UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:	)	
	)	
	)	
Pleasant Hills Authority	)	Docket No. CWA-III-210
	)	
	)	
Respondent	)	

ORDER DENYING COMPLAINANT'S MOTION
TO RECONSIDER MOTION FOR ACCELERATED DECISION

On February 3, 1999, the undersigned issued an Order Granting In Part and Denying In Part, Complainant's Motion For Accelerated Decision in the above-stated proceeding.[1] Specifically, the Order granted Complainant's Motion as to liability for Count II of the Complaint (Monitoring Violations), but denied the Motion as to Count I (Permit Effluent Violations), and Count III (Pretreatment Violations).

Thereafter, on February 11, 1999, Complainant filed a Motion To Reconsider Complainant's Motion For Accelerated Decision On Liability for Count I of the Complaint. Respondent filed a timely response to Complainant's motion.

Complainant argues that it is entitled to an accelerated decision on liability as to Count I with respect to the violations summarized in Attachment A to the Complaint as a matter of law. Complainant asserts that Respondent has disputed only whether the Discharge Monitoring Reports (DMR's),summarized in Attachment B to the Complaint reflect actual exceedences of the effluent limits due to the testing laboratory's failure to measure limits at the appropriate tolerances. Complainant states that this dispute does not apply to those violations summarized in Attachment A to the Complaint. Thus, Complainant argues that the DMR's summarized in Attachment A to the Complaint should be treated as admissions and the Complainant granted accelerated decision on liability as to those instances of violation.

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[1]In that the February 3, 1999, Order fully set forth the pertinent background information and discussion of applicable law in this case, it is unnecessary for purposes of this Order, to readdress these issues.

Count I of the Complaint alleges effluent violations occurring from September 1994 through May 1996. The 46 instances of violations are summarized in Attachments A and B to the Complaint. Attachment A to the Complaint reflects 22 instances of violation, occurring between September 1994 and May 1996. For the violations summarized in Attachment A, Complainant argues that the DMR's report exact measurements within the tolerances required by Respondent's Permit and the Complaint does not allege any failure to use proper analytical methods.

Complainant further argues that Attachment B contains 24 instances of violation, occurring between April 1995 and December 1995, and reflects levels reported on the DMR's as simply "less than" levels (e.g. <0.010 monthly average for Free Cyanide, when the effluent limit in the Permit was 0.0035) which were clearly not low enough to accurately reflect compliance (See Attachment B).

Attachment B reflects the monitoring violations alleged in Count II of the Complaint, for which the Respondent has already been adjudged liable by the Court's February 3, 1999 Order. Complainant asserts that Respondent's contention that the laboratory's failure to use sufficiently analytical methods could affect the accuracy of the results reported on the DMR's, applies only to those DMR's summarized on Attachment B, and not to any of the results reflected on Attachment A to the Compliant.

Complainant thus asserts that Respondent has not even asserted a factual issue with respect to the violations summarized on Attachment A. Moreover, Complainant argues that with respect to the violations reflected on Attachment A, Respondent does not dispute the violation, but simply asserts that certain of the violations are minor in extent, a matter relevant only to the amount of penalty warranted for such violations. As such, Complainant argues that its Motion should be granted as to those instances of violation reflected on Attachment A.

Discussion

Complainant's Motion questions the correctness of the February 3, 1999, judgment and as such, is treated as a motion to alter or amend the judgment under Rule 59(e) of the Federal Rules of Civil Procedure, 28 U.S.C.A.. In order to justify reconsideration of an order, the moving party must show that there has been some intervening development of law, some new evidence not previously available, or that the prior order is in clear error or would operate a manifest injustice. *Leong v. Hilton Hotels Corp.*, 689 F. Supp 1572 (1988).

A motion for reconsideration may also be brought on the basis of judicial mistakes, as well a mistakes of a party or his counsel. *Boone v. U.S.*, 743 F.Supp 1367, 1371 (1990). However, a motion for reconsideration must demonstrate some reason why the court should reconsider its prior decision and must set forth facts or law of a strongly convincing nature to induce the court to reverse its prior decision. *All Hawaii Tours, Corp. v. Polynesian Cultural Center,* 116 F.R.D. 645, aff'd in part, rev'd in part on other grounds (1987). Fed. Rules Civ. Proc. Rules 59(e), 60(b), 28 U.S.C.A.

Here, Complainant has offered no such rationale. Rather, as a disappointed party, it seeks a post-judgment opportunity to reiterate previous assertions and make additional arguments as to why it is entitled to an accelerated decision as to Count I of the Complaint. Without testing the soundness of these additional arguments, it is noteworthy that they were appropriate pre-judgment arguments. Where a motion for reconsideration is being used simply as a means to reargue matters already argued and disposed of and to put forth additional arguments which could have been made pre-judgment, no basis exists for amending or altering the order previously entered and the motion should be denied. *Cf. Backlund v. Barnhart,* 778 F. 2d 1386, 1388 (9th Cir. 1985). *See, also, Johnson v. City of Richmond,* 102 F.R.D. 623 (1984); and *Davis v. Lukhard,* 106 F.R.D. 317 (1984).[2]

Order

For the above reasons, Complainant offers no basis to address the Motion to Reconsider its Motion for Accelerated Decision on Liability as to Count I. As such, the Motion to Reconsider must be **DENIED.**

Stephen J. McGuire
Administrative Law Judge

Date: February 24, 1999

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[2]In that this is an administrative proceeding and the Federal Rules of Civil Procedure are used primarily for guidance, it is not necessary that the undersigned address the technical issue of whether an unfounded motion for reconsideration is properly *dismissed* rather than merely denied. *See, Johnson v. City of Richmond, supra at 624.*

NAME OF RESPONDENT: Pleasant Hills Authority
DOCKET NUMBER: CWA-III-210

CERTIFICATE OF SERVICE

I hereby certify that the original of this ORDER DENYING COMPLAINANT'S MOTION TO RECONSIDER MOTION FOR ACCELERATED DECISION were sent to the counsel for the complainant and counsel for the respondent on February 24, 1999.

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