

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR

In the Matter of )  
 )  
Indoor Air Quality, Inc. )  
 )  
 & ) Docket No. CAA-III-074  
 )  
Solomon Schechter Day School )  
 of Philadelphia, Inc., )  
 )  
 Respondents )

**ORDER DENYING RESPONDENT'S MOTION TO ENFORCE  
SETTLEMENT AND GRANTING, IN PART, COMPLAINANT'S  
MOTION TO STRIKE SETTLEMENT DOCUMENTS**

Respondent, Solomon Schechter Day School of Philadelphia, Inc. ("Schechter"), moves for an order enforcing what it maintains is an oral agreement between itself and the U.S. Environmental Protection Agency ("EPA") to settle this matter. EPA opposes Schechter's motion to enforce settlement and requests that the motion and accompanying exhibits be stricken. [\(1\)](#)

Prehearing settlements of administrative actions, such as this Clean Air Act case, are governed by Rule 18 of the Consolidated Rules of Practice. 40 CFR 22.18. In particular, Rule 18(b) in part provides that "[t]he parties shall forward a *written consent agreement* and a proposed consent order to the *Regional Administrator* whenever settlement or compromise is proposed." 40 CFR 22.18(b) (*emphasis added*). Moreover, Rule 18(c) in part provides that "[n]o settlement or consent agreement shall dispose of any proceeding under these rules of practice *without a consent order from the Regional Administrator.*" 40 CFR 22.18(c) (*emphasis added*).

The intended meaning of Rules 18(b) and 18(c) is clear. First, these procedural rules provide that the settlement be reduced to writing. Second, and more importantly, the rules provide that only the Regional Administrator can formally settle a case on behalf of EPA and thereby finally dispose of the matter. In other words, EPA counsel is without authority to bind the Agency to settle a particular case. The Consolidated Rules of Practice make clear that only the Regional Administrator can bind the Agency by way of settlement.

Moreover, aside from this Rule 18 analysis, even were it assumed that respondent introduced, or could introduce, convincing evidence of an oral settlement agreement, it would still fall short of binding EPA to settle this matter. In that regard, the United States generally is not bound by agreements of its agents who are acting beyond the scope of their authority. See *Empire-Detroit Steel v. OSHRC*, 579 F2d 378, 383 (6th Cir. 1978); see also, *Wyoming Technical Institute*, RCRA (3008) VIII-95-10 (July 29, 1997), citing *Empire-Detroit Steel* for same proposition and reaching similar result as this case. Here, Rule 18 of the Consolidated Rules of Practice limits the scope of an EPA attorney in settlement negotiations. According to Rule 18, an EPA attorney does not have the authority to bind the Agency by way of settlement.

Finally, insofar as EPA's motion to strike is concerned, the Consolidated Rules of Practice again offer substantial guidance. In that regard, Rule 22 provides for the exclusion of evidence "relating to settlement which would be excluded in the federal courts under

Rule 408 of the Federal Rules of Evidence." 40 CFR 22.22. Accordingly, inasmuch as Attachments A, B (*i.e.*, the cover letter bearing the date June 27, 1997), D, and E to respondent's motion specifically relate to settlement negotiations between EPA and Schechter, EPA's motion to strike these attachments is granted. However, because Attachments B (*i.e.*, with the exception of the cover letter) and C do not specifically identify the settlement positions of the parties, EPA's motion to strike is denied as to these two attachments.<sup>(2)</sup>

Accordingly, for the foregoing reasons, Schechter's motion to enforce settlement is *denied*, and EPA's motion to strike is *granted* as to Attachments A, B (the cover letter only), D and E, and in all other respects is *denied*.

Carl C. Charneski

Administrative Law Judge

Issued: September 18, 1997

Washington, D.C.

1. EPA denies that its counsel agreed orally to settle this matter. It argues that, in any event, such an agreement is unenforceable as a matter of law.
2. Attachment C contains financial information which appears to be relevant to Schechter's "inability to pay" defense.