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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of:)

JOSEPH OH)

and)

HOLLY INVESTMENT, LLC,)

Respondents.)

Docket No. RCRA-10-2011-0164

COMPLAINANT'S MOTION TO SUPPLEMENT PREHEARING EXCHANGE

Pursuant to the Order Rescheduling Hearing and Prehearing Deadlines issued on April 18, 2012, and 40 C.F.R. 22.19(f), Complainant hereby moves to supplement its initial prehearing exchange as follows, for the reasons set forth below:

Copies of additional documents Complainant intends to introduce into evidence are numbered and attached hereto as follows:

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U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900, ORC-158
Seattle, Washington 98101
206-553-1037

- CX 34: Northwest Tank & Environmental Services, Inc. Documents re: Invoice Number 2011-0350 and 2011-0568
- CX 35: INCON TS-1000 ATG Third Party Evaluation, May 14, 1998
- CX 36: Franklin Fueling Systems INCON T1 Series: Issued November 22, 1995
- CX 37: U.S. EPA Penalty Guidance for Violations of UST Regulations OSWER Directive 9610.12, November 14, 1990, HTML facsimile with Exhibit 4 and Attachments C and D to Appendix A
- CX 38: Revision to Adjusted Penalty Policy Matrices Package Issued on November 16, 2009 with Attachments A and B and Exhibits 4.A and 4.B
- CX 39: Description of Violations and Summary of Proposed Penalty

Complainant moves to add CX 34 which is a copy of compliance documentation that Joseph Oh's representative, presented to Complainant in February 2012. Complainant inadvertently left this out of its initial and rebuttal prehearing exchanges. Complainant intends to present testimony about this document at hearing.

Complainant moves to add CX 35 which provides a more complete version of the INCON TS 1000 third party evaluation in CX 27. Complainant intends to present testimony about this document at hearing and having a complete version will aid the Court and Respondents in understanding the testimony.

Complainant moves to add CX 36 which is a one-page summary of the requirements contained in the third party evaluation in CX 35. One of Complainant's witnesses, Charlotte Boulind-Yeung, will testify that she gave a version of this summary

to Respondents' employee during the 2009 EPA inspection. This exhibit should aid the Court and Respondents in understanding the witness's testimony.

Complainant moves to add CX 37 which is a copy of the electronic version of the UST Penalty Guidance. In its Initial Prehearing Exchange, Complainant provided the URL address to the UST Penalty Guidance, but has since learned that the version in the URL is not up-to-date. Complainant moves to add CX 38, an EPA memorandum issued by the Office of Enforcement and Compliance Assurance which updates various EPA penalty policies including the UST Penalty Guidance. Presenting both CX 37 and CX 38 as exhibits will aid the Court and Respondents in understanding the testimony of Katherine Griffith about the proposed penalty calculation which Complainant intends to present at hearing.

Complainant moves to add CX 39 which is a summary description of the violations and proposed penalty drafted by Katherine Griffith, Complainant's penalty witness. Recently, Complainant discovered minor errors in the Penalty Calculation Summary filed as Attachment 1 to the Administrative Complaint. Correcting these errors results in a proposed penalty calculation of \$48,078 instead of \$48,079 as proposed in the Complaint. Complainant provides this more detailed discussion of the violations alleged and the proposed penalty calculated to aid the Court and Respondents in understanding the testimony concerning penalty calculation that Ms. Griffith will present at hearing.

Because of time constraints, Complainant has not contacted Respondents to determine whether or not they oppose this motion to supplement prehearing exchange.

Respectfully submitted this 30th day of July, 2012.



Deborah E. Hilsman
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 10

CERTIFICATE OF SERVICE

In the Matter of Joseph Oh and Holly Investment, LLC, No. RCRA-10-2011-0164, I hereby certify that a copy of COMPLAINANT'S MOTION TO SUPPLEMENT PREHEARING EXCHANGE, with copies of exhibits, was sent to the following persons in the manner specified on the date below:

Original and one true and correct copy of each document, by hand delivery:

Candace H. Smith, Acting Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Suite 900
Office of Regional Counsel
1200 Sixth Avenue, Mail Stop ORC-158
Seattle, Washington 98101

By First Class Mail (Pouch) and Email (without Exhibits) (ojlrfiling@epa.gov):

The Honorable M. Lisa Buschmann, Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W., Mail Code 1900L
Washington, DC 20460

By First Class Mail and Email (without Exhibits) (josephoh405@gmail.com and oh.joseph@ymail.com):

Joseph Oh
4905 70th Avenue West
University Place, WA 98467

By Email without Exhibits (ipwcci@mail.lawguru.com):

Greg Tift

DATED: 7/30/2012



Signature

Print Name:

Title: