

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
) Docket No. RCRA-04-2008-4008
FBF Nuclear Container, LLC)
and)
Metal Solutions Design & Fabrication, LLC)
and)
Mr. David Berger)
_____)

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2009 MAY 22 AM 7:
HEARINGS CLERK

ORDER ON JOINT MOTION TO DISMISS RESPONDENTS
METAL SOLUTIONS DESIGN & FABRICATIONS, LLC AND M. DAVID BERGER

PLEASE TAKE NOTICE, on May 20, 2009, pursuant to 40 C.F.R. § 22.20, Complainant Environmental Protection Agency (“EPA”) and Respondents Metal Solutions Design & Fabrications, LLC, and M. David Berger filed a “Joint Motion to Dismiss Respondents Metal Solutions Design & Fabrications, LLC and M. David Berger,” (“Joint Motion”) from the above-captioned proceeding. The basis for the Joint Motion is that during settlement negotiations, Respondents Metal Solutions and M. David Berger provided sufficient evidence such that EPA determined that Metal Solutions Design & Fabrications, LLC and M. David Berger have no liability related to the Complaint and Compliance Order (“Complaint”) filed in the above-captioned matter.

Pursuant to 40 C.F.R. § 22.16, parties have the opportunity to file responses to motions within 15 days after service of such motions. In accordance with 40 C.F.R. § 22.16(b), the Presiding Officer may set a shorter or longer time for response. For that purpose, the undersigned convened a telephone conference on May 21, 2009, with counsel for all parties to determine the position taken by Respondent FBF Nuclear Container, LLC, in response to the Joint Motion. As indicated by Counsel for

Respondents, Brian M. Babb, Esq., FBF Nuclear Container, LLC, is unopposed to the granting of the Joint Motion.

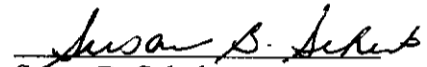
Based upon Complainant's position that there is insufficient evidence against Metal Solutions Design & Fabrication, LLC and M. David Berger, along with the fact that dismissal of the proceeding as to those Respondents is unopposed by the third and non-moving Respondent, FBF Nuclear Container, LLC, granting the Joint Motion is appropriate in this matter.

IT IS ORDERED:

1. The Joint Motion is hereby **granted**. The proceeding is dismissed as to Respondents Metal Solutions Design & Fabrication, LLC and M. David Berger.

2. The proceeding, and all claims contained in the Complaint remain as to Respondent FBF Nuclear Container, LLC.

Date: May 21, 2009


Susan B. Schub
Presiding Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Order Granting Joint Motion to Dismiss Respondents Metal Solutions Design & Fabrications, LLC and M. David Berger, in the Matter of FBF Nuclear Container, LLC and Metal Solutions Design & Fabrication, LLC and Mr. David Berger, Docket No: RCRA-04-2008-4008, on the parties listed below in the manner indicated:

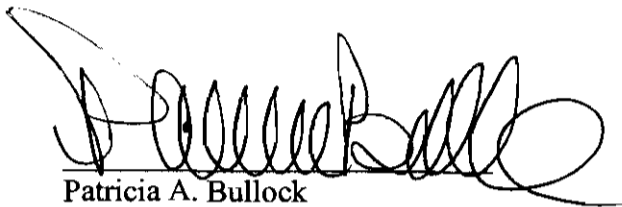
Brain M. Babb, Esq. and
David A. Meyer, Esq.
Keating Muething & Klekamp PLL
One East Fourth Street, Suite 1400
Cincinnati, Ohio 45202

Certified Mail – (Return
Receipt Requested)

Michael T. Newton, Esq.
U.S. Environmental Protection Agency
Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

(via Intra-Office Mail)

Date: 5-22-09



Patricia A. Bullock
Regional Hearing Clerk
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Agency, Region 4
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