

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS

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2019 JAN 21 PM 2:15  
REGIONAL HEARING CLERK  
EPA REGION VI

IN THE MATTER OF: )

Diamond 3S, LLC )

Respondent. )

) Docket No. SDWA-06-2018-1102  
)  
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)  
)

**INITIAL DECISION AND DEFAULT ORDER**

This proceeding was initiated by the Director of the Compliance Assurance and Enforcement Division, Region 6, United States Environmental Protection Agency (hereinafter, “Complainant” or “EPA”) in order to assess an administrative penalty in the amount of \$6,000 against Diamond 3S, LLC (“Respondent”) for violations of the Safe Drinking Water Act (“SDWA”), as well as require certain compliance measures. The proceeding is governed by the procedures set forth in the revised Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination and Suspension of Permits set forth at 40 Code of Federal Regulations (“CFR”) part 22, including the Supplemental Rules for Administrative Proceedings not Governed by the Administrative Procedures Act (collectively, the “Rules of Practice”).

Section 22.17(a) of the CFR provides that a “party may be found to be in default: after motion, upon failure to file a timely answer to the complaint...” 40 CFR § 22.17(a). EPA filed an Administrative Complaint (“Complaint”) against Respondent on June 13, 2018. I granted Respondent’s Motion for extension of time to answer the Complaint until March 29, 2019. Complainant avers that via e-mail and telephone, all attempts to contact Respondent have been to no avail. To date, Respondent has not filed its Answer or requested a hearing. On November 27, 2019, Complainant filed Motion for Default (“Motion”), to which Respondent has not, to date, countered with a response. Therefore, based on the Rules of Practice, the record in this proceeding, and the reasons set forth below, Complainant’s Motion is hereby GRANTED, this shall constitute my Initial Decision pursuant to 40 CFR § 22.17(c), I will assess the full amount

of the \$6,000 penalty Complainant sought against Respondent, and order the requested compliance measures.

## **I. BACKGROUND AND PROCEDURAL HISTORY**

On March 18, 2016, an EPA inspection revealed that Respondent's well's static fluid level was at the surface. Consequently, on September 22, 2017, Complainant issued an Administrative Order ("AO") against Respondent ordering compliance and finding that Respondent maintained an injection well in a manner that could allow for the movement of contaminated fluids into an underground source of drinking water ("USDW"). Service was properly made in accordance with 40 CFR § 22.6. Respondent did not respond to the AO. After issuing the AO, on numerous occasions EPA alleges it attempted contact with Respondent in order to explain the AO, the potential consequences of failing to adhere to the AO, to offer assistance in achieving compliance, and answer any questions. Respondent failed to remedy the violations or respond to EPA.

Consequently, Complainant filed the Complaint against Respondent on June 13, 2018, seeking a penalty in the amount of \$6,000, and compliance, in violation of the SDWA. Service was properly made in accordance with 40 CFR § 22.5(b). EPA again sought to contact Respondent to discuss the matter and Respondent did not respond to EPA's overtures. To date, with the exception of a Motion for Extension of Time, Respondent has not made any filings in this matter.

EPA therefore filed the present Motion on November 27, 2019, seeking a default order against Respondent finding it liable for the alleged Complaint violations, as well as the full assessment of the proposed \$6,000 penalty and accompanying compliance measures. Complainant properly served the Motion upon Respondent pursuant to 40 CFR § 22.5(b).

To date, Respondent has failed to file its Answer or a response motion or communicate with Complainant to resolve the matter. As noted prior, Section 22.17(a) of the Rules of Practice provides that a "party may be found to be in default: after motion, upon failure to file a timely answer to the complaint..." 40 CFR § 22.17(a). Default by Respondent entails "an admission of

all facts alleged...and a waiver of respondent's right to contest such factual allegations," thereby leaving Respondent potentially liable for the entire proposed penalty if such default decision is rendered. 40 CFR § 22.17(a).

