

and precedent, jurisdiction over the Complainant's "Motion for Extension of Time to Determine Whether to Seek Reconsideration" does not properly lie before the undersigned. [\(2\)](#)

The EPA's former Chief Judicial Officer (preceding the establishment of the EAB) has suggested that where a party seeks reconsideration of an initial decision, it should file an appeal under 40 C.F.R. § 22.30 and then request a stay of proceedings and permission to file a motion for reconsideration with the Presiding Judge. [\(3\)](#) *O.M. Scott & Sons*, RCRA Appeal No. 87-2 (CJO, Order Dismissing Appeal, June 12, 1987); *LTV Steel Co. Canton Works*, RCRA Appeal No. 87-10 (CJO, Remand, June 12, 1987). Complainant has indicated in its Motion for Extension that it intends to follow this procedure.

Therefore, Should an extension still be required at that point in the proceedings, Complainant could file with its request to the EAB for permission to file a motion for reconsideration, a motion for extension of time to do so.

Accordingly, Complainant's Motion for Extension of Time is hereby, **DENIED**, on the basis that it lies properly before the EAB and not before the undersigned Presiding Judge.

Susan L. Biro
Chief Administrative Law Judge

Dated: April 7, 1998
Washington, D.C.

1. Three additional narrow exceptions for jurisdiction have also been carved out by case precedent. Those exception involve the Presiding Judge issuing errata notices to correct minor errors in the decision, orders clarifying the decision, and ruling on orders for reconsideration where the Presiding Judge had explicitly given the parties in the Initial Decision the right to move for reconsideration within a certain set time period. See, *Joe Mortiboy*, EPA Docket No. RCRA-UST-1092-12-01-9006. slip op. at 4 (ALJ, Clarification of Default Order, Aug. 18, 1995); *Associated Products*, EPA Docket No. I.F.&R. III-412-C, 1997 FIFRA LEXIS 36 (ALJ, Decision Upon Reconsideration, Sept. 10, 1997)(presiding judge specifically provided in initial decision that parties had 30 days within which to seek reconsideration). None of those exceptions are applicable here.
2. It is observed that EPA's proposed amendments to the Rules of Practice, published as a Proposed Rule at 63 Fed. Reg. 9464 (Feb. 25, 1998), provide at Section 22.16(c) that "an Administrative Law Judge shall rule on all motions filed or made . . . before an initial decision has become final [45 days after service or the initial decision) or has been appealed." 63 Fed. Reg. at 9486. Although the presiding judge would have authority thereunder to rule on the motion for extension, as a proposed rule it is not binding in this proceeding.
3. Although not provided for in the Rules of Practice, 40 C.F.R. Part 22, motions to reconsider an initial decision have been considered useful to "correct errors in the [EAB's] review of the initial decision." *Fisher-Calo Chemicals*, 1983 EPA App. LEXIS *3.

[EPA Home](#) | [Privacy and Security Notice](#) | [Contact Us](#)

file:///Volumes/KINGSTON/Archive_HTML_Files/bollman2.htm
[Print As-Is](#)

Last updated on March 24, 2014