

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION
Docket No. 107-9-15 Vtec.

SECRETARY, VERMONT AGENCY
OF NATURAL RESOURCES,
Plaintiff

FILED

JUN -7 2016

VERMONT
SUPERIOR COURT
ENVIRONMENTAL DIVISION

v.

CHRISTOPHER E. DENIO, LLC,
EAST MOUNTAIN MOBILE HOME PARK, LLC,
CHRISTOPHER E. DENIO, AND
DAWN DENIO,
Respondents

JUDGMENT ORDER

The above-entitled matter concerns the prosecution of an Administrative Order issued by the Vermont Agency of Natural Resources (Agency) on August 26, 2015 against Christopher E. Denio, LLC, East Mountain Mobile Home Park, LLC, Christopher E. Denio and Dawn Denio (Respondents) based upon various allegations of environmental law violations. When the parties were unable to reach a resolution, the Court conducted a merits hearing on May 31, 2016. The Respondents failed to appear and the Agency presented evidence during the one day of trial. At the end of the proceedings the Court conducted a recess to complete its deliberations, returning thereafter to render its Findings of Fact and Conclusions of Law on the record. This Judgment Order is issued to memorialize this Court's order and decree. The court finds as follows:

1. Pursuant to 10 V.S.A. §8012(b), the Court hereby AFFIRMS the August 26, 2015 Administrative Order issued by the Secretary in this matter against Respondents.
2. The Court fulfills the statutory requirements of 10 V.S.A. §8012(c) with the following summary of its Findings and Conclusions provided on the record at the conclusion of the merits hearing:
 - A. Respondents own and operate a consecutive Public Community Water System (WSID #20760) located in Bennington, Vermont (the system), known as the East Mountain Mobile Home Park.

- B. The system serves approximately seventy-six (76) people in sixteen (16) mobile homes and two permanent residential structures year-round. The Town of Bennington is the source of the system's water.
 - C. Respondents violated Vermont Water Supply Rule (VWSR) Subchapter 21 Section 5.7 by operating the system without obtaining a permit to operate from the Agency.
 - D. Respondents violated VWSR Subchapter 21 Section 6.6.1 by failing to sample in accordance with the system's approved bacteriological sampling plan.
 - E. Respondents violated VWSR Subchapter 21 Section 10.5 by failing to issue consumer confidence reports for 2007 and 2009-2014.
 - F. Respondents violated VWSR Subchapter 21 Section 12.2.1.3 by failing to designate a certified operator for the system.
 - G. Respondents violated VWSR Subchapter 21 Section 6.4 by failing to monitor for Stage 2 Disinfection Byproducts at the system.
 - H. Respondents violated VWSR Subchapter 21 Section 7.2.4 by using an unapproved chemical at the system, specifically chlorine (sodium hypochlorite), which does not meet the American National Standards Institute/NSF International Standards.
 - I. Respondents violated VWSR Subchapter 21 Section 7.1.1 by failing to have an Agency approved Operation and Maintenance manual onsite for the system.
 - J. Respondents violated VWSR Subchapter 21 Section 9.1.2(a)(d) by failing to submit monthly operating reports to the Agency since taking ownership of the system in 2007.
3. Pursuant to 10 V.S.A. §8010, the Court considered the statutory criteria listed therein based on evidence provided during the hearing in determining the amount of penalty for the violations and took the following into consideration:
- A. 8010(b)(1): Respondents' failure to comply with the VWSR is a tremendous and significant impact on public health, safety and welfare.
 - B. 8010(b)(2): Respondents failed to show any mitigating circumstances.
 - C. 8010(b)(3): Respondents had reason to know the violations existed over many years.

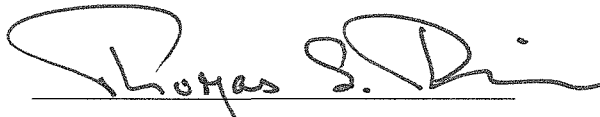
- D. 8010(b)(4): Respondents have no record of non-compliance but repeated instances of non-compliance were shown in this case.
 - E. 8010(b)(6): The penalty imposed is adequate for deterrence, and the Court will not increase the imposed penalty under this basis.
 - F. 8010(b)(7): The Agency provided its costs in this enforcement action, which totaled \$1,497.40.
 - G. 8010(b)(8): The violations occurred over a long period of time and are on-going.
4. The Court does hereby exercise its discretion and authority under 10 V.S.A. §8012(b)(4) to modify the penalty amount found in Paragraph A of the Administrative Order issued by the Agency and orders as follows:
- A. Respondents shall pay a penalty of \$27,000.00 no later than thirty (30) consecutive calendar days following the effective date of this Order. Payment shall be by check made payable to the “Treasurer, State of Vermont” and forwarded to:

