UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
2015 JUN -9 PM 4:13

IN THE MATTER OF:	)	
	)	
Page One Plus Wholesale, Inc.,	)	Docket No. SDWA-06-2014-1106
An Oklahoma corporation	)	
	)	
	)	
Respondent.	)	
	)	

INITIAL DECISION AND DEFAULT ORDER

This proceeding was initiated by the Director of the Compliance Assurance and Enforcement Division, Region 6, United States Environmental Protection Agency (hereinafter, "Complainant" or "EPA") in order to assess an administrative penalty in the amount of $7,000.00 against Page One Plus Wholesale, Inc. ("Respondent") for violations of the Safe Drinking Water Act ("SDWA"). The proceeding is governed by the procedures set forth in the revised Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination and Suspension of Permits set forth at 40 Code of Federal Regulations ("CFR") part 22, including the Supplemental Rules for Administrative Proceedings not Governed by the Administrative Procedures Act (collectively, the "Rules of Practice").

Section 22.17(a) of the CFR provides that a "party may be found to be in default…upon failure to comply with the information exchange requirements of §22.19(a) or an order of the Presiding Officer." Not only has Respondent failed to adhere to the information exchange requirements, Respondent has failed to comply with both the November 4, 2014, Order and March 3, 2015, Order to Show Cause I issued in this matter. Therefore, based on the Rules of Practice, the record in this proceeding, and the reasons set forth below, this shall constitute my Initial Decision pursuant to 40 CFR 22.17(c), and I find Respondent in default and order (1) assessment of the full amount of the $7,000.00 penalty Complainant sought against Respondent

and (2) satisfaction by Respondent of the Compliance Order set forth in the Administrative Complaint ("AC") dated January 14, 2014.

I. BACKGROUND AND PROCEDURAL HISTORY

On July 11, 2013, Complainant filed an Administrative Order ("AO") against Respondent in this matter for maintaining its injection well, identified as well number D54 or EPA inventory number OS1699 ("Well"), in a manner that could allow fluids to move into an underground source of drinking water in violation of the SDWA. The AO did not contain a penalty provision; rather, it sought corrective action measures to resolve the noted violation. Respondent failed to remedy the violation.

Consequently, Complainant filed the AC against Respondent on January 14, 2014, alleging Respondent failed to plug the Well within one year after terminating injection operations and by neglecting its responsibility to adhere to the dictates of the AO, both inactions in violation of the SDWA. On July 8, 2014, Respondent, pro se, countered the AC with what I considered its Answer under the Rules of Practice. Although Respondent did not request a hearing, Respondent sought to "rescind" the AC and convert the Well into a producing well again. Subsequent to this response, EPA's counsel repeatedly reached out to Respondent to settle the matter or continue negotiations and Respondent did not respond to such good faith efforts by EPA counsel. I therefore issued an Order on November 4, 2014, directing the parties to engage in a settlement conference by December 14, 2014, and required that Complainant subsequently file a status report on the progress of the case. In addition, I mandated in the Order that by February 9, 2015, the parties must file a fully executed Consent Agreement and Final Order ("CAFO"), put before me a motion for an extension of time, or prepare for hearing by having Complainant submit its prehearing exchange by February 9, 2015, and Respondent replying with its prehearing exchange by February 23, 2015.

The following day, Respondent wrote a letter to Complainant where he, among other things, did "not consent to the proposed final order and [felt] that [the Well] was not in violation." Respondent again then requested rescission of this matter. On December 18, 2014, EPA counsel informed via a status report that the parties again engaged in settlement

negotiations. As noted above, barring an applicable motion or CAFO filing by February 9, 2015, the Order mandated Complainant's initial prehearing exchange by February 9, 2015, and Respondent's prehearing exchange by February 23, 2015. With no settlement deemed likely, Complainant timely filed its prehearing exchange.

