



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

C-14J

June 24, 2011

The Honorable Barbara A. Gunning  
United States Administrative Law Judge  
U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
Mailcode 1900L  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460

**RE: In the Matter of Mercury Vapor Processing Technologies Inc., a/k/a/  
River Shannon Recycling and Laurence C. Kelly  
Docket No. RCRA-05-2010-0015**

Dear Judge Gunning:

Please find enclosed copies of **Complainant's Motion for Leave to File Second Supplemental Prehearing Exchange Instanter and Complainant's Second Supplemental Prehearing Exchange** that were filed today in the above-captioned matter.

Sincerely yours,



Jeffrey A. Cahn  
Associate Regional Counsel

Enclosure

cc: Mr. Laurence Kelly

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR

IN THE MATTER OF: )

Mercury Vapor Processing )  
Technologies Inc., a/k/a/ River Shannon )  
Recycling )  
13605 S. Halsted )  
Riverdale, Illinois 60827 )  
U.S. EPA ID No.: ILD005234141, and )

DOCKET NO. RCRA-05-2010-0015

Laurence Kelly )

Respondents. )

CERTIFICATE OF FILING AND SERVICE

I hereby certify that today I filed personally with the Region 5 Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, 77 West Jackson Boulevard (E-19J), Chicago, Illinois, 60604-3590, the original and one copy of the document entitled **Complainant's Motion for Leave to File Second Supplemental Prehearing Exchange Instanter and Complainant's Second Supplemental Prehearing Exchange**, and that I caused to be served copies of the original documents as follows:

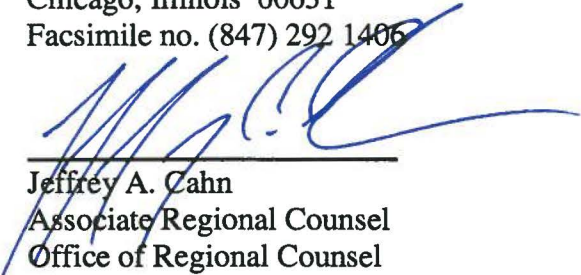
VIA POUCH MAIL:

Honorable Barbara Gunning  
Administrative Law Judge  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
Mail Code 1900L  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460  
Facsimile no. (202) 565 0044

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U.S. EPA REGION 5  
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VIA U.S. MAIL, FIRST CLASS POSTAGE PREPAID:

Mr. Larry Kelly  
Mercury Vapor Processing Technologies, Inc.  
7144 North Harlem Avenue  
Suite 303  
Chicago, Illinois 60631  
Facsimile no. (847) 292 1406



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Jeffrey A. Cahn  
Associate Regional Counsel  
Office of Regional Counsel  
U.S. EPA  
77 West Jackson Blvd.  
Chicago, Il. 60604

Date: June 24, 2011

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR**

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U.S. EPA REGION 5

**COMPLAINANT'S MOTION FOR LEAVE TO FILE SECOND SUPPLEMENTAL  
PREHEARING EXCHANGE INSTANTER**

Complainant, the Director of the Land and Chemicals Division, United States Environmental Protection Agency, Region 5 (Complainant or EPA), pursuant to 40 C.F.R. §§ 22.19(a) and (f) and 22.16 of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules or Rules), and consistent with the Presiding Officer's November 19, 2010 Order Scheduling Hearing<sup>1</sup> and telephone conference on May 19, 2011, hereby moves for leave to file a supplemental prehearing exchange instanter. For the reasons set forth below, Complainant respectfully requests that the Presiding Officer grant this Motion, and allow it to formally file the attached supplemental prehearing exchange.

**I. Background and Applicable Rules**

Pursuant to the Prehearing Order issued by the Presiding Officer on June 15, 2010, the parties have filed their initial prehearing exchanges and Complainant filed a rebuttal to

<sup>1</sup> On February 23, 2011, the Presiding Officer issued an Order Rescheduling Hearing in this matter, which set forth a new date for hearing and deadline for the parties to file a joint set of stipulated facts, exhibits, and testimony.

Respondents' prehearing exchange.<sup>2</sup> On June 8, 2011, Complainant filed its Motion For Leave To File Its First Supplemental Prehearing Exchange Instantly, along with its First Supplemental Prehearing Exchange.

The Consolidated 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. Section 22.19 of the Consolidated Rules require parties to submit prehearing exchanges, and require that a party who has submitted its prehearing exchange “shall promptly supplement . . . the exchange when the party learns that the information . . . is incomplete . . . and the additional information has not otherwise been disclosed to the other party pursuant to this section [22.19].” 40 C.F.R. § 22.19(f).

Additionally, the Presiding Officer's November 19, 2010 Order Scheduling Hearing states that “the parties retain the right to supplement their prehearing exchanges no later than fifteen (15) days before the hearing date.”<sup>3</sup> See, 40 C.F.R. § 22.22(a)(1). During a telephone conference on May 19, 2011, the Presiding Officer indicated that all motions in this matter must be filed no later than July 8, 2011, in order for the non-moving party to file a response and to permit the issuance of an order on the motion.

## **II. Complainant's Supplemental Prehearing Exchange**

Complainant respectfully requests that the Presiding Officer grant its motion for leave to file instantly its second supplemental prehearing exchange, which includes the following:

1. “Hazardous Waste Management System; Modification of the Hazardous Waste Recycling Regulatory Program,” 58 Fed. Reg. 8102 (February 11, 1992). Ex. 50.

