

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

CITY OF DAYTON,	:	
Plaintiff,		Case No. 3:11-cv-383
-vs-	:	Magistrate Judge Michael J. Newman (Consent Case)
A.R. ENVIRONMENTAL, INC., <i>et al.</i> ,		
Defendants.	:	

**ORDER DISMISSING DEFENDANT ALEX PENLAND’S *PRO SE* THIRD-PARTY
CLAIMS AGAINST AGIS SURETY COMPANY AND AMERICAN CONTRACTORS
INDEMNITY COMPANY**

The Court was recently notified that Defendant/Third-Party Plaintiff Alex Penland had not properly served Third-Party Defendants Agis Surety Company (“Agis”) and American Contractors Indemnity Company (“ACI”): the individual who had accepted the summonses was not an agent authorized to accept service of process for Agis and/or ACI. *See* doc. 108; Fed. R. Civ. P. 4(h). Shortly thereafter, the Court issued an Order to Defendant Alex Penland to show cause, on or before October 12, 2012, why it should not dismiss Agis and ACI for failing to properly serve these business entities in accordance with Rule 4(h) (*e.g.*, by serving an authorized agent) within Rule 4(m)’s 120-day deadline. *See* doc. 111. Instead of responding to the Show Cause Order, Penland filed a motion apparently requesting that the Court order American Contracting Services, Inc. – a Third-Party Defendant that has been dismissed from this case – to provide him with the names of these entities’ statutory agents. *See* doc. 112.

To prevent the dismissal of his third-party claims against Agis and ACI under Rule 4(m), Penland must show that good cause exists to excuse his failure to timely and properly serve these

parties. *See Nafziger v. McDermott Int'l, Inc.*, 467 F.3d 514, 521-22 (6th Cir. 2006). He has failed to do so. Accordingly, his third-party claims against Agis Surety Company and American Contractors Indemnity Company are **DISMISSED WITHOUT PREJUDICE**; and the Clerk is **ORDERED** to terminate them upon the docket.

Further, as Penland has failed to show how dismissed Third-Party Defendant American Contracting Services, Inc. has an obligation to provide him with the names of the statutory agents for Agis and ACI, his motion (doc. 112) is **DENIED**.

October 16, 2012

s/ **Michael J. Newman**
United States Magistrate Judge