## II. FINDINGS OF FACT

Pursuant to 40 CFR §§ 22.17(c) and 22.27(a), and based on the entire record, I make the following findings of fact:

1. Respondent is a limited liability company and partnership doing business in the state of Oklahoma.
2. At all relevant times, Respondent owned or operated an existing Class II well, as defined in 40 CFR § 147.2902 ("Well"). The Well is located in the Northeast Quarter of Section 1, Township 24 North, Range 7 East, Osage County, Oklahoma.
3. Because Respondent is an owner or operator of the Well within the meaning of 40 CFR § 122.2, Respondent is subject to the underground injection control requirements set forth at 40 CFR Part 147, Subpart GGG.
4. Unless authorized by rule or permit, underground injection is prohibited under the Underground Injection Control ("UIC") program. 40 CFR § 147.2903(a).
5. Existing injection wells authorized by the Bureau of Indian Affairs and constructed or completed on or before the effective date of the Osage UIC program are authorized by rule. 40 CFR § 147.2909.
6. The Well is authorized as such pursuant to 40 CFR § 147.2909, and Respondent therefore must comply with 40 CFR §§ 147.2903, 147.2905, 147.2907, and 147.2910-147.2915.
7. 40 CFR § 147.2905 requires the plugging of an injection well within one year after injection termination and sets forth specific administrative and technical requirements necessary to achieve proper plugging. EPA may extend the time to plug if no fluid movement into an USDW will occur and the operator has presented a viable plan for utilizing the well within a reasonable time thereafter. 40 CFR § 147.2905.
8. An owner or operator of such a well must not construct, operate, maintain, convert, plug, or abandon any injection well, or conduct any other injection activity, in a manner that allows the movement of fluid containing any contaminant into an USDW, if the presence

of that contaminant may cause the violation of any primary drinking water regulation or may otherwise adversely impact the health of persons. 40 CFR § 147.2903(b).

9. 40 CFR § 147.2912(a) requires each well authorized by rule to have mechanical integrity. A well has mechanical integrity if there are no significant leaks in the casing, tubing, or packer and there is no significant fluid movement into a USDW through vertical channels adjacent to the well bore.
10. On February 29, 2016, Respondent conducted a mechanical integrity test (“MIT”) inspection of the Well, testing the mechanical integrity of the casing, tubing, and packer of the Well according to procedures set forth at 40 CFR § 147.2912(a)(1)(i). The MIT indicated that the Well did not have mechanical integrity of the casing, tubing, or packer.
11. On March 8, 2016, EPA notified Respondent that the Well did not have mechanical integrity and required Respondent to cease use of the Well for fluid injection and to disconnect injection pipelines from the Well.
12. On April 18, 2018, an EPA inspector inspected the Well and observed the static fluid level in the Well to be at the surface. The inspector also observed the surface pressure on the tubing to be 355 pounds per square inch (“psi”). This static fluid level exceeded the USDW in the Well. A static fluid level above the base of the USDWs along with a surface pressure of 355 psi indicates that fluids could be moving through the Well into USDWs.
13. On June 26, 2018, EPA notified the public of the Complaint filing and allowed for a 30 day comment period, as required by SDWA Section 1423(c)(3)(B), 42 U.S.C. § 300h-2(c)(3)(B). The comment period expired on July 27, 2018, with no comment.
14. Complainant filed the Complaint on June 28, 2018, seeking a penalty in the amount of \$6,000 for Respondent’s failure to comply with the SDWA and required accompanying compliance measures.
15. Answers are required within 30 days after service of the Complaint. 40 CFR § 22.15(a).
16. 40 CFR § 22.15(d) clearly provides that if an Answer fails to admit, deny, or explain any material allegation of fact in the Complaint, it is deemed an admission of such allegation. Respondent also waives its right to a hearing on such factual allegations if such a request is not made in the Answer. *Id.*

17. With no communication beyond an extension request, filed Answer from Respondent, or negotiations with Complainant, the Motion discussed herein was filed.
18. Respondent must file any response to said Motion within 15 days after service. 40 CFR § 22.16(b). Respondent cannot object to the granting of the Motion if it fails to respond within the designated time period. *Id.*
19. Proper service was made upon Respondent and, to date, Respondent has not filed a response.

