

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	
DEPARTMENT OF DEFENSE)	Docket No. CAA-09-98-17
DAVIS-MONTHAN AIR FORCE BASE,)	
)	
RESPONDENT)	

**ORDER GRANTING EPA’S MOTIONS TO AMEND
PREHEARING EXCHANGE AND TO COMPEL DISCOVERY**

EPA filed, on January 18, 2000 a Motion to Amend Prehearing Exchange; Motion to Compel Discovery. The Motion explains that, in the wake of the Court’s November 30, 1999 Order granting the Respondent’s Motion to Amend its Answer, Complainant now must be permitted to respond to those allegations which Respondent had previously admitted but now denies.¹

Upon consideration², the Motion is GRANTED. It should be obvious that, in light of Respondent’s new stance, EPA’s Prehearing Exchange must, of necessity, be amended to address the “issues that were newly raised by Respondent’s Amended Answer.” EPA Motion at 2. EPA is directed to exchange the new documents it now intends to introduce to Respondent within seven days of this Order, which is being transmitted by facsimile in addition to mailing.

Further, EPA’s Motion to Compel Discovery of the United States Air Force Office of Special Investigation, File NR 95217D58-775999, dated October 9, 1995 and referred to as the “AFOSI

¹In its Order the Court advised the Respondent that good faith is inherent when a party seeks to withdraw previous admissions and that, while there was no presumption here that Respondent was acting other than in good faith in seeking to amend its Answer, if liability is subsequently established and the hearing reveals that Respondent, in fact, had not operated in good faith in amending its Answer, the Court could take that development into consideration in the penalty phase and, along with all the other penalty factors could consider that conduct as a factor for *increasing* the penalty. November 30, 1999 Order at 2.

²In making this determination the Court considered Respondent’s Response to EPA’s Motion as well as the applicable standard for such rulings, as set forth at 40 C.F.R. 22.19(e).

Report,” is GRANTED. Respondent is directed to provide EPA with a copy of this report within seven days of this Order.

So Ordered.

William B. Moran
United States Administrative Law Judge

Dated: February 22, 2000

In the Matter of Department of Defense, Davis-Monthan Air Force Base, Respondent
Docket No. CAA-09-98-17

CERTIFICATE OF SERVICE

I certify that the foregoing **Order Granting EPA's Motions To Amend Prehearing Exchange And To Compel Discovery**, dated February 22, 2000, was sent this day in the following manner to the addressees listed below:

Original by Regular Mail to:

Danielle E. Carr
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Copy by Regular Mail to:

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Maria Whiting-Beale
Legal Staff Assistant

Dated: February 22, 2000