



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
RM WAITE, INC., RICHARD WAITE,) DOCKET NO. CWA-5-98-015
PRESIDENT, AND GARY SANDS,)
)
)
RESPONDENTS)

**ORDER ON COMPLAINANT'S MOTION FOR A MORE
DEFINITE ANSWER BY RESPONDENT GARY SANDS**

The Complainant initiated this proceeding by filing a Complaint against the Respondents on September 30, 1998. The Complaint charges the Respondents with violating Section 301 of the Clean Water Act, 33 U.S.C. § 1311, for discharging dredged material into a water of the United States without first obtaining a permit to do so. A civil administrative penalty in the amount of \$35,000 is proposed for this alleged violation.

On March 9, 1999, Respondent Gary Sands ("Respondent Sands") filed a letter Answer dated February 25, 1999.^{1/} In this letter Answer, Respondent Sands states as follows:

I, Gary Sands deny all allegations against me. I, Gary Sands am requesting a trial or hearing. At that time I will show my evidence. I am stating at this time that if I am ordered to pay this penalty I will file bankruptcy. I have talked to you in the past and you stated to me that if I showed you that I had no assets I would not have to go to trial. I feel that is game playing.

^{1/} Previously, on October 27, 1998, Respondent Gary Sands had filed a letter objecting to the charges against him and noting that he would request a hearing if settlement could not be reached.

On August 3, 1999, Respondents RM Waite, Inc. and Richard Waite filed an Answer.^{2/}

In a Prehearing Order entered on January 19, 2000, the parties were directed to file their prehearing exchange. Pursuant to that Order, the Complainant's prehearing exchange is due by March 22, 2000, and the Respondents' prehearing exchange is due by April 22, 2000.

On February 1, 2000, the Complainant filed a Motion for a More Definite Answer by Respondent Gary Sands and to strike the Answer of Respondent Gary Sands. The Complainant moves to strike the Answer of Gary Sands, dated February 25, 1999, for failure to comply with Section 22.15(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (the "Rules of Practice"), 40 C.F.R. § 22.15(b).^{3/} The Complainant moves for an order directing Respondent Gary Sands to submit a more definite answer in compliance with Section 22.15(b) of the Rules of Practice.

In support of its motion, the Complainant contends that Respondent Sands, by denying all allegations against him, fails to clearly admit, deny, or explain each factual allegation in the Complaint. The Complainant also contends that Respondent Sands' Answer fails to state the circumstances or arguments which he alleges constitutes his grounds of defense and the facts which he intends to place at issue. The Complainant argues that Respondent Sands' failure to comply with Section 22.15(b) of the Rules of Practice defeats the purposes of an answer to a complaint.

This proceeding is governed by the Rules of Practice, 40 C.F.R. §§ 22.1-32, and the rules concerning the answer are found at Section 22.15, 40 C.F.R. § 22.15. Subsection (b) of Section 22.15

^{2/} The Complainant, in its Motion for a More Definite Answer by Respondent Gary Sands, states that Respondents RM Waite, Inc. and Richard Waite filed their Answer after several extensions of time to file an answer due to settlement negotiations between the parties.

^{3/} The Rules of Practice were revised effective August 23, 1999. Proceedings commenced before August 23, 1999, are subject to the revised Rules of Practice unless to do so would result in substantial injustice.

prescribes the requirements for the contents of the answer, providing 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 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.

40 C.F.R. § 22.15(b).

Respondent Sands, by denying all allegations against it in its letter Answer, clearly denies each of the factual allegations contained in the Complaint. Respondent Sands indicates that it opposes the proposed relief on the ground that it is unable to pay the proposed penalty. Respondent Sands states that a hearing is requested. Although this letter Answer is quite brief and does not articulate any defense, it is deemed adequate to meet the elementary requirements for an answer under Section 22.15(b) of the Rules of Practice.

Pursuant to Section 22.24 of the Rules of Practice, 40 C.F.R. § 22.24, the complainant has the burdens of presentation and persuasion that the violation occurred as set forth in the complaint and that the relief sought is appropriate. See *B.J. Carney Industries, Inc.*, CWA Appeal No. 96-2, 7 EAD 171 (EAB, June 9, 1997). Following the complainant's establishment of a prima facie case, the respondent has the burden of presenting any defense to the allegations set forth in the complaint and any response or evidence with respect to the appropriate relief. Section 22.24 of the Rules of Practice, 40 C.F.R. § 22.24. As noted in the Prehearing Order entered in this matter, each Respondent has the right to defend itself against the Complainant's charges by way of direct evidence, rebuttal evidence, or through cross-examination of the Complainant's witnesses. Each Respondent is entitled to elect any or all three means to pursue its defense. If the Respondent elects only to conduct cross-examination of the Complainant's witnesses and to forgo the presentation of direct and/or rebuttal evidence, the Respondent shall serve a statement to that effect on or before the date for filing its prehearing exchange.

Although the abbreviated Answer filed by Respondent Sands may well limit its presentation and argument at hearing and on briefing, it still is entitled to pursue its defense by denial of the allegations contained in the Complaint and placing its ability to pay in dispute. This is not to say, however, that it may not behoove Respondent Sands to file a more complete Answer that limits the allegations and issues in dispute, thereby avoiding unnecessary delay at hearing.

I note that Respondent Sands appears pro se in this matter. The Complainant correctly points out that any litigant who chooses to appear pro se still must comply with the procedural rules and can suffer adverse consequences for non-compliance. *Rybond, Inc.*, RCRA Appeal No. 95-3, 6 EAD 614, 627 (EAB, Nov. 8, 1996). Although this ruling is made in light of Respondent Sands' pro se appearance, it is recognized that such pro se appearance does not relieve Respondent Sands from meeting the procedural requirements set forth in the governing Rules of Practice.

I further observe that the Complainant filed this motion to strike Respondent Sands' Answer almost one year after the Answer was filed. Inasmuch as Respondent Sands has not filed an Amended Answer or responded to the motion to strike its Answer, the granting of the Complainant's instant motion could result in default by Respondent Sands, an extremely harsh consequence. Default for failure to file an answer to the complaint would not be appropriate.

For the reasons discussed above, the Complainant's Motion for a More Definite Answer by Gary Sands wherein the Complainant moves to strike the Answer filed by Respondent Gary Sands is **Denied**.

Original signed by undersigned

Barbara A. Gunning
Administrative Law Judge

Dated: 2-25-00
Washington, DC