

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	
Plaintiff,	:	
	:	CIVIL ACTION
v.	:	
	:	NO. 96-6395
ERNEST BARKMAN, GRACE	:	
BARKMAN, ERN-BARK, INC.,	:	
BARK-ERN, INC., and E.B. CORP., INC.	:	
Defendants.	:	

COMMONWEALTH OF	:	
PENNSYLVANIA DEPARTMENT OF	:	
ENVIRONMENTAL PROTECTION	:	
Plaintiff,	:	
	:	CIVIL ACTION
v.	:	
	:	NO. 98-1180
ERNEST BARKMAN, <u>et al.</u>	:	
Defendants.	:	

MEMORANDUM-ORDER

GREEN, S.J.

February 4, 1999

Presently before the court is Defendants' Motion for Reconsideration and Plaintiff United States of America's Response thereto. Defendants seek reconsideration of this court's Order dated December 17, 1998 based upon the EPA's failure to disclose a consultant's report concerning the EPA's investigation and proposed remediation until after the court's decision. Defendants also seek reconsideration of numerous conclusions reached by the court which Defendants contend are erroneous and not supported by the record of this matter. Defendants list a number of issues for which they seek reconsideration based on the argument that there was insufficient evidence to support the court's findings and the argument that Defendants were denied an opportunity to take discovery in the form of depositions of the EPA's representatives to investigate issues concerning the EPA's actions and the administrative record.

Plaintiff United States of America argues that the consultant's report in question was prepared by Golder Associates on behalf of Sonoco Products Company, a third-party defendant which was dismissed from this action on September 16, 1997. The United States contends that it was not required to disclose the Golder Report and that the Report is irrelevant as it is not a part of the administrative record. The United States also contends that an argument based on an inability to take discovery is not a proper basis for a motion for reconsideration.

“The purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence.” Harsco Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985). Courts will reconsider an issue “when there has been an intervening change in the controlling law, when new evidence has become available, or when there is a need to correct a clear error or prevent manifest injustice.” NL Industries, Inc. v. Commercial Union Ins. Co., 65 F.3d 314, 324 n.8 (3d Cir. 1995); Smith v. City of Chester, 155 F.R.D. 95, 96-97 (E.D. Pa. 1994). “A motion for reconsideration is . . . not properly grounded on a request that a court rethink a decision it has already made.” Tobin v. General Elec. Co., 1998 WL 31875, at *1 (E.D. Pa. Jan. 27, 1998).

This court stated in its opinion dated December 17 that it would consider the reports of the parties' experts as background information to aid the court's understanding and to determine if the agency examined all relevant factors or adequately explained its decision, however, consideration of the reports would not change the scope of review from review on the administrative record to a trial de novo. Although the Golder Report was not prepared on behalf of Defendants and the Report will not be considered “evidence”, the Report is a newly discovered document that Defendants were denied the opportunity to use at the summary

judgment stage of this litigation. Therefore, this court will consider the Report as background information in the same way as the other expert reports submitted in this case. Accordingly, Defendants' Motion for Reconsideration will be granted as it relates to this court's consideration of the Golder Report. This court will not, however, reconsider any other conclusions for which Defendants claim there was insufficient evidence or for which Defendants argue they were denied an opportunity to depose EPA representatives as such arguments do not set forth a proper basis for reconsideration.

The Golder Report focused its technical evaluation solely on the capping component of the OU-1 ROD remedy and concluded that "the 1990 ROD requirement of a multi-media cap is clearly not warranted." (Golder Report at 1.) The Report does not bear on any issues of liability, but rather, whether the capping remedy was warranted. As this court stated in its opinion on the motions for summary judgment, the fact that another conclusion may be reached based on the findings in the administrative record does not render the EPA's conclusions or response actions arbitrary and capricious. Upon review of the Golder Report, this court concludes that said Report does not change this court's conclusion that Defendants have failed to demonstrate on the record that the actions taken by the EPA were arbitrary and capricious.

An appropriate Order follows.

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Defendants.	:	

ORDER

AND NOW, this 4th day of February, 1999, upon consideration of Defendants' Motion for Reconsideration and Plaintiff United States of America's Response thereto, IT IS HEREBY ORDERED that Defendants' Motion is GRANTED as it relates to this court's consideration of the Golder Report and DENIED as it relates to the reconsideration of any other conclusions reached by this court that are unrelated to the Golder Report.

Upon consideration of the Golder Report, it is FURTHER ORDERED that this court's Memorandum-Order dated December 17, 1998 remain in full force and effect.

BY THE COURT:

