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ENVIRONMENTAL PROTECTION AGENCY
REGION IX
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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
San Francisco, California

BEFORE THE REGIONAL ADMINISTRATOR

IN THE MATTER OF: TOMMY A. TREASE, dba BUBBLING SPRINGS WATER COMPANY	))))	Docket No. PWS-COM-90-059

INITIAL DECISION AND DEFAULT ORDER

By Motion for Default Order dated March 29, 1991, Complainant, the Director of the Water Management Division of the United States Environmental Protection Agency, Region 9, moved for an Order assessing a civil penalty in the amount of five thousand dollars ($5,000) against Respondent, Tommy A. Trease, dba Bubbling Springs Water Company. Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties ("Consolidated Rules") at 40 C.F.R. Part 22, and 40 C.F.R. §22.17 thereunder, and based upon the record in this matter and the following Findings of Fact, Conclusions of Law, and Determination of Civil Penalty Amount, Complainant's Motion for Default Order is hereby GRANTED.

I. FINDINGS OF FACT

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

1. On September 19, 1990, the Complaint in this action, together with a copy of the Consolidated Rules, was personally served on Respondent. The Complaint, an accompanying cover letter,

and the Certificate of Personal Service, attached to Complainant's Motion for Default Order as Attachment 5, are incorporated by reference herein.

2. Respondent failed to file an Answer to the Complaint within twenty (20) days of service of the Complaint on Respondent. Moreover, the record in this case indicates that the Respondent did not, in any manner, otherwise admit, deny or explain the factual allegations in the Complaint. By letter of December 28, 1990, EPA's Office of Regional Counsel informed Respondent that the Complainant had not received Respondent's Answer. Moreover, this letter reiterated to Respondent that, under the Consolidated Rules, if no Answer to a Complaint were filed, the Complainant could move for a Default Order and Assessment of Civil Penalty. Complainant's letter was personally served on Respondent on January 3, 1991. This letter and its accompanying Certificate of Personal Service, attached to Complainant's Motion for Default Order as Attachment 6, are incorporated by reference herein. Despite Respondent's receipt of the Complaint, the Consolidated Rules, and the letter from EPA's Office of Regional Counsel, Respondent has not responded to the Complaint in any manner.

3. The Complaint alleged the facts set forth in paragraphs (a) through (d) below.

(a) Respondent owns and operates a public water system known as Bubbling Springs Water Company, located in Apache County, Arizona.

(b) Respondent provides piped water to the public for human

consumption and regularly serves a population of approximately 105 persons and has approximately 40 service connections.

(c) Respondent's public water system uses a ground water source.

(d) Respondent is a "person," as defined in the Safe Drinking Water Act ("the Act"), 42 U.S.C. §300f et. seq., and specifically in §1401(12) of the Act, 42 U.S.C. §300f(12), and in 40 C.F.R. §141.2. Respondent is a "supplier of water" as that term is defined in §1401(5) of the Act, 42 U.S.C. §300f(5), and 40 C.F.R. §141.2. Respondent owns and operates a "public water system" as defined by §1401(4) of the Act, 42 U.S.C. §300f(4), and 40 C.F.R. §141.2 and a "community water system" as defined by 40 C.F.R. §141.2.

4. On January 11, 1990, Respondent received, via certified mail, return receipt requested, a Final Administrative Order ("Order"), issued by the Complainant under the authority of §1414(g) of the Act, 42 U.S.C. §300g-3(g). The Order, an accompanying cover letter, and the properly executed return receipt are attached to the Complainant's Motion for Default Order as Attachment 1 and are incorporated by reference herein.

5. The Complaint alleges at Finding of Fact 11 that the Respondent accepted service of the Order and signed the certified mail receipt. Attachment 1 referred to above shows that the certified mail receipt was signed by "Robert H. Netzley" as Respondent's agent.

