

8/14/92

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY
REGION II

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In the Matter of:           : Docket No. PWS-NJ-CFP-03
ANTHONY J. TAYLOR,        :
ANDOVER WATER CORPORATION : ORDER FOR ACCELERATED DECISION
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Proceeding to Assess Adminis- :
trative Penalty Under Safe   :
Drinking Water Act, Section  :
1414(g)(3)(B)               :
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I. Preliminary Statement

On October 29, 1991, Anthony J. Taylor, Andover Water Corporation ("Respondent") was issued a "Complaint and Notice of Opportunity for Hearing" ("Complaint") pursuant to Section 1414(g)(3)(B) of the Safe Drinking Water Act ("SDWA"), 42 U.S.C. § 300g-3(g)(3)(B) to assess an Administrative Penalty of \$5,000 charging violations of an administrative compliance order issued by Region II of the United States Environmental Protection Agency ("EPA") to Respondent under Section 1414(g)(1) of the SDWA, 42 U.S.C. § 300g-3(g)(1). On June 25, 1992, EPA made a Motion for Accelerated Decision on the issue of Respondent's liability for the violations cited in the Complaint. I hereby grant EPA Region II's Motion for Accelerated Decision based on the findings of fact and conclusions of law as set forth below.

II. Findings of Fact

1. On May 7, 1991, the New Jersey Department of Environmental Protection and Energy ("NJDEPE") referred the case of Anthony J. Taylor, Andover Water Corporation, a public water supplier located in Hopatcong, New Jersey, to the United States Environmental Protection Agency ("EPA") for enforcement of monitoring and notification violations of the Safe Drinking Water Act ("SDWA").

2. On May 22, 1991, the EPA issued a Proposed Administrative Order ("PAO") pursuant to section 1414(g)(2) of the SDWA, 42 U.S.C. §300g-3(g)(2), to Respondent with a cover letter dated May 22, 1991. Mr. Taylor signed the return receipt on June 21, 1991. Pursuant to the Notice accompanying the PAO, Respondent had opportunity to request a public hearing to contest the findings and terms of the PAO. Respondent did not request a public hearing or submit comments to the PAO.

3. On August 20, 1991, the EPA issued an Administrative Order ("AO" or "Order"), Docket No. PWS NJ-AO-86F, to Respondent under authority of Section 1414(g) of the SDWA, 42 U.S.C. §300g-3(g), to address the above-referenced violations of the SDWA and the regulations promulgated thereunder. Compliance with the terms of the Order is required by section 1414(g) of the SDWA, 42 U.S.C §300-3(g). Mr. Taylor signed the return receipt on August 27, 1991.

4. Section 18 of the AO required Respondent to submit coliform analysis to EPA and NJDEPE by October 1, 1991. As of April 15, 1992, EPA never received these results, constituting 197 days of violation. On October 15, 1991, NJDEPE received the monthly coliform bacteria analysis input form for September, 1991, constituting 14 days of violation.

5. Section 19 of the AO requires the submission of sampling and analysis for inorganic chemicals to EPA and NJDEPE by October 21, 1992. As of April 15, 1992, EPA never received these results (177 days of violation). As of June 15, 1992, NJDEPE has never received these results (238 days of violation).

6. Section 20 of the AO requires the submission of sampling and analysis for regulated and unregulated volatile organic chemicals to EPA and NJDEPE by October 21, 1992. As of April 15, 1992, EPA never received these results (177 days of violation). As of June 15, 1992, NJDEPE never received these results (238 days of violation).

7. Section 21 of the AO requires the submission of sampling and analysis for radioactivity to EPA and NJDEPE by October 21, 1991. As of April 15, 1992, EPA had never received these results (177 days of violation). As of June 15, 1992, NJDEPE had never received these results (238 days of violation).

8. Section 24 of the AO requires public notification of these above-referenced violations. Based upon EPA's records, Respondent has never notified the public of any failure to report to EPA, thereby resulting in four (4) separate violations. Based upon NJDEPE's records, Respondent has never notified the public of any of these failures to report to NJDEPE, thereby resulting in four (4) separate violations.

9. In the Complaint, a civil penalty of \$5,000 was proposed against Respondent. The penalty amount proposed is based upon the statutory factors set out in Section 1414(b) of the SDWA, 42 U.S.C. § 300g-3(b), including the seriousness of the violations, the population at risk, and other appropriate factors. Complainant considered such "other appropriate factors" to

include prior history of such violations, degree of culpability, economic benefit and ability to pay. The following is the statutory analysis which justifies Complainant's \$5,000 proposed penalty:

(A) Seriousness of the Violation

It is undisputed that, as of April 15, 1992 (for submissions to EPA and June 15, 1992 (for submissions to NJDEPE), Respondent had repeatedly violated the SDWA by violating the following terms of an appropriately issued AO: section 18 (211 days), Section 19 (415 days), section 20 (430 days) and section 21 (415 days). As of July 31, 1992, despite receipt of the Proposed Administrative Order, the Administrative Order, the Complaint, Complainant's Prehearing Exchange, and Complainant's Motion for Accelerated Decision, neither EPA nor NJDEPE has received these results.