To date, Respondent has failed to file its prehearing exchange. As noted prior, Section 22.17(a) of the Rules of Practice provides that a "party may be found to be in default....upon failure to comply with the information exchange requirements of § 22.19(a) or an order of the Presiding Officer." Default by Respondent entails "an admission of all facts alleged...and a waiver of respondent's right to contest such factual allegations," thereby leaving Respondent potentially liable for the entire proposed penalty if such default decision is rendered. While a common route to initiating a default proceeding is through motion practice by the parties, I may also, *sua sponte*, issue an Initial Decision and Default Order ("Default Order") if a party does not adhere to the dictates set forth in Section 22.17(a) of the Rules of Practice. Prior to issuing this Default Order I ordered Respondent to show good cause on or before March 13, 2015, as to why it failed to file its prehearing exchange by the required deadline and why I should not issue a Default Order decision against Respondent. Respondent yet again failed to timely respond.

II. FINDINGS OF FACT

Pursuant to 40 CFR §§ 22.17(c) and 22.27(a), and based on the entire record, I make the following findings of fact:

1. Respondent is an Oklahoma corporation
2. At all relevant times, Respondent owned or operated the Well, which is classified as an "existing Class II well," as defined at 40 CFR § 147.2902, in the Southwest Quarter of Section 15, Township 29 North, Range 11 East, Hickory Creek District, Osage County, Oklahoma.
3. Because Respondent is an "owner or operator" of the Well within the meaning of 40 CFR § 122.2, as authorized by Section 1421 of the SDWA, 42 U.S.C. § 300h, Respondent is subject to the underground injection control requirements set forth at 40 CFR Part 147, Subpart GGG.

4. Unless authorized by rule or permit, underground injection is prohibited under the Underground Injection Control ("UIC") program. 40 CFR § 147.2903(a).

5. Existing injection wells authorized by the Bureau of Indian Affairs and constructed or completed on or before the effective date of the Osage UIC program are authorized by rule. 40 § 147.2909.

6. The Well at issue is authorized as such pursuant to 40 CFR § 147.2909, and Respondent must therefore comply with 40 CFR §§ 147.2903, 147.2905, 147.2907, and 147.2910 through 147.2915.

7. 40 CFR § 147.2905 requires the plugging of an injection well within one year after injection termination, and sets forth specific administrative and technical requirements necessary to achieve proper plugging. The EPA Regional Administrator may extend the time to plug if no fluid movement into an underground source of drinking water ("USDW") will occur and the operator has presented a viable plan for utilizing the well within a reasonable time thereafter. 40 CFR § 147.2905.

8. An owner or operator of such a Well must not construct, operate, maintain, convert, plug, or abandon any injection well, or conduct any other injection activity, in a manner that allows the movement of fluid containing any contaminant into an USDW, if the presence of that contaminant may cause the violation of any primary drinking water regulation or may otherwise adversely impact the health of persons. 40 CFR § 147.2903(b).

9. On or before April 1, 2009, Respondent ceased use of the Well, yet failed to plug it.

10. On multiple Annual Disposal/Injection Well Monitoring Reports ("Report") filed by Respondent between 2010 and 2012, Respondent indicted that the Well at issue was not in use. In particular, the 2012 Report indicated "This injection well not in use at this time, perhaps in the future."

11. EPA informed Respondent on September 28, 2011, of the plugging requirements for the Well and on January 18, 2012, after receiving no plan for future use of the Well from Respondent, EPA mandated plugging of the Well by September 28, 2012.

12. Respondent proposed a plan for future use of the Well on August 21, 2012, which EPA rejected on September 17, 2012, due to an August 24, 2012, inspection that revealed a fluid level in the Well annulus that was twenty feet below ground level, which is above the base of an USDW that indicates that contaminated fluids could move through the

Well into fresh groundwater resources – a direct violation of 40 CFR §§ 147.2903(b), 147.2905, and 147.2909.

13. While EPA denied a plugging deadline extension request in the letter, it proposed extending the plugging deadline if certain criteria were met. EPA then informed that an Administrative Order ("AO") could follow if Respondent chose to not plug the Well or propose corrective action.

