



U.S. ENVIRONMENTAL PROTECTION AGENCY-REG.II

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR  
2012 SEP 31 P 3:20  
REGIONAL HEARING CLERK

In the Matter of: )  
)  
Valvo's Convenience & Gas, Inc., ) Docket No. RCRA-02-2011-7507  
and Stephen M. Valvo, )  
) Dated: September 27, 2012  
Respondents. )

ORDER GRANTING COMPLAINANT'S MOTION TO SUPPLEMENT PREHEARING EXCHANGE

An Order dated August 17, 2012 granted Complainant's Motion to File a Second Amended Complaint, allowing Complainant to add a new Count 8 and to include updated compliance measures taken by Respondents. Accordingly, Complainant was directed to file a supplement to its Prehearing Exchange by August 24, 2012 with any additional names and summaries of proposed witnesses, additional proposed exhibits, and amended calculation of the proposed penalty, in regard to the amendments to the Complaint. On August 23, 2012, Complainant submitted a Motion to Supplement Complainant's Prehearing Exchange, to add two proposed witnesses and seventeen additional proposed exhibits.

The proposed additional exhibits and summaries of testimony of the additional witnesses include some information which is not relevant only to the amendments to the Complaint. Complainant therefore explains in the Motion that it was submitted two months in advance of the hearing, and why Respondent would not be unfairly disadvantaged or unduly prejudiced by the supplement to the Prehearing Exchange. Complainant states that in its discretion it did not increase the proposed penalty for the Second Amended Complaint, and submitted as proposed Exhibit 79 a calculation of the original proposed penalty for Counts 1 through 7.

Under the Rules of Practice, Section 22.19(f), Complainant was required to "promptly supplement or correct" its Prehearing Exchange when it learns that the information exchanged "is incomplete, inaccurate or outdated." 40 C.F.R. § 22.19(f). To date, Respondent has not submitted any response to the Motion.

Accordingly, Complainant's Motion to Supplement Prehearing Exchange is GRANTED.

M. Lisa Buschmann  
Administrative Law Judge

**In the Matter of Valvo's Convenience and Gas, Inc., and Stephen M. Valvo,  
Docket No. RCRA-02-2011-7507**

CERTIFICATE OF SERVICE

I hereby certify that true copies of this **Order Granting Complainant's Motion to Supplement Prehearing Exchange**, issued on September 27, 2012, were sent to the following parties in the manner indicated:

  
Knolyn R. Jones  
Legal Staff Assistant

Original and One Copy by Regular Mail to:

Karen Maples  
Regional Hearing Clerk  
US EPA, Region II  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007-1866

Copy by Regular Mail to:

Beverly Kolenberg, Esq.  
Assistant Regional Counsel  
U.S. EPA / Region II  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007-1866

Copy by Regular Mail to:

Valvo Convenience and Gas, Inc.  
Stephen M. Valvo, Individually  
1271 Routes 5 and 20  
Silver Creek, NY 14136

Paul A. Chiaravalotti, Esq.  
Attorney at Law  
1967 Wehrle Drive, Suite 1  
Williamsville, NY 14221

**Dated: September 27, 2012  
Washington, DC**