

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
2009 JUN -4 PM 1:36
REGIONAL HEARING CLERK
EPA REGION VI

In the Matter of:)

Gillespie Realty,)

Respondent.)

Docket No. TSCA-06-2008-6094

ORDER

This action, initiated by the Complainant, Director of the Compliance Assurance and Enforcement Division, United States Environmental Protection Agency Region 6, seeks to assess an administrative penalty under Section 16 of the Toxic Substances Control Act, 15 U.S.C. § 2615. This action is governed by procedures set forth in the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits codified at 40 C.F.R. Part 22. Pursuant to 40 C.F.R. § 22.4(b), I have been assigned to act as Presiding Officer in this matter until the Respondent files an answer to the complaint. As of the date of this Order, Respondent has not filed an answer.

Complainant filed the Complaint and Notice of Opportunity for Hearing ("Complaint") in this action on September 30, 2008. A Certificate of Service attached to the Complaint indicates that the Complaint was mailed to Respondent, Gillespie Realty, by Certified Mail, Return Receipt Requested on September 30, 2008. A United States mail return receipt, commonly referred to as a "green card," filed with the Regional Hearing Clerk fails to indicate when or whether the Complaint was served on the Respondent. On November 5, 2008, the parties filed a Joint Motion for Extension of Time to File Answer in which the parties indicate that they have agreed to enter into settlement negotiations and jointly request a 60-day extension of the due date for Respondent's answer during which time the parties anticipate that settlement may be reached. On January 21, 2009, the Presiding Officer issued an order extending Respondent's answer date to March 5, 2009, and requiring the Complainant to report on the status of this matter on or before February 12, 2009. On February 12, 2009, Complainant reported that the parties had reached a settlement in principle on December 26, 2008, and projected that a consent agreement and final order would be filed resolving this matter by March 16, 2009. On May 20, 2009, a copy of a check made out to "United States Environmental Protection Agency," dated December 26, 2008, and bearing the docket number of this case and Respondent's address was filed with the Regional Hearing Clerk. The check is for an amount less than the proposed penalty in this case. As of the date of this Order, neither an answer nor a consent agreement and final order has been filed with the Regional Hearing Clerk.

After giving consideration to the entire record in this matter and to the Presiding Officer's responsibility to avoid delay in these proceedings, **Complainant is ordered to file a motion for default seeking resolution of all parts of this proceeding on or before July 8, 2009**. If by July 8, 2009, a consent agreement and final order or Respondent's answer has not been filed, and the Complainant has not withdrawn the Complaint, Complainant may seek extension of this deadline only by filing a timely motion showing good cause for why such extension should be granted.

Given the amount of time that has passed since Complainant reported that a settlement in principle had been reached and since Respondent's answer date has passed, Complainant is cautioned that, absent a showing that the parties have both signed a consent agreement and that a consent agreement and final order has been presented to the Regional Judicial Officer for consideration, it is unlikely that Complainant will be granted an extension of this deadline. Complainant is further cautioned that failure to comply with this deadline or obtain a further extension of time on or before July 8, 2009, may result in Complainant's being found in default pursuant to 40 C.F.R. § 22.17.

SO ORDERED, this 4th day of June 2009.



MICHAEL C. BARRA
REGIONAL JUDICIAL OFFICER

CERTIFICATE OF SERVICE

I, Lorena S. Vaughn, the Regional Hearing Clerk for the Region 6 office of the Environmental Protection Agency, do hereby certify that a TRUE AND CORRECT copy of the Order for TSCA 06-2008-6094 as served upon the parties on the date and in the manner set forth below:

Mr. Greg Oehler
President
Gillespie Realty
502 East Main Street
Fredericksburg, Texas 78624-4640

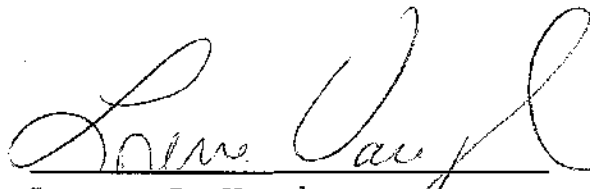
U.S. First Class Mail
Return Receipt Requested

Rebekah Reynolds
Assistant Regional Counsel
Environmental Protection Agency
1445 Ross Avenue
Dallas, Texas 75202

HAND-DELIVERED

DATE:

June 4, 2007


Lorena S. Vaughn
Regional Hearing Clerk