



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

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2012 JUN 29 AM 10:17

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Ms. LaDawn Whitehead
Regional Hearing Clerk
United States
Environmental Protection Agency-Region V
77 West Jackson Blvd. - 19th Fl.
Chicago, IL 60604-3590

REPLY TO THE ATTENTION OF:
C-14J

Re: U.S. EPA v. Joseph L. Bollig and Sons, Inc.
Docket No. CWA-05-2011-0008 - Complainant's Motion to Supplement Prehearing Exchange and Supplemental Exhibit

Dear Ms. Whitehead:

Pursuant to the May 30, 2012 order of the Court, enclosed please find an original and one copy of Complainant's Motion to Supplement Prehearing Exchange and Supplemental Exhibit in the above referenced case. I have also filed copies of this Amended Complaint with the Administrative Law Judge and Respondent by certified mail, return receipt requested.

Sincerely yours,

Thomas P. Turner
Associate Regional Counsel

Enclosure

cc: Hon. M. Lisa Buschmann, ALJ (mail code: 1900L)
Greg Carlson, Water Division (WW-16J)
Kevin C Chow, Assoc. Regional Counsel (C-14J)

Joseph L. Bollig and Sons, Inc.
c/o: William T. Curran, Esq.
Curran, Hollenbeck & Orton, SC
111 Oak Street, PO Box 140
Mauston, WI 53948-0140



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CERTIFIED MAIL
RETURN RECEIPT REQUESTED

REPLY TO THE ATTENTION OF:

Hon. M. Lisa Buschmann
Administrative Law Judge
Mail code: (1900L)
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

C-14J

Re: U.S. EPA v. Joseph L. Bollig and Sons, Inc.
Docket No. CWA-05-2011-0008 - Complainant's Motion to Supplement Prehearing Exchange and Supplemental Exhibit

Dear Judge Buschmann:

Pursuant to this Court's order of May 30, 2012 in above referenced case, enclosed please find a copy of Complainant's Motion to Supplement Prehearing Exchange and Supplemental Exhibit. I have filed the original and a copy with the U.S. EPA Regional Hearing Clerk, and filed a copy with Respondent by certified mail, return receipt requested.

Please contact me with any questions or comments at (312) 886-6613.

Sincerely yours,

Thomas P. Turner
Assoc. Regional Counsel

Enclosure

cc: U.S. EPA Regional Hearing Clerk
Region 5

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

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IN THE MATTER OF:)
)
Joseph L. Bollig and Sons, Inc.,)
New Lisbon, Wisconsin,)
)
)
)
)
)
)
)
Respondent.)
_____)

DOCKET No. CWA-05-2011-0008
Honorable M. Lisa Buschmann
Administrative Law Judge

COMPLAINANT’S MOTION TO SUPPLEMENT PREHEARING EXCHANGE

In accordance with the Scheduling Order issued by this Honorable Court on May 30, 2012, at Paragraph 9, p. 8, Complainant, the United States Environmental Protection Agency, Region 5 (“EPA”), through its undersigned attorneys, hereby moves to file the instant supplement to its prehearing exchange pursuant to Section 22.19(f) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, codified at 40 C.F.R. Part 22, § 22.19(f).

A. COMPLAINANT’S SUPPLEMENTAL PREHEARING EXCHANGE

II.B. Copies of all supplemental documents and exhibits intended to be introduced into evidence.

Complainant expects to offer the following document into evidence to supplement and update the record established by its March 30, 2012 Prehearing Exchange, specifically with reference to Complainant’s Exhibits 4 and 5:

1. COMPLAINANT’S SUPPLEMENTAL EXHIBIT 1: EPA Site Inspection Report, dated June 15, 2012.

A copy of this exhibit is attached to this Supplemental Prehearing Exchange.

Pursuant to this Court's February 29, 2012, Prehearing Order (at Section VI, pp. 5-6, "Procedures for Motions and Extensions of Time"), on June 28, 2012, Complainant contacted Respondent and sought to inquire as to whether Respondent would object to this Motion. Respondent has stated that it does not agree to the Motion, and reserves the right to review and reply to this Motion.

Complainant's Supplemental Prehearing Exchange for In the Matter of Joseph L. Bollig and Sons, Inc. is hereby respectfully submitted.

