



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 ON RESPONDENTS’ RESPONSE TO ORDER TO SHOW CAUSE
AND COMPLAINANT’S MOTION TO RESERVE THE RIGHT
TO FILE REBUTTAL PREHEARING EXCHANGE**

This proceeding was initiated on September 16, 2019, by Complainant, the Director of the Enforcement and Compliance Assurance Division of the U.S. Environmental Protection Agency, Region 7, filing a Complaint and Notice of Opportunity for Hearing (“Complaint”) against Respondents, Adamas Construction and Development Services, PLLC, and Nathan Pierce, 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). Through counsel, Respondents jointly filed an Answer and Request for Hearing on October 16, 2019.

On October 18, 2019, I issued a Prehearing Order setting forth various prehearing filing deadlines and procedures, including deadlines for the parties to engage in a prehearing exchange of information. The deadlines for completion of the prehearing exchange process were subsequently extended by Order dated January 2, 2020, in which I directed Respondents to file their Prehearing Exchange(s) on or before January 24, 2020, and Complainant to file its Rebuttal Prehearing Exchange on or before February 7, 2020.

While Respondents filed their Initial Prehearing Exchange on January 27, 2020, Complainant notified this Tribunal in a Motion for Extension of Time to File Rebuttal Prehearing Exchange, filed on February 5, 2020, that Respondents had failed to serve Complainant with a copy of their Initial Prehearing Exchange by either regular mail or electronic mail, despite that document including a certificate of service signed by Respondents’ counsel indicating that service by those means had been completed. As a consequence, I issued an Order dated February 5, 2020, requiring that Respondents, no later than February 12, 2020, serve Complainant with a copy of their Initial Prehearing Exchange and all attachments thereto and simultaneously file with this Tribunal and serve on Complainant a statement certifying the date and means by which they served Complainant with their Initial Prehearing Exchange. When Respondents failed to comply with that Order or request an extension of the deadline set forth

therein, I issued an Order to Respondents to Show Cause, directing Respondents to file a document on or before March 6, 2020, explaining why they had good cause for failing to comply with the Order of February 5, 2020, and why a default order should not be entered against them. Meanwhile, on February 24, 2020, Complainant filed a Motion to Reserve the Right to File Rebuttal Prehearing Exchange (“Motion”), in which Complainant asserts that it filed the Motion for the purpose of reserving its right to file a Rebuttal Prehearing Exchange in the event that Respondents serve Complainant with a copy of their Initial Prehearing Exchange and are found to have demonstrated good cause for their failure to comply with the Order of February 5.

On March 5, 2020, Respondents filed their Response to Order to Show Cause (“Response”). Therein, Respondents identify a number of circumstances that have impeded communications between Respondents and their counsel of record, including that their counsel has been coping with chronic medical issues and the unexpected death of a family member. Respondents further represent that their own financial circumstances have led to their counsel now representing them on a limited scope basis only, which has also contributed to the delays that have occurred in this proceeding. Asserting that “all items currently ordered . . . have been done,” Respondents vow to make a good faith effort to comply with all future orders and request that the merits of this case be heard and a default judgment not be entered against them. On March 9, 2020, Complainant’s counsel confirmed in an email to a staff member of this Tribunal that Complainant has now been properly served with Respondents’ Initial Prehearing Exchange.¹

Given the circumstances described by Respondents in their Response, I find that good cause has been shown and that the drastic remedy of entering a default order against Respondents would not be appropriate at this time. Accordingly, the prehearing exchange process may now resume. Complainant’s Motion reserving its right to file a Rebuttal Prehearing Exchange is hereby **GRANTED**, and Complainant shall file and serve its Rebuttal Prehearing Exchange on or before **April 3, 2020**.

SO ORDERED.



Christine Donelian Coughlin
Administrative Law Judge

Dated: March 10, 2020
Washington, D.C.

¹ Complainant’s counsel also represented that she and her co-counsel will be on leave from March 16 to March 21, 2020.

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Respondents.
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order on Respondents' Response to Order to Show Cause and Complainant's Motion to Reserve the Right to File Rebuttal Prehearing Exchange**, dated March 10, 2020, 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 and One Copy by Personal Delivery to:

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Dated: March 10, 2020
Washington, D.C.