

3. Casey Misch

If called to testify this witness is expected to testify about the operation of pumper trucks for hydro-excavation as well as waste removal, the disposal of wastes from the pumper trucks into publicly owned treatment works (POTWs), the land spraying of hydro-excavation water and certain wastes on farmland, and soil tilling as a part of the Misch Excavation LLC business.

4. Travis Misch

If called to testify this witness is expected to testify about the operation of pumper trucks for hydro-excavation as well as waste removal, the disposal of wastes from the pumper trucks into publicly owned treatment works (POTWs), the land spraying of hydro-excavation water and certain wastes on farmland, and soil tilling as a part of the Misch Excavation LLC business.

5. David Misch

If called to testify this witness is expected to testify about the operation of pumper trucks and soil tilling equipment as a part of the Misch Excavation LLC business.

6. David Williams

If called to testify this witness is expected to testify about the operation of pumper trucks and soil tilling equipment as a part of the Misch Excavation LLC business.

7. Bridget Conlon

If called to testify this witness is expected to testify about her visits to the farm that Misch Excavation LLC formerly used for land application, and her failure to find the violations alleged by a neighbor couple that had complained to the McLean County Health Department.

(B) copies of all documents and other exhibits intended to be introduced into evidence, identified as Complainant's or Respondent's exhibits, as appropriate, and numbered with Arabic numerals (e&, "CX 1" or "RX 1"); and

As Respondent previously reported, certain of its documents that may otherwise have been relevant were destroyed in a fire in 2009. A limited number of documents that Respondent currently intends to introduce into evidence are enclosed. If Respondent can reconstruct other relevant documents from other sources, it will make a motion to add them to its Prehearing Exchange.

C) a statement explaining its views as to the appropriate place for the hearing and the estimated amount of time needed to present its-direct case. See Sections 22.11(d) and 22.19(d) of the Rules of Practice, 40 C.F.R. secs. 22.21(d) and 22.19(d). Also, state whether translation services are necessary in regard to the testimony of any witness(es), and, if so, state the language to be translated.

Respondent requests that any hearing be held in Chicago, Illinois. It anticipates that day would be sufficient to present its direct case. Translation services are not necessary.

Prehearing Exchange Required of Respondent Only

(3) In addition, Respondent shall submit the following as part of its Initial Prehearing Exchange:

(A) a narrative statement, and a copy of any documents in support, explaining in detail the factual and/or legal bases for Respondent's assertions in response to Paragraphs 28, 32-34, 37 -40, and 43 -46.

All of the Respondents assertions in response to Paragraphs 28, 32-34, 37 -40, and 43 -46 of the Complaint are essentially based upon one fact, the occurrence of a fire in 2009 that resulted in the destruction of most of Respondent's files, either by fire, smoke, or water damage from firemen striking the fire out. It therefore has very little documentation to submit as exhibits. Respondent is submitting copies of newspaper articles that reported on the fire and the fact that the building needed to be completely gutted; it plans to provide witness testimony at the hearing to give further details.

(B).if Respondent intends to take the position that it is unable to pay the proposed penalty or that ^payment will have an adverse effect on its ability to continue to do business, a copy of any and all documents it intends to rely upon in support of such position; and

Respondent does take the position it is unable to pay the proposed \$157,500 penalty. It has recovered copies of certain tax returns from its tax preparation service that it has enclosed as proposed exhibits; it is also submitting a listing of extensive outstanding loans that it is carrying in order to keep its business operating. Respondent hereby requests that this financial information be held by US EPA as confidential, to be used for purposes of this proceeding only.

(C) if Respondent intends to take the position that the proposed penalty should be reduced or eliminated on any other grounds, a copy of any and all documents it intends to rely upon in support of such position.

Respondent does take the position that the proposed penalty should be substantially reduced. It has successfully operated a small, family run Roto-Rooter franchise, that included pump-outs of residential septage for disposal into various POTWs in the area. It sought and obtained approvals and licenses from the local McLean County Health Department to also land applied of a small percentage of this pumped out residential septage on a few acres of a farm owned by relatives of Respondent's owners [see Respondent's Exhibits, enclosed]. It was also using this farm to discharge non-septage waters from Respondent's hydro-excavating services and storm tile cleaning work for local government bodies. [see CX-4]. A neighbor couple apparently assumed all the water was septage and repeatedly complained to the Health Department. [see CX-12-89]. In November 2008, US EPA Ordered Respondent to produce extensive information and records, Respondent was unable to provide the information that EPA demanded, a situation exacerbated when a 2009 fire destroyed what records Respondent had. Respondent. Respondent's witnesses will testify that it has ceased this part of its business, and now realizes that the extensive federal record keeping requirements for this land application activity was beyond it as a small family business. Respondent believes

that the proposed \$157,500 is extremely high for the violation charged, and believes EPA's own guidance document supports this conclusion. [see CX- 14].

Misch Excavating LLC

by: Thomas W. Daggett
Its Attorney

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Certification of Service: I hereby certify that the original and one copy of the foregoing Respondent's Prehearing Exchange was filed with the Regional Hearing Clerk on Friday 27, 2011, and served upon Chief Administrative Law Judge Biro by sending it by overnight Federal Express on Thursday May 26, 2011; it was also served on counsel of record Associate Regional Counsel Maria Gonzalez by depositing copy in the U.S. Mail, 1st class postage pre-paid, and addressed to such counsel.

Thomas W. Daggett

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