

**STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
ADJUDICATIVE SERVICE UNIT**

In the Matter of:

TROXEL-ECHO GLEN  
WATER SYSTEM, KING COUNTY,  
ID 14446X,

Respondent.

Master Case No. M2008-118563

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND FINAL ORDER ON  
SUMMARY JUDGMENT

**APPEARANCES:**

Respondent, Mountain View Water Works, Inc., by  
Donald Walker, President, pro se

Department of Health Office of Drinking Water (Department), by  
Office of the Attorney General, per  
Dorothy Jaffe, Assistant Attorney General

**PRESIDING OFFICER:** Jerry D. Mitchell, Health Law Judge

On October 20, 2008, the Department issued a Notice of Imposition of Penalties and Initial Order (NIP), requiring the purveyors of Troxel Echo Glen System to have in place and operating properly all facilities and improvements as outlined in an approved project report and relevant documents, consistent with the February 25, 2008 Department Order, within twenty-eight (28) days of receipt of the Notice. Donald Walker, President and registered agent, and Mountain View Water Works, Inc., were jointly and severally penalized, pursuant to RCW 70.119A.040, the sum of two thousand six hundred forty dollars (\$2,640.00). On November 17, 2008,

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Respondent submitted his Request for Adjudicative Proceeding. On or about November 26, 2008, a scheduling order was issued setting the matter for hearing on March 26, 2009. On February 12, 2009, the Department filed Department's Motion for Summary Judgment. The Respondent did not file a response to the Motion. The Motion is GRANTED.

### **ISSUE**

1. Did respondent violate WAC 246-290-110 and WAC 246-290-120 by failing to submit a project report and construction documents for written approval by the Department as ordered by the Department on February 25, 2008?

2. Did Respondent violate WAC 246-290-451 by failing to install disinfection treatment?

3. Should Respondent be ordered to pay a civil penalty in the amount of \$2,640.00 in accordance with RCW 70.119A.040 and ordered to install the disinfection treatment as outlined in an approved project report and construction documents?

### **I. FINDINGS OF FACT**

1.1 Troxel-Echo Glen Water System (Troxel) is a public water system in King County, Washington. The owner of Troxel is Mountain View Water Works, Inc. (Mountain View). The registered agent is Donald E. Walker. Donald E. Walker and Mountain View are "purveyors" as defined in WAC 246-290-010. Troxel serves thirty-six (36) residential connections, providing water for approximately eighty-eight (88) individuals and is a Group A community public water system.

1.2 On November 15, 2006, Respondent was notified that Troxel had an acute maximum contaminant level (MCL) violation due to the presence of E.coli bacteria in a water sample, triggering a boil water advisory. Exhibit 3.

1.3 Respondent had a second acute MCL violation for the presence of E.coli bacteria in December 2007, triggering another boil water advisory. Exhibit 4.

1.4 On January 11, 2008, Troxel had a continuing occurrence of E.coli bacteria in the water, resulting in a third MCL violation and a continued boil water advisory. Exhibit 5.

1.5 Based on the recurring issues of E.coli contamination, Respondent agreed on January 11, 2008, to immediately hire an engineer to design and oversee the installation of disinfection treatment. Exhibit 6.

1.6 Respondent was issued a Department Order on February 25, 2008, for the following violations:

1. Water distributed by Troxel exceeded the acute maximum contaminant level (MCL) for coliform bacteria in November 2006, December 2007 and January 2008 in violation of WAC 246-290-310(2). Exhibit 1.
2. Troxel is required to have disinfection treatment, meeting disinfection contact concentration of six milligram-minutes per liter. Troxel does not have disinfection treatment, in violation of WAC 246-290-451. Exhibit 1.

1.7 Based on the violations, Respondent was required to submit the project report and construction documents for permanent disinfection treatment by May 16, 2008, and install by September 15, 2008. Exhibit 1.

1.8 On March 11, 2008, the Department approved the design documents for “temporary” disinfection treatment of Troxel, but permanent disinfection was still required pursuant to WAC 246-290-250(4) and the February 25, 2008 Order. Exhibit 7.

1.9 Respondent submitted the project report and construction documents for disinfection treatment on August 1, 2008, two and a half months late. Exhibit 9.

1.10 On August 27, 2008, the Department sent Respondent comments to the August 1, 2008 project report and construction documents, which needed to be addressed prior to receiving Department approval to construct the facilities. Exhibit 10. Respondent failed to respond and the Department changed Troxel’s operating permit to “red” on October 20, 2008, for failure to meet deadlines as laid out in the February 25, 2008 Order and for non-compliance with drinking water regulations. Exhibit 11.

