

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:) Docket No. CWA-08-2009-0017

Cheerful Cesspool Service)
18758 Surface Creek Road)

Cedaredge, CO 81413)

Respondent.)
_____)

MOTION FOR DEFAULT ORDER

Complainant, Region 8 of the United States Environmental Protection Agency, moves for the entry of a Default Order against Respondent in this matter. This motion is made pursuant to 40 C.F.R. § 22.17. Complainant requests a ruling that all the allegations in the Complaint are deemed admitted by Respondent, Cheerful Cesspool Service, and that, as a consequence, Respondent is liable for the violations and penalty payment as set forth in the Complaint. This motion is supported by the accompanying Memorandum in Support of Complainant's Motion for Default with exhibits.

Respectfully submitted this 10th day of May, 2011.

BY:

Wendy I. Silver
Wendy I. Silver
Senior Attorney
Attorney for Complainant

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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IN THE MATTER OF:)	Docket No. CWA-08-2009-0017
)	
Cheerful Cesspool Service)	
18758 Surface Creek Road)	MEMORANDUM IN SUPPORT
)	OF COMPLAINANT'S MOTION
Cedaredge, CO 81413)	FOR DEFAULT
)	
Respondent.)	
_____)	

In support of its Motion for Default, Complainant states as follows:

I. BACKGROUND

This administrative proceeding for the assessment of a civil penalty was initiated in accordance with the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by § 309(g) of the Clean Water Act (CWA or Act), 33 U.S.C. § 1319(g). Complainant, Region 8 of the EPA, has been delegated the authority to commence this action. This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Penalties and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. part 22.

II. DISCUSSION

A. Chronology of Events

At all times relevant to this action, Cheerful Cesspool Service (Respondent) has owned and operated a domestic septage pumping and disposal service at 18758 Surface Creek Road in Cedaredge, Delta County, Colorado.

The administrative complaint (complaint) (Exhibit (Ex.) 1) alleges that Respondent failed to respond to a request for information (request) issued by EPA on November 16, 2007, pursuant to the authority of § 308 of the CWA, 33 U.S.C. § 1318. The request sought information necessary to determine compliance with § 405 of the Act (Disposal or Use of Sewage Sludge), 33 U.S.C. § 1345, and regulations promulgated thereunder and found at 40 C.F.R. part 503. Ex.2. Respondent's response to the request was due within 45 days of its receipt by Respondent. The request was sent via certified mail, return receipt requested. The return receipt card was signed on behalf of Respondent on November 26, 2007. Ex. 3. Respondent's response was therefore due by January 10, 2008.

After no response was received, on March 14, 2008, EPA sent, by certified mail, a follow-up and notice of opportunity to confer (opportunity to confer) regarding the request to Respondent, pursuant to § 309(a)(4) of the Act, 33 U.S.C. § 1319(a)(4). Ex. 4. The opportunity to confer reiterated the questions contained in the request and offered Respondent an opportunity to confer with EPA via conference call regarding the request. Respondent's response to the opportunity to confer was due within fourteen (14) days of its receipt by Respondent. Respondent did not accept service of the opportunity to confer, and it was returned to EPA by the U.S. Postal Service on April 12, 2009. Ex. 5.

On July 3, 2008, EPA sent a Notice of Opportunity to Confer and Order for Compliance with Information Request (notice and order), Docket No. CWA-08-2008-0016, to Respondent via FedEx. Ex. 6. Respondent's response to the order was due within sixty (60) days of its receipt by Respondent, allowing Respondent sixty (60) days in which to confer with EPA regarding the information requested. Naomi Reynolds signed for the notice and order on behalf of Respondent on July 8, 2008. Ex. 7.

After Respondent failed to respond to the notice and order as well as to the original request, Elizabeth Fagen of EPA Region 8's National Pollutant Discharge Elimination System (NPDES) Enforcement Program attempted to contact Respondent by telephone to discuss those documents. On November 14 and 17, 2008, Ms. Fagen dialed the telephone number listed for Respondent and, on both occasions, left a message with her office phone number, requesting that Respondent return her call. When Respondent again failed to contact EPA, EPA sent a letter on December 16, 2008 (December 2008 letter), to Respondent stating that it planned to pursue an action for administrative penalties for Respondent's non-compliance with the request unless a complete response to the request was provided to EPA prior to January 9, 2009. Ex. 8. EPA enclosed a copy of the request with the December 2008 letter, which was sent via FedEx and delivered to Respondent's place of business on December 17, 2008. Ex. 9. Respondent did not respond to the December 2008 letter.

On June 18, 2009, Complainant filed the complaint in this matter, Docket No. CWA-08-2009-0017, alleging that Respondent violated § 308 of the CWA, 33 U.S.C. § 1318, by failing to respond to the request and proposing that a penalty of \$6,200.00 be assessed. Ex. 1. The complaint was served on Respondent on June 19, 2009, as evidenced by the written verification of delivery attached hereto as Exhibit 10. The complaint notified Respondent that it had thirty (30) days from the date of service in which to file an answer. Ex. 1 at ¶¶ 29, 32. Accordingly, the answer was required to be filed with the Hearing Clerk by July 20, 2009. The transmittal letter for the complaint and the copy of the Consolidated Rules enclosed with the complaint similarly informed Respondent of the thirty-day deadline for filing an answer. See Ex. 1.

After Respondent failed to timely file an answer, Ms. Fagen called Respondent on August 6, 2009. The person who answered the phone informed Ms. Fagen that Merl Reynolds, the owner/operator of Cheerful Cesspool Service, was not available to answer the phone. Ms. Fagen asked the woman to remind Mr. Reynolds that both the response to the November

2007 request and the answer to EPA's complaint in this matter were overdue and needed to be filed immediately. She also gave her phone number to the woman and directed her to tell Mr. Reynolds to call if he had any questions.

On August 7, 2009, EPA sent a letter to Respondent enclosing a copy of the complaint and reminding Respondent that its answer was overdue. Ex. 11. Respondent received the letter and enclosed complaint on August 10, 2009. Ex. 12.

