



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY BEFORE THE ADMINISTRATOR

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In the Matter of:)
Advanced Recovery, Inc.,) Docket No. RCRA-02-2013-7106
Respondent)

ORDER ON COMPLAINANT'S MOTION TO AMEND AND SUPPLEMENT PREHEARING EXCHANGE

On September 9, 2014, Complainant filed a Motion to Amend Prehearing Exchange / Supplement Prehearing Exchange ("Motion" and "Mot."). Complainant states that Respondent's counsel indicated on a conference call with staff for this Tribunal that Respondent does not object to the amendments sought by Complainant, nor does Respondent object to most of the supplementation sought by Complainant. Mot. 1-2.

In its Motion, Complainant seeks to amend her prehearing exchange with three proposed exhibits that were previously submitted to or referenced in the case record. Mot. 1. Complainant also seeks to supplement her prehearing exchange with three proposed exhibits that have not been submitted to this Tribunal previously. Id. Complainant argues that Respondent will not be surprised, disadvantaged or unfairly prejudiced if the relief sought is granted, and that there is good cause to amend and supplement her prehearing exchange as requested. Mot. 1-2, 5-10. Further, Complainant argues the Motion is timely (40 C.F.R. § 22.22(a); Mot. 10 n.9) and is being submitted in part due to the suggestions of staff for this Tribunal. Mot. 1-2, 5, 8, 10 n.9.

Complainant seeks to amend her prehearing exchange with proposed Exhibits 14, 15, and 16. Mot. 2. Complainant's proposed Exhibit 14 is a copy of the RCRA Civil Penalty Policy, dated June 2003. Complainant's proposed Exhibit 15 is an EPA Memorandum titled "Revision to Adjusted Penalty Policy.Matrices Package Issues on November 16, 2009," dated April 6, 2010. Complainant's proposed Exhibit 16 is comprised of three sets of documents that were attached to the Complaint, and include a penalty calculation worksheet, a gravity-based penalty matrix, and a multiple/multi-day penalty matrix.

Complainant seeks to supplement her prehearing exchange with proposed Exhibits 12a, 17, and 18. Mot. 3. Complainant's proposed Exhibit 12a is a draft report dated September 4, 2014, by proposed witness Anne Czerwonka of Industrial Economics, concerning Respondent's ability to pay the proposed penalty. Complainant's proposed Exhibit 17 is comprised of copies of the handwritten inspection notes of proposed witness Abdool Jabar, EPA Region 2.

Complainant's proposed Exhibit 18 is comprised of copies of the handwritten inspection notes of proposed witness Maryanne O'Connor, NYS DEC. With respect to proposed Exhibit 18, Respondent has not stated whether it objects to it being added to Complainant's prehearing exchange. However, Complainant argues that Ms. O'Connor's observations during the July 2012 inspection of Respondent's facility "form the basis of EPA's central allegations against Respondent," who is "presumptively aware of the overall nature and directions" of her testimony. Mot. 7. The "inclusion of the O'Connor notes should provide a more complete factual record for this Court to base its findings (and also for Respondent to challenge the evidence presented during Complainant's case-in-chief)." *Id.*

Complainant ultimately seeks an order granting her leave to amend and supplement EPA's prehearing exchange with the documents described above and attached to the Motion, declaring each of them "incorporated by reference into EPA's prehearing exchange with full force and effect," deeming each one an exhibit to Complainant's prehearing exchange, and granting other relief deemed lawful, just and proper. *Id.* 10.

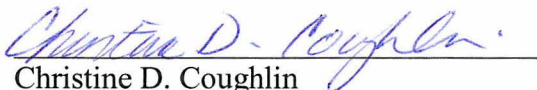
The procedural rules governing this proceeding, set forth at 40 C.F.R. Part 22 ("Rules"), require the parties to file and exchange certain information before the hearing, including copies of all documents that party intends to introduce into evidence at the hearing. 40 C.F.R. § 22.19(a). The Rules also provide that the parties "shall promptly supplement or correct the [prehearing] exchange when the party learns that the information exchanged or response provided is incomplete, inaccurate or outdated, and the additional or corrective information has not otherwise been disclosed to the other party pursuant to this section." 40 C.F.R. § 22.19(f). The Prehearing Order issued in this matter on March 10, 2014, requires the same, and in addition, requires that if a party intends to add a proposed exhibit to its prehearing exchange, it must file and serve an accompanying motion to supplement the prehearing exchange.

For good cause shown, without undue prejudice to Respondent, and in accordance with the Rules and the Prehearing Order, Complainant's Motion is **GRANTED**.

ORDER

Complainant's proposed Exhibits 12a, 14, 15, 16, 17, and 18 are hereby incorporated into Complainant's prehearing exchange.

SO ORDERED.


Christine D. Coughlin
Administrative Law Judge

Date: September 9, 2014
Washington, D.C.

In The Matter of Advanced Recovery, Respondent.
Docket No. RCRA-02-2013-7106

AMENDED CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order On Complainant's Motion To Amend And Supplement Prehearing Exchange**, dated September 9, 2014, was sent this day in following manner to the addresses listed below:



Sybil Anderson
Office of Administrative Law Judges
U.S. Environmental Protection Agency
(202)564-6261

Dated: **September 9, 2014**

Copy By Regular Mail and E-Mail To:

Lee A. Spielmann
Melva J. Hayden, Esq
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866
Email: speilman.lee@epa.gov
hayden.melva@epa.gov

Kirk O. Orseck, Esq.
Orseck Law Offices PLLC
Counsel for Respondent
1924 State Route 52
Liberty, New York 12754
Email: orsecklaw@yahoo.com