



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
MATERIAL DELIVERY, INC.,) DOCKET NO. CAA-09-2010-0006
)
)
RESPONDENT)

ORDER ON RESPONDENT'S ANSWER AND DIRECTING SETTLEMENT CONFERENCE

As you previously have been notified, I have been designated by the May 12, 2011, Corrected Order of the Chief Administrative Law Judge to preside in the above captioned matter. This proceeding arises under the authority of Section 113(d) of the Clean Air Act, as amended, 42 U.S.C. § 7413(a)(3). This proceeding is governed by 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. §§ 22.1-22.52. The parties are advised to familiarize themselves with both the applicable statute and the Rules of Practice.

On September 28, 2010, the United States Environmental Protection Agency ("EPA") filed a Complaint against Respondent, Material Delivery, Inc., charging five separate violations of Maricopa County Air Quality Department Regulation III, Rule 316, as incorporated into the State Implementation Plan for Arizona pursuant to Section 110 of the Clean Air Act, 42 U.S.C. § 7410. Mr. Michael Denny^{1/} then sent Complainant's counsel a one-page letter written on Respondent's letterhead. The letter is dated

^{1/} The record reflects that Respondent in this case is not presently represented by an attorney and is appearing through Mr. Michael Denny. The Rules of Practice allow a corporation to appear *pro se* before this Tribunal through one of its officers. Rule 22.10, 40 C.F.R. § 22.10. While the record does not indicate whether Mr. Denny is in fact an officer of Respondent, his appearance is recognized *de bene esse* pending clarification in Respondent's Answer.

November 11, 2010, and opens by stating: "In Response to our Phone conversation, I am responding to the allegations as follows." The letter goes on to provide short, narrative responses to each of the five counts in the Complaint. Respondent's letter was construed as an answer, and the case was referred to the Office of Administrative Law Judges.

Respondent's letter does not meet the requirements for filing an answer under the Rules of Practice. Under Rule 22.15, where a respondent contests any material fact upon which the complaint is based, its answer "must clearly and directly admit, deny or explain each of the factual allegations in the complaint," or, where the respondent has no knowledge of a particular factual allegation, it must so state in the answer and the allegation will be deemed denied. 40 C.F.R. § 22.15. "Failure of respondent to admit, deny, or explain any material factual allegation contained in the complaint constitutes an admission of the allegation." Rule of Practice 22.15(d), 40 C.F.R. § 22.15(d). The answer must also state: "[t]he circumstances or arguments which are alleged to constitute the grounds of any defense; . . . the basis for opposing any proposed relief; and whether a hearing is requested." Rule 22.15(b), 40 C.F.R. § 22.15(b).

Respondent's letter does dispute some of the Complainant's allegations, and does generally raise circumstances that might lead to a defense. It does not, however, clearly and comprehensively admit, deny, or explain each of the numbered factual allegations contained in the Complaint. The letter also does not clearly state the defenses Respondent wishes to raise, if any. Finally, it does not indicate whether Respondent requests a hearing.

To clarify the issues in dispute, Respondent is directed to file an Answer with the Regional Hearing Clerk. The Answer shall clearly admit, deny, explain, or deny knowledge of the allegations in each numbered paragraph contained in the Complaint. The Answer shall state Respondent's defenses, if any, and shall explain the circumstances or arguments supporting those defenses. It shall indicate whether Mr. Denny is an officer eligible to represent Respondent before this tribunal. The Answer shall provide any other bases on which Respondent opposes Complainant's request for penalties, and shall indicate whether Respondent does or does not request a hearing. Failure to deny any factual allegation may be deemed an admission of that allegation. Respondent's Answer shall be filed with the Regional Hearing Clerk on or before **June 24, 2011**.

The policy of the EPA, found in Rules of Practice 22.18(b), 40 C.F.R. § 22.18(b), encourages settlement of a proceeding without the necessity of a formal hearing. The record reflects that the parties have participated in the Alternative Dispute Resolution process offered by this office for four months, but that the parties have not reached a settlement. The parties are directed to hold a settlement conference on or before **July 8, 2011**, to attempt to reach an amicable resolution of this matter. See Rule of Practice 22.4(c)(8), 40 C.F.R. § 22.4(c)(8). Complainant shall file a status report regarding such conference and the status of settlement on or before **July 15, 2011**.

The original and one copy of all pleadings, statements and documents (with any attachments) required or permitted to be filed by this Order (including a ratified Consent Agreement and Final Order) shall be filed with the Regional Hearing Clerk, and copies (with any attachments) shall be sent to the undersigned and all other parties. The parties are advised that E-mail correspondence with the Administrative Law Judge is not authorized. See Rule of Practice 22.5(a), 40 C.F.R. § 22.5(a).

The statements and information required by this Order to be sent to the Presiding Judge, as well as any other pleadings or motions, if sent by mail, shall be addressed as follows:

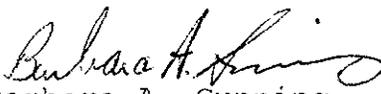
If sending by United States Postal Service (USPS):

EPA Office of Administrative Law Judges
1200 Pennsylvania Ave. NW
Mail Code 1900L
Washington, DC 20460

If sending by a non-USPS courier, such as UPS or FedEx:

EPA Office of Administrative Law Judges
1099 14th St. NW
Suite 350, Franklin Court
Washington, DC 20005

Telephone contact may be made with the my legal staff assistant, Mary Angeles, at (202) 564-6281. The facsimile number is (202) 565-0044.


Barbara A. Gunning
Administrative Law Judge

Dated: May 19, 2011
Washington, DC

In the ADR matter of *Material Delivery*, Respondent.
Docket No. CAA-09-2010-0006

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **Order on Respondent's Answer and Directing Settlement Conference**, dated May 19, 2011, issued by Administrative Law Judge Barbara Gunning, was sent this 19th day of May 2011, in the following manner to the addressees listed below.



Mary Angeles
Legal Staff Assistant

Original and One Copy by Pouch Mail to:

Bryan Goodwin
Acting Regional Hearing Clerk
U.S. EPA, Region 9
75 Hawthorne Street, ORC- 1
San Francisco, CA 94105

One Copy by Pouch Mail to:

David Kim, Esq.
Office of Regional Counsel
U.S. EPA, Region 9
75 Hawthorne Street, ORC -2
San Francisco, CA 94105

One Copy by Regular Mail to:

Mike Denny
Material Delivery, Inc.
2815 E. Rose Garden Lane
Phoenix, AZ 85050

Dated: May 19, 2011
Washington, D.C.