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- Statutes Administered by the Administrative Law Judges
- Rules of Practice & Procedure
- Environmental Appeals Board
- Employment Opportunities

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	
BIO- SCIENTIFIC SPECIALTY II - 557- C PRODUCTS, INC. ,	) ) ) ) )	I. F. & R. DOCKET NO.
RESPONDENT	)	

ORDER ON MOTION FOR CLARIFICATION

A Default Order and Initial Decision in the above-cited matter was issued by the undersigned on August 19, 1999, and served on the parties by the Regional Hearing Clerk on August 24, 1999. On October 20, 1999, the Complainant filed a Motion for Clarification concerning the August 19, 1999, Default Order and Initial Decision. In this motion, the Complainant requests the undersigned to clarify the date by which the Respondent must pay the penalty assessed against it in this matter.

Specifically, the Complainant requests interpretation of the order's language directing that the penalty be paid within sixty (60) days after a final order issued upon default under Section 22.17(a) of the governing Rules of Procedure <sup>(1)</sup>, 40 C.F.R. § 22.17 (a), in conjunction with the order's additional language providing that payment of the penalty be made within sixty (60) days of the service of the final order. <sup>(2)</sup> The Complainant states that it interprets such language and the regulations to mean that the penalty is due sixty (60) days following October 8, 1999, the date on which the Default Order and Initial Decision became a final order pursuant to Section 22.27(c).

The undersigned does not have authority to rule on the Complainant's Motion for Clarification. Prior to August 23, 1999, the Rules of Practice at Section 22.16(c)

provided that "[t]he Environmental Appeals Board shall rule on all motions filed or made after service of the initial decision upon the parties." Effective August 23, 1999, the Rules of Practice at 22.16(c) provide that "...an Administrative Law Judge shall rule on all motions filed or made after an answer is filed and before an initial decision has become final or has been appealed." The instant motion was filed after service of the initial decision upon the parties and after the initial decision became final. <sup>(3)</sup> See Section 22.07(c), 40 C.F.R. § 22.07(c) (prior to August 23, 1999); Section 22.30(a),(b), 40 C.F.R. § 22.30(a),(b) (effective August 23, 1999). Thus, regardless of whether the motion is adjudicated under the pre-August 23, 1999, Rules of Practice or the revised Rules of Practice, an Administrative Law Judge does not have authority to rule on the instant motion for clarification. Accordingly, the Motion for Clarification is dismissed for lack of jurisdiction.

Original signed by undersigned

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Barbara A. Gunning  
Administrative Law Judge

Dated: 10-28-99  
Washington, DC

1. The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits (the "Rules of Practice"), 40 C.F.R. §§ 22.01-22.32, were revised effective August 23, 1999. Proceedings commenced before August 23, 1999, are subject to the revised rules unless to do so would result in substantial injustice.
2. The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Orders, and the Revocation, Termination or Suspension of Permits at Section 22.17(d), 40 C.F.R. § 22.17(d), now provide that "[a]ny penalty assessed in the default order shall become due and payable by respondent without further proceedings 30 days after the default order becomes final under Sec. 22.27(c)."
3. The Default Order and Initial Decision has not been appealed.

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