

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. III
2008 APR -2 PM 3: 17
REGIONAL HEARING
CLERK

In the Matter of)
)
PUERTO RICO AQUEDUCT AND)
SEWER AUTHORITY,)
) Docket No. CWA-02-2008-3451
Ponce Regional Wastewater Treatment Plant)
)
Respondent)

ORDER

By Prehearing Order dated January 30, 2008, Complainant was required to file its Prehearing Exchange on or before March 14, 2008 and Respondent was required to file its Prehearing exchange on or before April 4, 2008.

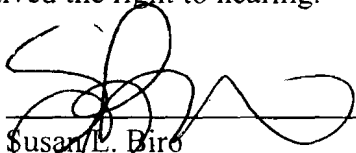
To date, however, Complainant has *not* filed its Prehearing Exchange nor has it filed a Motion requesting an extension of time to do so. On the other hand, on March 28, 2008, *in advance of its Prehearing Exchange deadline*, Respondent filed a "Motion for Withdrawal and Waiver of a Hearing" (Motion) in which it implies that the parties have agreed upon terms for settling this matter as well as another action and that they are currently in the process of memorializing in writing the terms of their agreement. Therefore, Respondent was moving for withdrawal and waiver of its request for a hearing in this matter. The Motion indicated that the Complainant consented to the relief sought.

Section 22.17(a) of the Consolidated Rules of Practice Governing The Administrative Assessment of Penalties, 40 C.F.R. § 22.17(a), provides that "[a] party may be found to be in default . . . upon failure to comply with . . . an order of the Presiding Officer," and that "default by complainant constitutes a waiver of complainant's right to proceed on the merits of the action, and *shall result in the dismissal of the complaint with prejudice*" (emphasis added). The Complainant was reminded of this provision in the Prehearing Order issued in this case which stated as follows:

The Complainant is notified that its failure to file its prehearing exchange in a timely manner can result in a dismissal of the case with prejudice. **THE MERE PENDENCY OF SETTLEMENT NEGOTIATIONS OR EVEN THE EXISTENCE OF A SETTLEMENT IN PRINCIPLE DOES NOT CONSTITUTE A BASIS FOR FAILING TO STRICTLY COMPLY WITH THE PREHEARING EXCHANGE REQUIREMENTS. ONLY THE FILING WITH THE HEARING CLERK OF A FULLY EXECUTED**

**CONSENT AGREEMENT AND FINAL ORDER, OR ON AN ORDER OF
THE JUDGE, EXCUSES NONCOMPLIANCE WITH FILING
DEADLINES.**

Accordingly, at this point in time, the Complainant is technically in default and the Complaint is subject to dismissal with prejudice. However, in light of Respondent's Motion and the representations made therein regarding settlement such default will not be issued. Instead, Respondent's Motion is hereby **GRANTED** and this proceeding deemed **TERMINATED AND CLOSED**, in light of the fact that there is no further need for the undersigned to preside over this matter since cases are referred to the Office of Administrative Law Judges solely for the purpose of providing respondents with a right to a hearing before an Administrative Law Judge, consistent with the applicable statutes and the Administrative Procedure Act and the Respondent has explicitly waived the right to hearing.



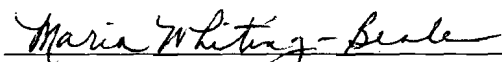
Susan L. Biro
Chief Administrative Law Judge

Dated: March 31, 2008
Washington, D.C.

In the Matter of Puerto Rico Aqueduct and Sewer Authority, Ponce Regional Wastewater Treatment Plant, Respondent
Docket No. CWA-02-2008-3451

CERTIFICATE OF SERVICE

I certify that the foregoing **Order**, dated March 31, 2008, was sent this day in the following manner to the addressees listed below:



Maria Whiting-Beale
Legal Staff Assistant

Dated: April 1, 2008

Original And One Copy By Pouch Mail To:

Karen Maples
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