

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF

ROGERS CORPORATION

DOCKET NO. TSCA-I-94-1079

Respondent

ORDER DENYING MOTION FOR DISCOVERY

On June 12, 1995, Respondent filed a motion for leave to take further discovery, pursuant to Section 22.19(f) of the EPA Rules of Practice (Rules), 40 C.F.R. § 22.19(f). The Respondent in this motion seeks to propound requests for admission and requests for production of documents, and asks permission to take oral depositions. On June 22, 1995, Complainant responded in opposition to this motion asserting that this motion is premature since the prehearing exchange has not yet occurred.

Respondent then, on June 28, 1995, filed a motion for leave to reply to Complainant's opposition. There was no opposition to Respondent's motion for leave to reply, so that motion is granted and the reply will be considered in disposition of the discovery motion. This reply asserts that Respondent has met the requirements of Section 22.19(f) of the Rules, and argues that the fact that the prehearing exchange had not taken place should have no bearing on disposition of the discovery motion.

The prehearing exchange took place between the parties on July 31, 1995, and extensive information and documentary data was submitted by both the Complainant and Respondent.

On analysis, Complainant's position on the discovery motion is better taken. The rationale underlying Section 22.19 of the Rules which provides for the prehearing exchange of information between the parties, is that this exchange consists of discovery for the parties. Further discovery is only permitted after a motion has been filed under Section 22.19(f), which motion must meet the specific criteria set out in this Subsection. Until the prehearing exchange has occurred, a proper evaluation cannot be made as to whether a request for

other discovery meets the criteria set out in Section 22.19(f) justifying further discovery beyond the prehearing exchange. Accordingly, Respondent's motion was premature when filed and, therefore, is denied. This denial is without prejudice to Respondent filing a further discovery motion, if it considers such action necessary, since Respondent now has had the opportunity to review the Complainant's prehearing exchange.

So Ordered.

Daniel M. Head
Administrative Law Judge

Dated: November 8, 1996
Washington, D.C.

IN THE MATTER OF ROGERS CORPORATION, Respondent

Docket No. TSCA-I-94-1079

CERTIFICATE OF SERVICE

I certify that the foregoing Order Denying Motion for Discovery, dated November 8, 1996, was sent in the following manner to the addressees listed below:

Original by Pouch Mail to:

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Regional Hearing Clerk
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Dated: November 8, 1996
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