

6/11/96

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of)	
ESSROC MATERIALS, INC.)	Docket No. CAA-17-1993
Respondent)	

Order Vacating Order Reinstating the Complaint

On April 26, 1996, I issued an order in which I reinstated the complaint in this case. Previously, on October 18, 1995, I had issued an order dismissing the complaint without prejudice.

Some elaboration of the prior proceedings is necessary to understand the present posture of this matter. After my order of October 18, 1995, had been issued dismissing the complaint, both parties jointly moved for me to reinstate the complaint. The grounds were that they had reached a settlement after Complainant's motion had been filed and my order dismissing the complaint would compromise that settlement. I responded to their motion by letter dated November 22, 1995, in which I questioned whether my jurisdiction in the matter had not ended with my order dismissing the complaint.

Nothing further was heard from the parties until four months later, on March 21, 1996, when Respondent filed a supplemental brief supporting my authority to reinstate the complaint and explaining why the brief had not been filed earlier. There was nothing in Respondent's filing to indicate other than that the brief was in further support of reinstating the complaint so that

the parties could consummate the settlement they had agreed upon.

Complainant apparently based on her understanding of a conversation with my secretary after receiving my letter, simply assumed that I would take no action on the matter and did not respond to Respondent's supplemental brief. Accordingly, on April 26, 1996, I issued my order reinstating the complaint.

It now turns out, however, that in the interim the EPA had decided that it did not want a settlement and that it was proceeding against Respondent in the United States District Court. Had Complainant timely responded to Respondent's supplemental brief, the present order would not have been necessary.

It was the agency policy of favoring settlement that resolved my doubts over my jurisdiction to reinstate the complaint. It now appears that the settlement had fallen through and letting the complaint stand can result in protracted administrative proceedings and would hamper the EPA's ability to try the alleged violations in the federal court. Respondent quarrels with the Agency's abandonment of the settlement but has shown no reason why my initial order dismissing the complaint without prejudice should not be restored.

Accordingly, my order of October 18, 1995, dismissing the

complaint without prejudice for the reasons given therein is reinstated.

Gerald Harwood

Gerald Harwood
Senior Administrative Law Judge

Dated: June 11 1996

In the Matter of ESSROC MATERIALS, INC., Respondent
Docket No. CAA-17-1993

I certify that the foregoing ORDER VACATING ORDER REINSTATING THE COMPLAINT, dated June 11, 1996, was sent this day in the following manner to the addressees listed below.

Original by Regular Mail to: Ms. Jodi Swanson-Wilson
Regional Hearing Clerk
U.S. EPA, Region 5
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Copy by Regular Mail to:

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Helen F. Handon
Helen F. Handon
Legal Staff Assistant

Dated: June 11, 1996