

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

In the Matter of the Public Water Systems of:	)	OPS No.	95-04-20-797 DW
	)	Prog. No.	0576 & 95-001
HOODSPORT WATER SYSTEM, ID #34100F;	)	OPS No.	95-06-06-858 DW
SUNCREST WATER SYSTEM, ID #85204W;	)	Prog. No.	0576 & 95-001
- Mason County;	)	OPS No.	95-08-03-029 DW
)		
In the Matter of the Water Works Certification of:	)	(CONSOLIDATED)	
)		
WILLIAM T. PETTY, Certification No. 1053)		
	)	FINDINGS OF FACT,	
Respondents.	)	CONCLUSIONS OF LAW,	
	)	AND FINAL ORDER	
)		

A hearing was held in this matter before Health Law Judge Brian D. Peyton, Presiding Officer for the Secretary of the Department of Health, on January 31 and February 1, 1996, at the Department of Health conference room, 2413 Pacific Avenue, Olympia, Washington. Dianna Timm Dryden, Attorney at Law, represented Respondents. Lilia Lopez, Assistant Attorney General, represented the Division of Drinking Water of the Department of Health (the Department). Having heard the testimony and considered the evidence and the arguments of the parties, the Presiding Officer now issues the following:

I. PROCEDURAL HISTORY

1.1 On November 28, 1994, the Division of Drinking Water of the Department issued a Field Order to Evergreen Land and Water Inc. (Evergreen) and its president and registered agent, William T. Petty. The Field Order cited Evergreen and Mr. Petty for violations of duties under chapter 246-290 WAC in the operation of the Hoodsport

Water System (Hoodsport), and required Evergreen to take steps to comply with chapter 246-290 WAC. The Order informed of the Department's authority to impose penalties for failure to comply with the Order.

1.2 On January 4, 1995, the Department issued an Order to Evergreen and Mr. Petty (the Order). The Order cited Evergreen and Mr. Petty for violations of duties under chapter 246-290 WAC in the operation of Hoodsport, Suncrest Water System (Suncrest), and three other water systems, and required Evergreen to take steps to comply with chapter 246-290 WAC. The Order informed of the Department's authority to impose penalties for failure to comply with the Order. That Order was modified on March 10 and April 6, 1995.

1.3 On March 20, 1995, the Department issued a Notice of Imposition of Penalties to Evergreen and Mr. Petty, owner and operator, in the amount of \$18,180 for failure to comply with the Field Order and the Order in connection with the operation of Hoodsport. Evergreen and Mr. Petty requested an adjudicative proceeding.

1.4 On May 5, 1995, the Department issued a second Notice of Imposition of Penalties to Evergreen and Mr. Petty in the amount of \$39,840, also for failure to comply with the Field Order and Order. Evergreen and Mr. Petty requested an adjudicative proceeding.

1.5 On June 30, 1995, the Department issued a Notice of Intention to Revoke regarding Mr. Petty's certification as a water works operator. Mr. Petty requested an adjudicative proceeding.

1.6 On August 24, 1995, the Presiding Officer consolidated the three adjudicative proceedings into one proceeding, on the grounds that the three

proceedings involved common issues. Prehearing Order No. 1: Order on Motion to Consolidate.

1.7 A hearing was held on January 31 and February 1, 1996. David W. Liechty, P.E., Sandy Brentlinger, Stephanie McDougall, Cheryl Bergener, Mary Jo Adams, Simon Tung, P.E., Tim Blake, Jerry Ballantyne, Doug Haskins, John Dickinson, Ed Johnston, and William Petty testified. Exhibits 1 through 29 were admitted into evidence.

II. FINDINGS OF FACT

2.1 William Petty is the president and registered agent of Evergreen Land & Water, Inc. (Evergreen). Evergreen owns five public water systems which provide water to users in and around the town of Hoodspport in Mason County. The five systems, and the approximate number of households each serves, are as follows:

- a. Hoodspport Water System (Hoodspport) - 127 households;
- b. Suncrest Water System (Suncrest) - 21 households;
- c. Highland Estates Water System (Highland Estates) - 41 households;
- d. Johns Prairie Water System (Johns Prairie) - 2 households; and
- e. Evergreen Water System - 4 households.