While the following are not part of Complainant's request for accelerated decision, there have been additional violations of the AO since the issuance of the Complaint. Section 18 of the AO requires the submission of monthly coliform monitoring results within the first ten (10) days of the month following the month that monitoring was performed. As of July 31, 1992, EPA and NJDEPE have not received Respondent's monthly monitoring, which were due on the following dates: November 10, 1991, December 10, 1991, January 10, 1992, February 10, 1992, March 10, 1992, April 10, 1992 and May 10, 1992. Section 20 of the AO requires submission of quarterly monitoring for volatile organic chemicals to EPA and NJDEPE. This quarterly monitoring was due on March 31, 1992. As of July 31, 1992, EPA and NJDEPE have not received these results. Section 21 of the AO requires submission of quarterly sampling and analysis for radioactivity to EPA and NJDEPE. This quarterly monitoring was due on March 31, 1992. As of July 31, 1992, EPA and NJDEPE have not received this quarterly monitoring for radioactivity. While these post-Complaint violations are not part of EPA's request for penalty, they reflect the seriousness of Respondent's ongoing noncompliance with the AO.

The self-submission of data is critical to the success of our public water supply program under the SDWA. Without this data, EPA and the State of New Jersey cannot know whether a drinking water supply is safe. Therefore, any failure to submit data significantly undermines the fundamental mechanism of the public water supply program and requires the use of Agency enforcement resources. These risks are especially significant in a system such as Respondent's where there is an extensive past history of violations, including maximum contaminant levels. (See Prior History of Violations, supra)

(B) Population at Risk

According to the Federal Reporting Data System and inspection reports by NJDEPE, this public water system serves a population of 160 persons.

(C) Prior History of Violation

In addition to ignoring the requirements of the PAO and AO, Respondent has an extensive past history of violations of the SDWA, particularly with regard to its failure to submit required data. Respondent's history includes: a substantial administrative penalty assessed by the State of New Jersey for extensive violations (Complainant's Prehearing Exchange ("CPE"), Exhibit 7); three (3) failures to monitor for hazardous chemicals (CPE, Exhibits 11, 16 and 24); an NJDEPE determination that an emergency condition existed at the site (CPE, Exhibit 32); exceedances of microbiological contamination levels (CPE, Exhibit 33); NJDEPE's issuance of a "boil water" order to counteract microbiological contamination found at the site (CPE, Exhibit 36); NJDEPE's giving of an "unacceptable" rating the site (CPE, Exhibit 37); and twenty (20) separate instances of Respondent's failure to submit required monthly data in a timely fashion (CPE, Exhibits 8, 9, 10, 12, 13, 14, 15, 17, 18, 19, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 37, 38, 41, 42, 43, 44, 45, 46, 47, and 48).

(D) Degree of Culpability

Respondent was well-aware of its duty to comply with the reporting requirements of the AO. This case was referred to us for enforcement by the State of New Jersey on May 7, 1991. As discussed in Prior History of Violations, infra, Respondent was notified countless times of its failure to submit required monitoring. A PAO was issued on May 22, 1991. When this failed to bring results, the final AO was issued on August 28, 1991. Only after there was no response to the AO was the Complaint issued. Thus, Respondent has had at least three (3) opportunities to come into compliance and avoid a penalty.

(E) Economic Benefit

There is currently no economic benefit component to the assessed penalty. If Respondent has performed all sampling and analysis required by the AO but has failed to submit these results, then Respondent's economic benefit is de minimis. If, however, Respondent has not done required monitoring, then there is substantial economic benefit. As Respondent has avoided contact with the regulatory authorities, there is currently no way of knowing whether the required monitoring was done.

(F) Ability to Pay

Respondent has not raised the issue of inability to pay and the Court has had no reason to consider it.

10. On October 29, 1991, EPA issued "Complaint and Notice of Opportunity for Hearing" pursuant to section 1414(g)(3)(B) of the SDWA, 42 U.S.C. §300g-3(g)(3)(B). Mr. Taylor signed the return receipt but did not date his signature.

11. On February 10, 1992, Respondent filed its "Answer to Complaint."

12. On March 16, 1992, the Court issued a Notice and Order directing the parties to file prehearing exchanges on or before April 20, 1992. Complainant filed its prehearing exchange on April 20, 1992. Respondent never filed a prehearing exchange or comments on Complainant's prehearing exchange.

13. On June 25, 1992, Complainant filed a Motion for Accelerated Decision for the above-referenced violations. Respondent never responded to the Motion.

14. On July 21, 1992, the Court issued an Order directing Complainant to prepare an order for accelerated decision for the Court's execution. The Order stated that, as Respondent has not responded to the motion for accelerated decision, any objection has been waived pursuant to 40 CFR §22.16(b).

III. Conclusions of Law

15. By reason of the facts as set out in the findings of fact, Respondent violated Section 1414 of the SDWA, 42 U.S.C. § 300g-3, failing to comply with the terms and condition of an Administrative Compliance Order (Docket No. PWS NJ-AO-86F) issued to Respondent by EPA under the authority of Section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g). This Order was issued to cease Respondent's violations of monitoring and notification requirements.

