

2/1/99

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR

IN THE MATTER OF: )  
)  
)  
Dedrick Johnson ) Docket No. 5-TSCA-064-1998  
)  
)  
Respondent )

ORDER DENYING COMPLAINANT'S UNTIMELY MOTION  
FOR EXTENSION TO FILE MOTION FOR ACCELERATED DECISION

On January 27, 1999, Complainant filed a Status Report and Motion for an extension of time to file a Motion For Accelerated Decision in the above-stated case. As grounds for its motion, Complainant contends that Judge Kuhlmann, who was previously assigned this case, set forth in an October 26, 1998, Order Establishing Procedures, a schedule for the filing of the parties pre-hearing exchange materials. The Order set forth *inter alia*, that Complainant was to file its Pre-hearing Exchange by December 7, 1998, and the Respondent was to file his by January 7, 1999.

By subsequent order dated December 7, 1998, Judge Kuhlmann granted Complainant an extension of time to file a Motion for Accelerated Decision by January 22, 1999.

Pursuant to Section 22.07(b) of the Consolidated Rules of Practice, an Administrative Law Judge "may grant an extension of time for the filing of any pleading, document or motion...upon timely motion of a party to the proceeding...*The motion shall be filed in advance of the date on which the pleading, document or motion is due to be filed, unless the failure of a party to make timely motion for extension of time was the result of excusable neglect.*"

Here, Complainant's Motion for extension of time to file a Motion For Accelerated Decision is dated January 27, 1999, or five days beyond the January 22, 1999, due date set in the December 7, 1998, Order of Judge Kuhlmann. Complainant argues that it did not file its Motion For Accelerated Decision on January 22, 1999, as it was awaiting receipt of the Respondent's pre-hearing exchange, due January 7, 1999. In light of Respondent's failure to file a pre-hearing exchange, Complainant

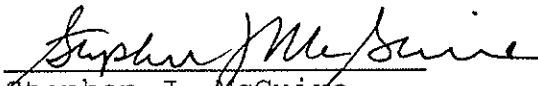
requests that it be granted until February 12, 1999, to file its Motion For Accelerated Decision. Complainant's request however, is without merit.

In addition to Complainant having failed to file its Motion For Accelerated Decision in timely fashion, it neglected to file with the undersigned a timely request for an extension of time, prior to the January 22, 1999 deadline. The fact that this case was transferred to the undersigned on January 8, 1999, gives little credence to Complainant's rationale for its failure to meet its pre-hearing obligations. Moreover, Complainant could easily have determined whether Respondent had filed, or intended to file, its pre-hearing exchange as early as January 7, 1999, had he chosen to contact Respondent and make such inquiry.

**Order**

Accordingly, Complainant's Motion For an Extension of Time to file a Motion For Accelerated Decision is **DENIED**. The record demonstrates, pursuant to Section 22.07, that Complainant neglected to timely file such motion and that such neglect was not excusable.

By separate Order, this case will be SET FOR EVIDENTIARY HEARING on the issues of liability and the appropriateness of the proposed civil penalty

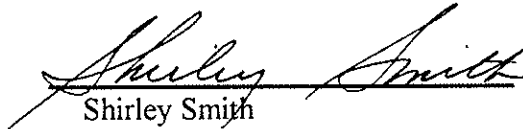
  
Stephen J. McGuire  
Administrative Law Judge

Date: February 1, 1999  
Washington, D.C.

**NAME OF RESPONDENT: Dedrick Johnson**  
**DOCKET NUMBER: 5-TSCA-064-1998**

**CERTIFICATE OF SERVICE**

I hereby certify that the original of this ORDER DENYING COMPLAINANT'S  
UNTIMELY MOTION FOR EXTENSION TO FILE MOTION FOR ACCELERATED  
DECISION were sent to the counsel for the complainant and counsel for the respondent on  
February 1, 1999.



Shirley Smith  
Legal Staff Assistant  
To Judge Stephen J. McGuire

Sonja R. Brooks  
Regional Hearing Clerk  
Region 5 - EPA  
77 West Jackson Blvd  
Chicago, IL 60604-3590

Peter Felitti, Esq.  
Assistant Regional Counsel  
Office of Regional Counsel  
Region 5 - EPA  
77 West Jackson Blvd  
Chicago, IL 60604-3590

Dedrick Johnson, Esq.  
1249 E. Cunningham  
Calumet City, Illinois 60409

Michael J. Walker  
Office of Enforcement  
USEPA - Mail Code 2201A  
Room 5232A  
401 M Street S.W.  
Washington, D.C. 20460