



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of:)
)
Adamas Construction and) Docket No. CWA-07-2019-0262
Development Services, PLLC, and)
Nathan Pierce,)
)
Respondents.)

**ORDER GRANTING COMPLAINANT’S MOTION FOR VIDEO TESTIMONY
AND SHORTENING TIME FOR RESPONSES AND REPLIES
TO COMPLAINANT’S MOTIONS FOR WRITTEN DEPOSITION
AND PRODUCTION OF DOCUMENTS**

This proceeding was initiated on September 6, 2019, when the Director of the Enforcement and Compliance Assurance Division at the United States Environmental Protection Agency, Region 7 (“Complainant”), filed a Complaint and Notice of Opportunity for Hearing against Adamas Construction and Development Services, PLLC, and Nathan Pierce (“Respondent Adamas” and “Respondent Pierce,” respectively, or “Respondents,” collectively), pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act, 33 U.S.C. § 1319(g). It is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Rules of Practice”), set forth at 40 C.F.R. Part 22.

By Notice of Hearing Order dated May 23, 2022, I scheduled the hearing in this matter to commence in Billings, Montana, on August 22, 2022. I also set deadlines for a number of prehearing procedures, including June 24, 2022, as the date by which the parties were required to file any non-dispositive motions, such as motions for additional discovery, motions for subpoenas, and motions in limine.

Thereafter, Complainant timely filed three non-dispositive motions:

1. Complainant’s Motion for Video Testimony for James Courtney (“Motion for Video Testimony”), filed on June 23, 2022. In its Motion for Video Testimony, Complainant requests that James Courtney be allowed to testify at the hearing via videoconference.¹ As grounds for its

¹ Mr. Courtney was identified as a potential fact witness by both Complainant and Respondent Pierce in their prehearing exchange of information. Complainant’s Initial

request, Complainant represents that Mr. Courtney no longer works for the Indian Health Services in Billings, Montana, but rather, works for the National Park Service in New York, New York, and is unable to take sufficient leave from his position so as to travel to the hearing. Complainant further represents that Respondents informed Complainant that they do not object to the request.

2. Complainant's Motion for Additional Discovery ("Motion for Written Deposition"), also filed on June 23, 2022. In its Motion for Written Deposition, Complainant requests leave to conduct a deposition of Sheri Bement by written questions.² In support of its request, Complainant argues that it has met all of the requirements for a motion for additional discovery, set forth at 40 C.F.R. § 22.19(e)(1), and a motion for depositions by oral examination, set forth at 40 C.F.R. § 22.19(e)(3). For example, Complainant argues that it seeks information that has significant probative value on a disputed issue of material fact inasmuch as it seeks information from Ms. Bement as to her role and the role of Respondents at the Lame Deer Publicly Owned Treatment Works, which informs who qualifies as an "operator" of that facility and who, in turn, is subject to one of the provisions of the Clean Water Act that Respondents are charged with violating, all points that Respondents contest. Characterizing Ms. Bement's role in the events giving rise to this matter as "unique," Complainant urges that the information sought from Ms. Bement "cannot reasonably [be] obtained by alternative methods of discovery because it involves knowledge of events and communications of a witness who was intimately involved in the facts of the case." Motion for Written Deposition at 5. Complainant also represents that Ms. Bement "is unavailable due to physical illness that impedes her ability to travel and be present for a hearing," such that "there is substantial reason to believe that the relevant and probative evidence [that she can offer] may otherwise not be preserved for presentation by a witness at the hearing." *Id.* at 6. Finally, Complainant asserts that it informed Respondent Pierce of its intention to request this discovery, and in response, Respondent Pierce advised that he intends to file a motion to subpoena Ms. Bement.³

Prehearing Exchange ("Complainant's Initial PHE") at 4; Respondent Pierce's Initial Prehearing Exchange ("Respondent's PHE") at 5.

² In their prehearing exchange of information, both Complainant and Respondent Pierce stated their intention to call a representative of the Northern Cheyenne Utilities Commission ("NCUC") to testify as a fact witness at the hearing. Complainant's Initial PHE at 4; Respondent's PHE at 5. In discussing this potential witness, Complainant referenced Sheri Bement as follows: "The former manager, Sheri Bement, no longer works at the NCUC, and therefore, a new witness will need to be identified." Complainant's Initial PHE at 4. Respondent Pierce, meanwhile, stated as follows: "The former manager, Sheri Bement, no longer works at the NCUC and, therefore, will need to be compelled to testify as a fact witness as she has significant details about this case and the facts surrounding it." Respondent's PHE at 4.

³ Respondents are hereby reminded that the deadline for parties to request subpoenas passed on June 24, 2022. Therefore, any request for subpoenas must now be accompanied by a motion for leave to file out of time.

