

7/17/95

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY



IN THE MATTER OF

TEDDY WEDDINGTON

Respondent

:
:
:
:
:
:
:
:
:
:
:
:

DOCKET NO. VII-94-CAA-144

Appearances:

For Complainant:

Anne E. Rauch, Esquire
Assistant Regional Counsel
Region VII - EPA
726 Minnesota Avenue
Kansas City, Kansas 66101

For Respondent:

Mr. Ted Weddington
211 East Monroe
Hayti, Missouri 63851

Before: J. F. Greene, Administrative Law Judge

Decided: July 17, 1995

ORDER GRANTING SUMMARY JUDGMENT

This matter arises under section 113(d) of the Clean Air Act ("The Act, or "CAA"), 42 U.S.C. § 7413(d) and federal regulations promulgated pursuant to the Act.

The complaint charges Respondent with a violation of section 608(c) of the Act, 42 U.S.C. § 7671g (c), which prohibits any person from knowingly venting or releasing to the environment a Class II substance used as a refrigerant in the course of maintaining, servicing, repairing, or disposing of an appliance. A civil penalty of \$10,068 is sought for the violation charged, pursuant to section 113(d) of the Act, which authorizes imposition of a civil penalty of up to \$25,000 per day for each violation of the Act. Complainant alleges that the proposed penalty was calculated in accordance with statutory requirements and with the Environmental Protection Agency (EPA) Clean Air Act Stationary Source Penalty Policy of October of October 19, 1991, and Appendix X to that policy¹ by combining factors set forth in the policy (including the size of Respondent's business, the economic benefit of noncompliance, and any willfulness on the part of Respondent.²

Respondent stated in answer to the complaint that he wanted to

¹ Appendix X to the Stationary Source Civil Penalty Policy is entitled "Interim Clean Air Act Penalty Policy Applicable to Persons Who Maintain, Service, Repair, or Dispose of Appliances Containing Refrigerant."

² A copy of the policy and Appendix X were attached to the complaint (complaint at 6).

"appeal this decision since there is more to this than has been brought forth."³ Accordingly, the answer was treated as a request for a hearing. In due course, settlement efforts were made by the parties. Respondent stated in a conference call on October 3, 1994, that he had never sought a hearing, and, later, after the consequences of not seeking a hearing had been explained to him⁴, and after he was given an opportunity to state in writing whether he wanted a hearing,⁵ specifically waived his right to a hearing "provided that settlement can be reached."⁶ Settlement could not be reached, and pretrial exchange was ordered. Complainant made pretrial exchange as ordered, but Respondent did not make the exchange. An Order to Show Cause was issued to give Respondent an opportunity to state why the matter should not be decided against him on default. Since the matter appeared to be in a posture where the only remaining issue was Respondent's ability to pay the proposed fine, numerous efforts were made to obtain reliable information regarding Respondent's financial situation in order to determine whether Respondent could afford to pay the proposed fine. Respondent was specifically provided with an adequate opportunity

³ Letter of December 14, 1993, stamped as received by Region VII on January 20, 1994.

⁴ See **Scheduling Order Relating to Materials and/or Statements to be Furnished by Respondent**, October 3, 1994.

⁵ See **Order Scheduling Further Statement from Respondent** of October 13, 1994 (copy attached).

⁶ Letter from Respondent of October 25, 1994.

(thirty days) in which to produce reliable information regarding his asserted inability to pay, and the consequences of failure to do so were fully explained to him in plain language.⁷ No such information has been produced.⁸ Complainant now seeks a default order.⁹ Respondent did not respond to Complainant's motion for default order.

It is determined that an order granting summary determination is appropriate in this matter.¹⁰ At no point has Respondent even hinted at any defense to facts alleged in the complaint. Nor has reliable and credible financial information been produced as to the issue of Respondent's ability to pay the proposed fine. This issue, too, must now be treated as admitted, since no evidence to the contrary has been submitted. Facts adduced by Complainant including pretrial exchange shows that Respondent did release a

⁷ See attached **Order Providing for Submission of Evidence Regarding Alleged Inability to Pay Civil Penalty Sought by Complainant**, November 7, 1994.

