

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

In the Matter of the Public Water	)	
System of:	)	Docket No. 00-11-C-1018DW
	)	Docket No. 00-032
SHAMROCK TRAILER COURT,	)	
THURSTON COUNTY,	)	FINDINGS OF FACT,
ID# 778059,	)	CONCLUSIONS OF LAW,
	)	AND FINAL ORDER
Respondent.	)	
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A hearing in this matter was held before Health Law Judge Arthur E. DeBusschere, Presiding Officer for the Department of Health, on July 5, 2001, at Department of Health, Conference Room 5, 1101 Eastside Street, Olympia, Washington. Lilia Lopez, Assistant Attorney General, represented the Department of Health, Division of Drinking Water (the Division). R. Kent Gardner, Attorney at Law, represented Mary C. Davis, Shamrock Trailer Court (the Respondent). Jean Ericksen, court reporter, recorded the proceedings.

**I. PROCEDURAL HISTORY**

1.1 On or about November 13, 2000, the Division served upon the Respondent a Notice of Imposition of Penalties (Notice of Penalties). The Notice of Penalties stated that the Respondent was being penalized the sum of six thousand dollars (\$6,000.00), because of the Respondent's failure to comply with an Order issued by the Division on August 7, 2000.

1.2 On December 11, 2000, the Respondent filed a Request for Adjudicative Proceeding (Respondent's Answer) denying the allegations and requesting a hearing. The Respondent attached documentation in support of her Answer.

1.3 On December 21, 2000, the Adjudicative Clerk Office served upon the parties a Scheduling Order/Notice of Hearing scheduling a prehearing conference for March 27, 2001, and the hearing for May 1, 2001.

1.4 On March 23, 2001, the Division filed a Prehearing Statement (Division's Prehearing Statement) and attached its exhibits, Division's Exhibits 1-16.

1.5 On March 23, 2001, the Respondent filed a letter from Peter J. Davis and Mary C. Davis to Bill Liechty, dated March 22, 2001.

1.6 On March 26, 2001, the Respondent filed a Prehearing Conference Statement (Respondent's Prehearing Statement) and attached its exhibits, Respondent's Exhibits Nos. 1-7.

1.7 On March 27, 2001, the Presiding Officer conducted a prehearing conference to review matters in preparation for the hearing scheduled for May 1, 2001. The issues were identified along with the witness and exhibits. Prehearing Order No. 1.

1.8 The Presiding Officer granted the Division's Motion for Continuance continuing the hearing to July 5, 2001. Prehearing Order No. 2.

1.9 During the hearing, the Presiding Officer heard testimony from the witnesses and considered the admitted exhibits. For the Division's case, the following four witnesses testified: Hoey Richard, Mark Toy, Karen Klocke, and John Aden. The Division offered 16 exhibits that were admitted. These exhibits were identified in the

Division's Prehearing Statement, filed March 23, 2001, Section VII, pages 3-5, Paragraphs 1-16. For the Respondent's case, the following two witnesses testified: Mary C. Davis and Peter John Davis. The Respondent offered 13 exhibits that were admitted. The Respondent's Exhibits Nos. 1-7 were identified in the Respondent's Prehearing Statement, filed March 26, 2001, Section V, pages 3-4, Paragraphs 1-7. The Respondent's Exhibits Nos. 8-13 were offered and admitted at the hearing:

- Respondent's Exhibit No. 8: Overview Photo of Shamrock Trailer Court.
- Respondent's Exhibit No. 9: Income Tax Return, Form 1041, Mary C. Davis, 2000.
- Respondent's Exhibit No. 10: Water Facilities Inventory, Shamrock Trailer Court
- Respondent's Exhibit No. 11: Well Water Report, Well Log ID: 27367, dated January 25, 1988.
- Respondent's Exhibit No. 12: Amateur's Description of Soil.
- Respondent's Exhibit No. 13: Metroscan, Thurston County Profile, re: parcels 11815121001 and 11815121000.

On July 5, 2001, Mr. Gardner also filed a Memorandum of Respondent.

1.10 As ordered by the Presiding Officer, post hearing briefs were filed. On July 20, 2001, the Division filed a Response to Memorandum of Respondent. On July 26, 2001, the Respondent filed Memorandum of Respondent.

## **II. FINDINGS OF FACT**

2.1 Shamrock Trailer Court is a public water system in Thurston County, Washington, owned and operated by Mary C. Davis (the Respondent), whose address is 6814 Martin Way, Olympia, Washington.

