

administrative complaint under Section 28.16(a) of the Consolidated Rules. The administrative complaint contained recitations of statutory authority and allegations regarding Respondent's operation of its Kodiak, Alaska, log transfer facility in a manner alleged to be in violation of the Clean Water Act. The administrative complaint provided notice of a proposed penalty in the amount of \$10,000. The letter accompanying the administrative complaint provided notice that failure to respond to the administrative complaint within thirty days would result in the entry of a default order, and informed the Respondent of its right to a hearing and of the opportunity to seek an extension of the thirty day period for filing a response.

By memorandum dated June 20, 1995, the Regional Counsel for EPA Region 10 designated me as Presiding Officer in this proceeding.

UNTIMELY RESPONSE

Under Section 28.20 of the Consolidated Rules, Respondent had thirty days (unless extended) from its receipt of the administrative complaint to file a response:

(a) Respondent's deadline. The respondent shall file with the Hearing Clerk a response within thirty days after receipt of

(1) The administrative complaint

(b) Extension of respondent's deadline. For the purpose of engaging in informal settlement negotiations between the complainant and respondent the deadline for the respondent to file a response pursuant to paragraph (a)(1) of this section shall be extended:

(1) For any period stipulated by the complainant and respondent (but in no event for longer than ninety days following such deadline), by filing such stipulation with the Hearing Clerk within thirty days after respondent's receipt of the administrative complaint

The initial deadline under Section 28.20(a) for filing a response was February 17, 1995. However, the Respondent and an EPA attorney representing the Complainant executed a stipulation on February 16, 1995 which extended the response deadline for 90 days, the maximum extension allowed under Section 28.20(b)(1). The new deadline for filing a response was therefore May 18, 1995.

No response has been filed to date by the Respondent. Environmental Timber Company, Inc. has therefore failed to

respond to the administrative complaint in a timely fashion.

On June 30, 1995, I issued an Order to Show Cause to the Respondent, allowing the Respondent until July 25, 1995 to file a written explanation of the circumstances or reasons surrounding the Respondent's apparent failure to file a timely response. The Respondent did not respond to the Order.

As a consequence of its failure to file a timely response to the administrative complaint, Respondent has waived its opportunity to appear in this action for any purpose. See Section 28.20(e) of the Consolidated Rules. Respondent's failure to file a timely response to the administrative complaint also automatically triggers the default proceedings provision of the Consolidated Rules. Section 28.21(a) of the Consolidated Rules provides:

Determination of Liability. If the Respondent fails timely to respond pursuant to §28.20(a) or (b) of this Part . . . the Presiding Officer, on his own initiative, shall immediately determine whether the complainant has stated a cause of action.

CAUSE OF ACTION

To state a cause of action against Respondent under Section 309(g) of the Clean Water Act, 33 U.S.C. §1319(g), Complainant must allege that:

- (1) Respondent is a person;
- (2) Respondent discharged a pollutant from a point source to waters of the United States; and
- (3) Respondent did not have a Clean Water Act permit authorizing the discharge.

The Complainant has stated a cause of action in the administrative complaint. In Paragraph II.3 of the administrative complaint Complainant alleged that Respondent is a corporation organized under the laws of the State of Alaska and is a person within the meaning of Section 502(5) of the Clean Water Act, 33 U.S.C. §1362(5). In Paragraph II.4 of the administrative complaint Complainant alleged that Respondent owns and operates a log transfer facility in Kodiak, Alaska, which is a point source within the meaning of Section 502(14) of the Clean Water Act, 33 U.S.C. §1362(14). In Paragraph II.6 of the administrative complaint Complainant alleged that on or about May 27, 1995, Respondent discharged logs from the facility into Kalsin Bay, Kodiak, Alaska, which is a navigable water within the meaning of Section 502(7) of the Clean Water Act, 33 U.S.C. §1362(7), and that logs are a pollutant within the meaning of

Section 502(6) of the Clean Water Act, 33 U.S.C. §1362(6). Finally, in Paragraph II.8 of the administrative complaint Complainant alleged that Respondent did not have a permit issued under Section 402 of the Clean Water Act, 33 U.S.C. §1342, authorizing the discharge of pollutants into navigable waters. The foregoing factual allegations are sufficient to state a cause of action.

ENTRY OF DEFAULT AS TO LIABILITY

Having determined that Complainant has stated a cause of action in the administrative complaint, the Presiding Officer must direct the Regional Hearing Clerk to enter Respondent's default as to liability in the administrative record of this proceeding. Section 28.21(a)(1) of the Consolidated Rules. Under Section 28.20(d) of the Consolidated Rules, uncontested allegations in the administrative complaint as to liability are deemed admitted by the Respondent. Accordingly, by this Order I direct the Regional Hearing Clerk for EPA Region 10 to enter Respondent's default as to liability. Upon entry of this Order, the allegations in the administrative complaint as to liability shall be deemed recommended findings of fact and conclusions of law in accordance with Section 28.21(a)(1) of the Consolidated Rules.

ORDER

The Regional Hearing Clerk for EPA Region 10 is directed to enter the Respondent's default as to liability in the record of this proceeding.

DETERMINATION OF REMEDY

In accordance with Section 28.21(b) of the Consolidated Rules, Complainant shall submit within thirty days of receipt of the entry of default a written argument (with any supporting documentation) regarding the assessment of an appropriate civil penalty, limited to the nature, circumstances, extent and gravity of the violation(s) and, with respect to Respondent, ability to pay, any prior history of such violations, the degree of culpability, the economic benefit or savings (if any) Respondent enjoyed resulting from the violation(s), and such other matters as justice may require.

Steven W. Anderson

Presiding Officer

Dated: _____