

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

BEFORE THE ADMINISTRATOR

In the matter of)	
)	
Environmental Protection Services, Inc.,)	Docket No. TSCA-3-2001-0331
)	
Respondent)	

ORDER ON COMPLAINANT’S DISCOVERY MOTION

The U.S. Environmental Protection Agency (“EPA”) has filed a motion requesting certain discovery in this matter. Environmental Protection Services, Inc. (“EPS”), opposes this discovery request. The Consolidated Rules of Practice provide for discovery, after the parties have completed their prehearing exchanges, if such discovery:

- (i) Will neither unreasonably delay the proceeding nor unreasonably burden the non-moving party;
- (ii) Seeks information that is most reasonably obtained from the non-moving party, and which the non-moving party has refused to provide voluntarily; and
- (iii) Seeks information that has significant probative value on a disputed issue of material fact relevant to liability or the relief sought.

40 C.F.R. 22.19(e).

EPA’s motion is *granted in part* and *denied in part*. To the extent that the motion is granted, as set forth below, respondent is to provide the documentation within 30 days of the date of this order, and to make individuals available for deposition within 45 days of the date of this order. In all other respects, the motion is *denied*.

A. Request for Production of Documents

Request 1

- a. Provide the generator’s name, the manufacturer, the serial number, the type of dielectric fluid shown on the name plate, the date each item was received, the size of each item, and the corresponding PCB concentration claimed by the generator and/or determined through direct analysis of the dielectric fluid .

b. Provide the customer manifests which accompanied the items when transported to EPS.

c. Provide the date, location and method of disposal for each bar code item.

d. Provide the certificates of disposal.

Request 2

a. Provide documents which list each source, PCB concentration, and volume of dielectric fluid which were commingled and sampled in March, September, and October, 1999, and which are represented by the batch testing sampling results submitted to complainant as an attachment to respondent's Motion to Dismiss.

Request 3

a. Provide the written record of the decontamination procedures used to decontaminate PCB transformers or PCB-contaminated transformers received by EPS for calendar year 1999, including photographs and videotapes.

b. Provide manifests for all items sent to EPS which were decontaminated by EPS in calendar year 1999.

c. Provide certificates of disposal for all items decontaminated by EPS in 1999.

d. Provide the identifying bar codes for each transformer that respondent claims was not subject to the EPA Approval to Commercially Store PCB Waste because it had been decontaminated in accordance with 40 C.F.R. 761.79.

Request 4

a. Provide documents or diagrams which depict the exact location of the monitoring point(s) used by respondent to measure the temperature of the primary chamber.

b. Provide a dimensioned drawing showing the location of the burner, all air inlets, the exhaust gas outlet, the temperature monitoring device(s) and the approximate location of the scrap when being treated.

c. Provide a description of the temperature measurement device used, steps taken to ensure that the device accurately portrays the bulk gas temperature, the capacity of all fans (both combustion and exhaust fans and a description of how those flows are regulated).

d. Provide all data on which respondent bases its assertion that actual temperatures in the primary chamber are 150 degrees higher than measured and reported to EPA.

B. Request for Depositions

EPA's motion to depose three scrap metal oven operators who operated the scrap metal oven in 1999 is *granted*. These individuals are identified by EPA as "Chuck Ernst," "Frank B. (last name unknown)," and "Dave (last name unknown)." To the extent that EPA seeks to depose other non-identified employees of EPS, such as decontamination workers, its request is *denied* for vagueness.

Carl C. Charneski
Administrative Law Judge

Issued: March 5, 2003
Washington, D.C.