2.2 On January 28, 1997, the Division notified the Respondent that there had been complaints about the water quality. There had been reported sand and dirt in the water. This had been an on-going problem for many years. The Respondent was also notified that it was classified as a Group A Community Water System. The Thurston County Health Department reported that the Respondent served at least 17 connections. This exceeded the 12 connections that were reported on the Respondent's most recent Water Facility Inventory. The Division also notified the Respondent that its water system has not been approved by the Division and based upon this lack of an approval and the Respondent's failure to meet the Department of Health Drinking Water Regulations, the Respondent's water system was considered to be "inadequate." The Respondent was also notified of her obligation to perform active monitoring for water quality, such as monthly coliform monitoring. Division's Exhibit No. 16.

2.3 In a letter, dated February 26, 1997, the Division reported to the Respondent that the her water system was reverted back to a Group B Community Water System. This was based upon the information provided by the Respondent that it had 13 active water connections. The Respondent also installed a "sand trap" to address the water quality complaints. Division's Exhibit No. 15. Respondent's Exhibit No. 6.

2.4 In a letter, dated March 17, 1997, the Division reported to the Respondent that her water system was changed back to a Group A Community Water System. The Thurston County Health Department reported that Shamrock Trailer Court was

designed to serve 17 connections and thus should be classified as a Group A.

Mr. Craig Downs from the Division visited Shamrock Trailer Court on March 12, 1997, and found 14 active residential connections. The Respondent was notified that her water system would remain classified as a Group A Community Water System, unless she provided assurance to the Thurston County Health Department that she would not ever serve more than 14 service connections. Division's Exhibit No. 14.

2.5 By letter, dated May 19, 1997, the Thurston County Public Health and Social Services Department notified the Respondent that her water system was considered a Group A Community Water System and was regulated by the Division. She was encourage to contact the Division regarding scheduling a comprehensive system evaluation and requirements for operation. The Respondent was also notified of her need to have an adequate isolation area around the wells. Division's Exhibit No. 13.

2.6 By letter, dated December 23, 1997, the Thurston County Public Health and Social Services Department notified the Respondent that her water system was surveyed on December 15, 1997. It was found that she still had 15 connections and would remain a Group A Community Water System. The Respondent was advised that given the availability of city water and her difficulty of meeting the requirements for well isolation, her best option for having a safe source of drinking water would be to connect to city water. Division's Exhibit No. 12.

2.7 On March 13, 1998, the Respondent was served with a Notice of Violation for her failure to adequately monitor for coliform bacteria from April 1997 through

February 1998. The Respondent was now classified as a significant non-complier (SNC) and was required to retain a certified water works operator. Division's Exhibit No. 11.

2.8 On March 27, 1998, Michael A. Davis signed a Bilateral Compliance Agreement Shamrock Trailer Court Water System and Washington State Department of Health. The Respondent agreed, along with other conditions, to monitor bacteriological quality a minimum of once per month from representative points in the distribution system. Division's Exhibit No. 10.

2.9 By letter, dated January 6, 1999, the Division notified the Respondent that no adequate planning and engineering documents have ever been received and approved for her water system. The Respondent was also notified that this out of compliance status would result in a red operating permit designation unless appropriate action was taken. Division's Exhibit No. 9.

2.10 By letter, dated July 26, 1999, the Division notified the Respondent that she was classified as a Group B Community Water System and that her water system would be operated by the Thurston County Health Department unless it reaches Group A status. Division's Exhibit No. 8. Respondent's Exhibit No. 5.

2.11 In a letter, dated May 18, 2000, Richard T. Hoey, Department of Health, notified the Respondent that on May 15, 2000, he met with Michael Davis and inspected Shamrock Trailer Court Water System. The inspection was a result of several complaints made related to low pressure, water outage and inadequate water service. Mr. Hoey was informed that approximately 35 persons were residing within the

trailer court. Given that there are more than 25 people residing on the water system, Shamrock Trailer Court was reclassified as a Group A Community Water System. The Respondent was notified that her water system was considered in “substantial non-compliance” and has been placed in the RED operating permit category. Division's Exhibit No. 7.

2.12 On May 18, 2000, the Respondent was also reminded that its well has never been approved and was located near sources of contamination. The Respondent was notified that pursuant to WAC 246-290-135, all public water supply wells must be located at least 100 feet from any potential source of contamination. The Respondent was notified that pursuant to WAC 246-290-130(1), “[e]very purveyor shall obtain drinking water from the highest quality source feasible.” The Division stated that in its opinion, the highest quality source feasible was the extension of the City of Lacey water supply and that this supply was just outside the Shamrock Trailer Court property. Division's Exhibit No. 7.

2.13 On June 3, 2000, the Respondent notified Mr. Hoey by letter that Shamrock Trailer Court has 27 residents and 10 trailers. The Respondent also stated that she did “fix the water.” Division's Exhibit No. 6.

