

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

In the Matter of:)
)
August Mack Environmental, Inc.,) Docket No. CERCLA-HQ-2017-0001
)
Requestor.)

**AUGUST MACK ENVIRONMENTAL, INC.'S
MOTION TO SUBMIT ADDITIONAL DOCUMENTS INTO THE RECORD**

August Mack Environmental, Inc. ("AME"), for its Motion to Submit Additional Documents into the Record, states the following:

1. In its September 8, 2021 Order of Redesignation and Prehearing Order, the Tribunal ordered the parties to submit exhibits with its prehearing exchanges and said that permission was needed to submit additional documents into evidence.

2. On October 22, 2021, AME filed its Initial Prehearing Exchange and 322 numbered exhibits (RX 001-322). (AME Initial Prehrg. Exch., pp. 4-19.)

3. In addition, it identified the following documents as exhibits it would rely on as evidence in this matter, including, but not limited to, documents identified through the discovery phase of this case, deposition transcripts, video recordings of depositions, deposition exhibits, written discovery requests and responses, and any document necessary for impeachment or rebuttal. (*Id.* at 19.)

4. Further, AME expressly reserved the right to identify additional exhibits as discovery progresses. (*Id.*)

5. On November 29, 2021, AME filed its rebuttal prehearing exchange, which included a supplemental list of exhibits and documents in response to EPA's prehearing exchange, and these documents were marked RX 323-RX 328.

6. On February 4, 2022, the Tribunal ordered EPA to respond to AME's requests for admission and to make three witnesses, Eric Newman, Silvina Fonseca, and Richard Jeng available to be deposed.

7. Thereafter, EPA served responses to AME's requests for admission and videotaped depositions of Mr. Newman, Ms. Fonseca, and Mr. Jeng took place.

8. In accordance with its initial prehearing exchange and the orders, AME submits EPA's responses to AME's requests for admission into the record as RX 329; Mr. Newman's deposition transcript and exhibits as RX 330; Ms. Fonseca's deposition transcript and exhibits as RX 331; and Mr. Jeng's deposition transcript and exhibits as RX 332.

9. Additionally, AME is submitting the video recordings of Mr. Newman (as RX 338 Part 1 and RX 338 Part 2), Ms. Fonseca (as RX 339 Part 1 and RX 339 Part 2), and Mr. Jeng's (as RX 340) depositions as evidence into the record.

10. Moreover, AME submits the affidavit of its president and owner, Mr. Geoffrey Glanders, as RX 337. Mr. Glanders was identified as a witness in AME's initial prehearing exchange, and therein, AME described his anticipated scope of testimony and

included a copy of his CV. Thus, there is good cause to accept his affidavit into the record as evidence.

11. Further, discovery and investigation have revealed a 1985 EPA memorandum that describes how “[v]ery few private party preauthorizations are anticipated, and those that are granted will occur under extraordinary circumstances,” and a 1987 Annual Superfund Report that describes “concern” that “some EPA regions did not plan to use preauthorization.” These documents are relevant to the case and support AME’s arguments. Thus, there is good cause to accept these documents into the record as evidence. Moreover, there is no prejudice to EPA for accepting these documents into the record because they are EPA’s own documents, so they already know of them. These documents are being submitted into the record as RX 333 and RX 334.

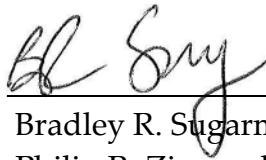
12. Similarly, AME seeks to submit EPA’s “Superfund Accomplishments Report” for 2021 into the record. This document is also relevant and supports AME’s position, so there is good cause to accept it into the record as evidence, and there is no prejudice to EPA since it is its own document. This document is being submitted into the record as RX 335.

13. Finally, AME submits EPA’s July 1, 2021 Memorandum into the record as RX 336. There is good cause to enter this document into the record as evidence because it is relevant and supports AME’s position. Further, EPA is not prejudiced by having its own documents as evidence in the record.

14. AME's due process rights will be violated if these documents are not accepted into the record as evidence.

15. In sum, the Tribunal should accept RX 329-RX 340 into the record as evidence.

Respectfully submitted,



Bradley R. Sugarman

Philip R. Zimmerly

Jackson L. Schroeder

BOSE MCKINNEY & EVANS LLP

111 Monument Circle, Suite 2700

Indianapolis, Indiana 46204

Telephone: (317) 684-5000

Facsimile: (317) 684-5173

BSugarman@boselaw.com

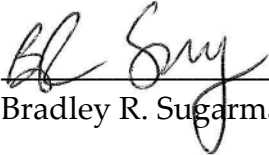
PZimmerly@boselaw.com

JSchroeder@boselaw.com

*Attorneys for August Mack Environmental,
Inc.*

Certificate of Service

I certify that the foregoing was filed and served on the Chief Administrative Law Judge Biro on September 16, 2022 through the Office of Administrative Law Judge's e-filing system, and that a copy of this document was also served on opposing counsel at the following e-mail addresses: cohan.benjamin@epa.gov and Berg.ElizabethG@epa.gov.


Bradley R. Sugarman

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Requestor, August Mack Environmental, Inc. (“AME”), having filed a Motion to Submit Additional Documents into the Record, and the Tribunal, having reviewed the Motion and being duly advised, hereby GRANTS Requestor’s Motion.

SO ORDERED

Date: _____

Susan L. Biro
Chief Administrative Law Judge

Distribution: All counsel of record.