

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9

75 Hawthorne Street
San Francisco, California 94105

FILED

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U.S. EPA, REGION IX
REGIONAL HEARING CLERK

In the Matter of:) Docket No.: CWA-09-2010-0003
)
)
A Plus Materials Recycling)
) **COMPLAINANT'S PREHEARING**
) **EXCHANGE**
)
250 Port Road 23)
Stockton, California, 95203)
)
)
Respondent.) Proceedings Under Section 309(g)(2)(B)
) of the Clean Water Act, as amended,
) 33 U.S.C. § 1319(g)(2)(B)
)

As set forth in Complainant United States Environmental Protection Agency's ("EPA") July 14, 2011 motion requesting a 14-day continuance of this matter, Complainant believed that the parties had reached a settlement of this matter and that Respondent, A Plus Materials Recycling, would quickly execute the proposed Consent Agreement. Since that time, Respondent has neither executed the settlement, nor communicated further with Complainant.

Therefore, pursuant to the Prehearing Order of June 2, 2011, as amended by the July 14, 2011 Order granting the request for a continuance, Complainant submits this Prehearing Exchange:

I. List of Potential Witnesses

A. Fact Witnesses:

Rick Sakow (Inspector / Compliance Officer, US EPA, Region 9)

Mr. Sakow is expected to testify about EPA's investigation of Respondent's operations, including the review of Respondent's records, observations of the facility and communications with Respondent's representatives; rainfall events; the potential impacts of Respondent's alleged violations on waters of the United States; the Clean Water Act ("CWA") requirements applicable to Respondent's operations; and other facts pertaining to the alleged violations.

Ellen Blake (Enforcement Officer, US EPA, Region 9)

Ms. Blake is expected to testify about EPA's investigation of Respondent's operations, including the review of Respondent's records, observations of the facility and communications with Respondent's representatives; rainfall events; the potential impacts of Respondent's alleged

violations on waters of the United States; the CWA requirements applicable to Respondent's operations; and other facts pertaining to the alleged violations.

Ann Murphy (Enforcement Officer, US EPA, Region 9)

Ms. Murphy is expected to testify about EPA's investigation of Respondent's operations, including the review of Respondent's records, observations of the facility and communications with Respondent's representatives; and other facts pertaining to the alleged violations.

Nova Clemenza (former Water Resources Control Engineer, Central Valley Regional Water Quality Control Board)

Ms. Clemenza is expected to testify about her investigation of Respondent's operations, including the review of Respondent's records, observations of the facility and communications with Respondent's representatives; and other facts pertaining to the alleged violations.

Jeffrey Wingfield (Environmental Manager, Port of Stockton)

Mr. Wingfield is expected to testify about investigations of Respondent's facility, the potential impacts of Respondent's alleged violations on waters of the United States, the CWA requirements applicable to Respondent's operations (including requirements related to the Port's municipal separate storm sewer system ("MS4") permit), and other facts pertaining to the alleged violations.

James Neal (Compliance Specialist, WGR Southwest, Inc.)

Mr. Neal, a contractor for the Port of Stockton, is expected to testify about investigations of Respondent's facility, the potential impacts of Respondent's alleged violations on waters of the United States, the CWA requirements applicable to Respondent's operations (including requirements related to the Port's MS4 permit), and other facts pertaining to the alleged violations.

Eric Horton (former employee of A Plus Materials Recycling)

Mr. Horton is expected to testify about Respondent's operations, activities at Respondent's facility pertaining to the alleged violations, and communications with EPA, the Port of Stockton, and other regulatory bodies.

B. **Expert Witness:**

Jonathan Shefftz (Industrial Economics, Inc.)

Mr. Shefftz is expected about the nature and amount of the "economic benefit" Respondent obtained by delaying compliance with the CWA requirements. Mr. Shefftz is an expert in financial economics, with experience in calculating the economic benefits of delayed and avoided regulatory compliance. His resume is attached.

