



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of:)
)
Adamas Construction and Development) Docket No. CWA-07-2019-0262
Services, PLLC, and Nathan Pierce,)
)
Respondents.)

**ORDER ON COMPLAINANT’S MOTION
TO SUPPLEMENT ITS PREHEARING EXCHANGE**

I. BACKGROUND

On September 6, 2019, the Director of the Enforcement and Compliance Assurance Division for Region 7 (“Complainant”) of the United States Environmental Protection Agency (“Agency”) initiated this proceeding by filing a Complaint and Notice of Opportunity for Hearing against Adamas Construction and Development Services, PLLC, and Nathan Pierce (“Respondent Adamas” and “Respondent Pierce,” respectively, or “Respondents,” collectively) pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (“Act” or “CWA”), 33 U.S.C. § 1319(g). Complainant alleged in the Complaint that (1) Respondents failed to develop and maintain records required by 40 C.F.R. § 503.17, in violation of Section 405 of the CWA, 33 U.S.C. § 1345, and the implementing regulations at 40 C.F.R. Part 503, and (2) Respondents did not provide complete and timely responses to information requests sent by EPA on September 25, 2018, and June 11, 2019, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318, in violation of that provision. On October 16, 2019, Respondents filed an Answer and Request for Hearing (“Answer”) denying the charged violations and requesting a hearing on the matter. Answer at 1-2.

Pursuant to the Prehearing Order issued on October 18, 2019, and subsequent orders related to filing deadlines, the parties engaged in the prehearing exchange of information process. Specifically, Complainant filed its Initial Prehearing Exchange on November 26, 2019; Respondent Pierce filed an Initial Prehearing Exchange on January 24, 2020; and Complainant filed its Rebuttal Prehearing Exchange on April 3, 2020.¹

While the prehearing exchange process was underway, Complainant was also granted leave to amend its Complaint. The Amended Complaint was deemed to have been filed on January 2, 2020.² The parties then engaged in extensive motions practice, resulting in the

¹ As part of the prehearing exchange process, Complainant and Respondent have identified the exhibits they intend to introduce into evidence as “CX [proposed exhibit number]” and “RX [proposed exhibit number],” respectively.

issuance of several Orders on those various motions. I later scheduled the hearing in this matter to begin at 9:00 a.m. on Monday, August 22, 2022, at the James F. Battin Federal Courthouse in Billings, Montana. On July 21, 2022, Complainant filed the instant Motion to Supplement Complainant's Prehearing Exchange ("Motion"), dated July 21, 2022, in which it seeks to add "the Lame Deer Wastewater Treatment Facility's National Pollutant Discharge Elimination System ('NPDES') Permit . . . attached as CX 58." Motion at 2.

II. APPLICABLE LAW

This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Rules of Practice" or "Rules"), set forth at 40 C.F.R. Part 22. The Rules of Practice require each party to engage in a prehearing exchange of information pursuant to an order issued by the Presiding Officer, with the Rules describing certain pieces of information to include. 40 C.F.R. § 22.19(a). The Rules of Practice also provide for the supplementation of a prior exchange as follows:

A party who has made an information exchange under paragraph (a) of this section . . . shall promptly supplement or correct the exchange when the party learns that the information exchanged . . . 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).

III. DISCUSSION

In my Notice of Hearing Order, dated May 23, 2022, I established June 24, 2022, as the deadline for the parties to supplement their prehearing exchanges without motion. Given that the instant request occurred after that deadline, Complainant appropriately seeks approval to supplement its exchange by filing the instant Motion. In its Motion, Complainant represents that it "notified Respondents of this Motion on July 19, 2022 via phone call" and that "Respondents [do] not object to this Motion." Motion at 2.

The proposed exhibit, CX 58, that Complainant seeks to introduce, appears to be relevant to this proceeding and, notably, appears similar, if not identical, to proposed exhibit CX 53 that Complainant previously submitted with its Rebuttal Prehearing Exchange. It does not appear that Respondents would be unfairly disadvantaged by the timing or granting of this supplement. Further, this request is unopposed. Accordingly, this Motion to Supplement Complainant's Prehearing Exchange is hereby **GRANTED**.

SO ORDERED.

² Complainant has since filed a Motion for Leave to Amend its Amended Complaint, dated July 19, 2022, which is currently pending before this Tribunal.

Christine Donelian Coughlin

Christine Donelian Coughlin
Administrative Law Judge

Dated: July 26, 2022
Washington, D.C.

In the Matter of Adamas Construction and Development Services, PLLC, and Nathan Pierce,
Respondents.
Docket No. CWA-07-2019-0262

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order on Complainant's Motion to Supplement Its Prehearing Exchange**, dated July 26, 2022, and issued by Administrative Law Judge Christine Donelian Coughlin, was sent this day to the following parties in the manner indicated below.



Mary Angeles
Paralegal Specialist

Original by OALJ E-Filing System to:
U.S. Environmental Protection Agency
Office of Administrative Law Judges
https://yosemite.epa.gov/OA/EAB/EAB-ALJ_Upload.nsf

Copy by Electronic Mail to:
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Respondent

Dated: July 26, 2022
Washington, D.C.