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REGIONAL HEARING CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN THE MATTER OF:)	
)	
Glacs, LLC,)	U.S. EPA Docket No.
Respondent.)	UIC-09-2011-0003
)	

ORDER DENYING COMPLAINANT'S REQUEST TO APPROVE FINAL ORDER

By written motion filed September 19, 2011, the United States Environmental Protection Agency (Complainant) seeks approval of the parties' proposed Consent Agreement and Final Order.

Consolidated Rules of Practice at 40 C.F.R. § 22.45 set forth the rules governing public notice and comment in administrative proceedings for the assessment of civil penalties under Section 1423(c) of the Safe Drinking Water Act, 42 U.S.C. § 300h-2(c). As stated in the parties' Consent Agreement and Final Order, Complainant assessed the penalties in this matter pursuant Section 1423(c)(1) of the Act, 42 U.S.C. § 300h-2(c)(1), and 40 C.F.R. § 19.4. Therefore, Complainant is subject to the mandatory notice and public comment requirements of 40 C.F.R. § 22.45.

A. Failure to Meet the Mandatory Public Notice Requirements

Under 40 C.F.R. § 22.45(b)(1), Complainant is subject to a forty (40) day public notice requirement because this proceeding was commenced pursuant to 40 C.F.R. § 22.13(b), which authorizes the parties to settle one or more causes of action before filing a complaint by simultaneously issuing a consent agreement and final order. The parties in this action settled this matter before the filing of a complaint. Complainant's supporting documents verify that Complainant properly issued a public notice of the proposed Consent Agreement and Final Order, and that Complainant received no comments in response to the public notice. However, the supporting evidence shows that Complainant only held the public comment period open for thirty (30) days. Therefore,

Complainant failed to meet the forty day public notice requirement set forth in 40 C.F.R. § 22.45(b)(1).

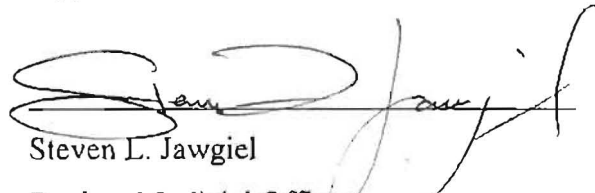
B. Inaccurate Effective Date

Pursuant to 40 C.F.R. § 22.31(b), final orders become effective upon their filing. However, the proposed Consent Agreement and Final Order ("CA/FO") in this matter states "The effective date of the CA/FO shall be the date that the Final Order is signed." Therefore, the proposed CA/FO is not compliant with § 22.31(b).

IT IS THEREFORE ORDERED THAT:

1. Complainant's request for an approval of the Consent Agreement and Final Order is DENIED.
2. The parties shall execute a new CA/FO, which accurately states the effective date of the Final Order.
3. After executing the new CA/FO, Complainant shall comply with the forty (40) day public notice requirement under 40 C.F.R. § 22.45(b)(1).
4. Complainant shall resubmit the proposed CA/FO and supporting documents to the Region 9 Presiding Officer for approval.

Dated: September 28, 2011


Steven L. Jawgiel
Regional Judicial Officer

CERTIFICATE OF SERVICE


I certify that the original of the Order Denying Complainant's Request To Approve Final Order against GLACS, LLC (**Docket #: UIC-09-2011-0003**) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

A copy was mailed to:

Patricia J. McHenry
Cades, Schutte
1000 Bishop Street, Ste. 1200
Honolulu, HI 96813

And additional copy was hand-delivered to the following U.S. EPA case attorney:

Julia Jackson, Esq.
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105



Bryan K. Goodwin
Regional Hearing Clerk
U.S. EPA, Region IX

September 29, 2011
Date