2.2 William Petty is certified as a Water Distribution Manager, certification number 1053. He operated the five Evergreen water systems from 1975, when he purchased Evergreen, until June 1995, when all five water systems were placed in receivership pursuant to an order of the Thurston County Superior Court. The systems are now being operated by the receiver, Mason County P.U.D.

2.3 On or about April 18, 1994, David Liechty, P.E., of the Southwest Drinking Water Operations, Division of Drinking Water, inspected Hoodspport. The water source

for Hoodsport is two shallow wells located along Finch Creek. The shallowness of the wells makes them susceptible to contamination. Mr. Liechty observed that the wellhouse was not clean, and a number of objects he characterized as “junk” were stored in it. Mr. Petty had made “unconventional” repairs to the well casings, and had made “jury rigged” repairs to other equipment, using wire, tape and twine. Photographs of Hoodsport facilities, including well #1, appear in the record as Exhibit 1. Mr. Leichy also observed loose electrical wires, an improperly calibrated control system timer, and water on the floor.

2.4 Mr. Leichy observed exposed water lines at several places in the system. An exposed pipe fastened to a bridge carries water across Finch Creek, and is vulnerable to freezing or failure. See Exhibit 1. Exposed PVC pipe fastened with clamps ran on the ground along the Hood Canal beach, and were subject to wave action and high tides, which created a risk of breakage or contamination of the water supply. Id. Mr. Liechty observed repairs to water lines that had been made with firehose and clamps. Those repairs were not watertight, creating the potential for contamination of the water supply. Broken or cracked lines without sufficient water pressure can allow the entry of contaminants into the water supply.

2.5 Mr. Liechty inspected the Hoodsport reservoir. He described it as in a state of disrepair. The reservoir had a cover of very thin plastic sheeting which was torn in places. He observed animal feces on the plastic sheeting. A trailer and camper were parked near the reservoir, and the area around the reservoir was being used for storage. The conditions at the reservoir created an unnecessary risk of contamination.

2.6 Mr. Liechty inspected the Hoodsport North Hill booster station, which

pumped water to water system customers on North Hill. Those customers had complained a number of times about a lack of water pressure. At the booster station, the pump was sitting on the floor. There were loose wires, and insulation laying on the ground. He noted a wasp nest in the booster station. See Exhibit 1.

2.7 Mr. Liechty, a licensed engineer, concluded that the Hoodsport system was not designed or operated in a manner consistent with good engineering practices. The various components of the system were not designed or built to acceptable standards, and were in very poor repair. Mr. Liechty testified that much of the system would require complete renovation or replacement.

2.8 On or about April 18, 1994, Mr. Liechty inspected Suncrest. He testified that Suncrest was in better condition than Hoodsport. Suncrest, for example, had a relatively new well/pump house. The Suncrest well was inoperable, and the system was being supplied by an intertie with the Hoodsport wells. The Hoodsport wells had been approved only as a secondary source of supply. Testimony at the hearing indicated that the owner of the property on which the only access road to the well was located placed a gate across it in early 1994. The pump for the Suncrest well failed shortly after the gate was erected. Mr. Petty could not reach the Suncrest well to repair the pump until approximately April 1995. During that period, the Hoodsport source was, in effect, the primary source for Suncrest. The Department never approved the change in source.

2.9 Department monitoring requirements applicable to Hoodsport and Suncrest require monthly testing for the presence of coliform bacteria. If a test is positive, i.e. indicates the presence of coliform, four additional follow-up tests are

required. See WAC 246-290-300. A sample from Hoodsport taken on August 27, 1994, was positive for fecal coliform. Follow-up tests were negative. Samples taken from Hoodsport and Suncrest on September 7, 1994, were positive. Follow-up tests for Hoodsport were negative. No follow-up tests were performed for Suncrest. A sample taken from Suncrest on October 3, 1994 was positive, but follow-up tests were negative.

