

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Alleged Violation of Article 13 of the Environmental Conservation Law (ECL) of the State of New York, and Parts 40 and 44 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR),

ORDER

-by-

DEC Case No.
CO1-20230720-141

CHRISTOPHER S. OSTRANDER,

Respondent.

In this administrative enforcement proceeding, staff of the New York State Department of Environmental Conservation (Department) alleges that respondent Christopher S. Ostrander (respondent) violated 6 NYCRR 40.1(c)(3) by failing to timely submit four monthly vessel trip reports (VTRs) or reports stating that no fishing trips were made for the months of September through December 2022. The complaint seeks an order: (i) holding respondent in violation of 6 NYCRR 40.1(c)(1)(i) and 6 NYCRR 44.4(a)(1); (ii) assessing a civil penalty in the amount of one thousand dollars (\$1,000); (iii) directing respondent to submit the missing VTRs; and (iv) granting such other relief as the Commissioner may deem appropriate.¹

Administrative Law Judge (ALJ) Jennifer M. Ukeritis of the Department's Office of Hearings and Mediation Services was assigned to this matter and prepared the attached default summary report, which I adopt as my decision in this matter, subject to my comments below.

As set forth in the ALJ's default summary report, respondent failed to file an answer to the complaint served by Department staff in this matter and failed to appear for the virtual adjudicatory hearing noticed for May 1, 2024 (see Default Summary Report, Findings of Fact 14). At the May 1, 2024, adjudicatory hearing, Department staff made an oral motion for a default judgment. ALJ Ukeritis reserved on the motion, and Department staff later submitted a written motion for default judgment with supporting papers. (Id. at p 2-5.)

Based upon respondent's failure to answer or appear in this matter, the ALJ recommends that Department staff's motion for a default judgment be granted (see Default Summary Report at 5-6). I concur that staff is entitled to a judgment on default pursuant to 6 NYCRR 622.15. The pleadings and the papers submitted with and in support of the motion provide sufficient

¹ 6 NYCRR Parts 40 and 44 have been amended numerous times since 2022. This order applies to the versions in effect at the time of the violations.

facts to enable me to determine that staff has a viable claim that respondent failed to file VTRs or reports stating that no fishing trips were made for the months of September through December 2022.

The record demonstrates that respondent, as a holder of Resident Commercial Food Fish license (#5494) and Resident Crab Permit (#2601) was required to submit monthly VTRs or reports stating that no fishing trips were made for the months of September through December 2022 but failed to do so. By failing to timely file either the VTRs or reports stating that no fishing trips were made, respondent violated 6 NYCRR 40.1(c)(1)(i) and 6 NYCRR 44.4(a)(1) (see Default Summary Report at 5, 6). Accordingly, Department staff is entitled to judgment based on record evidence.

As noted by the ALJ, department staff made multiple efforts to obtain respondent's compliance with the filing requirements and have demonstrated the importance of the VTR system in managing fishing quotas, assessing fishing stocks and analyzing the contribution of fishing to New York's economy (see Default Summary Report Findings of Fact 5-11; Hegemann aff ¶ 11, ex 2).

Based on the above, the ALJ recommends that I impose a civil penalty of one thousand dollars (\$1,000) as requested by Department staff. Department staff requests that a penalty of \$250 be assessed for each of the four months that respondent failed to submit his VTRs (see Haas aff ¶ 13). In the circumstances of this matter, ECL 71-0925(7) imposes a civil penalty of \$250 per violation for the violation of 6 NYCRR 40.1(c)(1)(i). Based on this record, the penalty requested is supported and appropriate.

Upon consideration, I am directing respondent to pay the civil penalty within thirty (30) days of respondent's receipt of this order. In addition, I am directing respondent to submit the September, October, November and December 2022 VTRs or reports stating that no fishing trips were made during those months to Department staff within thirty (30) days of respondent's receipt of this order.