6. The Order required Respondent to collect monthly water

samples from his system and to submit the samples to a state certified laboratory for bacterial analysis as required by 40 C.F.R. §141.21. The Order required Respondent to submit to EPA copies of laboratory analysis results for the monthly microbiological samples. Respondent failed to submit to EPA copies of the microbiological laboratory analysis results for the months of January, 1990 through July, 1990. The Declarations of Patrick P. K. Chan and Jon A. Dahl (hereinafter Chan and Dahl Declarations), which are attached to Complainant's Motion for Default Order as Attachments 3 and 4 respectively and are incorporated by reference herein, attest to this fact.

7. The Order required Respondent to collect water samples from his system and to submit the samples to a state certified laboratory for inorganic chemical analysis within thirty (30) days from the effective date of the Order, pursuant to 40 C.F.R. §141.23(a)(2). The Order required Respondent to provide EPA with copies of the inorganic chemical analysis results. Respondent failed to submit to EPA a copy of the inorganic chemical laboratory results. The Chan and Dahl Declarations attest to this fact.

8. The Order required Respondent to collect water samples from his system and to submit the samples to a state certified laboratory for four consecutive quarterly radionuclide analyses, pursuant to 40 C.F.R. §§141.26(a). The Order required Respondent to provide EPA with copies of the radionuclide analyses results. Respondent failed to submit to EPA a copy of the radionuclide laboratory results for the first and second quarters. The Chan and

Dahl Declarations attest to this fact.

9. The Order required Respondent to collect water samples from his system and to submit the samples to a state certified laboratory for corrosivity analysis, pursuant to 40 C.F.R. §141.42. The Order required Respondent to provide EPA with copies of the corrosivity analysis results. Respondent failed to submit to EPA a copy of the corrosivity laboratory results. The Chan and Dahl Declarations attest to this fact.

10. On February 26, 1990, EPA staff wrote to Respondent to reiterate the Order's requirements and Respondent's legal duty to comply with the Order. A copy of the letter is attached to Complainant's Motion for Default Order as Attachment 2 and is incorporated by reference herein. Complainant's records indicate that Respondent did not respond in any way to this letter.

II. CONCLUSIONS OF LAW

Pursuant to 40 C.F.R. §22.17(c), and based on the entire record, I make the following conclusions of law:

11. The Final Administrative Order in this action was issued to the Respondent on January 11, 1990.

12. The Complaint in this action was lawfully and properly served upon the Respondent, in accordance with 40 C.F.R. §22.05(b)(1) of the Consolidated Rules.

13. The Consolidated Rules required the Respondent to file an Answer to the Complaint within twenty (20) days of the service of the Complaint on Respondent. 40 C.F.R. §22.15(a).

14. Respondent's failure to file an Answer to the Complaint,

or otherwise respond to the Complaint, constitutes an admission of all of the factual allegations in the Complaint, including the allegations set forth in paragraphs 3(a) through (d) and 5 above, and a waiver of Respondent's right to a hearing on such factual issues. 40 C.F.R. §§22.15(d) and 22.17(a).

15. Respondent is a "person" within the meaning of §1401(12) of the Act, 42 U.S.C. §300f(12), and 40 C.F.R. §141.2. Respondent is a "supplier of water" as that term is defined in §1401(5) of the Act, 42 U.S.C. §300f(5), and 40 C.F.R. §141.2. Respondent owns and operates a "public water system" as defined by §1401(4) of the Act, 42 U.S.C. §300f(4), and 40 C.F.R. §141.2 and a "community water system" as defined by 40 C.F.R. §141.2.

16. Respondent violated 40 C.F.R. §141.21 by failing to collect samples and submit them to a state certified laboratory for coliform bacteria analyses once a month. Respondent violated the Order by failing to submit to EPA copies of microbiological laboratory analysis results for the months of January through July, 1990.

17. Respondent violated 40 C.F.R. §141.23(a)(2) by failing to collect samples and submit them to a state certified laboratory for inorganic chemical analyses. Respondent violated the Order by failing to submit to EPA a copy of the laboratory results for inorganic chemical analyses within thirty (30) days of the effective date of the Order.

18.Respondent violated 40 C.F.R. §141.26(a) by failing to collect samples and submit them to a laboratory for the first of

four consecutive radionuclide analyses. Respondent violated 40 C.F.R. §141.26(a) by failing to collect samples and submit them to a laboratory for the second of the four consecutive radionuclide analyses. Respondent violated the Order by failing to submit to EPA a copy of the laboratory results for the first of four consecutive quarterly radionuclide analyses within thirty (30) days of the effective date of the Order. Respondent violated the Order by failing to submit to EPA a copy of the second of the four consecutive radionuclide analyses.

