

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219
BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	
ADAMAS CONSTRUCTION AND)	COMPLAINANT’S MOTION TO
DEVELOPMENT SERVICES, PLLC)	RESERVE THE RIGHT TO FILE
)	REBUTTAL PREHEARING
)	EXCHANGE
AND)	
)	
NATHAN PIERCE,)	
)	
Respondents)	Docket No. CWA-07-2019-0262
)	
Proceedings under Section 309(g) of the)	
Clean Water Act, 33 U.S.C. § 1319(g))	

**COMPLAINANT’S MOTION TO RESERVE THE RIGHT TO FILE REBUTTAL
PREHEARING EXCHANGE**

COMES NOW, the United States Environmental Protection Agency (“EPA” or “Complainant”), pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.1 to 22.45, and Administrative Law Judge Christine Donelian Coughlin’s Prehearing Order of October 18, 2019, submits this Motion To Reserve the Right to File a Rebuttal Prehearing Exchange in the event that the event that the Court finds that Respondents showed good cause for their failure to comply with the Court’s February 5, 2020, Order and in the event that Respondents serve Complainant with a copy of their Initial Prehearing Exchange and attachments thereto.

Introduction

The Court’s October 18, 2019, Prehearing Order required Respondents to file their Prehearing Exchange by December 20, 2019, in response to Complainant’s November 26, 2019, Initial Prehearing Exchange. The Order also required Complainant to submit Complainant’s Rebuttal Prehearing Exchange by January 3, 2020. On December 17, 2019, Complainant filed a Motion for Leave to Amend the Complaint and a proposed Amended Complaint. On December 19, 2020, Respondents filed their Motion in Opposition for Leave to File the Amended

Complaint. Included in Respondents' motion was a request for an extension of time to file a prehearing exchange.

On January 2, 2020, the Court entered an Order granting the filing of the Amended Complaint and granting the extension of time for Respondents to file their Prehearing Exchange to January 24, 2020. Respondents filed their Prehearing Exchange with the Court, but failed to serve Complainant with the Prehearing Exchange, including the exhibits. On February 5, 2020, the Court issued an Order requiring the Respondents to serve their Prehearing Exchange, with the exhibits, to Complainant, no later than February 12, 2020. To date, and in violation of the Court's Order, Respondents have not served Complainant with a copy of their Prehearing Exchange and attachments thereto. On February 20, 2020, the Court issued an Order requiring Respondents to file a document on or before March 6, 2020, explaining why Respondents had good cause for failing to comply with the Order dated February 5, 2020, and why a default order should not be entered against them.

Because Respondents have not served their Prehearing Exchange and attachments thereto, Complainant respectfully reserves the right to file a Rebuttal Prehearing Exchange in the event that the Court finds that Respondents showed good cause for their failure to comply with the Court's February 5, 2020, Order and in the event that Respondents serve Complainant with a copy of their Prehearing Exchange and attachments thereto.

In order to preserve its right, Complainant provides the following response to address the Court's October 18, 2019, Prehearing Order.

Requirements of the Court's October 18, 2019 Order

With respect to the requirements of the Court's October 18, 2019, Order, Complainant states as follows:

Paragraph 4(A) of the Court's Prehearing Order states that Complainant shall submit as part of its Rebuttal Prehearing Exchange "a statement and/or any documents in response to Respondents' Prehearing Exchange(s) as to provisions 3(A) to 3(D) [of the Prehearing Order]." As described below, because Respondents have not served their Prehearing Exchange, there is nothing for Complainant to respond to at this time.

Paragraph 3(A) of the Court's Prehearing Order required Respondents, as part of their Prehearing Exchange, to submit "a copy of any documents in support of the denials made in their Answer." Because Respondents have not served their Prehearing Exchange and attachments thereto, there is nothing to which Complainant can respond at this time.

Paragraph 3(B) of the Court's Prehearing Order required Respondents, as part of their Prehearing Exchange, to submit "a copy of any documents in support of asserted affirmative defenses and an explanation of the arguments in support of any such affirmative defenses." Because Respondents have not served their Prehearing Exchange, there is nothing to which Complainant can respond at this time.

Paragraph 3(C) of the Court's Prehearing Order required Respondents, as part of their

Prehearing Exchange to submit “all factual information that Respondents consider relevant to the assessment of a penalty and any supporting documentation.” Because Respondents have not served their Prehearing Exchange, there is nothing to which Complainant can respond at this time.

Paragraph 3(D) of the Court’s Prehearing Order required Respondents, as part of their Prehearing Exchange if they take the position that the proposed penalty should be reduced or eliminated on any grounds, such as an inability to pay, then provide a detailed narrative statement explaining the precise factual and legal bases for their position and a copy of any and all documents upon which they intend to rely in support of such position. Because Respondents have not served their Prehearing Exchange, there is nothing to which Complainant can respond to at this time.

For the reasons stated above, Complainant files this motion to reserve its right to file a Rebuttal Prehearing Exchange in the event that: (1) a default order is not entered against Respondents, (2) the Court finds that Respondents had good cause for failing to comply with the Court’s February 5, 2020 Order, and (3) Respondents serve Complainant with a copy of their Prehearing Exchange.

RESPECTFULLY SUBMITTED this 24th day of February 2020.

/s Sara Hertz Wu
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CERTIFICATE OF SERVICE

I certify that the foregoing Motion to Reserve Right to File a Rebuttal Prehearing Exchange, Docket No. CWA-07-2019-0262, has been submitted electronically using the OALJ E-Filing System.

A copy was sent by email and postal mail to:

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Date: 2/24/2020

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