2.14 In a letter, dated June 15, 2000, Mr. Hoey for the Division informed the Respondent that since 25 or more people reside in the park, the Shamrock Trailer Court was classified as a Group A Community Water System. He stated that even though the Respondent maintained that she has fixed the water problem, there have been new complaints from residents regarding of low water pressure and manganese

sludge (black water). He stated that the water system at Shamrock Trailer Court was unapproved and considered to be in substantial non-compliance. Division's Exhibit No 5.

2.15 In the letter, dated June 15, 2000, Mr. Hoey also informed the Respondent that the well serving the trailers does not have the required 100-foot setback from potential sources of contamination and thus could not be approved. He stated that a new source of water must be obtained, that the requirement to extend water service from the City of Lacey remains, and that this connection must be made no later than December 31, 2000. Division's Exhibit No. 5.

2.16 In a letter, dated June 22, 2000, Mr. Hoey notified the Respondent that he had found that Shamrock Trailer Court water system was out of water on June 22, 2000, and most of June 21, 2000. He stated that water outages provide an avenue for contaminants to enter the system due to low or non-existing pressure. The Respondent was required to take appropriate action, including flushing the system, collecting adequate number of coliform samples, notifying the customers when the water was safe to drink, and reporting to the Division how the water was restored. Division's Exhibit No. 4.

2.17 On August 7, 2000, the Division issued a departmental Order (Order), Docket No. 00-24, to Mary C. Davis as purveyor of the Shamrock Trailer Court public water system. The Order listed violations of duty regarding a Group A Community Water System pursuant to chapter 246-290 WAC. The Order directed the Respondent

to take specific actions. The Order set forth those specific actions in Paragraphs 2.1 through 2.10, which are paraphrased as follows:

- Order 2.1 Within 10 days, notify consumers that drinking water had not been adequately monitored for coliform bacteria.
- Order 2.2 Within 15 days, submit a revised WFI (Water Facilities Inventory) Form
- Order 2.3 Within 20 days, employ a professional engineer.
- Order 2.4 Within 45 days, produce an engineering project report.
- Order 2.5 Within 45 days, submit construction documents
- Order 2.6 Within 90 days, have in place and operating all facilities and improvements outlined in the approved project report and have submitted a construction report.
- Order 2.7 Within 90 days, have obtained approved source of water.
- Order 2.8 Stop construction, modification, or expansion unless having written approval.
- Order 2.9 Maintain system water pressure.
- Order 2.10 Within 30 days, notify to all customers of Shamrock Trailer Court water system that “you” have been issued this Departmental Order for failure to comply with all the provisions of chapter 246-290 WAC.

(hereinafter Paragraphs 2.1 through 2.10 of the Order shall be identified as Order 2.1, Order 2.2, etc.) The Order notified the Respondent that the Division might impose civil penalties on a per day basis of up to five thousand dollars (\$5,000.00) per violation.

Division's Exhibit No. 1.

2.18 On November 13, 2000, the Division issued a Notice of Imposition of Penalties (Notice of Penalties), Docket No. 00-032, to the purveyor and assessed a penalty in the amount of \$6,000, because the Respondent failed to comply with the Order. That is, there was a penalty assessment of \$900 per Order for the

Respondent's failure to comply with Orders 2.1, 2.5, 2.6, 2.7 and 2.10, totaling \$4500. There was a penalty assessment of \$600 per Order for the Respondent's failure to comply with Orders 2.3 and 2.4, totaling \$1200. There was a penalty assessment of \$300 for the Respondent's failure to comply with Order 2.2. There was no penalty assessment for Order 2.8 and Order 2.9. Division's Exhibit No. 3.

2.19 Mary C. Davis, the Respondent, testified that she remembers receiving the Division Order, dated August 7, 2000. Division's Exhibit No. 1. She maintained that she has complied with all the requirements asked of her. She bought the land with her husband in 1949. Her husband passed away in 1986 and she has continued to live in a house on the property. Her son, Peter Davis, lives with her in the house and he helps her maintain the mobile home park. In the past, Peter Davis has worked with his brother Michael, but not anymore. There is a conflict between them and Michael has a protection order between himself and his brother. Michael Davis, is married and lives on the opposite end of the property with his wife and four children. Michael Davis is co-trustee of the land with the Respondent.