⁸ At one point Respondent wrote that he did not have federal income tax returns. He was informed that there are other means of providing credible and reliable financial information, in the event that he did not in fact file state or federal tax returns.

⁹ **Complainant's Motion for Default Order**, received December 24, 1994.

¹⁰ 40 C.F.R. § 22.20 provides that "the Presiding Officer, upon motion of any party or sua sponte, may at any time render an accelerated decision in favor of the complainant or the respondent as to all or any part of the proceeding, without further hearing or upon such limited additional evidence . . . as he may require if no genuine issue of material fact exists and a party is entitled to judgment as a matter of law, as to all or any part of the proceeding."

Class II substance into the environment on the date alleged as a result of a dispute over a repair bill.¹¹ Since Respondent had previously repaired the unit in question, according to these same materials, it appears that he knew enough about the unit to understand that by cutting the lines, he would disable the unit and release refrigerant into the environment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. By letter dated June 24, 1993, Kerry Lynn Prince informed EPA that one Teddy Weddington, Respondent here, had damaged an air conditioning unit at the Paris II beauty salon on June 17, 1993. Prince reported that Respondent had repaired the air conditioning unit and then intentionally cut the condensing lines.

On June 17, 1993 Officer Sheckell of the Hayti, Missouri Police Department observed the damage to the air conditioning unit at Paris II salon. Officer Sheckell observed that vents had been cut off the air conditioning unit, the air conditioner coil in the upper right side of the air conditioner had been damaged, and "freon was coming out of the air conditioner."

On June 24, 1993 Teddy Weddington was found guilty in Hayti, Missouri City Court of property damage to the air conditioning unit that was the subject of Prince's complaint and Officer Sheckell's

¹¹ Information submitted in pretrial exchange by Complainant indicates that Respondent was fined for destruction of property as a result of having severed the lines of an air conditioner at the Paris II Salon in Hayti, Missouri, on June 17, 1993. A complaint against Respondent had been filed by the operator of the salon.

investigation.

Respondent is a person as defined in Section 302(e) of the Act, 42 U.S.C. § 21 7602(e).

On or about June 17, 1993, Respondent knowingly released a Class II substance used as a refrigerant in an air conditioning system in a manner which permitted such substance to enter the environment.

The above mentioned air conditioning system contained hydrochlorofluorocarbon-22 (HCFC-22) which was vented when Respondent cut the air conditioning compressor lines.

The air conditioning system referred to in the complaint was an appliance within the meaning of § 608(c) of the Act, 42 U.S.C. § 7671g(c).

The air conditioning system contained HCFC-22 as a refrigerant.

HCFC-22 is a Class II substance listed in Section 602(b) of the Act, 42 U.S.C. § 7671a(b).

During destruction of the air conditioning system referred to in Paragraph 8, the Respondent vented or released pressurized HCFC-22 to the environment.

Respondent made no attempt to recapture and recycle, or safely dispose of the HCFC-22 contained in the air conditioning system.

Respondent having waived his right to a hearing on this matter, the facts as alleged in the complaint and in the record are taken as admitted.

Respondent having failed to provide reliable and credible evidence of inability to pay the penalty proposed in the complaint, despite numerous opportunities to do so, ability to pay the penalty is taken as admitted.

Complainant is entitled to judgment herein as a matter of law.

Accordingly, Respondent violated Section 608(c) of the Act, 42 U.S.C. § 7671g (c), by knowingly venting or releasing to the environment a Class II substance used as a refrigerant, in the course of maintaining, servicing, repairing, or disposing of an appliance, and is liable for a civil penalty.

Section 113(d) of the CAA, 42 U.S.C. Section 7413(d), authorizes a civil penalty of up to \$25,000.00 per day for each violation of the CAA.

For the violations stated herein, Complainant proposed that a penalty of \$10,068.00 be assessed. It is taken as admitted that the penalty was based upon the facts stated in this Complaint, and on the nature, circumstances, extent and gravity of the above cited violations in accordance with the Clean Air Act, Section 113(d) 42 U.S.C. § 7413(e) and the Stationary Source Civil Penalty Policy, dated October 19, 1992 ("Penalty Policy"), including Appendix X ("Interim Clean Air Act Penalty Policy Applicable to Persons Who Maintain, Service, Repair, or Dispose of Appliances Containing Refrigerant") copies of which were enclosed with the complaint.

