

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 Broadway
New York, NY 10007

In the Matter of:

IN THE MATTER OF:

Board of Directors of Rural Aqueduct
Fincas Mi Recreo;
Fincas Mi Recreo System;
Víctor Manuel Fernández Ramos;
Víctor Roberto Fernández Ramos;
Víctor José Fernández Ramos;
Carmen Aurea Fernández Ramos

Docket No. SDWA-02-2003-8264

Caguas, Puerto Rico
PWS-ID No. PR0613356

Respondents.

DEFAULT ORDER AND INITIAL DECISION

By Motion for Default, the Complainant, the Regional Administrator of Region 2 of the United States Environmental Protection Agency ("EPA"), has moved for a Default Order finding the Respondents, Board of Directors of Rural Aqueduct Fincas Mi Recreo, Fincas Mi Recreo System, Víctor Manuel Fernández Ramos, Víctor Roberto Fernández Ramos, Víctor José Fernández Ramos, and Carmen Aurea Fernández Ramos liable for the violation of an Administrative Order issued pursuant to Section 1414(g) of the Safe Drinking Water Act ("SDWA" or "Act"), 42 U.S.C. § 300g-3(g), and the Surface Water Treatment Rule, promulgated under the SDWA. The Complainant requests assessment of a civil penalty in the full amount of Five Thousand Dollars (\$5,000) proposed in the Amended Complaint.

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties ("Consolidated Rules"), 40 C.F.R. Part 22, and based upon the record in this matter and the following Findings of Violation, Conclusions of Law and Determination of Penalty, Complainant's Motion for Entry of Default is hereby GRANTED. The Respondents are hereby found in default and a civil penalty is assessed against them in the amount of \$5,000.

I. BACKGROUND

This is a proceeding under Section 1414(g)(3)(B) of the Safe Drinking Water Act, 42 U.S.C. § 300g-3(g)(3)(B) governed by the Consolidated Rules. Complainant initiated this proceeding by filing a Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to Request a Hearing ("Complaint") under EPA Docket No. SDWA-02-2002-8257 on September 7, 2002 against Respondents. In its Complaint, the Complainant alleged that Respondents violated an Administrative Order issued pursuant to Section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g), requiring compliance with the applicable requirements of the SDWA and the regulations promulgated thereunder, including the filtration requirements specified in 40 C.F.R. Part 141 Subpart H.

The Complaint explicitly stated on page 5, in the section entitled Failure to Answer, that

If Respondent fails to file a timely [i.e. in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)] Answer to the Complaint, Respondent may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all of the facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent for failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by

Respondent without further proceedings thirty (30) days after the Default Order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such Final Order of Default against Respondent, and to collect the assessed penalty amount, in federal court.

Service of the Complaint and a copy of the Consolidated Rules was complete on September 18, 2002. Complainant then filed an Amended Complaint under EPA Docket No. SDWA- 02-2003-8264 on May 21, 2003. The Amended Complaint, on page 5, in the section entitled Failure to Answer, included the same provisions as the Complaint, set forth above. To date, no Answer has been filed by the Respondents.

On February 3, 2004, Complainant filed a Motion for Entry of Default. It was served on Respondents via Federal Express on March 11, 2004. To date, the Respondents have not filed a Response to the Motion for Entry of Default.

II.-FINDINGS OF VIOLATION

Pursuant to 40 C.F.R. § 22.17(c) and based upon the entire record, I make the following findings:

1. Respondents are "persons" as defined in Section 1401(12) and (13)(A) of the SDWA, 42 U.S.C. § 300f(12) and (13)(A) and 40 C.F.R. § 141.2.
2. Respondent are "suppliers of water" who are owners and /or operators of a "public water system" of Fincas Mi Recreo, located in Caguas, Puerto Rico, within the meaning of Section 1401(4) and (5) of the SDWA, 42 U.S.C. § 300f(4) and (5), and 40 C.F. R. § 141.2.
3. Respondents are "persons" subject to an Administrative Order issued under Section 1414(g)(1) of the SDWA, 42 U.S.C. § 300g-3(g)(1).

