



As Complainant correctly notes in its Motion, the rules governing these proceedings, the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Rules”), 40 C.F.R. Part 22, contemplate that a party may move for other discovery *after* the prehearing exchange has concluded: “After the information exchange provided for in paragraph (a) of this section [titled “Prehearing information exchange”], a party may move for additional discovery.” 40 C.F.R. § 22.19(e)(1). Notwithstanding the text of the Rules, Complainant’s Motion seeks discovery prior to the culmination of the Parties’ prehearing information exchange. Complainant explains the timing of its Motion as an effort to “promote judicial economy by minimizing potential delay to the proceedings as well as help narrow the contested issues.” Mot. at 2. Complainant reasons further that the information sought in its Motion “may lead to the dismissal of some of the claims prior to trial or potentially assist the parties to reach a settlement of the case.” *Id.* Finally, Complainant represented in its Motion that “Respondents’ counsel stated to counsel for Complainant that he had no objection to the discovery sought by Complainant in this Motion for Discovery.” Mot. at 2.

I note that Respondents have asserted no objection to Complainant’s Motion. Pursuant to the Rules, a party has 15 days to file a response to a motion. 40 C.F.R. § 22.16(b). To date, Respondents have filed no response to Complainant’s Motion.

As the Presiding Officer in this matter, I have a duty to “conduct a fair and impartial proceeding, assure that the facts are fully elicited, adjudicate all issues, and avoid delay,” and I maintain the authority to “[r]ule upon motions.” 40 C.F.R. § 22.4(c). Consequently, it is within my authority to grant motions for additional discovery prior to the culmination of the Parties’ prehearing information exchange, if appropriate.

The Rules governing other discovery are found at 40 C.F.R. § 22.19(e)(1)(i)-(iii), which provides as follows:

The [discovery] motion shall specify the method of discovery sought, provide the proposed discovery instruments, and describe in detail the nature of the information and/or documents sought . . . .  
The Presiding Officer may order such other discovery only if it:

- (i) Will neither unreasonably delay the proceeding nor unreasonably burden the non-moving party;
- (ii) Seeks information that is most reasonably obtained from the non-moving party, and which the non-moving party has refused to provide voluntarily; and
- (iii) Seeks information that has significant probative value on a disputed issue of material fact relevant to liability or the relief

sought.

In its Motion, Complainant states that it seeks discovery via interrogatories, document requests, and a Financial Data Request Form, and Complainant provides adequate detail regarding each discovery request. Thus, Complainant has provided sufficient specificity pursuant to 40 C.F.R. § 22.19(e)(1). Mot. at Attachs. A & B.

Next, I evaluated the factors to be considered when ordering discovery. As Complainant points out in its Memorandum, disclosure of the information sought by Complainant will promote efficient resolution of both the liability and penalty elements of this matter, and the information “may lead to the dismissal of some of the claims prior to trial or potentially assist the parties to reach a settlement of the case.” Mem. at 3. Moreover, engaging in the requested discovery now, rather than after the Parties’ Prehearing Exchange is completed, mitigates any potential delay later in the process and potential duplication of effort on the part of Respondents during the Prehearing Exchange process. Further, and as previously noted, Respondents have raised no objection to Complainant’s Motion. Consequently, in accordance with 40 C.F.R. § 22.19(e)(1)(i), I have concluded that ordering the discovery requested in Complainant’s Motion will neither unreasonably delay the proceeding nor unreasonably burden Respondents.

In its Memorandum, Complainant states that, based on challenges raised by Respondents, it seeks to clarify ownership and operatorship of the facilities at issue, as well as Respondents’ claim of inability to pay the assessed penalty. *Id.* Such information is most reasonably obtained from Respondents. Further, Complainant states that, “despite numerous requests, Respondents have not provided voluntarily to Complainant adequate financial information to determine the validity of the Respondents’ inability to pay claims, nor have Respondents provided Complainant clarification concerning a myriad of corporate loan transactions and service contracts between the Respondents and other corporate entities controlled by Mr. Kiriscioglu.” *Id.* Thus, in accordance with 40 C.F.R. § 22.19(e)(1)(ii), I have concluded that the information sought is most reasonably obtained from Respondents and that Respondents, thus far, have not voluntarily provided the information.

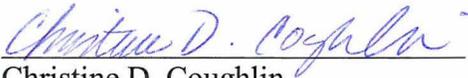
In its Memorandum, Complainant asserts that Respondent Kiriscioglu “is attributing responsibility to certain entities as the owners and/or operators of [facilities at issue] during the period of the alleged violations in the Complaint, while disclaiming responsibility individually.” *Id.* at 3–4. Complainant’s discovery requests appear aimed at elucidating this issue, as well as Respondents’ inability to pay claim, thus making the information sought probative as to disputed issues material to liability and, if reached, penalty. Thus, in accordance with 40 C.F.R. § 22.19(e)(1)(iii), I have concluded that the information sought has significant probative value on a disputed issue of material fact relevant to liability or the relief sought.

Given that Complainant’s Motion satisfies the requirements for other discovery under 40 C.F.R. § 22.19(e), and considering that Respondents raised no timely objection to the Motion, Complainant’s Motion is hereby **GRANTED**.

**ORDER**

1. Respondents shall respond to all discovery requests contained in Complainant's Motion for Discovery and corresponding Attachments.
2. Respondents shall provide Complainant the discovery responses ordered in the preceding paragraph as part of their Prehearing Exchange(s) due **April 4, 2014**.

**SO ORDERED.**

  
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Christine D. Coughlin  
Administrative Law Judge

Dated: March 12, 2014  
Washington, D.C.

**In the ADR Matter of *Aylin, Inc., RT. 58 Mart, Inc., Franklin Eagle Mart Corp., Adnan Kiriscioglu d/b/a New Jersey Petroleum Organization a/k/a NJPO*, Respondents.  
Docket No. RCRA-03-2013-0039**

AMENDED CERTIFICATE OF SERVICE

I hereby certify that the foregoing Order on Complainant's Motion for Discovery, dated March 12, 2014, was sent this day in the following manner to the addressees listed below.



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Mary Angeles  
Lead Legal Staff Assistant

Original and One Copy by Hand Delivery to:

Sybil Anderson  
Headquarters Hearing Clerk  
U.S. EPA / Office of Administrative Law Judges  
Mail Code 1900L  
1200 Pennsylvania Ave., NW  
Washington, DC 20460

One Copy by Electronic and Regular Mail to:

Janet E. Sharke, Esq.  
Sr. Assistant Regional Counsel  
ORC, U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029  
email: sharke.janet@epa.gov

Louis F. Ramalho, Esq.  
Sr. Assistant Regional Counsel  
ORC, U.S. EPA, Region III (3RC50)  
1650 Arch Street  
Philadelphia, PA 19103-2029  
Email: ramalho.louis@epa.gov

Jennifer J. Nearhood, Esq.  
Assistant Regional Counsel  
ORC, U.S. EPA, Region III, (3RC10)  
1650 Arch Street  
Philadelphia, PA 19103-2029  
Email: nearhood@jennifer@epa.gov

One Copy by Electronic and Regular Mail to:

Jeffrey L. Leiter, Esq.  
Leitner & Cramer, PLLC  
1707 L Street, NW, Suite 560  
Washington, DC 20036  
Email: jll@leitercramer.com

**Dated: March 13, 2014  
Washington, D.C.**