NOW, THEREFORE, having considered this matter and being duly advised, it is **ORDERED** that:

- I. Department staff's motion for a default judgment pursuant to 6 NYCRR 622.15 is granted. By failing to answer or appear in this proceeding, respondent Christopher S. Ostrander waived his right to be heard at a hearing.
- II. Moreover, based upon record evidence, respondent Christopher S. Ostrander violated 6 NYCRR 40.1(c)(1)(i) and 6 NYCRR 44.4(a)(1) by failing to file four monthly vessel trip reports or reports stating that no fishing trips were made for the months of September, October, November and December 2022 for respondent's Resident Commercial Food Fish license (#5494) and Resident Crab Permit (#2601).
- III. Within thirty (30) days of the service of this order upon respondent Christopher S. Ostrander, respondent shall submit to the Department monthly vessel trip reports

or reports stating that no fishing trips were made for each of the months of September, October, November and December 2022.

IV. Respondent Christopher S. Ostrander is hereby assessed a civil penalty in the amount of one thousand dollars (\$1,000). Respondent shall pay the penalty within thirty (30) days of the service of this order upon respondent. Payment is to be by certified check, cashier's check or money order made payable to the New York State Department of Environmental Conservation.

V. The vessel trip reports and/or not fishing forms and the penalty payment shall be sent to the following address:

Anne Haas, Esq.
Office of General Counsel
New York State Department of Environmental Conservation
625 Broadway, 14th Floor
Albany, New York 12233-1500.

VI. The provisions, terms and conditions of this order shall bind respondent Christopher S. Ostrander and his agents, successors and assigns, in any and all capacities.

For the New York State Department
of Environmental Conservation

By: _____/S/
Sean Mahar
Interim Commissioner

Dated: October 28, 2024
Albany, New York

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Alleged Violations of Article 13 of the Environmental Conservation Law of the State of New York and Parts 40 and 44 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York

**DEFAULT SUMMARY
REPORT**

-by-

**DEC Case No.
CO 1-20230720-141**

CHRISTOPHER S. OSTRANDER,

Respondent.

Appearance of Counsel:

- Thomas S. Berkman, Deputy Commissioner and General Counsel (Anne Haas, Associate Attorney, and Zoe Zatz, Senior Attorney, of counsel) for staff of the Department of Environmental Conservation
- No appearance for the Respondent

Procedural History

Staff of the New York State Department of Environmental Conservation (Department) served Christopher S. Ostrander (Respondent) with a notice of hearing and complaint dated January 3, 2024 (complaint), alleging violations of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR) 40.1(c)(1)(i) (food fish) and 44.4(a)(1) (crab) for failing to file Vessel Trip Reports (VTRs) for the months of September, October, November, and December in 2022 in relation to Respondent's crab (#2601) and food fish (#5494) permits.

The complaint seeks an order of the Commissioner:

- finding that respondent committed the alleged violations;
- directing respondent to submit the missing VTRs to the Department;
- assessing a civil penalty in the amount of \$1,000; and
- for such other relief as the Commissioner may deem appropriate.

Service of the notice of hearing, complaint, and statement of readiness (Department papers) was made by personal service upon Respondent by Environmental Conservation Officer (ECO) Derek Hilton, on March 23, 2024. (*See* Affirmation of Anne Haas [Haas Affirm.], dated July 8, 2024, ¶ 2, and Motion for Default Judgment Exhibit C – Affidavit of Service by ECO Hilton.)

Respondent failed to answer the complaint as directed in the notice of hearing. (*See* Haas Affirm. ¶¶ 2, 3.) As stated in staff’s notice of hearing, a virtual adjudicatory hearing was convened before Administrative Law Judge (ALJ) Jennifer M. Ukeritis on May 1, 2024. (*See* Haas Affirm. ¶¶ 2, 4, and Exhibit B.) Department Staff was represented by Zoe Zatz, Esq., Office of General Counsel, New York State Department of Conservation, 625 Broadway, Albany, New York. No one appeared on behalf of the respondent. (*See* Haas Affirm. ¶ 4.)

