

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

BEFORE THE ADMINISTRATOR

In the matter of)
)
Environmental Protection Services, Inc.,) **Docket No. TSCA-03-2001-0331**
)
Respondent)

**ORDER ON RESPONDENT'S
SUPPLEMENTAL MOTION TO REOPEN HEARING**

Environmental Protection Services, Inc. ("EPS"), has filed a supplemental motion to reopen the record in this matter. 40 C.F.R. 22.22(a)(1) & 22.28(a). This motion is dated April 16, 2004. Specifically, EPS seeks the admission into evidence of documents identified as "Attachment A," and the taking of testimony relative to those documents. The United States Environmental Protection Agency ("EPA") opposes respondent's motion to reopen. EPS's motion to reopen is *granted in part and denied in part*.

Attachment A consists of: (1) a one-page letter dated April 2, 2004, from EPA to the law firm of Jackson Kelly PLLC, referencing an attached Vaughn index; (2) a 22-page Vaughn index; (3) 51 pages relating to Investigative Summary Reports prepared by EPA's Criminal Investigation Division; (4) a one-page EPA letter, dated February 26, 1999, from Paul Zammit, Eastern Investigations Division, to William Lometti, Criminal Investigation Division, New York Office, concerning "Letter from Environmental Protection Services dated August 21, 1998"; and (5) a one-page EPA letter, dated January 25, 1999, from Paul Zammit to George Pavlou, Division of Enforcement and Compliance Assistance, also concerning EPS's letter of August 21, 1998. Respondent represents that these documents were obtained on April 7, 2004, from EPA pursuant to a Freedom of Information Act request made in September of 2002. Mot. at 1.

Inasmuch as these documents relate to EPS's defense of "selective enforcement," and inasmuch as they were not produced by EPA until after the hearing in this matter, they deserve to be included in this record. Accordingly, EPS's motion is granted in this regard and the documents included in Attachment A are admitted into evidence.

Next, EPS requests that it be permitted to take the testimony of Dave Dillion, Bede Portz, Ed Kapler, Jim Bushofsky, Beth Davenport, Roy Jacobs, Kenneth Beubaker, and Rick Monical. Mot. at 7. EPS's motion to reopen the hearing so as to take additional testimony is granted, but only as to witness Dave Dillion. Mr. Dillion is identified on the "Case Conclusion Report" (page 50 of EPA's Criminal Investigation Division's packet) as "Prepared by: David M. Dillion." Accordingly, EPS will be afforded the opportunity to question this individual regarding these reports. The questioning of Mr. Dillion, however, will be limited solely to the reports contained in Attachment A.

To the extent that EPS seeks to question the other named individuals, its request is denied. In that regard, EPS has not made a sufficient showing that the testimony of these individuals would be relevant to the case and that these individuals previously could not have been called as witnesses.

Carl C. Charneski
Administrative Law Judge

Issued: June 9, 2004
Washington, D.C.