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## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

### BEFORE THE ADMINISTRATOR

In the Matter of:	)	
	)	
	)	
Titan Wheel Corporation of Iowa	)	Docket No.
RCRA VII 98-H-0003	)	
	)	
Respondent,	)	

#### Order On Motion

In this action under the Sections 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. Sections 6901 et seq., and the Consolidated Rules of Practice, 40 C.F.R. Part 22, ("Rules"), Complainant EPA has filed a Motion for an Order Directing Respondent to Comply with Section 22.15(b) of the Rules.

EPA maintains that Respondent Titan Wheel's Answer does not satisfy the pleading requirements of Section 22.15(b) in that "the enumerated defenses [raised] in its Answer are mere legal conclusions unsupported by either facts or reasoning..." Motion at 1. In the accompanying Memorandum in Support of Complainant's Motion, Complainant reiterates its position that Respondent should be required to state the "circumstances or arguments" which support the grounds of its asserted defense. EPA points specifically to paragraphs 6 through 14 of Titan's Answer, claiming that the affirmative defenses "provide only bare legal conclusions" and offer no "insight .. into Respondent's bases for the defenses..."

In opposing EPA's Motion, Titan responds that the "information contained in

paragraphs 6 through 14 of the Answer is sufficient to allow Complainant to determine the bases for Respondent's affirmative defenses." Opposition at 1. Titan maintains that its Answer satisfies the standard of Section 22.15(b) and offers "sufficient reasoning to allow the Complainant to prepare its case for hearing." Opposition at 3.

For the reasons which follow, the Motion is GRANTED IN PART and DENIED IN PART.

The Section at issue, 40 C.F.R. 22.15(b), *Contents of the answer*, provides:

The answer shall clearly and directly admit, deny or explain each of the factual allegations contained in the complaint with regard to which respondent has any knowledge. Where respondent has no knowledge of a particular factual allegation and so states, the allegation is deemed denied. The answer shall also state (1) the circumstances or arguments which are alleged to constitute the grounds of defense, (2) the facts which respondent intends to place at issue, and (3) whether a hearing is requested.

As observed by Administrative Law Judge Thomas W. Hoya in Wooten Oil Company, Docket No. CAA-94-H001, 1996 EPA ALJ LEXIS 119, January 31, 1996, "[o]ne purpose of the Answer [under Section 22.15(b)] is to identify the points in dispute through Respondent's statement of such circumstances, arguments, and factual challenges. Absent such a statement by Respondent, issue cannot be joined on any points in dispute, and a tribunal lacks a basis upon which to adjudicate a case. The judge found that the Respondent's denials and disclaimers were unsupported by any statement of circumstances, arguments, or factual challenges. Id. at \*4 ,\*5.

To the extent that Titan's Answer asserts pure legal theories as defenses to the instant action and *does not* rely upon the testimony of witnesses nor the introduction of exhibits to support those theories, no further statement is required. Such defenses may be presented in post-hearing briefs. For example, Titan's assertion that the action is barred by the applicable statutes of limitation does not appear to need elaboration, as the date of the filing of the complaint is not in dispute and any arguments regarding the running of the statute would involve pure legal interpretations. Similarly, its assertion that the "events complained of are de minimus, remote, speculative, and transient and ... not cognizable by law" may also be supported, at least theoretically, on pure legal theories tied to uncontested facts. In addition, Titan need not elaborate further as to the affirmative defense that "[a]t all times relevant, [it] complied with all applicable laws, regulations and standards" as that merely puts the EPA to its burden of proving the alleged violations. Titan is put on notice by this Order that to the extent it intends to support any such defenses, through witnesses or documents it intends to introduce, they must be identified now, together with a brief statement explaining the purpose behind their introduction. <sup>(1)</sup>

Titan's affirmative defense that the relief sought by EPA is arbitrary and capricious and an abuse of discretion and the claim that the matter had already been settled prior to the filing of the Complaint do require further elaboration identifying the circumstances and facts in support of these assertions. However, based on its Prehearing Exchange, Titan has identified the circumstances and facts it intends to offer in support of the arbitrary and capricious/ abuse of discretion theory. This appears to be the only part of Titan's defense dependent upon the introduction of its own documents and witness. <sup>(2)</sup> However, the claim of prior settlement is completely unsupported and Titan must supplement its Answer and Prehearing Exchange if it still intends to pursue this avenue of defense.

This case can now be set for hearing. The parties are in agreement that Kansas City is an appropriate location. A conference call will be arranged to establish the hearing dates.

So Ordered.

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William B. Moran  
United States Administrative Law Judge

Dated: August 6, 1999

1. Several other of Titan's affirmative defenses appear to fall into the category of pure legal defenses. Again, to the extent that Titan wishes to make claims that the relief sought by the Complainant would contravene its rights under the United States Constitution, that the counts are barred under waiver, estoppel and other equitable theories, that the Complaint fails to state a claim upon which relief may be granted, and that civil penalties under the facts alleged are not applicable, such defenses do not require further elaboration as long as Titan does not intend to rely upon its own documents or witnesses to support such assertions.
2. Given that this appears to be the only aspect of Titan's affirmative defense that is dependent upon the introduction of its own exhibits and testimony relating to those exhibits and that Titan anticipates its direct case will only require two hours, the Court encourages EPA to stipulate to the admissibility of documents Titan received from EPA and the Missouri Department of Natural Resources, unless EPA has a good faith basis to question the documents' authenticity. Assuming that EPA first establishes liability in its case in chief, the weight, if any, that the Court should ascribe to these documents and the witness's interpretation of them, in considering the appropriate penalty, can be addressed in the post-hearing briefs.

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In the Matter of Titan Wheel Corporation of America, Respondent  
Docket No. RCRA-VII-98-H-0003

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order On Motion**, dated August 6, 1999, was sent in the following manner to the addressees listed below:

**Original by Regular Mail to:** Kathy Robinson  
Regional Hearing Clerk  
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Kansas City, KS 66101

**Copy by Regular Mail to:**

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Maria Whiting-Beale  
Legal Staff Assistant

Dated: August 6, 1999

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