

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR

IN THE MATTER OF )  
 )  
RICHARD M. STERN, REGINA STERN, ) DOCKET NO. 5-TSCA-97-007  
LYNDA COSLOV, JUDY S. GUTTMAN, )  
Co-Executors of the Estate of )  
Ernest Stern, AND )  
MICHAEL J. MANUSZAK, Ancillary )  
Administrator of the Estate of )  
Ernest Stern, )  
RESPONDENTS )

**ORDER DENYING RESPONDENTS' MOTION TO COMPEL DISCOVERY**

The Respondents' Motion to Compel Discovery is **Denied**. <sup>(1)</sup> In this motion dated July 11, 1997, the Respondents move to compel the Complainant to produce certain documents and information from a Mr. Thomas Buchan and to comply with its request for admissions, and to order the depositions of Mr. Buchan and a Mr. Edward McCabe. The Respondents maintain that this discovery request satisfies the stated requirements for discovery under the governing regulation found at Section 22.19 (f) (1) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits ("Rules of Practice"), 40 C.F.R. § 22.19 (f) (1). In this regard, the Respondents assert that the requested discovery will not unreasonably delay the proceedings, the information sought is not otherwise available, and such information has significant probative value. Id.

The Complainant opposes the motion to compel discovery. The Complainant argues that the motion is premature as the ordered prehearing exchange has not yet taken place. The Complainant further argues that the requested discovery does not satisfy the grounds for discovery or depositions under the applicable Rules of Practice found at Section 22.19(f).

Sections 22.19(a)-(e) of the Rules of Practice provide for the prehearing exchange of witness lists, documents, and information between the parties. Essentially, this exchange consists of discovery for the parties. "Further discovery" is permitted under Section 22.19(f)

only after motion therefor is filed and the Administrative Law Judge determines that the requested further discovery meets the specific criteria set forth in that subsection. In pertinent part, subsection (f) regarding further discovery provides that:

(i) That such discovery will not in any way unreasonably delay the

proceeding;

(ii) That the information to be obtained is not otherwise obtainable;

and

(iii) That such information has significant probative value.

(2) The Presiding Officer shall order depositions upon oral questions

only upon a showing of good cause and upon a finding that:

(i) The information sought cannot be obtained by alternative methods;

or

(ii) There is a substantial reason to believe that relevant and probative

evidence may otherwise not be preserved for presentation by a witness at the hearing.

In the instant case, I agree with the Complainant's position that the motion to compel discovery is premature at this time. In a Prehearing Order entered on June 3, 1997, the undersigned directed the parties to file their prehearing exchange in seriatim fashion, commencing with the filing of the Complainant's initial prehearing exchange on August 5, 1997. Until the prehearing exchange has occurred, a proper evaluation

cannot be made as to whether a request for other discovery meets the criteria set out in Section 22.19 (f) justifying further discovery beyond the prehearing exchange. The prehearing exchange by the Complainant has not occurred yet and, thus, there is no basis for me to determine the propriety or relevancy of the motion. Accordingly, the Respondents' motion is denied. This denial is without prejudice to the Respondents filing a further discovery motion after the completion of the prehearing exchange, if they consider such action necessary.

original signed by undersigned

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Barbara A. Gunning

Administrative Law Judge

Dated: August 1, 1997

Washington, DC

1. The Respondents are represented by the same attorney, R. Sarah Compton, in this matter.