2.20 The Respondent maintained that Shamrock Trailer Court was Group B Community Water System. She and her son, Peter Davis, testified that Phil Brinker, who was from the Thurston County Health Department, informed them that if they had fewer connections, then they could be a Group B. So, the Respondent closed down two trailer connections. The Respondent maintained that there was no mention from Mr. Brinker regarding the number of persons that could reside on the park for a Group B water system. The Respondent maintained that only after Michael Davis

called and complained, that Shamrock Trailer Court was classified as a Group A Community Water System based upon the number of persons residing there.

2.21 The Respondent testified that there were two wells on the property when she and her husband bought the property. One well was 75 feet deep and the other was 45 feet deep. They are no longer in use. In 1988, she contracted with the Kings Brothers to drill the third well, identified as SO3 well. Respondent's Exhibit No. 11. She understood that King Brothers took care of everything and she assumed they obtained all the permits. After the SO3 Well was dug, the water was checked and she was informed that the water was fine. For a while she had to send her water to Seattle to be checked. Afterwards, she understood that she needed to check her water once a year. The Respondent maintained that she has taken the water samples when she was asked to do it.

2.22 The Respondent was asked about her compliance with the Order. She testified that she did not remember telling her tenants that the coliform testing was not being done on a monthly basis. She did not remember completing any WFI forms, but that her daughter may have recently filled one out. She remembered that she hired an engineer. She thought the engineer would tell her that she could keep her well, but that was not the case. She was informed that if she dug this old well out, it would cost you just as much to connect with city water. The engineer had told her that she needed water and needed to go immediately to the City of Lacey water system. The Respondent paid for the engineer's costs and the additional amount that she paid was sent to the City of Lacey.

2.23 She maintained that the water from her SO3 Well is safe and the required sanitary control area (SCA) of 100 feet is not necessary. In her opinion, the water from her well is the highest quality source feasible. She stated that she has been drinking her well water since 1949 and raised all her children on the water. Now that her son Peter has put in the new pipes, she maintained that the water problems have been taken care of. She stated that the tenants receive plenty of water and good water pressure. The Respondent maintained that she could not afford to connect with city water.

2.24 Peter Davis testified that since 1988 there have problems with sediment and water pressure, but in 1997, it became more noticeable than before. At that time, there were two wells providing water to 17 trailer units. They thought it was older well that was the problem, and so they disconnected it. Then they continued to have pressure problems and so his mother called John's Plumbing and, in April 2000, they put in three new pressurized holding tanks. During the spring of 2001, Peter Davis replaced the pipes on the water line. During the hearing he showed the old one-inch pipes and the new one and one-fourth inch pipes that he used to replace them. Peter Davis pointed to the corrosion that was inside the old pipes. He testified that after replacing the pipes and having the pressurized holding tanks, the water pressure problem has been taken care of.

2.25 Richard Hoey has been employed by the Division for over nine years. Mr. Hoey had been working as a Regional Engineer. He was an inspector of the

drinking water systems and is licensed as a professional engineer in Washington.

Mr. Hoey is familiar with the Shamrock Trailer Court water system.

2.26 In January 1999, Mr. Hoey notified the Respondent that SO3 Well had been constructed without state or local approval. The Respondent was given an opportunity to respond, to show that it had been approved and the opportunity to go through the approval process. Division's Exhibit No. 9. Mr. Hoey testified that every water system should obtain drinking water from the highest water quality source feasible, which for this case is the City of Lacey water system that is readily available just outside the property. He stated that the Respondent's SO3 Well must have an adequate SCA setback from sources of contamination, which in the case of a well is 100 feet. This is to prevent contamination from bacterial and viral sources.

2.27 Mr. Hoey also testified that the setback area could be smaller if sufficient engineering justification was provided. That is, one would have to show that the well, based upon its construction and geology, has a low susceptibility to contamination and that the sources of contamination around the well have been mitigated to the highest extent. Mr. Hoey testified that the Respondent provided no justification for a smaller setback area than the required 100 feet for the SO3 Well.

2.28 Mark Toy is a Regional Engineer for the Division. Mr. Toy replaced Mr. Hoey and was also familiar with the Shamrock Trailer Court. Mr. Toy agreed with Mr. Hoey's opinion that the City of Lacey water is the highest quality source of drinking water feasible. Further, Mr. Toy also agreed with Mr. Hoey that there was no information provided to justify a reduction of the SCA. He testified that there are tests

to allow reduction of the SCA. However, in this case and from his review of SO3 Well Log, the tests do not demonstrate that the SCA could be reduced. He also stated that from the well report, he could not establish a low susceptibility for contamination by means of the well's surface seal.

2.29 In response to the construction completed by Peter Davis in the spring of 2001, Mr. Toy testified that the underlying problem remains. The constriction of the water line was caused in part or whole by the high level manganese which would continue to create sediment in the pipes. The well report, when the well was first drilled, showed high levels of manganese and iron in the water. That has not been corrected and there would still be complaints about the water quality and pressure.

