

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY**

**BEFORE THE ADMINISTRATOR**

In the Matter of )  
 )  
Overcash Gravel and ) Docket No. CWA-04-2004-4530  
Grading Company, Inc., )  
 )  
Respondent. )

**ORDER DENYING MOTION FOR ADDITIONAL DISCOVERY**

Respondent, Overcash Gravel and Grading Company, Inc. (“Overcash”), has filed a Motion for Additional Discovery in this matter. Overcash seeks to submit interrogatories and a request for production of documents to complainant, U.S. Environmental Protection Agency (“EPA”). Overcash also seeks to depose Susan J. Pope, an Environmental Protection Specialist with EPA. EPA opposes respondent’s motion on the grounds that it is untimely and that it does not otherwise satisfy the provisions of 40 C.F.R. 22.19(e) for obtaining discovery in civil penalty enforcement actions.

EPA is correct that respondent’s motion is untimely. In that regard, during a conference call held on May 17, 2005, the parties were informed by this tribunal that June 10, 2005, was the final date for the filing of discovery related motions. The parties were further advised of this June 10 deadline in a Scheduling Order issued on May 18, 2005.<sup>1</sup> Respondent’s Motion for Additional Discovery, however, was filed on June 16, 2005, six days out of time. In its motion, Overcash offered no explanation for its untimeliness.

In replying to EPA’s opposition, Overcash asserts that complainant’s timeliness argument is “purely technical” because “respondent is not familiar with the administrative rules and the discovery was served on complainant without a motion for additional discovery.” Reply at 1. Overcash’s argument with respect to the timeliness of its motion is not persuasive. Despite respondent’s unfamiliarity with EPA civil penalty enforcement actions arising under the Clean Water Act, 33 U.S.C. § 1319(g)(1), on two occasions, the June 10, 2005, deadline in this case for the filing of discovery related matters was unambiguously communicated by this

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<sup>1</sup> This Scheduling Order was served upon Overcash by facsimile transmission as well as by U.S. mail.

tribunal to both parties.<sup>2</sup>

Accordingly, because Overcash has failed to comply with this tribunal's Scheduling Order, its Motion for Additional Discovery is **denied** as untimely.

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Carl C. Charneski  
Administrative Law Judge

Dated: June 29, 2005  
Washington, D.C.

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<sup>2</sup> The agency's procedural rules governing discovery, 40 C.F.R. 22.19(e), also provided Overcash with an explanation as to the mechanics for obtaining discovery in EPA enforcement proceedings.