On September 17, 2009, EPA sent another letter to Respondent, again reminding the Respondent of the necessity of filing an answer and setting forth the potential consequences of failing to do so. Ex. 13. The letter further notified Respondent that Complainant would file a motion for default judgment if an answer was not filed by October 5, 2009. *Id.* The letter also provided contact information for Complainant, including a toll-free number. *Id.* The letter was delivered on September 18, 2009. Ex. 14.

On October 5, 2009, counsel for Complainant contacted Respondent by phone and explained the consequences of not responding to the complaint. Counsel for Complainant further stated that it would wait two weeks to file a motion for default judgment, and encouraged Respondent to both file an answer and provide a response to the November 2007 request within that time.

On October 19, 2009, EPA received a partial response to the November 2007 request.

On October 21, 2009, Respondent contacted counsel for Complainant to inquire what he needed to do to answer the complaint and counsel provided basic guidance. Respondent contacted counsel for Complainant again on October 28, 2009, asking the same questions. Counsel for Complainant again provided instructions on preparing an answer and indicated the Respondent could simply write a letter to answer the complaint.

To date, Respondent has not filed an answer.

B. Applicable Regulatory Provisions

There are two provisions in the Consolidated Rules that are relevant to this Motion for Default Order. According to 40 C.F.R. § 22.15, a written answer is required to be filed by Respondent "within 30 days of service of the complaint" and any failure by Respondent "to admit, deny, or explain any material factual allegation contained in the complaint constitutes an admission of the allegation." 40 C.F.R. § 22.25(a), (d). Additionally, in pertinent part, 40 C.F.R. § 22.17 provides as follows:

(a) Default. A party may be found to be in default: after motion, upon failure to file a timely answer to the complaint... . 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.

(c) Default order. When the Presiding Officer finds that default has occurred, he shall issue a default order against the defaulting party as to any or all parts of the proceeding unless the record shows good cause why a default order should not be issued.

C. Basis for Complainant's Motion for Default Order

1. Respondent's Failure to File an Answer has Placed him in Default.

As prescribed by 40 C.F.R. § 22.17(a), Respondent is in default for having failed to file a timely answer to the complaint. The administrative record and chronology of events summarized above demonstrate this failure. By neglecting to respond in the required manner, Respondent has continued a long practice of being non-responsive to EPA. As shown above, Respondent was contacted on numerous occasions regarding the November 2007 request but did not provide any response until October 19, 2009, and that was only a partial response. Similarly, despite multiple calls and letters from Complainant, Respondent has failed to file an answer in this matter.

Respondent's default constitutes, for purposes of this proceeding, an admission of all facts alleged in the complaint. 40 C.F.R. § 22.17(a). As demonstrated in the following two subsections of this Memorandum, these facts establish that Respondent is liable for the violation of the Act alleged in the complaint and that the penalty proposed in the complaint is appropriate. Furthermore, the record in this matter contains no information showing good cause why a default order assessing the full penalty should not be issued.

2. Respondent is Liable for the Violations Alleged in the Complaint.

Respondent is in default for having failed to answer the complaint and, as a result, the facts alleged in the complaint are now deemed true. 40 C.F.R. § 22.17(a). These facts establish a prima facie case for liability for one count of failing to timely and fully respond to a request for information issued under § 308 of the Act, 33 U.S.C. § 1318. Although Respondent, on October 19, 2009, filed a partial response to the November 2007 request, the response was incomplete and 647 days late.

Section 308(a)(2)(a) of the CWA, 33 U.S.C. § 1318(a)(2)(A), authorizes the Administrator of the EPA to require the owner or operator of any point source to provide information as necessary to determine whether any person is in violation of any effluent limit or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance, or to carry out § 405 of the Act, 33 U.S.C. § 1345. Section 405 of the Act, 33 U.S.C. § 1345, and regulations promulgated thereunder and found at 40 C.F.R. Part 503, set forth

requirements pertaining to the disposal or use of sewage sludge. Domestic septage constitutes sewage sludge as defined in 40 C.F.R. § 503.9.

The truck(s) and other equipment used by Respondent to dispose of domestic septage each constitute a “point source” as defined by § 502(14) of the Act, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2. See also, United States v. Weisman, 489 F. Supp. 1331, 1343 (M.D. Fla. 1980) (manure spreading truck and bulldozer held to be point sources). As the owner and/or operator of equipment used to dispose of domestic septage, Respondent is the “owner or operator” of a point source.

The November 2007 request for information sought information necessary to carry out § 405 of the Act, 33 U.S.C. § 1345.

3. The Penalty Proposed in the Complaint Should be Assessed Against Respondent.

In arriving at the proposed penalty of \$6,200.00, Complainant has taken into account the factors set forth in § 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3). Ex. 1 at ¶ 26. These factors include the nature, extent, and gravity of the violations and, with respect to the violator, ability to pay, prior history of violations, degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require. 33 U.S.C. § 1319(g)(3). Complainant has appropriately taken these factors into account in arriving at the proposed penalty.

a. Nature and Circumstances of the Violation

Complainant evaluated the nature, circumstances, extent, and gravity of the violations with reference to the fact that, for 524 days (the number of days from when the information request was issued to the date the complaint was filed), Respondent had refused to respond to EPA’s request for information despite receipt of a notice of an opportunity to confer with EPA, an order to comply with the request, phone calls, and letters. EPA’s ability to collect information under section 308 of the CWA is critical to ensuring compliance with the requirements of the Act. See In re Rofor Plating Co., Inc., Docket No. CWA-2I-91-1112, 1993 EPA ALJ LEXIS 40 (ALJ Head, Sept. 16, 1993)(noting that “cooperation by dischargers....is critical to the effective enforcement of the Act). See also, Sierra Club v. Simkins Industries, Inc., 847 F. 2d. 1109, 1115 n.9 (4th Cir. 1988)(noting that reporting requirements are “essential elements” of the Clean Water Act’s enforcement procedures). When a respondent completely refuses to respond to a properly issued request for information, that portion of the statutory scheme is completely undermined. See United States v. George Trucking Co., 823 F. 2d 685, 689 (1st Cir. 1987)(concluding that without the ability to enforce its investigative authority, the EPA will be “severely - indeed, unduly - handicapped in its attempt to effectuate needed regulation”). Furthermore, the request was intended to ascertain Respondent’s methods of septage disposal; improper disposal of septage can have significant deleterious effects on surface water, ground water and human health.

