

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF;)
)
Donald F. Strickland)
2425 Legion Road)
Fayetteville, North Carolina 28306)
)
Respondent)
_____)

Docket No.: RCRA-04-2020-0001

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ORDER TO SUPPLEMENT RECORD

By Motion for Default (“Motion”) dated May 27, 2010, Complainant, Director of the Resource Conservation and Recovery Act (RCRA) Division of the U.S. Environmental Protection Agency (EPA) Region 4, sought issuance of a default order against Respondent, Donald F. Strickland, assessing a civil penalty and ordering the performance of injunctive relief under Section 9006 of RCRA, 42 U.S.C. § 6991. 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.” Respondent asserts that it filed an Administrative Complaint and Compliance Order (“Complaint”) with the Regional Hearing Clerk (“RHC”) on January 12, 2010, and served it upon Respondent on January 23, 2010. Therefore, 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 Respondent is in default for failure to have filed an answer on or before February 22, 2010. In support of its Motion, Complainant attached four exhibits: a)

a copy of the Complaint and 40 C.F.R. Part 22; b) a copy of the cover letter for the Complaint and a copy of the Certified Mail Receipt; c) a copy of the Certificate of Service of the Complaint; and d) Affidavit of Patricia A. Bullock, RHC, stating that neither an answer to the Complaint, nor any other document has been filed by Respondent. Thereafter, on July 29, 2010, Complainant filed a Status Update indicating that Respondent failed to file a response to the above-referenced Motion which was due on or before June 16, 2010, and that the Motion was returned as “unclaimed” mail on July 7, 2010. Complainant further notified the undersigned that the unclaimed copy of the Motion was re-sent using commercial overnight delivery and was again returned, the recipient refusing delivery.

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)

Part IV B of Complainant’s Motion addresses its request for a civil penalty in the amount of \$8,520., but consists primarily of a brief recital of the factors considered by Complainant. There is 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.

In addition to seeking an Order finding Respondent liable for violations alleged in the Complaint and for the imposition of a penalty, Complainant also moves to have Respondent ordered to perform injunctive relief. It appears that the injunctive relief sought is that which was

contained in the Compliance Order, Section IV, of the January 12, 2010, Complaint. Pursuant to Section 9006(b) of RCRA, 42 U.S.C. 6991e, as well as Section 22.37(b) of the Consolidated Rules of Practice, 40 C.F.R. § 22.37(b), a Compliance Order automatically becomes a final order unless, no later than 30 days after the order is served, the Respondent requests a hearing. In light of the fact that Complainant seeks a default order based upon Respondent's alleged failure to respond to the Complaint, and given the statutory and regulatory provisions pertaining to compliance orders becoming effective automatically, it is appropriate that Complainant explain the basis for requesting that the undersigned order compliance.

IT IS ORDERED:

1. On or before **September 30, 2010**, Complainant shall submit the following:
 - a. A written argument stating the legal and factual grounds for the proposed penalty, with supporting documentation, 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;
 - b. A written explanation as to why it is seeking injunctive relief in light of the provisions at Section 9006 of RCRA, 42 U.S.C. § 6991e, and Section 22.37(b) of the Consolidated Rules of Practice, 40 C.F.R. § 22.37(b), pertaining to compliance orders becoming effective 30 days after service, absent Respondent's request for a hearing; and
 - c. Copies of 1) the return receipts for the Motion mailed to Respondent on May 27, 2010, via Certified Mail – Return Receipt Requested, and 2) any documentation

indicating delivery refusal of the Motion re-sent on July 15, 2010, via commercial overnight delivery.

Date: August 30, 2010

Susan B. Schub
Susan B. Schub
Regional Judicial Officer

Donald F. Strickland
2425 Legion Road
Fayetteville, North Carolina 28306

Certified Mail – (Return
Receipt Requested)

Alfred Politzer, Esq.
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

(via Intra-Office Mail)

Date: August 30, 2010

Claudette A. Haney
for Patricia A. Bullock
Regional Hearing Clerk
U.S. Environmental Protection
Agency, Region 4
61 Forsyth Street, S.W.
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