

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219
BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
ADAMAS CONSTRUCTION AND) COMPLAINANT’S MOTION FOR
DEVELOPMENT SERVICES, PLLC) ACCELERATED DECISION AS TO
) LIABILITY
)
AND)
)
NATHAN PIERCE,)
)
Respondents) Docket No. CWA-07-2019-0262
)
Proceedings under Section 309(g) of the)
Clean Water Act, 33 U.S.C. § 1319(g))

MOTION FOR ACCELERATED DECISION AS TO LIABILITY

COMES NOW, the United States Environmental Protection Agency, Region 7 (“EPA” or “Complainant”) and respectfully submits the following Motion for Accelerated Decision as to Liability. The attached Memorandum and Points of Authority details the factual and legal basis for this in support of this Motion.

Pursuant Rule 22.20(a) of the Consolidated Rules of Practice, 40 C.F.R. §22.20(a), the Presiding Officer may render an accelerated decision as to all or any part of the proceeding at any time “if no genuine issue of material fact exists and a party is entitled to judgment as a matter of law.” As in federal practice, the purpose of such a motion is to pierce the pleadings and assess the proof in order to see whether there is a genuine issue for trial. A party may not rest upon mere denials of the adverse party’s pleadings when opposing such a motion. *In the*

Matter of Gerald Strubinger, et. al., 2002 WL 2005525 at *3-4 (Docket No. CWA-3-2001-001) (Aug. 22, 2002); *In re Labarge, Inc.*, Docket No. CWA-VII-91-W-0078(Feb. 2, 1996).¹

If the non-moving party fails to address the moving party’s assertions of fact-or establish that there is a genuine factual dispute—by citing to specific materials in the record, the court may grant an accelerated decision. *In re Polo Development Inc., et. al.* Docket No. CWA-05-2015-0003, 2015 WL 627637 at *7, (Feb. 6, 2015). Likewise, with respect to affirmative defenses raised by the Respondent, the non-moving party must overcome the moving party’s claims that the defenses lack factual support by citing to specific evidence in the record. *Id.* If unable to demonstrate a genuine factual dispute concerning affirmative defenses, the court may strike the defenses. *Id.*

Complainant notes that, to date, Respondents have never filed an Answer to the Amended Complaint, which was deemed filed and served on January 2, 2020, as stated in the Court’s Order of the same date. Where respondent contests any material fact upon which the complaint is based...it shall file an original and one copy of a written answer to the complaint with the Regional Hearing Clerk. 40 C.F.R. §22.15(a). The answer shall clearly and directly admit, deny or explain each of the factual allegations contained in the complaint with regard to which respondent has any knowledge. 40 C.F.R. §22.15(b). Failure of respondent to admit, deny, or explain any material factual allegation contained in the complaint constitutes an admission of the allegation. 40 C.F.R. §22.15(d).²

¹[https://yosemite.epa.gov/oarm/alj/alj_web_docket.nsf/All%20Content%20%20Web/C7B11FE9917E338685257FBC00702418/\\$File/labarge-inc-cwa-020596.pdf](https://yosemite.epa.gov/oarm/alj/alj_web_docket.nsf/All%20Content%20%20Web/C7B11FE9917E338685257FBC00702418/$File/labarge-inc-cwa-020596.pdf)

² The Order states that Respondents “*may* file an answer to the Amended Complaint within 20 days of the Order.” (emphasis added). Complainant does not believe that the Order substitutes for the requirement in 40 C.F.R. Part 22 to file an Answer. Further, there were additional factual allegations in the Amended Complaint that were never answered by Respondents pursuant to 40 C.F.R. §22.15.

Because Respondents have not provided an answer nor provided any basis for disputing the legal and factual allegations contained in the Amended Complaint, Complainant believes the allegations in the Amended Complaint have been deemed admitted per 40 C.F.R. Part 22.³

Despite any admissions, the evidence in the record demonstrates that there is no genuine issue of material fact with respect to Respondents' liability for violations of the Clean Water Act. Therefore, EPA is entitled to an accelerated decision pursuant to 40 C.F.R. §22.20 that Respondents are liable under 33 U.S.C. §1319 of the Clean Water Act for failing to develop and maintain records pursuant to 40 C.F.R. §503; and failing to respond to an information request issued pursuant to 33 U.S.C. §1318.

For the reasons explained in the attached Memorandum in Support of Motion for Accelerated Decision on Liability, Complainant hereby respectfully requests that this Motion for Accelerated Decision on Liability be granted.

RESPECTFULLY SUBMITTED this 1st day of May 2020.

/s Sara Hertz Wu

Sara Hertz Wu, Senior Counsel
Elizabeth Huston, Senior Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219
Email: hertzwu.sara@epa.gov
Telephone: (913) 551-7316

³ See *In the Matter of Ronald Palimere et. al.*, 2000 WL 33126605, Docket No. RCRA-III-9005-050 (Dec. 13, 2000)(allegations deemed admitted for failure to file an answer to amended complaint and prehearing exchange; motion for default granted); *In the Matter of Rogers Petro-Chem Inc. et. al.*, 1985 WL 57135, Docket No. V-W-84-R-033 (Feb. 27, 1985) (allegations deemed admitted for failure to file an answer to amended complaint and prehearing exchange; motion for default granted); *In the Matter of Docketmaster, Inc.*, 2012 WL 371965, Docket No. CWA-08-2011-0002(Jan. 25, 2012)(allegations deemed admitted for failure to file an answer to amended complaint and prehearing exchange; motion for default granted).

CERTIFICATE OF SERVICE

I certify that the foregoing Complainant's Motion For Accelerated Decision As To Liability, Docket No. CWA-07-2019-0262, has been submitted electronically using the OALJ E-Filing System.

A copy was sent by email to:

Attorney for Respondents Adamas Construction and Development Services PLLC and Nathan Pierce:

chrisjgalluslaw@gmail.com

A copy was sent by email to Nathan Pierce at:

adamas.mt.406@gmail.com.

Date: 5/1/2020

/s Sara Hertz Wu

Sara Hertz Wu
Senior Counsel
11201 Renner Boulevard
Lenexa, Kansas 66209
(913) 551-7316 (Telephone)
(913) 551-9525 (Fax)
email: hertzwu.sara@epa.gov