

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

IN THE MATTER OF:)

Bradford Printing and Finishing, L.L.C.)
460 Bradford Road)
Westerly, Rhode Island 02808)

Respondent.)

EPA I.D. No. RID075679530)

Proceeding under Section 3008(a))
of the Resource Conservation and)
Recovery Act, 42 U.S.C. § 6928(a))

Docket No.)
RCRA-01-2012-0019)

**MOTION TO REQUEST)
WITHDRAWAL OF)
COMPLAINT WITHOUT)
PREJUDICE)**

RECEIVED BY OALJ
2012 DEC 21 PM 12:46

MOTION TO REQUEST WITHDRAWAL OF COMPLAINT WITHOUT PREJUDICE

Pursuant to Sections 22.14(d) and 22.16(a) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. §§ 22.14(d) and 22.16(a), Complainant hereby moves this tribunal to withdraw the complaint in the above-captioned matter without prejudice. Complainant inquired whether Respondent had any objection to the relief sought herein, and Respondent informed Complainant that it could not provide a response because a Rhode Island Superior Court placed Respondent into receivership on September 27, 2012.

GROUND FOR MOTION

Complainant filed the complaint in this matter on February 7, 2012. In the complaint, Complainant alleged the following violations of the Resource Conservation and Recovery Act (“RCRA”) and the Rhode Island hazardous waste regulations: (1) failure to make hazardous
Motion to Request Withdrawal of Complaint, Bradford Printing and Finishing, LLC, RCRA-01-2012-0019
Page 1 of 5

waste determinations, as required by Rule 5.8 of the Rhode Island Consolidated Rules and Regulations for Hazardous Waste Management (“RI Rules”) and 40 C.F.R. § 262.11; (2) failure to separate or protect containers holding hazardous waste that are incompatible with any waste or other materials stored nearby in other containers, as required by RI Rule 5.2 and 40 C.F.R. § 262.34(a)(1), which incorporates by reference 40 C.F.R. § 265.177(c); (3) failure to provide adequate hazardous waste training, as required by RI Rule 5.2 and 40 C.F.R. § 262.34(a)(4), which incorporates by reference 40 C.F.R. § 265.16; (4) failure to have a hazardous waste contingency plan, as required by RI Rule 5.2 and 40 C.F.R. § 262.34(a)(4), which incorporates by reference 40 C.F.R. §§ 265.51 and 265.52; (5) failure to properly manage universal waste, as required by RI Rules 13.1 and 13.5, which incorporate by reference 40 C.F.R. § 273.13(d); and (6) failure to label universal waste containers and demonstrate length of accumulation time of universal waste, as required by RI Rules 13.1 and 13.5, which incorporate by reference 40 C.F.R. §§ 273.14 and 273.15(c). Complainant did not seek a penalty in the complaint, but included a compliance order that required Respondent to come into compliance with all applicable hazardous waste regulations within a defined time frame. Respondent filed its answer to the complaint on May 2, 2012. The parties participated in an alternative dispute resolution (“ADR”) process from May 22, 2012 to September 24, 2012, but a settlement could not be reached because of Respondent’s financial condition. More specifically, Complainant was informed before the end of the ADR process that Respondent had dissolved, and Respondent was subsequently placed into receivership by the Rhode Island Superior Court on September 27, 2012.

During the weekend of October 27, 2012, Complainant conducted an emergency response removal action at Respondent’s facility that stabilized and secured all wastes stored at

Respondent's facility into trailers that are temporarily being stored at the facility. Complainant conducted the emergency response removal action at Respondent's facility based on its determination that immediate action was required to segregate and secure hazardous substances at the facility that posed an immediate and substantial threat to human health and the environment due to the imminent predicted landfall of Hurricane Sandy, the historic flooding events that had occurred at the facility, and the poor condition of many of the approximately 700 containers storing waste in the Old Mill Building, which is directly adjacent to the Pawcatuck River. The second phase of Complainant's emergency response removal action will transport the waste containers off site to an approved disposal facility. Complainant estimates that all of the stabilized wastes will be sent off site for disposal within six months.

