

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS

JUL -9 10 11  
REGIONAL HEARING CLERK  
EPA REGION VI

In the Matter of: )  
)  
Benton County School of the Arts )  
Charter School, ) Docket No. TSCA-06-2006-6078  
)  
Respondent. )

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**ORDER TO FILE ANSWER**

This administrative action was initiated by the Complainant, the Director of the Compliance Assurance and Enforcement Division, United States Environmental Protection Agency Region 6 ("EPA") by the filing of a Complaint and Notice of Opportunity for Hearing ("Complaint") under the authority of Section 207(a) of the Toxic Substances Control Act, 15 U.S.C. § 2647(a). 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. As of the date of this Order, an answer to the Complaint has not been filed.

Complainant filed the Complaint in this action on January 11, 2007. A U.S. Postal Service Return Receipt, also known as a "green card" filed with the Regional Hearing Clerk indicates that the Complaint was received by Respondent, Benton County School of the Arts Charter School, on January 16, 2007, making the original due date for Respondent's answer in this matter February 15, 2007. Pursuant to my Order filed March 22, 2007, Complainant reported on April 2, 2007, that as of April 2, 2007, it appeared that the parties had reached a settlement in principle and that Complainant was not opposed to extending the deadline for Respondent's answer for 45 days.

After giving due consideration to the entire record in this case, including the amount of time that has passed since the Complaint was served on Respondent, Respondent's failure to file an answer, a request for a hearing, or a request for an extension of the deadline for filing its answer and request for a hearing, Complainant's statement that the parties appeared to have reached a settlement in principle and that Complainant was not opposed to a 45 day extension of Respondent's answer date, the failure of the parties to file a consent agreement and final order resolving this fairly simple case over three months after a settlement in principle was reported, as well as my responsibility as the Presiding Officer to avoid delay in these proceedings, I find no good cause for further delay.

**THEREFORE, IT IS ORDERED:**

Unless a consent agreement and final order signed by all parties has been filed with the Regional Hearing Clerk, Respondent shall file its answer to the Complaint consistent with the requirements of 40 C.F.R. § 22.15 on or before August 8, 2007.

I direct the Respondent's attention to 40 C.F.R. § 22.15(b), which provides as follows:

*Contents of the Answer.* The answer shall clearly and directly admit, deny or explain each of the factual allegations contained in the complaint with regard to which the respondent has any knowledge. Where respondent has no knowledge of a particular factual allegation and so states, the allegation is deemed denied. The answer shall also state: The circumstances or arguments which are alleged to constitute the grounds of any defense; the facts which respondent disputes; the basis for opposing any proposed relief; and whether a hearing is requested.

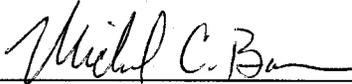
Section 22.15(d) sets forth the consequences for failing to admit, deny, or explain as follows:

*Failure to admit, deny, or explain.* Failure of the respondent to admit, deny, or explain any material factual allegation contained in the complaint constitutes an admission of the allegation.

At a minimum, in preparing its answer, Respondent shall go through the Complaint paragraph by paragraph and admit, deny, or explain each allegation contained in the Complaint consistent with the requirements set forth above, set forth its position concerning the proposed penalty, and indicate whether a hearing is requested. Respondent is advised that requesting a hearing at this time preserves Respondent's right to a hearing in this matter; it does not preclude an amicable settlement of the case.

Respondent is advised that failure to timely comply with this deadline will constitute a failure of the Respondent to admit, deny, or explain the material factual allegations contained in the Complaint, and, pursuant to 40 C.F.R. § 22.15(d), an admission of those allegations. Furthermore, Respondent will have waived its right to request a hearing. Finally, failure by the Respondent to comply with this Order may result in Respondent's being found in default. 40 C.F.R. § 22.17(a).

**SO ORDERED**, this 9<sup>th</sup> day of July 2007.

  
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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, hereby certify that a TRUE AND CORRECT copy of the Order to File Answer in Docket No. TSCA 06-2006-6078 was served upon the parties on the date and in the manner set forth below:

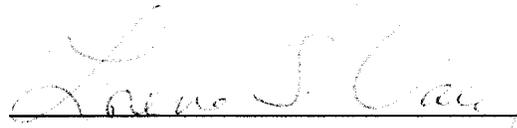
Mr. Gary Moore  
Administrator  
Benton County School of the Arts  
Charter School  
2005 South 12<sup>th</sup> Street  
Rogers, AR 72758

U.S. FIRST CLASS MAIL -  
RETURN RECEIPT REQUESTED

Ms. Elvia Evering  
Environmental Protection Agency  
1445 Ross Avenue  
Dallas, Texas 75202

INTEROFFICE MAIL

DATE: 7-9-07

  
\_\_\_\_\_  
Lorena S. Vaughn  
Regional Hearing Clerk