

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)
)
HILLYARD INDUSTRIES, INC.) DOCKET No. FIFRA-07-2004-0124
)
Respondent.)

**ORDER GRANTING WITHDRAWAL OF
AMENDED COMPLAINT WITHOUT PREJUDICE**

By Motion dated May 6, 2004, pursuant to *Rule 22.14(d)* (40 C.F.R. § 22.14(d)), Complainant moved to “*dismiss this matter without prejudice*” on the basis that after the action was initiated the “Respondent produced additional information that addressed the compliance concerns.” The Motion further indicates that “Respondent agrees that there is good cause to *withdraw* the amended complaint without prejudice and does not oppose this Motion to Dismiss Without Prejudice.” (Italics added).

Rule 22.14(d) provides that once an answer is filed, a “complainant may *withdraw* the complaint, or any part thereof, without prejudice only upon motion granted by the Presiding Officer.”¹

As to *dismissal* of a complaint, the Rules of Practice applicable to this proceeding provide that the Presiding Officer may upon motion of a respondent dismiss an action “without further hearing . . . on the basis of failure to establish a prima facie case or other grounds which show no right to relief on the part of complainant.” 40 C.F.R. § 22.20(a). However, the Rules of Practice provide that if a decision to dismiss is issued as to all issues and claims in the proceeding, it constitutes an initial decision. 40 C.F.R. § 22.20(b). As such, it cannot be refiled, and thus a dismissal cannot be “without prejudice.”

In that Complainant cited in its Motion to Rule 22.14(d) and requested that the action be terminated “without prejudice,” and Respondent agreed to “withdrawal” of the amended complaint, the Motion will be treated as one requesting *withdrawal* of the amended complaint, rather than dismissal. Therefore, the Complainant’s Motion is **GRANTED**, and the Amended Complaint filed in this action is hereby deemed **WITHDRAWN, WITHOUT PREJUDICE**.

¹ An Answer was filed in this case by the Respondent on March 15, 2004.

Susan L. Biro
Chief Administrative Law Judge

Dated: May 11, 2004
Washington, D.C.