2.10 The source of the coliform contamination could not be determined. Mr. Petty told the Department that water lines broken during telephone company excavation might account for the contamination. Broken lines, outages, or low pressure are among the factors that can cause contamination. Mr. Liechty and Sandy Brentlinger, Department Water Quality Specialist, testified that, in light of the condition of the water system and the lack of an explanation for the contamination, positive tests in three consecutive months were cause for concern regarding the quality of the water in the Hoodsport and Suncrest systems.

2.11 In a letter dated November 23, 1994, the Department advised Mr. Petty that, in light of the positive coliform tests, line breaks, and reported low pressure, “drinking water contamination at Hoodsport and Suncrest is highly probable.” Exhibit 2. The letter directed Mr. Petty to take action to distribute a written notice to all customers of Suncrest and Hoodsport that all drinking water should be boiled. That “Boil Water Notice,” which accompanied the letter, is included in the record as Exhibit 3. The letter also directed him to consult with Department representatives to determine where further samples should be taken, and to collect such samples; to refrain from emergency disinfection procedures; and to take immediate steps to implement continuous

disinfection pursuant to a system designed by a licensed professional engineer.

2.12 Mr. Petty did not distribute the notice to all customers. He testified that he made efforts to distribute it, and that distribution of the notice to media and posting in public places was adequate to inform all customers. On or about November 29, 1994, Mr. Petty distributed a notice entitled “Boil Water Scare” in which he apologized for “all the inconvenience the Department of Health may have caused.” Exhibit 6. The notice denied that there was any risk of contamination of the water, and characterized the Department’s actions as “scare tactics” being used to justify taking over his water systems.

2.13 The record indicates that as of November 1994, there was no system of continuous disinfection in place at Hoodsport or Suncrest. Mr. Petty did engage in emergency disinfection by “batch chlorination,” i.e. dumping chlorine bleach directly into the Finch Creek wells. Safe and effective chlorination requires the proper concentration of chlorine in the water supply, and adequate “contact time” during which the chlorine can mix with the water and disinfect it.

2.14 Mr. Petty’s batch chlorination was not safe or effective. He did not make any effort to measure the amount of chlorine he put into the well, and did not know what concentration to obtain. Moreover, because some customers receive water pumped directly from the wells, and not from a holding reservoir, those customers received water with very high levels of chlorine bleach in it. Mr. Petty testified that he had routinely engaged in batch chlorination after a positive test for coliform bacteria.

2.15 The Department took additional samples on November 28, 1994, for the purpose of determining the source of the positive tests in the previous months. Due to

the batch chlorination, the samples could not be considered valid, and the cause of any contamination could not be determined.

2.16 On November 28, 1994, the Department issued a Field Order to Evergreen and Mr. Petty. The Field Order found that Evergreen and Mr. Petty had failed to distribute the boiled water notice, and had violated their duty to provide continuous and effective disinfection. Exhibit 4. The Field Order required: (a) routine monitoring of Suncrest and Hoodsport for bacteria a minimum of five times a month; (b) employment of a licensed professional engineer for preparation of all reports required for Group A water systems; (c) submission of construction documents for a chlorinator for the Hoodsport well; (d) installation of the chlorinator after approval of the design; and (e) distribution of the Boil Water Notice to all customers of Hoodsport and Suncrest.

2.17 After additional test samples proved coliform free, the Boil Water Notice was rescinded on December 5, 1994. Mr. Petty retained Doug Eklund, P.E. to design a chlorinator for the Finch Creek wells. Mr. Petty's original proposal for chlorination involved a constant dripping of chlorine into the well. That proposal was rejected, as it did not allow sufficient contact time to disinfect the water. A new design was submitted, which involved a series of 12 inch pipes through which water circulated after the introduction of chlorine to allow sufficient contact time. The plans called for the use of 12 inch Class 200 PVC pipe. The Department approved the plans for construction on January 20, 1995. The chlorinator plans appear in the record as Exhibit 7.

