

5/26/95

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

| | | |
|-------------------------------|---|----------------------------|
| IN THE MATTER OF |) | |
| |) | |
| DAVID L. REDLER D/B/A TREE N' |) | IF&R Docket No. VII-1185C- |
| TURF LAWNSCAPES, |) | 93P |
| |) | |
| Respondent |) | |

THIRD REISSUANCE OF ORDER TO SHOW CAUSE

On July 14, 1993, Complainant filed a Motion for Default Order and supporting documentation. The basis for the Motion for Default Order is that the Respondent failed to file its prehearing exchange on July 7, 1993,¹ as required by the Order Setting Prehearing Procedures. Respondent did not submit any reply to the Motion for Default Order within the time permitted under Section 22.17(a) of the EPA Rules of Practice, 40 C.F.R. § 22.17(a).

An Order to Show Cause was issued on July 18, 1994, and was reissued on August 3, 1994. In light of the withdrawal of counsel for Respondent, the reissued Order was served directly on Respondent at the address provided on the letter Respondent filed in his Answer to the Complaint. On August 18, 1994, the reissued Order was returned marked "refused". On August 31, 1994, the Order to Show Cause was reissued for a second time to reflect an updated address for Respondent provided by Complainant in a letter dated August 3, 1994.

¹ May 5, 1993 was the date set for the prehearing exchange in the Order Setting Prehearing Procedures, but this was extended to July 7, 1993 by agreement of the parties.

By letter dated May 16, 1995, Complainant has informed the Court of a new address for Respondent. Therefore, this Order constitutes a third reissuance of the Order to Show Cause and will be served at this current address by regular first class mail and by certified mail, return receipt requested.

Under Section 22.05(c)(4) of the Rules of Practice (Rules), 40 C.F.R § 22.05(c)(4), a change in address of a person appearing in a case governed by the Rules shall be communicated promptly to the Regional Hearing Clerk, to the Presiding Judge and to the parties to the proceeding. Under Section 22.05(c)(4), a party who fails to furnish a change of address is deemed to have waived his right to notice and service under the Rules. Therefore, Respondent may be liable to entry of a default order against him if he fails to update his address or refuses to accept pleadings and orders properly served upon him by mail.

Nevertheless, the compliance date for the Respondent to show cause is extended as follows: Respondent is ordered to show cause on or before June 30, 1995, as to why Respondent failed to file its Prehearing Exchange by the July 7, 1993 deadline, and as to why the Complainant's Motion for Default Order should not be granted.

SO ORDERED.



Daniel M. Head
Administrative Law Judge

Dated: 5/26/95

Washington, DC

IN THE MATTER OF DAVID L. REDLER d/b/a TREE N' TURF LAWNSCAPES,
Respondent
IF&R Docket No. VII-1185C-93P

CERTIFICATE OF SERVICE

I certify that the foregoing Third Reissuance of Order To Show Cause, dated _____, was sent in the following manner to the addressees listed below:

Original by Pouch Mail to: Venessa Cobbs
Regional Hearing Clerk
U.S. Environmental Protection
Agency, Region VII
726 Minnesota Avenue
Kansas City, KS 66101

Copy by Certified Mail, Return
Receipt Requested, to:

Counsel for Complainant: Julie M. Van Horn, Esquire
Associate Regional Counsel
U.S. Environmental Protection
Agency, Region VII
726 Minnesota Avenue
Kansas City, KS 66101

Copy by First Class Mail and
by Certified Mail, Return
Receipt Requested, to:

Respondent: Mr. David L. Redler
P.O. Box 163
Palmyra, NE 68418

Aurora M. Jennings
Legal Assistant
Office of the Administrative
Law Judges

Dated: 5/26/95
Washington, DC