14. Respondent's lack of action resulted in Complainant issuing the referenced proposed AO on April 5, 2013, which noted Respondent's regulatory violation of failing to contain the Well in a manner that could allow fluids containing contaminants to move through the well bore into USDWs. The AO consequently ordered corrective action by September 9, 2013.

15. Neither the public nor Respondent responded to the AO and it became final on July 11, 2013.

16. On January 14, 2014, Complainant issued an AC against Respondent for failure to comply with the terms of the AO and for failure to plug the Well.

17. In the AC, Complainant assessed a proposed penalty in the amount of $7,000 for failure to plug the Well and for neglecting to comply with the AO, as well as set forth a Compliance Order section related to corrective action measures pertaining to the Well. Pursuant to 42 U.S.C. § 300h-2(c)(2), EPA may asses a civil penalty in this matter of not more than $5,000 per day for each day of a violation for any past or current violation, up to a maximum penalty of $125,000.[1]

18. EPA notified the public of the filing of the Complaint pursuant to 42 U.S.C. § 300h-2(c)(3)(B) and received no comments at the end of the thirty day expiration period.

19. Respondent filed, pro se, what I considered its Answer on July 8, 2014.

20. No hearing was requested by Respondent nor did Respondent dispute the facts per se; rather, Respondent sought to have the AC "rescinded" because of a plan to convert the Well to a producing well at some unspecified later date.

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[1] This amount is periodically adjusted by 40 CFR § 19.4, which for the present violations, Complainant may assess against Respondent a civil penalty not to exceed $7,500 for each violation day, up to a maximum penalty of $187,500. Penalty factors are set forth at 42 U.S.C. § 300h-2(c)(4)(B).

21. In its Answer, Respondent mostly failed to negate the facts set forth in the AC, nor did Respondent counter the proposed penalty in its Answer.

22. 40 CFR § 22.15(d) clearly provides that failure to admit, deny, or explain any material allegation of fact in an AC is deemed an admission of the allegation.

23. I issued a Scheduling Order on November 4, 2014, whereby I stressed EPA's policy encouraging settlement, and therefore directed the parties to engage in a settlement conference on or before December 19, 2014.

24. The following day, on November 5, 2014, Respondent filed a letter whereby he asserted that he had not used the well in over fifteen years and it "showed no signs of any violations of contamination." He further reiterated that he did "not consent to the proposed final order and…was not in violation." He again sought to have the AC "rescind[ed]" and to "accept [the Well] as an oil producing well."

25. On or before December 26, 2014, I instructed in the Scheduling Order that Complainant's counsel file a status report regarding the negotiation progress.

26. A settlement negotiation timely occurred and Complainant's status report indicated that Respondent intended to eventually use the Well (giving no specific timeline as to when) and therefore did not desire to plug it. While Respondent was dubious of the assertion that the Well could cause environmental harm, the parties agreed to allow and EPA inspector to visit the site again.

27. After the negotiations occurred, in the Scheduling Order, by February 9, 2015, I ordered that the parties present to me a fully executed Consent Agreement and Final Order ("CAFO"), a motion for extension of time if settlement seemed imminent, or Complainant's prehearing exchange. Respondent's prehearing exchange was due February 23, 2014, if either party failed to file a CAFO or motion for extension of time.

28. With negotiations failing to result in a CAFO and settlement not appearing imminent or likely, on February 9, 2015, Complainant timely filed its prehearing exchange.

29. The deadline of February 23, 2015, imposed on Respondent passed and to date Respondent has failed to file its prehearing exchange.

30. On March 3, 2015, I issued an Order to Show Cause to Respondent reminding Respondent of its missed deadline and also that Section 22.17(a) of the Rules of Practice provides that a "party may be found to be in default…upon failure to comply with the

information exchange requirements of § 22.19(a) or an order of the Presiding Officer." I further explained that a default by Respondent means "an admission of all facts alleged…and a waiver of respondent's right to contest such factual allegations," which could leave Respondent liable for the entire proposed penalty and required corrective action measures.

