

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19203-2029

REGION III  
EPA  
7/27/07 - 5 11 32  
CIVIL APPEAL BOARD

IN THE MATTER OF: )  
 )  
Elizabeth Tallie ) Docket No. SDWA-03-2007-0300-DS  
d/b/a )  
Liz's Place ) Proceeding under Section 1414(g)(3)(B) of  
20205 Cox Road ) the Safe Drinking Water Act, 42 U.S.C.  
Sutherland, VA 23885 ) § 300g-3(g)(3)(B)  
 )  
Respondent )  
 )  
PWS ID No. VA3053940 )  
\_\_\_\_\_ )

**INITIAL DECISION AND ORDER OF DEFAULT**

This administrative proceeding for the assessment of a civil penalty was initiated by the Director of the Water Protection Division for Region III of the United States Environmental Protection Agency ("EPA" or "Complainant"). On September 27, 2007, EPA issued a Proposed Order for the Assessment of a Civil Penalty and Opportunity for Hearing ("Complaint") against Respondent Elizabeth Tallie ("Respondent") pursuant to Section 1414(g)(3)(B) of the Safe Drinking Water Act ("SDWA"), 42 U.S.C. § 300g-3(g)(3)(B), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22 ("Consolidated Rules"). Subpart I and Section 22.42 of the Consolidated Rules apply to this proceeding. In the Complaint, EPA alleges that the Respondent violated 40 C.F.R. §§ 141.21, 141.31(a), 141.31(b), 141.31(d), and 141.201 et. seq. of the National Public Drinking Water Regulations ("NPDWR"), promulgated under Section

1412 of the SDWA, 42 U.S.C. § 300g-1.

The Motion for Default Order (“Motion for Default”) seeks an Order assessing a civil penalty in the amount of five thousand dollars (\$5,000.00) against Respondent.

### **FINDINGS OF FACT**

Pursuant to 40 C.F.R. § 22.17 and based on the entire record, I make the following findings of fact:

1. Respondent Elizabeth Tallie has at all times relevant to the Complaint owned and operated a restaurant called “Liz’s Place” which contained a system (“System”), also owned and operated by Respondent, that provided piped water to the public for human consumption. The restaurant is located at 20205 Cox Road, Sutherland, VA, in Dinwiddie County. The Public Water System identification Number is VA3035940.
2. On December 28, 2004, EPA, coordinating with the Virginia Department of Health (“VDH”), sent Respondent a Notice of Violation and Request for Information, pursuant to Sections 1414(a) and 1445 of the SDWA, 42 U.S.C. §§ 300g-3(a) and 300j-4. The Notice referenced findings of SDWA violations and requested that the Respondent provide EPA with information regarding the System within thirty (30) days of receipt of the notice.
3. Respondent did not respond to the Notice of Violation and Request for Information.
4. On March 14, 2005, EPA issued to Respondent an Administrative Order (“AO”), Docket No. SDWA-03-2005-0111-DS (AO), ordering her to comply with the monitoring and notification requirements of the NPDWR and requiring her to send written progress

- reports to the EPA.
5. Respondent did not respond to the AO either through written response or through compliance with the reporting requirements.
  6. On September 28, 2007, EPA filed an Administrative Complaint against Respondent, in accordance with 40 C.F.R. § 22.5(a).
  7. EPA served a copy of the Complaint upon Respondent on September 28, 2007, by certified mail, return receipt requested, in accordance with 40 C.F.R. § 22.5(b)(1).
  8. Proof of completion of service of the Complaint was evidenced by the executed return receipt card, signed October 1, 2007, in accordance with 40 C.F.R. §§ 22.5(b)(1)(iii), 22.7(c).
  9. The Complaint alleges that Respondent has violated the SDWA and its implementing regulations since April, 2003, by: a) failing to conduct quarterly monitoring for total coliform bacteria as required by 40 C.F.R. § 141.21(a) for the monitoring periods beginning July 2003 and continuing until the date of the Complaint; b) failing to report, since April 2003, the required total coliform monitoring to the VDH as required by 40 C.F.R. § 141.31(a); c) failing to notify, since April 2003, VDH of its violations as required by 40 C.F.R. § 141.31(b); d) failing to notify, since April 2003, persons served by the System of its violations as required by 40 C.F.R. § 141.204(b); and e) failing to provide, since April 2003, VDH with representative copies of its public notices as required by 40 C.F.R. § 141.31(d).
  10. Additionally, the Complaint alleges that Respondent failed to comply with paragraphs 15 through 22 of the AO issued on March 14, 2005, because Respondent a) failed to monitor

