



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY BEFORE THE ADMINISTRATOR

2015 MAR 18 AM 11:30

In the Matter of: Edward and Theresa Washines, Da Stor at Lillie's Corner Respondents. Docket No. RCRA-10-2014-0100

ORDER ON COMPLAINANT'S UNOPPOSED MOTION TO SUPPLEMENT COMPLAINANT'S AMENDED PREHEARING EXCHANGE

On March 11, 2015, Complainant filed Complainant's Unopposed Motion to Supplement Complainant's Amended Prehearing Exchange ("Motion" or "Mot.") wherein Complainant seeks to supplement its amended prehearing exchange with two additional proposed exhibits 43 and 44, submitted as a separate attachment to the Motion. Mot. at 1-2. Complainant's proposed exhibit 43 is the "Financial Responsibility, Colony Insurance Company, Insurance Policy for Da Stor at Lillie's Corner, dated January 14, 2015." Complainant's proposed exhibit 44 is a "Memorandum for Record from Katherine Griffith, Case Developer, UST Program 'Underground Storage Tanks (UST) Enforcement Case - Da Stor at Lillie's Corner - Penalty Justification,' dated March 2, 2015." Mot. at 2.

In support of its Motion, Complainant argues that its amended prehearing exchange is "incomplete and outdated" and that including these additional proposed exhibits will provide a complete, accurate record for the proceedings. Mot. at 1-2. Complainant represents that Respondents' counsel does not object to the Motion. Mot. at 2. On March 17, 2015, staff for this Tribunal confirmed with Respondents' counsel that Respondents do not object to the Motion.

The procedural rules governing this proceeding, set forth at 40 C.F.R. Part 22 ("Rules"), require the parties to file and exchange certain information before the hearing, including the names of witnesses, a brief narrative summary of their testimony, or a statement that no witnesses will be called, and copies of all documents that party intends to introduce into evidence at the hearing. 40 C.F.R. § 22.19(a). The Rules also provide that parties "shall promptly supplement or correct the [prehearing] exchange when the party learns that the information exchanged or response provided is incomplete, inaccurate or outdated, and the additional or corrective information has not otherwise been disclosed to the other party pursuant to this section." 40 C.F.R. § 22.19(f).

The Prehearing Order issued in this matter on August 26, 2014, notified the parties that any addition of a proposed witness or exhibit to the prehearing exchange had to be filed with an accompanying motion to supplement the prehearing exchange. The Notice of Hearing and Scheduling Order issued on January 8, 2015, notified the parties that the hearing scheduled in this matter is to commence on April 7, 2015, and provided further that all non-dispositive motions, such as motions to supplement a prehearing exchange, had to be filed on or before February 20, 2015. In support of its untimely Motion, Complainant states it “respectfully submits this motion to provide a complete, accurate record for the proceedings, and to satisfy the requirements of 40 C.F.R. § 22.19(f).” Mot. at 2. Further, Complainant explains that “[o]n March 2, 2015, Counsel for Complainant received from Counsel for Respondents a copy of the Respondents’ underground storage tank pollution liability insurance policy” Mot. at 1.

As to motions, generally, the Rules provide that “[u]pon the filing of a motion, other parties may file responses to the motion . . .” . . . and 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(a) and (b). However, “[t]he Presiding Officer . . . may set a shorter or longer time for response or reply, or make other orders for concerning the disposition of motions.” 40 C.F.R. § 22.16(b). Given that the hearing in this matter is scheduled to commence in approximately three weeks and that Respondents do not oppose the Motion, the undersigned has determined an expedited ruling is appropriate.

Having confirmed that Respondents have no objection to the proposed supplements to Complainant’s prehearing exchange, and considering not only Complainant’s recent receipt of proposed supplemental exhibit 43 but also the desire for completeness of the exchange of information, Complainant’s Motion is **GRANTED**.

SO ORDERED.



Christine Donelian Coughlin
Administrative Law Judge

Date: March 18, 2015
Washington, D.C.

In the Matter of *Edward and Theresa Washines, Da Stor at Lillie's Corner*, Respondent.
Docket No. RCRA-10-2014-0100

CERTIFICATE OF SERVICE

I hereby certify that true copies of this Order on Complainant's Unopposed Motion to Supplement Complainant's Amended Prehearing Exchange, dated March 18, 2015, issued by Administrative Law Judge Christine Coughlin, were sent to the following parties on this 18th day of March 2015, in the manner indicated:



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Dated: March 18, 2015
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