

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the matter of)	
)	
Gil Haugan Construction, Inc.,)	Docket No. CWA-08-2005-0013
)	
Respondent)	

ORDER

Respondent Gil Haugan Construction, Inc., has filed a Motion For Discovery And Pre-Hearing Exchange Supplementation seeking (1) that complainant U.S. Environmental Protection Agency (“EPA”) be required to supplement its prehearing exchange and identify “those experts and evidence that it will submit on the matter of jurisdiction” in light of *United States v. Rapanos*, 126 S.Ct. 2208 (2006), (2) that respondent, in turn, be allowed to supplement its own prehearing exchange, including the identification of expert witnesses, and (3) that discovery be extended from November 1, 2006, to December 7, 2006, on the jurisdictional issue.¹ EPA opposes this motion.

Respondent’s motion is *denied* to the extent that it requests that EPA be directed to amend its prehearing exchange. EPA bears the burden of proof in this matter and it is up to complainant as to how it will seek to establish jurisdiction in this case. Thus, while complainant indicates that it anticipates supplementing its prehearing exchange to address the jurisdictional issue presented by *United States v. Rapanos, supra*, it cannot be compelled by respondent to do so. Respondent’s motion to extend the discovery motion deadline from November 1, 2006, to December 7, 2006, also is presently *denied*.

Nonetheless, in order to ensure the development of a complete record in this case, to the extent that respondent seeks to submit a supplemental prehearing exchange, its request is *granted*. Accordingly, both parties may file supplemental prehearing exchanges no later than December 22, 2006, and supplemental replies no later than January 8, 2007. Thereafter, in light

¹ Respondent also notes that “Motions for Accelerated Decision will be filed no later than December 11, 2006.” Mot. at 1. This December 11, 2006, filing date had previously been established by order dated October 18, 2006.

of any supplemental filings, the parties may file motions for discovery no later than January 15, 2007.²

Carl C. Charneski
Administrative Law Judge

Issued: November 28, 2006
Washington, D.C.

² In the event that a discovery request is granted, the Scheduling Order of October 18, 2006, will be amended. Also, given the above filing schedule, a new date for the filing of Motions for Accelerated Decision will be determined in a later order.