



UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF )  
 )  
DITMAS OIL ASSOCIATES, INC. ) DOCKET NO. EPCRA-02-2002-4201  
 )  
 )  
 )  
RESPONDENT )

ORDER GRANTING COMPLAINANT'S MOTION FOR PARTIAL ACCELERATED  
DECISION

ORDER GRANTING RESPONDENT'S MOTION FOR LEAVE TO AMEND  
RESPONDENT'S PREHEARING EXCHANGE

ORDER SCHEDULING HEARING

This case arises under the authority of Section 325(c) of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 11045(c), also referred to as the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA").

The parties have filed their prehearing exchange in this matter pursuant to the undersigned's Prehearing Order entered on January 14, 2003.

On September 8, 2003, The United States Environmental Protection Agency (the "EPA" or "Complainant") filed a Motion for Partial Accelerated Decision as to Liability. In the EPA's Motion, brought pursuant to 40 C.F.R. §§ 22.16(a) and 22.20(a), the EPA moved for partial accelerated decision as to liability for charges contained in the Complaint in Counts 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, 15, and 18. Complaint at 3-13, 15, 16. Respondent, in its Prehearing Exchange and during a November 7, 2003 telephonic conference call between the parties and the court, admitted to the allegations of liability contained in Counts 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, 15, and 18 of the Complaint. Respondent's

Prehearing Exchange at 5, 17, 18. Accordingly, the EPA's Motion for Partial Accelerated Decision as to Liability is Granted.

The remaining four Counts cited in the Complaint that were not the subject of the Motion for Partial Accelerated Decision, Counts 7, 8, 16, and 17, are contested by Respondent. The hearing scheduled in this Order will proceed on the issue of Respondent's alleged liability on these four Counts and the amount of the appropriate penalty, if any.<sup>1/</sup>

Additionally, on November 7, 2003, during the conference call between the parties and the court, Respondent raised a Motion for Leave to Supplement its Prehearing Exchange regarding documents referencing Respondent's ability to pay. The EPA did not oppose this motion. Respondent's Motion for Leave to Supplement its Prehearing Exchange is hereby Granted.

The file before me reflects that the parties have held settlement discussions in this matter. However, no settlement has been reached. United States Environmental Protection Agency ("EPA") policy, found in the Section 22.18(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (the "Rules of Practice"), 40 C.F.R. §22.18(b), encourages settlement of a proceeding without the necessity of a formal hearing. The benefits of a negotiated settlement may far outweigh the uncertainty, time, and expense associated with a litigated proceeding. However, the pursuit of settlement negotiations or an averment that a settlement in principle has been reached will not constitute good cause for failure to comply with the requirements or schedule set forth in this Order.

The parties are hereby directed to hold another settlement conference on this matter on or before **December 12, 2003**, to attempt to reach an amicable resolution of this matter. See Sections 22.4(c)(8), 22.19(b)(1) of the Rules of Practice, 40 C.F.R. §§ 22.4(c)(8), 22.19(b)(1). The Complainant shall file a status report regarding such conference and the status of settlement on or before **December 31, 2003**.

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<sup>1/</sup> On November 7, 2003, during the conference call between the parties and the court, the EPA indicated that it will not amend its Complaint to add any additional counts for Respondent's self-reported violations for Cyclohexane in the 1998 and 1999 reporting years.

In the event that the parties have failed to reach a settlement by that date, they shall strictly comply with the requirements of this order and prepare for a hearing. In connection therewith, on or before **January 9, 2004**, the parties shall file a joint set of stipulated facts, exhibits, and testimony. See Section 22.19(b)(2) of the Rules of Practice, 40 C.F.R. § 22.19(b)(2). The time allotted for the hearing is limited. Therefore, the parties must make a good faith effort to stipulate, as much as possible, to matters which cannot reasonably be contested so that the hearing can be concise and focused solely on those matters which can only be resolved after a hearing.

Both parties are reminded that Sections 22.22.19(a) and 22.22(a) of the Rules of Practice, 40 C.F.R. §§ 22.19(a); 22.22(a), provide that documents or exhibits that have not been exchanged and witnesses whose names have not been exchanged at least fifteen (15) days before the hearing date shall not be admitted into evidence or allowed to testify unless good cause is shown for failing to exchange the required information.

Further, the parties are advised that every motion filed in this proceeding must be served in sufficient time to permit the filing of a response by the other party and to permit the issuance of an order on the motion before the deadlines set by this order or any subsequent order. Section 22.16(b) of the Rules of Practice, 40 C.F.R. § 22.16(b), allows a fifteen-day (15) period for responses to motions and Section 22.7(c), 40 C.F.R. § 22.7(c), provides for an additional five (5) days to be added thereto when the motion is served by mail. The parties are hereby notified that the undersigned will not entertain last minute motions to amend or supplement the prehearing exchange absent extraordinary circumstances.

The Hearing in this matter will be held beginning at 9:30 a.m. on Monday, January 26, 2004, in New York, New York, continuing if necessary on January 27 and 28, 2004. The Regional Hearing Clerk will make appropriate arrangements for a courtroom and retain a stenographic reporter. The parties will be notified of the exact location and of other procedures pertinent to the hearing when those arrangements are complete. Individuals requiring special accommodation at this hearing, including wheelchair access, should contact the Regional Hearing Clerk at least five business days prior to the hearing so that appropriate arrangements can be made.

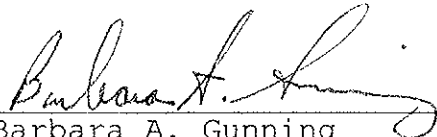
IF EITHER PARTY DOES NOT INTEND TO ATTEND THE HEARING OR HAS GOOD CAUSE FOR NOT BEING ABLE TO ATTEND THE HEARING AS SCHEDULED, IT SHALL NOTIFY THE UNDERSIGNED AT THE EARLIEST POSSIBLE MOMENT.

**ORDER**

Complainant's Motion for Partial Accelerated Decision as to Liability is Granted.

Respondent's Motion for Leave to Supplement its Prehearing Exchange is Granted.

The Settlement Conference and Hearing are so ordered as noticed above.



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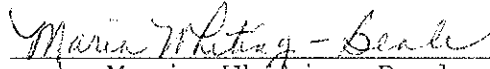
Barbara A. Gunning  
Administrative Law Judge

Dated: November 12, 2003  
Washington, DC

In the Matter of Ditmas Oil Associates, Inc.,  
Respondent Docket No. EPCRA-02-2002-4201

CERTIFICATE OF SERVICE

I certify that the foregoing **Order Granting Complainant's Motion For Partial Accelerated Decision; Order Granting Respondent's Motion For Leave To Amend Respondent's Prehearing Exchange and Order Scheduling Hearing** dated November 12, 2003, was sent this day in the following manner to the addressees listed below.

  
\_\_\_\_\_  
Maria Whiting-Beale  
Legal Staff Assistant

Dated: November 12, 2003

**Original and One Copy by Pouch Mail to:**

Karen Maples  
Regional Hearing Clerk  
U.S. EPA  
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New York, NY 10007-1866

**Copy by Pouch Mail to:**

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**Copy by Regular Mail to:**

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