

not received these documents and they have not been filed, as that term is used in 40 C.F.R. § 22.5(a). Complainant has been harmed by the Respondents' failure to properly file and serve their motions to the Court in that Complainant cannot properly determine when a response is due. Complainant requests that this motion be DENIED for improper filing and service.

DISCOVERY REQUEST IS UNTIMELY AND PREMATURE

Respondents' Interrogatories, Request for Production and Admissions (First Set) should be DENIED because it is premature and untimely. In EPA administrative adjudications, discovery is conducted pursuant 40 C.F.R. § 22.19. 40 C.F.R. § 22.19 is much more limited in scope compared to the district court counterpart. In fact, pre-hearing exchanges and supplemental exchanges have yet to occur in this case. Additionally, Respondents have failed to disclose in the motion the methods, instrumentalities, and nature of the discovery requests making the motion defective on its face. Lastly, Respondents have failed to make any argument regarding the three criteria necessary to grant a motion for other discovery. Therefore, Respondents' request for other discovery should be denied because the pre-hearing exchange has yet to occur, the motion is defective on its face, and none of the criteria necessary to grant such a motion can be found in this case.

Applicable Standard – Discovery Requests

Respondents' request is devoid of any citation to the Rules of Practice, 40 C.F.R. Part 22. The discovery process in EPA administrative adjudications is governed by 40 C.F.R. § 22.19. "In an administrative proceeding governed by the Rules of Practice, discovery, as it is typically thought of under the Federal Rules of Civil Procedure, occurs through a prehearing exchange of information in accordance with Section 22.19(a)." In the Matter of Aguakem Caribe, Inc., Dok. No. RCRA-02-2009-7110, 2009 EPA ALJ WL 2470250 (June 2, 2010). Each party is obligated to "file a prehearing exchange." 40 C.F.R. § 22.19(a)(1). If a document is not included in the prehearing exchange, it cannot be admitted into evidence at the hearing. *Id.* Each party must supplement the prehearing exchange as information becomes available to them. 40 C.F.R. § 22.19(f). After prehearing exchanges, a party may request other discovery as necessary and within the limits proscribed by 40 C.F.R. 22.19(e). In the Matter of FRM Chem, Inc., Advanced Products Technology, Inc., Custom Compounds, Inc., Dok. No. FIFRA 07-2008-0035, FIFRA 07-2008-0036, FIFRA 07-2009-0041, FIFRA 07-2009-0042, 2010 EPA ALJ WL 2470252 (May 27, 2010). Therefore, for a party to have even the possibility to obtain other discovery, they must have completed the prehearing exchanges.

Not only must the prehearing exchanges have been completed before the Presiding Officer may grant other discovery, but the movant must also specify in the motion the discovery being requested. 40 C.F.R. § 22.19(e) states "[t]he motion shall specify the method of discovery sought, provide the proposed discovery instruments, and describe in detail the nature of the information and/or documents sought . . ." 40 C.F.R. § 22.19(e)(1). Thus, a motion that does not specify the method, instrumentality, and nature of the discovery request should be denied.

Furthermore, the Presiding Officer can only order other discovery if she finds that the three criteria for other discovery have been met. The other criteria the Presiding Officer must find to

grant further discovery are whether the discovery request “[w]ill neither unreasonably delay the proceeding nor unreasonably burden the non-moving party; [s]eeks information that is most reasonably obtained from the non-moving party, and which the non-moving party has refused to provide voluntarily; and [s]eeks information that has significant probative value on a disputed issue of material fact relevant to liability or relief sought.” 40 C.F.R. § 22.19(e)(1). Thus, the Presiding Officer must find in favor of all three criteria to grant a motion for other discovery.

Thus, for a motion for other discovery to be granted it must be made after pre-hearing exchanges. Once prehearing exchanges have been completed, a party may move for further discovery. For the motion to be granted, the motion itself must describe the method, instrumentality, and nature of the discovery request. Failure to do so makes the motion defective under 40 C.F.R. § 22.19(e) and as such must be denied. Lastly, the Presiding Officer, after prehearing exchanges and with a proper motion before it must find for all three criteria before she may issue the further discovery order. Therefore, Respondents’ motion for other discovery must meet each part and criteria to be granted.

