



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY BEFORE THE ADMINISTRATOR

In the Matter of: Polo Development, Inc., AIM Georgia, LLC, and Joseph Zdrilich, Respondents. Docket No. CWA-05-2013-0003 Dated: February 19, 2015

ORDER GRANTING MOTION TO SUPPLEMENT COMPLAINANT'S PREHEARING EXCHANGE

The hearing in this matter is scheduled to commence on February 24, 2015. The Order Scheduling Hearing set February 9, 2015 as the deadline to file motions to supplement prehearing exchanges. On February 6, 2015, Complainant filed a Motion to Supplement Complainant's Prehearing Exchange, seeking to add Complainant's Exhibits 101 to 111A-G to its Prehearing Exchange.

Complainant characterizes these exhibits as falling into four general categories:

(1) Complainant's Prehearing Exhibits 101-107: copies of the declarations submitted with Complainant's October 17, 2014 Motion for Accelerated Decision on Liability, which may assist at hearing as written testimony pursuant to 40 C.F.R. Section 22.22(c).

(2) Documents containing publicly available information that may assist at hearing or with rulings on motions, specifically:

(A) Complainant's Prehearing Exhibit 108: a January 11, 2012 US Army Corps of Engineers public notice entitled "Current List of Navigable Waters of the United States Within the Pittsburgh District," a more recent version of Complainant's prior Prehearing Exhibit 5;

(B) Complainant's Prehearing Exhibit 109: Complaint, dated January 8, 2013, submitted to facilitate witness testimony by virtue of the specific document being available; and

(C) Complainant's Prehearing Exhibits 111A-G: reports and maps from Mahoning County and Fulton County related to various properties owned or controlled by one or more of the Respondents.

1 Motion and attached Memorandum of Law collectively referenced herein as "Motion" or "Mot."

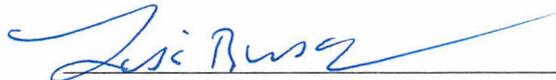
(3) Complainant's Prehearing Exhibit 110: photographs taken by Edward Wilk during his site visit(s), which may assist at hearing with understanding testimony.

Complainant states that many of these documents are either publicly available or have been in Respondents' possession since October 17, 2014, as part of the prior Supplement to Complainant's Prehearing Exchange. Mot. at 4. As good cause for its Motion, Complainant asserts that these documents may either assist in understanding witness testimony (Exhibits 1108-110) or may be offered as written statements in lieu of written testimony (Exhibits 101-107). *Id.*

Complainant timely filed the Motion before the applicable deadline of February 9, 2015 set forth in the Order Scheduling Hearing. The Rules provide that a response to a motion must be filed within 15 days after service of the motion. 40 C.F.R. § 22.16(b). As this Motion was served on Respondents' counsel on February 6, 2015, Respondents' deadline to file a response is February 23, 2015. However, as the hearing is scheduled to begin on February 24, 2015, the undersigned's staff attorney sent Respondents' counsel an email on February 13, 2015, asking whether Respondents objected to or intended to file an opposition to Complainant's Motion. To date, Respondents have filed no response to the Motion and have also not responded to the email inquiry. Further, during the prehearing conference held on February 13, 2015 conducted by the undersigned's staff attorney, Respondents' counsel gave no indication of any objection to this Motion.

Complainant's supplement to its Prehearing Exchange is timely and appropriate, and Respondents have filed no objections. Accordingly, the Motion to Supplement Complainant's Prehearing Exchange is hereby **GRANTED**.

SO ORDERED.

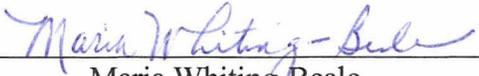


M. Lisa Buschmann
Administrative Law Judge

In the Matter of Polo Development, Inc., AIM Georgia, LLC and Joseph Zdrilich, Respondents
Docket No. CWA-05-2013-0003

CERTIFICATE OF SERVICE

I certify that copies of the foregoing **Order Granting Motion To Supplement Complainant's Prehearing Exchange**, dated February 19, 2015, was sent this day in the following manner to the addressees listed below:



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Staff Assistant

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Dated: February 19, 2015
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