

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of

State of Illinois,

Docket No. CAA-001-1995

Respondent

ORDER

On March 14, 1997, an order was issued in this matter in part directing the U.S. Environmental Protection Agency ("EPA") to show cause why this case should not be dismissed due to the complainant's failure either to file an executed Consent Agreement and Final Order ("CAFO") by March 10, 1997, as previously directed by this court, or to seek an extension of time for such filing. In its response, counsel for EPA submitted an 18-page argument as to why dismissal of this case would be improper.¹

It is not important for purposes of this order to discuss individually the arguments raised by EPA. It is enough simply to state that they are not well-taken. EPA initiated this action against the State of Illinois by the filing of an administrative complaint and, inasmuch as EPA bears the burden of prosecuting this matter, it is fair under the circumstances of this case to expect the Agency to comply with a clear and unambiguous deadline for the filing of an executed Consent Agreement.²

Nonetheless, justice in this case requires that this matter not be dismissed for failure to timely file an executed CAFO.³ Accordingly, EPA's motion for reconsideration is granted and the Amended Complaint is accepted for filing. In addition, EPA's motion for an extension of time for the filing of an executed CAFO is granted. EPA is directed to file an executed CAFO with this court no later than April 7, 1997.

Carl C. Charneski

Administrative Law Judge

Issued: March 24, 1997

Washington, D.C.

¹ EPA also filed a Motion for Reconsideration of Denial of Motion to Amend the Complaint Instantly and a Motion to Extend Date for Filing of the Consent Agreement and Consent Order.

² Indeed, in a conference call held on January 9, 1997, involving the parties and this court, no objection was raised to the court's setting March 10, 1997, as the date for the filing of the CAFO.

³ This is not to say, however, that the same result will obtain in all future cases. If EPA fails to file an executed CAFO within the time prescribed, or fails to seek an extension of time for such filing, it runs the risk of the case being dismissed.

IN THE MATTER OF STATE OF ILLINOIS, Respondent

Docket No. CAA-001-1995

Certificate of Service

I certify that the foregoing ORDER, dated March 24, 1997, was sent this day in the following

manner to the below addressees.

Original by Regular Mail to: Ms. Sonja Brooks

Regional Hearing Clerk

U.S. Environmental Protection

Agency, Region 5

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Copy by Regular Mail to:

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Marion Walzel

Legal Staff Assistant

Dated: March 24, 1997