



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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REPLY TO THE ATTENTION OF:

JUN 08 2011

C-14J

VIA U.S. MAIL

Hon. Barbara Gunning
Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Avenue N.W.
Washington, D.C. 20460

Re: Mercury Vapor Processing Technologies, Inc. a/k/a River Shannon Recycling
and Laurence Kelly
Docket No. RCRA-05-2010-015

Dear Judge Gunning:

Enclosed please find a copy of *Complainant's Motion for Leave to File First Supplemental Prehearing Exchange Instante* and a copy of *Complainant's First Supplemental Prehearing Exchange*, which were filed today in the above-referenced matter.

Sincerely,

Kasey Barton
Assistant Regional Counsel

Enclosure

cc: Mr. Laurence Kelly (w/ enclosure)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

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IN THE MATTER OF:)
)
Mercury Vapor Processing) DOCKET NO. RCRA-05-2010-0015
Technologies Inc., a/k/a/ River Shannon)
Recycling)
13605 S. Halsted)
Riverdale, Illinois 60827)
U.S. EPA ID No.: ILD005234141 and)
)
Laurence Kelly)
)
Respondents.)
_____)

**COMPLAINANT’S MOTION FOR LEAVE TO FILE FIRST SUPPLEMENTAL
PREHEARING EXCHANGE INSTANTER**

Complainant, the Director of the Land and Chemicals Division, United States Environmental Protection Agency, Region 5 (Complainant or EPA), pursuant to 40 C.F.R. §§ 22.19(a) and (f) and 22.16 of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules or Rules), and consistent with the Presiding Officer’s November 19, 2010 Order Scheduling Hearing¹ and telephone conference on May 19, 2011, hereby moves for leave to file a supplemental prehearing exchange instanter. For the reasons set forth below, Complainant respectfully requests that the Presiding Officer grant this Motion, and allow it to formally file the attached supplemental prehearing exchange.

I. Background and Applicable Rules

Pursuant to the Prehearing Order issued by the Presiding Officer on June 15, 2010, the parties have filed their initial prehearing exchanges and Complainant filed a rebuttal to

¹ On February 23, 2011, the Presiding Officer issued an Order Rescheduling Hearing in this matter, which set forth a new date for hearing and deadline for the parties to file a joint set of stipulated facts, exhibits, and testimony.

Respondents' prehearing exchange.²

The Consolidated Rules provide that “[t]he Presiding Officer shall admit all evidence which is not irrelevant, immaterial, unduly repetitious, unreliable, or of little probative value . . .” 40 C.F.R. § 22.22. Section 22.19 of the Consolidated Rules require parties to submit prehearing exchanges, and require that a party who has submitted its prehearing exchange “shall promptly supplement . . . the exchange when the party learns that the information . . . is incomplete . . . and the additional information has not otherwise been disclosed to the other party pursuant to this section [22.19].” 40 C.F.R. § 22.19(f).

Additionally, the Presiding Officer's November 19, 2010 Order Scheduling Hearing states that “the parties retain the right to supplement their prehearing exchanges no later than fifteen (15) days before the hearing date.”³ See, 40 C.F.R. § 22.22(a)(1). During a telephone conference on May 19, 2011, the Presiding Officer indicated that all motions in this matter must be filed no later than July 8, 2011, in order for the non-moving party to file a response and to permit the issuance of an order on the motion.

II. Complainant's Supplemental Prehearing Exchange

Complainant respectfully requests that the Presiding Officer grant its motion for leave to file instant a supplemental prehearing exchange, which includes the following:

1. Identify Mark D. Ewen, Principal and Chief Operations Officer at Industrial Economics, Inc., as a potential witness.
2. Identify William K. Graham, P.E., as a potential witness.
3. Identify Leonard Worth, President of Fluorecycle, Inc., as a potential witness.

² Appearing *pro se*, Respondent MVPT through its representative Laurence Kelly, filed a prehearing exchange on October 27, 2010. Laurence Kelly was added as a party to this action by the Presiding Officer's January 19, 2011 Order Granting Complainant's Motion For Leave to Amend Complaint and Compliance Order.

³ The November 19, 2010 Order also states that “the parties are advised that every motion filed this proceeding must be served in sufficient time to permit the filing of a response by the non-moving party and to permit the issuance of an order on the motion before the deadlines set by this Order.”