See In re Rofor Plating Co., Inc., Docket No. CWA-2-I-91-1112, 1993 EPA ALJ LEXIS 40 (ALJ Head, Sept. 16, 1993)(noting that “failure to respond in a timely manner to a request for information under section 308 of the Act risks damaging or irreparable environmental consequences and may threaten human health”).

b. History of Noncompliance

Based on the available evidence, Complainant believes that Respondent has no prior history of similar violations. However, the record establishes that Respondent continued to violate the Act for 524 days, during which time EPA repeatedly communicated to Respondent the necessity of responding to the request for information and the consequences of failing to respond. Respondent demonstrated a pattern of refusing to respond to communications from EPA. Standing alone, Respondent’s degree of culpability, as evidenced by repeated non-responsiveness to EPA, warrants a substantial civil penalty. See In re She Rentals, Docket No. CWA-III-156, 1997 EPA RJO LEXIS 13 (RJO McCabe, Apr. 29, 1997)(assessing a civil penalty of \$8,500 based on a finding that Respondent’s failure to respond to a section 308 letter, despite three EPA mailings and a hand delivery, “bespeaks to an all too casual attitude towards lawful information-gathering efforts by the EPA”).

c. Economic Benefit and Ability to Pay

The economic benefit of Respondent’s non-compliance with the request for information is estimated to be fairly minimal, including the delayed and avoided cost for failing to completely and timely comply with the request for information. At this time, Respondent has not claimed an inability to pay the proposed penalty.

d. Other Relevant Factors

In considering such other factors as justice may require, EPA has determined that the assessment of a penalty in this case will deter future violations not only by Respondent, but also by other recipients of requests for information from EPA issued under the various environmental statutes. See In re Rofor Plating Co., Inc., Docket No. CWA-2-I-91-1112, 1993 EPA ALJ LEXIS 40 (ALJ Head, Sept. 16, 1993) (“Respondent’s actions justify the imposition of a substantial penalty to deter future non-compliance by persons associated with the respondent and others.”).

The above analysis demonstrates that the total penalty amount of \$6,200.00 is an appropriate amount under the factors contained in § 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3). Indeed, decisions in administrative cases involving similar facts demonstrate that the penalty assessed against Respondent is very conservative. See, e.g., In re Mario Loyola, Docket No. CWA-02-2000-3604, 2005 EPA RJO LEXIS 337 (RJO Ferrara, Feb. 16, 2005)(ordering a civil penalty of \$11,000 based on the Presiding Officer’s opinion that Respondent’s “failure to reply to many formal and informal attempts by EPA to obtain his response to the Request for Information constitutes a high degree of culpability in violating section 308 of the CWA”); In re Rofor

Plating Co., Docket No. CWA-2-I-91-1112, 1993 EPA ALJ LEXIS 40 (ALJ Head, Sept. 16, 1993)(ordering a \$30,000 civil penalty based on six month history of noncompliance and economic benefit from non-compliance with section 308 request).¹

III. RELIEF REQUESTED

For the reasons stated above, Complainant requests the issuance of a default order against Respondent. In accordance with 40 C.F.R. § 22.17(d), Complainant requests that Respondent be ordered to pay the full civil penalty proposed in the complaint within thirty days of the issuance of a default order. A proposed order granting Complainant's Motion for Default Order is attached hereto.

Respectfully submitted this 10th day of May, 2011.

United States Environmental Protection Agency, Region 8
Office of Enforcement, Compliance, and
Environmental Justice, Complainant.
1595 Wynkoop Street
Denver, CO 80202-1129

By: Wendy I. Silver
Wendy I. Silver, Senior Attorney
Legal Enforcement Program
Telephone: 303-312-6637
Fax: 303-312-6953

¹Substantial civil penalties for non-compliance with requests for information have also been imposed under other environmental laws. See, e.g. United States v. JG-24, Inc., et al, 331 F. Supp. 2d 14 (D.P.R. 2010)(awarding the United States \$ 263,200 after Defendants failed to respond to RCRA Information Request for 888 days); In re Liston Brick of Corona, Docket No. CAA-9-2005-0018, 2007 WL 4618372 (ALJ Gunning, Dec. 18, 2007)(assessing a civil penalty of \$ 12,895 for Respondent's failure to respond to a request for information under the Clean Air Act).

In the Matter of: Cheerful Cesspool Service
Docket No. CWA-08-2009-0017

CERTIFICATE OF SERVICE

I hereby certify that the attached Motion for Default Order and Memorandum in Support of Complainant's Motion for Default, dated 5/10/2011, were served as follows:

The original and one copy were hand-delivered to:

Tina Artemis
Regional Hearing Clerk
U.S. Environmental Protection Agency (8RC)
1595 Wynkoop Street
Denver, CO 80202-1129

A copy was sent via CERTIFIED MAIL, RETURN RECEIPT REQUESTED, postage prepaid, to:

Merl Reynolds
Cheerful Cesspool Service
18758 Surface Creek Road
Cedaredge, CO 81413

5/10/2011
Date

Judith McTernan
Judith McTernan



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

JUN 18 2009

Ref: 8ENF-L

VIA FEDERAL EXPRESS

Merl Reynolds
Cheerful Cesspool Service
18758 Surface Creek Road
Cedaredge, CO 81413

Re: Administrative Complaint and Notice of
Opportunity for Hearing
Docket No. **CWA-08-2009-0017**

Dear Mr. Reynolds:

Enclosed is an Administrative Complaint and Notice of Opportunity for Hearing (complaint) that the U.S. Environmental Protection Agency, Region 8 (EPA) is issuing to Cheerful Cesspool Service (Cheerful) under the authority of § 309(g) of the Clean Water Act (Act), 33 U.S.C. § 1319(g). In the Complaint, EPA alleges that Cheerful has violated § 308 of the Act, 33 U.S.C. § 1318 by failing to respond to a request for information issued by EPA pursuant to that section. The violation that EPA is alleging is specifically set out in the Complaint. The Complaint proposes that a penalty of \$6,200.00 be assessed against Cheerful for this violation.

