

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Benjamin M. Cohan (3RC50)
Sr. Assistant Regional Counsel

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Honorable Susan L. Biro
Administrative Law Judge
EPA Office of Administrative Law Judges
1099 14th Street, NW
Suite 350, Franklin Court
Washington, DC 20005


JUN 24 2011

Re: *Mr. Thomas Caracio et. al.*
Docket No. CAA-03-2010-0408

Dear Judge Biro:

Please find enclosed a copy of Complainant's *Motion to Withdraw Complaint* in the above captioned matter, the originals of which were filed today with the EPA Regional Hearing Clerk. Copies have been served upon the Respondents as described in the attached Certificate of Service.

Sincerely,


Benjamin M. Cohan
Sr. Assistant Regional Counsel

Enclosures

cc: Ms. Lydia Guy (3RC00)
Regional Hearing Clerk
Paul Logan, Esquire (Former Counsel for Scotta Equipment & Materials Sales, LLC)
Leonard N. Zito, Trustee (*Pro Se*)
Mathew Goodrich, Esq. (Counsel for Mr. Thomas Caracio)
Marcia E. Mulkey, Regional Counsel

THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103

IN RE:

Mr. Thomas Caracio
P.O. Box 218
Wind Gap, PA 18091

and

Mr. Leonard N. Zito, Trustee
641 Market Street
Bangor, PA 18013

and

Scotta Equipment & Materials Sales LLC
HC #1 P.O. Box 70
Saylorsburg, PA 18353

Respondents

Former Sandt's Market
1021 South Broadway
Wind Gap, PA 18091

Facility

Docket No. CAA-03-2010-0408

MOTION TO WITHDRAW COMPLAINT

Pursuant to 40 C.F.R. §§ 22.16 and 22.14(d), and for the reasons set forth and discussed herein, Complainant United States Environmental Protection Agency ("Complainant" or "EPA"), hereby moves to withdraw the subject Complaint with prejudice.

A matter that has some bearing on this case has come to the attention of the Agency. This matter has been referred to the appropriate EPA investigative organization. The Complainant and Complainant's Counsel do not control or influence the conduct of this investigation. It is therefore not possible at this time to determine the outcome or duration of this investigation.

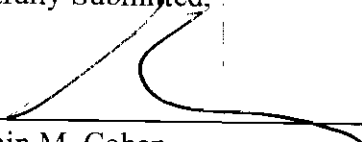
The June 23, 2011 Order denying Complainant's Motion to Stay Proceedings noted this Court's duty under 40 C.F.R. § 22.4c to "avoid delay" and to take measures necessary "for the efficient, fair and impartial adjudication of issues." Order at 2. The Order further directed that the Prehearing Exchange be submitted today, i.e., June 24, 2011. Due to the on-going investigation referenced above, Complainant has determined that it is not appropriate at this time to submit the Prehearing Exchange it had already prepared in this matter. Further, the indeterminate delay in this proceeding related to this investigation is likely to compromise the prospects for a speedy adjudication as contemplated by 40 C.F.R. Part 22.¹ Therefore, with the understanding that Complainant may not be able to comply with a reasonable pre-trial schedule, EPA hereby moves this Court to withdraw the Complaint in this matter with prejudice.

Counsel for EPA contacted opposing Counsel's offices/chambers yesterday in order to determine their position on this Motion. In addition, Counsel for EPA contacted the office of Respondent Cararcio's Counsel via email. As of the time of the filing of this Motion, Counsel

¹Respondents have asserted that "[d]elay will prejudice the former trustee to obtain a prompt adjudication of the Complainant's averments against him without further delay." Respondent Zito's Answer to Complainant's Motion to Stay Proceedings at ¶ 4.

for Complainant has not heard back from either opposing Counsel.

Respectfully Submitted,



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Of Counsel: Marcia E. Mulkey
Regional Counsel
EPA Region III

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CERTIFICATE OF SERVICE

I hereby certify that the original of Complainant's **Motion to Withdraw Complaint** was hand delivered to Lydia Guy, Regional Hearing Clerk, EPA Region III, and that true and correct copies were mailed to each of the following persons in the following manner:

VIA UPS DELIVERY AND FACSIMILE TO:

Hon. Susan Biro
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Franklin Court, Suite 350
1099 14th St. NW
Washington, DC 20005

VIA UPS DELIVERY, TO:

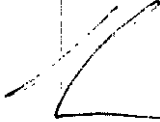
Matthew Goodridge
Martino, Karasek, Martino and Lopiano-Reilly, LLP
641 Market Street
Bangor, Northampton County, PA 18013

Trustee Leonard N. Zito (Judge)
Northampton County Courthouse
669 Washington Street
Easton, PA 18042

Paul Logan, Esq.
475 Allendale Road
King of Prussia, PA 19406

JUN 24 2011

Date



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