

**STATE OF WASHINGTON
DEPARTMENT OF HEALTH
OFFICE OF PROFESSIONAL STANDARDS**

In the Matter of the Public Water)	
System of:)	Docket No. 00-03-C-1006DW
)	
RAVENSDALE MOBILE HOME)	
PARK)	FINDINGS OF FACT,
King Co. ID# 71397L,)	CONCLUSIONS OF LAW
)	AND FINAL ORDER
Respondent.)	
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A hearing was held before Health Law Judge Arthur E. DeBusschere, Presiding Officer for the Department of Health, on December 10, 2001, at the Department of Health Offices, Center Point Plaza, 20435 72nd Ave South, Suite 200, Kent, Washington. Richard A. McCartan, Assistant Attorney General, represented the Division of Drinking Water of the Department of Health (the Division). Deloris Turner, owner and operator of Ravensdale Mobile Home Park (the Respondent), representing herself, did not appear. Robert Lewis, court reporter, recorded the proceeding.

I. PROCEDURAL FINDINGS

1.1 On May 28, 1999, a Departmental Order, Docket No. 99-022, (the Departmental Order) was served upon the Respondent.

1.2 On March 3, 2000, the Division issued a Notice of Imposition of Penalties assessing her monetary penalties for her failure to comply with the Departmental Order.

1.3 The Respondent requested an adjudicative proceeding and the Health Law Judge conducted prehearing conferences, issued prehearing orders, and set a hearing date for February 7, 2001. Prehearing Orders Nos. 1-6.

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1.4 On February 14, 2001, the Health Law Judge signed an Interim Stipulation and Agreed Order (the Stipulation). The parties had agreed to continue the February 7, 2001, hearing in order to allow the Respondent to comply with the Departmental Order and to mitigate the penalties.

1.5 On August 2, 2001, the Division filed a letter stating that the Respondent has not fully complied with the Stipulation and requested that this case be set for hearing.

1.6 On September 4, 2001, the Health Law Judge issued an Order scheduling a telephonic prehearing conference for September 5, 2001. Prehearing Order No. 6, served September 4, 2001.

1.7 The Office of Professional Standards attempted, but was unable, to reach the Respondent to notify her of the prehearing conference set for September 5, 2001. On September 27, 2001, the Health Law Judge issued a second Order Scheduling a Prehearing Conference scheduling a telephonic prehearing conference for October 2, 2001. Prehearing Order No. 7, served September 27, 2001.

1.8 On October 2, 2001, the Office of Professional Standards was unable to contact the Respondent by telephone for the prehearing conference. Thus, on October 2, 2001, the Health Law Judge conducted a prehearing conference and proceeded to communicate with Mr. McCartan to schedule dates for the prehearing conference and the hearing. The hearing was scheduled for December 10, 2001, and a prehearing conference was scheduled for October 30, 2001. Prehearing Order No. 8, served October 11, 2001.

1.9 On October 30, 2001, the Health Law Judge conducted a prehearing conference. The Health Law Judge attempted to contact the Respondent at her telephone number, but was unable to reach her. The Health Law Judge set a deadline for the parties to file their prehearing statements and their exhibits. Prehearing Order No. 9, served November 19, 2001.

1.10 On November 19, 2001, the Adjudicative Clerk Office served upon the parties a Notice of Hearing notifying the parties of the hearing date, location and starting time.

II. THE HEARING

On December 10, 2001, during the time and location stated in the Prehearing Orders and in the Notice of the Hearing, and after waiting for the Respondent to appear, the Health Law Judge found the Respondent in default and proceeded with the hearing. Neither the Respondent nor an attorney representing the Respondent appeared at the hearing. There was no reason to believe that the Respondent was in active military service. During the hearing on December 10, 2001, Ingrid Salmon testified. The Division offered four (4) exhibits that were admitted:

- Division's Exhibit No. 1: Notice of Imposition of Penalties, signed March 3, 2000.
- Division's Exhibit No. 2: Stipulation and Agreed Order (the Stipulation), entered February 14, 2001.
- Division's Exhibit No. 3: Department of Health Penalty Policy and Calculation Worksheet.
- Division's Exhibit No. 4: Department of Health statutes, rules and policy for certified operators.