16. By failing to dispute the facts set forth in Complainant's prehearing exchange and by failing to respond to Complainant's motion for accelerated decision, Respondent has waived any objection pursuant to 40 CFR §22.16(b).

17. Pursuant to Section 1414(g)(3)(A) of the SDWA, 42 U.S.C. §300g-3(g)(3)(A), any person who violates, or fails or refuses to comply with an Order issued under this subsection shall be liable to the United States for a civil penalty of not more than \$25,000 per day of violation. Where any such civil penalty sought does not exceed \$5,000, the Administrator may assess such penalty pursuant to Section 1414(g)(3)(B) of the SDWA, 42 U.S.C. §300g-3(g)(3)(B).

18. It is further concluded that by reason of the facts as set out in paragraph 9 of the above findings of fact, the amount

of the proposed penalty (\$5,000) is appropriate pursuant to section 1414 of the SDWA, 42 U.S.C. § 300g-3, due to the seriousness of the violation, the population at risk, and such other factors as Respondent's degree of culpability, economic benefit and ability to pay.

IV. Order

19. Complainant's Motion for Accelerated Decision is hereby GRANTED and Respondent is hereby assessed and ORDERED to pay \$5,000 as an administrative penalty pursuant to section 1414 of the SDWA, 42 U.S.C. § 300g-3.

20. The provisions of this order shall apply to Respondent and its officers, agents, servants, employees, successors, and assigns and to all persons, firms and corporations acting under, through, or for Respondent.


21. This order constitutes an initial decision (see 40 C.F.R. 22.20(b)) and is subject to review by the Administrator pursuant to 40 C.F.R. § 22.30. In order to appeal this ruling, Respondent must file a notice of appeal and accompanying appellate brief with the Hearing Clerk, A-10, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 and serve a copy of such notice and brief on Complainant's counsel within twenty (20) days after service of this initial decision. Otherwise, this order becomes a final order forty-five (45) days after service and is not subject to any further review. See 40 C.F.R. § 22.27(c).

22. Unless a notice of appeal is filed as described above, the penalty proposed in the Complaint is due and payable by Respondent sixty (60) days after a final order is issued upon default. Respondent shall pay by cashier's or certified check a civil penalty in the amount of five thousand dollars (\$5,000) to the Treasurer, United States of America. Such remittance may be sent by messenger or certified mail to the U.S. Environmental Protection Agency, Region II, Regional Hearing Clerk, P.O. Box 36018MM, Pittsburgh, PA 15251. In the event of failure of Respondent to make said payment within sixty (60) days after a final order issued upon default, the matter shall be referred to the Attorney General of the United States for recovery by

appropriate action in United States District Court.

AND NOW, THIS 14th DAY OF August, 1992 the foregoing order is hereby issued under the authority of the Clean Water Act, 33 U.S.C. § 1251 et seq., and the Consolidated Rules of Practice adopted pursuant thereto, 40 C.F.R. § 22.01 et seq.

Dated : 8/14/92



Thomas B. Yost
Administrative Law Judge
United States Environmental
Protection Agency

CERTIFICATION OF SERVICE

I hereby certify that, in accordance with 40 CFR § 22.27(a), I have this date forwarded via certified mail, return-receipt requested, the Original of the foregoing ORDER FOR ACCELERATED DECISION of Honorable Thomas B. Yost, Administrative Law Judge, to Ms. Karen Maples, Regional Hearing Clerk, United States Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York 10278, and have referred said Regional Hearing Clerk to said Section which further provides that, after preparing and forwarding a copy of said ORDER FOR ACCELERATED DECISION to all parties, she shall forward the original, along with the record of the proceeding to:

Hearing Clerk (A-110)
EPA Headquarters
Washington, D.C. 20460

who shall forward a copy of said ORDER FOR ACCELERATED DECISION to the Administrator.

Dated: 8/14/92

Jo Ann Brown
Jo Ann Brown
Secretary, Hon. Thomas B. Yost

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CERTIFICATE OF SERVICE

I hereby certify that the Decision by Administrative Law Judge Thomas B. Yost in the matter of Anthony J. Taylor, Andover Water Corporation, Docket No. PWS-NJ-~~CR~~P-03, was filed on August 18, 1992. I served copies of the Decision to the parties as indicated below:

*Certified Mail
Return Receipt Requested -*

*Bessie Hammiel
Hearing Clerk (A-110)
US Environmental Protection Agency
401 M. Street, S.W.
Washington, D.C. 20460
(w/Administrative Record)*

*Anthony J. Taylor
Andover Water Corporation
P.O. Box 159
Hopatcong, New Jersey 07843*

Hand-Delivered -

*Michael Siegel, Esq.
Office of Regional Counsel
US Environmental Protection Agency
26 Federal Plaza, Rm 400
New York, New York 10278*

Karen Maples

*Karen Maples
Regional Hearing Clerk
USEPA - Region II*

Dated: August 18, 1992