for total coliform bacteria, as required by Paragraph 15 of the AO and 40 C.F.R. § 141.21, during calendar quarters commencing July 2003, October 2003, April 2004, July 2004, October 2004, January 2005, April 2005, July 2005, October 2005, January 2006, April 2006, October 2006, January 2007, and April 2007; b) failed to report to VDH the results of any analyses required under 40 C.F.R. Part 141, as required by Paragraph 16 of the AO and 40 C.F.R. § 141.21; c) failed to report to VHD its failures to comply with the implementing regulations of the NPDWR, as required by Paragraph 17 of the AO and 40 C.F.R. § 141.21; d) failed to submit to EPA for review and approval a public notice satisfying the requirements of 40 C.F.R. § 141.32(d), and, upon approval, distributing such notice to all persons served by the System in compliance with 40 C.F.R. § 141.32 (replaced by Subpart Q, 40 C.F.R. § 141.201 et. seq.), as required by Paragraph 18 of the AO; e) failed to submit representative copies of any future public notifications to VDH, as required by Paragraph 19 of the AO and 40 C.F.R. 141.31(d); f) failed to post notification for any of the monitoring or maximum contaminant level ("MCL") requirements of the NPDWR, as required by Paragraph 20 of the AO and 40 C.F.R. §141.32 (replaced by Subpart Q, 40 C.F.R. § 141.201 et. seq.); and g) failed to provide progress reports to EPA and VHD within thirty (30) days of the receipt of the AO and every ninety (90) days thereafter, containing the information specified in the AO, until the AO has been closed, as required by Paragraphs 21 and 22 of the AO.

11. In both the Complaint and the cover letter to the Complaint, EPA informed Respondent that an Answer must be filed within thirty (30) days of receipt of the Complaint and that failure to file an Answer may result in entry of a Default Order imposing the proposed

- penalty without further proceedings. The Complaint also referred Respondent to 40 C.F.R. Part 22, a copy of which was provided to Respondent along with the Complaint, in accordance with 40 C.F.R. § 22.5(b)(1).
12. The Complaint proposed to issue an Order Assessing Administrative Penalties to the Respondent assessing a penalty in the amount of five thousand dollars (\$5,000.00) pursuant to 42 U.S.C. § 300-3(g)(3)(B).
  13. Respondent's Answer to the Complaint was due October 28, 2007, in accordance with 40 C.F.R. § 22.15(a).
  14. On October 23, 2007, EPA received a letter from John A. Clanton Sr., a Waterworks operator, State of Virginia licence #1903002595 Class 3, in which he stated that Respondent had hired him "to collect samples and operate her water system... to keep her in compliance." He stated that he "advised her to get her lawyer to answer [the complaint]."
  15. Respondent did not file an Answer by October 28, 2007, and has not filed one as of the date of this Order.<sup>1</sup>
  16. On February 13, 2008, EPA filed a Motion for Default, in accordance with 40 C.F.R. § 22.17, stating that Respondent failed to file an Answer to the Complaint.
  17. On February 13, 2008, EPA served the Motion for Default on Respondent via certified mail, in accordance with 40 C.F.R. § 22.5(b)(2).
  18. Respondent's response to the Motion for Default was due within fifteen (15) days after

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<sup>1</sup>Respondent and EPA both participated in an informal status conference held by telephone to review the matter on December 19, 2007, at 10:00AM. That call continued on February 20, 2008.

service of the Motion for Default in accordance with 40 C.F.R. § 22.16(b).