2.18 On January 4, 1995, the Department issued an Order (the Order) to Evergreen and Mr. Petty citing numerous violations of chapter 246-290 WAC in the

operation of the Hoodsport, Suncrest, Highland Estates, Johns Prairie, and Evergreen systems. Those violations are set forth in detail in paragraphs 1.1 through 1.15 of the Order, which appears in the record as Exhibit 9.

2.19 Based on the violations cited in the Order, the Department ordered Evergreen and Mr. Petty to take the remedial actions set forth in paragraphs 2.1 through 2.19, within the time for compliance set for each. Those remedial actions included: (a) bacteriological and fecal coliform monitoring and follow-up; (b) notification of consumers regarding inadequate coliform monitoring; (c) submission of water system plans for all systems; (d) attendance at a preplanning conference; (e) maintaining adequate water pressure at Hoodsport and Suncrest; (f) installation of a cover on Hoodsport reservoir; (g) redesign of portions of Hoodsport and Suncrest in accordance with good engineering practice; (h) beginning and maintaining proper operation of Hoodsport, Suncrest and Highland Estates; (i) elimination or control of cross-connections; (j) submission of project and design reports; and (k) submission of construction documents. The deadline by which each of these requirements was to be completed is set forth in "Chart of Deadlines - Order No. 95-001," Exhibit 24.

2.20 In January 1995, Mr. Petty retained the engineering firm of MacLearnsberry, Inc. A preplan conference was held on February 15, 1995, after the date by which the Order required it be held. Anthony Traverso, an engineer, attended with Mr. Petty. Deadlines for compliance with the Order and financial viability planning were discussed. When contacted later, Mr. Traverso stated that he was not sure if he had been hired. Matthew MacLearnsberry was contacted, and stated that their role was unclear. Mr. Liechty testified that at that time he became concerned that Mr. Petty was

making no progress in complying with the Order.

2.21 Mr. Petty experienced great difficulty obtaining the financing necessary to construct the chlorinator for Hoodsport and Suncrest. He testified that he contacted eight financial institutions, all of which refused to extend financing due to questions regarding the financial viability of the water systems. See Exhibit 23. He ultimately obtained a personal loan to finance its construction. The deadline for installation was extended to February 4, 1995, and then to February 27, 1995.

2.22 On March 20, 1995, the Department issued a Notice of Imposition of Penalties (the First Notice) to Evergreen and Mr. Petty. The First Notice imposed a penalty of \$18,180 for the following violations: (a) failure to install the chlorinator as required by the Field Order; and (b) failure to eliminate potential sources of contamination, such as trash, chemicals, and vehicles, from around the Hoodsport reservoir within 45 days, as required by the Order. The record indicates that Mr. Petty had in fact failed to comply with the requirements cited in the First Notice.

2.23 The \$18,180 penalty was calculated under a Department formula that for each violation considers the public health risk posed by the violation, the record of compliance, the size of the system, and the number of days the violation has lasted. The formula multiplies these four factors together and multiplies the resulting number by \$10 to arrive at the penalty for each violation. A "Penalty Formula" worksheet which demonstrates how the formula is applied appears in the record as Exhibit 16.

2.24 For the failure to install the chlorinator the Department assigned a value of six for the public health risk factor; a value of six for the previous record of compliance; a value of three for system size; and determined the violation existed for 16 days, from

February 27, the Field Order deadline, until March 16.

2.25 For the failure to eliminate sources of contamination, the Department assigned a value of five for the public health risk factor; a value of six for the previous record of compliance; a value of three for system size; and determined the violation existed for one day. (The use of a daily factor of one resulted in a lower penalty than could have been imposed based on the failure to comply with the 45-day deadline in the Order.)

