

4/24/96

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of)
)
Dominick's Finer Foods, Inc.,) Docket No. [CERCLA]/EPCRA-007-95
)
Respondent)

ORDER GRANTING MOTION FOR LEAVE
TO FILE A REQUEST TO ADMIT FACTS

Dominick's Finer Foods, Inc. ("Dominick's"), moves for leave to file a request to admit facts. The U.S. Environmental Protection Agency ("EPA") opposes this motion. For the reasons set forth below, the motion is granted.

In seeking leave to file a request to admit facts, Dominick's cites to Section 22.19(f) of the Consolidated Rules of Practice. 40 C.F.R. § 22.19(f). EPA likewise cites to Section 22.19(f) in opposing Dominick's motion. Section 22.19(f) is titled, "Other discovery", and while it sets forth general guidelines for conducting discovery after the Section 22.19(a) prehearing exchange of witness lists and documents has been made, it does not specifically address the subject of admissions. Accordingly, Rule 36 of the Federal Rules of Civil Procedure involving "Requests for Admission" is looked to for additional guidance.

A request for admissions pursuant to Rule 36, Fed. R. Civ. P., has been characterized as a "valuable time saver when properly used", as its function is to define and to limit the matters in controversy between the parties. 8A Wright, Miller & Marcus, Federal Practice and Procedure: Civil 2d § 2252 at 521-522 (fns. omitted). As explained by the Court in Langer v. Monarch Life Ins. Co., 966 F.2d 786, 803 (3rd Cir. 1992), "[a]dmissions are sought, first to facilitate proof with respect to issues that cannot be eliminated from the case, and second to narrow the issues by eliminating those that can be."

It has been observed, however, that "[s]trictly speaking [a request for admissions] is not a discovery procedure at all, since it presupposes that the party proceeding under it knows the facts or has the document and merely wishes its opponent to concede their genuineness." 8A Wright, Miller & Marcus § 2253 at 524 (fn. omitted). It is not surprising then that it is not so easy a task to directly apply the provisions of Section 22.19(f) to Dominick's present request to file a motion to admit facts.

Nonetheless, taking into account Section 22.19(f)'s overall approach to discovery and the practice under Rule 36 of the Federal Rules, it is determined that the present proceeding may well be facilitated by allowing Dominick's leave to present EPA with a request to admit facts. This is not to say, however, that this court has reviewed all of the proposed

admissions submitted by respondent along with its motion and endorses the requested admissions. Rather, in granting this motion it is recognized only that Dominick's may properly request EPA to either admit or deny specific facts. In answering Dominick's request for admissions, EPA may provide any responses that otherwise would be available in responding to such a request under Rule 36, Fed. R. Civ. P.

Accordingly, Dominick's motion for leave to file a request for admissions is granted. EPA shall have 30 days in which to answer the request for admissions.

Carl C. Charneski

Carl C. Charneski
Administrative Law Judge

Issued: April 24, 1996
Washington, D.C.

In the Matter of DOMINICK'S FINER FOODS, INC., Respondent
Docket No. [CERCLA]/EPCRA-007-95

Certificate of Service

I certify that the foregoing ORDER GRANTING MOTION FOR LEAVE TO FILE A REQUEST TO ADMIT FACTS, dated April 24, 1996, was sent this day in the following manner to the addressees listed below.

Original by Regular Mail to:

Ms. Jodi Swanson-Wilson
Regional Hearing Clerk
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

Copy by Regular Mail to:

Attorney for Complainant:

Jeffrey A. Cahn, Esquire
Office of Regional Counsel
U.S. EPA, Region 5 (CS-29A)
77 West Jackson Boulevard
Chicago, IL 60604-3590

Attorney for Respondent:

Carolyn S. Hesse, Esquire
Robert W. Cushing, Esquire
McDERMOTT, WILL & EMERY
227 West Monroe Street
Chicago, IL 60606-5096

Marion Walzel
Marion Walzel
Legal Staff Assistant

Dated: April 24, 1996