



REGION 9

SAN FRANCISCO, CA 94105



IN THE MATTER OF:)	DOCKET NO. UIC-09-2023-0029
)	
ERIC HAUCK, individually and as trustee of the)	ORDER FOR PARTIAL DEFAULT
Acton Holding Trust,)	JUDGMENT (LIABILITY)
)	
Respondent.)	
)	
Proceedings under Section 1423(c) of the Safe)	
Drinking Water Act, 42 U.S.C. § 300h-2(c).)	
_____)	

INTRODUCTION

This proceeding is governed by the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination, or Suspension of Permits*, 40 C.F.R. Part 22 (*Consolidated Rules*).

The United States Environmental Protection Agency, Region 9 (Complainant or EPA, Region 9) filed a Motion for Partial Default on Liability under § 22.17(b) of the *Consolidated Rules* against Eric Hauck, individually and as Trustee of Acton Holding Trust (Respondent). The Complainant seeks an Order for partial default on liability. The Complainant contends that the Respondent failed to timely file an Answer to EPA’s Administrative Complaint; for the purposes of this proceeding, Respondent is deemed to have admitted all the facts alleged in the Complaint; and Respondent is liable under section

1423(c) of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300h-2(c), for violating the regulatory prohibition on large capacity cesspools.

The *Consolidated Rules*, 40 CFR § 22.17, provide in pertinent part:

(a) Default. A party may be found to be in default; after motion, upon failure to file a timely answer to the complaint.... Default by respondent constitutes, for purposes of the proceeding only, an admission of all facts alleged in the complaint and a waiver of all facts alleged in the complaint and a waiver of respondent's right to contest such factual allegations.

(c) Default Order. When the Presiding Officer finds that default has occurred, he shall issue a default order against the defaulting party as to any or all parts of the proceeding unless the record shows good cause why a default order should not be issued.

As explained below, I am granting Complainant's motion for partial default judgement on liability. I find that default has occurred because Respondent failed to file an Answer, timely or otherwise, in this matter. Furthermore, the issuance of this Order against Respondent is justified since Respondent failed to respond to or otherwise oppose the pending motion, and thus, failing to show good cause why a default order should not be issued.

FINDINGS OF FACT

Respondent Failed to File an Answer.

1. On February 15, 2023, EPA Region 9 filed a Complaint against the Respondent for violations of the Safe Drinking Water Act, Underground Injection Control law, rules and regulations. (See Memorandum in Support of Complainant's Motion for Partial Default Order on Liability (Supporting Memo), Exhibit A.) The Complaint alleges that Respondent, individually and as trustee of the Acton Holding Trust, owns and/or operates two large capacity cesspools located at the Cactus Creek Mobile Home Park in Acton, California, in violation of the UIC regulatory ban on such systems that took effect on April 5, 2005. (Supporting Memo, Exhibit 1, Complaint ¶ 28.) The

Complaint further alleges that the cesspools are, and have been in service since at least December 2019, when the Los Angeles Regional Water Quality Control Board inspected the property.

(Supporting Memo, Exhibit 1, Complaint ¶¶ 18-24.)

2. Complainant engaged a process server to serve the Complaint and the *Consolidated Rules* on Respondent. (See Declaration of Christopher Chen in Support of Complainant’s Motion for Partial Default Order on Liability (Chen Decl.), ¶ 5). The process server effectuated service of process on March 4, 2023. (See Chen Decl. ¶6.) The Agency received an affidavit from the process server confirming successful services. (See Chen Decl. ¶6, Exhibit A).
3. Pursuant to 40 C.F.R. § 22.15(a), Respondent was required to file a written answer to the Complaint within thirty (30) days after service of the Complaint. Since Complainant effectuated service on March 4, 2023, Respondent’s written answer should have been filed on or before April 3, 2023.
4. The Complaint explicitly states that to avoid being found in default upon motion by Complainant, a written answer, which could include a request for a hearing, had to be filed with the Regional Hearing Clerk within thirty days of the Complaint’s receipt. (Supporting Memo, Exhibit A, Complaint ¶¶ 39-42). The Complaint also informed Respondent that “[t]he answer must clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint,” and that “Respondent’s failure to admit, deny, or explain any material factual allegation . . . constitutes an admission of the allegation.” (Supporting Memo, Exhibit 1, Complaint, ¶ 38.)
5. Respondent did not file an answer within 30 days after service of the Complaint’s receipt. (Chen Decl. ¶16.)
6. On April 18, 2023, Complainant contacted Respondent by phone and held a conversation with

him. (Chen Decl. ¶7.) During the conversation, Respondent included a person identified as the Respondent's Administrative Manager. (Chen Decl. ¶7.) The Administrative Manager indicated Respondent had engaged an attorney and an Answer was forthcoming. (Chen Decl. ¶7.) Complainant informed Respondent and his Administrative Manager of the obligation to Answer and where Complaint set forth the steps for filing the Answer. (Chen Decl. ¶7.)

