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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR

|  |                            |                      |
|--|----------------------------|----------------------|
| In the Matter of<br><br>Borden Chemical, Inc.,<br>1998<br><br>Respondent | )<br>)<br>)<br>)<br>)<br>) | Docket No. 5-CAA-03- |
|--|----------------------------|----------------------|

ORDER ON MOTION TO WITHDRAW COMPLAINT

On September 18, 1998, Complainant filed a Motion to Withdraw Complaint in this proceeding, on the basis of new information, in order to pursue alternative enforcement measures against Respondent, including a civil judicial proceeding. Complainant asserts that it needs to pursue injunctive relief, that certain reductions in the proposed penalty are now not warranted, and that the economic benefit of noncompliance and gravity component of the proposed penalty continue to grow in conjunction with the days that Respondent fails to install and test certain control equipment. Respondent filed a timely response opposing the motion, on October 2, 1998, asserting that withdrawal of the Complaint would inflict plain legal prejudice on Respondent. For the reasons set forth below, the Motion to Withdraw Complaint will be denied.

The Complaint in this matter was filed on February 18, 1998, and on March 23, 1998, Respondent answered the Complaint. By Order dated May 28, 1998, an Alternative Dispute Resolution (ADR) proceeding was initiated upon agreement of the parties. The ADR proceeding was continued for another two months after the initial 60 day period, and was terminated on September 29, 1998, without a settlement.

On or about October 26, 1998, Complainant's counsel requested by telephone that a ruling on the Motion to Withdraw be postponed in light of the parties' progress in settlement discussions. In a telephone discussion on or about November 30, 1998 with the office of the undersigned, counsel for Complainant indicated that although settlement discussions were progressing, he did not wish to withdraw the Motion to

Withdraw Complaint, but that he would file a motion to hold in abeyance a ruling on the Motion to Withdraw. To date, no such motion has been filed.

Section 555(b) of the Administrative Procedure Act (APA) requires that "within a reasonable time, each agency shall proceed to conclude a matter presented to it." 5 U.S.C. § 555(b). Without a written request to hold a ruling on the Motion to Withdraw the Complaint in abeyance, Respondent is in the position of believing that at any time the Motion for Withdrawal may be ruled upon, and, if not in Respondent's favor, a civil judicial proceeding initiated against it. To hold a ruling in abeyance indefinitely, or for any significant length of time, without a written request is unfair to Respondent and contrary to the APA. In view of the time elapsed since Complainant indicated its intent to submit a written request, an inference may be drawn that Complainant has decided not to submit one. However, a ruling at this point on the merits of the Motion to Withdraw Complaint may be contrary to the efforts of the parties to settle this matter.

Accordingly, the Motion to Withdraw Complaint is hereby DENIED as moot. Complainant may renew its Motion to Withdraw Complaint in the event that it determines that a ruling thereon is necessary.

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Susan L. Biro  
Chief Administrative Law Judge

Dated: December 23, 1998  
Washington, D.C.

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