

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

In the Matter of the Public Water System of:	)	
	)	Docket No. 01-08-C-1084DW
	)	
JOHANSON WATER SYSTEM,	)	FINDINGS OF FACT,
Kitsap Co. ID# 36782F,	)	CONCLUSIONS OF LAW
	)	AND FINAL ORDER (Waiver
Respondent.	)	of Hearing)
_____	)	

This matter came before Health Law Judge Arthur E. DeBusschere, Presiding Officer for the Department of Health. Richard A. McCartan, Assistant Attorney General, appears and represents the Division of Drinking Water of the Department of Health (the Division). Bill Randles is President of Gamble Bay Water Company, which owns and/or operates the Johanson Water System (the Respondent).

**I. PROCEDURAL FINDINGS**

1.1 On August 27, 2001, the Division filed a Notice of Imposition of Penalties, Docket No. 01-020, signed on August 23, 2001. The Respondent was penalized the sum of \$2,880.00.

1.2 On September 21, 2001, the Respondent filed a Request for Adjudicative Proceeding. The Respondent stated that he would not be represented by an attorney. The Respondent waived his right to a formal hearing. The Respondent attached three exhibits:

Respondent's Exhibit No. 1: A statement entitled "Request for Adjudicative Proceeding," dated September 17, 2001 (one page).

Respondent's Exhibit No. 2: Whiteley Engineering, Inc., Work Order, dated February 15, 2001 (two pages).

Respondent's Exhibit No. 3: Whiteley Engineering, Inc, Johanson Water System, Engineering Cost Estimate, dated February 15, 2001 (one page).

1.3 On November 1, 2001, the Adjudicative Clerk Office sent a letter to the Respondent informing him that a Scheduling Order/Notice of Hearing was issued to him in error, because he had waived his opportunity for a hearing and his case would be resolved without his further participation. He was notified that a copy of the Findings of Fact, Conclusions of Law and Final Order (Waiver of Hearing) would be served upon him. Thus, the prehearing conference, set for January 9, 2002, and the hearing set for February 7, 2002, was canceled.

1.4 On January 11, 2002, the Division filed a Memorandum Supporting NOI (Notice of Imposition of Penalties) and attached three exhibits in support.

Division's Exhibit No. 1: State Health Order, Johanson Water System, Kitsap County, Docket No. 01-012, March 23, 2001 (9 pages).

Division's Exhibit No. 2: Notice of Imposition of Penalties, Johanson Water System, Kitsap County, Docket No. 01-012, ACO Docket No. 01-08-C-1084DW, August 23, 2001 (5 pages).

Division's Exhibit No. 3: Division of Drinking Water Policy/Procedure (6 pages).

1.5 On January 15, 2002, the Division filed an Amended Memorandum Supporting NOI.

1.6 On February 20, 2002, the Presiding Officer issued an "Order Providing Notice of Waiver of Hearing." The Presiding Officer ordered that since the Respondent

has elected to waive his opportunity for a hearing, the Presiding Officer shall issue by April 15, 2002, a final order based upon the filed documents and legal memorandums.

## II. FINDINGS OF FACT

2.1 Johanson Water System, Kitsap County, is owned and operated by Gamble Bay Water Company, a Washington Corporation. Bill Randles is the President of Gamble Bay Water Company and the registered agent for Johanson Water System. Johanson Water System provides water for about 40 households and is classified as a Group A water system.

2.2 The State Health Order, Docket No. 01-012, was served on or about March 23, 2001. In the State Health Order, the Department notified the Respondent of his responsibilities as a purveyor, notified the Respondent of his failure to comply with rules and statutes regulating public drinking water systems, and ordered the Respondent to take actions to be in compliance. The State Health Order ordered the Respondent to do 14 separate actions, listed as Paragraphs 2.1 through 2.14 in the State Health Order:

- Paragraph 2.1: Produce a letter report to supply emergency water,
- Paragraph 2.2: Implement the plan to supply emergency water,
- Paragraph 2.3: Produce a project report for the new well and water system,
- Paragraph 2.4: Submit construction documents,
- Paragraph 2.5: Employ professional engineer,
- Paragraph 2.6: Install facilities,
- Paragraph 2.7: Sample for nitrate contamination,
- Paragraph 2.8: Monitor for radionuclides,
- Paragraph 2.9: Use Department approved methods,

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- Paragraph 2.10: Submit a revised WFI Form,
- Paragraph 2.11: Submit water system plan,
- Paragraph 2.12: Stop construction, modification, or expansion,
- Paragraph 2.13: Maintain system water pressure, and
- Paragraph 2.14: Notify consumers.