7. Complainant and Respondent's Assistant Manager had several subsequent conversations in April and May 2023. (See Chen Decl., ¶¶ 7 -14.) During these communications, Respondent, thru his Administrative Manager, acknowledged that an Answer had not yet been filed, but also repeatedly claimed an Answer was forthcoming. (Chen Decl., ¶¶ 7 -14.)
8. Respondent has yet to file an Answer in this matter. (Chen Decl. ¶16.)

CONCLUSIONS OF LAW

Respondent is in Default.

The Complaint in this action was properly served upon Respondent in accordance with 40 C.F.R. § 22.5(b) of the *Consolidated Rules*. In addition, based on the communications between Complainant and Respondent in April and May 2023, Respondent was clearly in receipt of the duly served Complaint. Nonetheless, Respondent has not filed an Answer to the Complaint. Respondent's failure to file a timely Answer to the Complaint constitutes a default by Respondent pursuant to 40 C.F.R. § 22.17(a).

Default by Respondent Constitute Admissions of All Facts.

For the purposes of these proceedings, Respondent's default constitutes an admission of all facts alleged in the complaint and a waiver of Respondent's right to a contest such factual allegations. 40 C.F.R. § 22.17(a); *see also* 40 C.F.R. § 22.15(d) ("Failure of respondent to admit, deny or explain any

material factual allegation contained in the complaint constitute an admission of that allegation.”) Therefore, all allegations, including all material factual allegations, set forth in the Complaint are deemed admitted.

Respondent Is Liable Under SDWA and UIC Regulations.

The allegations in the Complaint, now deemed admitted and which are incorporated herein by reference, establish Respondent’s liability for violating the SDWA, 42 U.S.C. § 300h-2(c), and its Underground Injection Control (UIC) regulations. The UIC regulations at 40 C.F.R. § 144.88(a) prohibit new large capacity cesspools and required owners and operators of existing large capacity cesspools to close them no later than April 5, 2005, in accordance with the closure specifications contained in 40 C.F.R. § 144.89.

First, the Complaint alleges that Respondent is a “person” within the meaning of Section 1401(12) of the SDWA, 42 U.S.C. § 300(f) and 40 C.F.R. § 144.3 because he is an individual. (Supporting Memo, Exhibit A, Complaint ¶ 26.)

Second, the Complaint alleges that Respondent owned or operated a cesspool after April 5, 2005. Under the UIC regulations, “owner or operator” is defined as “the owner or operator of any ‘facility or activity’ subject to regulation under the UIC program.” 40 C.F.R. § 144.3. A. The Complaint alleges (1) that Respondent, in his capacity as trustee of Acton Holding Trust, has owned the real property located at 3740 Smith Avenue, Acton, California 93510 with Assessor Parcel Number 3208-026-048 (the “Property”) since at least 2011, (2) that the Respondent has operated the Cactus Creek Mobile Home Park (the “Park”) on the Property since at least 2015, and (3) that since at least 2019, the Park’s wastewater system has consisted of two cesspools. (Supporting Memo, Exhibit A, Complaint ¶¶

17-21.) The Complaint therefore alleges that the Respondent owned and operated two cesspools after April 5, 2005.

Finally, the Complaint alleges that the cesspools on the property are large capacity cesspools. (Supporting Memo, Exhibit A, Complaint ¶ 21.) The Complaint alleges that the Park's wastewater disposal system has, since at least 2019, and at all times relevant to this action, consisted of two residential cesspools located on the Property, each of which receives sanitary waste, including human excreta, from at least two of the Park's mobile homes. (Supporting Memo, Exhibit A, Complaint ¶¶ 19-25.) The Complaint alleges that the cesspools on the Property receive sanitary waste from "multiple dwellings," and are therefore large capacity cesspools.

Therefore, Respondent, individually and as trustee of the Acton Holding Trust, has admitted to owning and/or operates two large capacity cesspools located at the Cactus Creek Mobile Home Park in Acton, California, in violation of the UIC regulatory ban on such systems that took effect on April 5, 2005. These cesspools are, and have been in service since at least December 2019, when the Los Angeles Regional Water Quality Control Board inspected the property. By virtue of Respondent's failure to file a timely Answer to the Complaint, Complainant has proven Respondent is liable under section 1423(c) of the SDWA, 42 U.S.C. § 300h-2(c), for violating the regulatory prohibition on large capacity cesspools.

Good Cause Has Not been Shown Against the Issuance of a Default Order.

An order of default as to any or all parts shall be issued against the defaulting party unless the record shows good cause why such an order should not be issued. Respondent did not respond to or otherwise oppose Complainant's Motion for Partial Default. As such, Respondent has not failed to show good cause for why a default order should not be issued.

ORDER

Based on the record, the Findings of Fact and Conclusions of Law set forth above, I hereby find that Respondent is in default and is liable as a matter of law for the violations set forth in the Complaint in this matter. Complainant's Motion for Partial Default Judgement on Liability is granted. *See* 40 C.F.R. § 22. 17(c) ("the relief proposed in the motion for default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act.") The issue of an appropriate penalty is referred to the Complainant for further action.

IT IS SO ORDERED:

BEATRICE WONG Digitally signed by
BEATRICE WONG
Date: 2024.04.24
11:44:49 -07'00'

BEATRICE WONG
Regional Judicial Officer
USEPA, Region IX