

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

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In the Matter of:)
)
Robert Christensen,) Docket No. SDWA-05-2010-0001
d/b/a Bob's Repair,)
)
)
Respondent.)
_____)

INITIAL DECISION AND DEFAULT ORDER

This is an administrative action brought pursuant to Section 1423(c) of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300h-2(c), and governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22.

Complainant, the Director of the Water Division, U.S. Environmental Protection Agency ("EPA") Region 5, filed a Complaint on September 17, 2010, against Robert Christensen (d/b/a Bob's Repair) alleging that Respondent violated the requirements of the applicable Underground Injection Control (UIC) program for the State of Minnesota, as promulgated pursuant to section 1421 of the SDWA, 42 U.S.C. § 300h. Specifically, Complainant alleges that Respondent failed to close a motor vehicle waste disposal well (MVWDW) he owned by January 1, 2007, or obtain a permit to operate it. Complainant requests the Presiding Officer assess a civil penalty against Respondent in the amount of \$3600 and order Respondent to take all actions reasonable and necessary to assure full compliance with the UIC regulations, including, but not limited to, permanently closing the MVWDW at his facility.

Complainant has filed a Motion for Default Order requesting that the Presiding Officer find the Respondent liable for the violation alleged in the Complaint and assess the \$3600 penalty as proposed in the Complaint. Section 22.17 of the Consolidated Rules provides in part:

(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....

(b) *Motion for Default.* A motion for default may seek resolution of all or part of the proceeding. Where the motion requests the assessment of a penalty or the imposition of other relief against a defaulting party, the movant must specify the penalty or other relief sought and state the legal and factual grounds for the relief requested.

(c) *Default Order.* When the Presiding Officer finds that a 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. If the order resolves all outstanding issues and claims in the proceeding, it shall constitute the initial decision under these Consolidated Rules of Practice. 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. . . .

Discussion

I. Statutory Background

The purpose of the Safe Drinking Water Act, 42 U.S.C. §§ 300f – 300j-26, is to protect the nation’s drinking water by regulating public water supply systems to ensure they meet minimum standards to protect public health. *United States v. Jolly*, No. 99-5700, 2000 U.S. App. LEXIS 29907 at *10 (6th Cir. Nov. 20, 2000). Part C of SDWA, 42 U.S.C. §§ 300h – 300h-8, establishes a program to protect potential and actual underground sources of drinking water from contamination from underground injection wells. If a state submits a program to protect its underground sources of drinking water that is at least as rigorous as the federal requirements for all or a portion of the federal program, EPA may delegate that program to the state to implement. 42 U.S.C. §§ 300h - 300h-1.

Pursuant to section 1421 of the SDWA, 42 U.S.C. § 300h, the Administrator of EPA published minimum requirements for state UIC programs, which prohibit underground injection of fluids not authorized by permit which may threaten underground aquifers. Under this authority, the agency promulgated UIC regulations at 40 C.F.R. parts 144-147. These UIC regulations define five classes of injection wells. A motor vehicle waste disposal well is a well which receives or has received fluids from vehicular repair or maintenance activities, such as auto body repair shops, automotive repair shops or any facility that does vehicular repair work, and is denominated as a Class V well. 40 C.F.R. § 144.81(16). The UIC regulations generally require that the owner of a MVWDW in existence or under construction prior to April 5, 2000, in an area where the agency has not designated groundwater protection areas or other sensitive groundwater areas, must close the well by January 1, 2007, or obtain a permit to operate it as another type of well. 40 C.F.R. §§ 144.87(c), 144.88.

The State of Minnesota has not obtained approval from EPA to implement and enforce an equivalent UIC program with regard to Class V wells within the State pursuant to section 1422(b) of SDWA, 42 U.S.C. § 300h-1(b). Therefore, EPA maintains authority to directly implement and enforce the federal UIC program with regard to Class V wells within the State of Minnesota.

Under section 1423(a)(2) of SDWA, 42 U.S.C. § 300h-2(a)(2), in states which have not received approval to implement and enforce their own UIC programs, the Administrator may issue orders requiring compliance with a requirement of the federal UIC program if the

Administrator finds any person is violating that requirement. Additionally, section 1423(c)(1) of SDWA, 42 U.S.C. § 300h(c)(1), authorizes the Administrator, if she finds any person in violation of a regulation or other requirement of an applicable UIC program, to either issue an order seeking penalties or requiring compliance with such regulation or other requirement, or both.