Administrative Assistant
Environmental Compliance Division
Agency of Natural Resources
1 National Life Drive, Davis 2
Montpelier, VT 05620-3803
 - B. Respondents shall reimburse the Agency \$1,497.40 for its actual costs of enforcement under 10 V.S.A. §8012(e)(2) no later than thirty (30) consecutive calendar days following the effective date of this Order. Payment shall be by check made payable to the “Agency of Natural Resources, State of Vermont” and forwarded to the address above.
5. The Court specifically directs that Respondents comply with paragraphs B through J of the attached Administrative Order within the respective deadlines as calculated from the effective date of this Order.

Rights of Appeal (10 V.S.A. §§8012(c)(4) and (5)):

WARNING: This Decision will become final if no appeal is requested within 10 days of the date this Decision is received. All parties to this proceeding have a right to appeal this Decision. The procedures for requesting an appeal are found in the Vermont Rules of Appellate Procedure (V.R.A.P.) subject to the Vermont Rules for Environmental Court Proceedings (V.R.E.C.P.) 4(d)(6). Within 10 days of receipt of this Order, any party seeking to file an appeal must file the notice of appeal with the Clerk of this Court, together with the applicable filing fee. Questions may be addressed to the Clerk of the Vermont Supreme Court, 111 State Street, Montpelier, VT 05609-0801, (802) 828-3276. An appeal to the Supreme Court operates as a stay of payment of a penalty, but does not stay any other aspect of an order issued by this Court. 10 V.S.A. §8013(d). A party may petition the Supreme Court for a stay under the provisions of V.R.C.P. 62 and V.R.A.P. 8.

Done at Burlington, Vermont this 7th day of June, 2016.



Thomas S. Durkin, Environmental Judge

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION

Docket No. 707-9-15 v/ee

SECRETARY, VERMONT
AGENCY OF NATURAL RESOURCES,
Plaintiff

FILED

AUG 31 2015

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v.

CHRISTOPHER E. DENIO, LLC,
EAST MOUNTAIN MOBILE HOME PARK, LLC,
CHRISTOPHER E. DENIO, AND
DAWN DENIO,
Respondents

VERMONT
SUPERIOR COURT
ENVIRONMENTAL DIVISION

ADMINISTRATIVE ORDER

Having found that Christopher E. Denio, LLC, East Mountain Mobile Home Park, LLC, Christopher E. Denio, and Dawn Denio (Respondents) have committed a violation as defined in 10 V.S.A. §8002(9), the Secretary (Secretary) of the Agency of Natural Resources (Agency), pursuant to the authority set forth in 10 V.S.A. §8008, hereby issues the following Administrative Order:

VIOLATIONS

1. Vermont Water Supply Rule (VWSR) Subchapter 21, Section 5.7: Operating a Public Water System without an operation permit
2. VWSR Subchapter 21, Section 6.6: Failure to sample in accordance with bacteriological sampling plan
3. VWSR Subchapter 21, Section 10.5: Failure to issue Consumer Confidence Reports
4. VWSR Subchapter 21, Section 12.2.1.3: Failure to have a certified operator
5. VWSR Subchapter 21, Section 6.4 and 40 CFR Part 141, Subpart U Section 141.600-605 and Subpart V section 141.620-629: Failure to monitor for Stage 2 DBP
6. VWSR Subchapter 21, Section 7.2.4: Use of unapproved chemical
7. VWSR Subchapter 21, Section 7.1.1: Failure to have an Operation and Maintenance (O&M) Manual
8. VWSR Subchapter 21, Section 9.1.2(a), (d): Failure to submit monthly operating reports

