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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of)	
)	
Kenneth Sebren)	
A-1 Trailer Park Water System)	Docket No.
[SDWA] - C930025)	
)	
Respondent)	

ORDER DISMISSING COMPLAINT WITH PREJUDICE

The Region 6 Office of the United States Environmental Protection Agency (the "Complainant" or "Region") filed a Complaint against Mr. Kenneth Sebren (the "Respondent"), owner of the A-1 Trailer Park in Sabine Parrish, Louisiana, on April 30, 1993. The Complaint alleged that the Respondent violated the Safe Drinking Water Act ("SDWA"), by failing to comply with an Administrative Order issued by EPA under the SDWA §1414(g), 42 U.S.C. §300g-3(g). The Complaint alleges that the Respondent violated that Order by supplying water to the system's users that exceeded the maximum contaminant level for total coliform bacteria from January to March 1993. Pursuant to the SDWA §1414(g)(3)(B), 42 U.S.C. §300g-3(g)(3)(B), the Complaint seeks the assessment of a civil penalty of \$5000 against Respondent for the alleged violation.

The Respondent filed an Answer to the Complaint on June 4, 1993. In his Answer, the Respondent denied liability for the alleged violations, contested the proposed amount of the penalty, and requested a hearing.

The next event reflected in the file was the filing of a Notice of Withdrawal of Complaint by the Region on August 29, 1997, more than four years after the filing of the Complaint. That Notice erroneously states that it was filed prior to the filing of an Answer by Respondent. In fact, as noted above, the Respondent had filed a timely Answer in 1993. The Complainant's notice of withdrawal also stated that it was without prejudice to refile the Complaint at a later date. One year later, on August 21, 1998, the Regional Hearing Clerk referred this proceeding to the Office of Administrative Law Judges.

The EPA's Consolidated Rules of Practice, at 40 CFR §22.14(e), provide that after the filing of an answer, the complainant may withdraw the complaint, without

prejudice, only upon a motion granted by the Administrative Law Judge. In this case, no such motion was made since the Region, as indicated in its earlier notice of withdrawal, erroneously believed that no answer had been filed.

In any event, this proceeding will be dismissed, with prejudice, for the failure of the EPA to conclude this matter within a reasonable time, as required by the Administrative Procedure Act ("APA"), 5 U.S.C. §555(b). That statute provides that ". . . within a reasonable time, each agency shall proceed to conclude a matter presented to it." Although the Complaint and Answer were filed in 1993, this matter was not referred for hearing until 1998, more than five years later. The Complainant itself attempted to withdraw the Complaint, albeit without prejudice, some four years after it was filed. These delays are completely unexplained in the record of this proceeding.

In determining whether agency action has been unreasonably delayed, the federal courts have identified the following factors for consideration: the length of the delay; the justification for the delay in the context of the statute being administered, and the consequences of the delay, or prejudice to the affected parties. See *Cutler v. Hayes*, 818 F.2d 879, 897 (D.C. Cir. 1987).

It is now over five years since the dates of the alleged violations. The applicable limitations period for the commencement of this proceeding is five years pursuant to 28 U.S.C. §2462. Although the proceeding was commenced promptly within the limitations period, the Respondent has not been afforded the actual opportunity for a hearing for over five years. This statute of limitations provides a guideline indicating that the delay here has been unreasonable in length. The agency has provided no justification whatsoever for the delay. Apparently the Region did not believe that the Respondent's alleged violations created any public health threat or were otherwise serious enough to pursue after the Complaint was filed. The file contains no direct evidence of prejudice to the respondent, since he had no reason to respond further when no action was taken after filing his Answer. The Complainant itself, however, has stated a desire to withdraw the Complaint, without prejudice. It is likely that the both parties would have difficulty presenting witnesses and retrieving evidence for any hearing, in view of the length of the delay in prosecuting this case.

The Complainant's delay in prosecuting this matter, with no justification, violates the APA's requirement that matters be concluded within a reasonable time. A dismissal without prejudice, allowing the possibility of refileing the Complaint, would violate the Respondent's rights to due process of law that the APA was intended to provide. Therefore, this proceeding will be dismissed with prejudice.

Andrew S. Pearlstein
Administrative Law Judge

Dated: October 7, 1998
Washington, D.C.

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