2.30 The Presiding Officer finds that the Respondent has failed to maintain around the SO3 Well a SCA. Within 100 feet of the well, which is the SCA, there are a number of trailers and sewage drain lines. The well is located just outside trailer number 7, which belongs to Michael Davis. There is a septic tank on the lower left-hand corner of the property. There are gravity sewer drain lines feeding off of all the trailers going to the septic tank and these sewer lines are within the SCA. About half of the trailers are located within the SCA.

2.31 Further, the Presiding Officer finds that there was no sufficient engineering justification to support a smaller surface SCA. Mr. Hoey testified that the Respondent's well was classified as an unconfined well. Both Mr. Hoey and Mr. Toy testified that the Respondent's SO3 Well did not comply with tests that would allow reduction of the SCA.

2.32 The Presiding Officer finds that the purveyor has failed to obtain drinking water from the highest quality source feasible. In this case, the water from the Lacey City Water Line is the highest quality source of drinking water feasible. The Respondent's SO3 well was constructed and is operating without state and local approval required under WAC 246-290-130. The well is operating without an adequate SCA. The well contains high levels of manganese and iron, which will continue to cause problems of staining, turbidity and constriction in the pipes. The Respondent has been repeatedly notified by correspondence that her well had not been approved and that the Respondent needed to submit appropriate documentation for approval.

2.33 Mr. Toy also testified that he was familiar with the Notice of Penalties served upon the Respondent in November 2000. Since the Order was issued, Mr. Toy has discussed the Order with the Respondent and members of her family. Mr. Toy testified that the Respondent has not complied with the Order. He stated that since June of 2000, the Respondent began to take coliform samples. Respondent's Exhibit No. 4.

2.34 The Order required the Respondent to submit a revised WFI (Water Facilities Inventory) Form. The purveyor is required to submit a WFI Form annually, but it could be submitted more often. The purpose is to maintain accurate information on the water system regarding a contact person, a telephone number, and population information in case there is an emergency. The Division relies on the purveyor to provide this information on the population served. Mr. Toy testified about two WFI Forms offered by the Respondent to show compliance. One WFI Form provided had a

computer printed "date updated" date of "03/13/01." This WFI Form reported 13 connections and 35 residential population. Respondent's Exhibit No. 3. The second WFI Form provided by the Respondent was a computer printed "date updated" date of "5/17/00." This WFI Form reported 13 connections and 35 residential population. However, the Respondent updated this WFI Form on February 7, 2001. The Respondent's updated report showed 13 connections and a residential population of 24. Mr. Toy testified that he had not seen this exhibit until the day of the hearing, but that the Division would accept it with respect to the Respondent's requirement to submit an updated WFI Form. Respondent's Exhibit No. 10. Thus, the Division agreed that the Respondent has complied with Order 2.2.

2.35 The Presiding Officer finds that from May 15, 2000, to November 13, 2000, that there were at least 25 persons using Shamrock Trailer Court water system. On May 15, 2000, Mr. Hoey inspected Shamrock Trailer Court and found that approximately 35 persons were using the water system. He notified the Respondent of this finding and that Shamrock Trailer Court was classified as a Group A Community Water System. Division's Exhibit No. 7. The WFI confirmed this finding. Respondent's Exhibit No. 3. The updated WFI on February 7, 2001, show 24 residents using the water system. Respondent's Exhibit No. 7. This WFI was updated after the Notice of Penalties was issued on November 13, 2000. Finally, the Respondent's testimony was consistent with the updated WFI. She testified that she had presently 13 connections and 22 persons using the water system. However, on cross-examination, she testified that two trailers had recently become empty and those two trailers together had five

residents. Also on cross-examination, the Respondent confirmed that her letter to the Division, dated June 3, 2000, was correct. It stated that Shamrock Trailer Court had 27 residents using the water system. Division's Exhibit No. 6.

2.36 Mr. Toy testified that in February of 2001, the Division received from the Respondent a project report and construction documents for hooking up with the City of Lacey. They were forwarded to the city that could review them and approve them based upon their own construction standards. These reports and documents entailed the hiring of a professional engineer; that is, the submittal of the project report or construction documents were drafted by an engineer from Hatton Godat Pantier, Inc. Respondent's Exhibit No. 1. As a result of the Respondent's contracting with this engineering firm, the Division agreed that the Respondent has complied with Orders 2.3 (employ a professional engineer), Order 2.4 (produce an engineering project report) and 2.5 (submit construction documents).

