8-13-92

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	
	)	Docket Nos. TSCA V-C-62-91; TSCA VII-91-T-363A, 414, 424, 425, 447, 450 and 570A; TSCA-(ASB)-VIII-90-26 and 30 through 39; and TSCA-09-91-0024
HALL-KIMBRELL ENVIRONMENTAL SERVICES, INC.	)	
	)	
	)	

ORDER CANCELING SECOND PREHEARING CONFERENCE AND REQUIRING PROCEDURAL SUBMISSIONS

I. SECOND PREHEARING CONFERENCE

A second prehearing conference is currently scheduled for August 18, 1992, the purpose of which is to assist in the disposition of outstanding motions. Respondent has requested that this conference be vacated and rescheduled after September 1, 1992, because of recent surgery on one of its attorneys substantially involved with the motions. Complainants have opposed the motion to vacate the conference, taking the position that other competent counsel are available to the Respondent to present oral argument on the motions.

In light of the excessive number of pleadings submitted by the parties in connection with the motions, the arguments relating thereto have been more than thoroughly expounded. And, based on analyses of the motions that has already been done in preparation for the prehearing conference, the Presiding Judge no longer considers oral argument to be necessary and will dispose of the outstanding motions by written order. Accordingly, the second prehearing conference is canceled and will not be reset.

II. FURTHER PROCEDURES

A large number of the pleadings filed in connection with the outstanding motions are not authorized by the EPA Rules of Practice (Rules), 40 C.F.R. Part 22, nor was permission sought by the parties for their submission. Section 22.16(b) of the Rules provides only for a response to a motion, but does give the Presiding Officer authority to make any order concerning disposition of motions that is deemed appropriate. While in many instances unauthorized pleadings are informally accepted with regard to motions, the excessive zeal of the parties in producing reply pleading after reply pleading necessitates a more restrictive rule on pleadings be instituted herein. As a result, in the future, the only pleadings that will be considered relating to motions will be the response authorized by the Rules and a reply by the movant to such response,[1] since the moving party has the burden of persuasion on the motion. Any further pleadings will be summarily rejected as unauthorized unless a motion for leave to file a further pleading is submitted, which sets out both the reason why the further material to be presented was not included in the pleadings authorized by the Rules and this Order, and also why such material is critical to disposition of the motion.

Moreover, since the prehearing exchanges and the present outstanding motions indicates that these cases are almost at issue, the parties are directed to submit their current position

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[1] The movant's reply must be filed within 10 days of the service date of the opposing party's response.

on proposed hearing dates and proposed hearing locations. The parties should confer in this regard, particularly counsel for the four EPA Regions involved, to determine a priority of cases to be set for hearing. Any proposed date for an evidentiary hearing should not be prior to November 1, 1992, because of previous scheduling commitments. The reports setting out the suggested dates and locations of the hearings should be submitted in writing no later than August 28, 1992.

SO ORDERED.

Daniel M. Head
Administrative Law Judge

Dated: August 13, 1992
Washington, DC

IN THE MATTER OF HALL-KIMBRELL ENVIRONMENTAL SERVICES, INC.
Respondent, Docket Nos. TSCA-V-C-62-91; TSCA-VII-90-T-363A, VII-91-414, 424, 425, 447, 450 and 570A; TSCA-(ASB)-VIII-90-26, 90-30 through 39; and TSCA-09-91-0024.

CERTIFICATE OF SERVICE

I certify that the foregoing Order Canceling Second Prehearing Conference and Requiring Procedural Submissions, dated _____, was sent in the following manner to the addressees listed below:

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Aurora M. Jennings
Secretary, Office of
Administrative Law Judges

Dated: August 13, 1992
Washington, D.C.