UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of:	)	
	)	
Dave Erlanson, Sr.	)	**Docket No. CWA-10-2016-0109**
	)	
Respondent.	)	

ORDER ON COMPLAINANT'S MOTION TO COMPEL ADDITIONAL DISCOVERY AND COMPLIANCE WITH SECOND PREHEARING ORDER, COMPLAINANT'S MOTION IN LIMINE, AND RESPONDENT'S MOTION TO APPEAL

I. RELEVANT BACKGROUND

The Director of the Office of Compliance and Enforcement at the United States Environmental Protection Agency ("EPA" or "Agency"), Region 10 ("Complainant"), initiated this proceeding on June 20, 2016, by filing a Complaint against Dave Erlanson, Sr. ("Respondent"), pursuant to Section 309(g)(2)(B) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act ("Act" or "CWA"), 33 U.S.C. § 1319(g)(2)(B). The Complaint alleges that on July 22, 2015, Respondent unlawfully discharged pollutants from a point source into a navigable water without authorization under a National Pollutant Discharge Elimination System permit, in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a). *See* Compl. ¶¶ 3.1-3.9. On July 18, 2016, Respondent filed an Answer denying the charge and requesting a hearing on the matter. Answer at 1.

On February 24, 2017, I issued a Prehearing Order that established deadlines for the parties to file and serve their proposed exhibits and, names of their proposed witnesses, and brief narrative summaries of the witnesses' expected testimonies.

On September 27, 2018, I issued an Order on Complainant's Motion for Accelerated Decision, granting the motion as to Respondent's liability for the violation charged in the Complaint. I denied the motion as to the proposed penalty, leaving the issue of the appropriate penalty for resolution after a hearing.

Thereafter, On November 5, 2018, I issued a Notice of Hearing Order that scheduled the hearing to commence on February 12, 2019, and established deadlines for the filing of documents prior to the hearing.[1] The Notice of Hearing Order established a December 14, 2018

[1] On January 31, 2019, I rescheduled the hearing because the U.S. Environmental Protection Agency, including the Office of Administrative Law Judges, was closed between December 28,

deadline for the filing of motions for additional discovery and motions in limine, among other things. That date was also the cut-off after which any party seeking to add witnesses, exhibits, or otherwise supplement its prehearing exchange would be required to file a motion.

On December 14, 2018, Complainant supplemented its prehearing exchange by adding two additional proposed exhibits and changing the descriptions of two proposed witnesses (Ms. Martich and Ms. Godsey) and their proposed testimonies. Complainant also filed a Motion to Compel Additional Discovery and Compliance with Second Prehearing Order, and a Motion in Limine on the same day. On March 8, 2019, I issued an order extending the deadline for the filing of Respondent's responses to the motions.

On March 12, 2019, this Tribunal received from Respondent one copy of the attached correspondence, styled "Motions to Limine," "Request for Information and request for Production," and "Motion to Appeal," without accompanying certificates of service. It is unclear whether Complainant has been served with a copy of the correspondence.

The Consolidated Rules of Practice ("Rules") provide that "[t]he original and one copy of each document intended to be part of the record shall be filed with the Headquarters . . . Hearing Clerk, when the proceeding is before the Presiding Officer . . .." 40 C.F.R. § 22.5(a)(1).[2] In addition, 40 C.F.R. § 22.5(a)(3) requires that a "certificate of service" be attached to each document evidencing such service. The Rules provide further that "[a]ny ex parte memorandum or other communication addressed to the . . . Presiding Officer during the pendency of this proceeding and relating to the merits thereof, by or on behalf of any party shall be regarded as argument made in the proceeding and shall be served on all other parties." 40 C.F.R. § 22.8.

Respondent's correspondence relates to the merits of this proceeding and is considered ex parte because there is no indication that it was properly served. Therefore, under 40 C.F.R. § 22.8, it is being served upon Complainant by its attachment to this Order. **Respondent is warned that failure to submit documents in compliance with Rule 22.8 may result in their exclusion from the record**.[3] 40 C.F.R. § 22.8(c)(5).

Rule 22.8 provides that "[t]he other parties shall be given an opportunity to reply to such memorandum or communication." 40 C.F.R. § 22.8. The "Motions to Limine" and "Request for Information and request for Production" appear to be Respondent's responses to Complainant's December 14, 2018 Motion to Compel Additional Discovery and Compliance with Second

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2018 and January 28, 2019, due to a lapse of appropriations for the executive branch of the federal government.

