

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY**

**BEFORE THE ADMINISTRATOR**

<b>IN THE MATTER OF:</b>	)	
	)	
<b>PUERTO RICO AQUEDUCT AND SEWER AUTHORITY, CAROLINA REGIONAL WASTEWATER TREATMENT PLANT,</b>	)	<b>DOCKET NO. CWA-02-2004-3402</b>
	)	
<b>RESPONDENT.</b>	)	

**ORDER DISMISSING COMPLAINT WITH PREJUDICE**

This case was initiated on December 15, 2003 with the filing of an Administrative Complaint alleging violation of Section 301(a) of the Clean Water Act (33 U.S.C. § 1311). The Respondent filed its Answer to the Complaint on or about March 1, 2004. Thereafter, the case was referred to the Office of Administrative Law Judges (OALJ). On March 23, 2004, the parties were extended in writing an opportunity to participate in OALJ's Alternative Dispute Resolution ("ADR") process. Neither party responded to the ADR offer and therefore the undersigned was thereafter designated to preside over a hearing in this matter.

On April 12, 2004, the undersigned issued a Prehearing Order requiring the parties to engage in the prehearing exchange process beginning on June 4, 2004. However, on May 14, 2004, the parties filed a Joint Status Report wherein the indicated they had reached an agreement in principle to settle this matter and requested that they be granted until June 30, 2004 to file their fully executed Consent Agreement and Final Order. Although the request for extension was made improperly, by Order dated May 17, 2004, the parties request was granted and they were given until June 30, 2004 to file the fully executed Consent Agreement or "their respective prehearing exchanges."<sup>1</sup> However, that Order warned the parties that –

**FAILURE TO SUBMIT THE CONSENT AGREEMENT IN A TIMELY  
MANNER MAY RESULT IN ENTRY OF AN ORDER OF DISMISSAL**

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<sup>1</sup> As indicated in that Order, including a request for extension in a status report is inconsistent with the rules of practice applicable to this proceeding in that the rules provide that requests for relief are to be in the form of "motions." 40 C.F.R. § 22.16. Further, including such uncontested requests in a document solely titled as a status report is not particularly good practice in that the request may go unnoticed until after the deadline sought to be extended expires and risks entry of default.

**WITH PREJUDICE OR DEFAULT, AS APPROPRIATE, WITHOUT FURTHER NOTICE.**

Regretfully, to date, the parties have not filed their Consent Agreement nor has *either party* filed their prehearing exchange. Further, neither party has requested an extension of the filing deadline. This inaction on the part of both parties constitutes a blatant disregard of the Order of this Tribunal for no apparent good cause. This disregard is particularly egregious on the part of the Complainant who, seeking the relief, bares the responsibility for moving the matter forward.

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). Accordingly, for the reasons stated above, I find the 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.**<sup>2</sup>

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Susan L. Biro  
Chief Administrative Law Judge

Dated: July 8, 2004  
Washington, D.C.

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<sup>2</sup> 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.