



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION IX
 75 Hawthorne Street
 San Francisco, CA 94105

FILED

2012 FEB -9 AM 11:26

U.S. EPA. REGION IX
 REGIONAL HEARING CLERK

In the Matter of:)
)
 Jose P. Jazmin and Betty Jazmin,)
 Trustees of the Jazmin Family Trust,) Docket No. UIC-09-2010-0006
)
 Respondents.)

PREHEARING ORDER

As you have been previously notified, I am designated to preside over this proceeding. This Order is being issued pursuant to the briefing schedule all parties agreed upon during the January 11, 2012 Prehearing Conference. Jeffrey Allen, Esq. and Jose Jazmin represented the Respondents. Brett Moffatt, Esq. and Maya Kuttan, Esq. represented Complainant. This proceeding will be governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.1-22.45 (“Rules of Practice”). The parties are advised to familiarize themselves with the applicable statute(s) and the Rules of Practice. An informal Practice Manual is accessible online at <http://www.epa.gov/oalj>.

Agency policy strongly supports settlement, and the procedures regarding documenting settlements are set forth in Section 22.18 of the Rules of Practice, 40 C.F.R. § 22.18. The record shows that the parties participated in the Alternative Dispute Resolution process offered by the Office of Administrative Law Judges for approximately four months, but were unable to reach a settlement. Each party is reminded that pursuing this matter through a hearing and possible appeals will require the expenditure of significant amounts of time and financial resources. The parties should realistically consider the risk of not prevailing in the proceeding despite such expenditures. A settlement allows the parties to control the outcome of the case, whereas a judicial decision takes such control away.

Prehearing Exchange. This Order is issued pursuant to Section 22.19(a) of the Rules of Practice. Accordingly, it is directed that the following prehearing exchange take place between the parties:

1. Each party shall file with the Regional Hearing Clerk, serve on the opposing party, and serve on the Regional Judicial Officer:

- (A) a list of names of the expert and other witnesses intended to be called at hearing, indentifying each as a fact witness or an expert witness, a brief narrative summary of their expected testimony, and a curriculum vitae or resume for each identified expert witness, or a statement that no witnesses will be called;
 - (B) copies of all documents and exhibits intended to be introduced into evidence, identified as “Complainant’s” or “Respondents” exhibit, as appropriate, and numbered with Arabic numerals (*e.g.*, CX 1 or RX 1);
 - (C) and an estimate of the time needed to present its direct case. See Sections 22.21(d) and 22.19(d) of the Rules of Practice. Also, state whether translation services are necessary in regard to the testimony of any witness(es), and, if so, state the language to be translated.
2. In addition, Complainant shall submit the following as part of its Initial Prehearing Exchange:
- (A) a copy of any documents in support of each of the factual allegations in the Complaint, particularly those in Paragraphs 8-19, that Respondents have denied or otherwise not admitted in their Answer.
3. In addition, Respondents shall submit the following as part of their Prehearing Exchange, except for the motion referenced in (D) below, ***which, if made, shall be separately filed and served in accordance with the motion requirements of 40 C.F.R. §§ 22.5 and 22.16:***
- (A) a clear admission, denial or explanation for each of the factual allegations in Paragraphs 8-19 of the Complaint to which Respondents have any knowledge, pursuant to 40 C.F.R. § 22.15(b) (failure to admit, deny, or explain any material factual allegation contained in the Complaint constitutes an admission of the allegation under 40 C.F.R. § 22.15(d);
 - (B) a narrative statement and a copy of any and all documents in support of the Affirmative Defenses in Paragraphs 3 through 7 of the Answer;
 - (C) if Respondents take the position that the proposed penalty should be reduced or eliminated on any grounds, such as inability to pay, a detailed narrative statement explaining the precise factual and legal basis for their position and a copy of any and all documents upon which they intend to rely in support of such position; and