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<sup>2</sup> Appearing *pro se*, Respondent MVPT through its representative Laurence Kelly, filed a prehearing exchange on October 27, 2010. Laurence Kelly was added as a party to this action by the Presiding Officer's January 19, 2011 Order Granting Complainant's Motion For Leave to Amend Complaint and Compliance Order.

<sup>3</sup> The November 19, 2010 Order also states that “the parties are advised that every motion filed this proceeding must be served in sufficient time to permit the filing of a response by the non-moving party and to permit the issuance of an order on the motion before the deadlines set by this Order.”

2. "Hazardous Waste Management System; Modification of the Hazardous Waste Program; Mercury-Containing Lamps," 59 Fed. Reg. 38288 (July 27, 1994). Ex. 51.
3. "Universal Waste Rule (Hazardous Waste Management System; Modification of the Hazardous Waste Recycling Regulatory Program); Final Rule," 60 Fed. Reg. 25492 (May 11, 1995). Ex. 52.
4. "Hazardous Waste Management System; Modification of the Hazardous Waste Program; Hazardous Waste Lamps; Final Rule," 64 Fed. Reg. 36466 (July 6, 1999). Ex. 53.
5. "Hazardous Waste Management System; Modification of the Hazardous Waste Program; Mercury Containing Equipment; Final Rule," 70 Fed. Reg. 45508 (August 5, 2005). Ex. 54.
6. River Shannon Recycling, Riverdale, Illinois Inspection Field Notes of Todd Brown, U.S. EPA, dated October 30, 2007. Ex. 55.
7. January 22, 2011, Response of Laurence C. Kelly to U.S. EPA's proposed Stipulation of Fact. Ex. 56.

### **III. Discussion**

Complainant's motion for leave to file instant a second supplemental prehearing exchange should be granted because Complainant is submitting this motion within the timeframes allowed by the Consolidated Rules, the Presiding Officer's Order, and the May 19, 2011 telephone conference. Additionally, the Consolidated Rules require a party to supplement its prehearing exchange upon learning that it is incomplete, inaccurate, or outdated. 40 C.F.R. § 22.20(f).

Since the filing of the initial Complaint and Compliance Order and the Presiding Officer's Order granting Complainant's Motion for Leave to Amend Complaint and Compliance Order, EPA has continued to investigate the facts of this matter. EPA has acquired new information during the course of its investigation that bears on the allegations in the Complaint and Compliance Order and Respondents' liability. In addition to the new information, all of the above-listed information is appropriate for consideration by the Presiding Officer in ruling on

Complainant's allegations against Respondents and determining an appropriate penalty in this matter.

Additionally, there is no prejudice to Respondents by allowing Complainant to include the above-listed documents in its supplemental prehearing exchange. The hearing in this matter is nearly one month away (July 25 through 29, 2011), which gives Respondents ample time in which to review the information.<sup>4</sup> All of the listed documents (except for Mr. Brown's inspection field notes) fall into different categories of public records, are part of the official record in this matter, or have been produced by Respondent and, thus, are documents that Respondent(s) are, or should be, already specifically aware of. Mr. Brown's field notes were used by Mr. Brown to prepare U.S. EPA's inspection report, which was previously provided to Respondents.

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<sup>4</sup> The hearing date in this matter was set pursuant to the Presiding Officer's February 23, 2011 Order Rescheduling Hearing.




**IV. Conclusion**

EPA has acquired new information that directly relates to Respondents' liability and an appropriate penalty in this matter, and has submitted this Motion within the appropriate timeframe. Additionally, the prehearing exchange is not complete without the listed documents. The listed documents are matters of public record (except for Mr. Brown's inspection field notes) or have been produced by Respondents. For the reasons set forth above, Complainant respectfully requests that the Presiding Officer grant its Motion for Leave to file its Second Supplemental Prehearing Exchange instantler.

Respectfully submitted,

DATED: 6/24/2011



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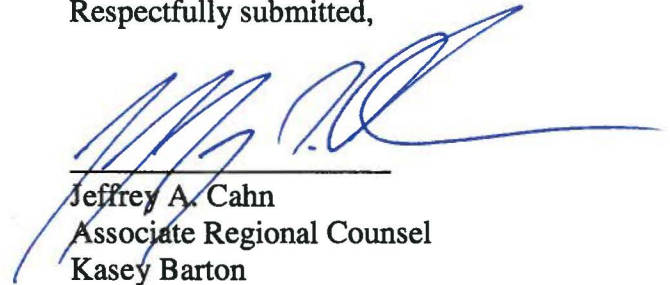
**COMPLAINANT'S SECOND SUPPLEMENTAL PREHEARING EXCHANGE**

Pursuant to pursuant to 40 C.F.R. §§ 22.19(a) and (f) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, Complainant hereby submits the following information in its Supplemental Prehearing Exchange:

- A. Complainant may also offer the following additional exhibits at hearing:
1. "Hazardous Waste Management System; Modification of the Hazardous Waste Recycling Regulatory Program," 58 Fed. Reg. 8102 (February 11, 1992). Ex. 50.
  2. "Hazardous Waste Management System; Modification of the Hazardous Waste Program; Mercury-Containing Lamps," 59 Fed. Reg. 38288 (July 27, 1994). Ex. 51.
  3. "Universal Waste Rule (Hazardous Waste Management System; Modification of the Hazardous Waste Recycling Regulatory Program); Final Rule," 60 Fed. Reg. 25492 (May 11, 1995). Ex. 52.
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7. January 22, 2011, Response of Laurence C. Kelly to U.S. EPA's proposed Stipulation of Fact. Ex. 56.

Respectfully submitted,



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