7/17/91

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	
SHANNON-POCAHONTAS MINING	)	
COMPANY; SHANNON-POCAHONTAS	)	
COAL CORPORATION; VAICO, INC.;	)	Docket No. TSCA-III-544
AND OMAR MINING COMPANY	)	
CAPELS, WEST VIRGINIA	)	
FACILITY),	)	
	)	
Respondent	)	

ORDER DENYING MOTION TO DISMISS

Respondent VAICO, Inc., (VAICO) has moved to dismiss the complaint against it on the grounds that it is not a proper party to this matter on the facts alleged in the complaint. In support VAICO states its argument in full as follows: "EPA alleges that VAICO was, but no longer is, a partner in Shannon-Pocahontas Mining, and thereby is not liable for civil penalties as a result of certain activities by Shannon-Pocahontas Mining Company. VAICO notes that EPA also seeks penalties from Omar, which replaced VAICO as a partner in Shannon-Pocahontas Mining Company, though the Complaint is not pleaded in the alternative."

EPA opposes the motion on three grounds. First, EPA points out that Respondent cites no law in support of its motion, fails to present all facts relevant to the issue, and states the grounds for dismissal in an overly vague manner. Second, VAICO, as an individual partner in Shannon-Pocahontas Mining Company, was an

owner of the facility where and at the time the alleged violations occurred and hence may be held liable for the violations. Third, Respondent has identified no legal principle which operates to discharge it from such liability upon the transfer of its partnership interest.

Section 22.16(a) of the Consolidated Rules of Practice [Rules] states that "[a]ll motions . . . shall . . . state the grounds therefor with particularity . . . and . . . be accompanied by any affidavit, certificate, other evidence, or legal memorandum relied upon."

In agreement with Complainant, I find that the grounds which Respondent sets forth in support of its motion are vague and fail to meet the standard of particularity as set forth in the Rules. Furthermore, the motion was not accompanied by any affidavit, certificate, other evidence or legal document in support. On this ground alone Respondent's motion must be denied.[1]

SO ORDERED.

Henry B. Frazier, III
Chief Administrative Law Judge

Dated: JUL 17 1991
Washington, DC

[1]It is therefore unnecessary for me to consider Complainant's alternative grounds in opposition to the motion.

IN THE MATTER OF SHANNON-POCAHONTAS MINING COMPANY; SHANNON-POCAHONTAS CORPORATION; VAICO, INC.; AND OMAR MINING COMPANY (CAPELS, WEST VIRGINIA FACILITY), Respondent
Docket No. TSCA-III-544

Certificate of Service

I hereby certify that this Order Denying Motion to Dismiss, dated JUL 17 1991, was mailed this day in the following manner to the below addressees:

Original by Regular Mail to:

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Regional Hearing Clerk
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Doris M. Thompson
Secretary

Dated: JUL 17 1991