UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of	)	
	)	
State of Connecticut	)	Docket No. RCRA-I-97-1083
Dept. of Transportation,	)	
(Bradley Intl. Airport)	)	
	)	
Respondent	)	

ORDER DENYING MOTION TO REOPEN CONSENT ORDER

The Region 1 Office of the United States Environmental Protection Agency (the "Complainant" or "Region") filed a Complaint against the State of Connecticut Department of Transportation (the "Respondent" or "Department") in September 1997. The Complaint charged the Respondent with a series of violations of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §6901 et seq., with respect to its facility known as Bradley International Airport, located in Windsor Locks, Connecticut. The Complaint sought injunctive relief and the assessment of a civil penalty in the amount of $400,560 against the Department. The Respondent filed an Answer to the Complaint. The proceeding was then assigned to the EPA's Office of Administrative Law Judges pursuant to the EPA Consolidated Rules of Practice, 40 CFR Part 22.

The undersigned Administrative Law Judge issued a Prehearing Order on December 18, 1997, establishing a schedule for the filing of prehearing exchanges by the parties of intended witnesses and evidence. Before the exchanges were due, the parties jointly moved, on March 4, 1998, for an extension on the basis that they had reached a settlement in principle in this matter. The extension was granted and the parties duly submitted a fully executed copy of a Consent Agreement and Order ("CAO") dated June 16, 1998. The CAO requires the Respondent to pay a civil penalty of $334,548.

On July 7, 1998, the Department filed a "Motion to Re-0pen Consent Agreement and Order."[(1)] The Department states that "changed circumstances" have now permitted the Department to offer a new proposal for a supplemental environmental project ("SEP") in the State of Connecticut that would offset part or all of the agreed civil

penalty. The Respondent adds that "new information" will enable it to offer a significant modification a previously submitted proposal for a SEP. The earlier failure to reach agreement on a SEP, "in retrospect," appears to have been caused by "misunderstandings and miscommunications." The motion further states that Respondent has discussed this motion with counsel for the Region, "who has no objection."

There are several obstacles that will prevent the granting of the motion to reopen the CAO. First and most fundamentally, the Administrative Law Judge no longer has jurisdiction over this proceeding. The CAO itself (at ¶2) provides that the Respondent waives its right to an administrative hearing on any issue of law or fact set forth in the Complaint. The CAO (at ¶3) also states that its provisions shall be binding on both the EPA and the Respondent. The CAO was fully executed by duly authorized representatives and counsel for both parties, and conformed with the requirements for such settlement agreements set forth in 40 CFR §22.18. Once such a CAO is filed with the Regional Hearing Clerk, the proceeding is concluded and is no longer within the jurisdiction of the Office of Administrative Law Judges.

The Respondent correctly points out that there is no provision in the EPA Rules of Practice for reopening a consent agreement or consent order. The Rules do include provisions for reopening a hearing and for reopening a final order by the Environmental Appeals Board - 40 CFR §§22.28 and 22.32, respectively. Respondent states it would be consistent with those provisions to reopen a "non-final" orders. There is however nothing "non-final" about the CAO executed in this case. By its own terms it is binding on the parties, and finally and completely resolves this matter.

Any analogy to the standards for reopening a hearing will not aid this motion. Respondent's vague allusions to "changed circumstances" and "new information" fall far short of the specific grounds and good cause required to be shown in order to reopen a hearing under §22.28. The Department's references to "misunderstandings and miscommunications" likewise fall short of alleging any fraud or irregularity in the negotiation of the CAO. The parties apparently had competent representation, as well as ample time and opportunity to reach their settlement by mutual consent. The concept of including a SEP to benefit the environment in Connecticut is desirable, but it was not included in the final CAO that was consented to by both parties.

For these reasons, the motion to reopen the CAO in this case will be denied. The proceeding will remain closed so far as the Office of Administrative Law Judges is concerned.

Notwithstanding this order, the parties may not necessarily be precluded from executing another consent agreement, with at least equal solemnity as the CAO, that could abrogate, modify, or supplement the CAO. I will leave it to the parties to research that possibility and derive their own course of proceeding. Such an additional agreement could result in either re-instituting this proceeding for a hearing, or renegotiating the civil penalty with a SEP component. For our records, the parties are requested to send a copy the Office of Administrative Law Judges of any such modification of the CAO in this case.

Order

The Respondent's motion to reopen the Consent Agreement and Order in this proceeding is denied.

Andrew S. Pearlstein
Administrative Law Judge

Dated: July 15, 1998
Washington, D.C.

1. In a companion case, Docket No. CWA-2-I-97-1084, the Region charged the Department with violations of the Clean Water Act at another facility in the State of Connecticut. The Respondent has made an identical motion to reopen the CAO in that proceeding as well. In a separate order issued today, that motion will also be denied.