2.26 Multiplying the four factors for each violation, then adding those two numbers, resulted in a total score of 1,818. That number multiplied by \$10 resulted in a penalty of \$18,180.

2.27 The record indicates that Mr. Petty did not make significant progress toward compliance with the Order. He failed to submit adequate documentation of retention of a licensed professional engineer to perform all the tasks required under the Order. See April 6, 1994 letter from Mr. Liechty to Mr. Petty, attached to the Order, Exhibit 9.

2.28 A water sample taken from Suncrest during bacteriological monitoring on or about April 5, 1995, was positive for fecal coliform contamination. Department follow-up samples taken on April 12, 1995, revealed the presence of chlorine, although the chlorinator had not yet been installed. Mr. Petty said he had again performed batch chlorination after the April 5 positive test.

2.29 The Department obtained a temporary restraining order from the Thurston County Superior Court on or about April 17, 1995, requiring that Mr. Petty install the chlorinator, and requiring the distribution of a notice to customers regarding the risk of

contamination of the Hoodspout and Suncrest systems and the health risk created by the contamination. A "Health Advisory," dated April 25, 1995, Exhibit 5, was distributed, which warned of the risk of contamination, the danger contamination posed to customers' health, and precautions to be taken.

2.30 The chlorinator was constructed, but not in conformance with the plans prepared by Mr. Eklund and approved by the Department. Testimony and exhibits, including photographs of the chlorinator, indicate that 12 inch schedule 40 PVC pipe was used, not 12 inch Class 200 PVC pipe, as required by the plans. See Exhibit 8. A Department inspection in May 1995 indicated that the chlorinator had, in effect, exploded. The pipes had broken, and their caps had come off. A wall of the pumphouse had also been destroyed. A June 14, 1995 letter from Mr. Eklund to Mr. Petty indicated that schedule 40 PVC pipe has a pressure rating 70 psi lower than the pressure rating of Class 200 PVC pipe, and that the use of the schedule 40 pipe "resulted in a system that is apparently prone to failure." Exhibit 8.

2.31 The record is unclear as to whether the chlorinator ever operated properly. What is clear is that Mr. Petty failed to construct the chlorinator as designed and approved. The Presiding Officer finds that that fact alone establishes his failure to comply with the Field Order.

2.32 On May 5, 1995, the Department issued a Notice of Imposition of Penalties (the Second Notice) to Evergreen and Mr. Petty. The Second Notice imposed a penalty of \$39,840 for his continuing failure to install the chlorinator for the period of March 16 until April 18, 1995, (when the temporary restraining order was obtained), and for seven other violations of the Order: paragraphs 2.2, 2.6, 2.13, 2.15, 2.16 (2

violations) and 2.19.

2.33 The \$39,840 penalty was calculated under the Department formula set forth above in Finding of Fact 2.23. For the failure to install the chlorinator the Department assigned a value of six for the public health risk factor; a value of six for the previous record of compliance; a value of three for system size; and determined the violation existed for 33 days, from March 16, the end of the penalty period, until April 18, 1995. Multiplying those four factors together resulted in a total score of 3,564. Mr. Petty had in fact failed to comply with the requirement of installation of an approved chlorinator.

2.34 For the other seven violations, which are set forth in the Second Notice and Exhibit 18, the total score was 420. Exhibit 18. Adding 420 to 3,564, and multiplying by \$10 resulted in a fine of \$39,840. The record indicates that Mr. Petty had in fact failed to comply with the requirements cited in the Second Notice, except for the submission of a Financial Viability Report as required by paragraph 2.6 of the Order, which was submitted by the May 4, 1995 deadline. A score of 54 was attributable to the failure to submit that Financial Viability Report.

2.35 The record indicates that the service provided to customers of Hoodspout and Suncrest was very poor. The Department received numerous complaints regarding frequent water outages, exceedingly low pressure, dirt and sand in the water, and excessive levels of chlorine. Pressure was often so low for some customers that they could not run household appliances, and could not shower. Leaks in water lines were not repaired in a timely manner.