2.37 Mr. Toy testified, however, that the Respondent has failed to have in place and operating all necessary improvements that were outlined in the project report (Order 2.6). He also testified that the Respondent has failed to obtain drinking water from the highest quality source feasible, which is the City of Lacey water service. (Order 2.7). Mr. Toy testified that installation of the needed improvements by hooking-up to City of Lacey water would resolve Orders 2.6 and 2.7. So the Division agreed that they would consider Order 2.6 and Order 2.7 as one Order and one violation.

2.38 Karen Klocke is the compliance manager for the Division. She works with the engineers to monitor water systems and to bring non-compliance systems into

compliance. She writes notices of violations, compliance agreements, and Division orders. Ms. Klocke prepared the Notice of Penalties for the Shamrock Trailer Court.

2.39 Ms. Klocke testified that there has been no submission of information to verify that the consumers had been notified the drinking water at Shamrock Trailer Court had not been adequately monitored for coliform bacteria (Order 2.1). She also testified that there has been no submission of information to verify that the Respondent had notified her water customers that she had been issued the departmental Order for failure to comply with all provisions of chapter 246-290 WAC (Order 2.10).

2.40 Ms. Klocke testified how the penalty was assessed against the Respondent. The penalty was calculated pursuant to a Division policy that took into account the degree of health risk (Factor A), the previous record of compliance (Factor B), and the size of the population served (Factor C). The factors were assigned a number in accordance with lists described in the Division's policy. Division's Exhibit No. 3. Once the numbers are calculated for Factors A, B and C, the Division assigned the factors a dollar amount pursuant to a penalty formula. Division's Exhibit No. 2. In determining penalties, the Division used the WFI Form on file that showed that Shamrock Trailer Court with 13 connections and 35 population. It was a Group A Community Water System.

2.41 The Presiding Officer finds that the penalties assessed against the Respondent were within the Division's policy guidelines. Under the Division's policy for Factor A, Shamrock Trailer Court was assigned a penalty value, because the Respondent's violation represented a very high public health risk. Under the Division's

Policy for Factor B, Shamrock Trailer Court was assigned a penalty value because of contact by the staff with the owners, because of complaints received on record, and because of seven (7) major monitoring violations within the past two years. Under the Division's Policy for Factor C, Shamrock Trailer Court was assigned a penalty value, because it was a Group A Community Water System. Division's Exhibit No. 2, pages 5-11 & 5-12. Under the Division's policy guidelines, the Respondent was penalized nine hundred dollars (\$900) per Order for her failure to comply with Order 2.1 and Order 2.10, totaling eighteen hundred dollars (\$1800). Finally, the penalty assessment of nine hundred dollars (\$900) for the Respondent's failure to comply with Orders 2.6 and 2.7 was within the Division's policy guidelines. Division's Exhibit No. 3.

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

3.1 The Presiding Officer 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.

3.2 The Department of Health, Division of Drinking Water, has jurisdiction over Shamrock Trailer Court Water System. The Shamrock Trailer Court Water System is a "public water system," as defined in RCW 70.119A.020(4) and WAC 246-290-010.

3.3 Mary C. Davis is the "purveyor" of the Shamrock Trailer Court Water System, as defined in RCW 70.119A.020(6) and WAC 246-290-010.

3.4 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 43.20.050 and 70.119.050. Regulations so adopted are contained in chapter 246-290 WAC.

3.5 The rules under WAC 246-290-020 define a Group A Community Water System:

(4) A **Group A** system shall be defined as a public water system providing service such that it meets the definition of a public water system provided in the 1996 amendments to the federal Safe Drinking Water Act (Public Law 104-182, Section 101, subsection b).

(5) **Group A** water systems are further defined as **community** and **noncommunity** water systems.

(a) **Community** water system means any **Group A** water system providing service to fifteen or more service connections used by year-round residents for one hundred eighty or more days within a calendar year, regardless of the number of people, or regularly serving at least twenty-five year-round (i.e., more than one hundred eighty days per year) residents. Examples of a **community** water system might include a municipality, subdivision, mobile home park, apartment complex, college with dormitories, nursing home, or prison.

(emphasis added). WAC 246-290-020(4) & (5)(a).

3.6 This section of the administrative code also clarifies a Group B Community Water System:

A **Group B** water system is a public water system that does not meet the definition of a **Group A** water system. (See Table 1 and chapter 246-291 WAC for further explanation of a **Group B** water system.)

WAC 246-290-020(5)(c).

3.7 The Respondent maintained that the definition of Group A Community Water System was in conflict with the definition of Group B Community Water System in WAC 246-291-010, which defines a Group B water system:

**"Group B water system"** means a public water system: [c]onstructed to serve less than fifteen residential services regardless of the number of people; or [c]onstructed to serve an average nonresidential population of less than twenty-five per day for sixty or more days within a calendar year; or [a]ny number of people for less than sixty days within a calendar year.

