

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF

PHILIP'S WELDING SERVICE

DOCKET NO.RCRA-(3008)-VIII-95-09

RESPONDENT

ORDER CLARIFYING AND VACATING THE ORDER TO SHOW CAUSE AND GRANTING EXTENSION OF
TIME

In response to the March 14, 1997, Order To Show Cause issued by the undersigned, the Complainant has filed a Motion For Clarification of Order To Show Cause, requesting that the Order To Show Cause be vacated. In the Order To Show Cause, the Complainant was directed to show cause for failure to comply with the Reestablishment of Prehearing Order issued by the undersigned on February 5, 1997. A previous Order Setting Prehearing Procedures was entered by another Administrative Law Judge, Judge Head, on October 3, 1996, and a prehearing exchange took place pursuant to that order. Judge Head retired in January 1997. In the Reestablishment of Prehearing Order, both parties were directed to file the prehearing exchange anew. No response was received from the Complainant.

While the Reestablishment of Prehearing Order may have appeared superfluous or redundant to the Complainant, the order was issued in an effort to ensure that the file before me was complete and because some of the prehearing exchange requirements set forth by Judge Head differ from those required by the undersigned. For example, the undersigned requests the submission of a curriculum vitae or resume for each proposed expert witness and actual unretouched photographs when photographs are filed. Although counsel for the Complainant now asserts in response to the Order To Cause that the Complainant had fully complied with Judge Head's Order Setting Prehearing Procedures and counsel could not discern any differences in the later Reestablishment of Prehearing Order entered by the undersigned, such response should have been filed in response to the Reestablishment of Prehearing Order. Moreover, counsel for the Complainant now explains in response to the Order To Show Cause that the Complainant did not intend to qualify one of its listed witnesses, Mr.

Lamdin, as an expert, and that the photocopies of the photographs filed with the initial prehearing exchange would not be introduced as evidence at the hearing. Again, such explanation should have been provided more appropriately in response to the Reestablishment of Prehearing Order.

In view of the foregoing, including the Complainant's timely response to the Order To Show Cause, and in an effort to fully and fairly adjudicate all issues without delay, the Order To Show Cause is vacated. See Section 22.04(c) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. § 22.04(c). However, such should not be construed as a license to ignore future orders.

Concomitant to the filing of the Motion For Clarification Of Order To Show Cause, the Complainant filed a Status Report and Request For Stay. Counsel for the Complainant states that a settlement in principle in the above cited matter has been reached and that the parties request that the proceedings be stayed until a Consent Agreement can be filed. Based on these representations, the proceedings are stayed until June 30, 1997.

The Complaint in this matter was filed on June 30, 1995, and Judge Head granted an extension of time. The parties have had adequate opportunity to engage in settlement discussions. This order grants yet additional time to pursue those discussions.

If the case is settled, the Consent Agreement and Final Order signed by the parties should be filed no later than June 30, 1997, with a copy sent to the undersigned. If the case is not settled by June 30, 1997, the parties shall prepare for trial. The Respondent's prehearing exchange shall be filed anew on or before **July 15, 1997**, in accordance with the requirements set forth in the February 5, 1997, Reestablishment of Prehearing order. The Complainant's rebuttal prehearing exchange, if any, shall be filed by **July 30, 1997**.

If the case is not settled, I expect the parties to meet the prehearing deadlines set by this order. A further extension of time will not be granted absent a showing of extraordinary circumstances. The desire to continue settlement discussions, or an averment that a settlement in principle has been reached, will not constitute extraordinary circumstances sufficient to warrant further extensions. Of course, the parties, if they choose, may continue their settlement discussions after the service of the prehearing exchange.

Barbara A. Gunning

Administrative Law Judge

Dated: 4/2/97

Washington, DC

CERTIFICATE OF SERVICE

I hereby certify that the original of this **ORDER CLARIFYING AND VACATING THE ORDER TO SHOW CAUSE AND GRANTING EXTENSION OF TIME**, dated April 2, 1997, **in re: PHILIP'S WELDING SERVICE, Dkt. No. RCRA-(3008)-VIII-95-09**, was mailed to the Regional Hearing Clerk, Reg. VIII, and a copy was mailed by certified mail, return receipt requested to Respondent and Complainant (see list of addressees).

Helen F. Handon

Legal Staff Assistant

Date: Alpril 2, 1997

ADDRESSEES:

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