

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF ENVIRONMENTAL
PROTECTION,

Petitioner,

vs.

Case No. 14-3013EF

JEFFREY M. HILL,

Respondent.

SUMMARY FINAL ORDER

Petitioner moved for issuance of a summary final order by Bram D.E. Canter, an Administrative Law Judge of the Division of Administrative Hearings ("DOAH"), based on Petitioner's assertion that there is no issue as to any material fact. No response to the motion was submitted by Respondent, nor did Respondent respond to a subsequent Order to Show Cause why a summary final order should not be issued.

APEARANCES

For Petitioner: Janet M. Tashner, Esquire
Department of Environmental Protection
Mail Station 35
3900 Commonwealth Boulevard
Tallahassee, Florida 32399

For Respondent: Jeffrey M. Hill
908 Southeast Country Club Road
Lake City, Florida 32025

STATEMENT OF THE ISSUES

The issues for determination in this case are whether Respondent Jeffrey Hill should pay the administrative penalty and investigative costs, and should undertake the corrective actions that are demanded by the Florida Department of Environmental Protection ("Department") in its Notice of Violation, Orders for Corrective Action, and Civil Penalty Assessment ("NOV").

PRELIMINARY STATEMENT

On or about April 25, 2014, the Department issued the NOV against Jeffrey Hill, Lance Hill, and their business entity known as Lance Water, charging them with violating laws related to the operation of a "community water system" located in Lake City, Florida. When the Department referred the matter to DOAH, it only named Jeffrey Hill as Respondent. All references hereafter to "Respondent" refer only to Jeffrey Hill.

In a letter to the Department dated June 2, 2014, and received by the Department on June 4, 2014, Respondent did not allege any factual or legal grounds to rebut the allegations and charges in the NOV, but only referred to telephone conversations with a Department employee and Respondent's willingness to meet to discuss the matter. Attached to his June 2 letter, is a letter from Respondent to the Secretary of the Department, dated May 16, 2014, in which Respondent claims that the Suwannee River Water Management District ("SRWMD") should be held responsible

for any problems with the community water system after it obtained title to the real property.

On August 20, 2014, the Department moved to deem admitted the requested admissions that Respondent had failed to respond to. Respondent did not file a response to the motion and it was granted. The Department requested official recognition of certain documents filed in a circuit court action between SRWMD and Respondent. The request is granted.

On October 28, 2014, the Department moved for summary final order based on the pleadings, admissions of Respondent, and a supporting affidavit, which the Department contends shows there is no issue as to any material fact. No response to the motion was filed by Respondent. An Order to Show Cause was issued on November 14, 2014, requiring Respondent to show cause why a disputed issue of fact remained to be determined. The Order warned Respondent that, "The failure to file a timely response to this Order that shows good cause to hold an evidentiary hearing will result in the immediate issuance of a summary final order against Respondent." Respondent did not file a response to the Order to Show Cause.

FINDINGS OF FACT

1. Respondent is the owner and operator of a community water system and its associated piping, designated PWS No. 2124409, located on parcel ID No. 03-4S-17-07486-001 on Country

Club Road, in Lake City, Columbia County, Florida ("the property").

2. Respondent is a "person" as defined in section 403.852(5), Florida Statutes.

3. Respondent is a "supplier of water" as defined in section 403.852(8).

4. The water system is a "public water system" and a "community water system" as defined in sections 403.852(2) and (3), respectively.

5. The community water system is a Category V, Class D water system with a capacity of 28,800 gallons per day that supplies between 25 and 3,300 people, using groundwater as its source.

Count I

6. Count I of the NOV charges Respondent with failure to sample for nitrate and nitrite in 2012 and 2013, which was admitted by Respondent.

Count II

7. Count II of the NOV charges Respondent with failure to sample for primary inorganic contaminants for the 2011-2013 compliance period, which was admitted by Respondent.

Count III

8. Count III of the NOV charges Respondent with failure to analyze for secondary contaminants in the 2011-2013 compliance period, which was admitted by Respondent.

Count IV

9. Count IV of the NOV charges Respondent with failure to sample for volatile organic contaminants in the 2011-2013 compliance period, which was admitted by Respondent.

Count V

10. Count V of the NOV charges Respondent with failure to sample for synthetic organic contaminants in the 2011-2013 compliance period, which was admitted by Respondent.

Count VI

11. Count VI of the NOV charges Respondent with failure to sample for total coliform from June 2013 to date, which was admitted by Respondent.

Count VII

12. Count VII of the NOV charges Respondent with failure to employ an operator for the system since May 2013, which was admitted by Respondent.

Count VIII

13. Count VIII of the NOV charges Respondent with failure to submit test results required by Florida Administrative Code

Chapter 62-550, and failure to file a monthly operation report since April 2013, which was admitted by Respondent.

Count IX

14. Count IX of the NOV charges Respondent with failure to issue Tier 3 notices in May 2013 and March 2014, advising customers of the failure to monitor for certain contaminants, which Respondent admitted.

Count X

15. Count X of the NOV charges Respondent with failure to provide a consumer confidence report to his customers in 2012 and 2013, which was admitted by Respondent.

Count XI

16. In Count XI of the NOV, the Department states that it incurred \$530 in investigative costs related to this enforcement matter, which is admitted by Respondent.

CONCLUSIONS OF LAW

17. The Department is the state agency with the power and duty to regulate community water systems for the protection of the public health pursuant to chapter 403, Part VI, Florida Statutes, and the related rules in the Florida Administrative Code.

