

**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 MOTION TO COMPEL COMPLIANCE WITH  
PREHEARING ORDER

In accordance with 40 C.F.R. §§ 22.16(a) and 22.19(g) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, Complainant, the Director of the Land and Chemicals Division of the United States Environmental Protection Agency, Region III, submits this Motion to Compel Compliance with the Prehearing Order. Complainant hereby requests this Court to compel Respondent Whitehall Township (“Whitehall or “Respondent”) to comply with the Administrative Law Judge M. Lisa Buschmann’s October 23, 2014 Prehearing Order (“Prehearing Order”), especially paragraphs I.A.1. and 2.

Paragraph I.A.1 of the Prehearing Order 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 . . . ;” (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 as required by paragraph I.A.1. Respondent’s failure to include this information prejudices Complainant’s ability to secure witnesses or documents necessary to rebut Mr. Shield’s expected testimony.

Paragraph I.A.2 of the Prehearing Order required that each party file a prehearing exchange that includes, *inter alia*:

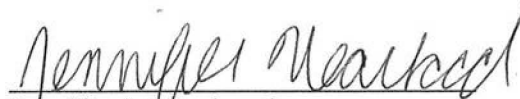
“[c]opies of all documents and exhibits intended to be introduced into evidence at the hearing. *Included among the documents shall be a curriculum vita or resume for each identified expert witness.*” (emphasis added).

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 copy of Mr. Shields’ curriculum vita or resume as required by paragraph I.A.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 qualifications as an expert witness.

Pursuant to Section VI. of the Prehearing Order, Counsel for Complainant has contacted counsel for Respondent, who indicated she does not object to the granting of this Motion.

WHEREFORE, Complainant requests that this Court issue an Order granting Complainant's Motion to Compel Compliance with the Prehearing Order, requiring Respondent to fully comply with the requirements of paragraphs I.A.1 and 2. as they relate to David I Shields. Additionally, Complainant requests that this Court allow Complainant two weeks to supplement its Rebuttal Prehearing Exchange following Respondent’s compliance with any Order by this Court granting the relief requested herein.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that, on the date below, the attached Complainant's Motion to Compel Compliance with Prehearing Order 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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