19. Respondent violated 40 C.F.R. §141.42 by failing to collect samples and submit them to a laboratory for corrosivity analyses. Respondent violated the Order by failing to submit to EPA a copy of the laboratory results for corrosivity analyses.

20. Section 1414(g)(3)(B) of the Safe Drinking Water Act, 42 U.S.C. §300g-3(g)(3)(B), authorizes the Administrator to assess administratively a civil penalty of up to $5,000 for the violation of final administrative orders. The Complaint sought the maximum penalty of $5,000 for violations of the Order.

21. When the Regional Administrator finds that a default has occurred, he shall issue a Default Order against the defaulting party, and the default order shall constitute the Initial Decision. 40 C.F.R. §22.17(b). This authority of the Regional Administrator has been delegated to the Regional Judicial Officer pursuant to 40 C.F.R. §22.04(a)(3).

22. Respondent's failure to file a timely Answer to the Complaint, or otherwise respond to the Complaint, is grounds for

the entry of a Default Order against the Respondent assessing a civil penalty for the violations of the Order enumerated in paragraphs 16 through 19 above.

III. DETERMINATION OF CIVIL PENALTY AMOUNT

Having found that Respondent has violated the Order, I have determined pursuant to 40 C.F.R. §22.17(a) and (c) that five thousand dollars ($5,000), the penalty amount proposed in the Complaint, is the appropriate civil penalty to be assessed against the Respondent.

Under the Consolidated Rules, the amount of the proposed civil penalty "shall be determined in accordance with any criteria set forth in the Act relating to the proper amount of a civil penalty and with any civil penalty guidelines issued under the Act." 40 C.F.R. §22.15(c). The Safe Drinking Water Act sets forth no criteria for determining administrative civil penalties. Nor are there any guidelines regarding the assessment of civil penalties under the Act. In the absence of specific penalty guidelines, it is appropriate to consider the factors set forth in EPA's General Enforcement Policy documents, "Policy on Civil Penalties," ("GM-21") and "A Framework for Statute-Specific Approaches to Penalty Assessments: Implementing EPA's Policy on Civil Penalties," ("GM-22"). GM-21 and GM-22 are attached to Complainant's Motion For Default Order as Attachments 7 and 8, and are incorporated by reference herein. While GM-21 and GM-22 do not speak directly to the issue of the penalty to be assessed under §1414(g)(3)(B) of the Act, 42 U.S.C. §300-3(g)(3)(B), they provide a framework for

determining the penalty amount.

GM-21 and GM-22 establish that a penalty figure must include two components: the "gravity component," which reflects the seriousness of the violation, and the "benefit component," which reflects the economic benefit to the Respondent of noncompliance. In addition, the penalty amount can be adjusted depending on the degree of the Respondent's willfulness and/or negligence, the history of noncompliance, the ability to pay, the degree of cooperation/noncooperation, and other unique factors.

Respondent's violations of the Order are grave. Respondent's apparent failure to sample and monitor the system's water quality and his failure to report the monitoring results to the appropriate state and federal agencies strike at the heart of the regulatory system, particularly because EPA has no other readily available and affordable means of obtaining monitoring information regarding the water Respondent provides for human consumption. Without monitoring data supplied by the Respondent, the EPA is in effect unable to determine whether or not the Respondent is supplying water that exceeds the maximum contaminant levels established in the National Primary Drinking Water Regulations, 40 C.F.R. §§141.11, 141.14, 141.15, and 141.16. Furthermore, without such monitoring data, EPA cannot quantify the risk posed by Respondent's public water system to the health of the system's approximately 105 customers.

In addition to the gravity of Respondent's violations, Respondent's failure to comply with the Order resulted in an

economic benefit from avoided costs of compliance for at least the eight-month period from January, 1990 through the filing of the Complaint on September 7, 1990.

