9/29/95

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	
GALLAGHER & HENRY Countryside, Illinois	)	Docket No. CWA-A-0-012-93
	)	
	)	
Respondent	)	

RULINGS ON MOTIONS TO COMPEL AND FOR RECONSIDERATION, and ORDER SETTING PROCEEDING FOR HEARING

Proceedings

By Order of the Chief Administrative Law Judge, dated September 5, 1995, the undersigned has been redesignated to preside in this proceeding pursuant to the EPA Rules of Practice, 40 C.F.R. §§22.04(d)(3), 22.21(a). This proceeding arises under Section 309(g) of the Clean Water Act ("CWA"), as amended, 33 U.S.C. §1319(g) which provides for the assessment of administrative civil penalties for violations of certain provisions of the CWA.

In this proceeding, the Environmental Protection Agency, Region 5, Chicago (the "Complainant") charges Gallagher & Henry, Countryside, Illinois ("Respondent"), a real estate development concern, with the discharge of fill material without a permit into the waters of the United States, at three wetlands sites in Cook County, Illinois, in violation of 33 U.S.C. §§1311 and 1344. Complainant seeks assessment of a Class II civil penalty of $125,000 for these violations pursuant to 33 U.S.C. §1319(g)(2)(B).

Complainant commenced this proceeding by serving a Complaint dated March 29, 1993 on Respondent. The Respondent, through its attorneys, Brown & Bryant, P.C., filed an Answer dated May 6, 1993 and an Amended Answer on October 17, 1994. Although Respondent admitted to having conducted filling activities at the three sites, it denied the material allegations of the Complaint and raised a series of affirmative defenses to the charges.

In a series of transcribed rulings given orally over the telephone on March 14, 1995, Administrative Law Judge Daniel M. Head, the former Presiding Officer in this case, disposed of

several motions by both parties that were then pending[1]. On March 20, 1995, Respondent filed a motion entitled "Motion for Partial Reconsideration and for Other Alternative Relief" with a supporting memorandum. In that motion, Respondent seeks reconsideration of one of Judge Head's rulings -- the denial of Respondent's Motion for Accelerated Decision. Complainant filed a response to Respondent's motion on April 10, 1995. On August 31, 1995 Respondent filed a "Motion for Leave to File Respondent's Supplemental Memorandum in Support of Its Motion for Partial Reconsideration and Other Alternative Relief" along with the supplemental memorandum.

On April 11, 1995 Respondent filed a "Motion to Compel Complainant to Supplement Its Prehearing Exchange." Complainant did submit its Supplement to Prehearing Exchange on or about April 3, 1995, which crossed in the mail with Respondent's Motion. This submission partly satisfied Respondent, who then, on April 26, 1995, amended its motion by withdrawing two items. With respect to the items remaining in dispute, Complainant filed its response to the Motion to Compel on May 15, 1995.

These rulings will address the two pending motions of Respondent: its Motion to Reconsider the Denial of Accelerated Decision, and its Motion to Compel Complainant to Supplement its Prehearing Exchange.

Motion to Reconsider Denial of Accelerated Decision

In this motion, Respondent seeks reconsideration, on several grounds, of Judge Head's ruling denying Respondent's earlier motion for accelerated decision. In the alternative, if the Presiding Officer determines not to reconsider that ruling, Respondent requests that he certify it for interlocutory appeal to the Environmental Appeals Board pursuant to 40 C.F.R. §22.29(b), on the issues raised in this motion. Respondent raises the following three main contentions in its Motion to Reconsider the denial of an accelerated decision: (1) that the charges are time-barred by the statute of limitations at two of the three sites that are the subjects of this proceeding; (2) that the work at the third site was authorized by Nationwide Permit No. 3; and (3) that the EPA lacks jurisdiction over the subject wetlands due to an insufficient

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[1] Other than the rulings under reconsideration here, Judge Head made the following rulings: granted Respondent's Motion to Amend its Answer; denied Respondent's Motion for Sanctions; denied Respondent's Motion to Disregard Complainant's Exhibit E and to Disqualify Complainant's Counsel; denied Respondent's Motion for a Default Order; denied Complainant's Motion to Strike a Portion of Respondent's Prehearing Exchange; and denied Complainant's Motion to Bar the Testimony of a Witness for Respondent, Thomas Slowinski.

nexus with interstate commerce. These rulings address those three contentions.

