9-23-92

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of	)	
	)	
Park Corporation, Estate of Virgil R. Williams, and Weyerhaeuser Company,	)	Docket No. TSCA-III-537
	)	
Respondents	)	

ORDER ON MOTION OF
RESPONDENT PARK CORPORATION
FOR DISCOVERY

On April 17, 1992, Respondent Park Corporation (Park) filed a motion to undertake discovery in this proceeding, seeking to depose the co-executors of the Estate of Virgil R. Williams ("Estate"), and to allow counsel and three representatives for Park Corporation to view the location and condition of the PCB transformers at issue here and the Doswell, Virginia property where the transformers were located.

Since that motion was filed, Park Corporation has filed a Supplemental Memorandum, dated June 12, 1992, stating that the electrical equipment containing PCBs was removed from the property and disposed of by the Respondent Estate on or about May 18, 1992. That memorandum addresses a key issue in this case of ownership and control of PCB electrical equipment, but does not refer to the motion for discovery. The request for the site view, however, appears to be moot as a result of the disposal of the PCB transformers, and will therefore be denied.

As to the request for depositions, the co-executors of the Estate, Micah V. Williams and Buddy Earl Williams, are expected to testify at the hearing in this matter as witnesses for the Estate. Park Corporation asserts in its motion that it is unaware of what testimony those witnesses have to present and that it must learn the facts on which they will testify in order to prepare for the hearing. The Estate's pre-hearing exchange documents, served on November 19, 1991, name the expected witnesses and include detailed statements on the Estate's position, but do not provide a summary of each witness's expected testimony.[1/] In support of the motion, Park Corporation submits that counsel for the Estate has declined to voluntarily produce the witnesses, that counsel for Park Corporation is unable to otherwise obtain the information sought, that in counsel's opinion the information is of significant probative value and necessary to Park Corporation's position and defense, and that the discovery will not in any way delay this proceeding.

No responses to this motion were filed.

D I S C U S S I O N

Although discovery provisions in the Consolidated Rules of Practice, 40 CFR Part 22, were intended to incorporate much of the discovery available under the Federal Rules of Civil Procedure, Consolidated Rule 22.19(f) is not hospitable to discovery by means

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[1/] No such summary of testimony was required by the pre-hearing exchange order.

of deposition.[2] Indeed, if opposed, motions to take depositions are seldom granted. Safety-Kleen (note 2 supra). Here, however, no opposition to Park's motion has been filed and under Rule 22.16(b), the parties are deemed to have waived any objection to granting the motion for taking depositions. Accordingly, the motion will be granted.[3]

O R D E R

The motion for a site view is denied.

Within 30 days of the date of this order, counsel for the parties will arrange a mutually agreeable time and place for taking the depositions of Micah V. Williams and Buddy Earl Williams, co-executors of the Estate of Virgil R. Williams. Such depositions will be taken within 45 days of the date of this order. On or

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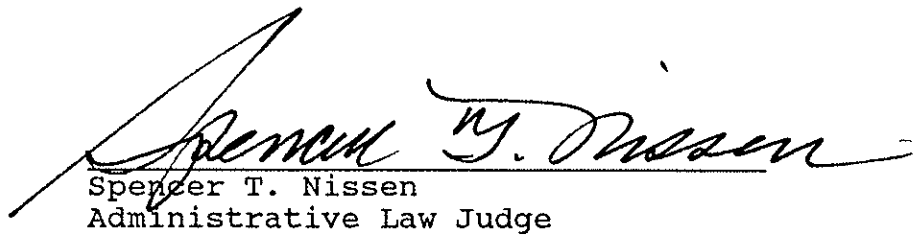
[2] See Safety-Kleen Corporation, Docket Nos. RCRA-1090-11-10-3008(a) and 11-11-3008(a) (Order on Discovery, December 6, 1991).

[3] Park's Supplemental Memorandum contains a persuasive argument that Williams, not Park, is responsible for the transformers and the depositions may encourage settlement.

before November 27, 1992, the parties will report on the status of the depositions and whether a settlement of this matter has been effected or is likely.[4/]

Dated this 23rd day of September 1992.



Spencer T. Nissen
Administrative Law Judge

[4/] Absent an affirmative answer as to settlement, or the prospects thereof, I will be in telephonic contact with counsel for the purpose of determining a location and mutually agreeable date for the hearing.

CERTIFICATE OF SERVICE

This is to certify that the original of this **ORDER ON MOTION OF RESPONDENT PARK CORPORATION FOR DISCOVERY**, dated September 23, 1992, in re: Park Corporation, Estate of Virgil R. Williams, and Weyerhaeuser Company, Dkt. No. TSCA-III-537, was mailed to the Regional Hearing Clerk, Reg. III, and a copy was mailed to Respondents and Complainant (see list of addressees).

Helen F. Handon
Helen F. Handon
Legal Staff Assistant

DATE: September 23, 1992

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