

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR**

IN THE MATTER OF: )  
 )  
 Atkinson Developers, LLC )  
 Francis M. Atkinson Jr. )  
 Aynor, South Carolina )  
 )  
 RESPONDENTS )  
 \_\_\_\_\_ )

Proceeding under Section 309(g)  
of the Clean Water Act, 33 U.S.C.  
§ 33 U.S.C. § 1319(g)

Docket No.: CWA-04-2010-5515

HEARING CLERK

2015 JAN 15 PM 4: 33

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**RESPONSE TO ORDER TO SUPPLEMENT RECORD**

COMES NOW the Complainant, Director of the Clean Water Protection Division of the U.S. Environmental Protection Agency (EPA) Region 4, and responds to the Regional Judicial Officer's (RJO) Order to Supplement the Record (First Order), dated October 29, 2014. The RJO ordered the Complainant pursuant to 40 C.F.R. § 22.16 to present an affidavit or declaration of the person calculating the proposed penalty, by December 1, 2014, that would provide factual grounds for the proposed penalty.

On November 25, 2014, Complainant filed a Response to Order to Supplement the Record. In the Response Complainant requested that the RJO reconsider her Order or in the alternative grant an extension of time for Complainant to comply with the Order. On December 4, 2014, the RJO issued an Order Granting Extension of Time (Second Order). The Second Order provided that the Complainant comply with the First Order by supplementing the record with an affidavit or declaration of the person calculating the proposed penalty on or before January 15, 2015.

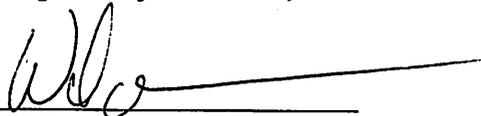
Complainant offers the Declaration of Mike Wylie, which provides the factual grounds for the proposed penalty, and provides the documents he relied on in his calculation as required by the Orders. This filing is consistent with the relevant regulation related to filing motions, 40 CFR §22.16(a)(4) which requires the motion to "[b]e accompanied by any affidavit, certificate, other evidence or legal memorandum relied upon."

Pursuant to 40 C.F.R. § 22.17(c), "[w]hen the Presiding Officer finds that default has occurred, s/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." 40 C.F.R. § 22.17(c) also states, "[t]he relief proposed in the complaint or the motion for default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act". The relief requested by Complainant is consistent with the record of this proceeding and the underlying federal laws and regulations.

Complainant believes that this Declaration and its Exhibits, together with the evidence provided with Complainant's Motion for Default meet the requirements of 40 CFR § 22.16(a)(4) and C.F.R. § 22.17(c).

Therefore, Complainant respectfully requests that the RJO find that default has occurred, issue a default order against the defaulting party as to all parts of the proceeding and issue an Order for Default and \$157,500 civil penalty against Respondents.

Respectfully submitted,



Wilda Watson Cobb  
Associate Regional Counsel  
U. S. Environmental Protection Agency, Region 4  
61 Forsyth Street, SW  
Atlanta, GA 30303

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and a copy of the forgoing, Response to Order to Supplement Record with accompanying Exhibits, were hand delivered to the Region 4 Regional Hearing Clerk, and that a true and accurate copy was served via U.S. Mail, Return Receipt Requested on the Respondent as follows:

Original by Hand-Delivery: Ms. Patricia Bullock  
Regional Hearing Clerk  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303

Copy by U.S. Mail: Mr. Francis M. Atkinson, Jr.  
Atkinson Developers, LLC  
4368 Green Sea Road South  
Aynor, South Carolina 29511

Date: 1/15/2015

  
\_\_\_\_\_  
Wilda Watson Cobb  
Associate Regional Counsel  
U. S. Environmental Protection Agency, Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303

# DECLARATION