

STATE OF MISSOURI *ex rel.* )  
Attorney General Joshua D. Hawley, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
JAMIE TURNER, )  
 )  
Defendant. )

APR 12 2017

Twila L. Halley  
Circuit Clerk

Case No. 16MA-CC00039

**Final Default Judgment**

This Court, upon review and after a hearing on Plaintiff's Motion for Default Judgment against Defendant Jamie Turner, finds that:

1. Plaintiff filed its Verified Petition to Enforce Administrative Order and Further Injunctive Relief and Civil Penalties with this Court on November 28, 2016 ("Petition").
2. Defendant was served with a summons and a copy of the Petition on or about December 29, 2016, more than thirty days ago.
3. Defendant has failed to file an answer to any of the allegations pled in the Petition or file any other responsive pleading.
4. Missouri Supreme Court Rule 55.25(a) governs the timing of pleadings and provides in relevant part that:

A defendant shall file an answer within thirty days after the service of the summons and petition, except where service by mail is had, in which event a defendant shall file an answer within thirty days after

the acknowledgment of receipt of summons and petition or return registered or certified mail receipt is filed in the case or within forty-five days after the first publication of notice if neither personal service nor service by mail is had.

5. Missouri Supreme Court Rule 55.09 explains the effect of a party's failure to file an answer:

Specific averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleadings. Specific averments in a pleading to which no responsive pleading is required shall be taken as denied.

6. In light of Defendant's failure to file a timely answer with this Court, Defendant is subject to the entry of Default Judgment pursuant to Supreme Court Rule 74.05, which provides in relevant part that:

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules, upon proof of damages or entitlement to other relief, a judgment may be entered against the defaulting party. The entry of an interlocutory order of default is not a condition precedent to the entry of a default judgment.

7. By virtue of Defendant's failure to file a timely answer or responsive pleading within thirty (30) days after service of the summons, Defendant is deemed in default and the facts alleged in Plaintiff's Petition are deemed admitted. The Court finds that Defendant Jamie Turner admits that he owns and operates a solid waste recovery facility (the "Site") that recycles metal and other materials, located at NW ¼, SE ¼, NE ¼, Sec. 15, Township 57 North, Range 15 West, Macon County, Missouri.

8. This Court has jurisdiction over the subject matter pursuant to Article V, § 14 of the Missouri Constitution and § 478.070 RSMo. Venue is proper in this Court pursuant to § 644.076.1 RSMo, because Macon County is where the water contaminant source was located at the times the violations occurred.

9. This Court has authority to issue an injunction and assess civil penalties against Defendant, pursuant to Missouri Supreme Court Rule 74.05(c), which states: "A default judgment may include an award of damages, other relief, or both."

10. The facts as stated in Plaintiff's Verified Petition show the following:

- a. Defendant has operated the Site as a metal and mobile home salvage facility since at least 2007.

b. Rainfall comes into contact with the materials on the Site and then runs off Defendant's property.

c. Such "stormwater" discharges are regulated by the Missouri Clean Water Law. 10 CSR 20-6.200.

d. Defendant obtained a stormwater discharge permit from the Missouri Department of Natural Resources ("Department") on January 5, 2007, which expired on July 23, 2014.

11. The Court further finds that on July 19, 2016, the Department issued Notice and Order to Abate Violations and Pay Administrative Penalties No. 2016-WPCB-1430 to Defendant ("Order"), pursuant to the Department's authority under §§ 644.056.3 and 644.079.2 RSMo.

12. The Court finds that the Department sent the Order to Defendant on August 17, 2016, and was received by Defendant on August 19, 2016.

13. The Court finds that Defendant had thirty (30) days, or until September 19, 2016, to file a petition or notice of appeal with the Administrative Hearing Commission for a contested case hearing and a decision by the Missouri Clean Water Commission, pursuant to §§ 644.056.3, 644.079.1, and 621.250.1 RSMo and Missouri Clean Water Regulation 10 CSR 20-1.020.

14. The Court finds that Defendant was notified of his appeal rights as required by § 621.250 RSMo, and that Defendant did not file a petition or notice of appeal.

15. The Court finds that the Order became final on September 19, 2016, that all provisions in the Order are binding upon Defendant, and that the violations stated therein are deemed proved by the State against Defendant.

16. The Court finds that Defendant failed to comply with the Order.

17. Section 644.076.1 RSMo makes it unlawful to fail to comply with an order issued by the Department under the Missouri Clean Water Law.

18. Section 644.079.2 RSMo makes it unlawful to fail to pay a final administrative penalty, and makes the subject party liable to the State for the unpaid penalty plus a 15% surcharge, plus 10% interest, and plus the State's attorney's fees and costs incurred in collecting the administrative penalty.

**THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:**

19. The Court finds that the terms of this Judgment protect the public's interest.

20. For purposes of this decree, this Court has jurisdiction over the subject matter of this action and over the parties hereto. This Judgment covers matters alleged in Plaintiff State of Missouri's Petition.

21. The provisions of this Judgment shall be binding upon the parties to this Judgment as well as their agents, servants, employees, heirs, successors, assigns, and to all persons, firms, corporations, and other entities who are, or will be, acting in concert or privity with or on behalf of the parties to this Judgment or their agents, servants, employees, heirs, successors, and assigns.

22. Defendant Jamie Turner violated the Missouri Clean Water Law and its implementing regulations as alleged in Plaintiff's Verified Petition.

23. Defendant owes the State of Missouri the administrative penalty of \$2,120.00 plus a 15% surcharge for failing to pay the penalty (amounting to an additional \$318.00), plus 10% interest per annum on the \$2,438.00 amount owed (for an additional \$136.92 owed, for 205 days of nonpayment from September 19, 2016 to April 12, 2017), plus the State's attorney's fees of \$722.92 (for 5.5 hours at the rate of \$131.44 per hour).

24. The Court enters judgment in favor of Plaintiff for an administrative penalty in the amount of **\$3,297.84**. Defendant is ordered to pay this amount by check or money order made payable to the "*State of Missouri (Macon County)*" sent along with a copy of this Judgment, to

Collections Specialist, Missouri Attorney General's Office, P.O. Box 899,  
Jefferson City, MO 65102-0899. Execution for said sum to issue immediately.

25. The Court enters judgment in favor of the State of Missouri for a civil penalty of \$ -0-. Defendant is ordered to pay the civil penalty by check made payable to the "*State of Missouri (Macon County)*" and mailed along with a copy of this Judgment to: Collections Specialist, Missouri Attorney General's Office, P.O. Box 899, Jefferson City, MO 65102-0899. Execution for said sum to issue immediately.

26. Nothing in this Judgment shall prevent Plaintiff from applying to this Court for further orders of relief to enforce this Judgment if violations of it or any Missouri law or regulations occur.

**IT IS SO ORDERED.**

Date: 4/12/17

  
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**The Honorable Frederick P. Tucker,  
Presiding Circuit Judge**