UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of:	)	
	)	
Bil-Jim Construction Company, Inc. and	)	**Docket No. CAA-02-2007-1217**
First Lakewood Forest Associates, LLC,	)	
	)	
Respondents.	)	

ORDER DISMISSING COMPLAINT WITH PREJUDICE

This case was initiated on August 16, 2007 with the filing of a Complaint and Notice of Opportunity to Request a Hearing ("Complaint"). Respondent Bil-Jim Construction Company, Inc., filed its Answer to the Complaint on September 27, 2007. Respondent First Lakewood Forest Associates, LLC, filed its Answer to the Complaint and Request for Hearing on April 20, 2012. Thereafter, the case was referred to the Office of Administrative Law Judges for assignment of the case to a judge for hearing. The undersigned was then designated to preside over this case on May 17, 2012. On May 23, 2012, the undersigned issued a Prehearing Order requiring the Complainant to file a Consent Agreement and Final Order ("CAFO") or its prehearing information by July 6, 2012.

On June 8, 2012, Complainant filed a letter stating that the parties have reached an agreement in principle and that a fully-executed CAFO would be filed by July 6, 2012. On July 6, 2012, Complainant filed a letter which stated that "[t]he Regional Administrator has yet to issue her Order accepting and Ordering the Agreement. The holiday has caused many delays in the concurrence procedure and I apologize for having to request a few additional days continuance before we must respond to your Order."

Regrettably, to date, the Complainant has failed to file the Consent Agreement or a proper motion requesting an extension of the July 6 deadline that complies with section 22.7(b) of the Consolidated Rules of Practice Governing The Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. § 22.7(b). Complainant's last letter, filed July 6, 2012, does not satisfy section 22.7(b), as it does not provide good cause, was not filed sufficiently in advance of the due date, and lacks a certificate of service as required by section 22.5(3) and the undersigned's Prehearing Order (p.4).

Section 22.17(a) of the Consolidated Rules, 40 C.F.R. § 22.17(a), provides that "A party may be found to be in default . . . upon failure to comply with the information exchange requirements of § 22.19 or an order of the Presiding Officer," and that "[d]efault 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). The Default section of the undersigned's Prehearing Order (p.4) sets out further cautionary language:

> **Complainant is notified that its failure to file its prehearing exchange in a timely manner can result in a dismissal of the case with prejudice.**
>
> **The mere pendency of settlement negotiations or even the existence of a settlement in principle does not constitute a basis for failing to strictly comply with the prehearing exchange requirements. Only the filing with the Regional Hearing Clerk of a fully-executed Consent Agreement and Final Order, or an order of the judge, excuses noncompliance with filing deadlines.**

(emphasis in original).

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**.[1]

SO ORDERED.

Susan L. Biro
Chief Administrative Law Judge

Dated: July 26, 2012
Washington, D.C.

[1] Pursuant to 40 C.F.R. §§ 22.17(a) and 22.17(c), 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.