II. Copies of Documents and Exhibits

Copies of Complainant's documents, including documents specified in sections 2(A)-(E) of the June 2, 2011 Prehearing Order, are numbered as Complainant's Exhibits ("CX[number]") and included in this prehearing exchange. Complainant may supplement these exhibits if additional information becomes available, or in response to any factual or legal issues that Respondent raises prior to hearing.

III. Proposed Hearing Location and Estimated Duration

Complainant proposes that the hearing for this matter be held in or near San Francisco, CA. All of the parties and anticipated fact witnesses are believed to live or work within a two hours' drive of San Francisco.

Complainant estimates that it will take two days to present its direct case.

None of Complainant's witnesses require translation services.

IV. Brief Statement of the Bases for the Denied Allegations

Complainant provides the following brief narrative statement regarding the disputed allegations in the Complaint. This statement may not include all of the details that are provided in the attached exhibits, and Complainant reserves its right to present other admissible evidence at hearing and make any other arguments based on the evidence presented.

Regarding Paragraph 21, Complainant's inspectors and Port staff observed the facility's drainage and the hydrological connectivity between the locations on respondent's facility and offsite storm drains, conveyance systems and water bodies. Respondent's SWPPP also describes aspects of the facility's drainage.

Regarding Paragraph 23, Complainant's NOI is included in the exhibits. Respondent operated a scrap metal recycling business, which is within the category of industry categorized under Standard Industrial Classification (SIC) Code 5093. Respondent also conducted ready-mix concrete operations, which is within the category of industry categorized under SIC Code 3273. According to the General Permit instructions, SIC codes should be found in the Standard Industrial Classification Manual prepared by the Federal Office of Management and Budget.

Regarding Paragraphs 24-26, Complainant's inspectors observed evidence of potential contaminants at the facility, and observed the lack of adequate best management practices ("BMPs") to prevent or limit discharges of contaminated storm from the specified locations. Further information is found in the inspection reports that are included as exhibits. Respondent's inadequate SWPPPs are also provided.

Regarding Paragraph 28, sampling information submitted to EPA by A Plus indicate that A Plus did not conduct the specified analyses.

Regarding Paragraph 30, the deficiencies are found in the SWPPP included as an exhibit.

Regarding Paragraphs 33-34, sampling information submitted to EPA by A Plus indicate that A Plus did not conduct the specified analyses, and show that the identified samples exceeded the specified parameter benchmark values.

Regarding Paragraph 42, Complainant provides the rainfall data as an exhibit.

Regarding Paragraphs 45-48, Complainant provides the relevant SWPPPs and correspondence as exhibits.

Regarding Paragraphs 50-53, please see statement regarding Paragraphs 24-26 and 28.

Regarding Paragraphs 55-57, please see statement regarding Paragraphs 42 and 45-48. Rainfall events potentially subject to storm water sampling were also identified by reference to calendars for the years 2005-10. Upon request by EPA, Respondent was unable to produce evidence that it had conducted storm water sampling during the 2005-08 wet seasons.

V. Location of the General Permit Referenced in the Complaint

The State of California's Industrial Activities Storm Water General Permit No. CAS000001/Water Quality Order No. 97-03-DWQ ("General Permit") can be found at the following internet address (URL):

http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/induspmnt.pdf

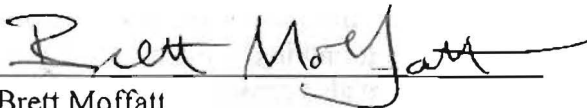
VI. Location of Policies Relevant to the Assessment of a Penalty in this Matter

To calculate a specific proposed penalty for this matter, Complainant expects to rely, in part, on the *Policy on Civil Penalties* (GM-21), and companion document, *A Framework for Statute-Specific Approaches to Penalty Assessments* (GM-22), Feb. 16, 1984, located at the following internet address (URL):

<http://www.epa.gov/compliance/resources/policies/civil/penalty/epapolicy-civilpenalties021684.pdf>

Respectfully Submitted,

DATED: July 28, 2011



Brett Moffatt
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U.S. Environmental Protection Agency, Region 9