III. FINDINGS OF FACT

3.1 Ravensdale Mobile Home Park, owned and operated by Delores Turner, is a public water system in King County. Ravensdale Mobile Home Park provides water for about 25 households.

3.2 The Departmental Order 99-022 was served on May 28, 1999. The Department notified the Respondent as purveyor of her failure to comply with rules and statutes regulating public drinking water systems and ordered the Respondent to take actions in order to be in compliance.

3.3 The Notice of Imposition of Penalties was issued on March 3, 2000. The Respondent was penalized in the sum of \$8,820.00 for failure to comply with orders in the Departmental Order. Division's Exhibit No. 1, Section III. The Respondent requested an adjudicative proceeding. The Health Law Judge conduct prehearing conferences and set the hearing date for February 7, 2001.

3.4 A Stipulation was entered on February 14, 2001. The parties agreed to continue the February 7, 2001 hearing in order to allow the Respondent to further comply with the Departmental Order and to mitigate the penalties. Under the terms of the Stipulation, it was agreed that the Respondent had made efforts to comply with the sampling and the public notification requirements. The penalty was accordingly reduced by \$3,360.00. Thus, at the time of the Stipulation, the Respondent's total penalty was reduced to \$5,460.00. Division's Exhibit No. 2, Paragraph 1.12.

3.5 After the Stipulation was signed, the Respondent further complied, in part, with the Departmental Order. That is, the Respondent did submit a coliform monitoring

plan, which reduced the penalty in the amount of \$210.00. The Respondent also completed a synthetic organic chemical monitoring, which further reduced the penalty in the amount of \$630.00. Thus, the Respondent further mitigated her penalties in the amount of \$840.00.

Respondent's Failure to Hire a Certified Operator.

3.6 In Paragraph 2.13 of the Departmental Order, the Respondent was ordered to hire a certified operator and the Notice of Imposition of Penalties assessed a penalty for the Respondent's failure to do this. Division's Exhibit No. 1, page 3. The Division had met and discussed with the Respondent this requirement. The Division provided the Respondent documents to assist her in locating a certified operator, including providing her a list of certified operators.

3.7 In the Stipulation, the Respondent was provided an opportunity to hire a certified operator in order to mitigate the assessed penalty. Division's Exhibit No. 2, Paragraph 1.13. After the Stipulation, the Respondent failed to hire a certified operator. Thus pursuant to the Notice of Imposition of Penalties and the Stipulation, the Respondent's assessed penalty of \$840.00 for her failure to hire a certified operator remains.

Respondent's Failure to Submit a Small Water System Management Program.

3.8 In Paragraph 2.11 of the Departmental Order, the Respondent was ordered to submit a small water system management program. The Respondent failed to do this and the Notice of Imposition of Penalties assessed a penalty. Division's

Exhibit No. 1, page 3. The Division had spoken with the Respondent about the importance of the small water system management plan and provided documents for her to complete for a management plan.

3.9 In the Stipulation, the Respondent was provided an opportunity to submit a small water system management program in order to mitigate the assessed penalty. Division's Exhibit No. 2, Paragraphs 1.9 and 1.15. After the Stipulation, the Respondent failed to submit a small water system management program. Thus, pursuant to the Notice of Imposition of Penalties and the Stipulation, the Respondent's penalty of \$420.00 remains.

Respondent's Failure to Regularly Monitor Bacteriological Quality.

3.10 In Paragraph 2.2 of the Departmental Order, the Respondent was ordered to monitor bacteriological quality a minimum of one time per month from representative points in the distribution system and report results to the Department. Since the issuance of the Departmental Order, the Respondent failed to perform the required monitoring during June, July and December 1999, and January 2000. Thus, the Notice of Imposition of Penalties assessed against the Respondent a penalty for each of these months. Division's Exhibit No. 3, page 5-8.

3.11 In the Stipulation, the Respondent was provided an opportunity to mitigate the penalty for her failure to monitor bacteriological quality. Division's Exhibit No. 2, Paragraphs 1.9 and 1.15. To reduce the penalty, the Stipulation required the Respondent to comply with Paragraphs 1.13 through 1.16 of the Stipulation. That is, the Respondent was to hire a certified operator, submit a coliform monitoring plan,

submit a small water system management program, and to provide proof of sampling for applicable synthetic organic chemicals. In addition, the Respondent was to continue to take monthly coliform samples. If the Respondent were to comply with the Stipulation, then Division would have agreed to mitigate the imposed penalty for her failure to monitor for bacteriological quality.

