

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NATURAL RESOURCES DEFENSE COUNCIL,)
)
Plaintiff,)
) 01-2545 (GK)
v.)
)
DEPARTMENT OF ENERGY,)
)

Defendant.)

SECOND DECLARATION OF HOWARD CRYSTAL

I, Howard M. Crystal, declare as follows:

1. I am a partner at Meyer & Glitzenstein, a Washington, D.C. law firm which represents the Natural Resources Defense Council ("NRDC") in this matter. I am submitting this Declaration in support of NRDC's Expedited Motion for an Order to Show Cause Order and for a Status Hearing.
2. During the several weeks prior to March 25th, 2002, I had several telephone conversations with defendant's counsel in this case, Daniel Bensing. In those conversations I emphasized that plaintiff wanted to know precisely when and how the Department of Energy ("DOE") would provide plaintiff with the materials DOE had been ordered to produce on March 25th.
3. In one of those conversations defendant's counsel suggested that the documents might not be provided until March 26, 2002. In light of this comment, on March 15, 2002, I sent defendant's counsel a letter explaining that plaintiff expected to receive these documents on the 25th, as Ordered by the Court. See Letter of Mar. 15, 2002 (Attachment 1).

4. The week of March 18th, I, together with NRDC's in-house counsel, had several additional telephone conversations with defendant's counsel. We continued to emphasize our need to find out the precise details concerning the production on the 25th.

5. In those discussions, defendant's counsel stated both that the documents would be produced on the 25th, and that they would be delivered directly to Natural Resources Defense Council (NRDC). To avoid any confusion concerning the delivery, plaintiff provided defendant's counsel with the telephone numbers of several staff members at NRDC who would be expecting to receive the documents on the 25th.

6. On Friday afternoon, March 22, 2002, I again spoke with defendant's counsel about the Monday production. At that time defendant's counsel promised to find out further details concerning the production. However, when I called defendant's counsel the morning of the 25th, defendant's counsel stated that he would have more information in the afternoon.

7. By early afternoon defendant's counsel had not called back, or returned my call. At that time, I faxed defendant's counsel a letter stating that unless DOE would commit to providing the documents to NRDC by 5pm that day, plaintiff would seek an immediate Status Conference with the Court. See Letter of Mar. 25, 2002 (Attachment 2).

8. In response to that letter, defendant's counsel called me and initially indicated the documents would be delivered by 5pm. Shortly thereafter, defendant's counsel modified that commitment, and told me that the documents would be delivered to NRDC between 5pm and 7pm. In light of this commitment, plaintiff agreed not to seek an immediate hearing. Defendant's counsel also

indicated that an index of the documents had been prepared, and that the documents would be made available in an electronic form later in the week.

9. On the evening of March 25th, when I learned that NRDC had not received the documents, I left a message for defendant's counsel asking him to immediately call concerning this matter. I have still not heard from DOE or any of its counsel concerning the failure to deliver documents to NRDC.

Pursuant to 28 U.S.C. ' 1746, I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Howard Crystal

Date