Respondent raised several other grounds in support of its Motion for Accelerated Decision that it is not urging in the instant Motion to Reconsider. These included the following contentions: (1) that imposition of a penalty for these alleged violations would violate the due process clause of the United States Constitution; (2) that EPA violated the CWA and the Joint Memoranda of Agreement between the EPA and the Corps in bringing this action; and (3) that the United States is estopped from bringing this enforcement action. These rulings will not address those contentions. They are considered denied for the purposes of accelerated decision by Judge Head's March 14, 1995 Order. Presumably those contentions and the underlying facts remain at issue for determination at the hearing as potentially relevant in defense of the charges or in mitigation of the amount of the penalty.

- Standard for Accelerated Decision

The EPA Rules of Practice, §22.20(a), allow the Presiding Officer to render an accelerated decision without a hearing "if no genuine issue of material fact exists and a party is entitled to judgment as a matter of law." This procedure is analogous to the motion for summary judgment under Section 56 of the Federal Rules of Civil Procedure.[2] The burden of showing there exists no genuine issue of material fact is upon the Respondent in this proceeding as the moving party. Adickes v. Kress, 398 U.S. 144, 157-160 (1970). In considering a motion for summary judgment or accelerated decision, the tribunal must construe the factual record and reasonable inferences therefrom in the light most favorable to the non-moving party. Cone v. Longmont United Hosp. Assoc., 14 F.3d 526, 528 (10th Cir. 1994). The mere allegation of a factual dispute will not defeat a properly supported motion for accelerated decision. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986). The decision on a motion for summary judgment or accelerated decision must be based on the pleadings, affidavits, and other evidentiary materials submitted in support or opposition to the motion. 40 C.F.R. §22.20(a), F.R.C.P. 56(c), Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986).

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[2] Numerous decisions of Administrative Law Judges and the Environmental Appeals Board have recognized the equivalence of the motion for accelerated decision under Rule 22.20(a) with the motion for summary judgment under F.R.C.P. 56. See, e.g., In re CWM Chemical Serv., TSCA Appeal 93-1, 1995 TSCA Lexis 10, 25 (EAB, Order on Interlocutory Appeal, May 15, 1995).

- Statute of Limitations

Respondent contended in its original Motion for Accelerated Decision, and strongly reasserts in the instant Motion to Reconsider, that the charges in this proceeding are time-barred by the statute of limitations at two of the three sites at issue. Respondent relies on the decision in 3M Company v. Browner, 17 F.3d 1453 (D.C. Cir., 1994), which held that the five-year Federal statute of limitations, 28 U.S.C. §2462, applies to administrative proceedings brought by federal agencies to assess civil penalties. In its Supplemental Memorandum, Respondent cites the more recent case of Unites States v. The Telluride Company (1995 WL 176787, D. Colo.). In that case the five-year statute of limitations was specifically applied to bar a civil enforcement action for the unpermitted discharge of fill in wetlands, as in this case a violation of the CWA sections 301 and 404, 33 U.S.C. §§1311, 1344.

The former Presiding Officer, Judge Head, denied Respondent's motion for accelerated decision on statute of limitations grounds on the basis that there are substantial issues of material fact that need to be resolved in this proceeding, as well as substantial issues of law. (Ruling of March 14, 1995, pp. 16-17). A careful review of the allegations, affidavits, and responses by the parties to this proceeding indicates that Judge Head's ruling was proper. The evidentiary materials on record, construed most favorably to Complainant, indicate that material factual issues remain with respect to both subject sites, even under the most restrictive application of the statute of limitations as urged by Respondent's interpretations of the 3M and Telluride holdings. In addition, the legal issue of the proper application of the five-year limitations period to the alleged continuing violation of the discharge of unpermitted wetlands fill is not settled despite the holdings in those cases.

The Respondent alleges that the filling of two of the three wetlands at issue in this proceeding occurred more than five years before the filing of the Complaint on March 29, 1993. It is undisputed that the Respondent began filling activities at the Wolf Road site in September, 1987, and at the Brittany Glen site in October, 1986. However, the affidavit of Respondent's own lead witness, Robert E. Gallagher,[3] leaves open the possibility that such filling activity, or discharge of pollutants, continued as late as June 2, 1988 at the Wolf Road site, and April 27, 1988 at the Brittany Glen site.[4] Those dates are within the five-year limitations period preceding the filing of the Complaint.