18. If the Department has reason to believe a violation of the law it administers has occurred, it may institute an administrative proceeding to establish liability, recover

damages, impose administrative penalties that do not exceed \$10,000, and order the prevention, abatement, or control of the conditions creating the violation. See § 403.121(2)(a) and (b), Fla. Stat. (2014).

19. Because the Department seeks to impose administrative penalties, the Administrative Law Judge is to issue a final order on all matters. See § 403.121(2)(d), Fla. Stat.

20. Section 120.57(1)(h) provides that, in any proceeding in which an administrative law judge has final order authority, any party may move for a summary final order "when there is no genuine issue as to any material fact." The pleadings, officially recognized materials, and admissions on file, together with supporting affidavits, show there is no genuine issue as to any material fact. Therefore, disposition of this case by summary final order is appropriate.

21. All facts alleged in Counts I through XI of the NOV have been admitted, and are further supported by record evidence. Respondent is liable under all Counts.

22. Liability under Counts I through VI requires assessment of an administrative penalty of \$2,000 for each count, pursuant to section 403.121(4)(d), for failure to conduct required monitoring and testing.

23. Liability under Count VII requires assessment of an administrative penalty of \$500, pursuant to section 403.121(5),

for failure to comply with a Department rule. The rule violated is rule 62-555.350(8).

24. Liability under Count VIII and X requires assessment of an administrative penalty of \$500 for each count, pursuant to section 403.121(4)(f), for failure to submit required reports.

25. Liability under Count IX requires assessment of an administrative penalty of \$1,000, pursuant to section 403.121(4)(e), for failure to respond to emergencies.

26. The total penalties allowed to be assessed under the statute for the violations charged in Counts I through X are \$14,500. However, the Department cannot impose penalties that exceed \$10,000 in a notice of violation. See § 403.121(2)(b), Fla. Stat. Therefore, Respondent is liable for a total penalty assessment of \$10,000.

27. In Count XI of the NOV, the Departments seeks to recover \$530 in investigative costs. Pursuant to section 403.121(4)(f), the prevailing party shall recover all costs. Therefore, the Department is entitled to recover these costs.

DISPOSITION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

ORDERED that:

1. Respondent shall correct and redress all violations within the time periods required below and shall comply with all

applicable rules in the Florida Administrative Code related to community water systems. All payments, documents, reports, and test results that are required to be submitted to the Department shall be submitted to: Florida Department of Environmental Protection, Northeast District, Potable Water Section, 8800 Baymeadows Way West, Suite 100, Jacksonville, Florida 32256-7590.

2. Within 10 days of the date of this Order, Respondent shall obtain permission from the property owner for site access to perform these corrective actions. Should the property owner deny site access, Respondent shall inform the Department within 48 hours.

3. Within 14 days of the date of this order, Respondent shall employ an operator to operate the community water system and shall notify the Department of the operator's name.

4. Within 30 days of the date of this Order, Respondent shall comply with rule 62-555.350(6), which requires suppliers of water to maintain a minimum 0.2 milligrams per liter of free chlorine residual throughout the distribution system and shall demonstrate such compliance to the Department.

5. Within 30 days of the date of this Order, Respondent shall collect samples and submit to the Department results for total coliform, nitrate, nitrite, primary inorganics contaminants, secondary contaminants, volatile organic contaminants, and synthetic organic contaminants.

6. Within 30 days of the date of this Order, Respondent shall submit to the Department monthly operation reports from April 2013 to date.

7. Within 30 days of the date of this Order, Respondent shall pay \$10,000 to the Department for the assessed penalties. Payment shall be made by cashier's check or money order payable to "State of Florida Department of Environmental Protection" and shall include thereon "OGC No. 13-1453" and the notation "Ecosystem Management and Restoration Trust Fund."

8. Within 10 days of the date of this Order, Respondent shall pay \$530 to the Department for its investigative costs. Payment shall be made by cashier's check or money order payable to "State of Florida Department of Environmental Protection" and shall include thereon "OGC No. 13-1453" and the notation "Ecosystem Management and Restoration Trust Fund."

DONE AND ORDERED this 2nd day of December, 2014, in Tallahassee, Leon County, Florida.



BRAM D. E. CANTER
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 2nd day of December, 2014.

COPIES FURNISHED:

Jeffrey M. Hill
908 Southeast Country Club Road
Lake City, Florida 32025

Janet M. Tashner, Esquire
Department of Environmental Protection
Mail Station 35
3900 Commonwealth Boulevard
Tallahassee, Florida 32399
(eServed)

Clifford D. Wilson, III, Interim Secretary
Department of Environmental Protection
Mail Station 35
3900 Commonwealth Boulevard
Tallahassee, Florida 32399
(eServed)

Matthew Z. Leopold, General Counsel
Department of Environmental Protection
Mail Station 35
3900 Commonwealth Boulevard
Tallahassee, Florida 32399
(eServed)

Lea Crandall, Agency Clerk
Department of Environmental Protection
Mail Station 35
3900 Commonwealth Boulevard
Tallahassee, Florida 32399
(eServed)

NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing the original notice of administrative appeal with the agency clerk of the Division of Administrative Hearings within 30 days of rendition of the order to be reviewed, and a copy of the notice, accompanied by any filing fees prescribed by law, with the clerk of the District Court of Appeal in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law.