4/18/91

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of	)	
	)	
Envirite Corporation,	)	RCRA Docket No. I-90-1063
	)	
Respondent	)	

ORDER GRANTING LEAVE TO RESPOND

Background

The Town of Thomaston, Connecticut ("the Town") moved for leave to respond to the Motion for Partial Accelerated Decision filed by Complainant Region I, Environmental Protection Agency. If leave were to be granted, the Town requested an extension to April 30, 1991 for its response. Currently the Town has pending a Motion to Intervene in this proceeding, which has been brought by Complainant against Respondent Envirite Corporation.

Respondent advised this Office by telephone that it had no objection to the Town's Motion for Leave to Respond, but Complainant filed an Opposition to the Motion on both procedural and substantive grounds. Procedurally, Complainant argued that the Town, as a non-party, could respond to Complainant's Motion only as an amicus curiae. Complainant noted that a motion for leave to file a brief as an amicus curiae must, pursuant to Section 22.11(d) of the Consolidated Rules of Practice (40 CFR § 22.11(d)), "identify the interest of the applicant and ... state the reasons why the proposed amicus brief is desirable;" and, Complainant

asserted, the Town's Motion did neither.

On substantive grounds, Complainant argued that it would be injured by delay if the Town were allowed to April 30, 1991 for its response. Complainant's Motion for Partial Accelerated Decision was filed March 25, 1991; and Complainant stated that a response even from a party, absent the grant of an extension, would have been due within ten days.

Discussion

Each of Complainant's objections to the Town's Motion for Leave to Respond has merit. In the present situation of this case, however, these objections are outweighed by the advantages of allowing a response by the Town. These advantages are chiefly the interest of the Town in the issues raised by Complainant's Motion for Partial Accelerated Decision and the possibility that the record for decision on Complainant's Motion will be enhanced by the Town's response.

It is true that the Town's Motion for Leave to Respond lacked an identification of its interest and a statement of the desirability of its response. But the Town's pending Motion to Intervene, together with its reply to Complainant's Opposition thereto, has clearly spelled out both of these points. Complainant's Motion for Partial Accelerated Decision in fact focuses on just that part of its Complaint against Respondent regarding which the Town seeks leave to intervene. Accordingly the Town's description of its relationship to this part of the Complaint, argued in the Town's pending Motion to Intervene and the

Town's subsequently filed reply, sufficiently identifies its interest in and states the desirability of its response to Complainant's pending Motion for Partial Accelerated Decision.

Complainant objected also to the delay that will be occasioned by allowing the Town until April 30 for its response. In terms of the time frame through which this case has been progressing, however, this delay will be modest; and Complainant has cited no specific injury to it from such delay. Consequently the delay is offset by the advantages of permitting the Town's response.

Order

The Town's Motion for Leave to Respond to Complainant's Motion for Partial Accelerated Decision is granted; as requested in the Town's Motion, it may have to April 30, 1991 for such response.

Thomas W. Hoya
Administrative Law Judge

Dated: April 18, 1991

In the Matter of Envirite Corporation, Respondent
RCRA Docket No. I-90-1063

CERTIFICATE OF SERVICE

I certify that the foregoing **Order Granting Leave To Respond**, dated April 18, 1991, was sent in the following manner to the addressees listed below:

Original by Regular Mail to:

Ms. Marianna B. Dickinson
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 1
J.F. Kennedy Federal Building
Boston, MA 02203-2211

Copy by Regular Mail to:

Counsel for Complainant:

Carol R. Wasserman, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency, Region I
J.F. Kennedy Federal Building
Boston, MA 02203-2211

Counsel for Respondent:

R. Timothy McCrum, Esq.
Crowell & Moring
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Counsel for Town of Thomaston:

Pamela I. S. Missal, Esq.
Shumway & Merle
2425 Post Road, Suite 205
Southport, CT 06490

Maria Whiting
Maria Whiting
Secretary

Dated: April 18, 1991