

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

BEFORE THE ADMINISTRATOR

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

ORDER DISMISSING COMPLAINT WITH PREJUDICE

This case was initiated on March 30, 1999 with the filing of a Complaint. The Respondent filed its Answer to the Complaint on May 17, 1999. Thereafter, the case was referred to the Office of Administrative Law Judges for assignment of the case to a Judge for hearing. On May 20, 1999, the parties were offered and accepted an opportunity to participate in Alternative Dispute Resolution (“ADR”). After more than four months in ADR, on October 12, 1999, the Neutral Judge filed a report stating that the ADR process was terminated since the parties had reached an Agreement and the time for ADR had expired.¹ The case was then reassigned to the undersigned for supervision until conclusion. On October 14, 1999, the undersigned issued an Initial Prehearing Order requiring the parties to file their Consent Agreement and Consent Order memorializing their agreement on or before November 15, 1999. However, the parties have failed to meet that deadline or to timely file a request for extension of the deadline for cause. As a result, on November 18, 1999, the undersigned issued an Order requiring the parties to show good cause on or before November 30, 1999 why they failed to file the Consent Agreement as required by the Prehearing Order and why this case should not be dismissed and/or a default entered. On November 30, 1999, Complainant filed a response to the Show Cause Order. The Order failed to state any “good cause” for the parties failure to meet the prior deadline set other than unexplained “neglect,” instead merely stating that “settlement was imminent” and that “with the exception of one term,” Respondent had indicated its willingness to execute the Agreement. The Complainant also requested in that same document an extension of more than 30 days, until January 3, 2000, to file the fully executed Consent Agreement. Despite all the shortcoming of the Response to the Show Cause Order, leniency was provided and by Order dated December 6, 1999, the extension requested by the Complainant was granted.

Regretfully, the Complainant has, to date, failed to file the Consent Agreement or any

¹ By letter dated October 13, 1999, the Respondent’s counsel, R.L. Huszagh, advised the Neutral Judge that the matter “has been settled [and that] Attorney Robert Guenther [Complainant’s counsel] is preparing the settlement papers.”

timely Motion for extension of the deadline established. This is the second time the Complainant has blatantly disregarded the Orders established by this tribunal, for no apparent good cause.

Section 22.17 (a) of the Consolidated Rules of Practice Governing The Administrative Assessment of Penalties, 40 C.F.R. § 22.17(a), as amended, 64 Fed. Reg. 40176 (July 23, 1999) 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**.²

Susan L. Biro
Chief Administrative Law Judge

Dated: January 4, 2000
Washington, D.C.

² 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.