

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**Region III**  
**1650 Arch Street**  
**Philadelphia, Pennsylvania 19103-2029**

In the Matter of:	)	
	)	
Madonna Enterprises, Inc.	)	<b>DOCKET NO. CAA-03-2014-0092</b>
610 3rd St.	)	
Port Carbon, PA 17965,	)	COMPLAINANT'S REBUTTAL
	)	PREHEARING EXCHANGE
and	)	
	)	
Whitehall Township	)	
3219 MacArthur Rd.	)	
Whitehall, PA 18052,	)	
	)	
RESPONDENTS.	)	

COMPLAINANT'S REBUTTAL PREHEARING EXCHANGE

In response to Administrative Law Judge M. Lisa Buschmann's October 23, 2014 Prehearing Order ("Prehearing Order"), Complainant, the Director of the Land and Chemicals Division, United States Environmental Protection Agency, Region III, hereby sets forth the following in rebuttal of Respondent Whitehall Township's ("Whitehall" or "Respondent") Prehearing Exchange.

At paragraphs I.A.1. and 2. of the Prehearing Order, the Presiding Judge required that each party file a prehearing exchange that includes, *inter alia*:

"[t]he names of any witness the party intends to call at the hearing, identifying each as a fact witness or an expert witness, *and a brief narrative summary of the expected testimony of each witness . . .*;" and "[c]opies of all documents and exhibits intended to be introduced into evidence at the hearing. *Included among the documents shall be a curriculum vita or resume for each identified expert witness.*" (emphasis added).

On page 2 of Whitehall's Prehearing Exchange, an individual named David I Shields from Bethlehem, Pennsylvania is listed as both a fact witness and expert witness expected to be called at hearing. Respondent's Prehearing Exchange did not include a description of Mr. Shields' expected testimony nor did it include a copy of Mr. Shields' curriculum vita or resume as required by paragraphs I.A.1. and 2. of the Prehearing Order. Respondent's failure to include this information prejudices Complainant's ability to secure witnesses or documents necessary to rebut Mr. Shield's expected testimony or his qualifications as an expert witness. Consequently,


Complainant is seeking relief in the form a Motion to Compel Compliance with the Prehearing Order.

At paragraph I.C.4. of the Prehearing Order, the Presiding Judge required that Respondent shall submit as part of its Prehearing Exchange:

If any Respondent believes that it is unable to pay the proposes penalty or that payment would have an adverse effect on its ability to continue to do business, a brief statement to that effect, and a copy of the documents in support, such as tax returns and/or certified copies of financial statements.

Complainant notes that Respondent Whitehall's Prehearing Exchange did not include any statements or documents relating to its inability to pay pursuant to paragraph I.C.4. of the Prehearing Order, and that no such issue was raised in Respondent Whitehall's Answer to the Complaint. As a result, Complainant does not expect Respondent to raise its inability to pay as an issue in this matter. If Respondent seeks to introduce evidence bearing on its inability to pay at hearing, Complainant will be prejudiced by not having had an opportunity to secure the witnesses or documents necessary to rebut such evidence, particularly given the amount of time needed to marshal Agency resources for an inability to pay analysis. Complainant reserves the right to seek injunctive relief should Respondent attempt to introduce evidence bearing on its inability to pay at hearing.

Respectfully Submitted,

  
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CERTIFICATE OF SERVICE

I hereby certify that, on the date below, the attached Complainant's Rebuttal Prehearing Exchange was served upon the persons listed in the manner indicated.

**Original and one copy via THE OALJ E-Filing System**

Sybil Anderson, Headquarters Hearing Clerk

**One copy via THE OALJ E-Filing System**

M. Lisa Buschmann, Administrative Law Judge

**Copy by UPS Next Day Air:**

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1/15/15  
Date

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