UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
2015 AUG -3 PM 3:23
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:	)	
	)	
Page One Plus Wholesale, Inc.,	)	Docket No. SDWA-06-2014-1106
An Oklahoma corporation	)	
	)	
	)	
Respondent.	)	
	)	

ORDER DENYING MOTION TO VACATE

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 $7,000.00 against Page One Plus Wholesale, Inc. ("Respondent") for violations of the Safe Drinking Water Act ("SDWA"). 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").

After issuing my Initial Decision and Default Order ("Default Order") against Respondent on June 9, 2015, Respondent moved to vacate the Default Order in a Motion to Vacate Initial Decision and Default Order ("Motion") filed on July 13, 2015. Complainant timely respondent to the Motion on July 24, 2015. For the reasons set forth herein, I am denying Respondent's Motion.

On July 11, 2013, Complainant filed an Administrative Order ("AO") against Respondent alleging SDWA violations pertaining to Respondent's injection well and requiring corrective action measures. Respondent failed to remedy the violation.

Consequently, Complainant filed an Administrative Complaint ("AC") against Respondent on January 14, 2014, for the same SDWA violations set forth in the AO, as well as for neglecting its responsibility to adhere to the mandates set forth in the AO. On July 8, 2014, Respondent, *pro se*, countered the AC with what I considered its Answer under the Rules of Practice. Although Respondent did not request a hearing, Respondent sought to "rescind" the AC. Subsequent to this response, EPA's counsel repeatedly reached out to Respondent to settle the matter or continue negotiations, and Respondent did not respond. I therefore issued an Order on November 4, 2014, directing the parties to engage in a settlement conference by December 14, 2014, and mandated in the Order that by February 9, 2015, the parties must file a fully executed Consent Agreement and Final Order, put before me a motion for an extension of time, or prepare for hearing by having Complainant submit its prehearing exchange by February 9, 2015, and Respondent replying with its prehearing exchange by February 23, 2015.

The following day, Respondent wrote a letter to Complainant where he, among other things, did "not consent to the proposed final order and [felt] that [the well] was not in violation." Respondent again requested rescission of this matter. With no settlement deemed likely after negotiations, Complainant timely filed its prehearing exchange.

To date, Respondent has failed to file its prehearing exchange, as required by the Order. On March 13, 2015, due to Respondent's failure to adhere to the Rules of Practice and my Order, I issued a show cause order to Respondent to allow for an opportunity to explain why it failed to file its prehearing exchange by the required deadline and why I should not issue the Default Order against Respondent. Respondent yet again failed to timely respond and I therefore issued the Default Order, ordering Respondent to comply with the AC, as well as assessed the full amount of the civil penalty ($7,000) set forth in the AC.

On July 13, 2015, Respondent filed the aforementioned Motion providing that it did not want to plug the injection well at issue, did not use or operate the well during the entirety of its well ownership, and no violations pertaining to the injection well existed, which, Respondent alleged, was supported by letters from the Osage Nation Environmental and Natural Resources Department. The Motion further provided that the action will cause great financial harm to Respondent and because the Well does not produce, is surrounded by heavy vegetation, and "proposes no threat," the Default Order "should be closed immediately."

Complainant, for its part, countered in its filing that Respondent "abjectly failed to adhere to the requirements of EPA's procedural rules" due to its multiple failures to comply with applicable regulations and Orders I have issued. Furthermore, Complainant points out that Respondent has not only failed to explain its complete disregard for said Orders and regulations, but also not attempted to remedy the violations at issue – rather, simply demanding that EPA vacate the Default Order and proceed with no further action against Respondent.

