

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of)
Earl Beeler,) [IV CWA] Docket No. 404-93-110
Respondent)

SUMMARY OF TELEPHONE CONFERENCE

STATEMENT OF ORDERS

This document summarizes for the record the July 16, 1996 telephone conference, and states for the record the orders issued during the conference. Representing Complainant was Kathleen L. Wilde, and representing Respondent was H. A. Nohsey.

In the conference, Complainant's Motion for Default was denied. The basis of the Motion--Respondent's failure to file its Prehearing Exchange when directed--was a legitimate ground for a default. Further, as Complainant stated in the conference, the failure had caused Complainant some hardship by delaying Complainant's prosecution of this action and by creating uncertainty as to the future course of the case. However, justice is best served when a case can be decided on the merits rather than on a procedural point, provided that so doing does not work an undue hardship on a party. The hardship experienced here by Complainant falls short of such undue hardship.

Moreover, Respondent filed a plausible explanation of its failure to file its Prehearing Exchange. According to Respondent, a proposed settlement with Complainant had been agreed upon, and

Respondent had expended efforts to implement it, but the settlement then collapsed because of the actions of a third party. In addition, Respondent listed several issues of fact that, it averred, exist in the case and that should be decided through a hearing.

Further in the conference, Respondent's Motion for an Extension of Time for Filing a Pre-Hearing Exchange was granted; the due date is now August 16, 1996. The basis for granting the Motion is essentially the same as the basis for letting Respondent avoid default--that Respondent has been expending its efforts toward a settlement that was almost concluded, and that Respondent has identified several factual issues that it believes merit a hearing.

Additionally in the conference, the parties discussed remaining possibilities for settlement, and agreed to pursue one option in particular. Complainant was directed to submit a status report by August 31, 1996. It was directed that conclusion of a settlement by August 16, 1996 would supersede Respondent's obligation to file a Prehearing Exchange by that date.

Dated: July 17, 1996

Thomas W. Hoya
Thomas W. Hoya
Administrative Law Judge

In the Matter of Earl Beeler, Respondent
Docket No. IV-CWA-404-93-110

Certificate of Service

I certify that the foregoing **Summary of Telephone Conference Statement of Orders**, dated July 17, 1996, was sent this day in the following manner to the addressees listed below.

Original by Regular Mail to:

Julia P. Mooney
Regional Hearing Clerk
U.S. EPA
345 Courtland Street, N.E.
Atlanta, GA 30365

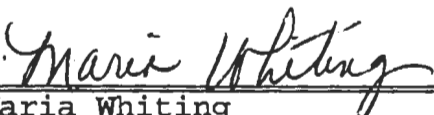
Copy by Regular Mail to:

Attorney for Complainant:

Kathleen L. Wilde, Esquire
Assistant Regional Counsel
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Atlanta, GA 30365

Attorney for Respondent:

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223 South Second Street
P.O. Box 279
Union City, TN 38261



Maria Whiting
Legal Staff Assistant

Dated: July 17, 1996