## II. CONCLUSIONS OF LAW

Pursuant to 40 CFR §§ 22.17(c) and 22.27(a), and based on the entire record, I make the following conclusions of law:

20. Respondent is an owner or operator of the Well within the meaning of 40 CFR § 122.2, and subject to the SDWA and underground injection control requirements set forth at 40 CFR Part 147, Subpart GGG.
21. As set forth herein, Respondent was properly served the AO, Complaint, and Motion. 40 CFR §§ 22.5(b) and 22.6.
22. Respondent's failure to timely file an Answer or response motion in this matter is deemed an admission of the factual allegations set forth in the Complaint and is grounds to enter this default order against Respondent assessing the full amount of the civil penalty sought and a waiver by Respondent of its right to object to the issuance of this order.
23. Respondent failed to comply with the AO and Complaint discussed herein and violated the SDWA and its accompanying regulations.
24. EPA has afforded Respondent ample time and opportunity to remedy this matter, as well as made numerous attempts to contact Respondent to resolve the matter.
25. Respondent has failed to make any efforts to respond to EPA and made no attempts to remedy the discussed SDWA violations.
26. Section 22.17(a) of the CFR provides that a "party may be found to be in default: after motion, upon failure to file a timely answer to the complaint..." Default by Respondent entails "an admission of all facts alleged...and a waiver of respondent's right to contest

such factual allegations,” thereby leaving Respondent liable for the entire proposed penalty.

27. As discussed above, Respondent failed to comply with the AO and Complaint, never filed an Answer or response motion in this matter, nor provided good cause as to why I should not issue this Initial Decision and Default Order against Respondent.
28. The requested civil penalty of \$6,000 is not inconsistent with the SDWA and the record in this proceeding.

### **III. PENALTY DISCUSSION**

Pursuant to 40 CFR § 22.27(b), the “Presiding Officer shall determine the amount of the recommended civil penalty based on the evidence in the record and in accordance with any penalty criteria set forth in the [SDWA]. The Presiding Officer shall consider any civil penalty guidelines issued under the [SDWA].” This determination may include (1) the seriousness of the violation, (2) any economic benefit resulting from the violation, (3) history of violations, (4) the good faith efforts to comply, (5) the economic impact on Respondent, and (6) other appropriate factors. 42 USC § 300g-3(b). In this case, the relief requested is a civil penalty in the amount of \$6,000 and appropriate compliance measures. Considering the above factors, the findings of facts and conclusions of law set forth above, and the entire record in this case, I make the following determinations regarding the proposed penalty.

#### **1. Seriousness of the Violation**

The seriousness of a violation will depend on the facts and circumstances in each specific case. In this case, there was a high static fluid level in the Well that did not have mechanical integrity. This means the Well was under pressure, which such pressure could force well fluids or contaminated fluids into USDWs, leading to severe human and/or environmental harm and potential loss of drinking water sources. Respondent failed to not only properly remedy said violations, but alternatively, Respondent also did not properly plug and abandon the Well that could have prevented fluid movement into the USDW.

#### **2. Economic Benefit**

Economic benefit is the avoided or delayed costs for noncompliance. Using the BEN computer program, EPA calculated the economic benefit to Respondent of \$1,296, which provided Respondent with an advantage over similar members of the regulated community who chose to stay in compliance.

### **3. History of Violations**

EPA had previously issued to Respondent an AO in this matter for the same violations set forth in the Complaint.

### **4. Good Faith Efforts to Comply**

Respondent has made no good faith efforts to comply, whether to reach settlement and correct the violations, or plug and abandon the Well. Respondent did not sufficiently respond to the AO, Complaint, or the Motion, nor did Respondent respond to EPA's attempts at contact via e-mail and telephone.

