

5/3/94

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	Docket No. [SDWA]
)	8-PWS-VIII-92-13
David Webb and Prairie Estates,)	
)	
Respondent)	
)	

Safe Drinking Water Act: Where Respondent David Webb and Prairie Estates failed to comply with order of Administrative Law Judge requiring pretrial exchange, and failed to comply with order to show cause why it should not be held in default, Respondent was found to be in default pursuant to 40 C.F.R. § 22.17, and to have admitted violations charged in the complaint. Respondent was assessed a penalty in the amount of \$4,410,00.

ORDER ON DEFAULT

By: J.F. Greene
Administrative Law Judge

Dated: May 31, 1994

APPEARANCES:

For Complainant:

Elyana R. Sutin
Office of Regional Counsel
Region VIII - EPA
999 18th Street
Denver Place, Suite 500
Denver, CO 80202-2466

For Respondent:

David Webb
Prairie Estates MHP
2282 S.E. Highway 94, Route 2
Calhan, CO 80808

INTRODUCTION

This administrative civil penalty proceeding was initiated by the United States Environmental Protection Agency (EPA or Complainant) pursuant to section 1414(g)(3)(B) of the Safe Drinking Water Act (SDWA), as amended, 42 U.S.C. § 300g-3(g)(3)(B), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22. The action was initiated by issuance of a complaint on April 28, 1993, charging David Webb and Prairie Estates (Respondent) with violation of an Administrative Compliance Order (Docket No. 8-PWS-VIII-92-13) (Compliance Order), issued under section 1414(g)(1) of the SDWA, 42 U.S.C. § 300g-3(g)(1). The complaint proposed an administrative civil penalty in the amount of four thousand, four hundred and ten dollars (\$4,410.00).

FINDINGS OF FACT

Respondent owns and operates the Prairie Estates Mobile Home Park public water system, located in El Paso County, Colorado. Respondent's water system provides piped well water to residents of the Prairie Estates Mobile Home Park.

On March 31, 1992, the Colorado Department of Health, citing a long history of water system-related violations by Respondent, requested that EPA initiate an enforcement action to bring Respondent into compliance with the SDWA. On June 10, 1992, the EPA issued the above-referenced Compliance Order under authority

of section 1414(g)(1) of the SDWA, 42 U.S.C. § 300 g-3(g)(1). The Compliance Order found Respondent in violation of 40 C.F.R. sections 141.21, 141.23(a)(2), 141.24, 141.26(a)(1), 141.31(b), 141.32, 141.36, and 141.40 for, inter alia, failure to monitor for bacteriological contaminants, failure to monitor for radiological contaminants, failure to monitor for inorganic contaminants, failure to monitor for organic contaminants, failure to report violations to the State, and failure to provide public notice of violations. Respondent failed to comply with the schedules mandated by the Compliance Order.

On April 28, 1993, EPA issued a complaint charging Respondent with violation of the Compliance Order, and proposing an administrative civil penalty in the amount of \$4,410.00. The proposed penalty was calculated based upon Region VIII's draft penalty policy for public water supply administrative actions. Respondent submitted its answer on or about May 27, 1993. The matter was received in this office on June 15, 1993.

The parties were unable to settle. By order dated February 8, 1994, they were directed to make pretrial exchange consisting of witness lists, and copies of documents to be offered in evidence, no later than March 11, 1994. In addition, Complainant was directed to provide evidence regarding the appropriateness of the penalty, and Respondent was directed to submit financial data supporting any intended claim of inability to pay.

Complainant made a timely submission of its pretrial exchange on March 10, 1994. Respondent did not submit its

pretrial exchange by the March 11, 1994 deadline. By order dated March 22, 1994, Respondent was directed to either file its pretrial exchange by March 30, 1994, or file a statement affirming that Respondent had no such exchange. Respondent again failed to meet the deadline. By order dated April 11, 1994, Respondent was directed to file a pretrial exchange or show cause why it should not be held in default for failure to observe this Court's pretrial orders. The deadline for compliance with this most recent order was April 20, 1994. To date, Respondent has failed to comply with any of the orders of this Court.

