

PAUL A. CHIARAVALLOTI, ESQ.

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January 16, 2012

Fax and First Class Mail

Hon. Barbara A. Gunning
EPA Office of Administrative Law Judges
1200 Pennsylvania Avenue, NW
Mail Code 1900L
Washington, DC 20460-2001

**Re: Respondents' Sir-Rebuttal Prehearing Exchange
Docket No.: RCRA-02-2011-7507**

Dear Judge Gunning:

Enclosed herewith is a copy of the Respondents' Sir-Rebuttal Prehearing Exchange in the above referenced action.

Respondents' Sir-Rebuttal is being served as set forth in the Certificate of Service attached to the said Sir-Rebuttal.

If you have any questions you may contact the undersigned at (716) 250-2764 or at pachiaravalloti@yahoo.com.

Thank you for your attention to this matter.

Respectfully submitted,



Paul A. Chiaravalloti, Esq.

PAC/mls

enc.

cc: ✓ Karen Maples
Beverly Kolenberg, Esq.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2**

-----X
In the Matter of :
Valvo Convenience and Gas, Inc., :
and Stephen M. Valvo, Individually :
Respondents :
Proceeding Under Section 9006 of the :
Solid Waste Disposal Act, as amended :
-----X

Honorable Barbara A. Gunning,
Administrative Law Judge

Docket No. RCRA-02-2011-7507

**U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2012 JAN 20 P 12: 51
REGIONAL HEARING
CLERK**

RESPONDENTS' SIR-REBUTTAL PREHEARING EXCHANGE

The above named Respondents submit this sir-rebuttal prehearing exchange pursuant to 40 C.F.R. Section 22.19(a).

PRELIMINARY STATEMENT

The above named Respondents make the following sir-rebuttal in response to the Complainant's rebuttal dated January 5, 2012.

As set forth below, the Respondents assert that Section 3512 of the Paperwork Reduction Act applies in the above captioned action and, as such, is a bar to the Complainant seeking a penalty herein.

RESPONDENTS' SIR-REBUTTAL ARGUMENT

There is no "Subsection 3518(c)(2)(B)(ii) of the PRA" as set forth in the Complainant's Rebuttal Argument. Section 3518(c)(2) states in relevant part: "This subchapter [44 USCS Section 3501 et seq.] applies to the collection of information during the conduct of general investigations...undertaken with reference to a category of individuals or entities such as a class of licensees or an entire industry.


Under Section 3518(c)(1)(B)(ii), the PRA does not apply to “an administrative action or investigation involving an agency against specific individuals or entities.” The Request for Information, as set forth in the Complainant’s Exhibits 17 through 23 attached to Complainant’s Prehearing Exchange dated November 23, 2011, were the basis of the administrative complaint against the Respondents. The Respondents assert that none of the aforesaid Requests for Information indicated that these documents were being served upon the Respondents as part of an administrative action or a formal investigation. As such, the EPA should have obtained a valid control number for the aforesaid Requests for Information. Therefore, the Respondents assert that the protections set forth in Section 3512 of the PRA are applicable in this action.

CONCLUSION

Based upon the foregoing circumstances, the Respondents respectfully assert that the Paperwork Reduction Act applies to this action and as such, is a bar to the EPA seeking a penalty against the Respondent.

DATED: January 16, 2012
 Williamsville, New York

Respectfully submitted,



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**Re: In the Matter of Valvo Convenience and Gas, Inc. and
Stephen M. Valvo, individually
Docket Number RCRA-02-2-11-7507**

CERTIFICATE OF SERVICE


This is to certify that I have this day caused (or am causing) to be sent Respondents' Sir-
Rebuttal Pre Hearing Exchange bearing docket number RCRA-02-2011-7507 in the following
manner to the respective addressees below:

Original and one copy: Karen Maples
By First Class Mail Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 2
290 Broadway
New York, NY 10007

Copies by Fax and Hon. Barbara A. Gunning
First Class Mail EPA Office of Administrative Law Judges
1200 Pennsylvania Avenue, NW
Mail Code 1900L
Washington, DC 20460-2001

Copy by Regular Mail: Beverly Kolenberg, Esq.
Assistant Regional Counsel
U.S. Environmental Protection Agency
290 Broadway, 17th Floor
New York, NY 10007-1866

Dated: January 16, 2012
Williamsville, NY 14221



Paul A. Chiaravalloti, Esq.