



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

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In the Matter of:)
TNT General Contracting, Inc.,) Docket Nos. RCRA-07-2012-0020
Webb Minerals, LLC, and Trustee(s)) CWA-07-2012-0029
of the Gary and Carol Trump Trust (U/T/A),)
Respondents.)

ORDER ON MOTION TO DISMISS

On January 28, 2014, Complainant filed a Motion to Dismiss ("Motion") stating that: (1) Complainant agreed with the Missouri Department of Natural Resources ("MDNR") that MDNR would pursue the enforcement case against Respondents TNT General Contracting, Inc. ("TNT"), and the Trustee(s) of the Gary and Carol Trump Trust ("Trust"); (2) Complainant has determined that Respondent Webb Minerals, LLC ("Webb"), has an extremely limited ability to pay for penalties and injunctive relief; (3) Complainant agreed with counsel for Webb that if Webb would pay for removal of waste from the TNT facility, Complainant would dismiss the matter with respect to Webb; (4) counsel for Webb provided Complainant with documentation showing that Webb completed the removal of materials from the TNT facility; (5) counsel for MDNR provided documentation to Complainant that the administrative agreement among MDNR, TNT and the Trust has been signed and filed; and (6) the conditions for dismissal having been met to EPA's satisfaction, Complainant moves to dismiss this matter in its entirety.

Respondents have not indicated an objection to the Motion, nor was their consent explicitly stated in the Motion, however, given the record in this matter, it may fairly be implied that Respondents do not object to the dismissal of the claims asserted against them by EPA.

This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation / Termination or Suspension of Permits, 40 C.F.R. Part 22 ("Rules of Practice"). According to the Rules of Practice, the presiding judge, "upon motion of the respondent, may at any time dismiss a proceeding without further hearing or upon such limited additional evidence as he requires, on the basis of failure to establish a prima facie case or other grounds which show no right to relief on the part of the complainant." 40 C.F.R. § 22.20(a) (emphasis added).

The Rules also provide that “[t]he complainant may withdraw the complaint, or any part thereof, without prejudice only upon motion granted by the Presiding Officer.” 40 C.F.R. § 22.14(d) (emphasis added).

Thus, under the Rules, a motion to dismiss may only be granted when a respondent has moved for such relief on the basis that EPA has failed to establish a prima facie or that there are other grounds that show EPA has no right to relief. 40 C.F.R. § 22.20(a). That is clearly not the case here. As such, it appears that Complainant’s Motion may actually be seeking to withdraw the Complaint as authorized by 40 C.F.R. § 22.14(d). Interpreting Complainant’s Motion as a motion to withdraw is appropriate because the parties have met certain conditions that EPA established to address the claims in the Complaint, and in exchange, Complainant agreed to abandon its efforts to seek a judgment against them. However, it appears appropriate in this case to grant withdrawal of the Complaint *with prejudice*, rather than without, since the agreement between MDNR, TNT and the Trust, and the cleanup that Webb completed, were executed specifically to answer for the violations and/or remediate the injuries that were alleged in the Complaint. Mot. ¶ 1 (“Complainant agreed with [MDNR] that MDNR would pursue the enforcement case”); Mot. ¶ 3 (“Complainant agreed with . . . Webb that if Webb would pay for the proper removal of the remaining waste from the TNT facility, Complainant would dismiss the matter”); Mot. ¶ 6 (“all of the conditions for dismissal have been met to EPA’s satisfaction”). In other words, the record shows that Complainant would not have an interest in re-litigating the claims in the Complaint, nor should it have that right, since it has by its own admission, been “satisf[ie]d.”

Therefore, the Complaint in this matter is hereby WITHDRAWN with prejudice. All deadlines set forth in this proceeding are lifted, and the matter is closed.

SO ORDERED.



Susan L. Biro
Chief Administrative Law Judge
U.S. Environmental Protection Agency

Dated: January 30, 2014
Washington, D.C.

In the Matter of TNT General Contracting, Inc., Webb Minerals, LLC and Trustee (s) of the Gary and Carol Trump Trust (U/T/A), Respondent
Docket Nos. RCRA-07-2012-0020 and CWA-07-2012-0029

CERTIFICATE OF SERVICE

I certify that the foregoing **Order On Motion To Dismiss**, dated January 30, 2014, was sent this day in the following manner to the addressees listed below.



Maria Whiting-Beale
Staff Assistant

Dated: January 30, 2014

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