

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of)
)
Triton Manufacturing Company) Docket No. 5-EPCRA-97-002
)
Respondent)

**ORDER STRIKING RESPONDENT'S AMENDED ANSWER
and
EXTENDING TIME FOR PREHEARING EXCHANGE**

This order addresses Complainant's motion to strike Respondent's Amended Answer / Answer to the Amended Complaint, and Complainant's motion to extend the time for filing prehearing exchanges in this matter.

The original Complaint in this matter, dated January 27, 1997, charged Respondent with two counts of failing to file the annual report of toxic chemicals used, the "Form R," for copper, as required by the Emergency Planning and Community Right-to-Know Act ("EPCRA") §313, 42 U.S.C. §11023. The Respondent filed its Answer on March 27, 1997, and this proceeding was then assigned to the undersigned Administrative Law Judge ("ALJ").

On or about July 2, 1997, the Complainant moved to amend the Complaint by adding three additional counts of failing to file the form R, based on information recently obtained from Respondent. The ALJ granted that motion in an order dated July 14, 1997. Complainant then filed its Amended Complaint on July 31, 1997. Respondent filed its Amended Answer / Answer to Amended Complaint ("Amended Answer") on September 12, 1997.

Complainant first alleges that the Amended Answer is so unclear that it is difficult, if not impossible, to determine what material facts are put at issue. As discussed below, Respondent did not follow the proper procedure for seeking to amend its Answer. However, the Amended Answer, although conclusory, is not unclear. The confusion apparently stems from

Respondent having misnumbered paragraphs after paragraph #16. This is apparently due to Complainant's insertion of a new ¶17 in the Amended Complaint, although the proposed amended Complaint filed with Complainant's motion to amend only added the new counts, beginning with ¶31. In the Amended Answer, Respondent did not specifically respond to the new ¶17, and the ensuing paragraphs are numbered in accord with the original Complaint and the proposed additional counts.

In any event, the real problem stems from Respondent's having amended the substance of its responses to the two original counts, without having filed a motion to do so as required by the EPA Rules of Practice, 40 CFR §22.15(e). The original Answer essentially admitted that Triton failed to timely file the required Form R's for copper for 1991 and 1992, but sought to contest the amount of the proposed civil penalty on the ground of lack of culpability in the circumstances. The Amended Answer, however, asserts that Respondent was not required to file Form R's for 1991 and 1992 as alleged in Counts I and II (or for 1993-1995 as alleged in the new Counts III-V). Respondent now claims it does not manufacture or process a toxic chemical as defined in 40 CFR §372.25(a).

Where an Amended Answer proposes entirely new assertions of legal or factual matters or defenses, as here, it is especially appropriate that a motion be made to ensure that the procedure is not being misused. Respondent here has not provided any explanation for its apparently new position that it is exempt from the EPCRA reporting requirements. The Amended Answer only states this position in conclusory terms, without stating the specific grounds Respondent believes it is exempt.

Therefore, Respondent's Amended Answer with respect to Counts I and II of the Amended Complaint is stricken. Respondent will, however, be permitted to make a motion to file an Amended Answer. The motion must include an explanation of the factual and legal bases for the position asserted in the Amended Answer, and attach a proposed Amended Answer that specifically responds to all counts and paragraphs of the Amended Complaint. The Amended Answer itself should also specify the grounds for asserted factual or legal defenses to the charges, as required by 40 CFR §22.15(b). Such motion to file an Amended Answer must be submitted no later than October 23, 1997.

A new date for the filing of prehearing exchanges will be set after the motion to file an Amended Answer is decided.

Andrew S. Pearlstein

Administrative Law Judge

Dated: September 22, 1997

Washington, D.C.