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[3] Respondent's Exhibit ("RX") 1 in support of Motion for Accelerated Decision.

[4] RX 1, ¶¶ 9 and 16.

Moreover, as Complainant points out, the fill was not removed from the Wolf Road site until April 1991. The fill currently remains at the Brittany Road site, which received an after-the-fact permit from the Corps on April 30, 1990 that required Respondent to undertake an on-site mitigation and restoration plan. That restoration has not been satisfactorily completed to date. Thus, before even reaching the legal issue of continuing violations, the factual pattern involving these mitigative activities or attempts at restoration raise additional potential factual issues as to what actually occurred since the original discharges began at these two sites. These continuing activities could comprise additional discharges that could re-commence the running of the statute of limitations.

In addition, the Complainant asserts that the violation of discharging unpermitted wetlands fill continues each day the fill remains without a permit, thus tolling the statute of limitations. It certainly appears that the Telluride case holds to the contrary. However, the facts are not discussed in that decision and they may well be distinguished by the facts to be adduced at the hearing in this proceeding, as indicated above. For the purposes of this ruling, on a motion to reconsider a denial of a motion for accelerated decision, it is unnecessary to further address the legal issue of continuing violations. At this juncture I will only point out that, in light of other authorities, the Telluride case is of questionable precedential value. The parties will have a full opportunity to adduce the facts in this case and present their arguments on the applicable law concerning the statute of limitations at the conclusion of the hearing.

Since this portion of these rulings is decided on the basis that genuine issues of material fact remain, it is also unnecessary to address Complainant's alternative contention that the statute of limitations was equitably tolled.

Accordingly, Respondent's motion to reconsider Judge Head's denial of Respondent's motion for accelerated decision on statute of limitations grounds as to the Wolf Road and Brittany Glen sites is denied. I also decline to certify this ruling to the Environmental Appeals Board pursuant to 40 C.F.R. §22.29, as alternatively requested by Respondent. Although the issue of the applicability of the statute of limitations to alleged continuing violations may be considered an important question of law or policy, an immediate appeal of this ruling will not materially advance the ultimate termination of this proceeding. This is because the underlying facts must first be found, which may well render the legal issue of continuing violations secondary, if not moot. In addition, this issue only applies to part of the proceeding. Review by the Environmental Appeals Board after the initial decision is issued would be the more efficient procedure, should either party seek such review. Therefore the standards for certifying an interlocutory appeal for review to the Environmental

Appeal Board in 40 C.F.R. §22.29(b) are not met, and this ruling will not be so certified.

- Nationwide Permit No. 3

Respondent asserts that there is no dispute as to material facts concerning the alleged violation of discharging wetland fill without a permit into the third site at issue in this proceeding, the Tinley Park site. Respondent claims the facts show that the activity at Tinley Park consisted only of the repair of an existing structure, field tile, as authorized by Nationwide Permit No.3 (NWP 3) in effect at the time in 1991, 33 C.F.R. Part 330, App. A, Part B, No. 3. Complainant claims that, if anything, the facts indicate the contrary -- that Respondent's activities at the Tinley Park site were not authorized by NWP 3.

The nature and circumstances of Respondent's activities at the Tinley Park site give rise to factual issues that cannot be decided in a motion for accelerated decision. Complainant points out that the Corps officially determined that Respondent's work at that site did not conform to the requirements of NWP 3, and issued a Cease and Desist Order. At issue is whether Respondent's filling and construction methods at this site constituted "minor deviations" that were "necessary" to repair the field tile, as required by NWP 3. Respondent's readings of both the standards in NWP 3 and of the proper scope of Complainant's response are overly narrow and hypertechnical. Complainant alleges that Respondent placed excessive dredged materials in the wetland, and unnecessarily temporarily dewatered it, causing adverse environmental impacts. In responding to this motion for accelerated decision, Complainant quite properly produced additional affidavits and documentary evidence that flesh out the original allegations of the Complaint[5], as explicitly contemplated by both the EPA Rules of Practice, 40 C.F.R. §22.20(a), and the F.R.C.P. 56(c).