II. Service of Process

As a preliminary matter, the Presiding Officer must determine whether the Complaint was properly served on Respondent. Service is proper if it meets both the requirements of the Consolidated Rules and principles of due process. *Katzson Bros., Inc., v. United States Environmental Protection Agency*, 839 F.2d 1397, 1400 (10th Cir. 1988). Section 22.5(b)(1) of the Consolidated Rules sets forth the requirements for service of a complaint:

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

In this case, Complainant served the Complaint by certified mail, return receipt requested, on September 17, 2011, addressed to "Robert Christensen d/b/a Bob's Repair." The return receipt was signed by Robert Christensen and dated September 27, 2010, and returned to the Regional Hearing Clerk who filed it on October 19, 2010. Service of process in this matter thus complies with the Consolidated Rules and satisfies principles of due process.

Pursuant to the Consolidated Rules and based upon the record in this matter and the following Findings of Fact, Conclusions of Law and Recommended Civil Penalty Assessment, Complainant's Motion for Default Order is hereby GRANTED.

III. Findings of Fact

Pursuant to sections 22.17(c) and 22.27(a) of the Consolidated Rules, 40 C.F.R. §§ 22.17(c) and 22.27(a), and based on the entire record in this case, I make the following findings of fact:

1. Respondent Robert Christensen is an individual who is the owner and operator of Bob's Repair, an automobile repair facility located at 15455 County Road 25, in Crow Wing County, Brainerd, Minnesota, which provides automotive repair services, including the draining and replacement of motor oil from automobiles and other motor vehicles it services.
2. The facility houses a drain which feeds a septic tank drain field and receives fluids from it automotive repair services. This drain was in operation prior to April 5, 2000.
3. On September 25, 2007, Respondent operated the MVWDW.

4. From September 25, 2007, until the present, Respondent has neither closed its MVWDW nor obtained a permit to operate it.
5. Respondent has not filed an answer to the Complaint in this matter.

IV. Conclusions of Law

1. Robert Christensen is a "person," as that term is defined by section 300f(12) of SDWA, 42 U.S.C. § 1401(12).
2. The drain and septic tank drain field at Robert Christensen's automobile repair facility located at 15455 County Road 25, in Crow Wing County, Brainerd, Minnesota, is a MVWDW.
3. All MVWDWs in Minnesota were required to be closed or receive a permit to operate by January 1, 2007.
4. The MVWDW at Mr. Christensen's facility in Brainerd has not been closed as required by 40 C.F.R. §§ 144.87(c) and 144.88.
5. Robert Christensen is in violation of 40 C.F.R. §§ 144.87(c) and 144.88, which is in turn a violation of an applicable UIC program and authorizes the Administrator to impose a civil penalty under section 1423(c) of SDWA, 42 U.S.C. § 300h-2(c).
6. Robert Christensen's violation of 40 C.F.R. §§ 144.87(c) and 144.88 further authorizes EPA to seek an order requiring compliance with that provision.
7. The Complaint in this proceeding was lawfully and properly served upon Respondent in accordance with 40 C.F.R. § 22.5(b)(1).
8. Respondent was required by section 22.15(a) of the Consolidated Rules, 40 C.F.R. § 22.15(a), to file an answer to the Complaint within thirty days from the date of service of the Complaint.
9. Respondent's failure to file an answer to the Complaint constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing on such factual allegations. 40 C.F.R. § 22.17(a).
10. Respondent is in default in this proceeding and has waived his right to contest the factual allegations in the Complaint.
11. The record in this matter shows no good cause why a default order should not be issued.

Recommended Civil Penalty Assessment

The Safe Drinking Water Act enumerates specific factors the Administrator shall take into account in assessing any civil penalty under section 1423 of the Act. Those factors are: (1) the seriousness of the violation; (2) the economic benefit (if any) resulting from the violation; (3)

any history of such violations; (4) any good-faith efforts to comply with the applicable requirements; (5) the economic impact of the penalty on the violator; and (6) such other matters as justice may require. 42 U.S.C. § 300h – 2(c)(4)(B). In addition, the Consolidated Rules provide in part:

(b) Amount of civil penalty. If the Presiding Officer determines that a violation has occurred and the complaint seeks a civil penalty, 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. The Presiding Officer shall explain in detail in the initial decision how the penalty to be assessed corresponds to any penalty criteria set forth in the Act. If the Presiding Officer decides to assess a penalty different in amount from the penalty proposed by complainant, the Presiding Officer shall set forth in the initial decision the specific reasons for the increase or decrease. If the respondent has defaulted, the Presiding Officer shall not assess a penalty greater than that proposed by complainant in the complaint, the prehearing information exchange or the motion for default, whichever is less.

