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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	
UNIVERSAL EQUIPMENT CO.,)	Docket No. TSCA- (PCB) -VIII-91-17
)	
Respondent)	

ORDER RESETTING EVIDENTIARY HEARING
AND RULING ON OUTSTANDING MOTIONS

On November 16, 1994, Complainant filed a motion to exclude evidence and on November 14, 1994, Respondent filed a motion seeking a continuance of the evidentiary hearing set for November 29, 1994. At a telephone conference on November 21, 1994, the Presiding Judge heard argument on these motions. The Respondent opposed the motion to exclude evidence and Complainant opposed the motion for continuance on the basis that it was prepared to go to trial.

Complainant's motion to exclude evidence was based on the fact that the Responder had not included the documents listed as proposed exhibits when the Respondent made its prehearing exchange. However, the Respondent's prehearing exchange has been on file for an extended period of time and Complainant made no attempt to secure the documents involved before its recently filed motion to exclude. While Complainant should have these exhibits to review in preparation for the hearing, the procedural defect of the Respondent not serving the listed exhibits in its prehearing exchange is more appropriately remedied by requiring

the production of these documents, rather than excluding them from evidence. The purpose of a prehearing exchange is to facilitate discovery and assist the parties in the orderly presentation of their cases. If there is a procedural defect in the exchange, generally the more reasonable remedy is to correct the defect prior to trial, as opposed to pursuing the more drastic approach of excluding the evidence at hearing. As a result, the Complainant's motion to exclude was denied, but the Respondent was ordered to submit a revised prehearing exchange and serve it on the Complainant on or before January 17, 1995. This prehearing exchange shall include a list of Respondent's witnesses, together with summaries of their testimony, and copies of all documents Respondent intends to introduce as exhibits at the hearing.

Further, because of the extended time between the prehearing exchange and the setting of the hearing date, Respondent asked that the hearing be continued, to retrieve certain relevant documents that have been placed in storage and to relocate certain witnesses who are no longer with the Respondent. Under the circumstances, particularly in light of the fact that the Complainant has to be supplied with the Respondent's revised prehearing exchange sufficiently far in advance to permit proper trial preparation, the Respondent's motion for a continuance was granted.

Moreover, Respondent in its motion for continuance indicated that it may wish to file certain dispositive motions prior to

hearing, involving such matters as the Paperwork Reduction Act, Federal statute of limitations and vagueness of certain Agency regulations. In this regard, the Respondent was directed to file any such motions on or before January 17, 1995, the same time Respondent is required to submit its revised prehearing exchange.


It was also determined at the November 21, 1994 telephone conference that Complainant should be given time to file a reply to the Respondent's revised prehearing exchange. Therefore, Complainant was given until January 31, 1995, to file a reply to the Respondent's revised prehearing exchange. Also, Complainant will have the time provided in the EPA Rules of Practice to answer any dispositive motions filed by the Respondent. The January 17, 1995 deadline for filing motions by Respondent does not apply to motions that may relate to matters raised in the Complainant's January 31, 1995 reply to the revised prehearing exchange of the Respondent.

Further, at the November 21, 1994 telephone conference, the evidentiary hearing was rescheduled for 10:00 a.m. on Tuesday, March 21, 1995, in Toledo, Ohio. The Regional Hearing Clerk is directed to secure a court reporter and an appropriate hearing facility in Toledo for March 21 through March 24, 1995, and to advise the parties and the Presiding Judge of the hearing location no later than February 28, 1995.

Should either party need to request the issuance of subpoenas to compel the appearance of witnesses at the evidentiary hearing, any motion requesting such subpoenas must be

filed by February 28, 1995, unless good cause can be established for a later request. Also, any motion requesting the issuance of subpoenas should be accompanied by a prepared original and two copies of any subpoena being sought. On any such subpoenas, the parties may leave the hearing location blank to be filled in by the Presiding Judge if the motion seeking subpoenas is granted.

SO ORDERED.



Daniel M. Head
Administrative Law Judge

Dated: December 23, 1994
Washington, DC

IN THE MATTER OF UNIVERSAL EQUIPMENT CO., Respondent
Docket No. TSCA-(PCB)-VIII-91-17

CERTIFICATE OF SERVICE

I certify that the foregoing Order Resetting Evidentiary Hearing and Ruling on Outstanding Motions, dated November 23, 1994 was sent in the following manner to the addressees listed below:

Original by Regular Mail to: Joanne McKinstry
Regional Hearing Clerk
U.S. EPA, Region VIII
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Denver, CO 80202-2405

Copy by Certified Mail to:

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Dated: November 23, 1994
Washington, DC