[2] Pursuant to the Standing Order Authorizing Electronic Filing in Proceedings Before the Office of Administration Law Judges, available on the OALJ website at www.epa.gov/alj, documents filed electronically are deemed to constitute both the original and one copy of the document.

[3] In addition to failing to attach certificates of service to his correspondence, Respondent also failed to submit an original and one copy of each document as required by Rule 22.5. *See* 40 C.F.R. § 22.5(a)(1).

Prehearing Order, and Motion in Limine. Complainant, may, if it wishes, file replies to the correspondence as provided for in the Rules. However, as discussed below, these motions have been granted and, therefore, a reply from Complainant appears to be unnecessary. Similarly, under 40 C.F.R. § 22.16, the Complainant, may, if it wishes file a response to the "Motion to Appeal," but, as discussed below, that motion is denied, therefore, a response from Complainant appears to be unnecessary.

II. MOTION TO COMPEL ADDITIONAL DISCOVERY AND COMPLIANCE WITH SECOND PREHARING ORDER

Turning to Complainant's December 14, 2018 motions, the Motion to Compel Additional Discovery and Compliance with Second Prehearing Order are two distinct requests. First, Complainant requests an order compelling Respondent to respond, within 14 days of this Order, to the Requests for Information and Requests for Production attached to the motion. Secondly, Complainant requests the Presiding Officer compel Respondent's compliance with the Second Prehearing Order, dated February 24, 2017, and require that Respondent provide, within 14 days of an Order granting this motion, a brief narrative summary of the expected testimony for each witness he intends to call at hearing and the curriculum vitae or resume for each expert witness. Each part will be addressed, in turn, below.

A. Additional Discovery

In the Motion to Compel Additional Discovery, Complainant seeks information related to: (1) the amount and value of gold and other materials removed from the South Fork Clearwater River on July 22, 2015, and (2) Respondent's ability to pay the $6,600 proposed penalty. Specifically, the Request for Information No. 1 ("RFI #1) calls for Respondent to estimate the quantity of each type of gold, or other metal, that he removed from the South Fork Clearwater River on July 22, 2015. Request for Production No. 1 ("RFP #1") asks Respondent to provide documents related to the amount of gold and other metals he identified in his response to RFI #1. Request for Information No. 2 ("RFI #2") calls for respondent to estimate the dollar value of each type of gold or other metal that he removed from the South Fork Clearwater River on July 22, 2015. Request for Production No. 2 ("RFP #2) asks Respondent to provide documents related to the dollar values that he provided in response to RFI #2. Request for Information No. 3 ("RFI #3") asks Respondent to clarify whether he claims an inability to pay the proposed penalty. If Respondent claims an inability to pay the proposed penalty, Request for Production No. 3 asks him to provide documents supporting the claimed inability to pay. Grounds for this motion are that Respondent's economic benefit of the violation and his ability to pay the proposed penalty are statutory penalty factors that must be considered in the determination of an appropriate penalty. *See* Motion to Compel Additional Discovery and Compliance with Second Prehr'g Order at 3 (citing 33 U.S.C. § 1319(g)(3), 40 C.F.R. § 22.27(b)).

Respondent's "Request for Information and request for Production," (hereinafter "Discovery Response") is apparently in direct response to Complainant's Requests for Information and Requests for Production rather than to the related motion. In the Discovery Response, Respondent stated that he "will go down each request an either comply to best [sic] of my abilities or reject!" His substantive responses are separated into enumerated paragraphs that

substantially correspond to the numbered RFIs and RFPs. In Response to the first and second RFIs and RFPs, Respondent asserts that he collected "no more than $10.00 in gold at $1400 per ounce," and he does not have records supporting this assertion. Regarding RFI #3, as to whether he claims an inability to pay the proposed penalty Respondent stated that "[t]his case has come to a price tag of over $22,000.00 to defend so now I find the amount of $6,600.00 to be extremely unreasonable . . .." His response to RFP #3 was "N/A."