### **5. Economic Impact on the Violator**

While Respondent had prior expressed an inability to pay, using ABEL software, EPA estimated a 94% probability that Respondent could afford the discussed penalty amount after meeting anticipated pollution control expenditures.

### **6. Other Appropriate Factors**

Pursuant to 40 CFR § 22.17(c), the "relief proposed in the complaint...shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the [SDWA]." Complainant proposed to assess a total civil penalty of \$6,000 for the violations set forth herein. After carefully considering the statutory factors and the entire record in this case, I find the civil penalty proposed is consistent with the record in this matter and the SDWA.

## **IV. DEFAULT ORDER**

Pursuant to 40 CFR § 22.17, Complainant's Motion is granted. Therefore, Respondent is hereby **ORDERED** to comply with all the terms herein, including as follows:

1. Respondent is assessed a civil penalty in the amount of \$6,000.
  - a. Payment of the full amount of the civil penalty assessed shall be made within thirty (30) days after this default order becomes final under 40 CFR § 22.27(c) by submitting a certified check or cashier's check payable to Treasurer, United States of America, and mailed to:

Regional Hearing Clerk  
EPA – Region 6  
P.O. Box 360582M  
Pittsburgh, PA 15251

A transmittal letter identifying the subject case and the EPA docket number, plus Respondent's name and address, shall accompany the check.

- b. Respondent shall mail a copy of the check to:

Lorena S. Vaughn  
Regional Hearing Clerk (6RC)  
U.S. Environmental Protection Agency  
Region 6  
1201 Elm Street, Suite 500  
Dallas, TX 75270-1201

2. Respondent shall plug the Well pursuant to 40 CFR § 147.2905 or repair the Well in order to demonstrate mechanical integrity of the casing, tubing, and packer in accordance with procedures set forth at 40 CFR § 147.2912(a)(1)(i).

3. This Default Order constitutes an Initial Decision, as provided in 40 CFR § 22.17(c). This Initial Decision shall become a final order 45 days after its service upon the parties and without further proceedings unless (1) a party appeals the initial decision to the Environmental Appeals Board if done so within thirty (30) days from the date of service provided in the certificate of service accompanying this order, (2) a party moves to set aside the Default Order, or (3) the Environmental Appeals Board elects, *sua sponte*, to review the initial decision on its own initiative. 40 CFR §§ 22.27(c), 22.30(a).



SO ORDERED, this 21<sup>st</sup> day of January, 2020.

A handwritten signature in blue ink, appearing to read 'Thomas Rucki', written in a cursive style.

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THOMAS RUCKI  
REGIONAL JUDICIAL OFFICER

**CERTIFICATE OF SERVICE**

I hereby certify that on this 21<sup>st</sup> day of January, 2020, I served true and correct copies of the foregoing Initial Decision and Default Order on the following in the manner indicated below:

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Ryan Summers  
Diamond 3S, LLC  
20102 West Coyote Trail  
Sand Springs, OK 74063

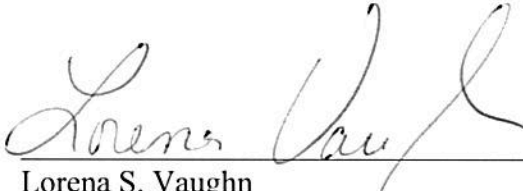
**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Clerk of the Environmental Appeals Board (1103B)  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460-0001

**COPY HAND/E-MAIL DELIVERED**

Rusty Herbert  
Enforcement Counsel (6RC-EW)  
U.S. EPA - Region 6  
10625 Fallstone Road  
Houston, Texas 77099

Branch Chief  
Water Enforcement Branch (6RC-EW)  
Office of Regional Counsel  
U.S. EPA - Region 6  
1201 Elm Street  
Dallas, Texas 75270-1201

  
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Lorena S. Vaughn  
Regional Hearing Clerk