By law, Cheerful has the right to request a hearing regarding the violation alleged in the Complaint and the appropriateness of the proposed administrative civil penalty. Please pay particular attention to the section of the Complaint entitled "Notice of Opportunity to Request a Hearing." If Cheerful wishes to request a hearing, it must file within thirty (30) days of receipt of the enclosed Complaint, a written Answer with the EPA Regional Hearing Clerk at the address set forth in the Complaint. The written request must follow the requirements of the Consolidated Rules of Practice at 40 C.F.R. Part 22, a copy of which is enclosed. Note that should Cheerful fail to request a hearing within thirty (30) days of receipt of the Complaint, the right to such a hearing will be waived and the proposed civil penalty may be assessed against Cheerful without further proceedings.



Printed on Recycled Paper

If Cheerful wishes to settle this matter without further legal action, it may waive the right to a hearing and, within thirty days of receipt of this letter, pay the proposed penalty to "Treasurer, United States of America," at the address set forth in the Complaint.

Enclosed is a copy of "U.S. EPA Small Business Resources," which can assist Cheerful with complying with federal environmental laws. Also enclosed is an SEC Disclosure Notice.

Whether or not Cheerful requests a hearing, it may confer informally with EPA concerning the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint proposing assessment of a penalty to pursue the possibility of settlement as a result of an informal conference. If such a mutually satisfactory settlement can be reached, it will be formalized by the issuance of a Consent Agreement signed by Cheerful and the delegated official in EPA Region 8. The issuance of such a consent agreement shall constitute a waiver by Cheerful of its right to a hearing on, and to a judicial appeal of, the agreed upon civil penalty.

A request for an informal conference with EPA does not extend the thirty day period within which Cheerful must request or waive the right to a hearing, and the two procedures can be pursued simultaneously.

Cheerful has the right to be represented by an attorney at any stage in the proceedings, including any informal discussions with EPA, but it is not required. If Cheerful wishes to discuss settlement or technical questions, please contact Liz Fagen, Environmental Engineer, at (303) 312-6095. Legal questions, including any communications from an attorney, should be directed to Wendy Silver, Senior Attorney, at (303) 312-6637.

We urge your prompt attention to this matter.

Sincerely,



Darcy O'Connor, Unit Chief
NPDES Enforcement Unit
Office of Enforcement, Compliance, and
Environmental Justice



David Rochlin, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance, and
Environmental Justice

Enclosures:

1. Administrative Complaint and Notice of Opportunity for Hearing
2. Consolidated Rules of Civil Practice (40 C.F.R. Part 22)
3. U.S. EPA Small Business Resources Information Sheet
4. SEC Disclosure Notice

cc: James Martin, Colorado Department of Public Health and Environment

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF:)	ADMINISTRATIVE COMPLAINT
)	AND NOTICE OF OPPORTUNITY
Cheerful Cesspool Service)	FOR HEARING
18758 Surface Creek Road)	Proceeding to Assess Class I
Cedaredge, CO 81413)	Administrative Penalty Under
)	Clean Water Act, Section 309(g)
Respondent.)	
<hr/>		Docket No. CWA-08-2009-0017

1. This Administrative Complaint and Notice of Opportunity for Hearing (Complaint) is issued pursuant to § 309(g) of the Clean Water Act (CWA or the Act), 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.13. Section 309(g) of the Act authorizes the Administrator of the United States Environmental Protection Agency (EPA) to make findings and to assess civil penalties for violations of § 308 of the CWA, 33 U.S.C. § 1318 This proceeding is subject to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22, a copy of which accompanies this Complaint.

2. The undersigned EPA officials have been properly delegated the authority to issue this Complaint.

STATUTORY FRAMEWORK

3. Section 308(a)(2)(A) of the Act, 33 U.S.C. § 1318(a)(2)(A), authorizes the Administrator of the EPA to require the owner or operator of any point source to provide information as necessary to determine whether any person is in violation of any effluent limit or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance, or to carry out § 405 of the Act, 33 U.S.C. § 1345.

4. Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), authorizes the EPA to assess a Class I civil administrative penalty of up to \$11,000.00 per day for each day of violation of § 308 of the Act that occurred between March 16, 2004, and January 12, 2009, and \$16,000.00 for each day of violation thereafter. For violations between March 16, 2004, through January 12, 2009, the maximum amount of the penalty may not exceed \$32,500.00. For violations after January 12, 2009, the maximum amount of the penalty may not exceed \$37,500.00. These amounts have been adjusted for inflation by 40 C.F.R. Part 19.

GENERAL ALLEGATIONS

5. Respondent Cheerful Cesspool Service (Cheerful or Respondent) is and was at all relevant times a Colorado company doing business in the State of Colorado.

6. At all times relevant to this action, Respondent owned and operated a domestic septage pumping and disposal service at 18758 Surface Creek Road in Cedaredge, Delta County, Colorado.

7. At all times relevant to this action, Respondent pumped domestic septage, as defined in 40 C.F.R. § 503.9(f), into tanks attached to one or more trucks owned and/or operated by Respondent and disposed of the septage by land application.

8. On November 19, 2007, EPA sent to Respondent a request for information (request) pursuant to § 308 of the Act, 33 U.S.C. § 1318, to determine compliance with § 405 of the Act (Disposal or Use of Sewage Sludge), 33 U.S.C. § 1345, and regulations promulgated thereunder and found at 40 C.F.R. Part 503. Respondent's response to the request was due within 45 days of its receipt by Respondent.

