DISTRICT COURT, ADAMS COUNTY, COLORADO Court Address: 1100 Judicial Center Drive, Brighton, CO, 80601	DATE FILED: October 21, 2014 11:28 AM CASE NUMBER: 2014CV30930
Plaintiff(s) COLO DEPT PUBLIC HEALTH & ENV v. **Defendant(s)** JOHN B BARANWAY	⚠ **COURT USE ONLY** ⚠
	Case Number: 2014CV30930 Division: A Courtroom:

Judgment for Civil Penalties

This matter came before the Court on October 21, 2014, for a hearing on damages following the entry of default in this administrative compliance proceeding related to a non-compliant waste water treatment facility. Plaintiff, Colorado Department of Public Health and Environment, appeared through counsel, Ellen Howard and Jerry Goad of the Office of the Attorney General. Defendant appeared, without counsel. Michael Harris, the Enforcement Unit Manager of the Department's Water Quality Control Division, testified under oath. Defendant testified. The Court, having considered the testimony and exhibits, makes the following findings of fact and conclusions of law.

The Court's review of the assessment of civil penalties by the Department is extremely limited. Both penalty provision here provide the Court with the authority to "consider the appropriateness of the amount of the penalty, if the party against whom the penalty is assessed raises the issue." 25-8-608(2), C.R.S.; 25-9-110(5), C.R.S. Defendant did not raise any issue with the appropriateness of the penalty; rather, he simply sought more time to address the issue. This, Court can do no more than review the penalty under an abuse of discretion standard. See Water Quality Control Div. v. Casias, 843 P.2d 665 (Colo. App. 1992). An agency abuses its discretion when it misconstrues or misapplies the applicable law. An abuse of discretion occurs when the agency's decision was beyond the bounds of reason, such as where the penalty is unsupported by law. See Jarosinski v. Indus. Claim Appeals Office, 62 P.3d 1082 (Colo. App. 2002).

In assessing the penalty in the case before the Court, the Department took a conservative approach in many respects. For one particular calculation, the Department used an entirely different methodology than it normally would in order to reduce that component of the potential penalty by nearly 80%. Given the number of calculations for which the Department used numbers far lower than those that could have been justified by the record evidence, it simply cannot be said that the Department abused its discretion.

The Department also requests reimbursement of its attorney fees in this matter. The Department cites 13-16-108 and -109, C.R.S. as providing the legal authority for this request. Those provisions, however, authorize awarding costs to the prevailing party, not attorney fees. The Court is unaware of any specific statutory provision authorizing the Department to recover its fees as a prevailing party in this instance. The request for fees, therefore, must be denied.

IT IS THEREFORE ORDERED:

The civil penalty of $541,255 is affirmed.

The Court hereby enters judgment against Defendant in the amount of $541,255.

Issue Date: 10/21/2014

TED C TOW III
District Court Judge