



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of:)
)
LHP, LLC,) Docket No. TSCA-07-2014-0029
)
Respondent.)

ORDER ON MOTIONS TO SUPPLEMENT PREHEARING EXCHANGE

On July 29, 2015, a Prehearing Order was issued in this matter, directing the parties to file and serve prehearing exchanges. Consistent therewith, Complainant submitted an Initial Prehearing Exchange on September 3, 2015, with Complainant’s proposed exhibits (“CX”) 1-45; Respondent submitted its Prehearing Exchange on September 28, 2015, with Respondent’s proposed exhibits (“RX”) 1-2; and Complainant filed a Rebuttal Prehearing Exchange on October 8, 2015, with CX 46.

On December 29, 2015, I issued an Order on Respondent’s Unopposed Motion for Extension of Time, setting the filing deadline for motions to supplement a prehearing exchange as February 19, 2016, and otherwise setting the dates for hearing in this matter as March 22-24, 2016.

On February 19, 2016, Complainant filed a Motion to Supplement Prehearing Exchange (“Complainant’s Motion to Supplement”), seeking to supplement its prehearing exchanges to amend CX 45 and CX 46, and include CX 47-52. Along with this motion, Complainant simultaneously filed Complainant’s First Supplemental Prehearing Exchange, with amended CX 45 and CX 46, and CX 47-52.

Likewise, on February 19, 2016, Respondent filed a Motion to Supplement Prehearing Exchange (“Respondent’s Motion to Supplement”), seeking to supplement its Prehearing Exchange to include Anita Rockenback (“Rockenback”) as a proposed witness, as well as RX 3-14. In its Motion to Supplement, Respondent provides a narrative summary of Rockenback’s proposed testimony, which reflects that such proposed testimony relates to a photograph contained in RX 1, previously submitted in Respondent’s Prehearing Exchange. Additionally, Respondent filed RX 3-14 simultaneously with its Motion to Supplement.

On February 25, 2016, Complainant filed a Response to Respondent’s Motion to Supplement (“Response” or “Resp.”), stating evidentiary objections to RX 1 and RX 14, and requesting additional materials from Respondent related to both aforementioned proposed exhibits. Specifically, Complainant objects to the quality of a photograph contained in RX 1, which is referenced in narrative summary of Rockenback’s proposed testimony, Resp. 4-5, and

questions the “authenticity, reliability, and probative value” of RX 14, Resp. 2. Complainant further requests that Respondent provide “a higher-quality version of the photograph identified as RX1,” and “foundational information” for RX 14. Resp. 5-6.

The procedural rules governing this proceeding, set forth at 40 C.F.R. Part 22 (“Rules of Practice”), empower the Presiding Officer to rule on motions, and admit or exclude evidence. 40 C.F.R. § 22.4(c). The Rules of Practice also provide for amendment to a prehearing exchange. *See* 40 C.F.R. § 22.19(f). Further, the Rules of Practice preclude, except as provided in 40 C.F.R. §22.22(a), a proposed exhibit from being admitted into evidence, unless such proposed evidence was included in prehearing information exchange and provided to all parties at least 15 days before the hearing date. 40 C.F.R. §§ 22.19(a), 22.22(a).

In the present case, both Complainant’s Motion to Supplement and Respondent’s Motion to Supplement were timely filed. Respondent has not opposed Complainant’s Motion to Supplement, and it otherwise appears proper to grant this motion. Accordingly, Complainant’s Motion to Supplement is hereby **GRANTED**.

With regard to Respondent’s Motion to Supplement, Complainant opposes this motion due to evidentiary objections to RX 1 and RX 14, and further requests Respondent provide additional materials related to these proposed exhibits to relieve its evidentiary objections. In seeking to amend its Prehearing Exchange, Respondent is not moving to admit evidence, but rather, merely seeking to exchange proposed evidence which it may, or may not, ultimately offer for admission at hearing. As a result, a ruling on Complainant’s evidentiary objections to Respondent’s proposed supplemental evidence is not appropriate at this time. At the evidentiary hearing, Respondent will be required to establish the admissibility of any proposed evidence it seeks to have admitted into the evidentiary record, at which time Complainant will have the opportunity to object to such proposed evidence. Accordingly, Respondent’s Motion to Supplement is hereby **GRANTED**.

SO ORDERED.

Christine Donelian Coughlin
Administrative Law Judge

Dated: March 14, 2016
Washington, D.C.

In the Matter of *LHP, LLC*, Respondent.
Docket No. TSCA-07-2014-0029

Certificate of Service

I hereby certify that copies of this **Order on Motions to Supplement Prehearing Exchange**, issued by Christine Donelian Coughlin, Administrative Law Judge, on this 14th day of March 2016, were sent to the following in the manner indicated.



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March 14, 2016
Washington, D.C.