

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

TERRA INDUSTRIES, INC.

CIVIL ACTION

VERSUS

NO. 08-5225

MEEKS DISPOSAL CORPORATION

SECTION "N" (3)

ORDER and REASONS

The Court has reviewed the briefs in this matter pursuant to the Defendant's **Motion for Summary Judgment (Rec. Doc. 14)** and the Plaintiff's **Motion for Leave to File Amended Exhibit and Witness Lists (Rec. Doc. 20)**. After initially denying the request for oral argument on these motions, the Court set them for oral argument on Wednesday, August 12, 2009 at 9:30 a.m., with Defendant's opposition to the Motion to Amend due on August 4, 2009, and Plaintiff's reply due on or before August 10, 2009. *See* Order of July 28, 2009 (Rec. Doc. 26). Thus, at this time, the record is complete on these motions and, with the unexpected clearing of other matters from the Court's docket, the Court has had an opportunity to review them in detail. Having done so, the Court has determined—with apologies to counsel and parties for the late date and the confusion that has resulted from the Court's consideration of whether oral argument would be held in this matter—to **CANCEL** the oral argument in this matter for the time being, and to proceed directly to ruling on the contested motions.

A. Motion for Leave to Amend

The Scheduling Order in this matter explicitly states that “[t]he Court will not permit any witness, expert or fact, to testify or any exhibits to be used unless there has been compliance with this Minute Entry as it pertains to the witness and/or exhibits, without an order to do so issued on motion for good cause shown.” Sched.. Order at 2 (Rec. Doc. 6). Reviewing the briefs, it is apparent that Plaintiff has not advanced, and cannot advance, any satisfactory explanation for its failure to timely file its witness and exhibit lists or move for a continuance of those dates.

Accordingly, **IT IS ORDERED** that Plaintiff’s Motion for Leave to File Amended Exhibit and Witness Lists is **DENIED**. Plaintiff will be precluded from introducing any witness (besides a corporate representative) of whose existence Defendant was not on notice prior to May 22, 2009. Except for a corporate representative, the burden will be on Plaintiff to show that any witness it chooses to call was specifically disclosed (by name and contact information) to Defendant before that date. Similarly, Plaintiff will be precluded from introducing any expert witness testimony, based on its failure to timely disclose expert reports.


Further, Plaintiff will be precluded from introducing any documents, records, or other exhibits that were not timely disclosed to Defendant pursuant to the July 2nd discovery deadline in the Scheduling Order or pursuant to the Magistrate’s Order of July 8, 2009 (Rec. Doc. 17). Again, the burden will be on Plaintiff to show that any documents, records, or other exhibits that it wishes to introduce were timely disclosed to Defendant pursuant to one of those two Orders.

A. Motion for Summary Judgment

In light of this ruling, it is unclear whether Plaintiff will be able to meet its burden of proof at trial, since it is not presently clear to the Court what, if any, documents Plaintiff may introduce or witnesses Plaintiff may call at trial consistent with the instant Order. However, it is apparent that

Defendant timely received *some* discovery pursuant to the Magistrate's July 8th Order, after the instant motion for summary judgment was filed. Accordingly, the Court will **DENY WITHOUT PREJUDICE** the motion for summary judgment at this time. Defendant may, if it chooses, pursue a more complete motion for summary judgment by filing it on or before the close of business on Thursday, August 13, 2009. Oppositions to any such motion for summary judgment will be due on or before the close of business on Tuesday, August 18, 2009. The Court will provide the parties with an expedited ruling on any such summary judgment motion.

New Orleans, Louisiana, this 11th day of August, 2009.



KURT D. ENGELHARDT
United States District Judge