

5/21/79

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the matter of )  
 )  
Advanced Electronics, ) Docket No. CWA-5-98-021  
 )  
Respondent )

ORDER DENYING RESPONDENT'S  
MOTION TO CONDUCT DISCOVERY

In this case, the U.S. Environmental Protection Agency ("EPA") has charged Advanced Electronics with two violations of the Clean Water Act. 33 U.S.C. § 1251 *et seq.* Count I is titled, "Violations of Industrial Waste Discharge Permit #0218 City of West Chicago, Illinois." In Count I, EPA alleges that respondent violated a pretreatment standard by exceeding certain daily limits imposed by Permit #0218. Count II is titled, "Failure to Demonstrate Continued Compliance." Here, EPA charges that respondent failed to demonstrate continued compliance with the applicable pretreatment standards.

It is against this background that Advanced Electronics has filed the present discovery motion. Respondent moves for an order directing EPA to comply with its 11-paragraph document request. *See Resp. Ex. D.* As explained below, respondent's motion is **denied**.

Section 22.19(f) of the Consolidated Rules of Practice, 40 C.F.R. 22.19(f), sets forth the criteria for obtaining discovery in enforcement cases. Under this rule, the requesting party must show: (i) "[t]hat such discovery will not in any way unreasonably delay the proceeding;" (ii) "[t]hat the information to be obtained is not otherwise obtainable;" and (iii) "[t]hat such information has significant probative value." It is the "significant probative value" criterion which Advanced Electronics fails to meet.<sup>1</sup>

In that regard, in paragraphs 2, 3, 4, 5, 7, 8, and 10, respondent asks for information involving the Illinois Environmental Protection Agency and the City of West Chicago. A review of the complaint and answer filed in this case suggests that the information sought in these paragraphs fails to satisfy Section 22.19(f)'s probative value standard. Nor has respondent (or for that matter EPA) offered much in the way of convincing argument to support its position. Also, paragraph 6 ("[a]ny documents pertaining to other persons or

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<sup>1</sup> Respondent's document request also raises questions regarding deliberative process and investigatory privileges. Whether those privileges apply in this instance, however, need not be addressed at this time.

entities who have allegedly violated the permit or categorical limits in the same manner as Respondent") and paragraph 9 ("[a]ny documents pertaining to the alleged discharge of excess amounts of pollutants to the West Branch of the Du Page River including, but not limited to, oxygen-demanding pollutants, total suspended solids, ammonia-nitrogen, fecal coliform bacteria, copper and chlorine") also seeks information that, at least at this point, lacks significant probative value. In addition, considering the present state of the record in this case, the requests made in paragraphs 1 and 11 are overly broad, and thus likewise must be rejected.

In sum, given the present state of the record, respondent has failed to show that it is entitled to the information requested in its motion to conduct discovery.

Carl C. Charneski

Carl C. Charneski  
Administrative Law Judge

Issued: May 21, 1999  
Washington, D.C.

IN THE MATTER OF ADVANCED ELECTRONICS, Respondent  
Docket No. CWA-5-98-021

Certificate of Service

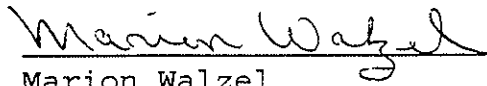
I certify that the foregoing Order Denying Respondent's Motion to Conduct Discovery, dated May 21, 1999, was sent this day in the following manner to the below addressees.

Original by Regular Mail to: Ms. Sonja R. Brooks  
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Dated: May 21, 1999