

U. S. ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 NORTH 5th STREET

KANSAS CITY, KANSAS 66101

10 JUN -8 PM 1:56

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

In the Matter of)

KASHFLOW, INC.)

St. Louis, Missouri)

Respondent)

Proceedings under Section 16(a) of the)
Toxic Substances Control Act,)
15 U.S.C. § 2615(a))

DOCKET NO. TSCA-07-2010-0002

COMPLAINANT'S
MOTION IN LIMINE TO
EXCLUDE EXHIBITS RX1 AND RX6

COMPLAINANT'S MOTION IN LIMINE
TO EXCLUDE EXHIBITS RX1 AND RX6

1. Comes now the United States Environmental Protection Agency, Region 7 (EPA or Complainant), and respectfully submits the following Motion in Limine to Exclude Exhibits RX1 and RX6.

2. Counsel for Complainant has contacted Counsel for Respondent, who objects to the granting of relief sought in this Motion.

3. This Motion is dependent on the Presiding Officer issuing a ruling favorable to Complainant under Complainant's Motion in Limine to Exclude Testimony of Addina Hobson and Denise McCloud, incorporated herein by reference.

4. Respondent's Prehearing Exchange section, "Documents and Exhibits" identifies exhibit RX1, an affidavit of Addina Hobson, and exhibit RX6, an affidavit of Denise McCloud, as documents to be entered into evidence at hearing.

5. Respondent's Supplemental Prehearing Exchange, which was filed on June 1, 2010, and the filing of which Complainant opposes, continues to identify RX1 and RX6 as documents to be entered into evidence at hearing.

6. Rule 22.22 sets forth the requirements for evidence at hearing. There are two possible means that exhibits RX1 and RX6 may be potentially introduced into evidence. These are as either written testimony, or as an affidavit of an unavailable witness.

7. Rule 22.22(c) provides for written testimony, but provides that in order for such testimony to be admitted, "The witness presenting the testimony shall swear to or affirm the testimony and shall be subject to appropriate oral cross-examination." Complainant contends, subject to the Presiding Officer's ruling on the Complainant's Motion in Limine to Exclude Testimony of Addina Hobson and Denise McCloud, that neither witness will be present at the hearing to swear to or affirm to any written testimony or to be subject to appropriate oral cross-examination.

8. Rule 22.22(d) provides for an affidavit where the witness is unavailable. The term unavailable shall have the meaning accorded to it by Rule 804(a) of the Federal Rules of Evidence. Neither Respondent's Prehearing Exchange, nor Respondent's Supplemental Prehearing Exchange, the filing of which Complainant opposes, identify fact witnesses, expected testimony, or documents to establish that Addina Hobson or Denise McCloud are unavailable under that, or any other, standard.

9. Exhibits RX1 and RX6 cannot be introduced as either written testimony by witnesses called at hearing, or as affidavits of unavailable witnesses. Moreover, Complainant disputes the content of the exhibits.

10. Respectfully, Complainant moves that the Presiding Officer rule in limine to exclude exhibits RX1 and RX6.

Respectfully submitted,



Robert W. Richards
Attorney
Office of Regional Counsel

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand carried the original Complainant's Motion in Limine to Exclude Exhibits RX1 and RX6 in the matter of KASHFLOW, INC, Docket No. TSCA-07-2010-0002, to the Regional Hearing Clerk and sent a true and exact copy of the Complainant's Motion in Limine to Exclude Exhibits RX1 and RX6 by certified mail, return receipt requested to:

Robert C. Withington, Esquire
7116 Oakland Avenue
Richmond Heights, Missouri 63117

and sent a copy to:

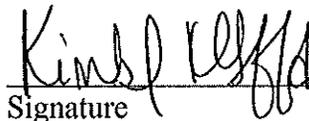
Honorable Susan L. Biro
U.S. EPA Headquarters
Ariel Rios Building
1200 Pennsylvania Avenue
Mail Code 1900L
Washington, DC 20460

or by fax to:

Fax number: 202-565-0044.

6/8/10

Date



Signature