

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)	
)	
BAYVIEW ENVIRONMENTAL SERVICES, INC.,)	Docket No. TSCA-09-99-0005
)	
Respondent)	

ORDER ON MOTION TO RECONSIDER

This proceeding before the Chief Administrative Law Judge (Presiding Judge) was terminated on the basis of Complainant's failure to file the fully executed Consent Agreement and Final Order (CAFO) within the time provided by Order of the Presiding Judge. Complainant immediately filed a Motion to Reconsider Order Terminating Proceedings before the Chief Administrative Law Judge (Motion). Complainant's Motion is denied as moot, as discussed below.

The Complaint in this matter was issued on September 30, 1999, a letter Answer was filed, and subsequently the parties entered into an Alternative Dispute Resolution (ADR) proceeding. After four months of ADR, on March 1, 2000, the parties reached an agreement in principle to settle the case, and the ADR proceeding was terminated. On March 13, 2000, an Initial Prehearing Order was issued, ordering Complainant to file a fully executed CAFO on or before April 7, 2000. In a Status Report dated April 5, 2000, Complainant filed a motion for an extension of the deadline for the CAFO, which was granted until June 5, 2000. However, Complainant filed neither a CAFO nor a motion for extension of the filing deadline by that date.

Instead, Complainant filed a Status Report, dated June 7, 2000, stating that a CAFO had been signed by Respondent but that Complainant is routing the document for signature.¹ The Status Report was not captioned as a motion and did not request an extension of time. A fully executed CAFO was not filed within the next several days. The parties were deemed to have waived their right to hearing, having reported that they reached settlement, Respondent having signed the CAFO, and no request for extension of time having been filed. Accordingly, the proceeding before the Presiding Judge was terminated by Order dated June 19, 2000.

¹ The portion of the Consent Agreement filed as an attachment to the Motion to Reconsider indicates that the Respondent executed the Agreement on April 24, 2000. Thus, Complainant had approximately six weeks thereafter to obtain the requisite signatures and approvals on its behalf before the filing deadline expired, but failed to do so.

The Practice Group Leader and the Branch Chief of the Assistant Regional Counsel immediately entered appearances in this proceeding and filed a Motion to Reconsider Order Terminating Proceedings, and a Declaration of the Practice Group Leader in support of the Motion. The Motion acknowledged that Respondent had signed the CAFO on April 24, 2000 but that the CAFO had not been filed. The Motion stated that the Assistant Regional Counsel is in her first year at the Office of Regional Counsel and is attending training. The Motion offered apologies for failure to meet the terms of the Prehearing Order, stated that the Office of Regional Counsel “will immediately take steps to ensure that the Court’s orders are not missed in the future,” and that the Region put a great deal of effort to obtain a settlement in this case, and “humbly asks the Court for an opportunity to correct its error.” The Declaration of the Practice Group Leader stated that if the Motion is granted, the CAFO will immediately be submitted to the Regional Judicial Officer for signature and then submitted to the Regional Hearing Clerk for filing. Attached to the Declaration is a copy of the first page and signature page of the CAFO, showing signatures of Respondent, dated April 24, 2000, and of a Senior Associate at EPA Region 9, dated June 22, 2000. A Supplemental Declaration filed on June 23, 2000 stated that Respondent’s representative does not oppose the Motion.

There is no provision in the Consolidated Rules of Practice, 40 C.F.R. part 22, for reconsideration of an order, except under 40 C.F.R. § 22.32, which does not apply here. Furthermore, there is no need for reconsideration of the Order. The Order Terminating Proceedings merely terminated litigation proceedings before the Presiding Judge, but did not foreclose the parties’ disposition of this proceeding by settlement, which the case record indicates was the parties’ intention since March 1, 2000. In contrast, a default order dismissing a complaint under 40 C.F.R. § 22.17(a) constitutes an initial decision, which is a complete disposition of the case, precluding disposition of the case by settlement. *See*, 40 C.F.R. §§ 22.17(c), 22.27(c). Because the parties retain the opportunity to settle this matter, the Motion to Reconsider is **denied as moot.**²

² This case was terminated through an “Order Terminating Proceedings Before the Chief Administrative Law Judge” rather than an “Order Dismissing the Complaint With Prejudice” as a courtesy to the Complainant, based upon the fact that the Complainant had filed, albeit after the filing deadline, a report on the status of the matter. The Order Terminating Proceedings was also issued before it had become clear that the Complainant was engaged in a pattern and practice of ignoring the filing deadlines established by this Tribunal. *See*, Order Dismissing Complaint With Prejudice dated June 20, 2000 in *Eric Tate*, FIFRA-09-99-0005; and Order Dismissing Complaint With Prejudice dated June 20, 2000 in *Allied Environmental, Inc.*, Docket No. TSCA 09-99-0004.

Susan L. Biro
Chief Administrative Law Judge

Dated: June 29, 2000
Washington D.C.