- (D) if Respondents intend to pursue dismissal of the action, an appropriate motion, such as a motion to dismiss or motion for accelerated decision, which includes detailed legal arguments and any supporting documents.
4. Finally, Complainant shall submit as part of its Rebuttal Prehearing Exchange:
- (A) a statement and/or any documents in response to Respondents' Prehearing Exchange as to provisions 3(A) through 3(C) above;
 - (B) a detailed narrative explanation of the proposed penalty and any other relief sought, addressing, in particular, the relevant penalty factors; and
 - (C) a copy, or the internet address (URL), of any policies, worksheets or guidance documents relied on or intended to be relied on by Complainant in calculating the proposed penalty and any other relief sought.

The following exchanges called for above shall be filed in seriatim fashion, pursuant to the following schedule:

March 2, 2012	Complaint's Initial Prehearing Exchange
March 27, 2012	Respondents' Prehearing Exchange
April 24, 2012	Complainant's Rebuttal Prehearing Exchange
June 1, 2012	Last day for parties to file prehearing motions
June 18, 2012	Last day for parties to file their brief in opposition of any pending motion(s)
June 25, 2012	Second Prehearing Conference & Hearing on all pending prehearing motion(s)

Section 22.19(a) of the Rules of Practice provides that, except in accordance with Section 22.22(a), **any document not included in the prehearing exchange shall not be admitted into evidence, and any witness whose name and testimony summary are not included in the prehearing exchange shall not be allowed to testify.** Therefore, each party should thoughtfully prepare its prehearing exchange.

Supplement to Prehearing Exchange. Any addition of a proposed witness or exhibit to the prehearing exchange shall be filed with an accompanying motion to supplement the prehearing exchange.

Default and Opportunity for a Hearing. The Complaint in this matter gave Respondents notice and opportunity for a hearing, in accordance with Section 554 of the Administrative Procedure Act, 5 U.S.C. §§ 554 *et seq* (“APA”). Respondents’ Answer to the Complaint contained a request for a hearing. In this regard, Section 554(c)(2) of the APA sets out that a hearing be conducted under Section 556 of the APA. Section 556(d) 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 against Complainant’s charges by way of direct evidence, rebuttal evidence or through cross-examination of Complainant’s witnesses. Respondents are entitled to elect any or all three means to pursue their defenses. If Respondents intend to elect only to conduct cross-examination of Complainant’s witnesses and to forgo the presentation of direct and/or rebuttal evidence, Respondents shall serve a statement to that effect on or before the date for filing their prehearing exchange. **Respondents are hereby notified that their failure to either comply with the prehearing exchange requirements set forth herein or to state that they are electing only to conduct cross-examination of Complainant’s witnesses, can result in the entry of a default judgment against them. Complainant is notified that its failure to file its prehearing exchange in a timely manner can result in a dismissal of the case with prejudice.**

The mere pendency of settlement negotiations or even the existence of a settlement in principle does not constitute a basis for failing to comply strictly with the prehearing exchange requirements. Only the filing with the Regional Hearing Clerk of a fully-executed Consent Agreement and Final Order, or an order of the Regional Judicial Officer, excuses noncompliance with filing deadlines.

Filing and Service. A document is “filed” when the Regional Hearing Clerk *receives* it. A document is “served” upon mailing or when placed in the custody of a reliable commercial delivery service. However, the parties are encouraged to send a courtesy copy to the Regional Judicial Officer by facsimile or e-mail, in addition to the mailed hard copy. The facsimile number is (415) 947-3570, and the e-mail address is goodwin.bryank@epa.gov. A signed certificate of service must be attached to all filed documents.

All documents served by regular mail or by Federal Express/UPS may be mailed to:

Steven L. Jawgiel
Regional Judicial Officer
U.S. EPA Region 9 (ORC-1)
75 Hawthorne Street
San Francisco, CA 94105

The parties are advised NOT to include, attach, or refer to any terms of settlement offers or agreements in any document submitted to the Regional Judicial Officer. No copies of Consent Agreements and Final Orders shall be submitted, or attached to any document submitted to the Regional Judicial Officer, except those that are fully-executed and filed with the Regional Hearing Clerk.

