

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY**

**BEFORE THE ADMINISTRATOR**

<b>In the matter of</b>	)	
	)	
<b>William A. Rowell,</b>	)	
	)	
<b>a/k/a William Rowell and as</b>	)	
<b>William A. Rowell, Jr.,</b>	)	
	)	<b>Docket No. TSCA-03-2005-0110</b>
<b>d/b/a Rowell Management Co.,</b>	)	
<b>and as Southwest Trade</b>	)	
<b>School</b>	)	
	)	
<b>Respondent</b>	)	

**ORDER DENYING COMPLAINANT'S  
MOTION IN LIMINE**

The United States Environmental Protection Agency ("EPA") has filed a Motion In Limine "to prohibit, preclude or otherwise prevent the Respondent from presenting, introducing or having admitted into evidence at the hearing in this proceeding any documents, exhibits and testimony not properly identified in, or included as attachments, with the Respondent's Opening Prehearing Exchange." Mot. at 1. Respondent, William A. Rowell ("Rowell"), opposes this motion.

EPA submits that Rowell has failed to comply with this Tribunal's order dated June 6, 2005, requiring the parties to engage in a prehearing witness and exhibit list exchange pursuant to 40 C.F.R. 22.19. In that regard, complainant submits that respondent has not provided copies of exhibits that EPA believes that respondent will seek to introduce into evidence in this case. It also submits that respondent has not provided a complete witness list with meaningful summaries of expected testimony. Mem. at 6-11.

EPA's concerns regarding the adequacy of Rowell's witness and exhibit lists are somewhat premature. If the events in this case unfold as complainant believes that they will -- *i.e.*, that respondent's witnesses will testify as to matters not previously identified in its narrative summary of expected testimony, or that respondent will seek to introduce into evidence exhibits not previously identified and not previously provided to opposing counsel, then the proper time to raise an objection will be at the hearing. The hearing will provide the appropriate context for evaluating the objections which complainant now seeks to raise. Also, it may well be that the events as anticipated by EPA in its motion will not come to pass.

In any event, as a corollary matter, without a showing of good cause and the absence of undue prejudice, the parties are advised not to expect testimonial and documentary evidence to

make its way into the evidentiary record if such evidence was not properly and timely identified before the hearing. *See* 40 C.F.R. 22.22.<sup>1</sup>

Finally, EPA's request that "[t]he Presiding Officer Should Preclude the Respondent From Raising an 'Inability-to-Pay' Defense at Hearing" ignores the fact that respondent already has informed this Tribunal, as well as counsel for EPA (*see* Attachment E to motion), that such an affirmative defense was not being raised.

Accordingly, EPA's Motion in Limine is *denied*.

---

Carl C. Charneski  
Administrative Law Judge

Issued: September 14, 2005  
Washington, D.C.

---

<sup>1</sup> The parties are informed that another conference call will be scheduled in this case to discuss prehearing matters and to resolve any procedural disputes.