As elucidated in the Default Order and herein, Respondent is subject to the requirements set forth in the SDWA and its implementing regulations, as well as the procedures provided for in the Rules of Practice. The Environmental Appeals Board has consistently concluded that continually failing to adhere to the procedural requirements set forth in the Rules of Practice constitutes grounds for default. *See, e.g., In re Rocking BS Ranch, Inc.*, CWA Appeal No. 09-04 (EAB April 21, 2010) (Final Decision and Order); *In re Tri-County Builders Supply*, CWA Appeal No. 03-04 (May 24, 2004) (Order Dismissing Appeal); *In re Rybond*, 6 E.A.D. 614 (EAB 1996). While some leniency is afforded *pro se* litigants, such parties cannot repeatedly ignore both the Rules of Practice and multiple orders without repercussions. *See, In re Rocking BS Ranch, Inc.*, at 10-11; *In re Jiffy Builders, Inc.*, 8 E.A.D. 315, 320-321 (EAB 1999).

The merits of this matter were determined in the Default Order. Respondent has presented no new or materially changed evidence to have me reconsider my conclusion in the Default Order that Respondent failed to comply with the AO discussed herein, did not plug the well within one year after terminating injection operations, and maintained the well in a manner that could allow fluid movement in an underground source of drinking water, all in violation of

the SDWA and its accompanying regulations (all as more fully explained therein). Furthermore, Respondent made no attempts to explain its failure to respond to the prehearing exchange requirements and my Orders, its disregard for the Rules of Practice, nor did the Motion propose what SDWA-approved corrective actions would ensue to remedy the violations at issue.

Section 22.17(a) of the Rules of Practice could not be clearer - a "party may be found to be in default....upon failure to comply with the information exchange requirements of § 22.19(a) or an order of the Presiding Officer." Default by Respondent entails "an admission of all facts alleged...and a waiver of respondent's right to contest such factual allegations," thereby, as noted in the Default Order, leaving Respondent potentially liable for the entire proposed penalty if such default decision is rendered.

Respondent did in fact fail to comply with the information exchange requirements and my two prior Orders, as well as did not pay the assessed penalty or remedy the violation at issue. When given multiple opportunities, Respondent also failed to show good cause for its complete failure to comply with the Rules of Practice, my prior Orders, and the SDWA. The present Motion offers nothing new beyond a brief reiteration of prior arguments, as well as a general annoyance with this process and the penalty and corrective action requirements that ensued due to the violations, which is why, as discussed herein, I will not vacate the Default Order.

The Default Order constituted an Initial Decision, as provided in 40 CFR § 22.17(c). The filing of the Motion stayed the finality of the Default Order, pursuant to 40 CFR §§ 22.27(c), 22.30(a). However, upon filing this Order, Respondent will have 30 days after service to appeal to the Environmental Appeals Board or the Environmental Appeals Board may elect, *sua sponte*, to review the decision on its own initiative. 40 CFR §§ 22.27(c), 22.30(a).

Pursuant to 40 CFR §§ 22.16(c) and 22.51, Respondent's Motion is hereby **DENIED.**

SO ORDERED, this 3rd day of August, 2015.

THOMAS RUCKI
REGIONAL JUDICIAL OFFICER

CERTIFICATE OF SERVICE

I hereby certify that on this ___ day of August, 2015, 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

Mr. Terrance L. Lewis
Page One Plus Wholesale, Inc.
P.O. Box 691335
Tulsa, OK 74169

Mr. Terrance L. Lewis
14432 E 36th Street
Tulsa, OK 74134

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Clerk of the Environmental Appeals Board (1103B)
U.S. Environmental Protection Agency
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Washington, D.C. 20460-0001

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Assistant Administrator
Office of Enforcement and Compliance Assurance (2201A)
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U.S. Environmental Protection Agency
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Washington, D.C. 20460

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Bureau of Indian Affairs, Osage Agency
P.O. Box 1539
Pawhuska, OK 74056

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Osage National Environmental and Natural Resources Department
P.O. Box 1495
Pawhuska, OK 74056

COPY HAND DELIVERED

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Lorena S. Vaughn
Regional Hearing Clerk