4/26/96

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

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

Order Vacating Order Dismissing Complaint Without Prejudice

On November 22, 1995, I issued an order dismissing the complaint without prejudice. The order was granted at the request of complainant over the opposition of Respondent. The parties have now filed a joint motion to vacate my order dismissing the complaint without prejudice. The grounds for their motion are that they wish to reinstate the complaint because they have reached settlement in all material respects regarding the violations of the complaint.

The complaint charged a violation of section 113(d) of the Clean Air Act. Such proceedings are governed by the consolidated rules of practice 40 C.F.R. Part 22. The question raised by the motion is whether I have the authority under the rules to grant the relief requested, since the rules are not specific on whether I do or not. Respondent has filed a brief in support of my authority.[1] After examining the rules and the facts, I agree that I do have authority to grant the motion.

An administrative law judge is assigned to preside over the

[1] Respondent's supplemental authority in support of joint motion to vacate order dismissing complaint without prejudice, filed March 21, 1996.

proceeding once an answer to the complaint has been filed.[2] The case then continues under the jurisdiction of the administrative law judge until it is disposed of by an initial decision.[3] An exception is made for motions to reopen a hearing after an initial decision. Such motions, if made within 20 days after the initial decision, are to be ruled on by the administrative law judge.[4] Another exception is the disposition of the matter by a consent settlement, which remains within the jurisdiction of the Regional Administrator.[5]

An order dismissing the complaint without prejudice also disposes of the entire proceeding. While it is not an initial decision, the considerations for allowing reopening of the case after an initial decision would seem to favor taking jurisdiction here. Motions to reopen to take further evidence must be filed within 20 days after the initial decision and good cause must be shown for granting the motion.[6] Here, as Respondent properly points out, the motion was filed 19 days after the order dismissing the complaint was served and good cause has been shown for reinstating the complaint.

While the motion was pending before the administrative law

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[2] 40 C.F.R. 22.21.

[3] 40 C.f.R. §22.16(c). Default orders and accelerated decisions are considered initial decisions. 40 C.F.R. §§ 22.17(b), 22.20(b).

[4] 40 C.F.R. §22.28.

[5] 40 C.F.R. §22.18.

[6] 40 C.F.R. §22.28(a).

judge, the parties were continuing with their settlement discussions. It is not clear precisely when agreement on settlement had reached the point where Complainant was willing to withdraw its motion to dismiss.[7] Whether the parties could have notified the administrative law judge about the settlement earlier than they did, however, is not as important as the fact that the motion to reinstate the complaint was filed within 20 days of the service of the order.[8] The 20-day period for filing a motion to reopen a hearing does strike a balance between ensuring that justice is done by including material evidence in the record, which for good cause had not been introduced earlier, and the need for bringing litigation to an end. The reasons for allowing reopening a record are different than the reasons for reinstating the complaint, but there are equally good reasons for placing a time limit on motions to vacate a dismissal order. The judges should not be presented with the prospect of having to rule on matters that have become stale and are no longer on their dockets.

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[7] Respondent says that the parties were preparing to consummate their settlement when the order was issued. Nevertheless, the parties did wait nineteen days after the order was issued before filing their joint motion. Since the motion was contested, it would be in the interest of judicial economy to notify the administrative law judge as soon as possible that the motion should be held in abeyance or that a ruling on the motion was unnecessary because the case was settled.

[8] The parties have not convinced me that their ability to settle the matter will be compromised if the complaint is not reinstated. Given the agency policy favoring settlement, however, I see no reason why the parties should not be allowed to proceed with their settlement in the manner they desire.

The motion to vacate the order of dismissal and reinstate the complaint, accordingly, is granted.

Gerald Harwood
Gerald Harwood
Senior Administrative Law Judge

Dated: April 26 1996

In the Matter of ESSROC MATERIALS, INC., Respondent
Docket No. CAA-17-1998

Certificate of Service

I certify that the foregoing **Order Vacating Order Dismissing Complaint Without Prejudice**, dated April 26, 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
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Chicago, IL 60604-3590

Copy by Regular Mail to:

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Marion Walzel
Legal Staff Assistant

Dated: April 26, 1996