9. The request was sent via certified mail, return receipt requested. The return receipt card was signed on behalf of Respondent on November 26, 2007.
10. To date, EPA has not received a response from Respondent to the request.
11. On March 14, 2008, EPA sent, by certified mail, a follow-up and opportunity to confer (opportunity to confer) regarding the request to Respondent, pursuant to § 309(a)(4) of the Act, 33 U.S.C. § 1319(a)(4). The opportunity to confer reiterated the request and offered Respondent an opportunity to confer with EPA via conference call regarding the request. Respondent's response to the opportunity to confer was due within fourteen (14) days of its receipt by Respondent.
12. Respondent did not accept service of the opportunity to confer, and it was returned to EPA by the U.S. Postal Service on April 12, 2008.
13. On July 3, 2008, EPA sent a Notice of Opportunity to Confer and Order for Compliance with Information Request (notice and order), Docket No. CWA-08-2008-0016, to Respondent via FedEx. Respondent's response to the order was due within 60 days of its receipt by Respondent, allowing Respondent 60 days in which to confer with EPA regarding the information requested.
14. Naomi Reynolds signed for the notice and order on behalf of Respondent on July 8, 2008. To date, Respondent has not responded to the notice and order.
15. On November 14 and 17, 2008, EPA attempted to contact Respondent by telephone to discuss the request and the notice and order. EPA dialed the telephone number listed for Respondent and, on each occasion, left a message requesting that Respondent call EPA.

16. To date, Respondent has not returned the November 14 and 17, 2008, calls from EPA.

17. On December 16, 2008, EPA sent a letter (December 2008 letter) to Respondent via FedEx indicating that it planned to pursue an action for administrative penalties against Respondent for its non-compliance with the request unless Respondent provided a complete response to the request prior to January 9, 2009. EPA enclosed a copy of the request with the December 2008 letter.

18. FedEx delivered the December 2008 letter to Respondent's place of business on December 17, 2008.

19. To date, Respondent has not responded to the December 2008 letter.

20. Respondent is, and was at all relevant times, a "person" within the meaning of the definition set forth in § 502(5) of the Act, 33 U.S.C. § 1362(5).

21. Domestic septage constitutes sewage sludge as defined in 40 C.F.R. § 503.9.

22. The truck(s) and other equipment used by Respondent to dispose of domestic septage each constitute a "point source" as defined by § 502(14) of the Act, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2.

23. As the owner and/or operator of equipment used to dispose of domestic septage, Respondent is the "owner or operator" of a point source.

DESCRIPTION OF VIOLATION

23. Respondent is subject to the provisions of the Act, 33 U.S.C. § 1251 *et seq.*, including §§ 308 and 309(g) of the Act, 33 U.S.C. §§ 1318 and 1319(g).

24. Respondent's failure to respond to the request described in paragraphs 8, 9 and 10, above, constitutes a violation of § 308 of the Act, 33 U.S.C. §§ 1318.

25. Pursuant to § 309(g) of the Act, 33 U.S.C. §1319(g), EPA has consulted with James Martin, Executive Director, Colorado Department of Public Health and Environment, regarding assessment of this administrative penalty by furnishing a copy of this complaint and inviting him to comment on behalf of the State of Colorado.

NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY

26. Based on the foregoing allegations and pursuant to the authority of § 309(g) of the Act, 33 U.S.C. §1319(g), EPA Region 8 hereby proposes that a penalty of \$6,200.00 be assessed against Respondent for the violation alleged above, as explained below:

Nature, Circumstances, Extent, and Gravity of Violations

Section 308 of the Act, 33 U.S.C. §1318, grants EPA the authority to require the owner or operator of any point source to provide information as necessary to determine, among other things, whether any person is in violation of any limitation, prohibition, or standard of performance, or to carry out § 405 of the Act, 33 U.S.C. § 1345. Respondent's refusal to comply with a request for information properly issued under § 308 of the Act completely undermines EPA's ability to fulfill its statutory mandate to ensure compliance with the Act.

The potential environmental impact of the possible improper application of septage by Respondent includes excessive amounts of nutrients reaching surface waters and ground water.

Prior Compliance History

On January 29, 2001, EPA sent a request for information (2001 request) to Respondent pursuant to § 308 of the Act, 33 U.S.C. §1318, to determine compliance with § 405 of the Act, 33 U.S.C. §1345, and regulations found at 40 C.F.R. Part 503. Respondent was granted a ten day extension on the response due date to April 25, 2001. To date, Respondent has not responded to

the 2001 request. On September 28, 2001, EPA issued an Order for Compliance with Information Request (2001 order) to Respondent. On April 15, 2002, EPA sent a letter to Respondent regarding its failure to respond to the 2001 request and the 2001 order, explaining EPA's authority and requesting a response to the 2001 order. EPA received a partial response from Respondent on August 15, 2002. On November 21, 2002, EPA sent a supplemental request for information. To date, EPA has not received a response from Respondent to the supplemental request. On January 17, 2003, EPA sent a notice of opportunity to confer to Respondent, which was not accepted and was returned to EPA on February 28, 2003.

Degree of Culpability

Respondent's complete failure to respond to EPA's request for information of November 19, 2007, despite written and telephonic reminders, corresponds to a high degree of culpability.

Economic Benefit

An analysis by EPA determined the economic benefit associated with the violation to be negligible.

Ability to Pay

The proposed penalty was not reduced based upon the statutory factor of an inability to pay. However, EPA will consider any new information that Respondent may present regarding Respondent's ability to pay the penalty proposed in this Complaint.

Other Matters That Justice May Require

At this time, EPA has not made any adjustment to the proposed penalty based on this statutory factor.

27. As required by § 309(g)(4) of the Act, 33 U.S.C. § 1319(g)(4), prior to assessing a civil penalty, EPA will provide public notice of the proposed penalty and a reasonable opportunity for the public to comment on the matter and, if a hearing is held, to be heard and present evidence.

