

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103**

In the Matter of:)	
)	
Whitehall Township)	DOCKET NO. CAA-03-2014-0092
3219 MacArthur Road)	
Whitehall, PA 18052,)	MOTION TO SUPPLEMENT
)	INITIAL PREHEARING EXCHANGE
Respondent.)	

MOTION TO SUPPLEMENT
INITIAL PREHEARING EXCHANGE

Pursuant to 40 C.F.R. § 22.16 of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (“Consolidated Rules of Practice”), and in response to Administrative Law Judge M. Lisa Buschmann’s October 23, 2014 Prehearing Order and August 18, 2015 Order Scheduling Hearing, Complainant, the Division Director of the Land and Chemicals Division, United States Environmental Protection Agency, Region III (“EPA”), hereby moves to supplement its Initial Prehearing Exchange filed in the above-captioned matter.

In support of this Motion, Complainant asserts the following:

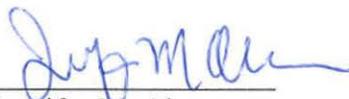
1. On December 4, 2014, EPA filed Complainant’s Initial Prehearing Exchange pursuant to 40 C.F.R. § 22.19(a), and in response to Administrative Law Judge M. Lisa Buschmann’s October 23, 2014 Prehearing Order.
2. Pursuant to 40 C.F.R. § 22.19(f), entitled “Supplementing Prior Exchanges”, in pertinent part:

A party who has made an information exchange under paragraph (a) of this section...shall promptly supplement...the exchange when the party learns that the information exchanged...is incomplete, inaccurate or outdated, and the additional...information has not otherwise been disclosed to the other party pursuant to this section.
3. By Prehearing Order dated October 23, 2014 and Order Scheduling Hearing dated August 18, 2015, the Presiding Officer required proposed additions to a party’s prehearing exchange to be filed with an accompanying motion to supplement, explaining why such additions were not submitted earlier.
4. On October 15, 2015, EPA’s original attorney of record and lead counsel for this matter withdrew from the case.

5. During recent preparations for the hearing scheduled to begin on November 17, 2015, EPA obtained new information that is believed to be relevant to Respondent's liability and to the appropriate penalty to be imposed for the violations alleged in the Complaint, and that therefore will be useful to EPA in presenting its *prima facie* case.
6. This Motion seeks to supplement Complainant's Initial Prehearing Exchange with such new information in the form of additional exhibits not previously disclosed.
7. The new information was obtained through online resources that are publically available.
8. The new relevant information is of a nature that is or should be already known to Respondent.
9. This Motion is being filed at least 15 days before the administrative hearing date, as discussed in 40 C.F.R. § 22.22(a)(1).
10. Complainant herein asserts that Respondent will not be prejudiced by the granting of this Motion for each of the following reasons:
 - A. Respondent will be provided the opportunity to review the additional exhibits sufficiently in advance of hearing for truthfulness, accuracy, relevance and completeness;
 - B. Respondent will be provided the opportunity to conduct an independent inquiry as to the additional exhibits sufficiently in advance of hearing in order to verify or refute the evidence to be set forth by the Complainant; and
 - C. Respondent will be able to prepare adequately for trial since it will have the additional exhibits in its possession sufficiently in advance of hearing.
11. After informing Respondent's counsel about its intent to file this Motion and about the relief sought herein, Respondent's counsel has not responded as to whether or not it opposes the relief sought herein.
12. A true and correct copy of Complainant's Supplement to Initial Prehearing Exchange accompanies and is being filed concurrent with this Motion.

WHEREFORE, Complainant moves this Presiding Officer for an Order granting this Motion to Supplement Initial Prehearing Exchange.

Respectfully Submitted,



Jennifer M. Abramson
Donzetta W. Thomas
Senior Assistant Regional Counsels

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3219 MacArthur Road)	
Whitehall, PA 18052,)	SUPPLEMENT TO INITIAL
)	PREHEARING EXCHANGE
Respondent.)	

