



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460

Mail Code 1900

November 22, 1995

OFFICE OF
THE ADMINISTRATIVE
LAW JUDGES

Nicole Cantello, Esq.
Office of Regional Counsel
U.S. EPA, Region V (C-29)
77 West Jackson Boulevard
Chicago, IL 60604-3590

Marcie R. Horowitz, Esq.
Barnes & Thornburg
1313 Merchants Bank Building
11 South Meridian Street
Indianapolis, Indiana 46204

Subject: Essroc Materials Inc.
Docket No. V-CAA-17-1993

Dear Counsel:

Your joint motion to vacate my order dismissing the above complaint raises a procedural question as to my jurisdiction to grant such relief.

As I read the rules of practice, my jurisdiction over this matter ended with my dismissal of the complaint. The only exceptions would appear to be where the dismissal was pursuant to a default order (see 40 C.F.R. §22.17(d)), or pursuant to an initial decision after a hearing, in which case the motion must be made within 20 days after service of the decision (see 40 C.F.R. §22.28). Neither of these exceptions apply here.

Since the complaint was dismissed without prejudice, however, the Regional Administrator would appear not to be precluded from reissuing the complaint along with the consent order, if the parties desire to have the case disposed of by a consent order (see 40 C.F.R. §22.18).

Sincerely yours,

A handwritten signature in cursive script that reads "Gerald Harwood".

Gerald Harwood
Senior Administrative Law Judge

In the Matter of ESSROC MATERIALS, INC., Respondent
Docket No. CAA-17-1993

Certificate of Service

I certify that the foregoing Letter, dated November 22, 1995, was sent this day in the following manner to the addressees listed below.

Original by Regular Mail to:

Ms. Jodi Swanson-Wilson
Regional Hearing Clerk
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

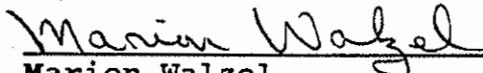
Copy by Regular Mail to:

Attorney for Complainant:

Nicole Cantello, Esquire
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

Attorney for Respondent:

Marcie R. Horowitz, Esquire
BARNES & THORNBURG
1313 Merchants Bank Building
11 South Meridian Street
Indianapolis, IN 46204



Marion Walzel
Legal Staff Assistant

Dated: November 22, 1995