It is taken as admitted that the proposed penalty was calculated in accordance with the Penalty Policy by combining the

factors in the policy, including the size of Respondent's business, the economic benefit of noncompliance and willfulness on Respondent's part.

The economic benefit component of the penalty was calculated under Appendix X. This component is \$65.00, which reflects Respondent's delayed and avoided costs in failing to use the appropriate refrigerant recovery equipment (Appendix X, at 2-3).

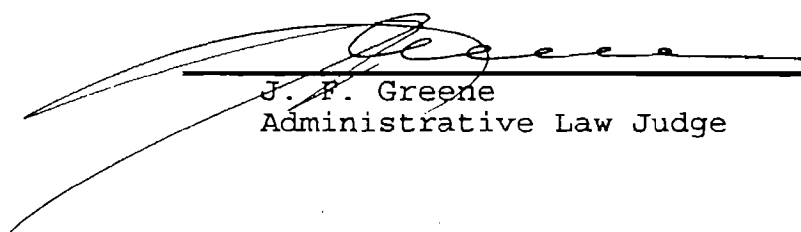
The gravity component as calculated pursuant to Appendix X includes a \$10,000 penalty to protect the integrity of the Section 608(c) regulatory scheme (Appendix X at 3). A penalty factor of \$3.00 per kilogram, or \$3,00, addresses the environmental harm from the release of approximately 1 kilograms of HCFC-22 (Appendix X at 4). The total proposed penalty was derived by combining the total gravity component \$10,003.00 with the economic benefit component \$65.00, for a total of \$10,068.

Having considered the entire record, and based upon the findings of fact and conclusions of law herein, and pursuant to the authority of Subchapter VI, Section 608(c) of the Act, 42 U.S.C. § 7671g (c), the following Order is entered.

ORDER

1. A civil penalty of \$10,068 is hereby assessed against Respondent for violation of Subchapter VI, section 608(c) of the Act, 42 U.S.C. § 7671g (c), pursuant to section 113(d) of the Act, 42 U.S.C. § 7413(d).

2. Payment of \$10,068, the total penalty assessed, shall be made within sixty (60) days of the date of this ORDER by forwarding to the U. S. Environmental Protection Agency - Region VII, Regional Hearing Clerk, P. O. Box 360748M, Pittsburgh, Pennsylvania 15251, a cashier's or certified check made payable to the U. S. Treasury. A copy of said check shall be sent to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101.



J. F. Greene
Administrative Law Judge

Dated: July 17, 1995
Washington, D. C.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY



In the Matter of

Teddy Weddington

Respondent

Dkt. No. VII-94-CAA-144

ORDER

PROVIDING FOR SUBMISSION OF EVIDENCE REGARDING ALLEGED INABILITY
TO PAY CIVIL PENALTY SOUGHT BY COMPLAINANT

Respondent has no legal counsel and apparently is unaware of the gravity of his failure or refusal to cooperate in a settlement effort which could bring these proceedings to a close.

Respondent has been charged with improperly releasing hydrochlorofluorocarbon-22 from a refrigerator.¹ The government is seeking a \$10,000 fine against him for this alleged activity.

Respondent has stated that he does not want a "hearing," by which it is assumed that he does not want a trial, i. e. an oral

¹ See Complaint, ¶ 9.

evidentiary hearing. However, this leaves a hearing on the record accumulated thus far. The record thus far contains un rebutted allegations of fact from Complainant that Respondent violated applicable law and regulations, which, in the absence of evidence to the contrary from Respondent, must be considered to have been established.

Respondent has asserted that he cannot afford to pay the civil penalty sought. It is up to Respondent to establish by more than mere statements that he cannot afford to pay the penalty. If he does not establish his position by means of credible evidence, this matter will have to be brought to an end without such evidence. In essence this will become a default judgment, which the law does not favor, but no other course is left in the event of failure or refusal to defend, even if such failure or refusal to defend is patently against Respondent's interest and displays a total lack of comprehension of the administrative judicial system. In these circumstances, the judge must, no matter how reluctantly, given Respondent's clear lack of understanding, enter a judgment as to the facts, the law, and the penalty, for complainant.