ALJ Ukeritis noted for the record that respondent had failed to answer the complaint and failed to appear for the adjudicatory hearing. Department staff moved orally for a default judgment pursuant to 6 NYCRR 622.15. ALJ Ukeritis reserved on the oral motion, allowing the record to remain open for Department staff to submit the documentation required by 6 NYCRR 622.15(b). By cover letter dated July 8, 2024, staff submitted a written motion for a default judgment with supporting papers. (*See* Appendix A, attached hereto.) Department staff served the motion and supporting papers on respondent by first class mail on or about July 8, 2024. (*See* affidavit of service of Ellen Shuppe-Bell, sworn to July 8, 2024). Respondent did not respond to the motion.

Applicable Regulatory Provisions

6 NYCRR § 40.1(c)(1)(i) states “(i) [a]ny person who is the holder of a marine commercial food fishing license ... issued pursuant to section 13-0335 of the Environmental Conservation Law shall complete and submit an accurate fishing vessel trip report for each commercial fishing trip, detailing all fishing activities and all species landed, on a form prescribed by the department. ... The license holder shall submit such fishing reports monthly to the department within 15 days after the end of each month or at a frequency specified by the department in writing. Fishing vessel trip reports shall be completed, signed, and submitted to the department for each month; if no fishing trips were made during a month, a report must be submitted stating no trips were made for that month.”¹

6 NYSCRR § 44.4(a)(1) states “(1)[a]ny person who is the holder ... a marine commercial crab permit issued pursuant to section 13-0331 of the Environmental Conservation Law ... shall complete and submit an accurate fishing Vessel Trip Report for each commercial fishing trip, detailing all fishing activities and all species landed, on a form prescribed by the department. The permit holder shall submit such fishing reports monthly to the department within 15 days after the end of each month or at a frequency specified by the department in writing. Fishing Vessel Trip Reports shall be completed, signed, and submitted to the department for each month; if no fishing trips were made during a month, a report must be submitted for that month stating no trips were made.”²

ECL § 71-0925(7) states that “[i]f the violation was a violation of sections ... 13-0331 [and] ... 13-0335 ... of this chapter, or of any regulation adopted pursuant to the foregoing sections, ... two hundred fifty dollars ...”

¹ Part 40 has been amended numerous times since 2022. This report applies the version in effect at the time of the alleged violations.

² Part 44 has been amended numerous times since 2022. This report applies the version in effect at the time of the alleged violations.

Findings of Fact

1. Respondent is a person who applied for and was issued a Food Fish License (# 5494) and Resident Crab Permit (# 2601) (together, Permits) on September 19, 2022, by the Department. (*See* Affidavit of Melissa Albino Hegeman [Hegeman Aff.] sworn to June 20, 2024, ¶ 4; Exhibit 1.)
2. The Permits expired on December 31, 2022. (*See* Hegeman Aff. ¶ 4.)
3. Terms of the Permits include submitting completed Vessel Trip Reports (VTRs) within 15 days of the end of the month for each month respondent held the permits. If respondent did not fish in a month, a report stating no trips were made was required to be filed, which is called Not Fishing form. (*See* Hegeman Aff. ¶¶ 5-6; Exhibit 2.)
4. Respondent did not file a Not Fishing form nor a VTR for September, October, November, or December 2022. (*See* Hegeman Aff. ¶ 7.)
5. Respondent was sent a reminder letter dated April 19, 2023, to submit the delinquent VTR's or Not Fishing form for September, October, November, and December 2022. (*See* Hegeman Aff. ¶ 7; Exhibit 3.)
6. Respondent did not respond or submit required paperwork. (*See* Hegeman Aff. ¶ 8.)
7. Respondent was sent a Notice of Violation (NOV) dated June 2, 2023, for failure to submit the VTR's or the Not Fishing forms for September, October, November, and December 2022. (*See* Hegeman Aff. ¶ 8; Exhibit 4.)
8. Respondent did not respond to the NOV nor submit the paperwork required. (*See* Hegeman Aff. ¶ 9.)
9. Department staff sent a settlement offer in the form of an Order on Consent dated September 5, 2023, for failure to submit the VTRs or Not Fishing form for the months of September, October, November, and December 2022. (*See* Hegeman Aff. ¶ 9; Exhibit 5.)
10. Respondent neither responded to the settlement offer nor submitted the delinquent paperwork. (*See* Hegeman Aff. ¶ 10.)
11. Department staff initiated the current proceeding with a notice of hearing, complaint, and statement of readiness dated January 3, 2024. (*See* Haas Aff. ¶ 2; Exhibit B.)
12. Department papers were personally served by Environmental Conservation Officer (ECO) Derek Hilton upon Respondent on March 23, 2024. (*See* Haas Aff. ¶ 2; Exhibit C.)

