

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103

Office of Regional Counsel
Benjamin Cohan, Esq.
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Via UPS

Honorable Barbara Gunning
Administrative Law Judge
EPA Office of Administrative Law Judges
1099 14th Street, NW
Suite 350, Franklin Court
Washington, DC 20005

Re: *In the Matter of Datom Products, Inc. et. al.*
Docket No. CAA-03-2011-0055

Dear Honorable Gunning:

Enclosed please find a copy of the *Complainant's Motion to Withdraw Complaint* filed today, August 4, 2011.

Sincerely,


Benjamin M. Cohan
Senior Assistant Regional Counsel

Enclosure

cc: EPA Region III Regional Hearing Clerk
Mr. Gromelski
Mr. Krause

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THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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1650 Arch Street

Philadelphia, Pennsylvania 19103
CLERK
EPA REGION I, PHILA. PA

IN RE:

Datom Products, Inc.

and

Wayne Highlands School District

Respondents

Honesdale High School
459 Terrace Street
Honesdale, PA 18431

Facility

Docket No. CAA-03-2011-0055

MOTION TO WITHDRAW COMPLAINT

Pursuant to 40 C.F.R. §§ 22.16 and 22.14(d), and for the reasons set forth and discussed herein, Complainant United States Environmental Protection Agency ("Complainant" or "EPA"), hereby moves to withdraw the subject Complaint with prejudice.

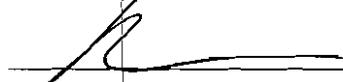
Pursuant to Complainant's status report dated July 15, 2011, the investigation referenced in EPA's motion to stay proceedings dated June 13, 2011 involves confidential matters that have recently been referred to the EPA Office of Inspector General (OIG) for additional fact finding. The Complainant and Complainant's Counsel do not control or influence the conduct of this investigation. It is therefore not possible at this time to determine the outcome or duration of this investigation, which is anticipated to continue beyond the sixty (60) day stay granted by this

Court. While Complainant cannot know the outcome of this investigation, at this time it appears that the outcome of the investigation may be material to this matter.

The June 15, 2011 Order Granting Motion to Stay Proceedings noted this Tribunal's duty under 40 C.F.R. § 22.4(c) to, *inter alia*, "avoid delay" in these proceedings. Order at 1. Due to the on-going investigation referenced above, Complainant has determined that it is not appropriate at this time to complete execution of the settlement it had already prepared in this matter, as any settlement may not be fully informed in light of the fact that Complainant is not in a position to provide further disclosure of this investigation. Further, an indeterminate delay in this proceeding related to this investigation may compromise the prospects for a speedy, fair and impartial resolution as contemplated by 40 C.F.R. Part 22.4(c). Therefore, with the understanding that Complainant cannot at this time provide Respondents and/or this Court with full disclosures pertaining to this investigation, EPA hereby moves this Court to withdraw the Complaint in this matter with prejudice.

Counsel for EPA contacted opposing Counsel on August 4, 2011 and informed them of this Motion. Both Mr. Gromelski and Mr. Krause stated to EPA Counsel that their respective clients do not oppose this Motion.

Respectfully Submitted,



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Howell, Howell, & Krause
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Honedale, PA 18431 (For Wayne Highlands School Dist.)

8/4/11
Date


Benjamin M. Cohan
Senior Assistant Regional Counsel