1.11 On October 20, 2008, the Department issued the NIP. Exhibit 2. The NIP required Respondent to pay a \$2,640.00 civil penalty and ordered all facilities and improvements be completed within twenty-eight (28) days.<sup>1</sup> Exhibit 2.

## II. CONCLUSIONS OF LAW

2.1 Summary judgment is appropriate where there is no genuine issue of material fact, and the moving party is entitled to summary judgment as a matter of law. CR56(c) and *State Farm General Ins. Co. v. Emerson*, 102 Wn.2d 477 (1984). In determining whether a genuine issue of material fact exists, all reasonable inferences

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<sup>1</sup> In order to comply with the requirements of RCW 70.119A.040(1)(a), the Department adopted Policy J.13 to aid in the determination of an appropriate civil penalty against a water system based on: health risk, previous record, and water system size. See Exhibit 12. The Department used this policy to assess a civil penalty in the amount of \$2,640.00 against the Respondent. See Exhibit 13.

shall be viewed in the light most favorable to the nonmoving party, and the motion granted only if reasonable persons could reach but one conclusion.

*GO2NET, Inc. v. C I Host, Inc.*, 115 Wn. App 73 (2003).

2.2 A court may properly decide legal issues related to the validity of a statute or its interpretation on summary judgment. *Kinnear v. Hertz Corp.*, 86 Wn. 2d 407, 545 P.2d 1186 (1976). The moving party carries the initial burden of showing there is no genuine issue of material fact, but once that burden has been met, the burden shifts to the nonmoving party to establish "the existence of an element essential to that party's case." *Robinson v. Avis Rent A Car Sys.*, 106 Wn. App. 104, 110, 22 P.3d 818 (2001). If the nonmoving party fails to meet that burden, the presiding officer should grant the Motion for Summary Judgment.

2.3 The Respondent did not respond to the Motion for Summary Judgment and the material facts in this case are uncontroverted. Respondent violated WAC 246-290-110 and WAC 246-290-120 by failing to submit a project report and construction documents for Department approval under state drinking water regulations and as ordered in the February 25, 2008 Order. Respondent violated WAC 246-290-451 by failing to install disinfection treatment. Respondent failed its duty to protect the public health and safety of the Troxel users.

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### III. ORDER

Based upon the above, the Presiding Officer hereby issues in this case the following ORDER:

3.1 Program's Motion for Summary Judgment is GRANTED. The Respondent is Ordered to submit for final review and approval the project reports and construction documents within twenty-eight (28) days of this final order, and shall install the disinfection treatment facilities within four (4) months of receiving Department approval. Respondent is further Ordered to pay the civil penalty of \$2,640.00 to the Department of Health.

3.2 There being no other issues remaining, the hearing scheduled for **March 26, 2009, is stricken.**

Dated this   9th   day of March 2009.

\_\_\_\_\_/s/\_\_\_\_\_  
JERRY D. MITCHELL, Health Law Judge  
Presiding Officer

## NOTICE TO PARTIES

This order is subject to the reporting requirements of RCW 18.130.110, Section 1128E of the Social Security Act, and any other applicable interstate or national reporting requirements. If discipline is taken, it must be reported to the Healthcare Integrity Protection Data Bank.

Either party may file a **petition for reconsideration**. RCW 34.05.461(3); 34.05.470. The petition must be filed within 10 days of service of this order with:

Adjudicative Service Unit  
P.O. Box 47879  
Olympia, WA 98504-7879

and a copy must be sent to:

Office of Drinking Water  
Department of Health  
P.O. Box 47822  
Olympia, WA 98504-7822

The petition must state the specific grounds for reconsideration and what relief is requested. WAC 246-11-580. The petition is denied if the Presiding Officer does not respond in writing within 20 days of the filing of the petition.

A **petition for judicial review** must be filed and served within 30 days after service of this order. RCW 34.05.542. The procedures are identified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. A petition for reconsideration is not required before seeking judicial review. If a petition for reconsideration is filed, the above 30-day period does not start until the petition is resolved. RCW 34.05.470(3).

The order is in effect while a petition for reconsideration or review is filed. "Filing" means actual receipt of the document by the Adjudicative Service Unit. RCW 34.05.010(6). This order is "served" the day it is deposited in the United States mail. RCW 34.05.010(19).

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