

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF; )  
)  
Atkinson Developers, LLC )  
Francis M. Atkinson Jr. )  
Aynor, South Carolina 28306 )  
)  
Respondent )  
\_\_\_\_\_ )

Docket No.: CWA-04-2010-551

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HEARING CLERK

ORDER TO SUPPLEMENT RECORD

By Motion for Default (“Motion”) dated May 2, 2014, Complainant, Director of the Clean Water Protection Division of the U.S. Environmental Protection Agency (EPA) Region 4, seeks issuance of a default order against Respondents Atkinson Developers, LLC and Francis M. Atkinson, Jr. (“Respondents”), assessing a civil penalty under Section 309(g)(2) of the Clean Water Act, 33 U.S.C. § 1319(g)(2). Complainant files its Motion pursuant to Section 22.17 of 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 (“Consolidated Rules of Practice”), 40 C.F.R. § 22.17. That section provides in pertinent part that, “[a] party may be found to be in default . . . after motion, upon failure to file a timely answer to the complaint.” Complainant asserts that he filed an Administrative Complaint with the Regional Hearing Clerk (“RHC”) on June 4, 2010 and served it upon Respondents on June 7, 2010, and thereafter refiled the Administrative Complaint on June 22, 2010, which he then served on Respondents on June 25, 2010. Complainant, relying upon Section 22.15 of the Consolidated Rules of Practice, 40 C.F.R. § 22.15, requiring the filing of an answer with the RHC within thirty (30) days after service of the Complaint, claims that Respondents are in default for failure to have filed a timely answer.

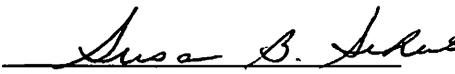
In support of its Motion, Complainant attached a number of exhibits, including Exhibit E, "Penalty Justification Memorandum." While a motion for default may seek resolution of all or part of the proceeding, where the motion requests the assessment of a penalty or the imposition of other relief against a defaulting party, the movant must specify the penalty or other relief sought and state the legal and factual grounds for the relief requested. 40 C.F.R. § 22.17(b). Additionally, Section 22.16(a) of the Consolidated Rules of Practice requires a party to submit "...any affidavit, certificate, other evidence ..." supportive of the relief requested. 40 C.F.R. § 22.16(a)

Complainant's Motion, and Exhibit E attached thereto, address the factual and legal grounds for its request for a civil penalty in the amount of \$157,500, but contains no supporting documentation for this proposed penalty. Conclusory findings of the appropriateness of a particular penalty amount are insufficient. See Katzson Bros., Inc. v. U.S. Environmental Protection Agency, 839 F. 2d 1396, 1400-1401.

**IT IS ORDERED:**

On or before December 1, 2014, Complainant shall submit the a supporting documentation to the relief sought in the Motion for Default, such as an affidavit or declaration of the person calculating the proposed penalty, which will provide factual grounds for the proposed penalty. Any document relied upon should also be referenced in the affidavit and attached to the affidavit as an exhibit.

Date: October 29, 2014

  
Susan B. Schub  
Regional Judicial Officer

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true and correct copy of the foregoing Order to Supplement Record, in the Matter of Atkinson Developers, LLC and Francis M. Atkinson, Jr., Docket No. CWA-04-2010-5515, on the parties listed below in the manner indicated:

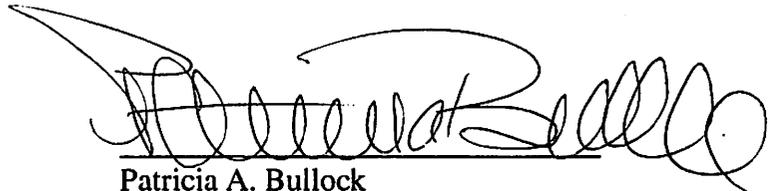
**First Class Mail-Return Receipt Requested**

Mr. Francis M. Atkinson, Jr.  
Atkinson Developers, LLC  
4368 Green Sea Road South  
Aynor, South Carolina 29511

**Intra-Office Mail:**

Wilda W. Cobb, Esq.  
Office of Environmental Accountability  
U.S. Environmental Protection Agency  
Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

Date: 10-29-14



Patricia A. Bullock  
Regional Hearing Clerk  
U.S. Environmental Protection  
Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, GA 30303  
404/562-9511