Region 5 has issued the Region 5 Underground Injection Control Proposed Administrative Order Penalty Policy (September 21, 1994) to be used by agency personnel to calculate administrative penalties against owners and operators who violate the SDWA and the UIC regulations. In addition, Complainant has submitted the Declaration of Ray Urchel, an Environmental Protection Specialist in the UIC Branch and a memorandum explaining how the proposed \$3600 penalty was calculated. Complainant considered each of the SDWA statutory penalty factors as follows:

- 1) *Seriousness of the violation:* Failure to close a NVWDW could pose a serious environmental threat by allowing used oil and other automotive waste to spread to underground sources of drinking water.
- 2) *Economic benefit:* None known.
- 3) *History of past violations:* None known.
- 4) *Good faith efforts to comply with applicable requirements:* None.
- 5) *Economic impact of the penalty on the violator:* Bob's Repair is considered to be a very small business.
- 6) *Other matters as justice may require:* The Region 5 UIC program principally seeks compliance with the UIC regulations, not a large penalty.

Complainant considers Respondent's violation to be a "high level" violation under the Region 5 Policy. The Policy sets \$1000 per month of violation as the minimum penalty for such violations. This violation has continued for 36 months. While a strict implementation of the Region 5 Policy would yield a penalty of \$36,000, the Region has proposed a 90% reduction of that amount because of the small size of Respondent's business their emphasis on compliance, rather than large penalties in these types of cases. I conclude that a penalty of \$3600 is consistent with the evidence in the record and in

accord with the penalty criteria set forth in the SDWA and the Region 5 Underground Injection Control Proposed Administrative Order Penalty Policy.

DEFAULT ORDER

It is hereby ORDERED as follows:

1. Within thirty days of the effective date of this Order, Respondent shall comply with the requirements of the Safe Drinking Water Act and shall close the MVWDW located at his facility in accordance with 40 C.F.R. § 144.89.

2. Respondent is assessed a civil penalty in the amount of \$3600;

3. Respondent shall, within thirty calendar days after this Default Order has become final, forward a cashier's or certified check payable to "Treasurer, United States of America," and shall deliver the check to:

U.S. EPA Region 5
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

In addition, Respondent shall mail a copy of the check to:

Regional Hearing Clerk (E-19J)
U.S. EPA Region 5
77 West Jackson Boulevard (E-19J)
Chicago, IL 60604

and to:

Ray Urchel
Underground Injection Control Branch (WU-16J)
Water Division
U.S. EPA Region 5
77 West Jackson Boulevard
Chicago, IL 60604

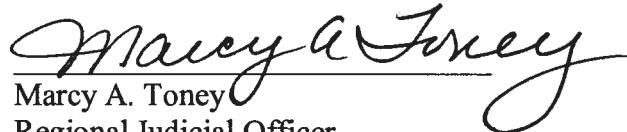
A transmittal letter identifying the case name and docket number should accompany both the remittance and copies of the check.

3. This Default Order constitutes an Initial Decision, as provided in 40 C.F.R. § 22.17(c). This Initial Decision shall become a final order unless: (1) an appeal to the Environmental Appeals Board is taken from it by any party to the proceedings within thirty (30) days from the date of service provided in the certificate of service accompanying this order; (2) a party moves

to set aside the Default Order; or (3) the Environmental Appeals Board elects, *sua sponte*, to review the Initial Decision within forty-five (45) days after its service upon the parties.

IT IS SO ORDERED.

Date: August 15, 2011



Marcy A. Toney
Regional Judicial Officer
U.S. EPA Region 5

In the Matter of Robert Christensen, d/b/a Bob's Repair,
Docket No. SDWA-05-2010-0001

REGIONAL HEARING CLERK
U.S. EPA REGION 5

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CERTIFICATE OF SERVICE

I certify that the foregoing **Initial Decision and Default Order**, dated August 15, 2011,
was sent this day in the following manner:

Original hand delivered to:

Regional Hearing Clerk
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

Copy hand delivered to
Attorney for Complainant:

Robert S. Guenther
U. S. Environmental Protection
Agency, Region 5
Office of Regional Counsel
77 West Jackson Boulevard
Chicago, IL 60604-3590

Copy by U.S. Certified Mail
Return Receipt Requested to:

Robert Christensen
1014 3d Avenue, NE
Brainerd, Minnesota 56401

Dated: 8/15/11

By: 
Darlene Weatherspoon
Administrative Assistant