Respondents’ Motion is Untimely because Prehearing Exchanges Have not Occurred

Respondents’ Request for Discovery should be denied because the Consolidated Rules of Practice do not allow for other discovery until the prehearing exchange has occurred. “After the information exchange provided for in [prehearing exchange], a party may move for additional discovery.” 40 C.F.R. § 22.19(e)(1). In fact, no other discovery is permitted until the prehearing exchange has occurred. In the Matter of City of St. Charles, Dok. No. CAA-05-2008-0003, 2008 EPA LJ WL 2626264 (June 30, 2008). In the case at bar, no prehearing exchange has occurred yet. Therefore, no other discovery is permitted by the Consolidated Rules of Practice at this time. Respondents’ motion is untimely and should be denied.

Respondents Motion is Defective on its Face because it Fails to Mention the Method, Instrumentality, and Nature of the Discovery Request

Respondents’ Request for Discovery should be denied because the motion does not specifically describe the method, instrumentality, or nature of the discovery request. “The motion shall specify the method of the discovery sought, provide the proposed discovery instruments, and describe in detail the nature of the information and/or documents sought.” 40 C.F.R. § 22.19(e)(1). Respondents’ Interrogatories, Request for Productions and Admissions (First Set) is devoid of any mention of the method, instrumentality, or nature of its discovery request. Respondents simply make a list of interrogatories, a list of request for production of documents, and list of requested admissions. Nowhere in the motion are the methods of this discovery discussed, or the nature of the discovery. Most of the requests and interrogatories are very broad and fail to provide any detail on the nature of the information Respondents are seeking. Without clarification on the method, instrumentality, or nature of the discovery request, the motion is defective. Because the motion is defective, the motion should be denied for failure to comply with 40 C.F.R. § 22.19(e)(1).

The Motion must be Denied because the Three Criteria for Other Discovery are not Present

For a Presiding Officer to grant a motion for other discovery, she must find three criteria present. Without a finding on each criteria in favor of the movant, the Presiding Officer cannot grant other discovery. "The Presiding Officer may order such other discovery *only* if it: Will neither unreasonably delay the proceeding nor unreasonably burden the non-moving party; Seeks information that is most reasonably obtained from the non-moving party, and which the non-moving party has refused to provide voluntarily; and Seeks information that has significant probative value on a disputed issue of material fact relevant to liability or the relief sought." 40 C.F.R. § 22.19(e)(1) (emphasis added). Therefore, a Presiding Officer must find in favor of all three criteria to grant other discovery.

Respondents have made no argument, either factual or legal, as to the reasons the Presiding Officer should find in favor of these three criteria. In fact, Respondents' Interrogatories, Request for Production and Admissions (First Set) does not cite a single provision of the Consolidated Rules of Practice, 40 C.F.R. Part 22. Because prehearing exchange has yet to occur, the record and potential evidence at the hearing is devoid of any factual context that would meet any of these factors. A Presiding Officer would be hard pressed to find any argument, either factual or legal, in the record or before the Presiding Officer in any fashion that could meet any of these requirements. In fact, Respondents' Motion to Dismiss and Interrogatories, Request for Production and Admissions (First Set) were not properly filed or served and as such are not in the record. With no motion on the record, with no prehearing exchange conducted, and with no argument from Respondents, there is no basis to find that any of the three necessary criteria have been met by Respondent. Therefore, Respondents' Interrogatories, Request for Production and Admissions (First Set) should be denied.

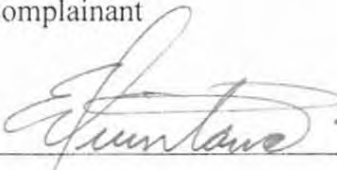
PRAYER FOR RELIEF

Accordingly, for all the reasons listed above, Complainants respectfully request the Court to DENY Respondents' Interrogatories, Request for Production and Admissions (First Set).

