



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
DUVALL DEVELOPMENT CO., INC.,)
JEFFREY H. DUVALL,) DOCKET NO. CWA-04-2010-5505
DUVALL & SON LIVESTOCK, INC.,)
AND LOUIS STEVE DUVALL, SR.)
)
RESPONDENTS)

AMENDED PREHEARING ORDER AND ORDER CONFIRMING HEARING

As you previously may have been notified, I am designated by the August 9, 2010 Order of the Chief Administrative Law Judge to preside in the above captioned matter. This proceeding arises under the authority of Section 309(g)(2)(B) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g)(2)(B), and is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Rules of Practice"), 40 C.F.R. §§ 22.1-22.32.^{1/} The parties are advised to familiarize themselves with both the applicable statute(s) and the Rules of Practice.

The file before me reflects that the parties have devoted substantial time to settlement discussions but have not reached a settlement in this case. Thus, the parties shall strictly comply with the requirements of this Amended Prehearing Order and prepare for a hearing. The parties are reminded that the Hearing in this matter has been scheduled to commence at 9:30 a.m. on Tuesday, August 23, 2011, in Courtroom 1860 of the United States District Court for the Northern District of Georgia in Atlanta, Georgia, continuing as necessary through August 26, 2011.

^{1/} On May 25, 2011, with leave granted by the undersigned, Complainant filed the Amended Administrative Complaint in this matter. The Amended Complaint supercedes the original Complaint in all respects and adds two parties to this action: Respondent Duvall & Son Livestock, Inc. ("Duvall Livestock"), and Respondent Louis Steve Duvall, Sr. ("Steve Duvall"). On June 14, 2011, Respondent Duvall Development Co., Inc. ("Duvall Development"), and Respondent Jeffrey H. Duvall ("Jeffrey Duvall") filed an Amended Answer. The record indicates that Respondents Duvall Livestock and Steve Duvall filed a joint Answer to the Amended Complaint on June 24, 2011.

The parties are encouraged to continue to engage in settlement negotiations during and after preparation of their prehearing exchange. However, the parties are advised that extensions of time will not be granted absent a showing of good cause. The pursuit of settlement negotiations or an averment that a settlement in principle has been reached will not constitute good cause for failing to comply with the requirements or to meet the schedule set forth in this Order.

The following requirements of this Order concerning prehearing exchange information are authorized by Section 22.19(a) of the Rules of Practice, 40 C.F.R. § 22.19(a). Complainant and Respondents Duvall Development and Jeffrey Duvall have already engaged in a complete prehearing exchange among themselves. With the addition of Respondents Duvall Livestock and Steve Duvall, an additional exchange is necessary with respect to those new parties. As such, it is directed that the following supplemental prehearing exchange takes place:

1. Each party^{2/} shall submit:^{3/}
 - (a) the names of any expert or other witnesses it intends to call at the hearing, together with a brief narrative summary of each witness's expected testimony, or a statement that no witnesses will be called; and
 - (b) copies of all documents and exhibits which each party intends to introduce into evidence at the hearing. The exhibits should include a curriculum vitae or resume for each proposed expert witness. If photographs are submitted, the photographs must be actual unretouched photographs. The documents and exhibits shall be identified as

^{2/} Respondents Duvall Livestock and Steve Duvall filed a joint Answer to the Amended Complaint and are represented by the same counsel. Respondents may choose to file a joint prehearing exchange, or each Respondent may file separately.

^{3/} Complainant and Respondents Duvall Development and Jeffrey Duvall must provide a copy of their previous prehearing exchange to Respondents Duvall Livestock and Steve Duvall. Additional witnesses or documents should concern the newly added Respondents and should not be a late supplement aimed at the original parties. Respondents Duvall Livestock and Steve Duvall are advised that this is the primary information exchange vehicle and any additional discovery will be necessarily constrained by the proximity of the scheduled hearing.

"Complainant's" or "Respondents'" exhibits,^{4/} as appropriate, and numbered with Arabic numerals (e.g., "Complainant's Exhibit 1"); and

- (c) a statement expressing its view as to the place for the hearing and the estimated amount of time needed to present its direct case.

See Sections 22.19(a), (b), and (d) of the Rules of Practice, 40 C.F.R. §§ 22.19(a), (b), and (d). See also Section 22.21(d) of the Rules of Practice, 40 C.F.R. § 22.21(d).

2. This proceeding is for the assessment of a penalty and Complainant has not specified a proposed penalty.^{5/} Accordingly, the parties shall include in their prehearing information exchange all factual information they consider relevant to the assessment of a penalty.
3. Within ten (10) days after Respondents file their prehearing information exchange, Complainant shall file a document specifying a proposed penalty and explaining in detail how the proposed penalty was determined, including a description of how the specific provisions of any Agency penalty or enforcement policies and/or guidelines were applied in calculating the penalty.
4. If any Respondent intends to take the position that he/it is unable to pay the proposed penalty or that payment will have an adverse effect on his/its ability to continue to do business, that Respondent shall furnish supporting documentation such as certified copies of financial statements or tax returns.
5. Complainant shall submit proof of proper public notice as required by 40 C.F.R. § 22.45(b).

See Section 22.19(a)(3) of the Rules of Practice, 40 C.F.R. § 22.19(a)(3).