2.3 The Notice of Imposition of Penalties, Docket No. 01-012, was issued on or about August 23, 2001. In Paragraph 2.4 of the Notice of Imposition of Penalties, there were findings that the Respondent failed to comply with the following Paragraphs of the State Health Order:

- Paragraph 2.3: Produce a project report for the new well and water system,
- Paragraph 2.4: Submit construction documents,
- Paragraph 2.5: Employ professional engineer,
- Paragraph 2.6: Install facilities,
- Paragraph 2.12: Stop construction, modification, or expansion,
- Paragraph 2.14: Notify consumers.

For its failure to comply with the State Health Order, the Respondent was penalized in the sum of \$2,880.00. Division's Exhibit No. 2.

2.4 In the Respondent's Request for Adjudicative Proceeding, the Respondent did not contest that he failed to comply with the following Paragraphs of the State Health Order:

- Paragraph 2.3: Produce a project report for the new well and water system,
- Paragraph 2.4: Submit construction documents,
- Paragraph 2.6: Install facilities,
- Paragraph 2.12: Stop construction, modification, or expansion,
- Paragraph 2.14: Notify consumers.

For the Respondent's failure to comply with these orders, the penalty assessment was \$2,340.00. The penalty assessment was in compliance with the Division of Drinking Water Policy/Procedure, Penalty Formula. Division's Exhibit No. 3.

2.5 The Respondent, however, denied that he failed to comply with Paragraph 2.5 of the State Health Order. In Paragraph 2.5 of the State Health Order, the Respondent was required to employ a professional engineer. The construction documents and project reports were to be prepared under the direction, and bear the seal and signature of a professional engineer licensed in the state of Washington. The engineer was required to have specific expertise regarding design, operation, and maintenance of public water systems. The Respondent was ordered to provide by April 2, 2001, documentation to the Division that a qualified engineer has been retained to prepare the required documents.

2.6 In the Notice of Imposition of Penalties (Docket No. 01-020), it was reported that as of August 21, 2001, no documents have been submitted proving that a professional engineer has been hired. Division's Exhibit No. 2, page 3 of 5. For Respondent's failure to comply with Paragraph 2.5 of the State Health Order, the Notice of Imposition of Penalties assessed a fine in the amount of \$360.00.

2.7 The engineering cost estimate was for Johanson Water System and was dated February 15, 2001. Respondent's Exhibit No. 3. This document corresponds with the work order from Whiteley Engineering System, Inc., which addressed engineering services for the Johanson Water System replacement source project. The work order was also dated February 15, 2001. Respondent's Exhibit No. 2. The

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Presiding Officer finds that the Respondent had documentation that on February 15, 2001, a qualified engineer has been retained to prepare the required documents.

### **III. CONCLUSIONS OF LAW**

3.1 The Presiding Officer shall consider the filed documents and memorandums and prepare a Findings of Fact, Conclusions of Law and Final Order (Waiver of Hearing), which shall be served upon the parties. WAC 246-10-605. Further, a respondent may waive an adjudicative proceeding and submit a written statement and other documents in defense or in mitigation of the charges. WAC 246-10-203(2).

3.2 In this case, the Respondent waived his opportunity for a hearing and has submitted a written statement and documents in defense. The Presiding Officer concludes that this matter shall be heard without further participation by the Respondent.

3.3 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. In this case, the Department filed a Memorandum Supporting NOI and attached supporting documents. In waiving his opportunity for a hearing, the Respondent filed supporting documents.

3.4 The Department of Health, Division of Drinking Water, has jurisdiction over Johanson 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 Chapter 70.119 RCW (Operators) and Chapter 70.119A RCW (Penalties and Compliance). The regulations adopted by the Department of Health are contained in chapter 246-290 WAC.