STATEMENT OF FACTS

1. Respondents own and operate a consecutive Public Community Water System (WSID #20760) located in Bennington, Vermont (the system), known as the East Mountain Mobile Home Park.
2. The system serves approximately seventy-six (76) people in sixteen (16) mobile homes and two permanent residential structures year-round. The Town of Bennington is the source of the system's water.
3. VWSR subchapter 21 Section 5.7 requires public water systems to have an operating permit. Respondents' temporary operating permit expired on January 11, 2011 and to date Respondents have not applied for a permit to operate in violation of VWSR Subchapter 21 Section 5.7.
4. VWSR Subchapter 21 Section 6.6.1 requires that all Public Water Systems collect total coliform samples in accordance with a written sampling plan and rationale that includes a map of the system. Respondents' bacteriological sampling plan was approved by the Agency in 2005 however it is not being followed in violation of VWSR Subchapter 21 Section 6.6.1.
5. VWSR Subchapter 21 Section 10.5 requires that all Public Community water suppliers shall prepare and directly deliver an annual consumer confidence report on the quality of the water by July 1 of each year to the consumers of the water system. Respondents failed to issue consumer confidence reports for 2007 and 2009-2014 in violation of VWSR Subchapter 21 Section 10.5.
6. VWSR Subchapter 21 Section 12.2.1.3 requires the owner of any Public Community or Non-Transient Non-Community Water System to place the direct supervision of the water system under the responsible charge of the designated certified operator. The certified operator shall hold a valid certification equal to or greater than the classification of the treatment facility and distribution system. Respondents do not currently have a certified operator in violation of VWSR Subchapter 21 Section 12.2.1.3.
7. VWSR Subchapter 21 Section 6.4 requires Stage 2 Disinfection Byproduct (DBP) monitoring by Public Community and Non-Transient Non-Community Water Systems that add and/or deliver water that is treated with a primary or residual disinfectant other than ultraviolet light. Respondents deliver water that is treated with a primary disinfectant and have not monitored for DBPs in 2013 and 2014 violation of VWSR Subchapter 21 Section

6.4 and 40 CFR Part 141, Subpart U Section 141.600-605 and Subpart V section 141.620-629.

8. VWSR Subchapter 21 Section 7.2.4 requires that all products or chemicals which may come in contact with water intended for use in a public water system shall meet American National Standards Institute/NSF International Standards. Respondents are using sodium hypochlorite for disinfection that is not ANSI/NSF approved in violation of VWSR Subchapter 21 Section 7.2.4.
9. VWSR Subchapter 21 Section 7.1.1 requires all Public Water Systems to have an O&M Manual approved by the Agency and shall be operated in a manner consistent with the approved O&M Manual. The previous owner of the system developed an O&M Manual however Respondents' do not have a copy in violation of VWSR Subchapter 21 Section 7.1.1.
10. VWSR Subchapter 21 Section 9.1.2(a)(d) requires that all Public Water Systems submit a signed report to the Secretary at least once a month no later than the ten (10) days following the end of the month with the following information, as applicable. (a) a summary of the Water System operation, including the amount of water produced or purchased; (d) results of chlorine residual analyses. Respondents have not submitted monthly operating reports since taking over ownership and operation of the system in July 2007 in violation of VWSR 21 Section 9.1.2(a)(d).

ORDER

Upon receipt of this Administrative Order, the Respondents shall:

- A. Pay a penalty of \$63,000.00 no later than thirty (30) consecutive calendar days following the effective date of this Order. Payment shall be by check made payable to the "Treasurer, State of Vermont" and forwarded to:

Administrative Assistant
Agency of Natural Resources
Compliance & Enforcement Division
1 National Life Drive, Davis 2
Montpelier, VT 05620-3803

The Secretary reserves the right to augment the above stated penalty based upon the evidence adduced at the hearing in this matter. The penalty may be increased by the total costs incurred by the Secretary for the enforcement of this matter, by the total amount of economic benefit gained by the Respondent from the violations(s) and by further consideration of any other component of penalty found in 10 V.S.A. §8010, each according to proof at hearing.

