

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

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In the matter of:)
)
Landsing Development Group, LLC,) Docket No. CWA-10-2005-0081
)
Respondent.)
)

ORDER

Complainant brings a Motion to Compel Production of Documents Or, Alternatively, Motion in Limine. For the reasons that follow, complainant's motion is denied.

Pursuant to the Consolidated Rules of Practice governing the procedures of this tribunal, a copy of any document or exhibit intended to be utilized at hearing must be filed as part of a prehearing exchange. 40 C.F.R. § 22.19. On November 23, 2005, respondent submitted a prehearing exchange that listed four witnesses along with an exhibit comprised of "several photos of the site and area." However, respondent did not include any photographs in its prehearing exchange. The absence of these photographs was the impetus for complainant's pending motion.

Thereafter, on January 28, 2006, respondent submitted copies of the photographs referenced in its prehearing exchange. This tribunal accepts respondent's supplemental prehearing exchange filing. Accordingly, complainant's motion to compel is denied as being moot.



Carl C. Charneski
Administrative Law Judge

Issued: March 13, 2006
Washington, D.C.

In the Matter of *Landsing Development Group, Inc.*, Respondent
Docket No. CWA-10-2005-0081

Certificate of Service

I certify that the foregoing Order, dated March 13, 2006, was sent this day in the following manner to the addressees below.



Mary Angeles
Legal Staff Assistant

Original and Copy by Facsimile and Pouch Mail to:

Carol D. Kennedy
Regional Hearing Clerk
U.S. EPA - Region X
1200 Sixth Avenue
Seattle, WA 98101
Fx: 206.553.0163

Copy by Facsimile and Pouch Mail to:

Courtney J. Hamamoto, Esq.
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Bruce Hessing, Esq.
Landsing Development Group, LLC
5800 Douth Cole Road
Boise, ID 83709
Fx: 208.890.6980

Dated: March 13, 2005
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ORDER

Complainant brings a motion pursuant to 40 C.F.R. §§ 22.16 and 22.19 for additional discovery regarding respondent Landsing Development Group, LLC's ability to pay the proposed civil penalty in this matter. It is complainant's belief that respondent's statement that "a \$25,000 penalty would be a large hardship on the company," Answer ¶ 13, indicates that "respondent may be contending that it has the inability to pay the proposed penalty amount." Mot. at 1. Complainant interprets respondent's statement as raising its inability to pay the proposed penalty as a defense, and moves to compel respondent's production of documents "that indicates an inability to pay the penalty amount." Id. Respondent has not filed an opposition to complainant's motion.

Inasmuch as respondent is appearing pro se, and given the ambiguity surrounding its position as to the "ability to pay" issue, this tribunal reserves ruling on complainant's motion pending a conference call with the parties addressing this discovery issue.

Carl C. Charneski

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