

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of >
>
>
Coleman Trucking, Inc., > Docket No. 5-CAA-96-005
>
>
Respondent >

ORDER GRANTING IN PART RESPONDENT'S
MOTION FOR DISCOVERY

Coleman Trucking, Inc. ("Coleman"), has filed a discovery motion requesting that the U.S. Environmental Protection Agency ("EPA") make available for inspection and copying all documents in its possession regarding both the Hemminger Elementary School and respondent itself. This discovery request includes all documents in the possession of EPA, as well as the Ohio Environmental Protection Agency. Coleman also seeks an order directing the depositions of three named individuals. EPA opposes this motion for discovery.

First, EPA argues that Coleman's motion was filed so close to the February 12, 1997, hearing date as to be untimely. EPA asserts that the timing of Coleman's motion provides an insufficient opportunity for complainant to brief this matter, as well as for this court to issue a ruling prior to hearing. This argument is no longer persuasive. Whatever momentum EPA's "timeliness" argument had at the time of filing was certainly lost by this court's subsequently rescheduling the hearing for April 22, 1997. Moreover, the discovery matters raised by Coleman are not complex and EPA was afforded ample opportunity to respond.

Second, EPA broadly attacks the discovery request arguing that the respondent has failed to satisfy the technical requirements of Section 22.19(f). EPA asserts, for example, that Coleman has failed to specify the nature of the information sought, that the information is not otherwise unobtainable, and that it has significant probative value. EPA also asserts that Coleman has failed to show good cause for the taking of deposition testimony.

To the extent that Coleman is requesting that EPA be directed "to produce all documents in its possession regarding Coleman and the Hemminger Elementary School," the complainant's objection is well-taken. Coleman's document production request is overly broad, as well as vague. Accordingly, Coleman's request for documents is denied.

Coleman's request, however, for the depositions of Mark Davis, Patrick Kilbane, and Jarrett Hightower, is on much sounder footing. Each of these individuals has been identified as a witness by EPA in the Agency's prehearing exchange. Yet, EPA provided only a cursory description of their expected testimony. EPA's description of its witnesses' testimony is inadequate. It would be unfair to require Coleman to prepare for hearing under the present circumstances where in essence it must guess as to the prospective testimony of opposing witnesses. Moreover, under the conditions set forth below, allowing Coleman to depose these three individuals is not burdensome to EPA and it will not delay further proceedings in this case.

ORDER

Coleman's motion for discovery is *Denied* insofar as it involves a request for the production of documents. Coleman's motion for discovery is *Granted* insofar as the respondent seeks to depose Mark Davis, Patrick Kilbane, and Jarrett Hightower. The depositions of these individuals shall be limited to three hours each and they shall be completed no later than March 21, 1997. EPA is directed to cooperate with Coleman in securing the presence of these individuals for deposition.

Carl C. Charneski
Administrative Law Judge

Issued: February 12, 1997
Washington, D.C.

IN THE MATTER OF COLEMAN TRUCKING, INC., Respondent

Docket No. 5-CAA-96-005

Certificate of Service

I certify that the foregoing Order Granting in Part Respondent's Motion for Discovery, dated February 12, 1997, was sent this day in the following manner to the below addressees.

Original by Regular Mail to:

Ms. Jodi Swanson-Wilson
Regional Hearing Clerk
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Copy by Regular Mail to:

Attorney for Complainant:

David Mucha, Esquire
Assistant Regional Counsel
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Attorneys for Respondent:

Peter R. Harwood, Esquire
Thomas A. Hamilton, Esquire
BUCKLEY KING & BLUSO
1400 Bank One Center
Cleveland, OH 44114-2652

Marion Walzel
Legal Staff Assistant

Dated: February 12, 1997