CONCLUSIONS OF LAW

Pursuant to section 1414(g)(3)(B) of the SDWA, as amended, 42 U.S.C. § 300g-3(g)(3)(B), Complainant has authority to institute enforcement proceedings against Respondent for failure to comply with the Compliance Order. Respondent's answer to the complaint does not raise any questions which could support a decision that Complainant has failed to establish a prima facie case, or justify the dismissal of the complaint. Complainant's pretrial exchange submission supports the allegations in the complaint. Specifically, Complainant has established a prima facie case to support the allegations that Respondent failed to comply with C.F.R. sections 141.21, 141.23(a)(2), 141.24, 141.26(a)(1), 141.31(b), 141.32, 141.36, and 141.40 within the schedules mandated by the Compliance Order. In addition, the proposed penalty, calculated following guidelines set forth in Region VIII's draft penalty policy for public water supply

administrative actions, is fair and reasonable in the circumstances of this case.

The Consolidated Rules provide that a party may be found to be in default "after motion or sua sponte, upon failure to comply with a prehearing or hearing order of the Presiding Officer." 40 C.F.R. § 22.17(a)(2). Respondent has failed to comply with this Court's pretrial orders, and is, therefore, in default pursuant to 40 C.F.R. § 22.17(a)(2). This default constitutes an admission by Respondent of all facts alleged in the complaint and a waiver of its right to a hearing regarding the factual allegations therein. In addition, payment of the penalty proposed in the complaint shall become due and payable by Respondent without further proceedings sixty (60) days after a final order in this matter is issued. 40 C.F.R. § 22.17(a).

ULTIMATE CONCLUSION

It is concluded that Respondent is in violation of Administrative Compliance Order Docket No. 8-PWS-VIII-92-13, issued under section 1414(g)(1) of the SDWA, 42 U.S.C. § 300g-3(g)(1).

ORDER¹

IT IS ORDERED, pursuant to section 1414(g)(3)(B) of the SDWA, as amended, 42 U.S.C. § 300g-3(g)(3)(B), that:

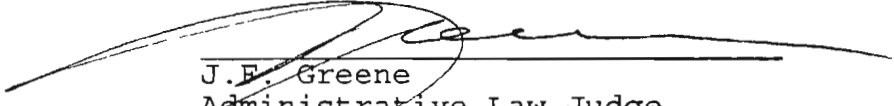
¹Pursuant to 40 C.F.R. § 22.17(b), this order on default constitutes the Initial Decision in this matter. Unless an appeal is taken pursuant to 40 C.F.R. § 22.30, or the Administrator elects to review this decision on her own motion, the Initial Decision shall become the final order of the Administrator. 40 C.F.R. § 22.27(c).

1. Respondent, David Webb and Prairie Estates be assessed an administrative civil penalty of \$4,410.00;

2. Payment of the full amount of the penalty assessed shall be made by forwarding a cashier's or certified check, payable to the Treasurer of the United States of America, to the following address within sixty (60) days of the entry of this decision and order:

Mellon Bank
EPA - Region VII
Regional Hearing Clerk
P.O. 360748M
Pittsburgh, PA 15251

3. Failure by Respondent to pay the penalty within the prescribed time frame after entry of the final order shall result in the assessment of interest on the penalty. 31 U.S.C. § 3717; 4 C.F.R. § 102.13.


J.F. Greene
Administrative Law Judge

Dated: 5/31/94

REC
EPA HEAR
HEAR
1994 JUN 16 AM 11:36

CERTIFICATE OF SERVICE

I certify that a copy of the ORDER ON DEFAULT was forwarded to the following on this the 16th day of June, 1994.

David Webb
Prairie Estates MHP
Route 2
Calhan, CO 80808

Certified Mail
Return Receipt Request

Elyana Sutin, Attorney
U.S. EPA Region VIII
Office of Regional Counsel
999 18th St., Suite 500
Denver, CO 80202

Hand-Carried

Joanne McKinstry
Joanne McKinstry
Regional Hearing Clerk