



UNITED STATES  
 ENVIRONMENTAL PROTECTION AGENCY  
 REGION  
 Philadelphia, Pennsylvania



IN THE MATTER OF: )  
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 Eatontown, New Jersey )  
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 RESPONDENTS ) DOCKET NO. III-90-025-DS  
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 )

ORDER ON MOTION FOR SANCTIONS

This is an administrative enforcement proceeding under Section 1423(c) of the Safe Drinking Water Act (SDWA), 42 U.S.C. 300h-2(c), being conducted in accordance with the United States Environmental Protection Agency (EPA) "GUIDANCE ON UIC ADMINISTRATIVE ORDER PROCEDURES," issued November 26, 1986 (GUIDANCE). This ORDER addresses Respondent New London Oil Company, Inc.'s Motion for Sanctions.

This motion, dated May 29, 1993, was filed on May 31, 1993, following the filing of Complainant's prehearing exchange on May 20, 1993, and Complainant's supplemental prehearing exchange on May 27, 1993. Respondent supplemented the motion on June 6, 1993. Complainant replied to the motion and the supplement on June 29, 1993.

The motion alleges that Complainant violated the Presiding Officer's Prehearing order of April 27, 1993, which described the content of the prehearing exchange as follows: "The prehearing exchange shall consist of copies of all documents to be offered into evidence at the hearing, a list of the witnesses to be called at the hearing with a summary of each witness' expected testimony."

Taking the motion and the supplement together, it appears to the Presiding Officer that Respondent alleges that two

documents, described but not provided by Complainant in its prehearing exchange, should have been provided. Further, the testimony of one expected witness, described but not summarized by Complainant in its prehearing exchange, should have been summarized. Next, the Complainant listed, but did not provide, the administrative record of the action. Finally, the Complainant reserved the right to supplement the prehearing exchange.

New London Oil Company, Inc.

The two specific documents not provided were not in Complainant's possession at the time of the prehearing exchange, according to Complainant's Reply. Complainant's prehearing exchange described a letter from Respondent's contractor to Respondent and a letter from Respondent's counsel to Respondent's contractor. Complainant had only recently learned of their existence and was attempting to obtain copies from Respondent and from Respondent's contractor. They were clearly more easily available to Respondent than to Complainant. The witness whose testimony had not been summarized, Respondent's President-and representative in this action, was also clearly available to the Respondent. So was the administrative record, which must be admitted into evidence at the hearing under 144.109(e) of the GUIDANCE. As to the reservation of right to supplement the prehearing exchange, that right is also a duty as recognized by the Complainant in its Reply.

The purpose of the prehearing exchange is to facilitate the administration of justice at the hearing by avoiding the possibility of surprise documentary evidence or testimony. None of the apparent "violations" of the prehearing order asserted by the Respondent have any potential for leading to surprises at hearing or any other form of prejudice. It is clear to the Presiding Officer, if not to the Respondent, that Complainant has met the spirit, if not the letter, of the prehearing exchange requirements in this action. If subsequent developments show either party has withheld documents, failed to identify witnesses, or subverted the procedures in this case in any way, exclusion at hearing or more severe sanctions may be imposed. At this point in the proceeding, however, no sanctions are appropriate. Accordingly,

Respondent's Motion for Sanctions is DENIED.  
Date: JAN 24 1994

/s \_\_\_\_\_  
BENJAMIN KALKSTEIN  
Presiding Officer

*Last Updated: October 18, 1999*