19. Respondent did not respond to the Motion for Default.

### CONCLUSIONS OF LAW

Pursuant to 40 C.F.R. § 22.17 and based on the entire record, I make the following conclusions of law:

1. The Complaint in this action was lawfully and properly served upon Respondent in accordance with 40 C.F.R. §§ 22.5(b)(1) and 22.7(c).
2. Respondent was required to file an Answer to the Complaint within the thirty (30) days of service of the Complaint, in accordance with 40 C.F.R. § 22.15(a).
3. Respondent's failure to file an Answer to the Complaint or otherwise respond to the Complaint within thirty (30) days constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations, in accordance with 40 C.F.R. § 22.17(a).
4. Complainant's Motion for Default was lawfully and properly served on Respondent, in accordance with 40 C.F.R. §§ 22.5(b)(2) and 22.7(c).
5. Respondent was required to file a response to the Motion for Default within fifteen (15) days of service, in accordance with 40 C.F.R. § 22.16(b).
6. Respondent's failure to respond to the Motion for Default is a waiver of any objection to the granting of the Motion for Default in accordance with 40 C.F.R. § 22.16(b).
7. Respondent is an individual. Therefore, Respondent is a "person" within the meaning of Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12).

8. The System at Respondent's restaurant has at least fifteen (15) service connections and/or regularly serves at least twenty-five (25) individuals daily at least sixty (60) days out of the year. Therefore, the System is a "public water system" as defined in section 1401(6) of the SDWA, 42 U.S.C. § 300(f)(6), and 40 C.F.R. § 141.2.
9. Respondent owns and operates the System at issue. Therefore Respondent is a "supplier of water" as that term is defined by section 1401(5) of the SDWA, 42 U.S.C. § 300f(5), and 40 C.F.R. § 141.2.
10. As a "supplier of water," Respondent is subject to the requirements of Part B of the SDWA, and the NPDWR, its implementing regulations at 40 C.F.R. Part 141.
11. Pursuant to 42 U.S.C. § 300g-2, the Commonwealth of Virginia, acting through the VDH, has primary enforcement responsibility to ensure that public water systems within the Commonwealth comply with the SDWA and the NPDWR.
12. 40 C.F.R. § 141.21(a)(3), under Subpart C of the NPDWR, requires non-community public water systems serving 1,000 persons or fewer to monitor for total coliform bacteria one (1) time each quarter. Respondent's System is therefore subject to this requirement.
13. 40 C.F.R. § 141.31(a) requires a supplier of water to report to the State results of required monitoring and analysis of water samples within the first ten (10) days following the month in which the result is received or the first ten (10) days following the end of the required monitoring period, whichever is shorter.
14. 40 C.F.R. § 141.31(b) requires the supplier of water to report to the State any failure to comply with the NPDWR within forty-eight (48) hours.
15. 40 C.F.R. § 141.31(d) requires the water supply system to submit to the State

representative copies of all notices required by 40 C.F.R. § 141.32 that were provided to persons served by the system.

16. 40 C.F.R. § 141.201 requires, no later than May 6, 2002, or on the date that the State-adopted rule becomes effective, whichever comes first, the owner or operator of a public water system give notice to persons served by the system of violations of the monitoring requirements of the NPDWR.
17. 40 C.F.R. § 141.204(b) requires that public notice of violations that do not have the potential to cause serious adverse health effects be provided no later than one year after the system learns of the violation; 40 C.F.R. § 141.204(c) sets forth the form and manner of such public notice; and 40 C.F.R. § 141.205 sets forth the contents of such notice.
18. 42 U.S.C. § 300g-3(g)(3)(A) requires that a person issued an administrative order comply with that order.
19. Respondent violated 40 C.F.R. § 141.21(a), since April 2003, by failing to conduct quarterly monitoring for total coliform bacteria for the monitoring periods beginning July 2003 and continuing until the date of the Complaint.
20. Respondent violated 40 C.F.R. § 141.31(a) by failing to report, since April 2003, the required total coliform monitoring to the VDH.
21. Respondent violated 40 C.F.R. § 141.31(b) by failing to notify, since April 2003, VDH of its violations.
22. Respondent violated 40 C.F.R. § 141.204 by failing to notify, since April 2003, persons served by the System of its violations.
23. Respondent violated 40 C.F.R. § 141.31(d) by failing to provide, since April 2003, VDH



