

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY**

**BEFORE THE ADMINISTRATOR**

<b>In the matter of</b>	)	
	)	
<b>Environmental Protection Services, Inc.,</b>	)	<b>Docket No. TSCA-3-2001-0331</b>
	)	
<b>Respondent</b>	)	

**ORDER ON RESPONDENT’S MOTION  
FOR PRODUCTION OF DOCUMENTS**

Environmental Protection Services, Inc. (“EPS”), has filed a discovery motion requesting the production of certain documents. The U.S. Environmental Protection Agency (“EPA”) generally opposes this discovery request. The Consolidated Rules of Practice provide for discovery, after the parties have completed their prehearing exchanges, if such discovery:

(i) Will neither unreasonably delay the proceeding nor unreasonably burden the non-moving party;

(ii) Seeks information that is most reasonably obtained from the non-moving party, and which the non-moving party has refused to provide voluntarily; and

(iii) Seeks information that has significant probative value on a disputed issue of material fact relevant to liability or the relief sought.

40 C.F.R. 22.19(e).

For the reasons stated below, Respondent’s motion is *granted in part* and *denied in part*.

Request # 1

The EPA has no objection. Therefore, the request is granted.

Request # 2

The request is granted to the extent that the EPA has not already provided this information in its proposed Exhibits 15 and 16. Also, EPA is required to provide information only as to the 12 days of alleged violation.

### Request # 3

EPA represents that documents supporting the specific burn cycle time and the number of items burned already have been provided to EPS in Complainant's Exhibit 16. In addition, EPS acknowledges that EPA provided some information in response to a Freedom of Information Act request. Finally, EPA states that the Respondent has refused to provide the PCB concentrations of the items burned and, therefore, they do not have that information. Accordingly, because it appears that EPA already has turned over to Respondent the information that it has, and because any additional information appears to be in the exclusive control of Respondent, this document request is denied.

### Request # 4

EPA asserts that it already has provided Respondent with Exhibits 15 and 16, thereby indicating that these documents form the basis for its claim that EPS unlawfully disposed of PCB transformers in its scrap metal oven. To the extent that other documentation exists that specifically relate to EPA's charges in Paragraph 26 of the Amended Complaint, Respondent is entitled to that information and it is to be furnished by EPA. Insofar as EPS seeks internal Agency documentation such as "internal sign off or review copies by EPA individuals and officers," that request is denied. The deliberative process privilege protects against the disclosure of such items. See *Chautauqua Hardware Corporation* 3 EAD 616 (1991).

### Request # 5

The EPA has already complied with this request in proposed Exhibits 15, 16, 19, 20, 24 and 25. Therefore, the request is denied.

### Request # 6

The request for a certified copy of 40 C.F.R. 761.20 is denied. By Respondent's own admission, this is a publicly available document.

### Request # 7

This request is denied. EPA's representation is accepted that it already has provided to Respondent its documents relating to EPS's Commercial PCB Storage Permits. Also, insofar as the requested Federal Register and Code of Federal Regulations are concerned, those documents are publicly available.

### Request # 8

This request for the EPS letter is denied inasmuch as the Respondent is the author of the document sought. Also, Respondent's request for 40 C.F.R. 761.65(g) is denied as that document is publicly available.

Request # 9

The request is granted to the extent that any material sought is not protected by any investigatory of deliberative process privilege.

Request # 10

The request is denied. The Respondent is already in possession of the document requested in (a). The Code of Federal Regulations provision requested in (b) is publicly available. In regards to (c), the Respondent's request for "any and all documents produced by EPA in any offices or regions in response to the subject matter of the above-referenced letter" is overly broad and of questionable relevance.

Request # 11

This request is granted to the extent that EPA has information relative to the request that it has not yet provided to Respondent.

Request # 12

This request is denied. The Federal Register and Code of Federal Regulations documents sought are publically available. Also, Respondent's general request for all such documents supporting EPA's reading of the regulation is beyond the scope of discovery.