4. The Fincas Mi Recreo Public Water System is supplied by a surface water source, and provides piped water for human consumption and regularly serves at least 15 service connections and/or a population of at least 25 individuals, and is, therefore, a "community water system" within the meaning of Section 1401(15) of the SDWA, 42 U.S.C. § 300f(15), and 40 C.F.R. § 141.2.
5. On June 29, 1989, EPA promulgated the Surface Water Treatment Rule (SWTR), as required by Section 1412 (b)(7)(C) of the SDWA, 42 U.S.C. § 300g-1(b)(7)(C), and regulated by 40 C.F.R. Part 141 Subpart H. The SWTR is intended to reduce the risk of waterborne disease outbreaks in public water systems utilizing a surface water source.
6. 40 C.F.R. Part 141 Subpart H requires public water systems using a surface water source, and currently not filtering, to filter their water in accordance with 40 C.F.R. § 141.73 by June 29, 1993, or within 18 months of the State's determination that the system must filter, whichever is later, unless the system can meet certain avoidance criteria as outlined in 40 C.F.R. § 141.71(a)(b) and disinfection criteria as outlined in 40 C.F.R. § 141.72(a).
7. The Respondents are required to filter in accordance with 40 C.F.R. § 141.73 and have failed to do so creating the risk of infection and waterborne disease among the population that is served from the system.
8. On December 14, 1994, EPA issued an Administrative Order, Docket No. PWS-PR-AO-302F, to Respondents under the authority of Section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g), addressing violations of the SDWA and the regulations promulgated thereunder.
9. During the years of 1995, 1996, 1997, 1999 and 2001, EPA inspected the system and sent

letters and compliance action plans to the Respondents in an effort to provide compliance assistance. In addition, on August 14, 2001, and on October 24, 2001, Information Request letters were sent to Respondents in an attempt to ascertain the status of the water system.

10. Respondents failed to reply to any of the Information Request letters and ignored EPA's compliance assistance efforts.
11. Respondents continue to be in non-compliance and have failed to comply with the filtration requirements specified in 40 C.F.R. Part 141 Subpart H and Section 10 of the Administrative Order.
12. As set forth above, Complainant found that Respondents have violated the Administrative Order, issued pursuant to Section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g), and the SWTR, promulgated pursuant to Section 1412 (b)(7)(C) of the SDWA, 42 U.S.C. § 300g-1 (b)(7)(C), and regulated by 40 C.F.R. Part 141 Subpart H. For these violations, Complainant filed a Complaint under EPA Docket No. SDWA-02-2002-8257 against Respondents on September 7, 2002.
13. Respondents have failed to answer the Complaint.
14. On May 20, 2003, Complainant filed an Amended Complaint under EPA Docket No. SDWA-02-2003-8264 against Respondents pursuant to Section 1414(g)(3)(B) of the Safe Drinking Water Act, 42 U.S.C. § 300g-3(g)(3)(B), seeking an administrative penalty of Five Thousand Dollars (\$5,000).
15. Respondents were properly served on June 11, 2003 as evidenced by the certified return receipt appended to the Motion for Entry of Default as Exhibit 2.

16. Respondents have failed to answer the Amended Complaint.
17. On March 11, 2004, Respondents were served by Federal Express with a Motion for Entry of Default.
18. To date, the Respondents have failed to respond to the Motion for Default.

III. CONCLUSIONS OF LAW

1. Jurisdiction is conferred by Section 1414 of the SDWA, 42 U.S.C. § 300g-3.
2. Section 1414(g)(3)(A) of the Act, 42 U.S.C. § 300g-3(g)(3)(A), as amended by the Debt Collection Act of 1996, implemented by the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, in effect as of December 31, 1991, provides that any person who violates, or fails or refuses to comply with, an Administrative Order issued pursuant to the SDWA shall be liable to the United States for a civil penalty up to \$27,500 per day of violation.
3. The Complaint in this action was served upon Respondents in accordance with 40 C.F.R. § 22.5(b)(1).
4. Respondents' failure to file an Answer to the Complaint and the Amended Complaint, or otherwise respond to the Complaint and the Amended Complaint, constitutes a default by Respondents pursuant to 40 C.F.R. § 22.17(a)
5. Respondents' default constitutes an admission of the allegations set forth in the Amended Complaint, and a waiver of the Respondents' right to a hearing on such factual allegations. 40 C.F.R. §§ 22.17(a) and 22.15(d).
6. Respondents have failed to comply with the provisions of an Administrative Order issued

pursuant to Section 1414(g) of the Act.

