

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF

ARTHUR WALKER,

DOCKET NO. VII-97-CAA-106

RESPONDENT

PREHEARING ORDER

The Environmental Protection Agency ("EPA") filed a Complaint and Notice of Opportunity for Hearing against the Respondent on March 7, 1997, charging the Respondent with violation of Section 114 (a) of the Clean Air Act, 42 U.S.C. § 7414 (a). In the Complaint, the EPA sought a proposed civil administrative penalty in the amount of \$17,000.

The Complaint specifically advised the Respondent of his right to request a formal hearing to contest any material fact set forth in the Complaint. Complaint at ¶ 20-24. The Complaint also advised the Respondent that in order to preserve his right to request a hearing, he must file a written answer and request for hearing. The Complaint stated that the answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with regard to which he has any knowledge or shall clearly state that he has no knowledge as to particular factual allegations in the Complaint. The written answer shall also state the circumstances or arguments that are alleged to constitute the grounds of defense and the facts that he intends to place at issue. Sections 22.15(a) and (b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits (the "Rules of Practice"), 40 C.F.R. §§ 22.15(a) and (b). Failure of the respondent to admit, deny, or explain any material factual allegation contained in the complaint constitutes an admission of the allegation. Section 22.15(d) of the Rules of Practice.

In the Respondent's letter Answer to the Complaint filed on March 26, 1997, the Respondent did not state whether he was requesting a formal hearing upon the issues raised by the Complaint and Answer. The handwritten letter Answer is difficult to read and understand. The Answer does not clearly and directly

respond to the factual allegations contained in the Complaint. The Respondent does state, however, that "...all CSP has been Removed when i pick them up at all these Stores" [listed by name and address].

The above captioned matter is governed by the Rules of Practice, 40 C.F.R. §§ 22.01 et seq. Section 22.15(b) of the Rules of Practice provides, in pertinent part, that the answer to a complaint shall state whether a hearing is requested. However, subsection (c) of Section 22.15 further provides that a hearing may be held at my discretion, sua sponte, if issues appropriate for adjudication are raised in the answer. See In re Green Thumb Nursery, Inc., FIFRA Appeal No. 95-4a (EAB, Mar. 6, 1997).

Accordingly, the Respondent is hereby directed to clarify his position as to whether or not a formal hearing before an Administrative Law Judge is requested and such statement by the Respondent must be filed on or before **June 16, 1997**. Failure to respond by the Respondent will be deemed a declination of a hearing and may result in the entry of a default order. See Sections 22.17(a) and (b) of the Rules of Practice.

EPA policy, found in the Rules of Practice at Section 22.18 (a) , encourages settlement of a proceeding without the necessity of a formal hearing. The benefits of a negotiated settlement may far outweigh the uncertainty, time, and expense associated with a litigated proceeding. There is no indication in the instant file that settlement discussions have been held. The Respondent may confer with the Complainant concerning settlement whether or not the Respondent requests a hearing. Section 22.18(a) of the Rules of Practice. To keep me apprised of the parties' settlement efforts, counsel for the Complainant is directed to file on or before **June 30, 1997**, a statement with respect to the status of settlement negotiations. See Section 22.19(a) of the Rules of Practice.

The original of all pleadings, statements and documents (with any attachments) required or permitted to be filed in this Order (including a ratified Consent Agreement and Final Order) shall be sent to the Regional Hearing Clerk and copies (with any attachments) shall be sent to the undersigned and all other parties. The prehearing exchange information required by this Order to be sent to the Presiding Judge, as well as any other further pleadings, shall be addressed as follows:

Judge Barbara A. Gunning

Office of Administrative Law Judges

U.S. Environmental Protection Agency

Mail Code 1900

401 M Street, SW

Washington, DC 20460

Telephone: 202-260-6703

Barbara A. Gunning

Administrative Law Judge

Dated: 5/7/97

Washington, D.C.

CERTIFICATE OF SERVICE

I hereby certify that the original of this **PREHEARING ORDER**, dated May 7, 1997, **in re: ARTHUR WALKER**, Dkt. No. CAA-VII-97-106, was mailed to the Regional Hearing Clerk, Reg. VII, and a copy was mailed by certified mail, return receipt requested to Respondent and Complainant (see list of addressees).

Helen F. Handon

Legal Staff Assistant

Date: **May 7, 1997**

ADDRESSEES:

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Mr. Arthur Walker

738 Sylvan

Wichita, KS 67218

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Gayle Hoopes, Esq.

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REGULAR MAIL

Ms. Venessa Cobbs

Regional Hearing Clerk

U.S. EPA, Region VII

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