Respondent denies that he has income tax forms for the past two years and indicates in his correspondence that he had no completed forms because he had no income for those years. However, there are other indicia of earnings and ability -- or lack thereof -- to pay the fine sought by Complainant.

Respondent will be given thirty (30) days in which to produce evidence of current inability to pay the penalty sought

by Complainant. If material adequate to an assessment of current ability to pay is not forthcoming and is not supplied to Complainant in connection with the settlement effort here within thirty (30) days, a motion for summary judgment will be entertained.

Accordingly, Respondent shall have thirty (30) days, i. e. through December 7, 1994, in which to produce credible and reliable evidence of his asserted inability to pay.


A handwritten signature in black ink, appearing to read 'J. F. Greene', written over a horizontal line.

J. F. Greene
Administrative Law Judge

Dated: November 7, 1994
Washington, D.C.

CERTIFICATE OF SERVICE

I hereby certify that the original of this ORDER was sent to the Regional Hearing Clerk and copies were sent to the counsel for the complainant and counsel for the respondent on November 7, 1994.



Shirley Smith
Legal Staff Assistant
for Judge J. F. Greene

NAME OF RESPONDENT: Teddy Weddington
DOCKET NUMBER: VII-94-CAA-144

Ms. Venessa Cobbs
Regional Hearing Clerk
Region VII - EPA
726 Minnesota Avenue
Kansas City, KS 66101

Anne E. Rauch, Esq.
Office of Regional Counsel
Region VII - EPA
726 Minnesota Avenue
Kansas City, KS 66101

Ted Weddington
211 East Monroe
Hayti, Missouri 63851

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY



In the Matter of

TEDDY WEDDINGTON

Respondent

:
:
:
:
:
:
:
:
:
:
:

Docket No. VII-94-CAA-144

Judge Greene

ORDER SCHEDULING FURTHER STATEMENT FROM RESPONDENT

Respondent Teddy Weddington having filed a statement in response to the Scheduling Order Relating to Materials and/or Statements to be Furnished by Respondent of October 3, 1994,¹ in which Respondent states that he waives his right to a hearing "providing settlement can be reached,"² and respondent apparently having misunderstood the full import of waiver of the right to a hearing, Respondent is further ordered as follows:

No later than October 26, 1994, Respondent shall state in writing whether he wishes to waive his right to a hearing, thereby causing the imposition of the full civil penalty proposed in the

¹ Hereafter referred to as "Scheduling Order".

² Statement dated October 7, 1994, received here October 11, 1994.

complaint, or whether he wishes to continue the attempt to settle this matter by, among other things, providing income tax returns (or a statement that none were filed) and cooperating with Complainant in the settlement effort.

Respondent shall file his statement in the same manner as is set forth in the October 3, 1994, Scheduling Order. If respondent fails or refuses to file the statement provided for in this Order, it will be assumed that he does not waive his right to a hearing. (See further, Scheduling Order at 2, first paragraph).

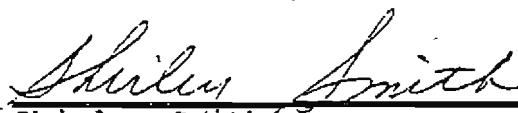


J. F. Greene
Administrative Law Judge

October 13, 1994
Washington, D. C.

CERTIFICATE OF SERVICE

I hereby certify that the original of this ORDER was sent to the Regional Hearing Clerk and copies were sent to the counsel for the complainant and counsel for the respondent on October 13, 1994.