28. EPA may issue the Final Order Assessing Administrative Penalties thirty days after Respondent's receipt of this notice, unless Respondent, within that time, requests a hearing on this notice pursuant to the following section.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

29. As provided in § 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), and 40 C.F.R. § 22.15(c), Respondent has the right to request a hearing in this matter. If Respondent (1) contests any material fact upon which the Complaint is based, (2) contends that the amount of penalty proposed in the Complaint is inappropriate, or (3) contends that it is entitled to judgment as a matter of law, it must file a written answer in accordance with 40 C.F.R. § 22.15 within thirty days after service of the Complaint.

30. Respondent's answer must (1) clearly admit, deny, or explain each of the factual allegations contained in the Complaint, (2) state the circumstances or arguments which are alleged to constitute grounds of defense, (3) state the facts intended to be placed at issue, (4) state the basis for opposing any proposed relief, and (5) specifically request a hearing, if desired.

40 C.F.R. § 22.15(b). Failure to admit, deny, or explain any factual allegation contained in the Complaint constitutes an admission of the allegation. 40 C.F.R. § 22.15(c).

31. Respondent's answer, an original and one copy, must be filed with:

Regional Hearing Clerk
U.S. EPA Region 8 (8RC)

1595 Wynkoop Street
Denver, Colorado 80202-1129

A copy of the answer and all other documents filed in this action must be served on:

Wendy Silver
Senior Attorney
U.S. EPA, Region 8 (8ENF-L)
1595 Wynkoop Street
Denver, CO 80202-1129

32. Be aware that should Respondent request a hearing on this proposed penalty assessment, members of the public, to whom EPA is obligated to give notice of this proposed action, will have a right under § 309(g)(4)(B) of the Act, 33 U.S.C. §1319(g)(4)(B), to be heard and to present evidence on the appropriateness of the penalty assessment.

IF RESPONDENT FAILS TO REQUEST A HEARING, IT WILL WAIVE ITS RIGHT TO CONTEST ANY OF THE ALLEGATIONS SET FORTH IN THE COMPLAINT.

IF RESPONDENT FAILS TO FILE A WRITTEN ANSWER WITHIN THE THIRTY (30) DAY LIMIT, A DEFAULT JUDGMENT MAY BE ENTERED PURSUANT TO 40 C.F.R. § 22.17. THIS JUDGMENT MAY IMPOSE THE FULL PENALTY PROPOSED IN THE COMPLAINT.

33. Should Respondent not request a hearing, EPA will issue a Final Order Assessing Administrative Penalties, and only members of the public who submit timely comments on this proposal will have an additional 30 days to petition EPA to set aside the Final Order Assessing Administrative Penalties and to hold a hearing thereon. EPA will grant the petition and will hold a hearing only if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order Assessing Administrative Penalties.

TERMS OF PAYMENT FOR QUICK RESOLUTION

34. If Respondent does not contest the findings and assessments set out above, this action may be resolved by paying the proposed penalty in full pursuant to 40 C.F.R. § 22.18. If such payment is made within thirty (30) calendar days of receipt of this Complaint, no Answer need be filed. For more time for payment, Respondent may file a statement agreeing to pay the penalty within thirty (30) days of receipt of the Complaint, then pay the money within sixty (60) days of such receipt. Penalty payment must be made by certified or cashier's check payable to "Treasurer, the United States of America," and remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 9790777
St. Louis, MO 63197-9000

Copies of the check shall be sent to:

Elizabeth Fagen
U.S. Environmental Protection Agency (8ENF-W-NP)
1595 Wynkoop Street
Denver, CO 80202-1129

and

Wendy Silver
U.S. Environmental Protection Agency (8ENF-L)
1595 Wynkoop Street
Denver, CO 80202-1129

A transmittal letter identifying the case title and docket number must accompany the remittance and copies of the check.

35. Payment of the penalty in this manner shall constitute consent by Respondent to the assessment of the proposed penalty and a waiver of Respondent's right to a hearing in this matter.

36. Neither assessment nor payment of an administrative civil penalty pursuant to § 309 of the Act, 33 U.S.C. § 1319, shall affect Respondent's continuing obligation to comply with the Clean Water Act or any other federal, state, or local law or regulations and any separate Compliance Order issued under § 309(a) of the Act, 33 U.S.C. §1319(a), for the violations alleged herein.


SETTLEMENT CONFERENCE

37. EPA encourages the exploration of settlement possibilities through an informal settlement conference. Please note that a request for, scheduling of, or participation in a settlement conference does not extend the period for filing an answer and request for hearing as set out above. The settlement process, however, may be pursued simultaneously with the administrative litigation process. If a settlement can be reached, its terms will be expressed in a written consent agreement signed by the parties and incorporated into a final order by the Regional Judicial Officer. 40 C.F.R. § 22.18. To explore the possibility of settlement in this matter, contact Wendy Silver, Senior Attorney, at the address below. Ms. Silver can also be reached at (303) 312-6637.

United States Environmental Protection Agency, Region 8
Office of Enforcement, Compliance, and
Environmental Justice, Complainant.
1595 Wynkoop Street
Denver, CO 80202-1129

In the Matter of: Cheerful Cesspool Service

Date: 6/17/09

By: 
Darcy O'Connor, Unit Chief
NPDES Enforcement Unit

Date: 6/17/09

By: David Rochlin
David Rochlin, Supervisory Attorney
Legal Enforcement Program

Date: 6/18/09

By: Wendy I. Silver
Wendy I. Silver, Senior Attorney
Legal Enforcement Program

CERTIFICATE OF SERVICE

I certify that on the date noted below, I sent by Federal Express a copy of the foregoing ADMINISTRATIVE COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING, and a copy of the Consolidated Rules of Practices Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22, to:

Merl Reynolds
Cheerful Cesspool Service
18758 Surface Creek Road
Cedaredge, CO 81413

FedEx tracking number 8667-8411-7290

I further certify that on the same date below I sent by certified mail, return receipt requested, a copy of this document to:

James B. Martin
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, CO 80246-1530

Certified Return Receipt No. 7008-1830-0000-5157-1741

The original and one copy were hand-delivered to:

Tina Artemis
Regional Hearing Clerk
U.S. Environmental Protection Agency (8RC)
1595 Wynkoop Street
Denver, CO 80202-1129

Date: 6/18/09

Judith M. McTernan

NOTICE OF SECURITIES AND EXCHANGE COMMISSION REGISTRANTS' DUTY TO DISCLOSE ENVIRONMENTAL LEGAL PROCEEDINGS

Securities and Exchange Commission regulations require companies registered with the SEC (e.g., publicly traded companies) to disclose, on at least a quarterly basis, the existence of certain administrative or judicial proceedings taken against them arising under Federal, State or local provisions that have the primary purpose of protecting the environment. Instruction 5 to Item 103 of the SEC's Regulation S-K (17 CFR 229.103) requires disclosure of these environmental legal proceedings. For those SEC registrants that use the SEC's "small business issuer" reporting system, Instructions 1-4 to Item 103 of the SEC's Regulation S-B (17 CFR 228.103) requires disclosure of these environmental legal proceedings.

