

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of

ESPANOLA MERCANTILE COMPANY, INC.
d/b/a ESPANOLA TRANSIT MIX

Docket No. VI-93-1604

Respondent

Judge Greene

ORDER SCHEDULING PROCEDURES FOR EXECUTION OF WRITTEN AGREEMENT

Following the Order of March 10, 1997, which granted Complainant's Motion for Further Consideration and Action by the Court, Respondent seeks to have Complainant's counsel sign the agreement in the form entered by that Order. Complainant's counsel reportedly insists that the documents be signed first by Respondent's counsel, "on the grounds that (1) Respondent might alter the executed originals; and (2) EPA has always required Respondent to first sign the settlement agreement."¹

In its request for expedited consideration of August 12, 1996, Complainant stated that, following a decision as to the appropriate form of agreement, the parties would "execute the selected document, and present it to the Court to resolve the case." Based upon this statement, it was understood that both Respondent and counsel for Complainant were in fact prepared, as represented, to execute the agreement in the form entered ² by the March 10, 1997, Order.

It is not to be assumed that Respondent's counsel, who is in effect an officer of the court, would surreptitiously alter the agreement. And, if a settlement/consent agreement signed by any respondent, before or after signature by Complainant's counsel, should be altered overtly, Complainant's counsel are free to recommend that the agreement not be signed (approved) by the EPA Regional Administrator or other authorized individual, on the basis that it is not the document upon which agreement was reached. ³ Consequently, while it appears that counsel for respondents and/or respondents themselves

have always, or almost always, placed their signatures on consent agreements before Complainant's counsel, there is no reason why, in view of the history and posture of this case, Complainant's counsel cannot sign before Respondent signs.

Accordingly, the procedure here for the placing of the parties' signatures on two originals of the agreement shall be as follows:

1. Complainant shall prepare two originals of the agreement, no later than April 15, 1997.
2. Complainant's counsel shall transmit one of the originals to this office, no later than April 18, 1997.
3. This office will transmit that original to counsel for Respondent.
4. A date and time will be established upon which Complainant's counsel shall sign the original that he retained. On the same date and at the same time, Respondent shall sign the original that was transmitted to its counsel by this office.
5. On a schedule to be announced, counsel for both parties shall then transmit the documents they signed to this office. This office will then forward the signed originals to the party that has not yet signed.
6. The parties shall each sign the second original (which already bears the signature of, or counsel/representative for, the other).
7. The parties shall then each transmit the signed documents to this office, on a schedule to be announced. This office will transmit the documents to Complainant for the carrying out of Complainant counsel's usual procedure in connection with consent agreements signed by respondents, to secure the signature of the appropriate EPA authority.

J.F. Greene
Administrative Law Judge

March 24, 1997
Washington, D. C.

CERTIFICATE OF SERVICE

I hereby certify that the original of this **ORDER** was filed with the Regional Hearing Clerk and copies were sent to the counsel for complainant and counsel for the respondent on March 24, 1997.

Shirley Smith
Legal Staff Assistant
for Judge J.F. Greene

RESPONDENT'S NAME: Espanola Transit Mix

DOCKET NUMBER: VI-93-1604

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¹ Respondent's Motion for Appointment of Escrow Agent and Request for Expedited Determination, received here by facsimile on March 21, 1997, at 1.

² Order Granting Motion for Further Consideration and Action by the Court and Order Disposing of the Question on its Merits, March 10, 1997, at 4, ¶ 1.

³ In this case, of course, the basis would be that the document was no longer in the form entered by the March 10, 1997, Order.