Respectfully submitted,

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,
REGION VIII,
Complainant

Date: 12/9/2010



Eduardo Quintana,
Legal Enforcement Program

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of COMPLAINANT'S RESPONSE TO RESPONDENTS' INTERROGATORIES, REQUESTS FOR PRODUCTION AND ADMISSIONS (FIRST SET) was hand-carried to the Regional Hearing Clerk, EPA Region 8, 1595 Wynkoop Street; Denver, Colorado 80202-1129, and that a true copy of the same was sent as follows:

A copy by pouch mail to:

Barbara A. Gunning
Administrative Law Judge
EPA Office of Administrative Law Judges
1200 Pennsylvania Avenue, NW
Mail Code 1900L
Washington, D.C. 20460

and

A copy via first class mail to:

Steven D. Sandven, Esq.
Law Office
300 North Dakota Avenue, Ste. 106
Sioux Falls, SD 57104

12/9/2010

Date

Judith M. McTernan

STEVEN D. SANDVEN

COMPLAINANT'S
EXHIBIT NO. 7

PRINCIPAL
STEVEN D. SANDVEN

*Admitted in South Dakota,
Minnesota & Washington D.C.*

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November 26, 2010

Eduardo Quintana, Esq.
United States Environmental Protection Agency
Region 8, Office of Enforcement, Compliance and
Environmental Justice
1595 Wynkoop Street (ENP-L)
Denver, CO 80202-1129

**RE: IN THE MATTER OF WENDY MEALER AND DENNIS STOKEBRAND
DOCKET NO. FIFRA-08-2010-0017**

Dear Counsel:

Please find the enclosed written discovery requests in the above-described matters.

Please contact me if there are any questions.

Sincerely,

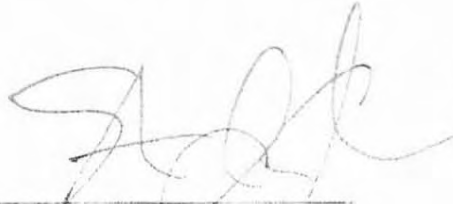


STEVEN D. SANDVEN
Attorney for Wendy Mealer and
Dennis Stokebrand

The undersigned attorney, attorney for Plaintiff hereby certifies that on the 26th day of November, 2010, a true and correct copy of the foregoing RESPONDENTS' INTERROGATORIES, REQUESTS FOR PRODUCTION AND ADMISSIONS (FIRST SET) was mailed by first-class mail to:

Eduardo Quintana, Esq.
United States Environmental Protection Agency
Region 8, Office of Enforcement, Compliance and
Environmental Justice
1595 Wynkoop Street (ENP-L)
Denver, CO 80202-1129

Dated this 26th day of November, 2010.



STEVEN D. SANDVEN

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ATTORNEY FOR WENDY MEALER AND DENNIS STOKEBRAND

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

In the Matter of:

Wendy Mealer and Dennis Stokebrand,

Respondents.

Docket No. FIFRA-08-2010-0017

RESPONDENTS'
INTERROGATORIES, REQUESTS FOR
PRODUCTION AND ADMISSIONS
(FIRST SET)

TO: PETITIONER/COMPLAINANT:

You are hereby requested to answer the following Interrogatories, Produce the Requested Documents, and respond to the Requested Admissions in the manner, form, and time required.

INSTRUCTIONS

1. These requests seek information and documents within your knowledge and ability to procure up to the date that they are answered and provided but the interrogatories and requests shall be deemed continuing, so that any additional information or documents that come within your knowledge or possession relating to any of the interrogatories or requests herein shall be furnished to the Respondent within five days thereafter as supplements to the answers and responses already made by you, and with the same formality under oath.
2. If it is claimed that any documents requested are privileged, constitute work product, or are otherwise claimed to be protected from disclosure, and you refuse

to produce such documents, then you must identify the specific privilege or protection which you claim, and identify the document for which you assert the privilege as set forth in Instruction 3, below.

3. For each document that you refuse to produce under a claim of privilege or other protection from discovery, provide a statement under oath, from a person having direct knowledge of the document that includes the following for each such document:
 - a. The name and title of the author;
 - b. The name and title of each person to whom the document was addressed;
 - c. The name and title of each person to whom a copy of the document was sent;
 - d. The name and title of each person who had access to the document;
 - e. The date of the document;
 - f. The number of pages in the document;
 - g. A general description of the nature and subject matter of the document;
 - h. The nature of the claim of privilege, immunity, or protection from discovery; and
 - i. The present location of the original and each copy of the document together with the name and address of the custodian(s) of the original and copies.
4. Documents requested in these requests include documents that are outside of your possession, custody, and control as well as documents in your immediate possession, custody, and control. For each document no longer in your possession, custody and control, identify the name and title of the author, the name and title of the addressee, the date of the document(s), the subject matter of the document(s), the last date in which the document was in your possession, custody, or control, the person or entity now in possession, custody, or control of the document(s), the reason(s) for your disposition or release of the document(s), the identity of all persons who have knowledge of the circumstances surrounding the disposition or release of the document(s), and the knowledge each such person has.
5. You are required to produce requested documents as they are kept in the usual course of business, or to organize and label them to correspond with the categories of these requests. Accordingly, whenever a document or group of documents is taken out of a file folder, file drawer, file box, or notebook, before the same is produced, you are requested to attach thereto a copy of the label and the file folder, file drawer, file box, or notebook from which the document or group of documents was removed.