4. Amended Complaint and Compliance Order, filed on January 28, 2011. Exhibit (Ex) 30.
5. Amended Answer, filed on January 28, 2011.⁴ Ex 31.
6. Enforcement action notice letter to the Illinois Environmental Protection Agency (IEPA), providing notice of EPA's intent to issue an Administrative Compliance Order under Section 3008(a)(1) of RCRA to Mercury Vapor Processing Technologies, Inc. d/b/a River Shannon Recycling, dated March 19, 2009. Ex 32.
7. 2005 Revised Penalty Matrices for RCRA Civil Penalty Policy. Ex 33.
8. EPA General Enforcement Policy #GM-21 February 16, 1984. Ex 34.
9. Transcript of the hearing before the Illinois Pollution Control Board (IPCB), In the Matter of Amendment of 35 Ill. Adm. Code 733 (Standards for Universal Waste Management), R-98-12 (Rulemaking) Volume II, including testimony from Laurence Kelly, on December 15, 1997. Ex 35.
10. Cook County of Illinois Inspection Report for River Shannon Recycling, 13605 South Halsted Street, Riverdale, Illinois, dated July 30, 1997. Ex 36.
11. Security Exchange Commission Registration Statement Under The Securities Act Of 1933, for VX Technologies, Inc., parent of Spent Lamp Recycling Technology, Inc., dated February 11, 2002. Ex 37.
12. Information Request under RCRA Section 7003 to S.L.R. Technologies, Inc. d/b/a Shannon Lamp Recycling dated July 6, 2010. Ex 38.
13. Response to July 6, 2010 Information Request from S.L.R. Technologies, Inc. d/b/a Shannon Lamp Recycling dated August 4, 2010. Ex 39.
14. Information Request under RCRA Section 7003 to S.L.R. Technologies, Inc. d/b/a Shannon Lamp Recycling dated November 11, 2010. Ex 40.
15. Response to November 11, 2010 Information Request from S.L.R. Technologies, Inc. d/b/a Shannon Lamp Recycling dated December 24, 2010. Ex 41.
16. U.S. EPA Inspection Report on the current conditions of the Riverdale Warehouse located at 13605 S. Halsted Street, Riverdale, Illinois, dated May 26, 2011, and accompanying photograph log. Ex 42.
17. Letter from U.S. EPA to Laurence Kelly requesting additional financial information,

⁴ Amended Answer was deemed filed as of the date of the filing of the Amended Complaint and Compliance Order pursuant to the Presiding Officer's January 19, 2011 Order Granting Complainant's Motion for Leave to Amend Complaint and Compliance Order.

dated May 27, 2011. Ex 43.

18. "Introduction To Universal Waste," U.S. EPA Office of Solid Waste and Emergency Response publication EPA530-K-05-019, September 2005. Ex 44.
19. "Universal Waste Rule – Implementation" memorandum from Steve Herman, Assistant Administrator, April 10, 1996. Ex 45.
20. Letter from U.S. EPA to Laurence Kelly transmitting RCRA sampling analytical results, dated February 15, 2008. Ex 46.
21. William K. Graham's consulting file for Laurence C. Kelly and Spent Lamp Recycling Technologies, Inc. Ex 47.
22. ATSDR/Division of Toxicology and Environmental Medicine (DTEM): ToxFAQs: CABS/Chemical Agent Briefing Sheet on Mercury, dated January 2006. Ex 48.
23. U.S. Department of Health and Human Services, Public Health Service, Agency for Toxic Substances and Disease Registry, *A Toxicological Profile for Mercury*, dated March 1999. Ex 49.

And that

24. Complainant reserves the right to reference, use, and rely on Respondents' prehearing exchange exhibits in all pretrial motions and at any hearing in this matter.

III. Discussion

Complainant's motion for leave to file instant a supplemental prehearing exchange should be granted because Complainant is submitting this motion within the timeframes allowed by the Consolidated Rules, the Presiding Officer's Order and the May 19, 2011 telephone conference. Additionally, the Consolidated Rules require a party to supplement its prehearing exchange upon learning that it is incomplete, inaccurate, or outdated. 40 C.F.R. § 22.20(f).

Since the filing of the initial Complaint and Compliance Order and the Presiding Officer's Order granting Complainant's Motion for Leave to Amend Complaint and Compliance Order, EPA has continued to investigate the facts of this matter. EPA has acquired new information during the course of its investigation that bears on the allegations in the Complaint

and Compliance Order and Respondents' liability. In addition to the new information, all of the above-listed information is appropriate for consideration by the Presiding Officer in ruling on Complainant's allegations against Respondents and determining an appropriate penalty in this matter.

Additionally, there is no prejudice to Respondents by allowing Complainant to include the above-listed documents in its supplemental prehearing exchange. The hearing in this matter is nearly two months away (July 25 through 29, 2011), which gives Respondents ample time in which to review the information.⁵ All of the listed documents fall into different categories of public records, are part of the official record in this matter, have been produced by Respondent, or were prepared by a former consultant to now-defunct company that one of the Respondents was once the president of, and thus are documents that Respondent(s) are, or should be, already specifically aware of.

⁵ The hearing date in this matter was set pursuant to the Presiding Officer's February 23, 2011 Order Rescheduling Hearing.

IV. Conclusion

EPA has acquired new information that directly relates to Respondents' liability and an appropriate penalty in this matter, and has submitted this Motion within the appropriate timeframe. Additionally, the prehearing exchange is not complete without the listed witnesses and documents. The listed documents are matters of public record or have been produced by Respondents. For the reasons set forth above, Complainant respectfully requests that the Presiding Officer grant its Motion for Leave to file its First Supplemental Prehearing Exchange *instanter*.

