undergoing a new Sanitary Survey, as required by 40 CFR § 141.21(d).

³⁶ 42 U.S.C. § 300f(4)

³⁷ 42 U.S.C. § 300(f)(15)

14. Respondents violated paragraph 34 of the Order by failing to issue a public notice, as required by 40 CFR § 141.32(b).
15. Respondent violated paragraph 35 of the Order by failing to give notice of its failure to meet the requirements of 40 CFR, Part 141, as required by 40 CFR § 141.31(a).
16. On May 9, 2005, Complainant issued the Respondents a Complaint based on their failure to comply with the Order.
17. Respondents Del Rosario, Anson and Allgood were individually and respectively served copies of the Complaint by certified mail on May 11, 2005, May 12, 2005 and May 16, 2005.
18. Pursuant to section 22.15(a) of the Consolidated Rules, 40 C.F.R. § 22.15, Respondent was required to file and answer to the May 9, 2005 Complaint by June 15, 2005 (last Respondent was served on May 16, 2005), within 30 days of service of the Complaint.
19. All of the Respondents failed to file an answer within the 30-day time period. Further, a review of the record revealed that as of the date of this decision, the Respondents have yet to file an answer to the Complaint.
20. On August 24, 2005, the Complainant filed a motion, pursuant to section 22.17(a) of the Consolidated Rules, 40 C.F.R. § 22.17(a), to find the Respondents in default for failing to file an answer to the May 9, 2005 Complaint.
21. Pursuant to section 22.17 (c) of the Consolidated Rules, 40 C.F.R. § 22.17 (c), the Respondents are in default for failing to file a timely answer to the Complaint.
22. Pursuant to section 22.17(a) of the Consolidated Rules, 40 C.F.R. § 22.17(a), “[d]efault by Respondent constitutes, for the purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of respondent’s right to contest such factual allegations”. The Respondents are deemed to have admitted all of the factual allegations in the Complaint.
23. Pursuant to section 1414(g)(3)(A) of the SDWA, 42 U.S.C. § 300g-3(g)(3)(A), the Complainant requested that a civil penalty in the amount of \$15,000.00 be assessed against the Respondents, for their violations of the SDWA.
24. Pursuant to section 22.17(c) of the Consolidated Rules, 40 C.F.R. § 22.17(c) . . . “the relief proposed in the Complaint . . . shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act”.

25. Considering the statutory factors set for in section 1414(b) of the SDWA, 40 C.F.R. § 300g-3(b), including but not limited to, the seriousness of the violations and the population at risk, the Agency's penalty policy's and the entire Administrative Record, the Respondents, as the owners/operators of the System, are assessed a civil penalty, in the amount of **Fifteen Thousand dollars (\$15,000.00)** for the herein noted violations of the SDWA, and regulations promulgated pursuant thereto.

DEFAULT ORDER

In accordance with section 22.17 of the Consolidated Rules³⁸, and based on the entire administrative record, I hereby grant the Complainant's Motion for Default and assess an administrative penalty, in the amount of **Fifteen-thousand dollars (\$15,000.00)** against the Respondents, **Patrick E. Anson, Robert Allgood, Maria Del Rosario Arevalo, and Bar Development Water Users' Association**, for violations of the SDWA, and regulations promulgated pursuant thereto.

No later than 30 days after the date that this Default Order becomes final, Respondents shall submit a cashier's check or certified check, payable to the order of "Treasurer, United States of America," in the amount of \$15,000.00 to the following address:

U. S. Environmental Protection Agency
EPA Region 10
P.O. Box 371099M
Pittsburgh, Pennsylvania 15251-6903

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 10
1200 Sixth Avenue, Mail Stop ORC-158
Seattle, Washington 98101

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

Should Respondents fail to pay the penalty in full by its due date, the entire unpaid balance of the penalty and accrued interest shall become immediately due and owing. Should such failure to pay occur, Respondents may be subject to a civil action to

³⁸ 40 C.F.R. § 22.17

collect the assessed penalty under the SDWA. In any such collection action, the validity, amount, and appropriateness of the penalty is not subject to review.³⁹

Further, should Respondents fail to pay any portion of the penalty assessed in full by its due date, Respondents shall be responsible for payment of interest on any unpaid portion of the assessed penalty at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of this Default Order; provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within thirty (30) days of the effective date of this Default Order.

This Default Order constitutes an Initial Decision, in accordance with 40 C.F.R. § 22.17(c) of the Consolidated Rules. The Initial Decision shall become a Final Order 45 days after its service upon the parties, and without further proceeding 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 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

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 RIGHTS TO JUDICIAL REVIEW.

SO ORDERED, This 3rd Day of January, 2006.



Alfred C. Smith
Presiding Officer

³⁹ 42 U.S.C. § 300g-3(g)(3)(D).

⁴⁰ See § 22.30 of the Consolidated Rules.

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **DEFAULT ORDER/INITIAL DECISION** in **In the Matter of: Bar Development Water Users' Association, Patrick E. Anson, Robert Allgood, and Maria Del Rosario Arevalo, DOCKET NO.: SDWA-10-2005-0133** was filed with the Regional Hearing Clerk on January 10, 2006.

On January 10, 2006 the undersigned certifies that a true and correct copy of the document was delivered to:

Richard Mednick, Esquire
US Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Seattle, WA 98101

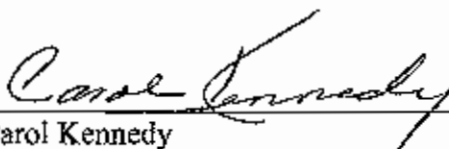
Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt on January 10, 2006, to:

Patrick E. Anson
As an Individual and on behalf of
Bar Development Water users' Association
P.O. Box 141
Bridgeport, Washington 98813

Robert Allgood
P.O. Box 642
Brewster, Washington 98112

Maria Del Rosario Arevalo
P.O. Box 1243
Brewster, Washington 98812

DATED this 10th day of January 2006.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10