The Rules of Practice at 40 C.F.R. § 22.19(e) set forth the procedure for a party to move for additional discovery following a prehearing exchange, as well as the conditions necessary for a Presiding Officer to grant such a motion. Specifically, a motion for additional discovery must "specify the method of discovery sought, provide the proposed discovery instruments, and describe in detail the nature of the information and/or documents sought." 40 C.F.R. § 22.19(e)(1). In turn, the Presiding Officer may order additional discovery only if it:

> (i) Will neither unreasonably delay the proceeding nor unreasonably burden the non-moving party;
>
> (ii) Seeks information that is most reasonably obtained from the non-moving party, and which the non-moving party has refused to provide voluntarily; and
>
> (iii) Seeks information that has significant probative value on a disputed issue of material fact relevant to liability or the relief sought.

40 C.F.R. § 22.19(e)(1).

I find that Complainant's Motion to Compel Additional Discovery, along with its RFPs and RFIs meet the requirements of Rule 22.19(e). I further find that the factors outlined in Rule 22.19(e)(1) have been met. Consequently, Complainant's Motion for Additional Discovery will be granted, in part. However, because Respondent has responded directly to Complainant's discovery requests, it is unnecessary to order him to provide further responses within fourteen days from the date of this Order. Furthermore, it appears that Respondent is not asserting an inability to pay the proposed penalty.

B. Compliance with Second Prehearing Order

Turning to the Motion to Compel Compliance with Second Prehearing Order, Complainant seeks an order from this Tribunal compelling Respondent to provide adequate narrative summaries for four of his proposed witnesses: Joseph Greene, Dave Erlanson, Clark Pearson, and Ron Miller. *See* Motion to Compel Additional Discovery and Compliance with Second Prehr'g Order at 5. In addition, Complainant requests an order compelling Respondent to provide the curriculum vitae for each of his expert witnesses. Complainant claims that the narrative summaries of Mr. Greene's and Mr. Pearson's testimonies are broad descriptions that are not relevant to the appropriate administrative penalty, which is the sole issue to be addressed at hearing. *Id*. In addition, Complaint notes that Respondent failed to provide any summary of his proposed testimony or that of Mr. Miller. Complainant requests that I exclude the testimony of each witness for which an adequate summary has not been provided if Respondent does remedy the omissions. *Id*. at 6.

Respondent's "Motion to Limine," rather than his Discovery Response, appears to address the Motion to Compel Compliance with Second Prehearing. In the Motion to Limine, Respondent stated that he finds Complainant's counsel's request to "restrict my evidence but to allow EPA to add testimony on their behalf I find as a complete disregard of Due Process of Law." Nevertheless, he does not object to Ms. Godsey or Ms. Martich if he is allowed to cross-examine them.[4] He further stated that he does not intend to offer "any witnesses/testimony, visual (CD) offerings, case law, environmental studies at this hearing. . . . [And a]t this hearing, I will be the only witness for Erlanson!" Motion to Limine at 1-2.

As an aside, Respondent's stated the following in his Motion to Limine:

> I reserve at this time, to call during future appeals procedures all witnesses deemed necessary, all test materials, visual and actual demonstratives to prove my case as I (not my previous counsel) need to show/prove the E.P.A. has no regulatory authority over suction dredging in the United States or its territories!

Id. at 2.

Rule 22.24(a) states that, at hearing, "respondent shall have the burden of presenting any defense to the allegations set forth in the complaint and any response or evidence with respect to the appropriate relief. The respondent has the burdens of presentation and persuasion for any affirmative defenses." 40 C.F.R. § 22.24(a). Respondent is hereby on notice that the hearing currently scheduled to commence on May 14, 2019, is his opportunity to present his case and the supporting testimony and physical evidence. *See* 40 C.F.R. § 22.28(a). He may or may not be permitted to introduce, on appeal, testimony and physical evidence that was not adduced at hearing. *See* 40 C.F.R. § 22.30(a)(1)(iii), (d)

By order dated February 24, 2017, I ordered the parties to exchange such information as the names of prospective expert and other witnesses and "a brief narrative summary of their expected testimony." Second Prehearing Order at 2. In addition, to apprise the parties of the potential consequences for failing to exchange the such information, the order stated:

> Section 22.19(a) of the Rules of Practice provides that, except in accordance with Section 22.22(a), any document not included in the prehearing exchange shall not be admitted into evidence, and any witness whose name and testimony summary

[4] To the extent that Respondent appears to construe Complainant's Supplemental Prehearing Exchange as a motion, that notion is incorrect. In the order, I stated that "a party seeking to add witnesses, exhibits, or otherwise supplement its prehearing exchange may do so only by motion after **December 14, 2018**. Belated supplements to a party's prehearing exchange may be excluded from evidence at the undersigned's discretion." Thus, Complainant timely supplemented its prehearing exchange in accordance with the November 5, 2018 Notice of Hearing Order. Accordingly, I find it unnecessary to entertain Respondent's due process argument.