31. I required that Respondent show good cause by March 13, 2015, as to why (1) it failed to timely file its prehearing exchange and (2) a Default decision against Respondent should not ensue.

32. To date, Respondent has failed to respond to the Show Cause Order.

II. CONCLUSIONS OF LAW

Pursuant to 40 CFR §§ 22.17(c) and 22.27(a), and based on the entire record, I make the following conclusions of law:

33. Respondent is a "person" as defined in Section 1401(12) of the SDWA. 42 U.S.C. § 300f(12).

34. Respondent is an "owner/operator" as defined in 40 CFR § 147.2902.

35. At all relevant times, Respondent owned or operated an "injection well" that is an "existing Class II well," as both defined in 40 CFR § 147.2902, and as such must adhere to the dictates of the SDWA, as well as the underground injection control requirements set forth at 40 CFR Part 147, Subpart GGG.

36. Respondent failed to comply with the AO discussed herein, did not plug the Well within one year after terminating injection operations, and maintained the Well in a manner that could allow fluid movement in an USDW, in violation of the SDWA and its accompanying regulations.

37. In filed letters, Respondent averred he simply wanted to keep the Well unplugged in the hopes of using it again and saw no actual or potential harm to the environment from his unplugged Well, which, if EPA allowed Respondent to proceed in that manner and belief, it would directly conflict with the SDWA and its accompanying regulations.

38. EPA has afforded Respondent an abundant amount of time and opportunities to remedy this matter, to no avail.

39. As set forth herein, Respondent was properly served the AC, Scheduling Order, Complainant's prehearing exchange, and the Order to Show Cause. 40 CFR §§ 22.5(b), 22.6. EPA also provided Respondent with numerous letters regarding this matter, described herein.

40. Unfortunately, even with EPA's good faith efforts and ample time afforded to Respondent to attempt to conclude this matter whether via settlement or a hearing, Respondent has, to date, ignored my Scheduling Order and Order to Show Cause, failed to file its prehearing exchange, and overall generally ceased communications with EPA regarding any potential settlement or hearing.

41. Section 22.17(a) of the Rules of Practice provides that a "party may be found to be in default....upon failure to comply with the information exchange requirements of § 22.19(a) or an order of the Presiding Officer." Default by Respondent entails "an admission of all facts alleged...and a waiver of respondent's right to contest such factual allegations," thereby leaving Respondent potentially liable for the entire proposed penalty if such default decision is rendered.

42. As discussed above, Respondent failed to comply with the information exchange requirements and my two prior orders.

43. The civil penalty of $7,000 requested in the AC is not inconsistent with the SDWA and the record in this proceeding.

III. PENALTY DISCUSSION

Pursuant to 40 CFR § 22.27(b), 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 [SDWA]. The Presiding Officer shall consider any civil penalty guidelines issued under the [SDWA]." This determination shall consider (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 this case, the relief requested is a civil penalty in the amount of $7,000. Considering the above factors, the findings of facts and conclusions of law set forth

above, and the entire record in this case, I make the following determinations regarding the proposed penalty.

1. Serious of the Violation

The seriousness of a violation will, of course, depend upon the facts and circumstances in each particular case. Contaminated fluids potentially leaking into an USDW could at worst lead to severe human or environmental harm and at the very least could create clean-up costs and issues, as well as lost use of potential drinking water sources and some form of harm to the environment or public. Respondent failed to plug the Well for years even though it had been known since at least 2012 that static fluid levels in the annulus of the Well were above the USDW. Safe drinking water is an important public health consideration. In addition, Respondent openly ignored the requirements set forth in the AO, undermining the SDWA regulatory program.

2. Economic Benefit

EPA conservatively estimated the economic benefit to Respondent of neglecting to complete the required corrective action measures at $195. While not a substantial portion of funds, it potentially put Respondent at an advantage over other similar members of the regulated community who invested the appropriate time and resources to stay in compliance with the law.

3. History of Violations

No such prior similar violations occurred against Respondent that EPA considered beyond Respondent's failure to comply with the AO.