with representative copies of its public notices.

24. Respondent violated 42 U.S.C. § 300g-3(g)(3)(A) by failing to comply with the requirements of the AO issued by EPA on March 14, 2005.
25. As a result of failing to comply with the AO, Respondent violated Paragraph 15 of the AO and 40 C.F.R. § 141.21 by failing to monitor for total coliform bacteria during calendar quarters commencing July 2003, October 2003, April 2004, July 2004, October 2004, January 2005, April 2005, July 2005, October 2005, January 2006, April 2006, October 2006, January 2007, and April 2007.
26. As a result of failing to comply with the AO, Respondent violated Paragraph 16 of the AO and 40 C.F.R. § 141.21 by failing to report to VDH the results of any analyses required under 40 C.F.R. Part 141.
27. As a result of failing to comply with the AO, Respondent violated Paragraph 17 of the AO and 40 C.F.R. § 141.21 by failing to report to VHD its failures to comply with the implementing regulations of the NPDWR.
28. As a result of failing to comply with the AO, Respondent violated Paragraph 18 of the AO and 40 C.F.R. § 141.204 by failing to submit to EPA for review and approval a public notice satisfying the requirements of 40 C.F.R. § 141.204(c), and, upon approval, distributing such notice to all persons served by the System in compliance with 40 C.F.R. §141.204.
29. As a result of failing to comply with the AO, Respondent violated Paragraph 19 of the AO and 40 C.F.R. 141.31(d) by failing to submit representative copies of any future public notifications to VDH.

30. As a result of failing to comply with the AO, Respondent violated Paragraph 20 of the AO and 40 C.F.R. § 141.32 (replaced by Subpart Q, 40 C.F.R. § 141.201 et. seq.) by failing to post notification of any violations of the monitoring or MCL requirements of the NPDWR.
31. As a result of failing to comply with the AO, Respondent violated Paragraphs 21 and 22 of the AO by failing to provide progress reports to EPA and VHD within thirty (30) days of the receipt of the AO and every ninety (90) days thereafter, containing the information specified in the AO, until the AO has been closed.
32. Respondent's failure to comply with the requirements of 40 C.F.R. § 141.21(a); 40 C.F.R. §§ 141.31(a), (b), and (d); and 40 C.F.R. § 141.204 are violations for which Respondent is liable for civil penalties under Section 1423(c)(2) of the SDWA, 42 U.S.C. § 300h-2(c)(2).
33. Respondent's failure to comply with the requirements of 42 U.S.C. § 300g-3(g) is a violation for which Respondent is liable for civil penalties under 42 U.S.C. § 300g-3(g)(3)(A).
34. Respondent's failure to file a timely Answer to the Complaint or otherwise respond to the Complaint is grounds for entry of a Default Order against the Respondent assessing a civil penalty for the violations described above. 40 C.F.R. § 22.17(a).
35. Respondent's failure to file a response to Complainant's Motion for Default is deemed a waiver of Respondent's right to object to the issuance of the Order. 40 C.F.R. § 22.16(b).
36. The civil penalty of five thousand dollars (\$5,000.00) proposed in the Complaint and requested in Complainant's Motion for Default is not inconsistent with the SDWA and the record in this proceeding.

