

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

In the Matter of:)	
)	
Norco Corporation,)	Docket No. CAA-09-2024-0025
)	
Respondent.)	

COMPLAINANT’S SUPPLEMENTAL PREHEARING EXCHANGE

The Director of the Enforcement and Compliance Assurance Division of the U.S. Environmental Protection Agency’s Region 9 Office (“Complainant”) respectfully requests that this Tribunal allow the following supplement to its prehearing exchange. Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”), set forth at 40 C.F.R. Part 22, a party who has made an information exchange under 40 C.F.R. § 22.19(a) shall promptly supplement or correct the exchange when the party learns that the information exchanged or response provided is incomplete, inaccurate, or outdated, and the additional or corrective information has not otherwise been disclosed to the other party pursuant to this section. 40 C.F.R. § 22.19(f).

Pursuant to this Tribunal’s January 31, 2024 Prehearing Order, any addition of a proposed witness or exhibit to the prehearing exchange, submitted pursuant to Section 22.19(f) of the Consolidated Rules, must be filed with an accompanying motion to supplement the prehearing exchange only when supplementation is sought within 60 days of the scheduled hearing. As this supplement is offered more than 60 days before the scheduled hearing—which

has not yet been scheduled—Complainant respectfully offers it without an accompanying motion.

I. Supplement to Complainant’s Initial Prehearing Exchange

The Tribunal’s June 21, 2024 Order on Motions (“Order on Motions”) clarified that Complainant’s Initial and Rebuttal Prehearing Exchanges contained incomplete and inaccurate information due to alleged violations for truck trips potentially prohibited by the statute of limitations under 18 U.S.C. § 2462 and truck trips that Respondent stated were listed by mistake and should not have been included in Respondent’s response to Complainant’s May 20, 2021 Information Request (“IR”). *See* Order on Motions at 24, Footnote 32; 25, Footnote 34. Motions at 25, Footnote 34. In the Order on Motions, the Tribunal clarified that it “is unwilling to rely upon [Complainant’s Exhibit CX 46] as accurately enumerating evidence of violations.” Order at 25, Footnote 34. Complainant therefore corrects its Initial Prehearing Exchange, which included CX 46, titled “EPA Analysis of Norco Corp. Response to May 20, 2021 EPA Information Request,” with a new exhibit, CX 51, that names each fleet owner hired by Respondent and dispatched to California at Respondent’s direction during calendar year (“CY”) 2019, CY 2020, or between January 1, 2021, and May 20, 2021, as reported by Respondent in its most recent response to the IR.¹ Complainant intends CX 51 to replace CX 46.

CX 51 describes the basis for Respondent’s liability for each violation count by citing to documents that are in the record. It provides the locations in the record of the relevant documents from Respondent’s response to the IR, which show that Respondent hired or

¹ The basis for the Complaint is Respondent’s most recent response to the IR, which it certified on August 10, 2023.

dispatched trucks but did not verify compliance with the California Truck and Bus Regulation (“TBR”). Complainant assessed Respondent’s liability based on Respondent’s inability to show that it verified the fleets it hired and dispatched into California, as required under TBR Section 2025(x)(2), 13 C.C.R. § 2025(x)(2).² Some hired fleets consist of multiple trucks that may have traveled into California during more than one year under Respondent’s dispatch, therefore, if Respondent failed to verify TBR compliance with any of the trucks in a fleet, or if Respondent failed to verify trucks in a fleet annually, Complainant assessed one violation for that fleet. However, if Respondent failed to verify TBR compliance of multiple trucks in a fleet, or if Respondent failed to verify compliance annually, Complainant would still count only one violation for the entire fleet. Up to this point, Respondent has not provided Complainant with any documentation to show that it verified the TBR compliance of the fleets it hired and dispatched into California prior to the trucks’ entry into California.

