

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of:)
)
Mercury Vapor Processing)
Technologies, Inc. a/k/a River Shannon)
Recycling)
13605 S. Halsted)
Riverdale, IL 60827)
EPA ID No: ILD005234141, and)
)
Laurence Kelly)
)
Respondents)

Docket No. RCRA-05-2010-0015

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MOTION TO COMPEL DISCOVERY AND

REQUEST FOR THE PRODUCTION OF DOCUMENTS

Comes now Mercury Vapor Processing Technologies, Inc., a/k/a River Shannon Recycling, and Laurence Kelly, pursuant to the Consolidated Rules of Practice and respectfully requests The Production of Documents as grounds therefor states as follows:

On March 25, 2011, Mercury Vapor Processing/ River Shannon Recycling (MVP/RSR) submitted a request for the production of certain documents from the opposing party to disclose certain information delineated in the following paragraphs, on April 7, 2011 MVP/RSR received a denial of that request. Respondents believe that this request for production of documents will not unreasonably delay the proceeding nor unreasonably burden the opposing party. Respondents also believe that certain information obtained by these interviews may serve to strengthen their defense and most certainly will shed additional light on what the intent of the opposing party has been and continues to be relating to this now over four yearlong investigation.

On November 26, 2007, MVP/RSR immediately complied with a request from the opposing party and submitted a list of clients along with other supporting documentation in accordance with that request. This information was submitted in good faith in an effort to offer full cooperation and in keeping with the spirit of full disclosure aimed at expediting their ongoing investigation of the River Shannon Warehouse located in Riverdale Illinois. These documents were submitted over the cover of confidentiality which was subsequently denied.

MVP/RSR has recently been informed by several sources that the USEPA investigation of the activities conducted at the Riverdale warehouse has somehow moved into the interview phase of interrogating customers and non-customer of MVP/RSR using information initially supplied the USEPA in confidence. MVP/RSR does not resist these interviews being conducted, considering

that the request for confidentiality was denied but does object to some of the off handed statements that apparently have been made to customers and non-customers that goes directly to MVP/RSR and Laurence Kelly's integrity and regulatory protocols related to MVP/RSR's method of safely managing Universal Waste at the Riverdale Warehouse.

MVP/RSR has the right to know who conducted the interviews, who was interviewed, what questions were posed and more importantly what statements were made to these individuals that might lend them to believe that MVP/RSR was conducting illegal activities during the course of Handling, Transporting or managing their lamps in a safe, regulatory compliant and equitable manner.

MVP/RSR is requesting that the USEPA relinquish any and all information and documents they may have obtained including any field notes, questions posed and answers received by individuals and any ancillary comments that were made at the time by the persons interviewed by the USEPA and the USEPA interviewer conducting the interview regarding the operations of MVP/RSR and/or Laurence Kelly.

MVP/RSR has the right if necessary to cross examine the interviewees whether that be through depositions or affidavits so has to establish what they were told, when they were told and what that eventually resulted in as far as doing business with Laurence C. Kelly or any entity Kelly may have been or currently is involved with.

MVP/RSR and Laurence Kelly is very aware that perception in the highly regulated waste industry is in fact reality and for that reason alone drives the need to hear directly from the interviewees what exactly they were either told or directed to read that could possibly cast a negative light on MVP/RSR or Laurence Kelly, thus the reason for the request. Once this information is produced MVP/RSR intends to create a series of affidavits confirming their recollection of the events. This may or may not lead to as mentioned above deposing these individuals under oath or calling these individuals as witnesses at our hearing scheduled in July, 2011.

This newly discovered information and the preliminary feedback that has been received from certain individuals combined with the opposing party's motion to accelerate fines for RCRA violations without so much as a formal hearing demonstrates that the opposing party is in some way acting as judge and jury related to erroneous and false accusations. This request for information, if provided goes directly to that issue.

Prior to filing this Motion, the undersigned contacted the opposing party as to the relief requested herein and said opponent has denied the request for documents.

Signed: Laurence C. Kelly Date: 5-5-11

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CERTIFICATE OF SERVICE

I certify that the foregoing Objection to Complainant's Motion to Compel Discovery and Request for the production of documents, dated May 5, 2011, was sent this day in the following manner to the addressees listed below:

Original by Certified Mail to: Regional Hearing Clerk
U.S. EPA - Region 5
77 W. Jackson Blvd.
Mail Code: E-19J
Chicago, IL 60604

Copy by Certified Mail to: Thomas M. Williams
Associate Regional Counsel
US Environmental Protection Agency - Region 5
77 W. Jackson Blvd.
Mail Code: C-14J
Chicago, IL 60604

The Honorable Judge Gunning
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Mail Code 1900L
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Laurence Kelly
7144 N. Harlem Ave.
Suite 303
Chicago, IL 60631

Dear Mr. Williams,

As the lead attorney for the USEPA who is managing an ongoing investigation of the above captioned company for purported regulatory violations that occurred at the above captioned location, I am requesting that you reply to the following request.

It has recently been brought to our attention from various sources that it appears your investigation of the RSR warehouse in Riverdale, Illinois pertaining to illegally managing Subtle "C" waste has broadened. We have been informed that USEPA investigators are interviewing generators that were both customers of RSR and non-customers of RSR, using information we supplied you, with the intent of full disclosure aimed at expediting your investigation.

In the interest of full disclosure, we are asking that you supply us with the list of generators who were both clients and non-clients of RSR that you interviewed. We also would like you to supply any field notes including questions that were posed and subsequent answers that your investigator received from specific individuals you interviewed.

We are requesting this information in an effort to more fully understand where you are going with your over three yearlong (40 months) investigation and what you have concluded by gathering this information from these various sources both customers and non-customers of RSR.

It has been and will be our intent to fully cooperate with your investigation but we also feel that in the interest of properly defending our position regarding your charges, it is important to understand who you visited with, the subsequent questions posed and the resulting answers. The response we receive will potentially lead to calling additional witnesses who may add additional clarity at our hearing in July.

We look forward to your reply in a timely fashion.

Respectfully submitted,


Laurence C. Kelly, Vice President
River Shannon Recycling

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

APR 07 2011

C-14J

BY CERTIFIED MAIL

RETURN RECEIPT REQUESTED 7001 0320 0006 1564 9679

Mr. Laurence Kelly
Mercury Vapor Processing Technologies, Inc.
d/b/a River Shannon Recycling
7144 North Harlem Avenue
Suite 303
Chicago, Illinois 60631

Re: Mercury Vapor Processing Technologies, Inc., et al.
Docket No. RCRA-05-2010-0015

Dear Mr. Kelly:

This is in response to your letter dated March 25, 2011. We cannot disclose the information you have requested regarding any EPA investigations because, as a general matter, the scope of a pending law enforcement investigation is confidential and privileged from disclosure.

We have identified in our prehearing exchange and our reply prehearing exchange the witnesses that we may produce to give testimony at hearing, and the documents that we may introduce at hearing. Consistent with the "Consolidated Rules" at 40 C.F.R. Part 22 and the Presiding Officer's orders, we reserve the right to move to supplement our prehearing exchange to add additional witnesses and documents if that should become necessary at some point. If we do so, it would be done in a timely manner, with opportunity for you to respond.

Sincerely,

Thomas M. Williams
Associate Regional Counsel

cc : A Daugavietis (C-14J)
K. Barton (C-14J)
T. Brown (LCD-8J)

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