7. Respondents' failure to file a timely Answer or otherwise respond to the Complaint and the Amended Complaint is grounds for the entry of an Order on Default against the Respondents assessing a civil penalty for the aforementioned violations pursuant to 40 C.F. R. § 22.17(a).
8. As described in the penalty calculation below, I find that the Complainant's proposed civil penalty of \$5,000 is properly based on the statutory requirements of Section 1414(g) of the SDWA, 42 U.S.C. § 1300g-3(g).

IV. DETERMINATION OF PENALTY

Section 1414(g)(3)(A) of the SDWA, U.S.C. § 300g-3(g)(3)(A), as amended by the Debt Collection Act of 1996, implemented by the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, in effect as of December 31, 1991, provides that any person who violates, or fails or refuses to comply with, an Administrative Order issued pursuant to the SDWA shall be liable to the United States for a civil penalty up to \$27,500 per day of violation. The penalty which the Complainant seeks is \$5,000.

In both its Amended Complaint and its Motion for Entry of Default, the Complainant seeks a civil penalty of \$5,000, based upon the statutory factors in Section 1414(b) of the SDWA, U.S.C. § 300g-3(b)¹ and in accordance with the Agency's Policy on Civil Penalties (#GM-21),²

¹ Section 1414(b) of the SDWA, U.S.C. § 300g-3(b) specifically provides statutory guidelines for a Federal district court to consider when determining an appropriate civil penalty. While there are no equivalent statutory criteria for consideration in an administrative matter, EPA has followed the statutory guidelines set forth for courts, as well as written penalty policies, when calculating an appropriate penalty amount. See In the Matter of Harold Gallagher, Manager, Mansard Apartments, EPA Docket No. SDWA-02-2001-8293; In the Matter of Apple

as outlined in the Motion for Entry of Default and Exhibit 3 thereto, the memorandum to file entitled *Issuance of Penalty Order to Non-PRASA System*. The statutory factors under Section 1414(b) of the SDWA include the seriousness of the violation, the population at risk, the prior history of such violations, the degree of willfulness or negligence, the economic benefit accrued to the Respondents through failure to comply, and the ability of the Respondents to pay.

In concluding that the proposed penalty is reasonable, the undersigned took the following findings into consideration:

1. The risk to public health in this case is known and could have easily been avoided. EPA's main concern is the risk of waterborne diseases and pathogens. Respondents' failure to comply with the Act and the Administrative Order has placed a population of approximately 120 individuals at risk of infectious diseases.
2. The Respondents have continued to violate the Act for a significant period of time. Under EPA regulations, the Respondents were required to comply with filtration and disinfection requirements by June 29, 1993. EPA issued an Administrative Order to Respondents in 1994 requiring compliance with the filtration and disinfection requirements of the SWTR within three years. Respondents never complied with the ordered provisions of the above referenced Administrative Order. Furthermore, Respondents failed to provide the information requested in the Information Request letters issued thereafter and failed to comply and/or respond to the original Complaint

Blossom Court, EPA Docket No. SDWA-10-2001-0147.

² Complainant does not have a written penalty policy for calculating the penalty amount it would seek in an administrative or judicial action for violations of the Public Water Supply section of the Safe Drinking Water Act, as it does under other environmental statutes.

filed on September 7, 2002 or the Amended Complaint filed on May 21, 2003.