- B. No later than thirty (30) consecutive calendar days following the effective date of this Order, Respondents shall submit an administratively complete application for a permit to operate the system to the Agency's Drinking Water and Groundwater Protection Division (DWGPD).
- C. No later than thirty (30) consecutive calendar days following the effective date of this Order, Respondents shall submit a bacteriological sampling plan to the DWGPD, including a distribution map identifying sampling locations that are representative of water throughout the distribution system and, pending DWGPD approval, shall follow the plan for all future required monthly bacteriological samples.
- D. No later than thirty (30) consecutive calendar days following the effective date of this Order, Respondents shall issue all past Consumer Confidence Reports to system users and submit copies and completed delivery certification forms to the DWGPD.
- E. No later than fifteen (15) consecutive calendar days following the effective date of this Order, Respondents shall retain a certified operator for the system and submit a completed Water System Officials Contact Form to the DWGPD.
- F. Within the month of August 2015, Respondents shall sample for DBPs and submit the results to the DWGPD no later than September 10, 2015. Respondents shall sample for DBPs and submit all required future results in accordance with its DBP monitoring plan.
- G. Respondents shall immediately cease use of any unapproved sodium hypochlorite. No later than seven (7) consecutive calendar days following the effective date of this Order,

Respondents shall submit written certification to the DWGPD of its discontinued use of unapproved chemicals and procurement and use of approved chemicals.

- H. No later than thirty (30) consecutive calendar days following the effective date of this Order, Respondents shall submit a complete O&M Manual to the DWGPD for review and approval.
- I. Respondents shall submit monthly operating reports as required by the VWSR.
- J. Respondents shall promptly respond to the directive and requests for information of DWGPD personnel within the timelines specified. Respondents shall comply with the VWSRs in the operation of its Water Supply System.

RESPONDENTS' RIGHT TO A HEARING

BEFORE THE ENVIRONMENTAL COURT

The Respondents have the right to request a hearing on this Administrative Order before the Environmental Court under 10 V.S.A. §8012 by filing a Notice of Request for Hearing within fifteen (15) days of the date the Respondents receive this Administrative Order. The Respondents must timely file a Notice of Request for Hearing with both the Secretary and the Environmental Court at the following addresses:

1. Secretary, Agency of Natural Resources
c/o: Compliance & Enforcement Division,
1 National Life Drive, Davis 2
Montpelier, VT 05620-3803
2. Clerk, Superior Court, Environmental Division
32 Cherry Street, 2nd Floor, Suite 303
Burlington, VT 05401

EFFECTIVE DATE OF THIS ADMINISTRATIVE ORDER

This Administrative Order shall become effective on the date it is received by the Respondents unless the Respondents file a Notice of Request for Hearing within fifteen (15) days of receipt as


provided for in the previous section hereof. The timely filing of a Notice of Request for Hearing by the Respondents shall stay the provisions (including any penalty provisions) of this Administrative Order pending a hearing by the Environmental Court. If the Respondents do not make a timely filing of a Notice of Request for Hearing, this Administrative Order shall become a final Judicial Order when filed with and signed by the Environmental Court.

COMPLIANCE WITH THIS ADMINISTRATIVE ORDER

If the Respondents fail or refuses to comply with the conditions of a final Judicial Order, the Secretary shall have cause to initiate any further legal action against the Respondents including but not necessarily limited to, those available to the Secretary pursuant to the provisions of 10 V.S.A. Chapters 201 and 211.

Dated at Montpelier, Vermont this 13th day of July, 2015.

SECRETARY, VERMONT AGENCY OF NATURAL RESOURCES

By: 
David Mears, Commissioner
Department of Environmental Conservation

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION
Docket No.

SECRETARY, VERMONT
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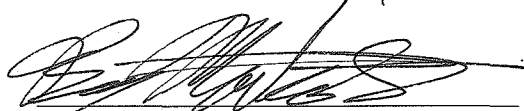
CHRISTOPHER E. DENIO, LLC,
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CHRISTOPHER E. DENIO, AND
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Respondents

Affidavit of Benjamin Montross

I, Benjamin Montross, being duly sworn do attest:

1. I am of legal age and a resident of the State of Vermont.
2. I am employed as the Compliance and Support Services Section Program Manager in the Drinking Water and Groundwater Protection Division of the Agency of Natural Resources.
3. Based upon personal observations, review of the relevant Drinking Water and Groundwater Protection Division program file, and conversations with witnesses, the violations described in the Statement of Facts section of the above-entitled Administrative Order occurred during the time periods set forth therein.

Dated at Montpelier, Vermont this 6 day of July, 2015.


Benjamin Montross - Affiant

Subscribed and sworn before me on the 6 of July, 2015.


Notary Public

My Commission Expires: 2-10-19