4. Good Faith Efforts to Comply

Respondent has not made any good faith efforts to remedy the violations. Respondent's complete lack of respect for the SDWA is clear as evidenced by a total failure to attempt to, or actually, resolve any of the issues that could potentially harm human health or the environment at issue in this matter. It is also quite apparent that Respondent has openly and knowingly disregarded deadlines imposed by my orders and the AO. The only efforts made by Respondent in this case are in essence to tell EPA to go away because the Well may come in use again at

some undetermined later date. There have been no good faith efforts made by Respondent in this case to resolve the matter.

5. Economic Impact on the Violator

Respondent has never indicated an inability to pay a penalty, nor has EPA a reason to believe that the penalty will substantially negatively impact Respondent or cause its business to fail. Even though it seems Respondent could afford the penalty in this matter, taking into account the small size of Respondent's business, EPA nonetheless chose to use this factor to reduce the penalty.

6. Other Factors as Justice May Require

The Respondent's recalcitrance in failing to comply with my orders, the SDWA, and the AO are notable considerations, showing a knowing and clear lack of respect for the law, EPA, and the public and environment. Furthermore, while no additional similar violations occurred in Respondent's past, the continuing, knowing violations of the SDWA in this matter since at least 2013, and likely prior to that, also indicates a general lack of respect for the law, environment, and public welfare.

Pursuant to 40 CFR § 22.17(c), the "relief proposed in the complaint…shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the [SDWA]." Complainant proposes to assess a total civil penalty of $7,000 for the violations set forth in the AC. After carefully considering the statutory factors and the entire record in this case, I find the civil penalty proposed is consistent with the record in this matter and the SDWA.

IV. DEFAULT ORDER

Respondent is hereby **ORDERED** to comply with all the terms herein, including as follows:

1. Respondent must comply with the Compliance Order set forth in the AC.
2. Respondent is assessed a civil penalty in the amount of $7,000.

a. Payment of the full amount of the civil penalty assessed shall be made within thirty (30) days after this default order becomes final under 40 CFR § 22.27(c) by submitting a certified check or cashier's check payable to Treasurer, United States of America, and mailed to:

Regional Hearing Clerk
EPA – Region 6
P.O. Box 360582M
Pittsburgh, PA 15251

A transmittal letter identifying the subject case and the EPA docket number, plus Respondent's name and address, shall accompany the check.

b. Respondent shall mail a copy of the check to:

Lorena S. Vaughn
Regional Hearing Clerk (6RC)
U.S. Environmental Protection Agency
Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

3. This Default Order constitutes an Initial Decision, as provided in 40 CFR § 22.17(c). This Initial Decision shall become a final order 45 days after its service upon the parties and without further proceedings unless (1) a party appeals the initial decision to the Environmental Appeals Board if done so 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 on its own initiative. 40 CFR §§ 22.27(c), 22.30(a).

SO ORDERED, this 9 day of June, 2015.

THOMAS RUCKI
REGIONAL JUDICIAL OFFICER

CERTIFICATE OF SERVICE

I hereby certify that on this 9 day of June, 2015, I served true and correct copies of the foregoing Initial Decision and Default Order on the following in the manner indicated below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Terrance L. Lewis
Page One Plus Wholesale, Inc.
P.O. Box 691335
Tulsa, OK 74169

Mr. Terrance L. Lewis
14432 E 36th Street
Tulsa, OK 74134

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Clerk of the Environmental Appeals Board (1103B)
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-0001

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Assistant Administrator
Office of Enforcement and Compliance Assurance (2201A)
Ariel Rios Building
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Bureau of Indian Affairs, Osage Agency
P.O. Box 1539
Pawhuska, OK 74056

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Osage National Environmental and Natural Resources Department
P.O. Box 1495
Pawhuska, OK 74056

COPY HAND DELIVERED

Russell Murdock
Regional Criminal Enforcement Counsel (6RC-EC)
U.S. EPA - Region 6
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Branch Chief
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Lorena S. Vaughn
Regional Hearing Clerk