3. Respondents were made aware of the requirements of the Act and the Administrative Order, yet willfully remained in noncompliance. During the years of 1995, 1996, 1997, 1999 and 2001, EPA inspected the system and sent letters and compliance action plans to the Respondents in an effort to provide compliance assistance. In addition, on August 14, 2001, and on October 24, 2001, the aforementioned Information Request letters were sent to Respondents in an attempt to ascertain the status of the water system. Respondents' unwillingness and lack of good faith have prevented EPA from ascertaining Respondents' compliance with the Act and its implementing regulations.
4. The Respondents had an obligation under the law to provide disinfection and filtration to the surface water source to reduce the risk of waterborne disease outbreaks. By failing to do so, the Respondents saved all costs associated with the operation and maintenance for a period of approximately six years. The economic benefit associated with the violations involved was, at minimum, \$1500.00.
5. Respondents have the ability to pay. The Respondents collect a maintenance and operation fee to defray the costs to operate the system; therefore, they are in a position to pay the assessed penalty.
6. In summary, the Complainant did not propose the maximum penalty (\$27,500) allowed under the SDWA for violation of the Administrative Order. Nevertheless, Complainant makes clear that it takes violations of its Administrative Orders and the SWTR seriously. The penalty sought in the amount of \$5,000 is fully supported by the application of the statutory factors for determining a civil penalty in Section 1414(b) of the SDWA and the

Agency Policy on Civil Penalties. Further, the record supports this penalty. Therefore, a penalty of \$5,000 is hereby imposed against Respondents.

V. DEFAULT ORDER

Pursuant to the Consolidated Rules at 40 C.F.R. Part 22, including 40 C.F.R. § 22.17, an Initial Decision and Default Order is hereby ISSUED and Respondents are ordered to comply with all the terms of this Order:

- (1) Respondents are assessed and ordered to pay a civil penalty in the amount of Five Thousand Dollars (\$5,000.00).
- (2) Respondents shall pay the civil penalty by certified or cashier's check payable to the "Treasurer of the United States of America" within thirty (30) days after this default order has become a final order pursuant to 40 C.F.R. § 22.27(c). The check shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. Such payment shall be remitted to:

Regional Hearing Clerk
EPA Region 2
P.O. Box 360188M
Pittsburgh, Pennsylvania 15251

A copy of the payment shall be mailed to:

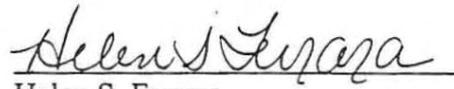
Regional Hearing Clerk
EPA Region 2
290 Broadway, 16th Floor
New York, New York 10007

- (3) This Default Order constitutes an Initial Decision pursuant to 40 C.F.R. § 22.17(c). Pursuant to 40 C.F.R. § 22.27(c), this Initial Decision shall become a final order

forty-five (45) days after its service upon the parties unless (1) a party moves to reopen the hearing, (2) a party appeals the initial decision to the Environmental Appeals Board, (3) a party moves to set aside the default order, or (4) the Environmental Appeals Board chooses to review the initial decision sua sponte.

IT IS SO ORDERED.

Dated: June 16, 2005


Helen S. Ferrara
Presiding Officer

Helen

CERTIFICATE OF SERVICE

I hereby certify that the Default Order and Initial Decision by Regional Judicial Officer Helen Ferrara in the matter of Board of Directors of Rural Aqueduct Fincas Mi Recreo; Fincas Mi Recreo System; Victor Manuel Fernandez Ramos; Vactor Roberto Fernandez Ramos; Victor Jose Fernandez Ramos; Carmen Aurea Fernandez Ramos, Docket No. SDWA-02-2003-8264 was served on the parties as indicated below:

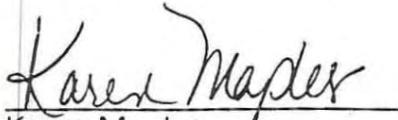
Overnight Mail - Board of Directors of Rural Aqueduct
Fincas Mi Recreo
P.O. Box 20414
San Juan, Puerto Rico 00928-0414

Environmental Appeals Board
U.S. Environmental Protection Agency
Colorado Building, Suite 600
1341 G. Street, N.W.
Washington, D.C. 20005

Pouch Mail - Assistant Administrator for
Enforcement & Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W. (2201A)
Washington, D.C. 20460

Regular Mail - Silva Carreno-Coll, Esq.
Office of Regional Counsel
USEPA - Region II
Caribbean Field Division
Centro Europa Bldg.
1492 Ponce de Leon Avenue, Suite 417
San Juan, Puerto Rico 00907

Board of Directors of Rural Aqueduct
Fincas Mi Recreo
Road #Km. 49.1
Caguas, Puerto Rico 00725


Karen Maples
Regional Hearing Clerk
USEPA - Region II

Dated: June 17, 2005