

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

BEFORE THE ADMINISTRATOR

In the Matter of)
)
Eric Tate d/b/a Pretty Baby,) **Docket No. FIFRA-09-99-0005**
)
Respondent)

ORDER DISMISSING COMPLAINT WITH PREJUDICE

This case was instituted on September 28, 1999. A Hearing Order was issued on March 14, 2000, setting the case for hearing on June 20, 2000 in Pomona, California. Over two months ago, on April 7, 2000, Complainant filed a Status Report indicating that the parties had reached a settlement and that Consent Agreement and Final Order was being prepared for signature. Thereafter, Complainant was contacted by this Tribunal and advised that the Consent Agreement has to be filed in advance of the hearing so that the undersigned may timely cancel travel plans to attend the hearing. In absence of a filed Consent Agreement, the parties were expected to attend the hearing. To date, Complainant has not filed the Consent Agreement nor any Motion to extend the deadline for such filing or otherwise change the hearing date. Moreover, Complainant's office, Region 9, advised this Tribunal yesterday, that Complainant's counsel, Ms. Kate Nooney, is unavailable to attend the hearing today in that she is attending "a training program."

This is not the first time in this case that Complainant's counsel has failed to comply with filing deadlines. The Complainant also failed to file its Prehearing Exchange in this case in a timely manner and had to seek leave to file out of time. Moreover, this case is one of three cases in this month alone in which Complainant, represented by the same Assistant Regional Counsel, Kate Nooney, has blatantly disregarded the Orders established by this Tribunal and failed to meet filing deadlines, for no apparent good cause. *See also, Order Terminating Proceedings Before the Chief Administrative Law Judge dated June 19, 2000 in Bayview Environmental Services, Inc., TSCA-09-99-0005; and Order Dismissing Complaint With Prejudice dated June 20, 2000 in Allied Environmental, Inc., TSCA 09-99-0004.*

The persistent disregard of the Orders of this Tribunal undermines the orderly administration of justice, brings disrespect upon the proceedings and wastes administrative resources. It is worthy of a serious reprimand and the imposition sanctions.

Section 22.17 (a) of the Consolidated Rules of Practice Governing The Administrative Assessment of Penalties, 40 C.F.R. § 22.17(a), as amended, 64 Fed. Reg. 40176 (July 23, 1999) 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). Accordingly, for the reasons stated above, I find Complainant to be in default under the provisions of Section 22.17(a). Pursuant to that Section of the Rules of Practice, the Complaint in this matter is hereby **Dismissed With Prejudice**.¹

Susan L. Biro
Chief Administrative Law Judge

Dated: June 20, 2000
Washington, D.C.

¹ Pursuant to 40 C.F.R. §§ 22.17(a) and 22.27(b), respectively, this Order Dismissing Complaint With Prejudice constitutes an Initial Decision that shall become the final Order of the Agency unless appeal is taken pursuant to 40 C.F.R. § 22.30 or the Environmental Appeals Board elects *sua sponte*, to review this decision.