Request #13

This request is denied. With respect to (a), EPA already has provided EPS with Exhibits 15, 16, 19, 20, 24, and 25. With respect to (b), the requested documents relate to the processing of non-PCB units in an industrial furnace, which is not the case here.

Request # 14

The request is denied inasmuch as EPA has provided EPS with Exhibits 9, 12, 19, 24, and 25.

Request # 15

To the extent that respondent is not in receipt of any such EPA communications, this request is granted. *See Request # 9, supra.*

Request # 16

This request is denied. EPS seeks information for the year 2000 which is beyond the

time frame of the violations alleged in this case. Moreover, EPS has failed to show why events occurring after the dates of the alleged violations would be relevant here.

Request # 17

This request is denied. In (a) and (b), the Respondent seeks documents which are already in its possession. In (c), Respondent requests documents concerning companies which are not involved in this litigation. Moreover, at this early stage, respondent has made no showing that information obtained relative to these non-party companies would have any relevance to this case. Accordingly, the material requested in (c) is not relevant to this enforcement matter.

Request # 18

This request is denied as respondent has thus far failed to show that the requested information has probative value in the present matter.

Request # 19

This request is denied. Respondent seeks information already in its possession. Moreover, this information does not appear at relevant to this case.

Request # 20

The request is denied as being overly broad and unduly burdensome. Moreover, respondent has thus far failed to show the relevance of the requested material.

Request # 21

Respondent's request is vague. Moreover, to the extent that the request is understood, it appears that respondent is seeking documents that have no probative value. Therefore, the request is denied.

Request # 22

This request is denied. The Respondent is in possession of the document requested in (a). Also this request is overly broad and vague as it involves (b). Additionally, the Respondent has not shown how inspection reports or correspondence involving General Public Utilities are relevant to the issues present in this case.

Request # 23

The Respondent has not shown the relevance of the requested documents. Additionally, even if the documents were shown to be relevant, the request is overly broad. Moreover, the

request appears likely to include privileged documents relating to civil and criminal enforcement matters. Therefore, the request is denied.

Request # 24

The request is denied as to (a). The documents requested in (a) are publicly available. The request is granted as to (b), but only insofar any such documents are not protected by the deliberative process privilege.

Request # 25

The request is denied as to (a) inasmuch as Respondent already has a copy of the document requested. The request also is denied to (b) inasmuch as respondent has not yet identified the relevance of such material to the present enforcement proceeding.

Request # 26

The request is denied. *See* Request # 25.

Request # 27

The request is denied. The Respondent is in possession of the documents requested in (a). Therefore, the production of the documents is unnecessary. As for (b), the Respondent has not shown that the requested material is relevant to this case.

Request # 28

The request is denied. The Respondent is already in possession of the document requested in (a). Additionally, the request as to (b) is overly broad and raises questions regarding the application of any privileges.

Request # 29

Respondent has failed to show the relevance of the requested material to this case. Therefore, the request is denied.

Request # 30

The request is denied. The Respondent has not articulated the relevance of the information sought. In any event, the Respondent is in possession of the document requested in (a).

Request # 31

The Respondent is in possession of the inspection reports and seeks further information resulting from a September 15, 2000, meeting. However, the Respondent has not shown how this meeting, or EPA's actions against G & S, are relevant to this case. Therefore the request is denied.

Request # 32

The Respondent is in possession of the letter in question, thus the request is denied. Also, the request is too vague as to what documents the Respondent is requesting and there has been no showing that these documents are relevant. Therefore the request is denied.

Request # 33

As stated earlier, the requested file may contain information which may be deemed privileged. Additionally, the Respondent has not shown how these documents are relevant to the issues at hand. Therefore the request is denied.

**ORDER**

Accordingly, for the reasons stated above, the Respondent's Motion for Production of Documents is *granted in part* and *denied in part*. Insofar as the requested discovery is granted, EPA is to provide the documentation no later than 30 days from the date of this order.

---

Carl C. Charneski  
Administrative Law Judge

Issued: February 28, 2003  
Washington, D.C.