3.5 In this case, Johanson Water System is a "public water system," serving 40 households in Kitsap County. RCW 70.119A.020(4). Johanson Water System is classified as a Group A community water system. WAC 246-290-020. Bill Randles is the "purveyor." WAC 246-290-010.

3.6 The Department has authority to issue a State Health Order notifying the Respondent of his failure to comply with rules and regulations for a public water system. RCW 43.05.030. RCW 43.05.040. In this case, the Department of Health issued a State Health Order, directing the Respondent to undertake corrective action within certain time periods to bring the water system into compliance.

3.7 The Division may impose penalties for failure to comply with an order of the Division, when the order requires a purveyor to cease violating any regulation pertaining to public water systems or to take specific actions within a specified time to place a public water system in compliance with such regulations. RCW 70.119A.030. The amount of the penalty shall be not more than \$5,000 per violation, per day. RCW 70.119A.040(1). The amount of the fine shall reflect the health significance of the violation and the purveyor's previous record of compliance. Id.

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3.8 In this case, the Division issued a Notice of Imposition of Penalties (Docket No. 01-020) for the Respondent's failure to comply with the State Health Order. The Respondent was penalized in the sum of \$2880.00.

3.9 The rules address the requirements for responding to the initiating documents:

(d) The application for adjudicative proceeding shall contain a response to the initiating documents, indicating whether each charge is admitted, denied, or not contested, and responses shall be subject to the following conditions: (i) [o]nce admitted or not contested, an allegation may not be denied; and (ii) [a]n allegation denied or not contested may later be admitted.

(e) When an allegation is admitted or not contested, it shall be conclusively deemed to be true for all further proceedings. No proof of the allegation need be submitted.

WAC 246-10-203(1)(d)&(e).

3.10 In this case, the Respondent filed an application for adjudicative proceeding responding to the Notice of Intent. The Respondent did not contest the following Paragraphs of the State Health Order: 2.3, 2.4, 2.6, 2.12 and 2.14. The Presiding Officer concludes that these paragraphs shall be deemed true and no proof of the allegation needed to be submitted by the Division. The Presiding Officer concludes that the Respondent failed to comply with Paragraphs of the State Health Order: 2.3, 2.4, 2.6, 2.12 and 2.14. Thus, the Presiding Officer concludes that the penalty assessments, in the amount of \$2,340.00 for Respondent's failure to comply with Paragraphs 2.3, 2.4, 2.6, 2.12 and 2.14 of the State Health Order should be affirmed. WAC 246-290-050(6).

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3.11 Next, the Presiding Officer considered the assertions of the parties regarding the Respondent's failure to comply with Paragraph 2.5 of the State Health Order. The Division asserted that if this matter went to hearing, the Department officials would have testified that Mr. Randles failed to notify the Department of employment of a professional engineer as of August 21, 2001, when the Department issued the Notice of Imposition of Penalties. In the Request for Adjudicative Proceeding, the Respondent denied Paragraph 2.5 and provided documentation that he received a cost estimate from a professional engineer.

3.12 Based upon the Findings of Facts above, (Paragraphs 2.5 through 2.7), the Presiding Officer concludes that the Division failed to prove by a preponderance of the evidence that the Respondent did not provide documentation that it had employed a professional engineer as order in Paragraph 2.5 of the State Health Order. Thus, the penalty assessment for Respondent's failure to comply with Paragraph 2.5 of the State Health Order in the amount of \$360.00 should be reversed.

#### **IV. DECISION AND ORDER**

Based on the above Procedural History, Findings of Fact and Conclusions of Law, the Presiding Officer hereby ORDERS that the Notice of Imposition of Penalties (Docket No. 01-020) in the above reference matter is AFFIRMED, in part, and is REVERSED, in part; accordingly,

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4.1 The Notice of Imposition of Penalties (Docket No. 01-020) for Respondent's failure to comply with Paragraphs 2.3, 2.4, 2.6, 2.12 and 2.14 of the State Health Order in the amount of \$2,340.00 is AFFIRMED;

4.2 The Notice of Imposition of Penalties (Docket No. 01-020) for Respondent's failure to comply with Paragraph 2.5 of the State Health Order in the amount of \$360.00 is REVERSED.

**V. NOTICE TO PARTIES**

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, PO 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.

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