



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

C-14J

July 8, 2011

Honorable Barbara Gunning
Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
1099 14th Street, NW Ste 350
Washington, D.C. 20005

Re: In the Matter of Mercury Vapor Processing Technologies, Inc., a/k/a
River Shannon Recycling and Laurence Kelly
Docket No. RCRA-05-2010-015

Dear Judge Gunning:

Please find enclosed copies of **Complainant's Response and Objection to Respondents' Motion to Supplement their Prehearing Exchange** that were filed today in the above-captioned matter.

Sincerely,

A handwritten signature in black ink that reads "Kasey Barton".

Kasey Barton
Assistant Regional Counsel

Enclosure

cc: Mr. Laurence Kelly

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

CLERK
U.S. EPA REGION 5
2011 JUL 12 AM 10:26

IN THE MATTER OF:)
)
Mercury Vapor Processing) DOCKET NO. RCRA-05-2010-0015
Technologies Inc., a/k/a/ River Shannon)
Recycling)
13605 S. Halsted)
Riverdale, Illinois 60827)
U.S. EPA ID No.: ILD005234141 and)
)
Laurence Kelly)
)
Respondents.)
_____)

CERTIFICATE OF FILING AND SERVICE

I hereby certify that today I filed personally with the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, 77 West Jackson Boulevard (E-19J), Chicago, Illinois, 60604-3590, the original and one copy of the document entitled **Response and Objection to Respondents' Motion to Supplement their Prehearing Exchange**, and that I caused to be served copies of the original documents as follows:

VIA U.P.S. Mail Service:

Honorable Barbara Gunning
Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
1099 14th Street, NW Ste 350
Washington, D.C. 20005

VIA U.P.S. Mail Service:

Mr. Laurence Kelly
7144 North Harlem Avenue
Suite 303
Chicago, Illinois 60631



Kasey Barton
Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA
77 West Jackson Blvd.
Chicago, Illinois 60604

REGIONAL HEARING CLERK
U.S. EPA REGION 5

2011 JUL 12 AM 10:26

Date: July 12, 2011

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY-ERK
BEFORE THE ADMINISTRATOR U.S. EPA REGION 5

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)
Laurence Kelly)
)
Respondents.)
_____)

**RESPONSE AND OBJECTION TO RESPONDENTS' MOTION TO SUPPLEMENT
THEIR PREHEARING EXCHANGE**

Complainant, pursuant to 40 C.F.R. §§ 22.16 and 22.19 of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* ("Consolidated Rules"), hereby responds and objects to Respondents' motion to supplement their prehearing exchange on the ground that portions of their prehearing exchange do not comply with the requirements of the Consolidated Rules, 40 C.F.R. Part 22 (the "CROP"). Specifically, Respondents identified two additional witnesses in their Supplemental Prehearing Exchange, but failed to provide a narrative of their proposed testimony as required by the Consolidated Rules, 40 C.F.R. Part 22 (the "CROP"). Accordingly, with respect to the identified potential witnesses, Complainant requests that the Court deny Respondents' motion to supplement their prehearing exchange with these two witnesses and that the Court rule that Respondents are barred from calling those witnesses to testify at hearing because their Supplemental Prehearing Exchange fails to provide a brief narrative summary of their expected testimony, as required by 40 C.F.R. § 22.19(a)(2)(i).

I. Respondents' Supplemental Prehearing Exchange

On July 7, 2011, Respondents filed a motion to supplement their Prehearing Exchange (Supplemental Prehearing Exchange). In Respondents' Supplemental Prehearing Exchange, Respondents identified the following potential witnesses: Mary Allen, Solid Waste Agency of Northern Cook County, and Gary Westefer, Illinois Regulatory Specialist of US EPA Region 5. Resp. Supp. PX, ¶¶ 1-2. Respondents also included two affidavits from Laurence Kelly and "color copies of photographs of Riverdale facility taken October and December 2008." Resp. Supp. PX ¶¶ 3-5.

II. Legal Standard

Under 40 C.F.R. § 22.19(a)(1) of the Consolidated Rules, "in accordance with an order issued by the Presiding Officer, each party shall file a prehearing information exchange." A party's prehearing information exchange that identifies a potential witness **must contain** the witness' name and "a brief narrative summary of their expected testimony." 40 C.F.R. § 22.19(a)(2)(i)(emphasis added). Thus, pursuant to 40 C.F.R. § 22.19(a)(1), "any witness whose name and testimony summary has not been included in the prehearing information exchange shall not be allowed to testify."

III. Argument

Respondents' motion for leave to supplement their Prehearing Exchange should be denied with respect to the identified potential witnesses because Respondents fail to provide a brief narrative summary of their expected testimony. Pursuant to 40 C.F.R. § 22.19(a)(2)(i), Respondents are required to submit a brief narrative summary of their potential witnesses' expected testimony. 40 C.F.R. § 22.19(a)(2) provides that any witness whose name and testimony summary has not been included in a prehearing exchange "shall not be allowed to

testify". Without a brief summary of expected testimony, Complainant has not been given any information or notice to prepare its case regarding the testimony of the potential witnesses.

Accordingly, Respondents' motion for leave to supplement their Prehearing Exchange with respect to the two potential witnesses should be denied, and Respondents should be barred from calling those witnesses to testifying at hearing.

IV. Conclusion

Complainant respectfully requests that the Presiding Officer deny Respondents' motion to supplement their prehearing exchange with the two newly identified witnesses and that the Court rule that Respondents are barred from calling those witnesses to testify at hearing because their Supplemental Prehearing Exchange fails to provide a brief narrative summary of their expected testimony, as required by 40 C.F.R. § 22.19(a)(2)(i).

Respectfully submitted this 12th day of July 2011,



Jeffrey A. Cahn
Kasey Barton
Office of Regional Counsel
U. S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604