

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

BEFORE THE ADMINISTRATOR

In the Matter of)	
)	
VALIMET, INC.,)	Docket No. EPCRA-09-2007-0021
)	
Respondent.)	

**ORDER ON MOTIONS TO SUPPLEMENT
PREHEARING EXCHANGE**

The hearing in this matter is scheduled to commence on December 9, 2008. On November 24, 2008, both parties submitted motions to supplement their Prehearing Exchanges.

In the Motion to Supplement Complainant's Prehearing Exchange, Complainant seeks to add two witnesses and ten exhibits, marked CX 43 through CX 52, to its Prehearing Exchange. Complainant asserts that it identified the witnesses and certain documents only recently, and as to the other documents, only recently determined their relevancy to this proceeding. In particular, Complainant seeks to include as a witness Mary Wolf, the former EPA Case Development Officer who allegedly followed up with Respondent's representatives after the inspection and who EPA took some time to contact as she no longer works at EPA Region 9. Complainant also seeks to add as a witness Clover Fletcher, who recently drafted maps to be submitted as evidence in conjunction with an expert witness' report. The documents Complainant proposes to add are Ms. Wolf's notes, Mr. Fletcher's maps of Respondent's facility and surrounding areas, reports of expert witnesses which were very recently completed, penalty policies recently determined relevant to an expert's report, and an Emergency Response Guide as to explosions recently identified to support an expert report. Complainant points out that Respondent did not submit expert reports nor other supporting documents for its expert witnesses, yet the documents Complainant seeks to include in the Prehearing Exchange will give Respondent ample information to prepare cross-examination of Complainant's expert witnesses.

In the Motion to Further Supplement Valimet's Prehearing Exchange, Respondent seeks to add four exhibits, marked RX 26 through RX 29. Respondent asserts that it did not include these documents earlier in the Prehearing Exchange because they are responsive to issues that arose during prehearing motions, related to ignitability and flammability of aluminum powder.

The parties' proposed documents and Complainant's proposed additional witnesses appear to be responsive to the scope of issues that may be relevant to the penalty assessment as discussed in the Order on Complainant's Motion to Strike and Motion *in Limine* recently issued in this proceeding on November 6, 2008. There is no indication of undue delay or bad faith on

the part of either party.

Accordingly, Respondent's Motion to Further Supplement Valimet's Prehearing Information Exchange, dated November 24, 2008, is **GRANTED**, and Complainant's Motion to Supplement Complainant's Prehearing Exchange, dated November 24, 2008, is **GRANTED**.

Susan L. Biro
Chief Administrative Law Judge

Dated: December 2, 2008
Washington, D.C.