

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)

Landmark at Rahway, LLC,)

Respondent.)

) Docket No. CWA-02-2009-3405

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG-011
2010 JAN 27 PM 1:45
REGIONAL HEARING
CLERK

ORDER TERMINATING PROCEEDINGS
BEFORE CHIEF ADMINISTRATIVE LAW JUDGE

This matter was initiated by an Administrative Complaints filed on June 30, 2009. On September 24, 2009, Complainant advised this Tribunal by e-mail that the parties were declining to participate in Alternative Dispute Resolution (ADR) because they were in the process of arranging for an outside neutral mediator and requested a stay of proceedings until December 8, 2009 for such purposes.¹ By Order dated September 29, 2009, the request for stay was granted, however as a condition thereof Complainant was required to “file a Status Report in regard to the matter on or before October 15, 2009, October 30, 2009, November 15, 2009, and November 30, 2009.” See, Initial Prehearing Order dated September 29, 2009 (italics added).

The first status report due to be filed on or before October 15, 2009, was not timely received by the undersigned. However, the next day, Complainant e-mailed informally advising that the parties had selected a neutral and were discussing scheduling. No further status reports were received by the undersigned on or before the October 30th and November 15th deadlines. As a result, on November 16, 2009 the undersigned’s staff e-mailed Complainant a reminder. Complainant e-mailed a response to that reminder the same day, indicating an intent to file a status report after the first mediation session scheduled to occur later that day. Nevertheless, this Tribunal received no such further communication from Complainant. As a result, on November 27, 2009, the undersigned’s staff again sent Complainant a e-mail reminder as to the status reports now overdue. Complainant responded to this reminder on November 30, 2009, asserting that status “reports were served on 10/20, 11/09, and 11/16” and attaching thereto a status report dated November 16, 2009. Upon review, the Certificate of Service accompanying such status report revealed that the Tribunal was not among the recipients to whom a copy of the report was

¹ While this Tribunal permits the parties to respond to its offer of ADR by e-mail, the Rules applicable to this proceeding do not permit requests for relief to be submitted in such an informal manner. See, 40 C.F.R. §§ 22.16(a), 22.6. Nevertheless, as a courtesy to the parties, and in an effort not to delay proceedings, this Tribunal acted upon the parties’ informal request.

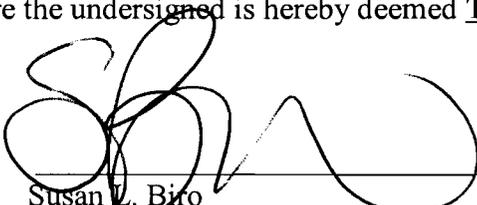
sent.²

On December 10, 2009, after expiration of the stay, the parties filed a Joint Motion requesting an additional stay until December 28, 2009, by which time they anticipated a Consent Agreement and Final Order (CAFO) would be filed.³ By Order dated December 14, 2009, the Motion was granted and, in light of the upcoming holidays and as a courtesy to the parties, a deadline of *January 8, 2010* was established for the filing of the CAFO.

On January 7, 2010, in response to Complainant's e-mail notification that the CAFO would not be filed by the next day because it was still being circulated for approval, this Tribunal's staff advised Complainant of the need to immediately file and serve a motion for an extension. Having not received such motion, this Tribunal's staff made further inquiries on January 15, 2010 to which Complainant responded by e-mail on January 19th indicating that a Joint Motion for extension through *January 21, 2010* was filed on January 7th and attaching a copy thereof. Again, the Certificate of Service on this pleading indicated that a copy of it was *not* sent to the Tribunal.

The time period the parties requested for the second stay has expired and, to date, this Tribunal has not received a copy of the filed CAFO. However, there is no further need for the undersigned to extend its time and resources presiding over this matter. Cases are referred to the Office of Administrative Law Judges solely for the purpose of providing respondents with a right to a hearing before an Administrative Law Judge, consistent with the applicable statutes and the Administrative Procedure Act. The parties are deemed to have waived the right to hearing, as they have reported that they have reached agreement in principal for the settlement.

Accordingly, this proceeding before the undersigned is hereby deemed **TERMINATED AND CLOSED** as of this date.



Susan L. Biro
Chief Administrative Law Judge

Dated: January 26, 2010
Washington, D.C.

² Perhaps it is not obvious, but the whole point of *filing* status reports is not to notify the parties as to the status of the matter as they are no doubt already aware of such, but to make the Tribunal aware of the status of the matter and to document such status in the record to justify continuing to delay proceedings towards hearing.

³ The Tribunal was also not listed on the Certificate of Service accompanying the Motion and the record suggests that a copy thereof was informally provided the Tribunal by e-mail.

In the Matter of Landmark at Rahway, LLC, Respondent
Docket No. CWA-02-2009-3405

CERTIFICATE OF SERVICE

I certify that the foregoing **Order Terminating Proceedings Before Chief Administrative Law Judge**, dated January 26, 2010, was sent this day in the following manner to the addressees listed below:


Maria Whiting-Beale
Staff Assistant

Dated: January 26, 2010

Original And One Copy By Pouch Mail To:

Karen Maples
Regional Hearing Clerk
U.S. EPA
290 Broadway, 16th Floor
New York, NY 10007-1866

Copy By Pouch Mail To:

Christopher Saporita, Esquire
Assistant Regional Counsel
U.S. EPA
290 Broadway, 16th Floor
New York, NY 10007-1866

Copy By Regular Mail To:

Neil Yoskin, Esquire
Sokol, Behot & Fiorenzo
229 Nassau Street
Princeton, NJ 08542-4601