2.36 Moreover, the presence of fecal coliform bacteria posed a very serious

health risk, especially for the young, the elderly, and individuals with weakened immune systems. One customer testified that his wife, who suffers from an immune system disorder, became very sick after drinking water from the Suncrest system at their nursery business.

2.37 The Suncrest and Hoodsport systems require extensive redesign, repair and upgrading to provide adequate service. Mr. Liechty testified that, in his opinion, the systems require replacement of the shallow Finch Creek wells, redesign to eliminate the ineffective booster stations, a new system of reservoirs or holding tanks, and the replacement of undersized water lines throughout the systems. Those improvements could cost over \$100,000, and as much as \$400,000. The financial viability plan submitted by Mr. Petty proposed spending only \$25,000 for necessary improvements, based on his lack of financial resources to spend any more. See Evergreen Land & Water, Inc. Financial Viability Plan, Exhibit 10. Evergreen and Mr. Petty clearly do not have access to the financial resources necessary to redesign, repair, and rebuild the water systems.

2.38 On June 12, 1995, after a hearing, the Water and Wastewater Operator Certification Board of Examiners recommended revocation of Mr. Petty's Water Distribution Manager certification, on the grounds that he had demonstrated gross negligence in operating the Evergreen systems.

2.39 Mr. Petty is not trained or licensed as an engineer. Since taking over operation of the five Evergreen systems, he testified that he has not enlisted the services of an electrician or plumber in the construction or maintenance of the systems. Mr. Petty has done much, if not all, of the redesign and construction of modifications to

the water systems himself since 1975. Many of these modifications were performed without the involvement or approval of a professional engineer or the Department. The result, as set forth above and in the record of this proceeding, has been inadequate water systems that provide unreliable service.

2.40 The record in this proceeding indicates that Mr. Petty has operated the water systems in a haphazard manner. He was unable to explain or demonstrate to Department representatives the proper operation of portions of the water systems. His response to positive tests for the presence of fecal coliform in the water supply indicated a lack of concern for the danger to the public health, and an inability or unwillingness to address the problem in an effective manner.

2.41 Mr. Petty's response to the evidence presented by the Department was, in effect, that he was doing what he deemed most effective with the limited resources available to him. He has characterized the Department as unfairly attempting to take his business away from him. Testimony from him and witnesses on his behalf indicated that repairs and redesign are not necessary or not required because the receiver appointed to run the systems has not yet remedied all the inadequacies in the systems. The record indicates that service has improved since the receiver took over, and that a great deal of work has been done to improve the systems. Extensive renovation is required, in part due to the dilapidated state in which the receiver found the systems when taking them over from Mr. Petty. It is no defense that the receiver has not completed in eight months what Mr. Petty could not do, or would not do, for 20 years.

III. CONCLUSIONS OF LAW

3.1 The Department has jurisdiction over Hoodspport, Suncrest, and Mr. Petty and Evergreen. Hoodspport and Suncrest are public water systems as defined by RCW 70.119A.020(4) and WAC 246-290-010, and are Class A community water systems, as defined in WAC 246-290-020(3). Mr. Petty and Evergreen were, at all times material to this proceeding, purveyors as defined by RCW 70.119A.020(6) and WAC 246-290-010.

3.2 The Department may impose penalties for failure to comply with an order of the Department, 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(2)(c). The amount of the penalty shall be not less than \$500 nor 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.

3.3 The calculation of the penalty of \$18,180 in the First Notice, as set forth in Findings of Fact 2.22 through 2.26, was consistent with RCW 70.119A.040, and supported by the record in this proceeding.

3.4 The calculation of the penalty of \$39,840 in the Second Notice, included \$540 (54 X \$10) for failure to submit a Financial Viability Report. That Report, while inadequate to address the need of the water systems, was submitted by the deadline established by the Department. The exclusion of the amount attributable to that violation reduces the penalty to \$39,300. As so modified, the penalty in the Second Notice was consistent with RCW 70.119A.040, and supported by the record in this proceeding.