Shirley Smith
Legal Staff Assistant
for Judge J. F. Greene

NAME OF RESPONDENT: Teddy Weddington
DOCKET NUMBER: VII-94-CAA-144

Ms. Venessa Cobbs
Regional Hearing Clerk
Region VII - EPA
726 Minnesota Avenue
Kansas City, KS 66101

Anne E. Rauch, Esq
Office of Regional Counsel
Region VII - EPA
726 Minnesota Avenue
Kansas City, KS 66101

Ted Weddington
211 East Monroe
Hayti, Missouri 63851

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY



In the Matter of

TEDDY WEDDINGTON

Respondent

:
:
:
:
:
:
:
:
:
:

Docket No. VII-94-CAA-144

Judge Greene

SCHEDULING ORDER RELATING TO MATERIALS
and/or STATEMENTS TO BE FURNISHED BY RESPONDENT


The parties having had an opportunity on this date to report upon the status of their effort to reach a settlement, and Respondent having indicated at various times that he had not requested a hearing in this matter, it is hereby ORDERED that no later than October 11, 1994, Respondent shall provide a statement which makes clear whether or not he wishes to avail himself of his right to a hearing on the violations charged in the complaint, or whether he wishes to waive his right to such a hearing. The statement shall be sent by certified mail to counsel for Complainant, Ms. Rauch, as well as to Judge Greene.

If Respondent fails or refuses to provide the statement, it will be assumed that he wishes to exercise his right to a hearing on the violations. Further, it will be assumed that Respondent will then participate meaningfully in the settlement discussions which have been ordered herein previously. In the absence of such meaningful effort, this matter will proceed to hearing. If Respondent fails or refuses to comply with orders issued to further the progress of this matter toward a conclusion, a default motion will be entertained.

In connection with Respondent's assertion, during the telephone conference call held on this date, of inability to pay, Respondent will be expected to furnish to counsel for Complainant, Ms. Rauch, copies of federal income tax returns filed by Respondent for the years 1991, 1992, and 1993. If, as Respondent further asserted, he did not file returns for some or all of these years, Respondent will be expected to furnish a signed statement addressed to counsel for Complainant, Ms. Rauch, that he did not file federal income tax returns for some or all of the years 1991, 1992, or 1993; the statement must state with particularity (1) the years for which no returns were filed, and (2) the reason(s) why the return(s) were not filed for each of the years in question.

A scheduling order for the submission of Respondent's tax returns or, alternatively, for his statement that he did not file tax returns, will be issued following receipt of Respondent's written statement regarding his position on whether he desires to exercise his right to a hearing on the violations charged in the

complaint. If Respondent fails or refuses to provide that statement, a scheduling order will issue on October 14, 1994, for the submission of the returns.

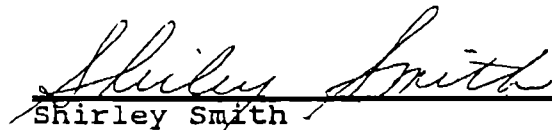


J. F. Greene
Administrative Law Judge

October 3, 1994
Washington, D. C.

CERTIFICATE OF SERVICE

I hereby certify that the original of this ORDER was sent to the Regional Hearing Clerk and copies were sent to the counsel for the complainant and counsel for the respondent on October 3, 1994.



Shirley Smith
Legal Staff Assistant
for Judge J. F. Greene

NAME OF RESPONDENT: Teddy Weddington
DOCKET NUMBER: VII-94-CAA-144

Ms. Venessa Cobbs
Regional Hearing Clerk
Region VII - EPA
726 Minnesota Avenue
Kansas City, KS 66101

Anne E. Rauch, Esq.
Office of Regional Counsel
Region VII - EPA
726 Minnesota Avenue
Kansas City, KS 66101

Mr. Ted Weddington
211 East Monroe
Hayti, Missouri 63851

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY



In the Matter of

TEDDY WEDDINGTON

Respondent

:
:
:
:
:
:
:
:
:
:

Docket No. VII-94-CAA-144

Judge Greene

ORDER FOR RESPONDENT TO FILE PRETRIAL EXCHANGE

The parties having been ordered to file pretrial exchange no later than April 29, 1994, and complainant's exchange having been received on May 6, 1994, it is hereby ORDERED that respondent shall, no later than August 5, 1994, file pretrial exchange with the regional hearing clerk. A copy of such exchange shall be provided to this office and to counsel for complainant.

A copy of March 23, 1994, Order is attached for respondent's reference.