6. If the answer to any Interrogatory is that you lack knowledge of the requested information, then describe all efforts that you have made to obtain the information necessary to answer the Interrogatory.
7. For requests that you “identify” someone, you are to state that person’s name, address, e-mail address, phone number, facsimile number, current employer, and employment position.

DEFINITIONS

1. “You” or “Your”, unless otherwise stated or the context clearly means someone else, means the person answering these discovery requests and his or her agents and attorneys.
2. “Petitioner” mean the Complainant.
3. “Communication” or “Discussion” mean any form of oral or written interchange, transmission or exchange of words, thoughts, information, opinions, statements, presentations, discussions, conversations, speeches, or transmission of ideas and thoughts of any kind, whether person-to-person, in a group, in a meeting, by telephone, letter, telefax, electronic mail, and otherwise, and includes, without limitation, any printed, typed, handwritten, electronic, or otherwise readable or decipherable documents and data and any tape recordings, correspondence, memoranda, reports, contracts, diaries, logbooks, minutes, notes, letters, studies, summaries, surveys, and forecasts.
4. “Document” or “Documents” shall be construed as including but not being limited to, any written, printed, typed, drawn or other graphic matter of any kind or nature, photographs, and all mechanical, electrical, and magnetic recordings, whether an original, copy, or a non-identical copy, however reproduced or altered, including but not limited to e-mails, papers, letters, correspondence, telegrams, inter or intra office communications, memoranda, notes, notations, notebooks, reports, accounting books or records of minutes of meetings, contracts, invoices, transcripts, publications, scrapbooks, diaries, or any drafts, revisions, or amendments of the above, in the possession of or under the control of Petitioner its agents and attorneys.

INTERROGATORIES

1. Identify the individual responding to these Interrogatories.
2. Identify each individual who helped you answer any of these interrogatories.
3. Identify all documents to which you, or anyone on your behalf, resorted to or consulted in aid of your answers to these Interrogatories.

4. State the name, business address, and business telephone number of each person who investigated any aspect of this case for you, whether a report was prepared, and the date of each such report.
5. State the name, home address, home telephone number, business address, and business telephone number of each person who has given you a written or recorded statement concerning any aspect of this case.
6. Identify each photograph, diagram, object, or other tangible item you intend to offer in evidence during the trial of this matter.
7. State the name, home address, home telephone number, business address, and business telephone number of each person you intend to call as a non-expert witness during the trial of this matter.
8. For each person you intend to call as an expert witness during the trial of this matter, state the name, profession, business address, and business telephone number of the expert, and for each such expert state:
 - a. His or her educational background, giving the names of the educational institutions attended, the dates of attendance, and the degrees earned with the dates thereof;
 - b. His or her professional specialty, if any;
 - c. His or her experience within the field, giving dates, names, and addresses of employers, if any; dates, names, and addresses of institutions with which he or she has been associated, if any; and any other applicable experience, including dates and places;
 - d. The names of all professional societies or associations with which he or she has been related or has maintained membership, stating his or her status with each and the inclusive dates of such status;
 - e. The title, name of publication, name of publisher and date of publication, of any published articles, books, etc., authored by each such person;
 - f. Whether he or she has ever been a witness in any other lawsuit and, if so, for each such lawsuit, give the name of the suit, the nature of the suit involved, the name of the court, the approximate date of the testimony, and the name and address of the parties or attorneys for whom he or she gave evidence;
9. For each expert identified in the answer to the previous Interrogatory, state the opinions to which the expert is expected to testify.
10. For each expert opinion set forth in answer and as to each fact that is in any way relied upon by such expert in arriving at his or her opinion, state:
 - a. The name and address of the person supplying such facts.
 - b. The form in which such facts were supplied to such person.

