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- Statutes Administered by the Administrative Law Judges
- Rules of Practice & Procedure
- Environmental Appeals Board
- Employment Opportunities

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR

IN THE MATTER OF:	)	
	)	
BORDEN CHEMICAL, INC.,	)	Docket No. 5-CAA-03-
1998	)	
	)	
Respondent	)	

ORDER GRANTING MOTION FOR RECONSIDERATION  
AND SCHEDULING HEARING

By Order dated January 25, 1999, Complainant's and Respondent's joint motion for a two month extension of time to file the prehearing exchange was denied. On January 28, 1999, Respondent filed an "Emergency Motion for Reconsideration," requesting the undersigned to reconsider the Order and to grant the two month extension.

This case was initiated eleven (11) months ago, on February 18, 1998. After four months of an alternative dispute resolution (ADR) process, the parties had not reached a resolution of the case, so the case was assigned to the undersigned Presiding Judge. An Initial Prehearing Order was issued requiring that if a Consent Agreement and Consent Order (CACO) is not filed by February 5, 1999, the Complainant shall file its Initial Prehearing Exchange by that date, and that Respondent shall file its prehearing exchange on or before February 5, 1999.

In the Joint Motion to Postpone Submission of Prehearing Exchanges, the parties stated that test results from Respondent's pollution control equipment would be provided to Complainant on or about February 16, 1999, and that Complainant will need 30 days within which to review the results, and that if the test results demonstrate to Complainant's satisfaction that Respondent is in compliance with certain State regulatory provisions, then the parties "will, should they so desire, settle the case." Complainant stated in a status report that if the test results do not so demonstrate, then Complainant will be unable to settle this case administratively or to obtain appropriate relief in this administrative forum, and would renew its previous Motion to Withdraw the Complaint. The joint motion for extension was denied on the basis that mere ongoing attempt at settlement is an

insufficient excuse for delaying the litigation of this proceeding, particularly where the parties have been unable to settle the case through ADR proceedings.

Respondent in its "Emergency Motion" now reports that the parties have reached agreement on the amount of money to be paid in settlement of this case if the test results show that Respondent's facility is in compliance with certain regulations under the Clean Air Act, and that Complainant has furnished Respondent with a proposed CACO. Respondent reports further that the test report is still being prepared, and Complainant still needs 30 days for review upon receipt of the test report. Respondent asserts, however, that it appears to Respondent that the testing was successful in establishing compliance, and that "settlement of this matter is a virtual certainty." Respondent adds that hearing preparation for the Respondent will cost an estimated \$5,000 to \$10,000 in attorney fees.

In view of the likelihood, as reported by Respondent, that this matter will settle, the request for 60 day extension will be granted. Where a settlement is a "virtual certainty," and it is unlikely that the parties will need to file prehearing exchanges, it is appropriate to require the parties to file their prehearing exchanges simultaneously.

THEREFORE, the Emergency Motion for Reconsideration is **GRANTED**. It is hereby **ORDERED** that if a fully executed CACO in this matter is not filed by April 5, 1999, both Complainant and Respondent shall file their prehearing exchanges on or before **April 5, 1999**. Replies to the prehearing exchanges shall be filed on or before **April 19, 1999** if a CACO has not been filed.

A hearing in this matter will be scheduled for the week of May 10, 1999. The location, exact date and time of the hearing will be set by order to be issued at a later date if this matter is not settled.

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Susan L. Biro  
Chief Administrative Law Judge

Dated: February 1, 1999  
Washington, D.C.

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