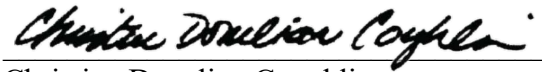
3. Complainant's Motion to Compel Discovery, or in the Alternative, Motion in Limine ("Motion for Production of Documents"), filed on June 24, 2022. In its Motion for Production of Documents, Complainant seeks an order requiring Respondents to produce certain documentation related to the issue of Respondents' ability to pay the proposed penalty. In support of this request, Complainant represents that during a teleconference on June 1, 2022, Respondent Pierce expressed an interest in demonstrating an inability to pay the proposed penalty, prompting Complainant to expect the issue to be raised at the hearing, but that Respondent Pierce has yet to provide any supporting documentation despite multiple requests by Complainant. Complainant then argues that it has met all of the requirements for a motion for additional discovery, here in the form of the production of documents. For example, Complainant argues that the discovery sought would not unreasonably delay this proceeding provided that the order compelling discovery is issued by July 8, 2022, and Respondents provide the responsive information by August 8, 2022, which would afford Complainant sufficient time to review and respond to the information prior to the hearing. Complainant then goes on to request that if Respondents fail to produce the financial information as directed, then I grant its alternative motion in limine to preclude Respondents from arguing at the hearing that they lack the ability to pay the proposed penalty and find that Respondents have waived any such claims. Motion for Production of Documents at 7-8 (citing 40 C.F.R. § 22.19(g) and multiple cases). Finally, Complainant represents that Respondent Pierce "expressed neither opposition nor support of this motion" when informed of Complainant's intention to file it. *Id.* at 1.

Pursuant to the Rules of Practice, I am responsible for regulating the course of this proceeding consistent with 40 C.F.R. § 22.4. With respect to Complainant's Motion for Video Testimony, I find that Complainant has shown good cause for its request that Mr. Courtney be allowed to testify via videoconference, and Respondents do not oppose it. Accordingly, the Motion for Video Testimony is hereby **GRANTED**.

As for Complainant's Motions for Written Deposition and Production of Documents, Respondents' position on the relief sought is unclear. Therefore, I shall afford Respondents an opportunity to respond in writing as provided for in the Rules of Practice. *See* 40 C.F.R. § 22.16(a). The Rules of Practice provide that any response to a written motion must be filed within 15 days after service of such motion and that any reply to a response must be filed within 10 days after service of such response. 40 C.F.R. § 22.16(b). Here, the attached Certificates of Service reflect that Complainant completed service of its Motion for Written Deposition on June 23, 2022, and service of its Motion for Production of Documents on June 24, 2022. *See* 40 C.F.R. § 22.7(c). Therefore, any response and reply to the Motion for Written Deposition would be due on July 8 and July 18, 2022, respectively, and any response and reply to the Motion for Production of Documents would be due on July 11 and July 21, 2022, respectively. *See* 40 C.F.R. § 22.7(a). Given the proximity of the hearing and the amount of time required for the requested discovery to be completed if Complainant's requests are granted, I am hereby shortening the time for the parties to file responses and replies pursuant to my authority to "set a shorter . . . time for response or reply, or make other orders concerning the disposition of motions." 40 C.F.R. § 22.16(b). Accordingly, Respondents shall file and serve any written responses to Complainant's Motions for Written Deposition and Production of Documents no later than **Tuesday, July 5, 2022**, and Complainant shall file and serve any written replies to Respondents' responses no later than **Friday, July 8, 2022**. Additionally, with respect to

Complainant's Motion for Written Deposition, the parties are ordered to explain in any response and reply why, as in the case of Mr. Courtney, Ms. Bement testifying by videoconference at the hearing is not a viable alternative to appearing in person, such that preserving her testimony by way of deposition is necessary.

SO ORDERED.



Christine Donelian Coughlin
Administrative Law Judge

Dated: June 28, 2022
Washington, D.C.

In the Matter of Adamas Construction and Development Services, PLLC, and Nathan Pierce,
Respondents
Docket No. CWA-07-2019-0262

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order Granting Complainant's Motion for Video Testimony and Shortening Time for Responses and Replies to Complainant's Motions for Written Deposition and Production of Documents**, dated June 28, 2022, and issued by Administrative Law Judge Christine Donelian Coughlin, was sent this day to the following parties in the manner indicated below.



Mary Angeles
Paralegal Specialist

Original by OALJ E-Filing System to:
U.S. Environmental Protection Agency
Office of Administrative Law Judges
https://yosemite.epa.gov/OA/EAB/EAB-ALJ_Upload.nsf

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Dated: June 28, 2022
Washington, D.C.