

FILED

2012 MAY -1 PM 3: 29  
U.S. EPA. REGION IX  
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
	)	

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ORDER GRANTING COMPLAINANT'S MOTION FOR RECONSIDERATION

By written motion filed October 11, 2011, the United States Environmental Protection Agency (Complainant) seeks reconsideration of the Regional Judicial Officer's (RJO) September 29, 2011 denial of the proposed Consent Agreement and Final Order (CA/FO) in this matter.

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 (SDWA), 42 U.S.C. § 300h-2(c). As stated in the parties' proposed CA/FO, 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. The parties executed the proposed CA/FO without filing a complaint pursuant to the quick resolution and settlement procedures of 40 C.F.R. §§ 22.13(b) and 22.18(b)(2). Therefore, Complainant is subject to the mandatory notice and public comment requirements of 40 C.F.R. § 22.45.

A. 40 C.F.R. § 22.45(b)(1) Public Notice and Comment Requirements

As stated in Complainant's moving papers, Complainant filed its proposed CA/FO with the Regional Hearing Clerk on August 17, 2011. Complainant also published public notice of the settlement and provided an opportunity for public comment. The public comment period closed on September 16, 2011, 30 days after publication. On September 19, 2011, the Regional Hearing clerk notified Complainant that the Agency received no public comments on the proposed CA/FO. Therefore,

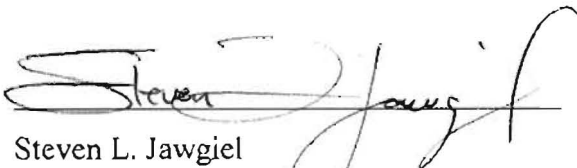
Complainant made a motion for approval of the CA/FO, which was denied thirteen days after the public comment period closed.

Upon reconsidering the applicable statutory and regulatory provisions that apply to this action, I agree with Complainant's contention that 42 U.S.C. § 300h-2(c)(3)(B) only requires Complainant to provide "public notice of, and a reasonable opportunity to comment on" proposed administrative orders, but does not require any specific notice timeframes. Similarly, I find Complainant's position on the application of 40 C.F.R. § 22.45(b)(1) convincing. In sum, 40 C.F.R. § 22.45(b)(1) does not require that the public comment period for a CA/FO filed pursuant to 40 C.F.R. § 22.12(b) be held open for any specific amount of time. Instead, it establishes that the Presiding Officer may not issue a final order in the matter until forty days after the start of the comment period. Therefore, Complainant satisfied its notice requirements and timely sought the Presiding Officer's review and approval of the proposed CA/FO in the above-referenced administrative action. Given the Presiding Officer's initial ruling was issued thirteen days after the close of Complainant's thirty-day comment period, the Presiding Officer was authorized to approve the proposed CA/FO for filing.

IT IS THEREFORE ORDERED THAT:

1. Complaint's Motion for Reconsideration is GRANTED and my September 29, 2011 Order is withdrawn;
2. Complainant's original public notice in this matter was sufficient;
3. Paragraph 31 of the CA/FO is stricken and shall now read, "The effective date of the CA/FO shall be the date that the Final Order is filed"; and
4. The attached Final Order shall be filed and entered into the record.

Dated: April 30, 2012

  
Steven L. Jawgiel  
Regional Judicial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX

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U.S. EPA. REGION IX  
REGIONAL HEARING CLERK

IN THE MATTER OF

GLACS, LLC,  
Kailua-Kona, HI

Proceedings under Section 1423(c)  
of the Safe Drinking Water Act,  
42 U.S.C. § 300h-2(c)


DOCKET NO. UIC-09-2011-0003

FINAL ORDER

The United States Environmental Protection Agency Region IX ("EPA"), and GLACS, LLC ("Respondent"), having entered into the foregoing Consent Agreement, and EPA having duly publicly noticed the Stipulations and Findings and proposed Final Order regarding the matters alleged therein,

IT IS HEREBY ORDERED THAT:

1. The foregoing Consent Agreement and this Final Order (Docket No. UIC-09-2011-0003) be entered; and
2. Respondent shall comply with the requirements set forth in the Consent Agreement and Final Order, which shall become final and effective on the date it is filed.

  
Steven Jawgiel  
Presiding Officer  
U.S. Environmental Protection Agency  
Region 9

Date: April 30, 2012

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Order Granting Complainant's Motion for Reconsideration AND 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:

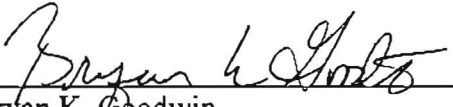
A copy was mailed via CERTIFIED MAIL to:

Patricia J. McHenry, Esq.  
Cades Schutte, LLP  
1000 Bishop Street, 12<sup>th</sup> Floor  
Honolulu, HI 96813

**CERTIFIED MAIL NUMBER:** 7010 2780 0000 8388 7252

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

Brett Moffatt, Esq.  
Assistant Regional Counsel (ORC-2)  
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

5/1/12  
Date