If you are an SEC registrant, you have a duty to disclose the existence of pending or known to be contemplated environmental legal proceedings that meet any of the following criteria (17 CFR 229.103(5)(A)-(C)):

- A. Such proceeding is material to the business or financial condition of the registrant;
- B. Such proceeding involves primarily a claim for damages, or involves potential monetary sanctions, capital expenditures, deferred charges or charges to income and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis; or
- C. A governmental authority is a party to such proceeding and such proceeding involves potential monetary sanctions, unless the registrant reasonably believes that such proceeding will result in no monetary sanctions, or in monetary sanctions, exclusive of interest and costs, of less than \$100,000; provided, however, that such proceedings which are similar in nature may be grouped and described generically.

Specific information regarding the environmental legal proceedings that must be disclosed is set forth in Item 103 of Regulation S-K or, for registrants using the "small business issuer" reporting system, Item 103(a)-(b) of Regulation S-B. If disclosure is required, it must briefly describe the proceeding, "including the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceedings and the relief sought."

You have been identified as a party to an environmental legal proceeding to which the United States government is, or was, a party. If you are an SEC registrant, this environmental legal proceeding may trigger, or may already have triggered, the disclosure obligation under the SEC regulations described above.

This notice is being provided to inform you of SEC registrants' duty to disclose any relevant environmental legal proceedings to the SEC. This notice does not create, modify or interpret any existing legal obligations, it is not intended to be an exhaustive description of the legally applicable requirements and it is not a substitute for regulations published in the Code of Federal Regulations. This notice has been issued to you for information purposes only. No determination of the applicability of this reporting requirement to your company has been made by any governmental entity. You should seek competent counsel in determining the applicability of these and other SEC requirements to the environmental legal proceeding at issue, as well as any other proceedings known to be contemplated by governmental authorities.

If you have any questions about the SEC's environmental disclosure requirements, please contact the Office of Chief Counsel in the SEC's Division of Corporation Finance. The phone number is (202) 942-2900.



Office of Enforcement and Compliance Assurance
INFORMATION SHEET

U. S. EPA Small Business Resources

If you own a small business, the United States Environmental Protection Agency (EPA) offers a variety of compliance assistance resources such as workshops, training sessions, hotlines, websites, and guides to assist you in complying with federal and state environmental laws. These resources can help you understand your environmental obligations, improve compliance, and find cost-effective ways to comply through the use of pollution prevention and other innovative technologies.

Compliance Assistance Centers

(www.assistancecenters.net)

In partnership with industry, universities, and other federal and state agencies, EPA has established Compliance Assistance Centers that provide information targeted to industries with many small businesses.

Agriculture

(www.epa.gov/agriculture or 1-888-663-2155)

Automotive Recycling Industry

(www.ecarcenter.org).

Automotive Service and Repair

(www.ccar-greenlink.org or 1-888-GRN-LINK)

Chemical Industry

(www.chemalliance.org)

Construction Industry

(www.cicacenter.org or 1-734-995-4911)

Education

(www.campuserc.org)

Healthcare Industry

(www.hercenter.org or 1-734-995-4911)

Metal Finishing

(www.nmfrc.org or 1-734-995-4911)

Paints and Coatings

(www.paintcenter.org or 1-734-995-4911)

Printed Wiring Board Manufacturing

(www.pwbrc.org or 1-734-995-4911)

Printing

(www.pneac.org or 1-888-USPNEAC)

Transportation Industry

(www.transource.org)

Tribal Governments and Indian Country

(www.epa.gov/tribal/compliance or 202-564-2516)

US Border Environmental Issues

(www.bordercenter.org or 1-734-995-4911)

The Centers also provide State Resource Locators

(www.envcap.org/statetools/index.cfm) for a wide range of topics to help you find important environmental compliance information specific to your state.

EPA Websites

EPA has several Internet sites that provide useful compliance assistance information and materials for small businesses. If you don't have access to the Internet at your business, many public libraries provide access to the Internet at minimal or no cost.

EPA's Home Page

www.epa.gov

Small Business Gateway

www.epa.gov/smallbusiness

Compliance Assistance Home Page

www.epa.gov/compliance/assistance

Office of Enforcement and Compliance Assurance

www.epa.gov/compliance

Voluntary Partnership Programs

www.epa.gov/partners

U.S. EPA SMALL BUSINESS RESOURCES

Hotlines, Helplines & Clearinghouses

(www.epa.gov/epahome/hotline.htm)

EPA sponsors many free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements. A few examples are listed below:

Clean Air Technology Center
(www.epa.gov/ttr/catc or 1-919-541-0800)

Emergency Planning and Community Right-To-Know Act
(www.epa.gov/superfund/resources/infocenter/epcra.htm or 1-800-424-9346)

EPA's Small Business Ombudsman Hotline provides regulatory and technical assistance information.
(www.epa.gov/sbo or 1-800-368-5888)

The National Environmental Compliance Assistance Clearinghouse provides quick access to compliance assistance tools, contacts, and planned activities from the U.S. EPA, states, and other compliance assistance providers
(www.epa.gov/clearinghouse)

National Response Center to report oil and hazardous substance spills.
(www.nrc.uscg.mil or 1-800-424-8802)

