

**ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

IN THE MATTER OF:)	
)	
MFA Exchange of Chamois-Morrison,)	Docket Nos. EPCRA-07-2003-0324
)	CERCLA-07-2003-0325
Respondent)	
)	

**ORDER GRANTING REQUEST FOR EXTENSION OF TIME
AND ADDRESSING PROCEDURAL ISSUES**

After engaging in an Alternative Dispute Resolution (ADR) process, the Neutral Judge reported that the parties had reached an agreement to settle this case. The ADR process was therefore terminated and the parties were directed in an Initial Prehearing Order to file a Consent Agreement and Final Order (CAFO) on or before April 15, 2004. On April 7, 2004, Complainant submitted a "Progress Report and Request for Schedule for Prehearing Exchanges" (Request) which requested a schedule for filing prehearing exchanges, or, in the alternative, a two week extension of time to file the CAFO.

The Request contains a procedural error which must be addressed. In addition to the Respondent and docket numbers which appear on the Complaint and on all other documents filed in this matter, the caption of the Request names another entity, namely MFA Inc., and lists another docket number, CAA-07-2003-0168.¹ The Request states that the parties had attempted during the ADR process to resolve the present Complaint as well as pending enforcement action under the Clean Air Act (CAA), and that on March 30, 2004, EPA issued a complaint under the Clean Air Act (CAA) against MFA Exchange of Chamois-Morrison and MFA Inc., but that counsel for Complainant is confident that a settlement of both cases will be reached.

Simply adding another respondent and/or another docket number to the caption of a document filed in a case is not in compliance with the applicable procedural rules, 40 C.F.R. part 22 (Rules). In order to add another respondent to a proceeding, or to add allegations of violation to a complaint, the complainant must file a motion to amend the complaint under Section 22.13(c) of the Rules. The procedure for combining two complaints into one proceeding is consolidation of the two complaints under Section 22.12(a) of the Rules.

The Rules provide that after the answer is filed, "the complainant may amend the

¹The CAA docket number listed in the caption of the Request, CAA-07-2004-0168, is different from the CAA docket number referenced in the text of page 2 the Request, CAA-07-2004-0146. It is assumed that one of those references contains a typographical error, and that Complainant intended to refer to the same CAA docket number.

complaint *only upon motion granted* by the Presiding Officer.” 40 C.F.R. § 22.13(c) (emphasis added). As to consolidation, the Rules provide that “*The Presiding Officer . . . may consolidate any or all matters at issue in two or more proceedings . . . where: there exist common parties or common questions of fact or law; consolidation would expedite and simplify consideration of the issues; and consolidation would not adversely affect the rights of parties engaged in otherwise separate proceedings.*” 40 C.F.R. § 22.12(a) (emphasis added). Complainant has not filed either a motion to amend the complaint or a motion for consolidation.

Therefore, the Request is improperly captioned. In the interest of expediency, however, the additional respondent and docket number will be ignored for purposes of ruling on the Request on its merits.

Complainant states in the Request that on March 30, 2004, the same date that the CAA Complaint was filed, a proposed CAFO for settlement of both the present Complaint and the CAA Complaint was sent to Respondent. Complainant states further that, due to difficulty in finalizing one aspect of settlement, it is uncertain whether the CAFO would be filed by April 15, 2004. Complainant therefore requests an order scheduling prehearing exchanges or a two week extension of time to file the CAFO.

Given the status of settlement, scheduling of prehearing exchanges may not be necessary. Good cause exists for the granting of an extension of time in that it is in the interest of the parties and judicial economy for the parties to settle this matter on mutually agreeable terms rather than litigate the matter to a conclusion. In that a hearing in this case has not yet been scheduled, no prejudice will result from a brief delay. However, in the event that Complainant intends to amend the present Complaint or to consolidate it with the CAA Complaint, a mere two week extension of time is not sufficient for the filing of a motion, a response from Respondent, a ruling thereon, and the finalizing, execution and filing of a CAFO. Therefore, a longer extension of time than that requested is appropriate.

Accordingly, the parties have until **May 17, 2004** to file a fully executed CAFO in this matter.

Susan L. Biro
Chief Administrative Law Judge

Dated: April 9, 2004
Washington, D.C.