(emphasis added). WAC 246-291-010. The Presiding Officer did not find any inconsistency with the rules defining Group A and Group B water systems.

3.8 On May 18, 2000, the Respondent was notified that her water system was a Group A Community Water System, because there were more than 25 people residing on the water system. On May 15, 2000, Mr. Hoey had inspected the water system because of several complaints related to low water pressure, water outage and inadequate water service. Division's Exhibit No. 7. The Presiding Officer concludes that from May 15, 2000, to November 13, 2000, Shamrock Trailer Court was a Group A Community Water System as defined in WAC 246-290-020. This was the period when the Respondent's was required to comply with the Order issued on August 7, 2000, and when the Respondent was served the Notice of Penalties on November 13, 2000.

3.9 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.

3.10 In this case, the Notice of Penalties assessed monetary fines against the Respondent for her failure to comply with the Order, and in particular, for her failure to timely notify consumers for failure to monitor drinking water (Order 2.1), to submit a revised WFI Form (Order 2.2), to employ a professional engineer (Order 2.3), to produce a project report (Order 2.4), to submit construction documents (Order 2.5), install facilities (Order 2.6), to obtain an approved source of water (Order 2.7), and to timely notify consumers of the issuance of departmental Order (Order 2.10).

3.11 During the hearing, the Division stipulated that it would not seek monetary fines for the Respondent's failure to comply with Orders 2.2, 2.3, 2.4 and 2.5. Thus, the Presiding Officer concludes that an order should be entered reversing the penalty assessments for Respondent's failure to comply with such Orders.

3.12 The Division maintained, however, that the Respondent has never obtained source approval for its SO3 Well and the drinking water from this well is not the highest quality source feasible. Moreover, the Respondent does not have in place and properly operating, as outlined in its project report, the necessary improvements. Such improvements include connecting with the City of Lacey Water Main.

3.13 This requirement in this Order is set forth in the rules regarding source approval:

Every purveyor shall obtain drinking water from the highest quality source feasible. No new source, previously unapproved source, or modification of an existing source shall be used as a public water supply without department approval. No intake or other connection shall be maintained between a public water system and a source of water not approved by the department.

(emphasis added). WAC 246-290-130(1).

3.14 The Division's Order was also based upon rules regarding source of water protection.

Sanitary control area (SCA). (a) The purveyor shall maintain an SCA around all sources for the purpose of protecting them from existing and potential sources of contamination. (b) For wells and springs, the minimum SCA shall have a radius of one hundred feet (thirty meters) and two hundred feet (sixty meters) respectively, unless engineering justification demonstrates that a smaller area can provide an adequate level of source water protection. The justification shall address geological and hydrological data, well construction details, mitigation measures, and other relevant factors necessary to assure adequate sanitary control.

(emphasis added). WAC 246-290-135(2)(a) & (b).

3.15 In Order 2.7, the Division ordered that within 90 days of receipt of this order, the purveyor of Shamrock Trailer Court must obtain drinking water from the highest quality source feasible. The Order stated that the purveyor did not have source approval for its SO3 Well, nor was the purveyor able to maintain a SCA. Therefore, the Presiding Officer concludes that drinking water from the highest quality source feasible is water from the City of Lacey, whose water mains are located directly in front of the Respondent's trailer court. WAC 246-290-130(1). The Presiding Officer concludes that the Respondent failed to comply with Order 2.7.

3.16 In Order 2.6, the Respondent was to have in place and operating all facilities and improvements outlined in an approved project report and relevant

construction documents within 90 days of receipt of the Order. A construction report form was to have been submitted to the Division as required by WAC 246-290-120. The Respondent did submit, although untimely, a construction proposal from an engineering firm for the connection with the City of Lacey Water System. Respondent's Exhibit No. 1. The Respondent, however, failed to have in place and operating her water system connected with the City of Lacey's water. Thus, the Presiding Officer concludes that the Respondent failed to comply with Order 2.6.

3.17 When the City of Lacey is the drinking water of the highest quality source feasible, then the Respondent's compliance with Order 2.6 entails compliance with Order 2.7. Moreover, the Respondent's failure to comply with Order 2.6 is the same as her failure to comply with Order 2.7. The Presiding Officer concludes that the Respondent's failure for her failure to comply with Order 2.6 and 2.7 should be affirmed as one violation.

3.18 The Presiding Officer concludes that the calculation of the penalty of \$900.00 for the Respondent's failure to have in place and operating her water system connected with the City of Lacey's water under WAC 246-290-130 was consistent with RCW 70.119A.040, and supported by the record in this proceeding.

