



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

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IN THE MATTER OF

DAVID D'AMATO,

RESPONDENT

)
)
) DOCKET NO. CWA-10-2010-0132
)
)

ORDER TO SHOW CAUSE

On September 10, 2010, the undersigned issued a Prehearing Order in this matter, scheduling the required prehearing information exchange between the parties. That Prehearing Order required Complainant to submit its initial prehearing exchange ("PHE") on November 5, 2010. Respondent's PHE was then due on December 3, 2010, and Complainant's rebuttal, if any, was due on December 17, 2010. According to the Certificate of Service, Complainant's PHE was sent to Respondent on November 5, 2010, by certified mail, return receipt requested. According to Complainant, the package containing its PHE was not claimed by Respondent until December 8, 2010, when Complainant notified Respondent that the package was being held at the local post office. Complainant stated in a motion to extend the filing deadlines that Respondent confirmed receipt of the PHE on December 8, 2010.

In order to give the Respondent additional time to review Complainant's PHE and submit his own PHE, the undersigned issued an Order Granting Motion to Extend Times for Filing the Prehearing Exchange on December 15, 2010. In that Order, Respondent was given until January 7, 2011,^{1/} and Complainant's Rebuttal PHE would be due 14 days after Respondent filed his PHE with the Regional Hearing Clerk ("RHC"). The Office of Administrative Law Judges and the RHC did not receive Respondent's PHE by January 7, 2011. The undersigned's staff attorney subsequently contacted the RHC to confirm that nothing had been received in the Regional Office and then contacted counsel for Complainant to determine whether Respondent had sent anything directly to her. Finding that Respondent had not communicated with either Complainant or the RHC

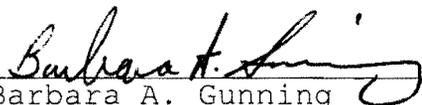
^{1/} At one point, the Order incorrectly stated the year as 2010 but later stated the correct year as 2011.

since December 8, 2010, the undersigned's staff attorney attempted to contact Respondent directly. Respondent returned a voicemail message and stated that his PHE had been mailed before January 7, 2011, by certified mail.^{2/} The tracking number provided by Respondent was given to the RHC. The RHC then conducted a search for the package but was unable to locate any matching deliveries. In a subsequent phone conversation with Respondent, the undersigned's staff attorney suggested that Respondent confer with Complainant to determine the best course of action to ensure that Respondent's PHE was properly filed as soon as possible.

The file before me reflects that as of March 4, 2011, Respondent has failed to file either a prehearing exchange or a statement electing only to conduct cross-examination of Complainant's witnesses as its manner of defense, as required by the Order issued by the undersigned on December 15, 2010, and that Respondent has not filed a motion for an extension of the filing deadline. Complainant timely filed its prehearing exchange.

Under Section 22.17(a) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Rules of Practice"), 40 C.F.R. § 22.17(a), a party may be found to be in default upon failure to comply with the information exchange requirements of Section 22.19(a) of the Rules of Practice, 40 C.F.R. § 22.19(a), or an order of the Administrative Law Judge.

Therefore, Respondent is **ordered to show cause**, if any, on or before **March 21, 2011**, why he failed to meet the filing deadline set by the Order of December 15, 2010, and why a default order should not be entered for failing to meet this deadline.


Barbara A. Gunning
Administrative Law Judge

Dated: March 4, 2011
Washington, DC

^{2/} Respondent provided the following tracking number from the U.S. Postal Service ("USPS"): 70070710000182520374. The USPS Track & Confirm service indicates that a package bearing this receipt number was delivered on January 12, 2011, to Seattle, WA 98101. No further information is available.

**In the Matter of *David D'Amato*, Respondent.
Docket No. CWA-10-2010-0132**

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order to Show Cause**, dated March 4, 2011, was sent this day in the following manner to the addressees listed below.


Knolyn R. Jones
Legal Staff Assistant

Original and One Copy by Pouch Mail to:

Carol Kennedy
Regional Hearing Clerk
U.S. EPA, Region X
1200 Sixth Avenue, ORC-158
Seattle, WA 98101

Copy by Pouch Mail to:

Jennifer L. Byrne, Esq.
Assistant Regional Counsel
ORC, U.S. EPA, Region X
1200 Sixth Avenue
Seattle, WA 98101

Copy by Regular and Certified Mail to:

David D'Amato
17211 Kings Way Drive
Anchorage, AK 99516

Dated: March 4, 2011
Washington, DC