## DETERMINATION OF CIVIL PENALTY AMOUNT

EPA proposed the penalty in this case, \$5,000.00, after taking into account the appropriate statutory factors when determining penalties, including: (1) the seriousness of the violation; (2) the population at risk; and (3) other appropriate factors. In accordance with 40 C.F.R. § 22.17(c), which requires that the Presiding Officer order the relief proposed in the Motion unless it is clearly inconsistent with the record of the proceeding or the SDWA, I have taken into account the same statutory factors that the Region used in determining the proposed penalty. Those factors are:

### **Seriousness of the violation:**

Respondent's violations are serious. Respondent has failed to comply with the requirements of the NPDWR, which require her to conduct quarterly monitoring of coliform bacteria, report the results to the State, and notify the State and the public of any violations of the monitoring requirements or of the MCL requirements.

The purpose of the NPDWR is to protect drinking water supplies from contamination and to protect the people who are served by the supplies from exposure to that contamination. Quarterly monitoring assures that contamination in the supply will be detected, while reporting results of monitoring and notifying the state and public of any violations of the NPDWR protects the public from any risk associated with drinking water contaminated with hazardous substances, such as coliform bacteria. Respondent's failure to monitor and report violations placed the people served by her System at great risk of contamination.

### **The Population at Risk:**

Respondent's System serves over 25 individuals daily, at least 60 days a year. The System

is used at her restaurant in Sutherland, Dinwiddie County, VA. U.S. Census Bureau information indicates that Dinwiddie County has a population of approximately 24,500 people. Twenty four percent of the population is under 18, and twelve percent is over 65 years. See

<http://www.dinwiddieva.us/about/>, (last accessed March 31, 2009). Such data suggests that the population at risk by Respondent's System includes vulnerable risk populations of young children and elderly adults.

Though coliform bacteria does not have the potential to cause serious adverse health effects, failure to monitor for the bacteria and assure it is not in the supply increases the risk of exposure to a seriously harmful strand of the bacterium *Escherichia coli* ("*E.coli*"). *E.coli* O157:H7 produces a powerful toxin that can cause severe illness, which can lead to kidney failure, particularly in young children and the elderly. See

[http://www.cdc.gov/nczved/dfbmd/disease\\_listing/stec\\_gi.html](http://www.cdc.gov/nczved/dfbmd/disease_listing/stec_gi.html), (last accessed March 31, 2009).

Given that those most vulnerable to the *E.coli* O157:H7 are likely served by Respondent's System, I find that the population at risk is a significant factor in determining the penalty.

**Other Appropriate Factors:**

In light of the several instances of non-compliance, including failure to comply with the Notice of Violation and Request for Information, as well as EPA's Administrative Order, justice requires a penalty that serves as a deterrent to the Respondent and to any other similarly situated persons. Although a letter was sent by Mr. Clanton to EPA on behalf of Respondent in which he stated the he had been hired by Respondent to help her comply, Respondent has not indicated that she realizes the seriousness of the violations or understands that a continuation of them could result in grave harm.

The burden to raise and prove an inability to pay a penalty rests with the Respondent. With the record being devoid of any evidence to the contrary, the Respondent is deemed able to pay the maximum statutory penalty. 56 Fed. Reg. 29996, 30006 (July 1, 1991). See also In the Matter of: Mr. William J. Fabrick, 3225 Old Westminister Pike, Finksburg, Maryland 21048, No. CWA-III-208, 2000 WL 1660911 (E.P.A. Apr. 25, 2000). Therefore, it is within my discretion to assess the full penalty amount the Complainant seeks.

### **ORDER**

Pursuant to the Consolidated Rules at 40 C.F.R. Part 22, including 40 C.F.R. § 22.17, Complainant's Motion for Default Order is hereby GRANTED and Respondent is hereby ORDERED as follows:

1. Respondent Elizabeth Tallie is hereby assessed a civil penalty in the amount of five thousand dollars (\$5,000.00) and ordered to pay the civil penalty as directed in this Order.
2. Respondent shall pay the civil penalty by certified or cashier's check payable to the "United States Treasury" within thirty (30) days after this Default Order has become final.