3.19 The Respondent's claim that she was without adequate financing to make the necessary improvements is no defense; that is, a lack of financial resources does not exempt the Respondent from the requirements of chapter 70.119A RCW or chapter 246-290 WAC.

3.20 Further, the Division maintained that the Respondent failed to timely notify its consumers that it had its drinking water had not been adequately monitored (Order 2.1). In addition, the Division maintained that the Respondent failed to timely notify its consumers that it had been issued a departmental Order for its failure to comply with all the provisions of chapter 246-290 WAC (Order 2.10).

3.21 Under Order 2.1, the Respondent was required to provide notice to all customers of Shamrock Trailer Court water system that their drinking water was not being adequately monitored for coliform bacteria. Further, in Order 2.10, the Respondent was ordered to provide notice to all of its customers that Shamrock Trailer Court was issued the departmental Order for failure to comply with all the provisions of chapter 246-290 WAC. To assist in complying with these orders, the Respondent was provided copies of "Notice to Water System Users" as attachments G and H to the Order and was required to submit verification to the Division of such notice to users within 30 days of receipt of the Order.

3.22 The rules require notification to a water system's users when it has failed to comply with monitoring requirements WAC 246-290-495(1)(b)(ii) and when it has been issued a departmental Order. WAC 246-290-495(1)(e). In this case, Mr. Toy and Ms. Klocke testified that the Respondent, as ordered, did not submitted any documentation to verify compliance with Orders 2.1 and 2.10. The Respondent testified that she did not remember telling or providing any such notices to her customers. The Presiding Officer concludes that the Respondent failed to comply with Orders 2.1 and 2.10.

3.23 The Presiding Officer concludes that the calculation of the penalty of \$900.00 for the Respondent's failure to notify its water system users that it had failed to comply with monitoring requirements under WAC 246-290-495(1)(b)(ii) (Order 2.1) 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 \$900 for this violation.

3.24 The Presiding Officer concludes that the calculation of the penalty of \$900.00 for the Respondent's failure to notify its water system users that it had been issued a departmental Order under WAC 246-290-495(1)(e) (Order 2.10) 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 \$900 for this violation.

3.25 Finally, the Respondent maintained that the Division failed to comply with the Regulatory Fairness Act (Chapter 19.85 RCW) when it promulgated the rules governing Group A and Group B water systems. That is, the Respondent maintained that the Division failed to prepare and have available a small business impact statement when promulgating such rules. Further, the Respondent maintained that the Division penalty formula was drafted and implemented without regard for the Regulatory Fairness Act. Thus, the Respondent maintained that WAC 246-290 and WAC 246-291 as well as the Division's policy for determining penalties against purveyors were invalid and not enforceable.

3.26 In opposition to the Respondent's contentions, the Division maintained that its Penalty Policy (Respondent's Exhibit No.2) was consistent with RCW 70.119A.040(1)(a). Using the penalty calculation formula, the Division considered the health risk of the violation, the purveyor's record of compliance, and the size of the system. The Division, in considering the size of the system in the calculation of the penalty, does address the system's financial capabilities. The larger systems, by virtue of their size, are assessed higher penalties than smaller systems.

3.27 Considering the Respondents' Regulatory Fairness Act arguments challenging the validity chapter 246-290 WAC and chapter 246-291 WAC along with the Division's Policy and Penalty Formula, the Presiding Officer concludes that he is without the authority to invalidate such departmental rules. WAC 246-10-602(3). The Presiding Officer concludes that the Respondent's contentions should be denied.

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

Based on the above Procedural History, Findings of Fact and Conclusions of Law, the Presiding Officer hereby issues the following ORDER:

4.1 The six thousand dollar (\$6,000.00) penalty imposed on Shamrock Trailer Court, ID # 778059, and Mary C. Davis, by the November 13, 2000, Notice of Imposition of Penalties is AFFIRMED in part, and REVERSED in part.

4.2 The Notice of Imposition of Penalties in this matter assessing penalties in the amount of twenty-seven hundred dollars (\$2700) for the Respondent's failure to comply with Orders 2.1, 2.6, 2.7 and 2.10 is AFFIRMED.

4.3 The Notice of Imposition of Penalties assessing penalties in the amount of thirty-three hundred dollars (\$3300) for the Respondent's failure to comply with Orders 2.2, 2.3, 2.4 and 2.5 is REVERSED.

4.4 The Respondent's request for an order invalidating WAC 246-290 and WAC 246-291, along with the Division's policy and penalty formula, is DENIED.

“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, 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,

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