13. The Notice of Hearing and Complaint stated an answer was due within 20 days of receiving the papers and also providing instructions for attending the virtual hearing scheduled to be held on May 1, 2024. (*See* Haas Aff. ¶ 2.)
14. Respondent failed to file an answer to the complaint and failed to appear at the adjudicatory hearing scheduled in the matter on May 1, 2024, as directed in the notice of hearing. (*See* Hearing Record.)

Discussion

A respondent upon whom a complaint has been served must serve an answer within 20 days of receiving a notice of hearing and complaint (*see* 6 NYCRR 622.4[a]). A respondent's failure to file a timely answer "constitutes a default and a waiver of respondent's right to a hearing" (6 NYCRR 622.15[a]). In addition, attendance by a respondent at a scheduled pre-hearing conference or hearing is mandatory, and failure to attend constitutes a default and a waiver of the opportunity for a hearing (*See* 6 NYCRR 622.8[c]; *see also* 6 NYCRR 622.15[a] ["A respondent's ... failure to appear at the hearing or the pre-hearing conference ... constitutes a default and waiver of respondent's right to a hearing"]).

Upon a respondent's failure to answer a complaint or failure to appear for a pre-hearing conference or hearing, Department staff may make a motion to an ALJ for a default judgment. Such motion must contain:

- “(1) proof of service upon respondent of the notice of hearing and complaint or such other document which commenced the proceeding;
- (2) proof of respondent's failure to appear or failure to file a timely answer;
- (3) consistent with CPLR 3215(f), proof of the facts sufficient to support the violations alleged and enable the ALJ and commissioner to determine that staff has a viable claim;
- (4) a concise statement of the relief requested;
- (5) a statement of authority and support for any penalty or relief requested; and
- (6) proof of mailing the notice required by [6 NYCRR 622.15(d)], where applicable.” (6 NYCRR 622.15[b][1] - [6]).

As the Commissioner has held, “a defaulting respondent is deemed to have admitted the factual allegations of the complaint and all reasonable inferences that flow from them” (*Matter of Alvin Hunt, d/b/a Our Cleaners*, Decision and Order of the Commissioner, July 25, 2006, at 6 [citations omitted]). In addition, in support of a motion for a default judgment, staff must “provide proof of the facts sufficient to support the claim[s]” alleged in the complaint. (*Matter of Queen City Recycle Center, Inc.*, Decision and Order of the Commissioner, December 12, 2013, at 3.) Staff is required to support its motion for a default judgment with enough facts to enable the ALJ and the Commissioner to determine that staff has a viable claim (*See Matter of Samber Holding Corp.*, Order of the Commissioner, March 12, 2018, at 1 [citing *Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 70-71 (2003)]; *see also* 6 NYCRR 622.15[b][3], CPLR 3215[f]).

The record establishes that: (i) Department staff served the notice of hearing and complaint upon respondent; (ii) respondent failed to file an answer to the complaint, as directed in the cover letter and notice of hearing served with the complaint, and respondent failed to appear for the adjudicatory hearing scheduled on May 1, 2024, as directed in the notice of hearing; (iii) Department staff's papers provide proof of the facts sufficient to support the violation alleged and enable me to determine that staff has a viable claim; (iv) Department staff's papers include a concise statement of the relief requested (*see* motion for default judgment, wherefore clause; Haas Affirm. Exhibit B [complaint]); (v) staff's motion includes a statement of authority and support for the penalty and relief requested (*see* Haas Affirm. ¶¶ 9-13, Hegeman Aff. ¶ 11); and (vi) Department staff provided proof of service of the motion papers on respondent (*see* affidavit of service of motion for default of Ellen Shuppe-Bell, sworn to July 8, 2024). Respondent did not file or serve a response to staff's motion. Based upon the foregoing, the Department is entitled to a default judgment in this matter pursuant to the provisions of 6 NYCRR 622.15.

