UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

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In the Matter of:	)	
	)	Docket No. CWA-05-2005-0010
Leonard Sockness, d/b/a	)	
Sockness Septic Service	)	
	)	
	)	
	)	
	)	
Respondent.	)	
	)	

6 MAR 28 P1:50
US
PROTECTION AGENCY
REGION V

Order to Show Cause and
Order to Supplement Record

Complainant, by lawful delegation, the Director of the Water Division, U.S. Environmental Protection Agency Region 5, has moved for entry of a Default Order against Respondent, Leonard Sockness, d/b/a Sockness Septic Service, for his failure to file an Answer in the above-captioned matter.

Complainant initiated this administrative action on September 21, 2005, alleging that Respondent has violated Section 405(e) of the Clean Water Act, 33 U.S.C. § 1345(e) and EPA regulations promulgated pursuant thereto. Respondent was served with a copy of the Complaint on October 20, 2005. *See* Attachment B to Complainant's Memorandum in Support of Motion for Default Order. Respondent has failed to file an Answer as required by 40 C.F.R. § 22.15. On February 10, 2006, Complainant moved for a Default Order that: (1) finds all of the facts in the Administrative Complaint admitted; and (2) assesses a civil penalty in the amount of $80,000.

This proceeding is governed by the Consolidated Rules of Practice, 40 C.F.R. Part 22. Section 22.17(a) of the Consolidated Rules provides in part:

> (a) *Default*. A party may be found to be in default: after motion, upon failure to file a timely answer to the complaint. . . . Default by respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the complaint and a waiver of respondent's right to contest such factual allegations. . . .
>
> (b) *Motion for default*. 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.

(c) *Default order*. When the Presiding Officer finds that a default has occurred, 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. If the order resolves all outstanding issues and claims in the proceeding, it shall constitute the initial decision under these Consolidated Rules of Practice. The relief proposed in the complaint or in the motion for default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act.

In addition, Section 22.27 of the Consolidated Rules provides in part:

(b) *Amount of civil penalty*. If the Presiding Officer determines that a violation has occurred and the complaint seeks a civil penalty, the Presiding Officer shall determine the amount of the recommended civil penalty based on the evidence in the record and in accordance with any penalty criteria set forth in the Act. The Presiding Officer shall consider any civil penalty guidelines issued under the Act. The Presiding Officer shall explain in detail in the initial decision how the penalty to be assessed corresponds to any penalty criteria set forth in the Act. . . .

In view of the gravity and consequences of a default, Respondent is ORDERED, on or before April 17, 2006, to show cause why it should not be held in default and to answer the Complaint. Failure on the part of Respondent Leonard Sockness to file a timely response to this Order could subject him to assessment of the full amount of the proposed civil penalty of $80,000.

In addition, Complainant is ORDERED, on or before April 17, 2006, to supplement the record and further explain the basis for its penalty assessment. The record as it currently stands is insufficient to allow the Presiding Officer to determine the amount of the recommended civil penalty as required by the Consolidated Rules. In particular, Complainant should address how it arrived at the specific amounts it proposes to assess for each count of the Complaint. Such evidence can be provided by means of a declaration by the agency representative responsible for calculating the penalty assessed in the Complaint.

SO ORDERED.

Dated: March 28, 2006

Marcy A. Toney
Regional Judicial Officer

REGIONAL HEARING CLERK
6 MAR 28 P1:50
US ENVIRONMENTAL PROTECTION AGENCY
REGION V

In the Matter of Leonard Sockness, d/b/a Sockness Septic Service,
Respondent.
Docket No.CWA-05-2006-0010

CERTIFICATE OF SERVICE

I certify that the foregoing Order, dated March 28, 2006, was sent this day in the following manner:

Original hand delivered to:

Regional Hearing Clerk
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

Copy hand delivered to
Attorney for Complainant:

Charles V. Mikalian
U. S. Environmental Protection
Agency, Region 5
Office of Regional Counsel
77 West Jackson Boulevard
Chicago, IL 60604-3590

Copy by U.S. Certified Mail
Return Receipt Requested to:

Leonard Sockness
Sockness Septic Service
N15048 Fernwell Avenue
Stanley, WI 54768

Dated: 3/28/06

By: Darlene Weatherspoon
Secretary