 J. P. Greene
 Administrative Law Judge

July 18, 1994
 Washington, D. C.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D. C. 20460

IN THE MATTER OF

Teddy Weddington

Respondent

Dkt No. VII-94-CAA-144

ORDER FOR PRETRIAL EXCHANGE

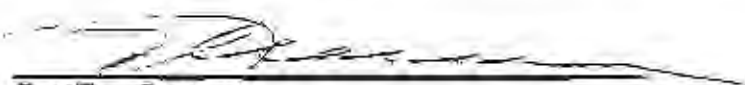
No later than April 29, 1994, the parties shall exchange (1) a list of witnesses they intend to call to testify, together with a short summary of the expected testimony of each proposed witness; and (2) a copy of each document to be offered in evidence, together with a brief statement of the purpose for which the document will be offered. The list of proposed witnesses shall include, for each person, the name, business address, and business position or title.

Evidence regarding the appropriateness of the penalty proposed by complainant shall be exchanged if there is a dispute regarding the penalty. In any case, complainant shall be prepared to support its penalty request. If respondent intends to assert that it cannot afford to pay a penalty in the amount proposed in the complaint, respondent shall exchange evidence to support its position.

No later than May 13, 1994, each party shall have notified the other(s), and this office, of any changes in the proposed list of witnesses or changes or additions regarding the documents to be offered in light of the April 29, 1994, exchange.

One copy of all materials exchanged shall be sent to this office at the time the exchanges are made.

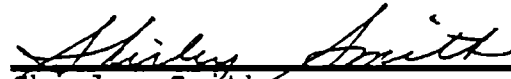
AND IT IS FURTHER ORDERED that, regardless of progress toward settlement, the parties shall not fail to make pretrial exchange by the dates specified unless a continuance or some other form of leave to depart from the requirements of this Order has been secured in advance.


J. F. Greene
Administrative Law Judge

Dated: *March 23, 1994*
Washington, D.C. 20460

CERTIFICATE OF SERVICE

I hereby certify that the original of this Order was sent to the Regional Hearing Clerk and copies were sent to the counsel for the complainant and counsel for the respondent on July 19, 1994.



Shirley Smith
Legal Staff Assistant
for Judge J. F. Greene

NAME OF RESPONDENT: Teddy Weddington
DOCKET NUMBER: VII-94-CAA-144

Ms. Venessa Cobbs
Regional Hearing Clerk
Region VII - EPA
726 Minnesota Avenue
Kansas City, KS 66101

Anne E. Rauch, Esq.
Office of Regional Counsel
Region VII - EPA
726 Minnesota Avenue
Kansas City, KS 66101

Ted Weddington
211 East Monroe
Hayti, Missouri 63851

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY



In the Matter of

TEDDY WEDDINGTON

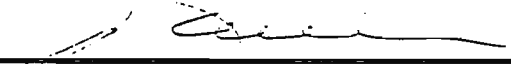
:
:
:
:
:
:
:
:
:
:

Docket No. VII-94-CAA-144

Judge Greene

ORDER to SHOW CAUSE

Respondent herein having been ordered to file pretrial exchange by a date certain, after having failed to file such exchange when first ordered (see attachments hereto), it is hereby ORDERED that, no later than October 7, 1994, respondent shall show cause why a default order should not issue for failure to comply with pretrial orders.



J. F. Greene
Administrative Law Judge

September 22, 1994
Washington, D. C.

CERTIFICATE OF SERVICE

I hereby certify that the original of this Order was sent to the Regional Hearing Clerk and copies were sent to the counsel for the complainant and counsel for the respondent on September 22, 1994.

Shirley Smith

Shirley Smith
Legal Staff Assistant
for Judge J. F. Greene

NAME OF RESPONDENT: Teddy Weddington
DOCKET NUMBER: VII-94-CAA-144

Ms. Venessa Cobbs
Regional Hearing Clerk
Region VII - EPA
726 Minnesota Avenue
Kansas City, KS 66101

Anne E. Rauch, Esq.
Office of Regional Counsel
Region VII - EPA
726 Minnesota Avenue
Kansas City, KS 66101

Ted Weddington
211 East Monroe
Hayti, Missouri 63851