3.12 Since the Stipulation was entered, the Respondent failed to comply with Paragraphs 1.13 through 1.16 of the Stipulation. Thus, pursuant to the Notice of Imposition of Penalties and the Stipulation, the Respondent's penalty assessment of \$3,360.00 remains.

Penalty Assessment.

3.13 Ingrid Salmon is a compliance manager for the Department of Health. She prepares enforcement documents for the Division, including the Notice of Imposition of Penalties. In preparing the Notice of Imposition of Penalties in this case, she spoke with individuals involved and reviewed the Division's files and records. To calculate the penalties in this case, Ms. Salmon used the Department policy and procedure for Penalty Formula. Division's Exhibit No. 3, pages 5-9 to 5-14. Under the Division's policy, there are factors for the Division to consider in assessing a penalty such as the public health risk factor, the previous record factor and the size of the water system factor. Under the previous record factor, the Division's records revealed that the Respondent previously had 12 major monitoring violations. Ms. Salmon incorporated this previous record in calculating the penalty.

3.14 The Division calculated the penalty for the Respondent's failures to comply. The Respondent failed to hire a certified operator (a penalty of \$840.00), to submit a small water system management program (a penalty of \$420.00), and to regularly monitor bacteriological quality (a penalty of \$3,360.00). Thus, the penalty assessments for these failures totaled in the amount of \$4,620.00.

IV CONCLUSIONS OF LAW

4.1 The Health Law Judge shall conduct the hearing and shall issue Findings of Fact, Conclusions of Law, and an Order resolving the proceeding. WAC 246-10-602 and 246-10-605.

4.2 The Respondent failed to attend the hearing. The Respondent was in default and the Health Law Judge proceeded to hear the matter in the absence of the Respondent and to issue a Final Order. RCW 34.05.440. WAC 246-10-204(3).

4.3 In this case, the Division has the burden to prove by a preponderance of the evidence the factual basis for the imposition of penalties assessed in the Notice of Imposition of Penalties. WAC 246-10-606.

4.4 The Department of Health, Division of Drinking Water, has jurisdiction over Ravensdale Mobile Home Park Water System. The Department of Health, Division of Drinking Water, has the authority to adopt regulations relating to the operation of public water systems, pursuant to RCW 70.119.050 (Operators), and RCW 70.119A.050 (Penalties and Compliance). The regulations adopted by the Department of Health are contained in chapter 246-290 WAC.

4.5 Ravensdale is a "public water system," as defined in RCW 70.119A.020(4). WAC 246-290-010. Dolores Turner is the owner and operator of the water system and is a "purveyor" of the Ravensdale Mobile Home Park Water System. RCW 70.119A.020(6). WAC 246-290-010. Ravensdale Mobile Home Park Water System is classified as a Group A public water system. WAC 246-290-020.

Respondent's Failure to Hire a Certified Operator and Penalty Assessment.

4.6 The Respondent was required to hire a certified operator under the rules for a Group A community water system. WAC 246-292-020(1)(a). The Respondent was required to have a certified operator, because the Division had determined that Ravensdale was in significant noncompliance with monitoring of primary contaminants. RCW 70.119.030. Division's Exhibit No. 4, Division of Drinking Water Policy/Procedure, page 2. Based upon the above Findings of Fact, the Health Law Judge concludes that the Division proved by a preponderance of the evidence that the Respondent was required to hire a certified operator and failed to comply with this requirement.

4.7 The Health Law Judge concludes that the calculation of the penalty of \$840.00 for Respondent's failure to hire a certified operator was consistent with RCW 70.119A.040 and was supported by the record in this proceeding. An order should be entered confirming the Division's penalty assessment of penalty of penalty of eight hundred forty dollars (\$840.00) for this violation.

Respondent's Failure to Submit a Small Water System Management Program and Penalty Assessment.