11. For each expert or lay witness you intend to call at the trial, state whether you have paid or agreed to pay and compensation and/or expenses.
12. If you have paid or agreed to pay any compensation and/or expenses to any witness, for each such witness state:
 - a. What amounts you have paid or agreed to pay; and
 - b. Describe the compensation agreement (hourly, daily, percentage, etc.).
13. State the name, business address, and business telephone number of each person who investigated any aspect of this case, whether a report was prepared, and the date of each such report.
14. State the name, home address, home telephone number, business address, and business telephone number of each person who has given Petitioner a written or recorded statement concerning any aspect of this case.
15. Identify each photograph, diagram, object, or other tangible item Petitioner intends to offer in evidence during the trial of this matter.
16. State the name, home address, home telephone number, business address, and business telephone number of each person Petitioner intends to call as a non-expert witness during the trial of this matter.
17. For each person Petitioner intends to call as an expert witness during the trial of this matter, state the name, profession, business address, and business telephone number of the expert, and for each such expert state:
 - a. His or her educational background, giving the names of the educational institutions attended, the dates of attendance, and the degrees earned with the dates thereof;
 - b. His or her professional specialty, if any;
 - c. His or her experience within the field, giving dates, names, and addresses of employers, if any; dates, names, and addresses of institutions with which he or she has been associated, if any; and any other applicable experience, including dates and places;
 - d. The names of all professional societies or associations with which he or she has been related or has maintained membership, stating his or her status with each and the inclusive dates of such status;
 - e. The title, name of publication, name of publisher and date of publication, of any published articles, books, etc., authored by each such person;
 - f. Whether he or she has ever been a witness in any other lawsuit and, if so, for each such lawsuit, give the name of the suit, the nature of the suit involved, the name of the court, the approximate date of the testimony,

and the name and address of the parties or attorneys for whom he or she gave evidence;

18. For each expert identified in the answer to the previous Interrogatory, state the opinions to which the expert is expected to testify.
19. For each expert opinion set forth and as to each fact that is in any way relied upon by such expert in arriving at his or her opinion, state:
 - a. The name and address of the person supplying such facts.
 - b. The form in which such facts were supplied to such person.
20. For each expert or lay witness Petitioner intends to call at the trial, state whether it has paid or agreed to pay and compensation and/or expenses.
21. If Petitioner has paid or agreed to pay any compensation and/or expenses to any witness, for each such witness state:
 - a. What amounts it has paid or agreed to pay; and
 - b. Describe the compensation agreement (hourly, daily, percentage, etc.).
22. State the legal description for the lands described in paragraph 16 of the Complaint.
23. State the legal description(s) where the signs described in paragraph 17 of the Complaint were located at the time of the alleged violation.
24. State the legal description(s) for the “area” described in paragraph 18 of the Complaint.

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Please produce all documents that support your answer to Interrogatory 22.
2. Please produce all documents that support the LLC’s answer to Interrogatory 23.
3. Please produce all documents that support your answer to Interrogatory 24.
4. Please produce all documents that support your answer to Interrogatory 3.
5. Please produce all documents that support your answer to Interrogatory 4.
6. Please produce all documents that support your answer to Interrogatory 5.
7. Please produce all documents that support your answer to Interrogatory 6.

8. Please produce all documents that support your answer to Interrogatory 13.
9. Please produce all documents that support your answer to Interrogatory 14.
10. Please produce all documents that support your answer to Interrogatory 15.
11. Please produce a map designating the ferret reintroduction area.
12. Please produce a map designating the location of signage described in Interrogatory 17.

REQUEST FOR ADMISSIONS

1. Admit that the Rosebud Sioux Tribal Council directed the Department of Fish and Wildlife and the Department of the Interior to relocate the ferrets to another location outside the jurisdiction of the Rosebud Sioux Tribe and to release the Tribe from any further responsibilities therefore.
2. Admit that the Rosebud Sioux Tribal Secretary searched Tribal records on April 9, 2007 and concluded "[t]he Rosebud Sioux Tribal Secretary's office did research our records regarding the Black Footed Ferret reintroduction and maps. Resolution 03-81, which adopts and approves the request to implement the Rosebud Prairie Management Plan, is the only resolution that was submitted with an attached map. According to our records, this is the only approved resolution on record with an attached map."
3. Admit that the boundaries of the reintroduction area were not delineated via Rosebud Sioux Tribal Council Resolution.

Dated this 26th day of November, 2010.

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CERTIFICATE OF SERVICE