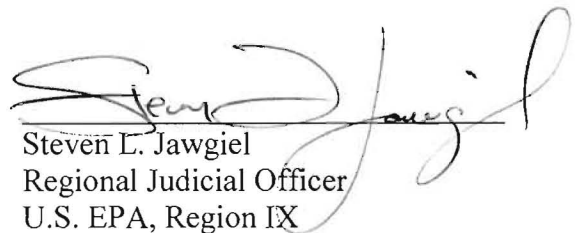
Contact Information. Telephone contact may be made with the Regional Hearing Clerk, Bryan K. Goodwin, at (415) 972-3686, or via e-mail at goodwin.bryank@epa.gov, for any procedural questions, as well as to ask whether a document has been received or issued.

Courtesy Copies. If any party wishes to receive, by e-mail or facsimile, an expedited courtesy copy of decisions and substantive orders issued in this proceeding, the party shall submit a request for such copies by letter addressed to Bryan K. Goodwin at the address above. The letter shall include the case docket number, the party's e-mail address or facsimile number, and a statement as to whether the party requests expedited courtesy copies of (a) the initial decision and/or any orders on motion for accelerated decision or dismissal, or (b) all decisions and substantive orders. The undersigned's office will endeavor to comply with such requests, but does not guarantee the party's expedited courtesy copies.

Motions. Prior to filing any motion, the moving party must contact the other party or parties to determine whether the other party has any objection to the granting of the relief sought in the motion, and the motion shall state the position of the other party or parties. The mere consent of the other parties to the relief sought does not assure that the motion will be granted. Furthermore, all motions must be submitted in sufficient time to permit the filing of a response by the other party and/or the issuance of a ruling on the motion before any relevant deadline set by this or any other subsequent order. Sections 22.16(b) and 22.7(c) of the Rules of Practice allow a 15-day response period for motions, with an additional 5 days added thereto if the pleading is served by mail. Motions not filed in a timely manner may be considered. **If either party intends to file any dispositive motion regarding liability, such as a motion for accelerated decision or motion to dismiss under 40 C.F.R. §22.20(a), it shall be filed within thirty days after the due date for Complainant's Rebuttal Prehearing Exchange.**

Pursuant to 40 C.F.R. § 22.16(d), a party may submit a written request for oral argument upon filing a motion, a response to a motion, or a reply. The requesting party shall propose an appropriate location for the argument. The Regional Judicial Officer has access to conference space and videoconferencing technology, and strongly encourages the parties to consider utilizing such technology for oral arguments on motions so as to minimize the expenditure of time and monetary resources in connection with such arguments. A request for oral argument may be granted, in the undersigned's discretion, where further clarification and elaboration of arguments would be of assistance in ruling on the motion.

Dated: February 9, 2012


Steven L. Jawgiel
Regional Judicial Officer
U.S. EPA, Region IX

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Prehearing Order against Jose P. Jazmin and Betty Jazmin (Trustees of the Jazmin Family Trust) (**Docket #: UIC-09-2010-0006**) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

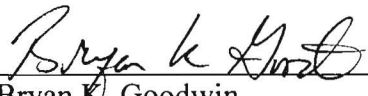
A copy was mailed via CERTIFIED MAIL to:

Jeffrey W. Allen, Esq.
Van De PPE; Levy & Allen, LLP
1600 South Main Plaza, Ste 325
Walnut Creek, CA 94596

CERTIFIED MAIL NUMBER: 7010-2780-0000-8388-7726

And additional copy was hand-delivered to the following U.S. EPA case attorney:

Brett Moffatt, Esq.
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105



Bryan K. Goodwin
Regional Hearing Clerk
U.S. EPA, Region IX

2/9/12
Date