

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	
SAN PEDRO FORKLIFT,)	DOCKET NO. CWA-09-2009-0006
)	
)	
RESPONDENT)	

ORDER GRANTING COMPLAINANT'S MOTION TO STRIKE

The Complaint in this matter was filed on September 29, 2009, pursuant to Complainant's authority under Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act ("CWA"), as amended, 33 U.S.C. § 1319(g). San Pedro Forklift's ("Respondent") Answer was filed on November 13, 2009.¹ This case was assigned to the undersigned on April 13, 2010.

In accordance with the Prehearing Order issued by the undersigned, Complainant and Respondent filed their Initial Prehearing Exchanges on June 2 and July 2, 2010, respectively. Complainant then filed its Rebuttal Prehearing Exchange on July 15, 2010, and a Penalty Analysis on July 16, 2010.

On July 13, 2010, Complainant filed a Motion to Strike ("Motion") several exhibits contained in Respondent's Prehearing Exchange.² Respondent has not filed a response to the Motion.³ In the Motion, Complainant argues that Respondent's Prehearing Exchange includes evidence of "statements made by [both

¹The parties participated in the Alternate Dispute Resolution process offered by this office.

²Respondent's opposed Motion For Leave to File a First Amended Answer to Administrative Complaint is pending before the undersigned.

³Under the Rules of Practice, failure to respond to a motion "waives any objection to the granting of the motion." 40 C.F.R. § 22.16(b).

Complainant and Respondent] as part of settlement negotiations in this matter." According to Complainant, these statements contained in Exhibits 5, 6, 9, 12, 13, 14, and 21 occurred after Complainant had commenced settlement negotiations by informing Respondent of its intent to seek a penalty and the option of settlement. Complainant requests that these statements "be stricken from the record," and that "Respondent be admonished for having attempted to disclose these statements in violation of the Part 22 requirements."

Under Section 22.22(a)(1) of the Rules of Practice, 40 C.F.R. § 22.22(a)(1), evidence relating to settlement, which would be excluded in the federal courts under Rule 408 of the Federal Rules of Evidence, FED. R. EVID. 408, is not admissible. Therefore, all references to the substance of the parties' settlement discussions are not properly before me and Exhibits 5, 6, 9, 12, 13, 14, and 21 must be stricken from Respondent's proposed exhibits. Respondent should refrain from disclosing to this tribunal any confidential settlement matters in future filings. Accordingly, Complainant's unopposed Motion to Strike is **Granted**.

Barbara A. Gunning
Administrative Law Judge

Dated: August 4, 2010
Washington, DC