12/7/95

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	
HAROLD G. RUETH	)	Docket No. CWA-A-0-007-92
RUETH DEVELOPMENT COMPANY	)	
	)	
Respondent	)	

ORDER DISPOSING OF OUTSTANDING MOTIONS

Currently pending are two motions filed by the Complainant herein: a Motion in Limine and a Motion for a More Definite Statement. They will be dealt with *seriatim*.

1. Motion in Limine

Complainant in this motion seeks to bar Respondent from introducing into evidence material listed in its prehearing exchange pleadings related to a settlement agreement alleged accepted by EPA. Complainant asserts that, under Section 22.22 of the EPA Rules of Practice (Rules), 40 C.F.R. § 22.22, this material is prohibited from being admitted into evidence. Section 22.22 of the Rules provides for exclusion of evidence which would be excluded under Rule 408 of the Federal Rules of Evidence (FRE). Rule 408 of the FRE provides that settlement offers or acceptances are not admissible to prove either liability or the amount of a claim. Complainant also argues that no enforceable agreement exists because a consent agreement and final order was not entered by the Regional Administrator, and avers that a favorable ruling on the motion in limine will save judicial resources and expense to the parties.

Respondents oppose the Motion in Limine and argue that Rule 408 of the FRE does not prohibit evidence on settlement where the evidence is being offered to prove the terms of a settlement agreement and Respondents' right to enforce the agreement. Respondents further assert that motions in limine are not favored, and that questions of admissibility are more properly dealt with at trial, especially in an administrative hearing where there is no danger of a jury being exposed to inadmissable evidence.

On analysis, Respondents are correct that motions in limine are not favored and that the question on admissibility of the alleged settlement is more appropriately dealt with at hearing, if and when the document at issue is offered into evidence. Further, there does not appear to be any appreciable saving of resources in dealing with this matter as a motion in limine since the purported agreement might well be admissible for reasons other than showing liability or the amount of penalty. For example, the document might be germane to showing the overall context of the alleged violation or as an element pertinent to the statutory factors that need be considered in determining a penalty under Section 309(g)(3) of the Clean Water Act, 33 U.S.C. § 1319(g)(3). Accordingly, the Complainant's Motion in Limine is denied without prejudice to Complainant raising the objections stated in the motion if the Respondents offer the purported settlement agreement into evidence at hearing.

2. Motion for a More Definite Statement

In its Motion for a More Definite Statement, Complainant seeks to have Respondents furnish a specific list and copies of the documents Respondents intend to introduce as exhibits at hearing, as required by the order issued herein providing for the prehearing exchange of such information. The motion further asks that Respondents provide a statement of the factual and/or legal bases for Respondents' denials set forth in paragraphs 8, 9, 10, 12, 17, 18, and 20 of the Answer, as also required by the order providing for the submission of prehearing exchange information.

Respondents did not submit a reply to the Motion for a More Definite Statement and, since good cause has been shown, that motion is granted. Respondents are hereby given until January 8, 1996: to submit and serve a list and copies of the exhibits they intend to introduce at hearing; and to submit and serve a statement of the factual and/or legal bases for Respondents' denials set forth in paragraphs 8, 9, 10, 12, 17, 18, and 20 of the Answer.

SO ORDERED.

Daniel M. Head
Administrative Law Judge

Dated: December 7, 1995
Washington, D.C.

IN THE MATTER OF HAROLD G. RUETH, ET AL
Respondents, Docket No. CWA A-0-007-92

CERTIFICATE OF SERVICE

I certify that the foregoing Order Disposing of Outstanding Motions and Setting Further Procedures dated December 7, 1995, was sent in the following manner to the addressees listed below:

Original by Pouch Mail to:

Jodi l. Swanson-Wilson
Regional Hearing Clerk
U.S. Environmental Protection
Agency, Region V
77 West Jackson Blvd.
Chicago, IL 60604-3507

Copy by Certified Mail to:

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Highland, Indiana 46322

Aurora Jennings
Legal Assistant
Office of Administrative
Law Judges

Dated: December 7, 1995
Washington, DC

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