

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
BRUCE M. FOLKINS,) DOCKET NO. CAA-3-99-0002
)
)
RESPONDENT)

ORDER ACCEPTING AMENDED ANSWER

The complaint in this proceeding under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d)(1), issued March 10, 1999, alleged, inter alia, that on September 17, 1997, Respondent, Bruce M. Folkins, sold two canisters of CFC-12, also known as "R-12," for use as a refrigerant to an individual who was not certified to purchase or use CFC-12 in violation of CAA § 608 and 40 C.F.R. § 82.154(m) and that Respondent failed to retain invoices indicating the name of the purchaser, the date of the sale and the quantity of CFC-12 purchased for the mentioned and other sales of CFC-12 in violation of CAA § 608 and 40 C.F.R. § 82.166(a). For these alleged violations, it was proposed to assess Respondent a penalty of \$15,180.00.

Respondent, through counsel, filed an answer under date of May 10, 1999, and requested a hearing. On September 8, 1999, Complainant filed a motion to strike paragraph 2 of the answer upon the ground that it did not admit, deny or explain the factual allegations in the complaint as required by Rule 15(b) of the

Consolidated Rules of Practice, 40 C.F.R. Part 22. Complainant requested that Respondent be ordered to file an amended answer complying with Rule 15(b). By a letter-order, dated September 9, 1999, the ALJ directed that, failing settlement, the parties exchange specified prehearing information on or before October 29, 1999.

Folkins did not respond to Complainant's motion to strike. He has, however, filed, under date of November 1, 1999, an initial prehearing exchange and an amended answer in which he admitted certain factual averments of the complaint and denied others. Although the amended answer was not accompanied by a motion in accordance with Rule 22.15(e), it will be accepted as a complete response to the motion to strike and as an answer complying with Rule 22.15.

Order

The amended answer included with Respondent's prehearing submission, dated November 1, 1999, is accepted.*

Dated this 9th day of November 1999.

Original signed by undersigned

Spencer T. Nissen
Administrative Law Judge

* In the near future, I will be in contact with counsel for the parties in order to schedule a time and place for a hearing on this matter.