Respectfully submitted,

DATED: 6/8/2011



Jeffrey A. Cahn
Associate Regional Counsel
Kasey Barton
Assistant Regional Counsel

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

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13605 S. Halsted)
Riverdale, Illinois 60827)
U.S. EPA ID No.: ILD005234141, and)
)
Laurence Kelly)
)
Respondents.)
_____)

CERTIFICATE OF FILING AND SERVICE

I hereby certify that today I filed personally with the Region 5 Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, 77 West Jackson Boulevard (E-19J), Chicago, Illinois, 60604-3590, the original and one copy of the document entitled **Complainant's Motion for Leave to File Supplemental Prehearing Exchange Instanter**, and that I caused to be served, by first class mail, a copy of the original document on the Presiding Officer and the Respondent:

Honorable Barbara Gunning
Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
Facsimile no. (202) 565 0044

Mr. Larry Kelly
Mercury Vapor Processing Technologies, Inc.
7144 North Harlem Avenue
Suite 303
Chicago, Illinois 60631
Facsimile no. (847) 292 1406



Date: June 8, 2011

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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COMPLAINANT'S FIRST SUPPLEMENTAL PREHEARING EXCHANGE

Pursuant to pursuant to 40 C.F.R. §§ 22.19(a) and (f) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, Complainant hereby submits the following information in its Supplemental Prehearing Exchange:

A. Complainant may call the following additional witnesses to testify at hearing:

1. Mark D. Ewen
Principal and Chief Operations Officer
Industrial Economics, Inc.
2067 Massachusetts Avenue
Cambridge, MA 02140

If called, Mr. Ewen will offer expert testimony on the Respondents' ability to pay a civil penalty in this matter.¹ Mr. Ewen's C.V. accompanies this First Supplemental Prehearing Exchange.

2. William K. Graham, P.E.

If called, Mr. Graham will offer testimony regarding his consulting work for Laurence Kelly, and his company Spent Lamp Recycling Technoligies, regarding RCRA compliance and compliance with Illinois' rules on Universal Waste:

3. Leonard Worth, President

¹ In Complainant's initial prehearing exchange filed on September 20, 2010, it reserved the right to call an expert witness to testify to the issue of Respondents' ability to pay civil penalty. Respondents' have since raised the issue of ability to pay the civil penalty in this matter.

Fluorecycle, Inc.
27780 West Concrete Drive
Ingleside, Illinois 60041

Fluorecycle advertises itself as the only IEPA RCRA-permitted destination facility recycler which processes spent mercury-containing lamps. If called, Mr. Worth as the president of Fluorecycle will testify regarding the cost of complying with RCRA. Mr. Worth's testimony relates to the economic benefit of the proposed penalty in this matter.

4. James K. Morris
Illinois Environmental Protection Agency

Mr. Morris has twenty-five years of experience working on closure plans at IEPA. If called, Mr. Morris will offer testimony regarding closure plans, including but not limited to the following: an estimate of the cost of closure at facility similar to the one Respondents' were operating out of, the importance of closure plans and conducting closure generally, and some of the specific requirements of a closure plan for an operation similar to the one that Respondents' were conducting at the Riverdale warehouse.

B. Complainant may also offer the following additional exhibits at hearing:

5. Amended Complaint and Compliance Order, filed on January 28, 2011. Exhibit (Ex) 30.
6. Amended Answer, filed on January 28, 2011.² Ex 31.
7. Enforcement action notice letter to the Illinois Environmental Protection Agency (IEPA), providing notice of EPA's intent to issue an Administrative Compliance Order under Section 3008(a)(1) of RCRA to Mercury Vapor Processing Technologies, Inc. d/b/a River Shannon Recycling, dated March 19, 2009. Ex 32.
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C. General

1. Complainant reserves the right to reference, use, and rely on Respondents' prehearing exchange exhibits in all pretrial motions and at any hearing in this matter.

Respectfully submitted,



Kasey Barton
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection
Agency
Mail Code C-14J
77 W. Jackson Blvd.
Chicago, Illinois 60604

Phone: 312.886.7163

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on June 8, 2011, I filed personally with the Region 5 Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, 77 West Jackson Boulevard (E-19J), Chicago, Illinois, 60604-3590, the original and one copy of the document entitled **Complainant's First Supplemental Prehearing Exchange**, and that I caused to be served, by first class mail, a copy of the original document on the Presiding Officer and the Respondent:

Honorable Barbara Gunning
Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
Facsimile no. (202) 565 0044

and

Mr. Larry Kelly
Mercury Vapor Processing Technologies, Inc.
7144 North Harlem Avenue
Suite 303
Chicago, Illinois 60631
Facsimile no. (847) 292 1406



JEFFREY A. CAHN
Associate Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
Mail Code C-14J
77 W. Jackson Blvd.
Chicago, Illinois 60604

Phone: 312.886.6670
Fax: 312.692.2971