

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
UNITED SEPTIC, INC.,) **DOCKET No. CWA-5-99-005**
)
Respondent)

**ORDER GRANTING COMPLAINANT'S MOTION
TO SET ASIDE DISMISSAL**

This proceeding was initiated by a Complaint, filed on March 31, 1999, by the Director of the Water Division, United States Environmental Protection Agency Region V, charging Respondent with violations of the Clean Water Act in regard to the application of domestic septage to agricultural land. Respondent submitted an Answer to the Complaint on May 17, 1999, and this matter was referred to the Office of Administrative Law Judges for hearing. The parties accepted an offer to participate in Alternative Dispute Resolution ("ADR"), and after four months in ADR, Respondent's counsel reported on October 13, 1999 that this matter was settled. On October 14, 1999, the parties were ordered to file a Consent Agreement and Consent Order (CACO) memorializing their settlement by November 15, 1999. When no CACO or motion for extension of time to file the CACO was filed by that date, an Order to Show Cause for failure to file the CACO was issued. Complainant responded to the Order to Show Cause explaining its failure to file the CACO merely as "neglect," but stating that settlement was "imminent," and by Order dated December 6, 1999, Complainant was granted until January 3, 2000 to file the CACO. Neither a CACO nor a motion for extension of time was filed with the Regional Hearing Clerk or received in the undersigned's office by the close of business on that date.

Accordingly on January 4, 2000, this matter was dismissed with prejudice under 40 C.F.R. § 22.17(a) of the Consolidated Rules of Practice, 64 Fed. Reg. 40176 (July 23, 1999), for Complainant's default in failure to comply with orders of the Presiding Judge.

Thereafter, on the afternoon of January 4, 2000, the undersigned received by facsimile a document entitled "Complainant's Status of Settlement Negotiations," which had been stamped as received by the Regional Hearing Clerk after business hours at 5:06 p.m. on January 3, 2000. In that document, Complainant stated that it had not yet acquired the necessary Agency signatures on the CACO, and requested until January 7, 2000 to file the CACO.

On January 7, 2000, Complainant filed a Motion to Set Aside Dismissal (Motion). Recognizing that failure to meet deadlines imposed by the Presiding Judge inhibits the orderly

and swift disposition of matters before the Administrative Law Judges, the Motion stated that Respondent executed the Consent Agreement and forwarded it to Complainant on December 23, 1999, and that Complainant received it on December 27, 1999, whereupon Complainant needed to pursue signatures of at least eight Agency employees in order to file the CACO with the Regional Hearing Clerk. The Motion stated further that Complainant filed a status report informing the Presiding Judge that the necessary signatures could not be acquired in time, that the Presiding Judge should have received a copy of the status report by January 5, 2000, and that on January 6, 2000, the CACO was fully executed. Complainant asserted in the Motion that the interests of the parties would be best served by reinstating this matter so the CACO can be filed, and that Respondent does not object to the relief requested in the Motion.

The Consolidated Rules of Practice provide at 40 C.F.R. § 22.17(c) that, “for good cause shown,” the presiding officer may set aside a default order. There is no gainsaying that in general, a settlement of an enforcement action is a more condign disposition than a dismissal of the action upon default. Here, where a CACO has been fully executed by the parties, and Respondent does not object to setting aside the Order Dismissing the Complaint with Prejudice, good cause is shown to set aside the dismissal of this action.

Accordingly, the Complainant’s Motion for Set Aside Dismissal is **GRANTED**. The Order Dismissing Complaint With Prejudice is hereby set aside.

Susan L. Biro
Chief Administrative Law Judge

Dated: February 3, 2000
Washington, D.C.