

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)
)
H. KRAMER & COMPANY,) **Docket No. RCRA-5-2000-0140**
)
Respondent)

**ORDER DENYING MOTION TO ENFORCE
CONSENT AGREEMENT AND FINAL ORDER**

H. Kramer & Company (Respondent) and the United States Environmental Protection Agency, Region 5 (Complainant or EPA) entered into a Consent Agreement and Final Order (CAFO) on November 2, 2001, by its terms constituting the “entire settlement between the parties” and “final resolution of all claims set forth in the Complaint filed in this case.” CAFO ¶ 17. As a result, the above captioned matter was closed without further order of this tribunal. Subsequently, on February 5, 2002, Respondent filed a Motion to Enforce Consent Agreement and Consent Order (Motion to Enforce), requesting an order directing EPA to withdraw its Request for Information dated January 10, 2002, and determining that Respondent is not required to respond to the Request for Information. Complainant filed a Motion to Dismiss Respondent’s Motion to Enforce on February 20, 2002. On February 28, 2002, Respondent filed a Reply Memorandum in support of its Motion.

In its Motion to Enforce, Respondent argues that EPA’s Request for Information is contrary to the terms and conditions of the CAFO because it seeks to reopen matters that were fully resolved by the CAFO, to determine Respondent’s compliance status. Respondent asserts that its attempts at a voluntary resolution of these arguments, by written correspondence and telephone contact with EPA, were unsuccessful. Respondent claims that the undersigned, who presided in this matter prior to the filing of the CAFO, retains jurisdiction over the terms of the CAFO, citing to *Bragg v. Colonel Dana Robertson*, 83 F. Supp. 2d 713, 717 (S.D. W. Va. 2000) and other cases standing for the proposition that courts retain jurisdiction to enforce their own orders.

EPA’s Motion to Dismiss is in essence an opposition to the Motion to Enforce. EPA asserts that the undersigned lacks jurisdiction over the Motion to Enforce and that the Request for Information was legitimately issued. More particularly, Complainant asserts the Request for Information was authorized by Section 3007 of the Resource Conservation and Recovery Act

(RCRA),¹ that the CAFO does not infringe on that authority, and that the Request seeks information that is separate and distinct from the issues in the matter settled by the CAFO. Complainant argues that there is no ongoing case or controversy over which the undersigned has ongoing jurisdiction, and that on the effective date of the CAFO, the proceeding, and thus the jurisdiction of the presiding officer, terminated.

The case of *Bragg v. Colonel Dana Robertson, supra*, referenced by Respondent concerns a consent decree which is “a negotiated agreement that is entered as a judgment of the court.” 83 F. Supp. 2d at 717. The Court in that decision explains, “[a] district court’s ‘authority to adopt a consent decree comes only from the statute which the decree is intended to enforce,’” and “approval of a consent decree is a judicial act, committed to the informed discretion of the trial court” *Id.* (quoting *System Fed’n No. 91, Ry. Employees’ Dep’t v. Wright*, 364 U.S. 642, 651 (1961)). On that basis, the Court states that “[w]here . . . the parties agree to the Court’s continuing jurisdiction to enforce the consent decree . . . a party aggrieved by the other’s noncompliance may apply for an order to show cause why the noncompliant party should not be held in contempt.” *Id.* (citation omitted).

In support of its argument that “this tribunal has jurisdiction to enforce its own order” (Reply at 3), Respondent cites two other cases. In *Aro Corp. v. Allied Witan Co.*, 531 F.2d 1368 (6th Cir. 1976), where the district court had issued an order dismissing the matter based upon settlement, the Sixth Circuit affirmed the district court’s subsequent vacatur of its order, reinstatement of the case, and issuance of an injunction for noncompliance with the settlement agreement, relying upon Fed.R.Civ.P. 60(b). 531 F. 2d at 1371. In the other case, *United States v. District of Columbia*, 768 F. Supp. 365 (D.D.C. 1991), the Court concluded that it had jurisdiction to enforce its own order, noting that it had approved and signed the consent decree, which became an order of the Court, and which explicitly provided that the court would retain jurisdiction over the action for four years after entry for the purpose of resolving disputes. 768 F. Supp. at 365-66.

A consent agreement in an EPA administrative enforcement proceeding under Section 3008(a) of RCRA, on the other hand, is not approved or signed by an Administrative Law Judge, and does not become an order of the Administrative Law Judge. Instead, a consent agreement is ratified by the Regional Judicial Officer or Regional Administrator, if the proceeding was initiated in an EPA regional office, or by the Environmental Appeals Board, if the proceeding was commenced at EPA Headquarters. 40 C.F.R. § 22.18(b)(3). The Administrator of EPA delegated the authority “[t]o issue consent orders memorializing settlements between the Agency and respondents resulting from administrative enforcement actions” under RCRA 3008(a) to Regional Administrators, who may redelegate their authority within their region. EPA Delegation 8-9-C. The Complaint initiating this matter was filed by a Branch Chief in EPA Region 5, and accordingly the CAFO was signed, approved and ordered by the EPA Region 5 Director of the Waste, Pesticides and Toxics Division . The Administrative Law Judge who

¹The EPA Administrator’s investigative authority under Section 3007 of RCRA is delegated to Regional Administrators and several Assistant Administrators under EPA Delegation 8-8.

presided in the proceeding does not approve or issue a CAFO in any manner, does not issue any orders in response to the execution of such CAFO, and has no continuing jurisdiction to enforce one.

Accordingly, the Motion to Enforce Consent Agreement and Final Order is **DENIED**.

Susan L. Biro
Chief Administrative Law Judge

Dated: March 5, 2002
Washington, D.C.