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4.8 The Respondent was required to submit a small water system management program. WAC 246-290-105(3)(b). By Departmental Order, the Division ordered the Respondent to submit a small water system management program. See Division's Exhibit No. 1, page 3, and Division's Exhibit No. 2, Paragraph 1.15. Based upon the above Findings of Fact, the Health Law Judge concludes that the Division proved by a preponderance of the evidence that the Respondent was required to submit a small water system management program and failed to comply with this requirement.

4.9 The Health Law Judge concludes that the calculation of the penalty of \$420.00 for Respondent's failure to submit a small water system management program was consistent with RCW 70.119A.040 and was supported by the record in this proceeding. An order should be entered confirming the Division's penalty assessment of penalty of \$420.00 for this violation.

Respondent's Failure to Regularly Monitor Bacteriological Quality and Penalty Assessment.

4.10 The Respondent was required to monitor the Ravensdale water system for bacteriological quality.

The purveyor shall be responsible for collection and submittal of coliform samples from representative points throughout the distribution system. Samples shall be collected after the first service and at regular time intervals each month the system provides water to consumers. Samples shall be collected that represent normal system operating conditions.

WAC 246-290-300(3)(a). Based upon the above Findings of Facts, the Health Law Judge concludes that the Division proved by a preponderance of the evidence that the

Respondent was required to monitor its water system for bacteriological quality and failed to do so during the months of June, July and December 1999, and January 2000.

4.11 The Health Law Judge concludes that the calculation of the penalty in the amount of \$3,360.00 for Respondent's failure to monitor for bacteriological quality was consistent with RCW 70.119A.040 and was supported by the record in this proceeding. Further, by means of the Stipulation, the Respondent failed an opportunity to mitigate this penalty. An order should be entered confirming the Division's penalty assessment of \$3,360.00 for this violation.

V. ORDER

Based on the above Procedural Findings, the Hearing, Findings of Fact and Conclusions of Law, the Health Law Judge hereby issues the following ORDERS:

5.1 The \$8,820.00 penalty imposed on Ravensdale Mobile Home Park, King Co. ID# 71397L, and Deloris Turner, owner, by the March 3, 2000 Notice of Imposition of Penalties is AFFIRMED in part (in Paragraph 5.2) and is DENIED in part (Paragraph 5.3):

5.2 The penalty assessments in total amount of \$4,620.00 in the Notice of Imposition of Penalties are AFFIRMED as follows:

5.2.1 The Notice of Imposition of Penalties in this matter assessing penalties in the amount of \$840.00 for her failure to hire a certified operator is AFFIRMED.

5.2.2 The Notice of Imposition of Penalties assessing penalties in the amount of \$420.00 for Respondent's failure to submit a small water system

management program is AFFIRMED.

5.2.3 The Notice of Imposition of Penalties assessing penalties in the amount of \$3,360.00 for Respondent's failure to monitor bacteriological quality and to comply with Paragraphs 1.13 through 1.16 of the Stipulation is AFFIRMED.

5.3 By means of Stipulation and by mitigation, the remaining penalty assessments in the Notice of Imposition of Penalties assessing penalties in the amount of \$4,200.00 are DENIED.

VI. NOTICE TO PARTIES

“Filing” means actual receipt of the document by the Adjudicative Clerk Office. RCW 34.05.010(6). This Order was “served” upon you on the day it was deposited in the United States mail. RCW 34.05.010(19).

As provided in RCW 34.05.461(3), 34.05.470, and WAC 246-10-704, either party may file a petition for reconsideration. The petition must be filed within 10 days of service of this Order with the Adjudicative Clerk Office, 1107 Eastside Street, P O Box 47879, Olympia, WA 98504-7879. The petition must state the specific grounds upon which reconsideration is requested and the relief requested. The petition for reconsideration shall not stay the effectiveness of this Order. The petition for reconsideration is deemed to have been denied 20 days after the petition is filed if the Adjudicative Clerk Office has not acted on the petition or served written notice of the date by which action will be taken on the petition.

Proceedings for judicial review may be instituted by filing a petition in superior court in accordance with the procedures specified in chapter 34.05 RCW, Part V,

Judicial Review and Civil Enforcement. The petition for judicial review must be filed within 30 days after service of this Order, as provided in RCW 34.05.542.

DATED THIS 28 DAY OF JANUARY, 2002.

/s/
ARTHUR E. DeBUSSCHERE, Health Law Judge
Presiding Officer