CX 51 reflects Complainant’s removal of 34 alleged violation counts due to statute of limitations limits or statements by Respondent in its August 10, 2023 IR response that certain trucks within a fleet or whole fleets were listed by accident in Respondent’s earlier IR responses. The revised count of alleged violations in this matter is 43; Complainant alleges that

² The Order on Motions references the “CARB List” and cites CX 42 at 1-5 and CX 4 at 26. Order on Motions at 23, 24. The “CARB List” that the Tribunal refers to in the Order on Motions is Norco’s list of transportation refrigeration units (“TRUs”), which are different units than the trucks subject to the TBR that are at issue in this matter. Respondent supplied the CARB list in response to Complainant’s December 22, 2021 Finding and Notice of Violation (“NOV”) which alleged violations based on Respondent’s responses to section III of the IR regarding TRUs. CX 2 at 13-14; CX 4 at 39. Complainant is not alleging violations of the TRU regulation in this matter. Complainant apologizes for any misleading information in the record on this subject.

Respondent failed to verify TBR compliance of 43 fleets that it hired or dispatched in California during the period of January 1, 2019, through May 20, 2021, inclusive.

The first column from the left in CX 51 is the violation number, which is the same as the fleet number since Complainant is assessing violations by fleet. The second column from the left contains the fleet owner name. Fleet owners are listed alphabetically by first name. The third column from the left references evidence in the record that Respondent is a motor carrier for the purpose of the TBR. The fourth column from the left references evidence in the record that Respondent “operated or directed the operation of” a vehicle by hiring or dispatching that vehicle in California. The fifth column from the left references evidence in the record that Respondent hired the specific fleet listed. Finally, the sixth (last) column from the left shows that Norco did not provide any information in response to IR item I.E.4, which requests copies of documents establishing vehicle compliance with the TBR, consistent with the requirement of TBR Section 2025(x)(2).

II. Supplement to Complainant’s Rebuttal Prehearing Exchange

Complainant also respectfully submits as a supplement to its prehearing exchange CX 52, which, like CX 51, names each fleet owner hired by Respondent and dispatched to California at Respondent’s direction during CY 2019, CY 2020, or between January 1, 2021, and May 20, 2021, as reported by Respondent in its most recent response to the IR. In its Rebuttal Prehearing Exchange, which it filed on May 2, 2024, Complainant included Table 1, titled “Summary of Penalty Amounts for the Importance to the Regulatory Scheme Penalty Factor.” Complainant’s removal of violation counts due to the statute of limitations and Respondent’s certification that certain fleets did not travel into California at its direction during the time

period contemplated in the IR resulted in the need for Complainant to revise Table 1 of the Rebuttal Prehearing Exchange, which Complainant is correcting with CX 52.

Based on the information that Respondent has provided to Complainant as presented in CX 52, Complainant determined that over the time period specified in the IR, (1) 13 hired or dispatched fleets that drove at least one 2010 model year or older truck without any additional information would not be allowed to operate in California during the time that Norco dispatched them in the state; (2) 16 hired or dispatched fleets consisted of trucks that were 2011 model year or newer trucks and therefore were compliant with the TBR; and (3) 14 hired or dispatched fleets consisted of trucks that had missing information regarding their TBR compliance status.

Finally, Complainant respectfully requests to supplement its prehearing exchange with a revised penalty calculation, as shown in CX 53. Except for the changes to the “Importance to the Regulatory Scheme” factor of the gravity penalty component, Complainant did not change its penalty calculation as presented in its Rebuttal Prehearing Exchange.

III. Additional Documents and Exhibits Intended to be Introduced

Exhibit Number	Description
CX 51	Summary of Violation Counts and Locations of Relevant Evidence in the Record
CX 52	Summary of Penalty Amounts for the Importance to the Regulatory Scheme Penalty Factor by Fleet/Violation Count
CX 53	Complainant’s Penalty Calculation: Norco Corporation

Respectfully Submitted,

July 18, 2024

Date

Jacob Finkle, Attorney Advisor
Office of Regional Counsel
EPA Region 9
75 Hawthorne Street (ORC-2)
San Francisco, CA 94105
415-972-3857
finkle.jacob@epa.gov

CERTIFICATE OF SERVICE

I certify that an electronic copy of the foregoing "Complainant's Supplemental Prehearing Exchange," along with copies of Complainant's Exhibits CX 51, 52, and 53, was sent this day by e-mail to the following e-mail address for service on Respondent: A.G. Hollenstein at ag@norcocorp.com.

July 18, 2024

Date

Jacob Finkle, Attorney Advisor
Office of Regional Counsel
EPA Region 9
75 Hawthorne Street (ORC-2)
San Francisco, CA 94105
415-972-3857
finkle.jacob@epa.gov