Moreover, Respondent has failed to take any action to comply with the Order or to cooperate with the EPA, despite a letter from Complainant reiterating Respondent's legal obligations under the Order and despite a letter from the Office of Regional Counsel reiterating the legal consequences of not filing an Answer to the Complaint.

Respondent has failed to produce any data that indicate an inability to pay. In the absence of such information, it would be inappropriate to mitigate the penalty amount based on Respondent's inability to pay.

Accordingly, the appropriate civil penalty is five thousand dollars ($5,000).

IV. DEFAULT ORDER

WHEREFORE, pursuant to the Consolidated Rules at 40 C.F.R. Part 22, including 40 C.F.R. §22.17, Complainant's Motion for Default Order is hereby GRANTED. Respondent is hereby ORDERED to comply with all of the terms of this Default Order:

A. Respondent is hereby assessed a civil penalty in the amount of five thousand dollars ($5,000) and ordered to pay such civil penalty as directed in this Default Order.

B. Pursuant to 40 C.F.R. §22.27(c), this Default Order shall become final within forty-five (45) days after service upon the parties unless it is appealed to the EPA Administrator or the

Administrator elects, sua sponte, to review it. Respondent shall, within sixty (60) calendar days after this Default Order becomes final, forward a cashier's or certified check, payable to the order of the "Treasurer of the United States of America," in the amount of five thousand dollars ($5,000). Respondent shall mail the check by certified mail, return receipt requested, to the following address:

U.S. EPA-Region 9
Regional Hearing Clerk
P.O. Box 360227M
Pittsburgh, PA 15251

In addition, Respondent shall mail a copy of the check, by first class mail, to the following person:

Regional Hearing Clerk (RC-1)
U.S. EPA, Region 9
75 Hawthorne Street
San Francisco, CA 94105

C. Pursuant to 31 U.S.C. §3717, an executive agency like EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty if it is not paid within sixty (60) calendar days after this Default Order becomes final. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R. §102.13(c). In addition, a penalty charge of six percent per year will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. However, should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due under 4 C.F.R. §102.13(e).

D. Respondent shall otherwise comply with all applicable provisions of the Safe Drinking Water Act, 42 U.S.C. §300f et seq., the rules promulgated thereunder, and all other environmental laws. Nothing in this Default Order shall be construed as relieving Respondent of the duty to comply with any of these provisions in a timely manner.

IT IS SO ORDERED.

Date: April 26, 1991

Steven W. Anderson

Steven W. Anderson
Regional Judicial Officer
U.S. EPA - Region 9

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, Ca. 94105

CERTIFICATE OF SERVICE

RE: TOMMY A. TREASE
dba Bubbling Springs Water Co.
Docket No. PWS-COM-90-059

I certify that on this 26th day of April 1991, I served copies of the foregoing Initial Decision and Default Order in the following manner to the following persons:

Original by overnight express mail to Peggy Guichard-Waters, Arizona Department of Environmental Quality at 2005 North Central Avenue, Phoenix, Arizona, 85004 for personal delivery to:

Tommy A. Trease
dba Bubbling Springs Water Co.
49030 North 7th Avenue
New River, AZ 85027

One copy by personal delivery to:

Steven Armsey
Regional Hearing Clerk, Region IX
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

Elizabeth R. Pulling
Office of Regional Counsel
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

Sandra Y. Frison
Sandra Y. Frison
Legal Technician
EPA Region IX

Printed on Recycled Paper

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street

San Francisco, Ca. 94105

CERTIFICATE OF SERVICE

RE: TOMMY A TREASE
dba Bubbling Springs Water Co.
Docket No. PWS-COM-90-059

I certify that, on the date specified below, the foregoing Initial Decision and Default Order was served personally on:

Tommy A. Trease
dba Bubbling Springs Water Co.
49030 N. 7th Avenue
New River, AZ 85027

_____ Date

_____ Signature

_____ Date Served

_____ Name Printed

PROCESS SERVER

Printed on Recycled Paper

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, Ca. 94105

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dba Bubbling Springs Water Co.
49030 N. 7th Avenue
New River, AZ 85027

_____
Date

_____
Signature

_____
Date Served

_____
Name Printed

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