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UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

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BEFORE THE ADMINISTRATOR

1996 JUN 31 PM 4:11

IN THE MATTER OF )  
 )  
WOOTEN OIL COMPANY, )  
 )  
Respondent )

Docket No. CAA-94-H001

EPA's Consolidated Rules of Practice -- Contents of Answer, 40 C.F.R. § 22.15(b) -- an Answer that, as to all the significant factual allegations of the Complaint, states either a naked denial or a disclaimer of sufficient knowledge to form a belief, with no statement of circumstances or arguments in defense or of facts placed at issue, fails to constitute a sufficient Answer; nevertheless, the Answer will not be dismissed and accelerated decision entered for Complainant without first affording Respondent a reasonable time to amend the Answer, because justice is best served by deciding cases on the merits, rather than on a procedural point.

RULING ON COMPLAINANT'S MOTION  
TO DISMISS ANSWER AND FOR ACCELERATED DECISION

This Ruling reserves judgment on a Motion Pendente Lite to Dismiss Answer as Insufficient and for Accelerated Decision filed by Complainant--the Division Director, Field Operations and Support Division, Office of Mobile Sources, Office of Air and Radiation, U.S. Environmental Protection Agency--against Respondent Wooten Oil Company. Complainant initiated this case under sections 205 and 211 of the Clean Air Act, 42 U.S.C. §§ 7524, 7545, and the implementing regulations.

Background

Respondent, a North Carolina corporation, is the owner and/or operator of a Citgo gas station in Raleigh, North Carolina. The February 28, 1994 Complaint was based on a September 11, 1992 Agency inspection of this gas station and a subsequent testing of collected samples. Charging that Respondent had offered for sale gas that exceeded the volatility standard applicable to Respondent for mid-grade unleaded and premium unleaded gasoline,<sup>1</sup> the Complaint proposed a \$12,000 civil penalty.<sup>2</sup>

Respondent answered March 21, 1994 by admitting, denying, or

<sup>1</sup> Complaint, ¶¶ 17, 24.

<sup>2</sup> Complaint, at 8-9.

alleging insufficient knowledge to form a belief as to each paragraph of the Complaint.<sup>3</sup> Respondent admitted essentially only those paragraphs describing generally its retailing operation and the issuance of regulations pursuant to the Clean Air Act, and characterizing Respondent as a "person" and a "retailer" under the Act.<sup>4</sup> For all those paragraphs alleging the actions constituting the charged violations, Respondent either stated a denial or disclaimed sufficient knowledge to form a belief, with no statement supporting either the denials or the disclaimers.<sup>5</sup>

On August 29, 1994, Complainant filed a Motion Pendente Lite to Dismiss Answer as Insufficient and for Accelerated Decision. Respondent made no response to the Motion.

The thrust of Complainant's Motion was that Respondent's naked denials and disclaimers of sufficient knowledge rendered its Answer fatally inadequate under the governing procedural rules. The Motion accordingly requested dismissal of the Answer and entry of judgment in favor of Complainant.

Procedure for this case is governed by the Agency's Consolidated Rules of Practice, 40 C.F.R. Part 22. Rule 22.15(b) of these Consolidated Rules of Practice states in pertinent part as follows.

(b) Contents of the Answer. The answer shall clearly and directly admit, deny or explain each of the factual allegations contained in the complaint with regard to which respondent has any knowledge. Where respondent has no knowledge of a particular factual allegation and so states, the allegation is deemed denied. The answer shall also state (1) the circumstances or arguments which are alleged to constitute the grounds of defense, (2) the facts which respondent intends to place at issue . . . .

#### Discussion

Complainant's basic contention is correct--Respondent's denials and disclaimers of knowledge as to its relevant actions fail to satisfy the requirements for an Answer in the Consolidated Rules. The crucial paragraphs of the Complaint are those alleging factually what Respondent is said to have done that constituted the charged violations. Respondent's denials and disclaimers for these paragraphs were unsupported by any statement of circumstances, arguments, or factual challenges.

One purpose of the Answer, as suggested by Section 22.15(b),

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<sup>3</sup> Respondent's Answer to Amended Administrative Complaint and Request for Hearing, at 1-4.

<sup>4</sup> Id. ¶¶ 1, 7, 8, 15, 16, 22, 23.

<sup>5</sup> Id. ¶¶ 17-20, 24-27.

is to identify the points in dispute through Respondent's statement of such circumstances, arguments, and factual challenges. Absent such a statement by Respondent, issue cannot be joined on any points in dispute, and a tribunal lacks a basis upon which to adjudicate the case.

Therefore, as urged by Complainant, Respondent's Answer is declared insufficient. But the next conclusion proposed by Complainant--that the Answer be dismissed and an accelerated decision be entered against Respondent--does not follow automatically. Wherever reasonably possible, it serves justice to decide a case on the merits, rather than on some procedural point.<sup>6</sup> Consequently, Respondent will be accorded a period of time within which to amend its Answer.

Moreover, in the instant case a further factor is present. In status reports submitted since filing its August 1994 Motion Pendent Lite, Complainant has indicated that the parties are making substantial progress toward a negotiated settlement. A negotiated settlement is encouraged by the Consolidated Rules,<sup>7</sup> and the parties are commended for their progress toward settlement.

Accordingly, the time period for Respondent to amend its Answer is stayed until further notice, so that both parties can focus their entire efforts on their settlement negotiations. A final judgment on Complainant's Motion will be reserved until the passage of more time clarifies the outcome of the parties' settlement negotiations.

#### RULING

Pursuant to Complainant's Motion Pendente Lite to Dismiss Answer as Insufficient and for Accelerated Decision, Respondent's Answer is declared insufficient. Respondent is, however, accorded an additional period of time to amend its Answer; and the running of that period is stayed until further notice. Judgment is reserved on the remainder of Complainant's Motion.

Dated: January 31, 1995

Thomas W. Hoya  
Thomas W. Hoya  
Administrative Law Judge

<sup>6</sup> In the Matter of Plaza Land Associates, Ltd Partnership; and Twitchell Wrecking Co.; and DML Corp., Docket No. TSCA-III-483, Ruling Granting in Part and Denying in Part Complainant's Motion to Strike Defenses, and Denying Complainant's Motion for Accelerated Decision, at 6 (October 31, 1995).

<sup>7</sup> § 22.18.