Respectfully Submitted,



Thomas Turner
Kevin C. Chow
Associate Regional Counsels
Office of Regional Counsel (C-14J)
U.S. EPA, Region 5
77 W. Jackson Blvd.
Chicago, IL 60604
(312) 886-6613

Attachment

CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the attached Complainant's Supplemental Prehearing Exchange, for In the Matter of Joseph L. Bollig and Sons, Inc., Docket No. CWA-05-2011-0008, was filed with the Regional Hearing Clerk, U.S. EPA, Region 5, and that true, accurate and complete copies of Complainant's Supplemental Prehearing Exchange were served by Certified Mail, Return Receipt Requested, on Administrative Law Judge M. Lisa Buschmann and Mr. William Curran, Counsel for Respondent, on the date indicated below.

Administrative Law Judge

The Honorable M. Lisa Buschmann
Office of the Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Counsel for Respondent

William T. Curran, Esq.
Curran, Hollenbeck & Orton, SC
111 Oak Street, P.O. Box 140
Mauston, WI 53948-0140

Dated in Chicago, Illinois, this 29th day of June, 2012.



Thomas Turner
Associate Regional Counsel
U.S. EPA - Region 5

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SITE INSPECTION REPORT
JOSEPH L. BOLLIG & SONS, INC. case
Unnamed Tributary Flow

2012 JUN 29 AM 10:18

Northeast Quarter of Section 34, Town of Lisbon, Juneau County, Wisconsin
May 11, 2012

(REPORT DATE: June 15, 2012)

ATTENDEES: Gregory T. Carlson, U.S. Environmental Protection Agency (EPA)

SITE: Located on either side of U.S. Highway 12, in the NE 1/4, Section 34, Township 16 North, Range 3 East, Town of Lisbon, Juneau County, Wisconsin

CONDITIONS: Mostly sunny, around 65 degrees F.

HISTORY/BACKGROUND: EPA, in preparation for a hearing in the matter of Joseph L. Bollig & Sons, Inc., performed additional observations of water levels and flow within an unnamed tributary that originates in wetlands on the Mauston New Lisbon Union Airport property and flows about one mile to the Lemonweir River, in part, by passing beneath U.S. Highway 12 about 2.3 miles north of the city of Mauston, Wisconsin.

OBSERVATIONS: I parked along the east or northbound shoulder of U.S. Highway 12 on May 11th, around 7:45 a.m. where the unnamed tributary enters a culvert beneath the highway. I walked to the upstream side of the U.S. 12 culvert to check for flow and observe the channel. There was no discernable flow into the culvert or in the channel upstream of it, but the channel and culvert contained significant amounts of water. Photo 1 is an upstream view of the unnamed tributary's channel a few feet upstream of the culvert. I walked the channel upstream as it parallels the highway for about 120 feet and took Photo 2 through overhanging dogwoods and alders as the channel bent away from the highway right of way. Crossing the highway to the downstream side of the highway culvert, I took a couple of photos depicting the sinuous channel at the same spot where data was collected by EPA in October 2009. Photo 3 depicts the first channel bend downstream of the highway culvert and the general location of the channel thalweg measurement in 2009. The channel waters were in flood stage as the water levels exceeded the bank height. Photo 4 depicts a close-up of the channel near the thalweg measurement. The floating grasses at the interface of the open channel waters and the vegetated bank belie the flooding nature of the channel at this point in time. A channel thalweg measurement yielded depths of 33 and 35 inches within six inches of each other. In contrast, the channel thalweg was 16 inches in 2009 and described as bankfull or to the top of the discernable channel bank. Photo 5 depicts the flooded ground between the unnamed tributary channel as it meanders toward the Lemonweir River – note the mirrored water surface within the willow clump in the photo center. Photo 6 depicts the continuation of the channel downstream towards the Lemonweir River. Given the increased water depths from the fall of 2009 to the spring of 2012, the flooded ground on the downstream side of the U.S. 12 highway culvert and the lack of flow even with the increased water levels, likely means the Lemonweir River is in flood stage. If the Lemonweir River is in flood stage, then the observations of the unnamed tributary are depicting back waters of the flood.

EPA departed the site around 8 am.

Attachments: Photographs

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COMPLAINANT'S SUPPLEMENTAL EXHIBIT - PHOTO 1



COMPLAINANT'S SUPPLEMENTAL EXHIBIT - PHOTO 3



COMPLAINANT'S SUPPLEMENTAL EXHIBIT - PHOTO 3



COMPLAINANT'S SUPPLEMENTAL EXHIBIT - PHOTO 4



COMPLAINANT'S SUPPLEMENTAL EXHIBIT - PHOTO 5



COMPLAINANT'S SUPPLEMENTAL EXHIBIT - PHOTO 6