



51

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
841 Chestnut Building  
Philadelphia, Pennsylvania 19107

July 10, 1991

Ami Y. Antoine (3RC12)  
Assistant Regional Counsel  
United States Environmental Protection Agency - Region III  
841 Chestnut Building  
Philadelphia, PA 19107

John B. Crowe and Myra A. Crowe  
2098 Generals Highway  
Annapolis, MD 21401

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Re: John & Myra Crowe  
EPA Docket No. CWA-III-046

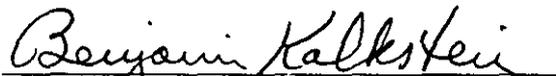
Dear Ms. Antoine and Mr. and Mrs. Crowe:

I enclose copies of an FINDING OF WAIVER OF RIGHT TO HEARING, the original of which I have filed today with the Regional Hearing Clerk. I note that § 126.104(g) of the GUIDANCE sets forth procedures for the filing of a motion for default for failure to file a timely response, as has occurred in this case.

I have not been informed of any progress in settlement negotiations since I received Mr. Crowe's telefax transmittal dated May 30, 1991. That transmittal indicated that the parties were continuing to work toward a mutually satisfactory settlement. Accordingly, counsel for EPA shall submit a written statement describing the status, but not the content, of settlement discussions, by July 31, 1991. This submission shall be made in accordance with the procedure set forth in my letter dated April 10, 1991.

If you have any questions about this ORDER or about this proceeding, you may contact me at (215) 597-9853. In doing so, please be mindful of the rule on Ex Parte Communications, § 126.103(d) of the GUIDANCE.

Sincerely yours,

  
BENJAMIN KALKSTEIN  
Presiding Officer

cc: Regional Hearing Clerk (3RC00)

Enclosure



EPA Docket No. CWA-III-046

By ORDER OF ASSIGNMENT dated April 5, 1991, EPA's Regional Administrator designated the undersigned as the Presiding Officer in this proceeding.

By letter dated April 10, 1991, the Presiding Officer determined that Respondents' March 11, 1991 letter contained no specification of the factual and legal issues which are in dispute and failed to specify the factual and legal grounds of Respondents' defense, as required by § 126.104(a) of the GUIDANCE. The Presiding Officer also noted that Respondents' March 11 letter was addressed to EPA Assistant Regional Counsel Williams, rather than to the Regional Hearing Clerk, as required by § 126.104(b) of the GUIDANCE. The Presiding Officer directed Respondents to submit a written statement specifying the factual and legal issues in dispute and the factual and legal grounds of their defense, together with a written explanation of why these matters were not included in Respondents' March 11 Request for Hearing, by May 3, 1991. The Presiding Officer directed Respondents to file the original of this submission with the Regional Hearing Clerk, and to serve copies of the submission upon EPA counsel and the Presiding Officer.

Respondents failed to file their submission as directed. Instead, Respondents called the Presiding Officer's office on May 28, 1991, and stated their intention to make the submission by Friday, May 31, 1991. On Thursday, May 30, 1991, the Presiding Officer received a telefacsimile captioned "ADMINISTRATIVE

EPA Docket No. CWA-III-046

COMPLAINT-ANSWERS TO FINDINGS OF VIOLATION." This document contained no explanation of the Respondents' failure to specify the factual and legal issues in dispute and the factual and legal grounds of their defense, the original was not filed with the Regional Hearing Clerk, and Respondents did not provide a copy to EPA's counsel. (The Presiding Officer hand delivered a copy to EPA counsel.)

Section 126.104(b) of the GUIDANCE provides:

The respondent shall be deemed to have waived the right to a hearing if the respondent does not submit the request to the Hearing Clerk designated. Respondent's request must be in writing and received by the Hearing Clerk no later than 30 days after respondent receives the proposed order. For good cause shown, the Presiding Officer may grant a hearing if the respondent submits a late request.

The Presiding Officer issued an Order to Show Cause on May 31, 1991, requiring Respondents to file a written explanation of their failures to follow the procedures of the GUIDANCE and the directives of the Presiding Officer within 15 days of their receipt of the Order. This explanation could have shown cause for granting a late request. Unfortunately, Respondents have not filed any such explanation.

The record in this action shows that Respondents have failed to request a hearing properly, have not explained this failure, and

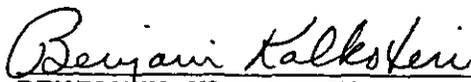
EPA Docket No. CWA-III-046

may be deemed have waived the right to a hearing under the statute.

Accordingly:

Respondents are hereby deemed to have waived their right to a hearing.

Date: JUL 10 1991

  
BENJAMIN KALKSTEIN  
Presiding Officer