

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2011 JUL 27 PM 12:55

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)
)
Cheerful Cesspool Service)
18758 Surface Creek Road)
Cedaredge, CO 81413)
)
Respondent.)
_____)

Docket No. CWA-08-2009-0017

ORDER

On June 17, 2011, this court issued an Order to Supplement the Record. The Order requested Complainant provide a declaration addressing the factual basis for the proposed penalty as well as a clarification of the relief sought. On July 14, 2011, Complainant filed a letter explaining the Agency's position on the relief sought in the Motion for Default Order (Default Motion). Attached to the letter was the "Declaration of Darcy O'Connor." Complainant has complied with the court's Order. As of July 15, 2011, this court was prepared to rule on the Default Motion.

On July 21, 2011, Respondent, Merl C. Reynolds, filed a hand written note that stated the following:

This notice is to answer your request for information about Cheerful Cesspool Service dumping and or paperwork. I am denying this complaint as of the 14th of July, 2011.

This is Respondent's first communication in this matter. It is the practice of this court to accept any written submittal by a Respondent, regardless of the form, if they are not represented by counsel. It appears from the note that Respondent intends for it to be an answer to the complaint. However, the note does not comport with any of the requirements set forth in 40 C.F.R. § 22.15 including, but not limited to, the request for a hearing. Accepting the document as the Respondent's written answer does not answer the question of whether it was filed in a timely and appropriate manner pursuant to the Consolidated Rules of Practice (40 C.F.R. Part 22).

Complainant filed a complaint in this administrative action on June 18, 2009, alleging that Respondent violated Section 309 of the Clean Water Act, 42 U.S.C. § 1319, by failing to respond to a Section 308 information request. Respondent was served with a copy of the complaint, and it was delivered to Respondent on June 19, 2009. (See, Memorandum in Support of Default Motion at 2, and Exhibit 10).¹ The complaint notified Respondent that it had thirty (30) days from the date of service to file an answer. Complaint, at pp. 7-9. Respondent failed to

¹ It is not clear that Respondent actually received the Complaint. Exhibit 10 only indicates that the document was left at the door. Therefore, Respondent may not have been aware of the Part 22 requirements on filing an answer.

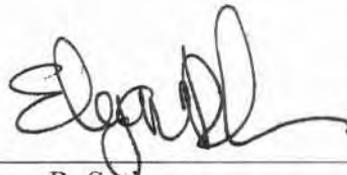
file an answer by July 20, 2009 as required by 40 C.F.R. § 22.15.

If Respondent was not aware that an answer was due on July 20, 2009, it should have become clear that the answer was overdue after Complainant's many attempts to help Respondent understand the process and deadlines. (See, Memorandum in Support of Default, p. 2). Between August and October, 2009, Complainant called and sent letters to Respondent. Specifically, on August 7, 2009, Complainant sent a letter to Respondent enclosing a copy of the complaint and reminding Respondent that its answer was overdue. (See, Memorandum in Support of Default, p. 3, Exhibit 11)² The Agency provided numerous opportunities for Respondent to file an answer as well as the information required in the Section 308 information request before it filed its Motion for Default Order. Accordingly, this court believes there is no reason to set aside the Motion for Default Order. Respondent's filing of its answer was neither complete nor timely, and therefore, is **DENIED**.

This court intends to proceed with ruling on the Motion for Default with respect to liability at this time. See, 40 C.F.R. § 22.17(c). However, Respondent is not precluded from cooperating with the Agency and providing the information requested in the original Section 308 request and the Complaint. If Respondent agrees to provide all the necessary information by September 2, 2011 to the Complainant, this court is willing to consider Respondent's cooperation in determining the appropriate penalty amount. **Please provide the information required by the Section 308 request to Complainant, not the Hearing Clerk, by September 2, 2011.** Therefore, a ruling on the penalty, if any, will be stayed until after September 2, 2011.

It is so ordered.

Ordered this 27th day of July, 2011.



Elyana R. Sutin
Regional Judicial Officer
EPA, Region 8

² Exhibit 12 to the Motion for Default shows that the complaint was signed for and personal service given pursuant to 40 C.F.R. § 22.5(b)(1).

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **ORDER** in the matter of **CHEERFUL CESSPOOL SERVICE; DOCKET NO.: CWA-08-2009-0017**. The document was filed with the Regional Hearing Clerk on July 27, 2011.

Further, the undersigned certifies that a true and correct copy of the document was delivered to, Wendy I. Silver, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested on July 27, 2011, to:

Merl Reynolds
Cheerful Cesspool Service
18758 Surface Creek Road
Cedaredge, CO 81413

July 27, 2011



Tina Artemis
Paralegal/Regional Hearing Clerk

