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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

IN THE MATTER OF)) INDSPEC CHEMICAL CORPORATION) III - 086) and) ASSOCIATED THERMAL SERVICES, INC.)) Respondents.)	Docket No. CAA-
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ORDER ON COMPLAINANT'S RENEWED MOTION FOR RELIEF

On February 2, 1998, EPA filed "Complainant's Renewed Motion for Appropriate Relief from Prejudice Caused to Complainant Through Respondent Associated Thermal Services, Inc.'s Repeated Failure to Adequately and Fully Comply with the Orders of this Court." Respondent Associated Thermal Services, Inc. ("ATS") filed its response, through Counsel, on February 9, 1998. For the reasons which follow, EPA's motion is denied but with a strong **caveat** to ATS.

Without detailing the particulars of EPA's motion, its essence asserts that ATS has continued to "partially and selectively -- but never fully -- comp[ly] with the requirements of the Consolidated Rules of Practice and with the Orders of this Court." Memorandum in Support of Motion at 1. As relief, EPA requests that the presiding judge invoke 40 C.F.R. § 22.19 (f) (4), which permits an adverse inference to be drawn or issuance of a default order upon failure to comply with an order.

As observed by EPA, Respondent ATS has submitted a Third Pre-Trial Submission in the wake of this Court's January 21, 1998, Order on Motion And Response to Status Report. EPA's chief objection to the ATS's Third Submission is an alleged inadequate narrative summary or description "as to the anticipated testimony of ATS' listed financial (i.e., ability-to-pay) witnesses," providing only "generic...iteration as to the expected testimony of each witness." EPA Memorandum in Support at 9,10. However, EPA concedes that it "has not yet had the opportunity to provide or discuss these submissions with its financial expert or to ascertain whether they fully and completely respond to the Court's Order..." *Id.* at 9.

Taken together, ATS's Second and Third Pre-Trial Submissions evince at least an attempt to comply with my January 21, 1998 Order. In the undersigned's view it is difficult at this juncture to ferret out whether ATS has said enough about the expected testimony from its witnesses. To some extent the financial documents speak for themselves, and even EPA has conceded that it has not fully determined whether ATS's submissions comply with the Order. Having said that, ATS is given the **caveat** that, to the extent that EPA can show at the hearing that a fuller disclosure of the expected testimony was reasonably possible and that EPA was consequently disadvantaged in its ability to challenge and cross examine, the undersigned may take note of that and draw adverse inferences impacting upon the weight given to the testimony of those witnesses. ATS (and EPA) are reminded that the principle underlying discovery is that both parties put all their cards on the table, face up. To the extent, *if any*, that ATS is engaging in stratagem, it is advised that the wiser course is to comply with the spirit of discovery.

So Ordered.

William B. Moran

Administrative Law Judge

Dated: February 12, 1998

Washington, D.C.

In the Matter of Indspec Chemical Corporation and Associated Thermal Services, Inc.,
Respondents

Docket No. CAA-III-086

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order on Complainant's Renewed Motion for Relief**, dated February 12, 1998, was sent in the following manner to the addressees listed below:

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Dated: February 12, 1998
Washington, D.C.

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