Department staff's submissions in support of the motion for a default judgment provide proof of facts sufficient to enable me to determine that staff has a viable claim that respondent failed to timely file VTRs or Not Fishing forms for September, October, November, and December of calendar year 2022, in violation of the terms of the Permits.

Staff's complaint requested a total civil penalty of one thousand dollars (\$1,000). Staff's submissions on the motion for a default judgment elaborate on the requested civil penalty, discussing the Department's Civil Penalty Policy, DEE-1. (*See* Haas Affirm. ¶¶ 9-13). According to Department staff, timely submission of VTRs or Not Fishing forms is essential to the Department's mission, as VTRs are used in quota management, fishery stock assessments, protected species management, and economic analyses. (*See* Hegeman Aff. ¶ 11.)

ECL 71-0925(7) provides for a penalty of \$250 per violation. Department staff's proposed civil penalty of one thousand dollars (\$1,000) is consistent with the Department's Civil Penalty Policy (DEE-1, issued June 20, 1990) as well as applicable provisions of ECL article 71. Furthermore, staff demonstrated the importance of VTRs to the regulatory scheme. Accordingly, I conclude that the penalty of one thousand dollars (\$1,000) requested by Department staff is supported and appropriate. I also conclude that Department's request requiring respondent to submit its missing September, October, November, and December 2022 VTRs is supported and appropriate.

Conclusion of Law

By failing to timely file his September, October, November, and December 2022 VTRs required under his Resident Commercial Food Fish license (#5494) and Resident Crab Permit (#2601), Respondent Christopher S. Ostrander violated 6 NYCRR 40.1(c)(1)(i) and 441.4 (a)(1).

Recommendation

Based upon the foregoing, I recommend that the Commissioner issue an order:

1. granting Department staff's motion for default;
2. holding that Respondent Christopher S. Ostrander violated 6 NYCRR 40.1(c)(1)(i) and 441.4 (a)(1) by failing to timely file his September, October, November, and December 2022 VTRs;
3. directing Respondent Christopher S. Ostrander to submit the missing September, October, November, and December 2022 VTRs within thirty (30) days of the service of the Commissioner's order upon respondent;
4. directing Respondent Christopher S. Ostrander to pay a civil penalty in the amount of one thousand dollars (\$1,000) within thirty days (30) of the service of the Commissioner's order upon respondent; and
5. directing such other and further relief as he may deem just and appropriate.

/S/
Jennifer M. Ukeritis
Administrative Law Judge

Dated: October 1, 2024
Albany, New York

APPENDIX A

Matter of Christopher S. Ostrander
DEC Case No. CO 1-20230720-141
Motion for Default Judgment

1. Cover Letter, dated July 8, 2024, from Anne Haas, Esq. filing and attaching staff's motion papers.
2. Affidavit of service of Ellen Shupe-Bell, sworn to July 8, 2024 (default motion papers).
3. Notice of Motion for Default Judgment, dated July 8, 2024.
4. Motion for Default Judgment, dated July 8, 2024, attaching Exhibit A, Affirmation of Anne Haas, sworn to July 8, 2024, which attaches exhibits B and C:

Exhibit B – Cover letter, Notice of Hearing, Complaint, and Statement of Readiness, all dated January 3, 2024.

Exhibit C – Affidavit of Service of ECO Derek Hilton, sworn to March 23, 2024 (notice of hearing and complaint).

5. Affidavit of Melissa Albino Hegeman, sworn to June 20, 2024, attaching exhibits 1 through 5:

Exhibit 1 – Application for Permit Renewals Crab-Resident (#2601) and Food Fish- Resident (#5494 received by Marine Permit Office and issued on September 19, 2022.

Exhibit 2 – VTR Information Packet

Exhibit 3 – Reminder to Submit 2022 VTRs dated April 19, 2023.

Exhibit 4 – NOV Reminder to Submit 2022 VTRs dated June 3, 2023.

Exhibit 5 – Failure to submit 2022 VTRs with settlement offer of Order on Consent dated September 5, 2023.