Given the close proximity of the scheduled hearing, time is of the essence in this matter and the parties should make all

^{4/} If Respondents Duvall Livestock and Steve Duvall choose to file separate prehearing exchanges, the proposed exhibits should be identified as "Respondent Duvall Livestock's" or "Respondent Steve Duvall's" exhibits.

^{5/} The Amended Complaint states that Complainant proposes the assessment of a civil penalty of up to \$177,500 against Respondents for the violations alleged in the Complaint. Amd. Compl. at ¶ 23.

efforts to meet the deadlines as set forth in this Order. The supplemental prehearing exchange delineated above shall be filed *in seriatim* manner, according to the following schedule:

- July 11, 2011 - Complainant's Initial Supplemental Prehearing Exchange
- July 29, 2011 - Respondents' Prehearing Exchange(s), including any direct and/or rebuttal evidence
- August 8, 2011 - Complainant's Supplemental Rebuttal Prehearing Exchange

In their Answer to the Amended Complaint, Respondents Duvall Livestock and Steve Duvall exercised their right under Section 554 of the Administrative Procedure Act ("APA"), 5 U.S.C. § 554, to request a hearing in this matter. The Hearing in this matter has been scheduled to commence at 9:30 a.m. on August 23, 2011, continuing as necessary through August 26, 2011. In connection therewith, **on or before August 17, 2011**, the parties may file a joint set of stipulated facts, exhibits, and testimony. See Section 22.19(b)(2) of the Rules of Practice, 40 C.F.R. § 22.19(b)(2).

Section 556(d) of the APA provides that a party is entitled to present its case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Thus, Respondents have the right to defend themselves against Complainant's charges by way of direct evidence, rebuttal evidence, or through cross-examination of Complainant's witnesses. Each Respondent is entitled to elect any or all three means to pursue its defense.

If a Respondent elects only to conduct cross-examination of Complainant's witnesses and to forgo the presentation of direct and/or rebuttal evidence, that Respondent shall serve a statement to that effect on or before the date for filing its prehearing exchange. Each party is hereby reminded that failure to comply with the prehearing exchange requirements set forth herein, including a Respondent's statement of election only to conduct cross-examination of the Complainant's witnesses, can result in the entry of a default judgment against the defaulting party. See Section 22.17 of the Rules of Practice, 40 C.F.R. § 22.17.

The original and one copy of all pleadings, statements, and documents (with any attachments) required or permitted to be filed by this Order (including a ratified Consent Agreement and Final Order) shall be filed with the Regional Hearing Clerk, and copies (with any attachments) shall be sent to the undersigned

and all other parties. The parties are advised that e-mail correspondence with the Administrative Law Judge is not authorized. See Section 22.5(a) of the Rules of Practice, 40 C.F.R. § 22.5(a).

The prehearing exchange information required by this Order to be sent to the Presiding Judge, as well as any other further pleadings, shall be addressed as follows:

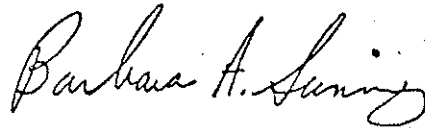
If filing by United State Postal Service (USPS):

EPA Office of Administrative Law Judges
1200 Pennsylvania Ave. NW
Mail Code 1900L
Washington, DC 20460

If sending by non-USPS couriers:

EPA Office of Administrative Law Judges
1099 14th St. NW
Suite 350, Franklin Court
Washington, DC 20005

Telephone contact may be made with my legal staff assistant, Mary Angeles, at (202) 564-6281. The facsimile number is (202) 565-0044.



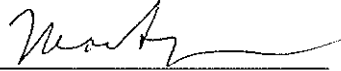
Barbara A. Gunning
Administrative Law Judge

Dated: June 27, 2011
Washington, D.C.

In the Matter of *Duvall Development Co., Inc., Jeffrey H. Duvall, Duvall & Son Livestock, Inc., and Louis Steve Duvall, Sr.*, Docket No. CWA-04-2010-5505

CERTIFICATE OF SERVICE

I hereby certify that true copies of the foregoing **Amended Prehearing Order and Order Confirming Hearing**, dated June 27, 2011, issued by Barbara Gunning, Administrative Law Judge, were sent this 27th of June 2011, in the following manner to the addressees listed below.



Mary Angeles
Legal Staff Assistant

Original and One Copy by Facsimile and Pouch Mail to:

Patricia Bullock
Regional Hearing Clerk
U.S. EPA / Region 4
Sam Nunn Federal Center - 13th Flr.
61 Forsyth Street
Atlanta, GA 30303
Fx: 404.562.9487

One Copy by Facsimile and Pouch Mail to:

Robert W. Caplan, Esq.
Sr. Attorney
ORC, U.S. EPA, Region 4
Sam Nunn Federal Center - 13th Flr.
61 Forsyth Street
Atlanta, GA 30303
Fx: 404.562.9486

One Copy by Facsimile and Regular Mail to:

Edwin Schwartz, Esq.
Sweetnam & Schwartz, LLC
Suite 1700
Three Ravinia Drive, Suite 1700
Atlanta, GA 30346
Fx: 770.234.6779

Dated: June 27, 2011
Washington, DC