

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219
BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
ADAMAS CONSTRUCTION AND) COMPLAINANT’S MOTION FOR
DEVELOPMENT SERVICES, PLLC) LEAVE TO SUPPLEMENT
) COMPLAINANT’S PREHEARING
) EXCHANGE
)
AND)
)
NATHAN PIERCE,)
)
Respondents) Docket No. CWA-07-2019-0262
)
Proceedings under Section 309(g) of the)
Clean Water Act, 33 U.S.C. § 1319(g))

COMPLAINANT’S MOTION FOR LEAVE TO SUPPLEMENT COMPLAINANT’S
PREHEARING EXCHANGE

COMES NOW, the United States Environmental Protection Agency (“EPA” or “Complainant”), pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.1 to 22.45 and submits this Motion for Leave to Supplement the Prehearing Exchange.

1. The Complaint in this matter was filed September 6, 2019. The Complaint contains two counts alleging that Respondent violated the Clean Water Act (“CWA”). The counts allege that Respondents failed to maintain records as required by 33 U.S.C. § 1345 and failed to respond to an information request as required by 33 U.S.C. § 1318. EPA pleaded a penalty of \$59,583.

2. Respondents filed an Answer with EPA's Regional Hearing Clerk on October 16, 2019. Hearing on this matter has not yet been scheduled. Complainant filed its Initial Prehearing Exchange on November 16, 2019 and its Rebuttal Prehearing Exchange on April 3, 2020. The parties' briefing on Complainant's Motion for Accelerated Decision as to Liability was complete on June 2, 2020.

3. Pursuant to 40 C.F.R. §22.19(f), Complainant seeks to supplement its Prehearing Exchange with the Clean Water Act Section 308, 33 U.S.C. §1318 Information Request response from Tom Robinson. Complainant included a placeholder for this response in both its Initial Prehearing Exchange and its Rebuttal Prehearing Exchange. The placeholder is listed in both documents as CX41.

4. EPA received Mr. Robinson's response in late February 2020 but due to circumstances related to the pandemic, including the continued closure of Complainant's offices since mid-March 2020, Complainant did not become aware of its receipt of the response until early October 2020. Since a hearing on this matter has not been scheduled, EPA does not believe that supplementing the Prehearing Exchange with this document will unduly burden the Respondents.

5. Further, Complainant notes that the document supports Complainant's Motion for Accelerated Decision as to Liability. Mr. Robinson states in his response that Respondent Nathan Pierce placed the biosolids on his property, supporting the allegation that Respondents were persons who "applied sewage sludge" pursuant to 40 C.F.R. §503.10(a). Further, Mr. Robinson states that Respondents did not provide any information about the biosolids to him. This supports the allegation that Respondents failed to keep the records required under 40 C.F.R. §503.17.

6. Pursuant to 40 C.F.R. 22.19(f), a party who has made an information exchange under 40

C.F.R. §22.19(a) shall promptly supplement the exchange when the party learns that the information exchanged or response provided is incomplete, inaccurate or outdated, and the additional information has not otherwise been disclosed to the other party pursuant to this section.

7. Such motions to amend are generally granted, if the conditions of 40 C.F.R. §22.19(f) are met. *See e.g. In the Matter of LHP*, 2016 WL 2759700, Docket No. TSCA-07-2014-0029 (March 14, 2016); *In The Matter Of: Taotao Usa, Inc., Taotao Group Co., Ltd., And Jinyun County Xiangyuan Industry Co., Ltd.*, 2017 WL 6373573, Docket No. CAA-HQ-2015-8065 (Sept. 30, 2017).

8. Complainant has met the requirements of 40 C.F.R. §22.19(f) because it is timely filing this motion to supplement the prehearing exchange after discovery the response had been submitted to EPA.

9. The October 18, 2019 Prehearing Order allows the parties to supplement the prehearing exchanges with leave of the Court only when supplementation is sought within 60 days of the scheduled hearing. A hearing date has not yet been set.

10. After review of the evidence and facts of the case in light of applicable case law, Complainant seeks leave to supplement the Prehearing Exchange with the attached exhibit, previously identified in the Prehearing Exchange as CX41.

11. Complainant contacted Respondents through Respondents' counsel by email on October 19, 2020. A copy of this correspondence is attached to this motion. As of the date of this filing, Complainant has not received a response and, therefore, does not know whether Respondents oppose this motion.

12. Granting this motion to amend will not cause prejudice beyond mere inconvenience. The

EPA does not seek to add additional violation counts and does not seek to modify the proposed penalty. Respondents' potential liability is unchanged. Finally, this amendment is in the public interest and will promote the justiciable disposition of this matter.

13. For the reasons cited above, Complainant respectfully requests leave of the Court to supplement the Prehearing Exchange with CX41.

RESPECTFULLY SUBMITTED this 26^h day of October 2020.

/s Sara Hertz Wu

Sara Hertz Wu, Senior Counsel

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CERTIFICATE OF SERVICE

I certify that the foregoing Complainant's Motion for Leave to Supplement Complainant's Prehearing Exchange, Docket No. CWA-07-2019-0262, has been submitted electronically using the OALJ E-Filing System.

A copy was sent by email to:

Attorney for Respondents Adamas Construction and Development Services PLLC and Nathan Pierce:

Christopher Gallus at chrisjgalluslaw@gmail.com and

Nathan Pierce at adamas.mt.406@gmail.com.

Date: 10/26/2020

/s Sara Hertz Wu _____

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