

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

IN THE MATTER OF

WELTY MOBILE SERVICE

[UST]RCRA-(9006)-VIII-95-07

Respondent

ORDER ON POSSIBLE EX PARTE COMMUNICATION

On November 4, 1996, the Presiding Judge received a letter from the Respondent in which the Respondent made three requests, one relating to the location of the hearing, the second concerning the EPA Rules of Practice and the third about the Paperwork Reduction Act, 44 U.S.C. §§3501 et seq. There is no indication in the letter that a copy thereof was served on the Complainant's counsel and, as a result, the letter may constitute an ex parte communication prohibited by Section 22.08 of the EPA Rule of Practice (Rules), 40 C.F.R. §22.08. Therefore, in accordance with Section 22.08 of the Rules, a copy of this letter is being attached to this order and will be served on the Complainant's counsel. Complainant's counsel can make, on or before December 2, 1996, such reply to the Respondent's letter as is deemed necessary.

Since the Respondent is handling this proceeding pro se, it is noted that an ex parte communication means any communication with the Presiding Judge on the merits of the case that has not also been furnished to the other party, the Complainant.

Moreover, with regard to the Respondent's request that he be furnished a copy of the EPA Rules of Practice, it is further noted that a copy of those Rules was attached as an exhibit to the copy of the Complaint received by the Presiding Judge. If a copy of the Rules was inadvertently not attached to the Complaint served upon the Respondent, the Complainant is directed to send a copy of the Rules to the Respondent by the date set out above for replying to the letter, December 2, 1996.

Further, with regard to the Paperwork Reduction Act request, it would not be appropriate by the Presiding Judge to supply the information requested since this would constitute giving legal advice to a party. The Respondent will have to conduct his own independent research on this matter if the Respondent intends to take any position on the applicability on the Paperwork Reduction Act.

SO ORDERED.

Daniel M. Head
Administrative Law Judge

Dated: November 14, 1996
Washington, DC

IN THE MATTER OF WELTY'S MOBIL SERVICE Respondent

Docket No. RCRA-(9006)-VIII-95-07

CERTIFICATE OF SERVICE

I certify that the foregoing Order on Possible Ex Parte Communication, dated _____, was sent in the following manner to the addressees listed below:

Original by Pouch Mail to:

Tina Artemis
Regional Hearing Clerk
U.S. EPA, Reg. 8
999 18th Street
Denver, CO 80202-2466

Copy by Certified Mail-Return Receipt Requested to:

Counsel for Complainant:

Dana J. Stotsky, Esquire
Senior Enforcement Attorney

Enforcement Division
U.S. EPA, Reg. 8
999 18th Street
Denver, CO 80202-2466

Representative for Respondent:

Welty Mobile Service
Frank and Alta Welty
P.O. Box 277
DuBois, Wyoming 82513

Aurora M. Jennings
Legal Assistant
Office of Administrative Law
Judges
Environmental Protection Agency
Washington, DC 20460

Dated:
Washington, DC