Far from being a "purely legal" issue, the issue of whether Respondent complied with NWP 3 at Tinley Park is almost purely factual. Therefore, Respondent's motion for reconsideration of Judge Head's denial of accelerated decision on this issue is denied, and this ruling will not be certified to the Environmental Appeals Board on an interlocutory appeal.

- Jurisdiction Over "Isolated" Wetlands

Respondent contends that the wetlands sites that are the subjects of this proceeding are isolated, wholly intrastate wetlands that are not "navigable waters" within the meaning of 33

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[5] See Affidavit of Keith Wozniak submitted in Response to Motion for Accelerated Decision, Complainant's Exhibit ("CX") 31, ¶14.

U.S.C. §1344(a), and are thus not subject to Federal jurisdiction. The term "navigable waters" is defined as "waters of the United States". 33 U.S.C. §1362(7). EPA's regulations implementing Section 404 of the CWA include within the definition of "waters of the United States" intrastate wetlands, "the use, degradation or destruction of which could affect interstate or foreign commerce." 40 C.F.R. §230.3(s)(3). Respondent argues that the wetlands that are the subjects of this proceeding have an insufficient nexus with interstate commerce to invoke Federal permitting and enforcement jurisdiction over their use or filling. In its Supplemental Memorandum, Respondent cites the recent U.S. Supreme Court case of United States v. Lopez, 115 S.Ct. 1624, 1995 U.S. Lexis 3039 (1995) for the proposition that the Commerce Clause of the Constitution should be construed more narrowly than the jurisdiction asserted here under the CWA §404.

In response, Complainant asserts that the subject wetlands could affect interstate commerce through their use by migratory birds; their connection to adjacent waters; their potential use for recreational purposes by interstate travellers; and their capacity to affect water quality in the region. Complainant cites the leading case of Hoffman Homes, Inc. v. U.S. EPA, 999 F.2d 256 (7th Cir., 1993). The 7th Circuit in that case specifically upheld the EPA's broad interpretation of its definition of "waters of the United States" to include wetlands that could affect interstate commerce, even if that effect was only potential or minimal. The Court also specifically found that "it is reasonable to interpret the regulation as allowing migratory birds to be that connection between a wetland and interstate commerce." 999 F.2d at 261.

The issue presented by Respondent's contention is a mixed one of fact and law that is inappropriate for resolution on a motion for accelerated decision. To the extent Respondent claims that the subject wetlands are hydrologically isolated, not used by migratory birds, and not used for recreation by interstate travellers, factual issues are raised. Both parties have submitted affidavits addressing these matters that illustrate the factual issues that must be determined at hearing.[6] Since material factual issues remain for hearing, it is unnecessary to analyze the law any further at this juncture. I will note, however, that the holdings in the Hoffman Homes decision, which address the precise issues before us, appear to constitute the prevailing authority.

Accordingly, the motion to reconsider Judge Head's decision denying Respondent's Motion for Accelerated Decision on the grounds of lack of Federal jurisdiction over the subject wetlands is denied. Since this issue will require resolution of factual matters, I also decline to certify it for an interlocutory appeal to the Environmental Appeals Board.

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[6] See CX 31, 32, 33, 34, 41, 42, and 43; and RX 1 and 4.

Motion to Compel

- Expert Witnesses (Item #1 in Respondent's Motion)

Respondent first requests that Complainant be ordered to designate which of its witnesses will testify as experts and to provide a brief narrative for each summarizing their expected testimony. However, as Complainant responded, such designation is not necessary and was not actually specifically required by the Prehearing Order of Judge Head dated July 29, 1993. Complainant has provided its list of witnesses, including "expert and other witnesses," with narrative summaries, as required by the Prehearing Order. It is self-evident from the list which witnesses could be characterized as experts. Requiring further designation as experts would exalt form over substance. In addition, as Complainant points out, Respondent has also not specifically designated which of its witnesses are "experts." Therefore, Respondent's Motion to Compel is denied with respect to requiring designation of expert witnesses.

