

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of)
)
Allen Family Foods, Inc.,) Docket No. CWA-3-2001-0002
)
Respondent)

ORDER

The United States Environmental Protection Agency (“EPA”) has filed a Motion To Compel Discovery. Respondent, Allen Family Foods, Inc. (“Allen”), opposes this discovery motion. For the reasons set forth below, EPA’s motion to compel discovery is *granted in part*, and *denied in part*.

A. EPA’s Discovery Request of December 17, 2001

i.) EPA’s discovery request is granted as to the following interrogatories:

7. At how many locations does Allen operate under U.S. Department of Agriculture regulations, including HACCP regulations;

8. Identify all occasions since September 1996 when Allen did not discharge all wastewater generated at its facility on Nelson Street in the Town of Hurlock, Maryland, (“Hurlock facility”), to the City of Hurlock Publicly Owned Treatment Works (“POTW”);

9. For each occasion on which Allen did not discharge any wastewater generated at its Hurlock facility to the Hurlock POTW, describe what Allen did with such wastewater (“alternative action”);

10. For each occasion on which Allen did not discharge any wastewater generated at its Hurlock facility POTW, identify the amount of wastewater (in gallons) for which the alternative action was taken; and

11. For each occasion on which Allen did not discharge any wastewater generated at the Hurlock facility to the Hurlock POTW, describe the costs (including the cost per gallon) incurred by Allen in taking this alternative action. Identify separately costs incurred for transportation, treatment and/or disposal.

Here, EPA is requesting probative information solely in the possession of the respondent. The information sought, including the number of respondent’s locations subject to

HACCP regulations, goes to the very heart of the enforcement issues to be decided in this case. Providing this information will not unreasonably delay this case, nor will it be unduly burdensome to respondent.

In addition, Allen is directed to provide readable copies of the prehearing exchange documents cited by EPA.¹

ii.) EPA's discovery request is *denied* as to the following interrogatories:

Interrogatories 1 through, and including, 6 are too broadly framed. This case is about Allen's Hurlock facility. While respondent's defenses made the HACCP regulation relevant to this proceeding, and thus significantly probative of the issues to be resolved, the information sought in Interrogatories 1 through 6 goes beyond the issues to be tried here.

B. EPA's Discovery Request of January 25, 2002

i.) EPA's discovery request is *granted* as to the following interrogatories:

1a. The number of chickens produced at the Hurlock facility each month for the time period September 1996 through September 2000;

2a. The amount of wastewater generated per chicken processed at the Hurlock facility each month for the time period September 1996 through September 2000;

3a. The portion of the wastewater generated per chicken processed at the Hurlock facility each month for the time period September 1996 through September 2000 which Allen claims was necessitated by Allen's attempted compliance with the HACCP regulations;

4. The amount of net profit (in dollars) generated per chicken processed at the Hurlock facility each month for the time period September 1996 through September 2000;²

5. Any and all HACCP plans (including modifications to such plans) that

¹ Finally, EPA's motion to compel discovery indicates that there may be conflict between the parties as to whether certain of respondent's proposed exhibits qualify as Confidential Business Information. That issue is outside the scope of this discovery order and it will be addressed separately.

² Allen need not provide this profit information if it is willing to stipulate that it has the ability to pay the penalty proposed by EPA.

pertained to operations at the Hurlock facility during the time period September 1996 through September 2000, identifying the date(s) and the products and/or processing categories to which each plan was applicable;

6a. The number of persons employed at the Hurlock facility; and

7. Identify those individuals contributing responsive information to the December 17, 2001, and the January 25, 2002, discovery requests.

8. The identity of the officers, directors, managing agents, or other persons designated by Allen to testify on certain enumerated topics.

The interrogatories propounded by EPA in Nos. 1a, 2a, 3a, 4, 5, 6a, 7, and 8 involve matters that specifically pertain to the Hurlock facility. It is at this facility where EPA alleges that the Clean Water Act violations in this case occurred. The information sought by complainant is relevant to this proceeding, has sufficient probative value, and it is information which can be obtained only from the respondent. Moreover, there has been no showing by respondent Allen that answering any of these interrogatories would be unduly burdensome.

Also, with respect to Interrogatory No. 8, it is noted that Allen has filed a prehearing exchange listing the various witnesses expected to be called, with a summary of their expected testimony. Nonetheless, upon a review of this prehearing information supplied by Allen, as well as the discovery request submitted by EPA, it is held that complainant is entitled to the requested information.

ii.) EPA's discovery request is *denied* as to the following interrogatories:

1b. The number of chickens produced at the facility owned and operated by Allen in Harbison, Delaware, each month for the time period September 1996 through September 2000;

1c. The number of chickens produced at the facility owned and operated by Allen in Cordova, Maryland, each month for the time period September 1996 through September 2000;

2b. The amount of wastewater generated per chicken processed at the Harbison facility each month for the time period September 1996 through September 2000;

2c. The amount of wastewater generated per chicken processed at the Cordova facility each month for the time period September 1996 through September 2000;

3b. That portion of the wastewater generated per chicken processed at the

Harbison facility each month for the time period September 1996 through September 2000 which Allen claims was necessitated by Allen's attempted compliance with the HACCP regulations;

3c. That portion of the wastewater generated per chicken processed at the Cordova facility each month for the time period September 1996 through September 2000 which Allen claims was necessitated by Allen's attempted compliance with the HACCP regulations;

6b. The number of persons employed at the Harbison facility; and

6c. The number of persons employed at the Cordova facility.

Allen is not required to respond to these interrogatories inasmuch as EPA has not established that the requested information is probative as to whether respondent committed the alleged Clean Water Act violations at its Hurlock, Maryland, facility, as well as the appropriate penalty for any such violations. This case is not about respondent's Harbison or Cordova facilities and, in its discovery request, complainant has made no showing as to why the events and circumstances at Harbison and Cordova are probative as to the events and circumstances at Hurlock.

C. ORDER

Insofar as EPA's motion to compel discovery is granted, and to the extent that it thus far has not provided this information, Allen Family Foods, Inc., is directed to provide the requested information to complainant no later than March 15, 2002.

Carl C. Charneski
Administrative Law Judge

Issued: March 6, 2002
Washington, D.C.