



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
SPRINGFIELD ELECTROPLATING) DOCKET NO. CAA-1-99-0049
COMPANY, INC.,)
)
)
RESPONDENT)

ORDER ON COMPLAINANT'S MOTION FOR
ISSUANCE OF A DISCOVERY ORDER

This proceeding arises under the authority of Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), and is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (the "Rules of Practice"), 40 C.F.R. §§ 22.1-32. The Complaint issued in the above-cited matter charges Respondent with violating Section 112 of the Clean Air Act and proposes a total civil administrative penalty in the amount of \$128,807.

Following the parties' submission of their prehearing exchange in this matter, an Order Scheduling Hearing was entered on January 30, 2001. Pursuant to that Order, the parties were directed to file a joint set of stipulated facts, exhibits, and testimony by April 13, 2001. The hearing was scheduled to begin on April 25, 2001, in Boston, Massachusetts.

On March 7, 2001, the EPA filed a Motion for Issuance of a Discovery Order. The EPA seeks an order that directs Respondent to submit documentation supporting its assertion that it is unable to pay the proposed penalty. Specifically, the EPA moves for an order requiring Respondent to produce copies of all Schedules K-1, which were attachments to its tax returns, for the years 1995 through 1999, and an Affiliation Schedule. Respondent has not responded to the motion.

Sections 22.19(a)-(f) of the Rules of Practice, 40 C.F.R. §§ 22.19(a)-(f), provide for the prehearing exchange of witness lists, documents, and information between the parties. Essentially, this

exchange consists of discovery for the parties. "[A]dditional discovery" is permitted under Section 22.19(e) of the Rules of Practice only after motion therefor is filed and the Administrative Law Judge determines that the requested further discovery meets the specific criteria set forth in that subsection. In pertinent part, subsection (e)(1) provides for other discovery only if it:

- (i) Will neither unreasonably delay the proceeding nor unreasonably burden the non-moving party;
- (ii) Seeks information that is most reasonably obtained from the non-moving party, and which the non-moving party has refused to provide voluntarily; and
- (iii) Seeks information that has significant probative value on a disputed issue of material fact relevant to liability or the relief sought.

In support of its motion, the EPA argues that this discovery request satisfies the stated requirements for discovery under the governing regulation at Section 22.19 (e)(1) of the Rules of Practice. The EPA asserts that the requested discovery will neither unreasonably delay the proceeding nor unreasonably burden Respondent. In this regard, the EPA maintains that if Respondent provides the requested information by April 5, 2001, the EPA will have adequate time to complete preparations for the April 25, 2001, hearing. The EPA asserts that Respondent will not be unreasonably delayed because it has the documents in question, which consist of only a few pages of information already compiled.

The EPA further maintains that the information sought is not otherwise obtainable. According to the EPA, Respondent has refused to provide the requested information despite its requests. The EPA submits that the requested information will be probative of the Respondent's ability to pay the proposed penalty.

The EPA persuasively argues that its motion for discovery is warranted under the governing Rules of Practice. Respondent has not responded to the EPA's motion for issuance of a discovery order. A party's failure to respond to a written motion within the

designated period waives any objection to the granting of the motion under Section 22.16(b) of the Rules of Practice, 40 C.F.R. § 22.16(b).^{1/}

Inasmuch as Respondent has not responded to the EPA's motion for discovery and there is no apparent reason to deny the motion, the EPA's Motion for the Issuance of a Discovery Order is **Granted**. Accordingly, Respondent is directed to file copies of its Schedule K-1 for the tax years 1995 through 1999 and an Affiliation Schedule no later than April 6, 2001.

Barbara A. Gunning
Administrative Law Judge

Dated: March 28, 2001
Washington, DC

^{1/} A party's response to any written motion must be filed within fifteen (15) days after service of such motion. 40 C.F.R. § 22.16(b). Where a document is served by first class mail or commercial delivery service, five (5) days shall be added to the time allowed for the filing of a responsive document. 40 C.F.R. § 22.7(c). A document is filed when it is received by the Regional Hearing Clerk. 40 C.F.R. § 22.5(a).

CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of this **ORDER ON COMPLAINANT'S MOTION FOR ISSUANCE OF A DISCOVERY ORDER**, dated March 28, 2001, **IN RE: SPRINGFIELD ELECTROPLATING COMPANY, INC., DKT. NO. CAA-1-99-0049**, were mailed to the Regional Hearing Clerk by regular mail and a copy by certified mail return receipt requested to Respondent and Complainant (see list of addressees).

Maria Whiting-Beale
Legal Staff Assistant

Dated: March 28, 2001

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