- Unidentified Witness (Item #2)

Respondent next requests that Complainant be ordered to name a possible witness, a neighbor to the Tinley Park site whose identity the Complainant wishes to protect as a confidential source. Complainant states that the testimony of this witness may not actually be necessary, and it wishes to protect his or her privacy unless a specific need is shown to reveal the witness' identity. While this is not a criminal proceeding in which an issue of protection of a confidential informant's identity would ordinarily arise, Respondent has not offered any specific reason why it needs the name of the possible witness. In these circumstances, I will defer to Complainant's desire to protect the witness' identity until the advent of the hearing, if the witness eventually testifies.

- Copies of All Documents, Photographs, and Maps (Items #4 and #6)

The Complainant has stated it has fully complied with these requests in its Supplement to Prehearing Exchange, which also complied with Judge Head's March 14, 1995 Order. I trust in the good faith of both parties in this discovery process, and find no basis to question Complainant's statement of compliance with these requests.

- Penalty Calculations (Item #5)

Respondent contends that the Complainant failed in its Prehearing Exchange to adequately comply with this Court's Prehearing Order to "set out how the proposed penalty was determined, and . . . state in detail how the specific provisions

of any EPA penalty or enforcement policies and/or guidelines were used in calculating the penalty." In this regard, Respondent also seeks disclosure of a document entitled "USEPA's March 9, 1993 Administrative Penalty Settlement Calculation." The EPA withheld production of this Penalty Settlement Calculation in response to a Freedom of Information Act (FOIA) request by Respondent's counsel made on May 20, 1993. The Complainant contends that this document, as its title indicates, discusses privileged settlement positions. Complainant further states that it fully explained its penalty determination in a memorandum provided with its original Prehearing Exchange, entitled "Proposed CWA Class II Administrative Penalty in the Matter of Gallagher & Henry, Inc."

A review of Complainant's memorandum submitted in its Prehearing Exchange fails to reveal any direct application of the statutory penalty factors found in Section 309(g)(3) of the Clean Water Act, 33 U.S.C. §1319(g)(3) to the alleged violations in the Complaint. Most of the memorandum consists of a synopsis of the history of the alleged violations at the three sites and a discussion of facts relevant to the penalty factors listed in 33 U.S.C. §1319(g)(3): "the nature, circumstances, extent and gravity of the violation, or violations, and with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require." What is lacking, however, is a discernible connection between this discussion and the ultimate penalty determination by Complainant.

The section entitled "Penalty Calculation and Proposed Penalty" recites that the potential maximum based on $10,000 per day of violation would result in a penalty of $23,360,000. However the actual statutory maximum for a Class II penalty is $125,000 pursuant to 33 U.S.C. §1319(g)(2)(B), which is the amount sought in this case. Then after some general further discussion of the penalty factors, the memorandum simply concludes that "taking into account all of the above factors, the administrative complaint proposes that the U.S. EPA assess a penalty in the amount of $125,000."

Although the relevant penalty factors and underlying facts are discussed, this memorandum does not enlighten the reader as to how the penalty was determined with respect to each violation and the relevant penalty factors, or whether any other guidelines or a matrix was used. The Respondent is placed at a disadvantage in formulating its strategy without a more specific indication of how the penalty was determined or allocated. For example, there is no indication as to how the penalty is proposed to be apportioned among the three sites at issue in this proceeding, or even whether the Complainant considers the allegations as constituting three separate violations. The alleged facts and circumstances vary considerably among the three sites, and logically comprise separate and distinct contexts in which to consider imposition of penalties.

There is discussion of a downward adjustment in the penalty due to the lack of coordination between the EPA and the Army Corps of Engineers in enforcing these alleged violations, and due to Respondent's efforts at mitigation. But there is no indication of the magnitude of such adjustments, or to which sites it is intended to apply. The memorandum seems to say that Complainant is seeking the maximum of $125,000 regardless of such downward adjustments. The Complainant's statement that it need only prove 13 days of violation in order to support the penalty of $125,000 begs the entire question. Complainant does not state that it seeks to calculate the penalty by applying any particular dollar amount per day of violation. In view of the statutory maximum penalty, the $23 million figure is obviously meaningless.