> are not included in the prehearing exchange shall not be allowed to testify. Therefore, each party should thoughtfully prepare its prehearing exchange.

Id. at 4.

Respondent has expressed his intention to be the sole witness on his behalf but has not provided a brief narrative summary of his expected testimony. Therefore, the only missing brief narrative summary is that of Respondent.

Considering the foregoing discussion, Complainant's Motion to Compel Additional Discovery and Compliance with Second Prehearing Order will be granted, in part, as set forth in the Order below.

III. Motion in Limine

In the Motion in Limine, Complainant seeks a "clear limiting order . . . barring presentation of testimony and evidence relating solely to the liability portion of this case," because it suspects that the crux of Respondent's testimony and evidence will relate to his liability for the violation. Motion in Limine at 3-4. As to specific physical evidence, Complainant moves to exclude Respondent's proposed exhibits RX01 and RX 3, which are written statements that Respondent's proposed witness, Joseph Greene, a retired EPA biologist submitted to at least one state legislative body.[5] The statements cite environmental impacts reports, environmental impact statements, and a plethora of books and other writings to support his argument that suction dredge mining has a less than significant impact on the environment.

Regarding exhibit RX01, Complainant argues that Mr. Greene's cited reports suggest that the suction dredge mining regulations mitigated the environmental impact to "less than significant," but not that suction dredge mining generally has a less than significant impact on the environment when not regulated. *Id*. at 5. Complainant contends that, in this respect, Mr. Greene misrepresents what the cited sources stand for. Complainant also criticizes this exhibit for omitting contradictory reports. For example, Complainant noted that the California Department of Fish & Game issued a superseding "draft subsequent environmental impact report" with a basis and finding contradicting the one cited by Mr. Greene. *Id*. at 7.

Complainant argues that Mr. Greene made the same error in Exhibit RX03, regarding the oft-cited California Final Subsequent Environmental Impact Report. *Id*. at 6. In addition, Complainant argues, with respect to Exhibit RX03, that

> This document is not peer reviewed; no apparent research or experimentation was performed in preparation of the report; no credentials have been offered to support Mr. Greene's education or expertise; Mr. Greene does not appear to have published research on these subjects; and no resume is available in evidence to support his ability to provide expert opinion

[5] Exhibit RX01 was apparently submitted to the Idaho State Legislature. Exhibit RX03 does not identify to which state's legislature it was submitted.

Id.

Complainant further contends that both exhibits "omit other legal and regulatory changes to those permitting programs, including wholesale moratoria on the activity imposed in several states, including in California." *Id*. at 7. Complainant concludes that the exhibits "are at worst misleading and at best unreliable," that even arguably relevant portions are "so unreliable as to be inadmissible pursuant to 40 C.F.R. § 22.22(a)." *Id*. at 5, 7.

In response to Complainant's Motion in Limine, Respondent stated that he does not intend to offer "any witnesses/testimony, visual (CD) offerings, case law, environmental studies at this hearing. . . . [And a]t this hearing, I will be the only witness for Erlanson!" Motion to Limine at 2. Respondent made no arguments in support of the admissibility of the exhibits. However, Respondent clearly disputes the EPA's jurisdiction in this matter and his liability, but he has expressed his intention to reserve those matters for appeal.

The Rules provide that "[t]he Presiding Officer shall admit all evidence which is not irrelevant, immaterial, unduly repetitious, unreliable, or of little probative value . . .." 40 C.F.R. § 22.22(a)(1). The Rules do not specifically address the issue of motions in limine and therefore federal court practice, the Federal Rules of Civil Procedure and the Federal Rules of Evidence may be of guidance. *See Carroll Oil Co.*, 10 E.A.D. 635, 649, 2002 WL 1773052, at *12 (EAB 2002); *Solutia Inc*., 10 E.A.D. 193, 211 n. 22, 2001 EPA App. 2001 WL 1549338, at *15 n.22 (EAB 2001).