In support of this motion, Complainant states that the emergency response removal action performed at Respondent's facility during the weekend of October 27, 2012 achieved the compliance measures that Complainant sought in the compliance order for the wastes that were stored at Respondent's facility. The compliance measures sought in the compliance order that pertain to Respondent's implementation of its hazardous waste program remain unresolved. As described in the paragraph below, however, the current prospect of Respondent conducting future operations at its facility is uncertain.

On November 1, 2012, a consent order was filed in Rhode Island Superior Court that approved the receiver's emergency petition to authorize operation and funding of Respondent's facility for a limited forty-five (45) day period. This limited operation of Respondent's facility will occur subject to the terms of the consent order, with the oversight of the Rhode Island Superior Court through the receivership proceeding. At this point in time, it is uncertain whether Respondent's operations may occur in the future at its facility after the conclusion of the

receivership proceeding. Respondent, therefore, requests that this motion to withdraw the complaint be granted without prejudice in order to allow for the possibility that Complainant could file a new action against Respondent for its hazardous waste programmatic failures in the event that it resumes operations at its facility.

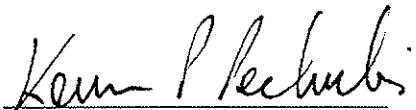
A motion to withdraw a complaint without prejudice should be granted unless the respondent would suffer "legal prejudice." *City of Mandeville, Louisiana*, EPA Docket No. CWA-VI-97-1620, 1998 EPA ALJ LEXIS 57 (ALJ, July 14, 1998). The following factors are considered in determining whether a respondent will suffer such legal prejudice: (1) the respondent's efforts and expenses of preparation for hearing; (2) delay or lack of diligence on the part of the complainant in prosecuting the action; (3) the sufficiency of the explanation for the need to take a voluntary dismissal, (4) whether the respondent has filed a motion for summary judgment, and (5) any difference in the applicable law between the current and proposed forum. *Id.* at *9. In this case, Complainant does not intend to file a subsequent action against Respondent for the same violations in a different forum. In addition, Complainant is not aware of significant efforts or expenses made by Respondent in preparation for the prehearing exchange in this matter. Respondent has not made a motion for summary judgment in this matter, and Complainant has diligently prosecuted the matter. Accordingly, Respondent will not suffer legal prejudice if this motion is granted. A balancing of the relevant equities between the parties in this case supports the conclusion that this motion should be granted.

CONCLUSION

Complainant's motion requesting that this tribunal withdraw the complaint without prejudice is appropriate because the compliance measures sought in the compliance order for the wastes that were stored at Respondent's facility have been achieved through the emergency

response removal action conducted at the facility during the weekend of October 27, 2012, and any future operations by Respondent at its facility beyond the limited 45-day period under receivership control are uncertain at this point in time. Additionally, Respondent will not suffer legal prejudice if this motion is granted. Accordingly, Complainant requests that this motion be granted.

Respectfully Submitted,



Kevin P. Pechulis
Enforcement Counsel
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1
5 Post Office Sq., Suite 100
Boston, MA 02109-3912

Date: 12/19/12

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion to Request Withdrawal of Complaint Without Prejudice was delivered in the following manner to the addresses listed below:

Original and Two (2) Copies by
Overnight Delivery to:

Sybil Anderson, Hearing Clerk
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900 L
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

One Copy by Certified Mail
Return Receipt Requested to:

Nicholas L. Griseto
Bradford Printing & Finishing, L.L.C.
460 Bradford Road
Westerly, Rhode Island 02891

One Copy by overnight delivery to: Steven H. Surdut, Esq.
Law Office of George A. Comolli
15 Franklin Street
Westerly, Rhode Island 02891

Date : 12/19/12

Signed: Kevin P. Pechulis
Kevin P. Pechulis
Enforcement Counsel
Office of Environmental Stewardship (OES04-3)
U.S. EPA, Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912
Phone (dir.): 617-918-1612
E-mail: pechulis.kevin@epa.gov