Pollution Prevention Information Clearinghouse
(www.epa.gov/opptintr/ppic or 1-202-566-0799)

Safe Drinking Water Hotline
(www.epa.gov/safewater/hotline/index.html or 1-800-426-4791)

Stratospheric Ozone Refrigerants Information
(www.epa.gov/ozone or 1-800-296-1996)

Toxics Assistance Information Service also includes asbestos inquiries.
(1-202-554-1404)

Wetlands Helpline
(www.epa.gov/owow/wetlands/wetline.html or 1-800-832-7828)

State Agencies

Many state agencies have established compliance assistance programs that provide on-site and other types of assistance. Contact your local state environmental agency for more information or the following two resources:

EPA's Small Business Ombudsman
(www.epa.gov/sbo or 1-800-368-5888)

Small Business Environmental Homepage
(www.smallbiz-enviroweb.org or 1-724-452-4722)

Compliance Incentives

EPA provides incentives for environmental compliance. By participating in compliance assistance programs or voluntarily disclosing and promptly correcting violations before an enforcement action has been initiated,

businesses may be eligible for penalty waivers or reductions. EPA has two policies that potentially apply to small businesses:

The Small Business Compliance Policy
(www.epa.gov/compliance/incentives/smallbusiness)

Audit Policy
(www.epa.gov/compliance/incentives/auditing)

Commenting on Federal Enforcement Actions and Compliance Activities

The Small Business Regulatory Enforcement Fairness Act (SBREFA) established an SBA Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. If you believe that you fall within the Small Business Administration's definition of a small business (based on your North American Industry Classification System (NAICS) designation, number of employees, or annual receipts, defined at 13 C.F.R. 121.201; in most cases, this means a business with 500 or fewer employees), and wish to comment on federal enforcement and compliance activities, call the SBREFA Ombudsman's toll-free number at 1-888-REG-FAIR (1-888-734-3247).

Every small business that is the subject of an enforcement or compliance action is entitled to comment on the Agency's actions without fear of retaliation. EPA employees are prohibited from using enforcement or any other means of retaliation against any member of the regulated community in response to comments made under SBREFA.

Your Duty to Comply

If you receive compliance assistance or submit comments to the SBREFA Ombudsman or Regional Fairness Boards, you still have the duty to comply with the law, including providing timely responses to EPA information requests, administrative or civil complaints, other enforcement actions or communications. The assistance information and comment processes do not give you any new rights or defenses in any enforcement action. These processes also do not affect EPA's obligation to protect public health or the environment under any of the environmental statutes it enforces, including the right to take emergency remedial or emergency response actions when appropriate. Those decisions will be based on the facts in each situation. The SBREFA Ombudsman and Fairness Boards do not participate in resolving EPA's enforcement actions. Also, remember that to preserve your rights, you need to comply with all rules governing the enforcement process.

EPA is disseminating this information to you without making a determination that your business or organization is a small business as defined by Section 222 of the Small Business Regulatory Enforcement Fairness Act or related provisions.

§ 21.13

approve or disapprove the State issued statement, in accordance with the requirements of § 21.5.

(2) The Regional Administrator will periodically review State program performance. In the event of State program deficiencies the Regional Administrator will notify the State of such deficiencies.

(3) During that period that any State's program is classified as deficient, statements issued by a State shall also be sent to the Regional Administrator for review. The Regional Administrator shall notify the State, the applicant, and the SBA of any determination subsequently made, in accordance with § 21.5, on any such statement.

(i) If within 60 days after notice of such deficiencies has been provided, the State has not taken corrective efforts, and if the deficiencies significantly affect the conduct of the program, the Regional Administrator, after sufficient notice has been provided to the Regional Director of SBA, shall withdraw the approval of the State program.

(ii) Any State whose program is withdrawn and whose deficiencies have been corrected may later reapply as provided in § 21.12(a).

(g) Funds appropriated under section 106 of the Act may be utilized by a State agency authorized to receive such funds in conducting this program.

§ 21.13 Effect of certification upon authority to enforce applicable standards.

The certification by EPA or a State for SBA Loan purposes in no way constitutes a determination by EPA or the State that the facilities certified (a) will be constructed within the time specified by an applicable standard or (b) will be constructed and installed in accordance with the plans and specifications submitted in the application, will be operated and maintained properly, or will be applied to process wastes which are the same as described in the application. The certification in no way constitutes a waiver by EPA or a State of its authority to take appropriate enforcement action against the owner or operator of such facilities for violations of an applicable standard.

PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION/TERMINATION OR SUSPENSION OF PERMITS

Subpart A—General

Sec.

- 22.1 Scope of this part.
- 22.2 Use of number and gender.
- 22.3 Definitions.
- 22.4 Powers and duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment.
- 22.5 Filing, service, and form of all filed documents; business confidentiality claims.
- 22.6 Filing and service of rulings, orders and decisions.
- 22.7 Computation and extension of time.
- 22.8 *Ex parte* discussion of proceeding.
- 22.9 Examination of documents filed.

Subpart B—Parties and Appearances

- 22.10 Appearances.
- 22.11 Intervention and non-party briefs.
- 22.12 Consolidation and severance.

Subpart C—Prehearing Procedures

- 22.13 Commencement of a proceeding.
- 22.14 Complaint.
- 22.15 Answer to the complaint.
- 22.16 Motions.
- 22.17 Default.
- 22.18 Quick resolution; settlement; alternative dispute resolution.
- 22.19 Prehearing information exchange; prehearing conference; other discovery.
- 22.20 Accelerated decision; decision to dismiss.

Subpart D—Hearing Procedures

- 22.21 Assignment of Presiding Officer; scheduling the hearing.
- 22.22 Evidence.
- 22.23 Objections and offers of proof.
- 22.24 Burden of presentation; burden of persuasion; preponderance of the evidence standard.
- 22.25 Filing the transcript.
- 22.26 Proposed findings, conclusions, and order.

Subpart E—Initial Decision and Motion to Reopen a Hearing

- 22.27 Initial decision.
- 22.28 Motion to reopen a hearing.