

Arizona Environmental Container Corp.
850 North Davidson St.
Eloy, Arizona 85231

FILED

2008 MAY -8 PM 1:23

U.S. EPA, REGION IX
REGIONAL HEARING CLERK

In re:)	
)	
United States Environmental Protection)	Docket No. EPCRA-09-2007-0028
Agency Region IX,)	
)	
Complainant.)	INITIAL
)	PREHEARING EXCHANGE

Pursuant to the Prehearing Order in this matter dated March 13, 2008, Respondent submits the following Initial Prehearing Exchange:

I. NAMES OF EXPECTED WITNESSES AND BRIEF NARRATIVE OF
EXPECTED TESTIMONY.

1. Todd Sullivan, President Co-owner, Arizona Environmental Container Corp.

Mr. Sullivan as a fact witness was the president of Arizona Environmental Container Corp. for the reporting year 2005 and he will testify that he certified the electronically filed Form R for the 2005 reporting year according to the emailed directions, Complainants Ex. 3, supplied by the U.S.EPA.

2. Ole A. Solberg P.E., Consulting Engineer, Solberg Engineering, Casa Grande, AZ.

Mr. Solberg as a fact witness will testify that he submitted the Form R to the U.S.EPA before the July 1st 2006 deadline. He will also testify that he supplied the U.S. EPA with the wrong email for Todd Sullivan on the original Form R submission.

3. Mike Braun, Owner Braun Consulting Group, Inc., Key Largo, FL.

Mr. Braun as an expert witness will testify to standard procedures for emailed directions when developing web based applications.

4. Tom John P.E., Consulting Engineer, Tom John P.E. Inc., Hudson, FL.

Tom John as a fact witness will testify that he has worked with AECC for at least ten years, and in his experience we have made every attempt to conform to all relevant environmental regulations.

4. Other Witnesses: Respondent respectfully reserves the right to supplement its witness list upon adequate notice to Complainant and the Presiding Administrative Law Judge.

II. DOCUMENTS AND EXHIBITS TO BE INTRODUCED AT HEARING.

- Respondent's Ex. 1: Letter from Michael P. Braun. Explains standard procedures for emailed instructions and sizes for hyperlinks.
- Respondent's Ex. 2: How to Submit Form R(s) and/or Form A(s) to EPA via the internet (EPA's Central Data Exchange (CDX)), from the Toxic Chemical Release Inventory Reporting Forms Instructions (Revised 2005 Version). There are no instructions on certifying a Form R in the entire document.
- Respondent's Ex. 3: Email from kirk@sanjuanpools.com to trime@saic.com dated April 29,2008. This email was supplied by the U.S. EPA to use for help in certifying Form R submittals and is no longer valid.

Respondent's Ex. 4: Email from Postmaster@mclmx.mail.saic.com to kirk@sanjuanpools.com dated April 29,2008. Shows the above email is no longer valid.

Respondent's Ex. 5: Email from kirk@sanjuanpools.com to epacdx@csc.com dated April 29,2008. This email was supplied by the U.S. EPA to use for help in certifying Form R submittals.

Respondent's Ex. 6: Email from csimons@csc.com to kirk@sanjuanpools.com dated April 29,2008. This is a response from the U.S.EPA with directions on how to certify a Form R submittal filed under the TRIMEWeb program.

Respondent's Ex. 7: Viking Pools Inc (TRI ID: 95987VKNGP101CR) graph showing our nearest competitor's filings. Shows our nearest competitor's filings. They neglected to file for 3 years and filed the exact same numbers for 2 years.

Respondent's Ex. 8: Chart labeled EPA TRI Explorer Report(TREND_CHART)|US EPA. TRIF ID 85231RZNNV850DA. Shows chemicals reported by Arizona Environmental Container Corp. between 2001 and 2006.

Respondent's Ex. 9: Financial statements for Arizona Environmental Container Corporation. Shows 7.05 million in revenue in 2007.

Respondent's Ex. 10: News release for Koch foods. Located on internet at www.epa.state.oh.us/pic/nr/2008/january/Kochfoods.html.

Gives a precedent for size of fines. Koch Foods Incorporated failed to file their TRI report for 2 years in a row, 2004 and 2005, and was fined \$10,000.

Respondent's Ex. 11: Financials for Koch Foods Incorporated. Located on the internet at biz.yahoo.com/ic/155/155140.html. Shows Koch Foods Incorporated had 1800.00 million dollars in revenue in 2006 and employed 8000 people. Based on revenue this company is 255 times larger than Arizona Environmental Container Corp.

Respondent's Ex. 12: All of Complainants exhibits shall be considered exhibits for Respondent.

Other Exhibits: Respondent respectfully reserves the right to supplement its exhibit list upon adequate notice to Complainant and the Presiding Administrative Law Judge, if the need arises. In addition, Respondent may request the Presiding Administrative Law Judge to take official notice of appropriate matters within 40 C.F.R. § 22.22 (f).

III. LOCATION AND ESTIMATION OF TIME FOR THE HEARING

Respondent respectfully requests that the hearing in this matter be held in Polk County, Florida. The co-owners, Michael Braun and Tom John are residents of Florida.

Respondent estimates it will need 1-2 days to defend our company from the U.S. EPA case.

Respectfully submitted,

05/06/08
Date


Kirk Sullivan
Co-owner
Arizona Environmental Container Corp.

The Regional Hearing Clerk, Region IX
Attn: Danielle Carr
U.S. EPA Region 9
75 Hawthorne St.
Mail Code ORC -1
San Francisco, CA 94105

and a copy was sent by Mail to:

The Honorable Susan L. Biro
Chief Administrative Law Judge
Office of Administrative Law Judges
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Mail Code 1900L
Washington, D.C. 20460

and to:

Carol Bussey, Esquire
Assistant Regional Counsel
U.S.E.P.A
75 Hawthorne Street, ORC-2
San Francisco, CA 94105

05/07/08
Date


Ken Butler