A motion in limine is the appropriate vehicle for excluding testimony or evidence from being introduced at hearing on the basis that it lacks relevancy and probative value. "[A] motion in limine should be granted only if the evidence sought to be excluded is clearly inadmissible for any purpose." *Noble v. Sheahan*, 116 F. Supp. 2d 966, 969 (N.D. Ill. 2000). "[A] motion in limine should not be used to resolve factual disputes or weigh evidence." *C & E Servs., Inc. v. Ashland Inc.*, 539 F. Supp. 2d 316, 323 (D.D.C. 2008). Motions in limine are generally disfavored. *Hawthorne Partners v. AT&T Technologies, Inc.*, 831 F. Supp. 1398, 1400 (N.D. Ill. 1993). "Unless evidence meets this high standard, evidentiary rulings should be deferred until trial so questions of foundation, relevancy, and potential prejudice may be resolved in proper context." *Id.* at 1400-1401.

Considering Complainant's arguments, Respondent's non-opposition, and my review of the exhibits, it is does not appear to me that the exhibits are reliable without any testimony from Mr. Greene to explain the internal inconsistencies and apparent omissions and misrepresentations. However, at this time, it appears unnecessary to issue an order specifically limiting the scope of Respondent's prospective physical evidence and testimony to only those matters relating to an appropriate penalty because he does not intend to present any exhibits at hearing and he expressed an intention to reserve the issue of his liability for appeal. However, Respondent does not object to a limiting order and such an order would not be inappropriate. Therefore, Complainant's Motion in Limine will be granted.

IV. Motion to Appeal

The final issue is Respondent's Motion to Appeal, filed on March 12, 2019. Respondent's Motion to Appeal requests an appeal to the Environmental Appeals Board. Citing Strickland v. Washington, 466 US 668 (1984), his stated grounds for the request is ineffective assistance of counsel.

Complainant has not yet responded to the Motion to Appeal, however awaiting response by Complainant is not deemed necessary prior to the issuance of my ruling on this issue.

Regarding appeals from or review of interlocutory orders, the Rules state:

> (a) *Request for interlocutory appeal*. Appeals from orders or rulings other than an initial decision shall be allowed only at the discretion of the Environmental Appeals Board. A party seeking interlocutory appeal of such orders or rulings to the Environmental Appeals Board shall file a motion within 10 days of service of the order or ruling, requesting that the Presiding Officer forward the order or ruling to the Environmental Appeals Board for review, and stating briefly the grounds for the appeal.
>
> (b) *Availability of interlocutory appeal*. The Presiding Officer may recommend any order or ruling for review by the Environmental Appeals Board when:
>
> (1) The order or ruling involves an important question of law or policy concerning which there is substantial grounds for difference of opinion; and
>
> (2) Either an immediate appeal from the order or ruling will materially advance the ultimate termination of the proceeding, or review after the final order is issued will be inadequate or ineffective.
>
> (c) *Interlocutory review*. If the Presiding Officer has recommended review and the Environmental Appeals Board determines that interlocutory review is inappropriate, or takes no action within 30 days of the Presiding Officer's recommendation, the appeal is dismissed. When the Presiding Officer declines to recommend review of an order or ruling, it may be reviewed by the Environmental Appeals Board only upon appeal from the initial decision, except when the Environmental Appeals Board determines, upon motion of a party and in exceptional circumstances, that to delay review would be contrary to the public interest. Such motion shall be filed within 10 days of service of an order of the Presiding Officer refusing to recommend such order or ruling for interlocutory review.

40 C.F.R. § 22.29.

An initial decision has yet to be issued in this case and the only substantive order substantially affecting Respondent's rights in the matter is the September 27, 2018 Order on

Complainant's Motion for Accelerated Decision. Therefore, I will construe Respondent's Motion to Appeal as a request for interlocutory appeal from that order. The Motion to Appeal was filed nearly six months after the Order on Complainant's Motion for Accelerated Decision, thus it is untimely and will be denied. *See* 40 C.F.R. § 22.29(a). Furthermore, I do not find that that order involved an important question of law or policy about which there are substantial grounds for a difference of opinion. *See* 40 C.F.R. § 22.29(b)

Respondent may file a motion with the Environmental Appeals Board seeking a review of my denial of his Motion to Appeal within 10 days of service of this Order. Respondent may submit his motion to the Environmental Appeals Board at one of the following addresses.

