



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY BEFORE THE ADMINISTRATOR

In the Matter of: )
LHP, LLC, ) Docket No. TSCA-07-2014-0029
Respondent. )

ORDER ON COMPLAINANT'S MOTION TO COMPEL DISCOVERY

On February 19, 2016, Respondent filed a Motion to Supplement Prehearing Exchange ("Respondent's Motion to Supplement"), seeking to supplement its Prehearing Exchange to include an additional proposed witness, and also to include Respondent's proposed exhibits ("RX") 3-14. Complainant filed a Response to Respondent's Motion to Supplement on February 25, 2016, stating evidentiary objections to RX 1 and RX 14, and requesting additional materials from Respondent related to both aforementioned proposed exhibits, including foundational information pertaining to RX 14. Respondent's Motion to Supplement was granted by order on March 14, 2016.

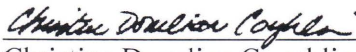
Following its Response to Respondent's Motion to Supplement, Complainant filed a Motion to Compel Discovery ("Motion to Compel" and "Mot. to Compel") on March 11, 2016, requesting that I "compel production of documents and information authenticating the renovation record submitted by Respondent as [RX 14]." Mot. to Compel 1. Specifically, Complainant requests that I compel Respondent to provide the electronic files in which RX 14 was created, produced in native format, on CD or DVD, with all original metadata intact. Mot. to Compel 2. Complainant asserts that its request does not unreasonably delay this proceeding or unreasonably burden Respondent. Mot. to Compel 2. Further, Complainant asserts that Respondent maintains exclusive access to the materials it seeks through its Motion to Compel, and that Respondent has not otherwise provided such materials. Mot. to Compel 2-3.

The procedural rules governing this proceeding, set forth at 40 C.F.R. Part 22 ("Rules of Practice"), provide that a party may move for additional discovery following the prehearing exchange. 40 C.F.R. § 22.19(e). The Rules of Practice, however, direct that a Presiding Officer may order such other discovery only if it (1) will neither unreasonably delay the proceeding nor unreasonably burden the non-moving party; (2) seeks information that is most reasonably obtained from the non-moving party, and which the non-moving party has refused to provide voluntarily; and (3) seeks information that has significant probative value on a disputed issue of material fact relevant to liability or the relief sought. 40 C.F.R. § 22.19(e). With regard to response to written motions, the Rules of Practice provide that a party's response to any written motion must be filed within 15 days after service of such motion. 40 C.F.R. § 22.16(b).

Considering the requirements for additional discovery set forth in 40 C.F.R. § 22.19(e), as well as my obligations to avoid delay and provide for the efficient adjudication of matters before me,<sup>1</sup> granting Complainant's Motion to Compel, at this late stage in the proceedings, could cause an unreasonable delay.<sup>2</sup> Consequently, I am not inclined to do so. However, the denial of Complainant's Motion to Compel does not foreclose Complainant's opportunity at the evidentiary hearing to renew its objections to the admissibility of proposed exhibit RX 14, should Respondent move for its admission and fail to establish the requisite foundation for admissibility into evidence.

Accordingly, Complainant's Motion to Compel is **DENIED**.

**SO ORDERED.**

  
Christine Donelian Coughlin  
Administrative Law Judge

Dated: March 16, 2016  
Washington, D.C.

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<sup>1</sup> See 40 C.F.R. 22.4(c).

<sup>2</sup> The evidentiary hearing in this matter is scheduled to commence on Tuesday, March 22, 2016, and was previously postponed from February 2-5, 2016. Insufficient time remains to afford Respondent the fifteen days to respond to Complainant's Motion to Compel, as provided in 40 C.F.R. 22.16(b).

In the Matter of *LHP, LLC*, Respondent.  
Docket No. TSCA-07-2014-0029

**Certificate of Service**

I hereby certify that copies of this **Order on Complainant's Motion to Compel Discovery**, issued by Christine D. Coughlin, Administrative Law Judge, on this 16<sup>th</sup> day of March 2016, were sent to the following in the manner indicated.

  
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**Dated: March 16, 2016**  
**Washington, DC**