Therefore, I find Complainant must further supplement its response to the Prehearing Order paragraph 2 concerning its penalty determination. In order to set out how the penalty amount was determined, the Complainant must at least provide: (1) a statement clarifying the number of violations alleged and apportioning the penalty among the three sites or alleged violations; (2) an indication of the magnitude, in terms of dollars, of any adjustments related to the statutory penalty factors for each site or violation; and (3) a statement as to whether any other EPA penalty or enforcement policies and/or guidelines were used in calculating the penalty. Such supplemental penalty explanation must be provided no later than October 26, 1995.

Complainant will not, however, be required to disclose the March 9, 1993 Penalty Settlement Calculation withheld in response to Respondent's FOIA request. I construe Respondent's Motion to Compel as a motion for further discovery pursuant to 40 C.F.R. §22.19(f). Respondent has not shown that the information sought by disclosure of that document meets the requirement in §22.19(f)(1)(ii) that the information sought is not otherwise obtainable. Complainant's supplemental explanation of its penalty determination, as ordered above, will fulfill the purpose of the requested discovery.

In addition, I have no basis to question the Complainant's assertion that the March 9, 1993 document, as indicated in its title, relates to Complainant's settlement positions. It would therefore not be discoverable or admissible under Rule 408 of the Federal Rules of Evidence and §22.22(a) of the EPA Rules of Practice.

- Other Withheld Documents Item #7)

Respondent requests that Complainant be ordered to produce certain documents and portions of documents that the EPA withheld in response to a FOIA request made by Respondent's counsel in May of 1993. In particular Respondent requests disclosure of one of the listed withheld documents -- a letter from the USEPA to the

Army Corps of Engineers, dated March 26, 1992, regarding the lead enforcement role on this case.

Again construing Respondent's motion as one for further discovery pursuant to 40 C.F.R. §22.20(f), I find the requested letter should be disclosed. The letter is apparently relevant to Respondent's Fifth Affirmative Defense, which asserts that the Complaint is barred by the CWA and the Enforcement Memorandum of Agreement between the EPA and the Corps. Apart from the merits of Respondent's Fifth Affirmative Defense, the Complainant itself raised the issue of "imperfect coordination" between the EPA and Corps as a factor in mitigation of the penalty. Disclosure would not delay the proceeding and the letter is not otherwise obtainable. The March 26, 1992 letter could have significant probative value in providing a direct expression of the Complainant's position on the issue of enforcement coordination between the Corps and EPA. Accordingly, Complainant must provide a copy of the March 26, 1992 letter to the Corps to Respondent as a supplement to its Prehearing Exchange, no later than October 26, 1995.

Respondent has not supported its request for further discovery with respect to any other documents or portions of documents. Complainant has stated it has included in its Prehearing Exchange all the documents it intends to use at the hearing, as required by the Prehearing Order and EPA rules of Practice.

Summary of Rulings

1. Respondent's Motion to Reconsider the Denial of its Motion for Accelerated Decision is denied.

2. This ruling denying the motion to reconsider the denial of accelerated decision will not be certified to the Environmental Appeals Board on an interlocutory appeal.

3. Complainant is directed to supplement its Prehearing Exchange by providing a further explanation of its penalty determination as specified above.

4. Complainant is directed to provide Respondent a copy of the March 26, 1992 letter from the EPA to the Corps.

5. Respondent's other requests for additional discovery are denied.

Order Setting Proceeding for Hearing

The hearing in this proceeding will convene at 10:00 a.m. on Tuesday, January 16, 1996, in Chicago, Illinois, and continue until concluded. The parties will be advised later of the exact location of the hearing.

The Regional Hearing Clerk is requested to arrange for appropriate hearing accommodations for January 16-19, 1996, and for the services of a stenographic reporter to transcribe the proceedings. The undersigned's office shall be notified upon completion of these arrangements. When a hearing facility is acquired, a further order will issue advising the parties of the location and addressing other pertinent matters associated with the proceeding.

Andrew S. Pearlstein

Andrew S. Pearlstein
Administrative Law Judge

Dated: September 29, 1995
Washington, D.C.

IN THE MATTER OF GALLAGHER & HENRY, Respondent

CERTIFICATE OF SERVICE

I certify that the foregoing Rulings on Motions to Compel and for Reconsideration, and Order Setting Proceeding for Hearing, dated September 29, 1995, was sent in the following manner to the addressees listed below:

Original by Pouch Mail to:

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Copy by Certified Mail to:

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Dated: Sept 29, 1995
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