

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS

07 JUL 18 AM 11  
REGIONAL HEARING CLERK  
EPA REGION VI

In the Matter of: )  
 )  
Mountainair School District, ) Docket No. TSCA-06-2006-6074  
 )  
Respondent. )  
 )

**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 9, 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, Mountainair School District, on January 12, 2007, making the original due date for Respondent's answer in this matter February 12, 2007. On February 28, 2007, a letter from Jay Mortensen, Superintendent, Mountainair Public Schools, addressed to Elvia E. Evering, Toxic Enforcement Section at EPA Region 6, was filed with the Regional Hearing Clerk. It is not clear from the record who filed the letter with the Regional Hearing Clerk, because the letter itself contains no indication that a copy was addressed to the Regional Hearing Clerk, and it was not accompanied by a certificate of service. In the letter, Mr. Mortensen expresses his intention to work collaboratively with Ms. Evering until all the issues have been resolved to her satisfaction, and he states that he does not intend to request a hearing. The Regional Hearing Clerk's file in this matter contains no other filings.

As of the date of this Order, Respondent has not filed an answer to the Complaint consistent with the requirements of 40 C.F.R. § 22.15 or a request for an extension of the

deadline for filing its answer. It appears that Respondent may be under the mistaken impression that February 28, 2007, filing constitutes an answer to the Complaint. 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.

After giving due consideration to the entire record in this case, including that Respondent apparently is not represented by counsel, 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, 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**. 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.

In the future, both Complainant and Respondent shall refrain from filing documents revealing the substance of settlement negotiations with the Regional Hearing Clerk or providing copies of documents revealing the substance of settlement negotiations to me.

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 06-2006-6074 was served upon the parties on the date and in the manner set forth below:

Mr. D. Jay Mortensen  
Superintendent  
Mountainair School District  
512 North Ross  
Mountainair, New Mexico 87036-0456

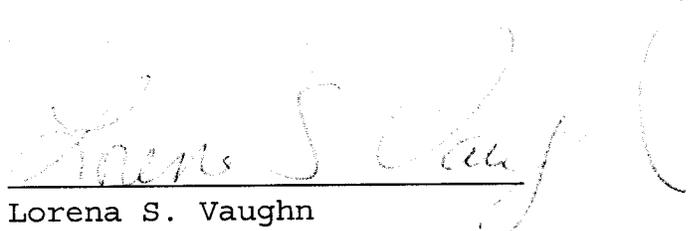
U.S. FIRST CLASS MAIL -  
RETURN RECEIPT REQUESTED

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

INTEROFFICE MAIL

DATE:

7-9-07

  
Lorena S. Vaughn  
Regional Hearing Clerk