

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
SAN PEDRO FORKLIFT,) DOCKET NO. CWA-09-2009-0006
)
)
RESPONDENT)

ORDER GRANTING MOTION TO SUPPLEMENT RESPONDENT'S
PRE-HEARING EXCHANGE AND WITNESS LIST

The Complaint in this matter was filed on September 29, 2009, pursuant to Complainant's authority under Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act ("CWA"), as amended, 33 U.S.C. § 1319(g). San Pedro Forklift's ("Respondent") Answer was filed on November 13, 2009.

In accordance with the Prehearing Order issued by the undersigned, Complainant and Respondent filed their Initial Prehearing Exchanges on June 2 and July 2, 2010, respectively. Complainant then filed its Rebuttal Prehearing Exchange on July 15, 2010, and a Penalty Analysis on July 16, 2010.

On August 20, 2010, Respondent filed a Motion to Supplement Respondent's Pre-Hearing Exchange and Witness List ("Motion"), which seeks leave to add two expert witnesses, along with their respective curricula vitae, and two fact witnesses to the Respondent's Witness List for hearing. On September 7, 2010, Complainant filed a Motion in Opposition to Respondent's Motion to Supplement ("Response"), in which Complainant objects to the two additional expert witnesses on two grounds: (1) the statements describing these witnesses' intended testimony are "vague and offer very little guidance as to what, specifically, each expert witness will testify to," and (2) the absence of expert reports for these witnesses. Response at 1.

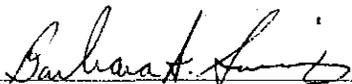
In its Motion, Respondent identifies two potential expert witnesses, Mr. Anthony Severini and Mr. Mark W. Bulot. According to the Motion, Mr. Severini is an environmental consultant who has relevant experience in "hydrogeology, geology and related

matters concerning storm water pollution permit issues." Motion at 1. Mr. Bulot, also an environmental consultant, is offered for his relevant experience in "hydrology, water resources [and] analytical data analysis and storm water pollution permit issues." Motion at 2.

Under the Rules of Practice, each party's prehearing information must include "[t]he names of any expert or other witnesses it intends to call at the hearing, together with a brief narrative summary of their expected testimony. . . ." 40 C.F.R. § 22.19(a)(2)(i). Although the Motion does not explicitly detail the expected testimony of the two proposed expert witnesses, the Motion does offer more specificity than Complainant cites in its Response. See Response at 1. Given that Respondent identifies the areas of expertise for each proposed expert witness, Respondent meets, if only just, the requirements of section 22.19(a). Complainant's first ground for objection, despite its merit, is insufficient to justify denying the Motion.

As to the absence of expert reports, Complainant appears to concede that two of its own expert witnesses "are not preparing reports as such," Response at 2, and instead Complainant focuses on the clarity and explicitness of its own witness descriptions. Respondent states in its Motion that Mr. Severini and Mr. Bulot have each reviewed the case and "will provide a formal report to all parties well in advance of trial." Provided Respondent does in fact provide such reports well in advance of trial, Complainant's second ground for objection carries little persuasiveness.

The parties are reminded that, as a general rule, witnesses for either party should not testify on what the law is. This determination is reserved to the ALJ and is more appropriate for argument in legal briefs. Provided the parties' witnesses restrict themselves to their areas of expertise and the facts known to them, no party should find itself disadvantaged at hearing. The Motion is hereby **GRANTED**.



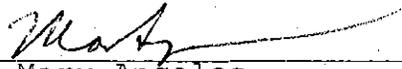
Barbara A. Gunning
Administrative Law Judge

Dated: September 23, 2010
Washington, DC

In the Matter of *San Pedro Forklift*, Respondent.
Docket No. CWA-09-2009-0006

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order Granting Motion to Supplement Respondent's Pre-Hearing Exchange and Witness List**, dated September 23, 2010, was sent this 24th day of September 2010, in the following manner to the addressees listed below.



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Dated: September 24, 2010
Washington, D.C.