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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

<p>In the Matter of)) Rhone-Poulenc Rorer) 226) Pharmaceuticals, Inc.)) Respondent)</p>	<p>Docket No. EPCRA-III-</p>
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ORDER ON JOINT MOTION FOR DISMISSAL

On March 31, 1998, the Complaint in this matter was filed by the U.S. Environmental Protection Agency Region III pursuant to Section 325 of the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045. The Complaint alleged that Respondent violated Section 313 of EPCRA, 42 U.S.C. § 11023. The Respondent answered the Complaint, denying the alleged violations.

On September 28, 1998, the parties filed a "Joint Stipulation of Dismissal" (Motion) moving to dismiss the Complaint, on the basis that Respondent's facility falls outside of the jurisdiction of Section 313 of EPCRA. One of the jurisdictional requirements of EPCRA Section 313 is that the Standard Industrial Classification ("SIC") code falls between 20 and 39. The Complaint alleged that the SIC code for Respondent's facility was 28. Subsequent to the filing of the Complaint, Respondent provided a Declaration of Stuart S. Dearden, Manager of Environmental Affairs of Respondent, stating that the correct SIC code of the facility at the time of the alleged violations was 8731. On that basis the parties jointly move to dismiss the Complaint without prejudice and they state that they each agree to pay their own costs and attorney's fees.

As to dismissal of a complaint, the Rules of Practice applicable to this proceeding provide that the Presiding Officer may upon motion 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 the dismissal under Section 22.20(a) cannot be "without prejudice."

The Rules of Practice provide for withdrawal of a complaint without prejudice in 40 C.F.R. § 22.14(e). The parties have neither cited to this provision nor requested a "withdrawal" of the Complaint. Thus, the motion will not be treated as such without further clarification from the parties.

Accordingly, Complainant is hereby **ORDERED to submit, within ten days of the date of service of this Order, either a Joint Motion for Dismissal With Prejudice or a Joint Motion for Withdrawal of the Complaint.**

Susan L. Biro
Chief Administrative Law Judge

Dated: October 6, 1998
Washington, D.C.

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