SUPPLEMENT TO INITIAL PREHEARING EXCHANGE

Pursuant to 40 C.F.R. § 22.19(f) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (“Consolidated Rules of Practice”), and in response to Administrative Law Judge M. Lisa Buschmann’s October 23, 2014 Prehearing Order and August 18, 2015 Order Scheduling Hearing, Complainant, the Division Director of the Land and Chemicals Division, United States Environmental Protection Agency, Region III (“EPA”), hereby supplements the Initial Prehearing Exchange filed on December 14, 2014 as follows:

LIST OF EXHIBITS

The following additional exhibits may be introduced by Complainant at hearing. In accordance with 40 C.F.R. § 22.19(a) and Administrative Law Judge M. Lisa Buschmann’s October 23, 2014 Prehearing Order, copies of the exhibits identified below are being filed through the OALJ E-Filing System and are being provided to the Respondent.

Complainant's Ex.40: Copy of a Google Map image, depicting the back of the building located at 896 3rd Street in Whitehall, Pennsylvania as of July 2011. Note: At hearing, Complainant may present an enlargement of this exhibit in the nature of a demonstrative aid.

Complainant's Ex.41: Copy of a Google Map image, depicting the side of the building located at 896 3rd Street in Whitehall, Pennsylvania (along Grape Street) as of July 2011. Note: At hearing, Complainant may present an enlargement of this exhibit in the nature of a demonstrative aid.

Complainant's Ex.42: Copy of a Google Map image, depicting the front of the building located at 896 3rd Street in Whitehall, Pennsylvania as of July 2011. Note: At hearing, Complainant may present an enlargement of this exhibit in the nature of a demonstrative aid.

Complainant's Ex.43: Copy of a Google Map image, depicting the side of the building located at 896 3rd Street in Whitehall, Pennsylvania (and proximity to 3rd Street) as of September 2008. Note: At hearing, Complainant may present an enlargement of this exhibit in the nature of a demonstrative aid.

Complainant's Ex.44: Copy of a Google Map image, depicting the side of the building located at 896 3rd Street in Whitehall, Pennsylvania as of September 2008. Note: At hearing, Complainant may present an enlargement of this exhibit in the nature of a demonstrative aid.

Complainant's Ex.45: Copy of a Google Map image, depicting the side of the building located at 896 3rd Street in Whitehall, Pennsylvania (and proximity to neighboring houses) as of September 2008. Note: At hearing, Complainant may present an enlargement of this exhibit in the nature of a demonstrative aid.

Complainant's Ex. 46: Copy of March 7, 2013 article from Whitehall-Coplay Press entitled "Whitehall may widen Grape St."

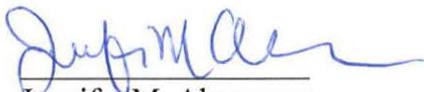
Complainant's Ex. 47: Copy of March 28, 2013 article from Whitehall-Coplay Press entitled "The bids are in".

Complainant's Ex. 48: Copy of May 2, 2013 article from Whitehall-Coplay Press entitled "Building to be demolished".

Complainant's Ex. 49: Copy of September 5, 2013 article from Whitehall-Coplay Press entitled "Building at Third and Grape Demolished".

Complainant's Ex. 50: Asbestos NESHAP Clarification of Intent, 60 *Fed. Reg.* 38725 (July, 28, 1995).

Respectfully Submitted,



Jennifer M. Abramson
Donzetta W. Thomas
Senior Assistant Regional Counsels

CERTIFICATE OF SERVICE

I hereby certify that, on the date below, copies of Complainant's Motion to Supplement Initial Prehearing Exchange and Supplement to Initial Prehearing Exchange were served upon the persons listed in the manner indicated.

Original and one copy via THE OALJ E-Filing System

Sybil Anderson, Headquarters Hearing Clerk

One copy via THE OALJ E-Filing System

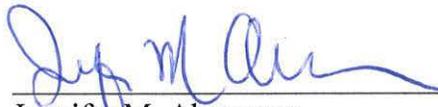
M. Lisa Buschmann, Administrative Law Judge

Copy by UPS Next Day Air:

Kimberly G. Krupka
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Allentown, PA 18105-0406

NOV 02 2015

Date



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