

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

IN THE MATTER OF:)
)
BL BUILDERS, INC.,) **DOCKET No. CWA-5-2000-006**
)
Respondent.)

**ORDER ON MOTION TO DISMISS
COMPLAINT WITHOUT PREJUDICE**

On June 8, 2000, the Complaint in this matter was filed by the U.S. Environmental Protection Agency, Region 5, pursuant to Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g). The Complaint alleged that Respondent violated CWA Section 301(a) (33 U.S.C. § 1311) in connection with fill material allegedly discharged by Respondent into a wetland. Respondent failed to file an Answer to the Complaint in a timely manner and on July 31, 2000, and again on August 22, 2000, Complainant filed for default. On August 29, 2000, Respondent filed some pleadings in this case. Based upon the filing of those pleadings, on November 7, 2000, the Regional Judicial Officer, who was then presiding over this matter, issued an Order which found that Respondent had not filed an Answer meeting the requirements of Rule 22.15(b) (40 C.F.R. § 22.15(b)), but nevertheless, denied Complainant's default motions and forwarded the case for assignment to an Administrative Law Judge for hearing.¹

On February 20, 2001, Complainant filed a "Motion to Dismiss Complaint Without Prejudice," citing as authority therefor Rule 22.16 (40 C.F.R. § 22.16).² As grounds for its Motion, Complainant alleged that, based on information provided by Respondent, it "elects not to pursue its claims against Respondent at this time." Upon being contacted, Respondent indicated that it had no objection to that Motion.

As to dismissal of a complaint, the Rules of Practice applicable to this proceeding provide that the Presiding Officer "upon motion *of the respondent* may at any time dismiss a proceeding without

¹ The file in this case was not actually received from the Regional Hearing Clerk until February 28, 2001, after the Motion at issue was received, due to an administrative error.

² Rule 22.16 is the rule generally applicable to motions.

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) (emphasis added). 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 do provide for withdrawal of a complaint without prejudice in 40 C.F.R. § 22.14(d). That provision states that a “complainant may withdraw the complaint . . . without prejudice one time before the answer has been filed . . . [or after filing of an answer] only upon motion granted by the Presiding Officer.” Although Complainant does not cite this provision in its Motion, its Motion will be treated as one filed under Rule 22.14(d) requesting withdrawal of the Complaint.

It is not clear on the record as it stands now whether an “Answer” has been filed by the Respondent. However, no ruling need be made on that issue since Respondent does not object to the Motion.

Accordingly, the Complaint in this matter is hereby deemed **WITHDRAWN WITHOUT PREJUDICE**.

Susan L. Biro
Chief Administrative Law Judge

Dated: March 1, 2001
Washington, D.C.