All documents that are sent through the U.S. Postal Service (except by Express Mail) MUST be addressed to:

Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
1200 Pennsylvania Avenue, NW
Mail Code 1103M
Washington, DC 20460-0001

Documents that are hand-carried, delivered via courier, mailed by Express Mail, or delivered by a non-U.S. Postal Service commercial delivery service (e.g., Federal Express or UPS) MUST be addressed or delivered to:

Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
1201 Constitution Avenue, NW
WJC East Building, Room 3332
Washington, DC 20004

V. ORDER

(1) Complainant's Motion to Compel Additional Discovery and Compliance with Second Prehearing Order is **GRANTED**, in part. To the extent that Respondent wishes to offer any testimony, he shall file and serve a brief narrative summary of the proposed testimony within 14 days of the date of this Order. Respondent need not identify or provide a curriculum vitae of expert witnesses that he does not intend to call or provide a narrative summary of testimony that he does not intend to offer at hearing.

(2) Complainant's Motion in Limine is **GRANTED**. Respondent may not introduce evidence or testimony relating solely to his liability for the charge in the Complaint as that issue has been decided. In addition, Respondent's Exhibits RX01 and RX03 may not be introduced into evidence at hearing.

(3) Respondent's Motion to Appeal is **DENIED**.

SO ORDERED.

Christine Donelian Coughlin
Administrative Law Judge

Date: March 18, 2019
Washington, D.C.

In the Matter of Dane Clanson v EPA.
Motions to Limine Docket # CWA-10-2016-0109

In regards to this Motion by EPA Counsel to restrict my evidence but to allow E.P.A. to add testimony on their behalf I find as a complete disregard of Due Process of Law.

I will, however, not object to Cindy Godsey as a witness — I will hope this Law judge allows me the right? To ask her questions.

Furthermore, I will not object to Tara Martich as a witness for EPA but only if I can cross examine!

To conclude I do not intend to offer any witnesses / testimony, visual (CD) offerings, case law, environmental studies at this hearing.

I reserve, at this time, to call during future appeals procedures all witnesses deemed necessary, all testimonials, visual and actual demonstration to prove my case as I (not my previous Counsel) need to show / prove the E.P.A. has no regulatory authority over suction dredging in the United States or

its territories!

At this hearing I will be the only witness for Espanola!

Regards,

Dave Espanola

March 7, 2019

In the Matter of Dave Clanson v EPA.
Docket # CWA-10-2016-0109
Request for information and request for Production

I will go down each request and either comply to best of my ability or reject!

1. I had just got started when Mr Hughes instructed me to get out of the water and shut down operations! My best guess is I collected no more than $10.00 in gold at $1405. per ounce. I wasn't dredging anymore than 15 minutes!

2. N/A — I don't have such records!

3. This case has come to a price tag of over $22,000.00 to defend so now I find the amount of $600.00 to be extremely unreasonable as the EPA counsel has not produced the name of pollutant discharged into South Fork Clearwater River on July 22, 2015. EPA counsel also has not quantified the pollutant added to S. F. C. River.

3. N/A

Regards,
Dave Clanson

March 8, 2019

In the Matter of Dave Erlanson V EPA.
Docket # CWA-10-2016-0109

Motion to Appeal

At this time Erlanson requests

"Motion to Appeal to Enviromental Protection Agencies Appeals Board." The reasoning for this request, motion, is based upon ineffective assistance of Counsel on behalf of Erlanson. See (STRICKLAND v WASHINGTON 466 US 668 1984).

Regards,
Dave Erlanson Sr

In the Matter of *Dave Erlanson, Sr.*, Respondent
Docket No. CWA-10-2016-0109

CERTIFICATE OF SERVICE

I certify that the foregoing **Order on Complainant's Motion to Compel Additional Discovery and Compliance with Second Prehearing Order, Complainant's Motion in Limine, and Respondent's Motion to Appeal (including Respondent's ex parte correspondence)**, dated and issued by Administrative Law Judge Christine Donelian Coughlin on March 18, 2019, was sent this day to the following parties in the manner indicated below.

Michael Wright
Attorney-Advisor

Original and One Copy by Hand Delivery to:

Mary Angeles
Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Room M1200
1300 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Copy by Electronic Mail to:

William M. McLaren
Assistant Regional Counsel
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Counsel for Complainant

J. Matthew Moore
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Counsel for Complainant

Dave Erlanson, Sr.
Email: tapawingoinc@msn.com
Pro se

Dated: March 18, 2019
Washington, D.C.