3.5 RCW 70.119.110 provides that the Secretary of the Department may, after conducting a hearing, revoke a Water Distribution Manager certificate for gross negligence in the operation of a water distribution system. Gross negligence is “the failure to exercise slight care. . . that is, negligence substantially and appreciably greater than ordinary negligence” Grace v. Edds, 4 Wn. App. 798, 799, 484 P.2d 441 (1971), citing Nist v. Tudor, 67 Wn.2d 322, 407 P.2d 798 (1965).

3.6 In this case, the Presiding Officer concludes that the record supports the conclusion that Mr. Petty was grossly negligent in his operation of the Evergreen water systems. Mr. Petty routinely declined to seek any technical assistance in the design, repair, and operation of the water systems. He routinely acted without reference to and in contravention of Department regulations, orders, and advice. Although he was made aware of regulations governing public water systems, he did not comply, preferring instead to operate as he determined was best. His failure to follow good engineering practices and Department regulations resulted in poor and unreliable water service, and in the risk of illness or disease for his customers. As the operator of a regulated public utility, he had certain legal obligations to his customers that he is unwilling to recognize.

3.7 Respondents’ claim that they were without adequate financing to make the necessary improvements is no defense; a lack of financial resources does not exempt them from the requirements of chapter 70.119A RCW or chapter 246-290 WAC.

3.8 Respondents assert that the fines constitute the taking of their property without due process of law. That argument is without merit. The fines imposed were consistent with the authority granted the Department by chapter 70.119A RCW, and

Respondents were given a meaningful opportunity to be heard regarding the imposition of the fines. Respondents also argue that the imposition of the fines denied them equal protection of the laws, because the receiver has not been required to comply with the same schedule of deadlines that Respondents were. The record does not establish that Respondents have been denied equal protection of the laws.

3.9 To the extent that Respondents' constitutional due process and equal protection arguments challenge the validity of any portion of chapter 70.119A RCW or chapter 246-290 WAC, the Presiding Officer is without the authority to rule on Respondents' arguments. WAC 246-10-602(3).

IV. ORDER

Based on the foregoing Procedural History, Findings of Fact, and Conclusions of Law, the Presiding Officer enters the following:

4.1 The \$18,180 penalty imposed on Evergreen Land and Water, Inc. and William T. Petty by the March 20, 1995 Notice of Imposition of Penalties is **AFFIRMED**.

4.2 The \$39,840 penalty imposed on Evergreen Land and Water, Inc. and William T. Petty by the May 20, 1995 Notice of Imposition of Penalties is **MODIFIED** to \$39,300.

4.3 The certification as a Water Distribution Manager of William T. Petty, certification number 1053, is **REVOKED**.

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 ten (10) days of service of this Order, with the Office of Professional Standards, 2413 Pacific Avenue,

P.O. Box 47872, Olympia, Washington 98504-7872. 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 twenty (20) days after the petition is filed, if the Office of Professional Standards has not acted on the petition or served written notice of the date by which action will be taken on the petition.

“Filing” means actual receipt of the document by the Office of Professional Standards. 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(18).

Proceedings for judicial review may be instituted by filing a petition in superior court in accord 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 thirty (30) days after service of this Order, as provided in RCW 34.05.542.

DATED THIS 8th DAY OF APRIL, 1996.

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BRIAN D. PEYTON, Health Law Judge
Presiding Officer

I declare that today I served a copy of this document upon the following parties of record: WILLIAM T. PETTY, LILIA LOPEZ, DIANNA TIMM DRYDEN by mailing a copy properly addressed with postage prepaid.

DATED AT OLYMPIA, WASHINGTON THIS ____ DAY OF APRIL, 1996.

Office of Professional Standards

cc: DAVE CLARK