

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF

TOM AND GAIL SIDLETSKY,
SCOTTY'S SMALL WORLD,

DOCKET NO. 8-PWS-VIII-93-08

Respondent

ORDER DISPOSING OF MOTIONS AND SETTING FURTHER PROCEDURES

On June 7, 1994, Complainant filed a motion for default, or in the alternative, for accelerated decision, accompanied by supporting documentation. The basis for the default motion was that Respondents failed to file its prehearing exchange on August 23, 1993, as required by the June 17, 1993 Order Setting Prehearing Procedures. Respondents did not file a reply to Complainant's default motion. As a result, on May 15, 1995, Respondents were ordered to show cause as to why they failed to file their prehearing exchange by the aforementioned deadline, and why Complainant's motion for default should not be granted.

Respondents submitted a reply to the order to show cause on July 3, 1995. In that reply, Respondents, appearing pro se, explained that they failed to submit their prehearing exchange because they mistakenly believed that ongoing settlement negotiations with Complainant were in lieu of further action in this administrative proceeding.

On analysis, it is not warranted to grant the Complainant's motion for default. Regarding the default motion, Respondents' explanation of their failure to file a prehearing exchange is reasonable. Therefore, good cause has been demonstrated to refrain from holding the Respondents in default, and the motion for default is hereby denied.

As to the alternative motion for accelerated decision, there are genuine issues of material fact that need to be resolved concerning whether Respondents' facility qualifies as a public water system by regularly serving at least 25 of the same persons over six months of the year, and whether Respondents used city

water instead of well water at various times during the period of the alleged violations. Accordingly, Complainant's motion for accelerated decision must be, and hereby is, denied.

However, Complainant's request to supplement its prehearing exchange with exhibits 34 through 37, which were submitted in support of the accelerated decision motion, is unopposed and is granted.

As to further procedures, Respondents are directed to file, on or before December 9, 1996, the prehearing exchange information required by the June 17, 1993 Order Setting Prehearing Procedures. Any replies to the prehearing exchanges must be filed by January 9, 1996.

SO ORDERED.

Daniel M. Head
Administrative Law Judge

Dated: November 7, 1996
Washington, D.C.

IN THE MATTER OF TOM AND GAIL SIDLETSKY, Respondent

SCOTTY'S SMALL WORLD

Docket No. 8-PWS-VIII-93-08

CERTIFICATE OF SERVICE

I certify that the foregoing Order Disposing of Motions and Setting Further Procedures, dated November 7, 1996, was sent in the following manner to the addressees, listed below:

Original by Pouch Mail to:

Tina Artemis
Regional Hearing Clerk
Environmental Protection
Agency, Region VIII
999 18th Street
Denver, CO 80202-2405

Copy by Certified Mail, Return Receipt Requested to:

Counsel for Complainant:

Sheldon H. Muller, Esquire
Enforcement Attorney
U.S. Environmental Protection
Agency, Region VIII 999 18th Street
Denver, CO 80202-2405

Representative of Respondent:

Tom Sidletsky, Esquire
Scotty's Small World
654 Brundage Lane
Sheridan, WY 82801

Aurora Jennings
Legal Staff Assistant
Office of Administrative
Law Judges
Environmental Protection Agency
Washington, DC 20460

Dated: November 7, 1996
Washington, DC