



**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

In the Matter of:)
)
Evergreen Development, Inc., and) **Docket No. CWA-07-2022-0134**
Mark Schmidt,)
)
Respondents.)

**ORDER ON COMPLAINANT’S MOTION FOR RULING, RESPONSE TO ANSWER,
AND MOTION FOR ORDER TO FILE COMPLETE ANSWER**

This matter commenced when, on September 28, 2022, Complainant U.S. Environmental Protection Agency, Region 7, filed with the Regional Hearing Clerk a Complaint against Evergreen Development, Inc., and Mark Schmidt (“Respondents”); Respondents were served with the Complaint on October 13, 2022. After the deadline was extended twice, Respondents filed their Answer to Complaint and Request for Hearing (“Answer”) on January 20, 2023. The matter was then transferred to the Office of Administrative Law Judges for adjudication.

On February 1, 2023, Complainant filed its Motion for Ruling, Response to Answer Opposing Request to Dismiss, and Motion for Order to File Complete Answer (“Motion”). Three facets of the Answer are relevant to this Motion:

- (1) The final sentence of the Answer states “WHEREFORE, the Respondents respectfully request that the Complaint be dismissed as well as any additional relief which may be just and equitable.” Answer at 4.
- (2) Although titled “Answer to Complaint and Request for Hearing,” the document text does not explicitly state a request for a hearing. The document does state that “Respondents . . . hereby request an informal conference in order to discuss the facts of this case, the proposed penalty, and the possibility of settlement.” Answer at 5.
- (3) Citing paragraph 75 of the Complaint, which required a response to each factual allegation, the Answer contains enumerated responses to paragraphs 17 through 44 of the Complaint (the “Factual Background” section) only. Answer at 1-4. (The Complaint is comprised of 82 numbered paragraphs in toto.)

As a result of (1), Complainant's Motion asks the Tribunal to rule that Respondents' Answer is not a Motion to Dismiss. Mot. at 5. Complainant asserts that the sentence highlighted above fails to comply with two of the requirements for motions set out in the Consolidated Rules of Practice. Mot. at 5 (citing 40 C.F.R. § 22.16(a)). Complainant continues: "Respondents' bare assertions do not meet the requirements of 40 C.F.R. § 22.16(a) because they fail to provide EPA adequate notice of the basis for Respondents' Request or legal argument to which EPA can respond." Mot. at 5. Therefore, Complainant affirms that "the Tribunal should issue a ruling to clarify that Respondents' Request is not a motion to dismiss." Mot. at 6.

Complainant is being thorough by ensuring that it is not overlooking a seemingly minor detail, which, if incorrect in its assessment, could result in the dismissal of the matter. But, it seems evident that the single sentence at the end of the Answer requesting dismissal of the Complaint does not rise to the level of a Motion to Dismiss. The parties are steered to the Prehearing Order, issued concurrently with this Order, which sets the deadline for dispositive motions, should any party opt to file one in the future. The Tribunal is not going to address the request for dismissal made in the Answer.¹

Considering (2), Complainant states that "it is not clear whether Respondents have or have not requested a hearing in this case" because the "Answer also failed to request a hearing." Mot. at 12 (citing 40 C.F.R. § 22.15(b)).

It is accurate that the Answer does not contain in its body a statement that a hearing is requested, a point made more salient by its emphasized Request for Informal Settlement Conference. However, the Answer is titled "Answer to Complaint and Request for Hearing" in its Caption, and it is referred to as the "Demand for Hearing" within the Certificate of Service. Answer at 1, 5. Therefore, the Tribunal will construe the Answer as requesting a hearing and proceed accordingly.


Regarding (3), Complainant avers that "Respondents' Answer failed to admit, deny, or explain each of the facts alleged in the Complaint." Mot. at 11. Complainant states that "[t]he Rules of Practice require that Respondents clearly admit, deny, or explain *each* of the facts alleged in the Complaint." Mot. at 11 (citing 40 C.F.R. § 22.15(b)). Complainant asserts that "Respondents' failure to admit, deny, or explain each factual allegation thwarted the purpose of the Answer in this case because it did not narrow the contested issues for the parties or this tribunal." Mot. at 12.

The Answer opens by declaring that "Respondents generally deny all allegations of the Complaint filed by Complainant and put them to strict proof thereof[.]" followed by a list of specific denials such as "that there have been discharges of pollutants from a point source[.]" Answer at 1. The Answer reiterates this position later: "The Respondents do generally deny all other paragraphs of the Complaint which are almost exclusively legal conclusions rather than factual allegations." Answer at 4. I interpret these declarations as Respondents' denial of all allegations not specifically admitted in the Answer. Therefore, I find that the Answer is

¹ The Motion also contains a Response to the Motion to Dismiss, to be considered if the Tribunal decided that the Answer did include a Motion to Dismiss. Mot. at 6-11. Since the Tribunal made the opposite finding, this section of the Motion will not be discussed here.

sufficient, and that no ameliorative filing is necessary. As to elucidating the contested issues, the parties will participate in the prehearing exchange of information process, *see* 40 C.F.R. § 22.19(a), which will clarify the issues to be tried at the hearing.

SO ORDERED.

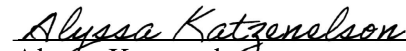

Christine Donelian Coughlin
Administrative Law Judge

Dated: February 6, 2023
Washington, D.C.

In the Matter of *Evergreen Development, Inc., and Mark Schmidt*, Respondents.
Docket No. CWA-07-2022-0134

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order on Complainant's Motion for Ruling, Response to Answer, and Motion for Order to File Complete Answer**, dated February 6, 2023, and issued by Administrative Law Judge Christine Donelian Coughlin, was sent this day to the following parties in the manner indicated below.


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Dated: February 6, 2023
Washington, D.C.