See ¶ 6 below.

- a. All payments made by certified or cashier's check and sent by regular mail shall be addressed and mailed to:

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

Contact: Natalie Pearson, 314-418-4087

- b. All payments made by certified or cashier's check and sent by overnight delivery service shall be addressed and mailed to:

U.S. Environmental Protection Agency  
U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

Contact: Natalie Pearson, 314-418-4087

- c. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York  
ABA No. 021030004  
Account No. 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"

(For Customer Service, dial 212-720-5000)

- d. All payments made by through the automated clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

PNC Bank  
ABA No. 051036706  
Transaction Code 22 - Checking  
Environmental Protection Agency  
Account 310006  
CTX Format  
808 17th Street, NW  
Washington, DC 20074

Contact: Jesse White 301-887-6548

(For Customer Service, dial 800-762-4224)

- e. All payments made online can be made at:

WWW.PAY.GOV.

Enter sfo 1.1 in the search field

Open form and complete required fields.

- f. Additional payment guidance is available at:

[http://www.epa.gov/ocfo/finservices/make\\_a\\_payment\\_cin.htm](http://www.epa.gov/ocfo/finservices/make_a_payment_cin.htm)

- g. At the same time that payment is made, Respondent shall mail copies of any corresponding check, or written notification confirming any electronic wire transfer to:

Lydia Guy

Regional Hearing Clerk

U.S. EPA Region III (Mail Code: 3RC00)

1650 Arch Street

Philadelphia, PA 19103-2029

and

Deane H. Bartlett

Senior Assistant Regional Counsel

U.S. EPA Region III (Mail Code: 3RC20)

1650 Arch Street

Philadelphia, PA 19103-2029

A transmittal letter identifying the name and docket number should accompany both the remittance and/or a copy of the check or a copy of Respondent's electronic wire transfer.

3. In the event of failure by Respondent to make payment as directed above, this matter may be referred to a United States Attorney for recovery by appropriate action in United States District Court.
4. Pursuant to the Debt Collection Act, 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debt owed to the United States and to assess a charge to cover the cost of processing and handling a delinquent claim.

5. Furthermore, in accordance with 42 U.S.C. § 300g-3(g)(3)(B), Respondent is ordered to pay the civil penalty of Five Thousand Dollars (\$5,000.00) pursuant to 40 C.F.R. § 22.17(c) thirty (30) days after this Order becomes final under 40 C.F.R. § 22.27(c).
6. This Default Order constitutes an Initial Decision, as provided in 40 C.F.R. §§ 22.17(c) and 22.27(a). This Initial Decision shall become a Final Order forty-five (45) days after it is served upon the Complainant and Respondent unless (1) a party appeals this Initial Decision to the EPA Environmental Appeals Board in accordance with 40 C.F.R. § 22.30, (2) a party moves to set aside the Default Order that constitutes this Initial Decision, or (3) the Environmental Appeals Board elects to review the Initial Decision on its own initiative.

IT IS SO ORDERED.

April 30, 2009  
Date

Renee Sarajian  
Renee Sarajian  
Regional Judicial Officer/Presiding Officer



**CERTIFICATE OF SERVICE**

This Initial Decision and Default Order was served on the date below, by the manner indicated, to the following people:

**VIA HAND DELIVERY:**

Deane Bartlett  
Senior Assistant Regional Counsel (3RC20)  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

**VIA CERTIFIED MAIL/  
RETURN RECEIPT REQUESTED:**

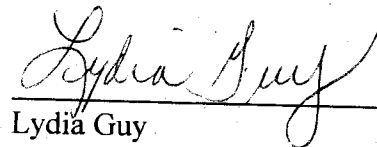
Elizabeth Tallie  
Liz's Place  
20205 Cox Road  
Sutherland, VA 23885

**VIA POUCH MAIL:**

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

MAY 01 2009

Date



Lydia Guy  
Regional Hearing Clerk  
Region III, EPA