



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

In the Matter of:)
)
NSHE HI Narcissus, LLC,)
Kahuku, Hawaii,) Docket No. UIC-09-2022-0058
)
Respondent.)

ORDER GRANTING EXTENSION OF TIME

The United States Environmental Protection Agency (“Complainant or EPA”) filed a Motion For Extension Of Time on December 9, 2022. In its Motion, EPA requested the dates set forth in the December 6, 2022, Prehearing Order be continued until after the Presiding Officer rules on EPA’s upcoming motion for accelerated decision on liability or after March 9, 2023. EPA contends the proposed motion for accelerated decision on liability will narrow the issues in this proceeding thereby avoiding an unnecessary expenditure of time and expense because the subsequent prehearing exchange will solely focus on penalty issues. EPA conferred with NSHE HI Narcissus, LLC (“Respondent”). Respondent confirmed it concurs with EPA’s request for an extension of time on the condition that Respondent will have an opportunity to oppose EPA’s proposed motion for an accelerated decision before the Presiding Officer rules on the upcoming motion.

Pursuant to 40 C.F.R. § 22.7(b), the Presiding Officer may grant an extension of time for filing any document upon his own initiative or “upon timely motion of a party to the proceeding,

for good cause shown, and after consideration of prejudice to the other parties.” Based on the information contained in EPA’s Motion For Extension Of Time, and Respondent’s conditional concurrence, I find good cause exists to grant EPA’s Motion. The following revised scheduling order shall supersede the December 6th Order.

INFORMATION EXCHANGE

I direct the parties’ attention to Subpart I of 40 C.F.R. Part 22, particularly Rule 22.50(b) (“Relationship to other provisions” in Part 22) and Rule 22.52 (“Discovery under § 22.19(e) shall not be authorized, except for discovery of information concerning respondent’s economic benefit from the alleged violations and information concerning respondent’s ability to pay a penalty.”). 40 C.F.R. §§ 22.50(b) and 22.52.

Prehearing Exchange: Pursuant to Section 22.19(a) of the Rules of Practice, each party shall file with the Regional Hearing Clerk, and serve on the opposing party, a prehearing information exchange that complies with the requirements set forth in 40 C.F.R. § 22.19. Except as provided in § 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. The parties shall file their prehearing exchange of information by **March 9, 2023**.

Discovery: After the parties’ prehearing information exchange, the parties may seek limited discovery on the issues of Respondent’s economic benefit from the alleged violations and information regarding Respondent’s ability to pay a penalty. Either party may request additional

discovery and will only be allowed to propound additional discovery with permission of the Presiding Officer.

PREHEARING CONFERENCE

A prehearing video conference is scheduled for **March 16, 2023, at 1:00 p.m. (PST) / 11:00 a.m. (HST)**. Region 9's Regional Hearing Clerk shall provide the parties with instruction on how to access the video conference. During the prehearing conference, the parties shall be prepared to discuss:

1. Settlement of the case;
2. Simplification of issues and stipulation of facts not in dispute;
3. The necessity or desirability of amendments to pleadings;
4. The exchange of exhibits, documents, prepared testimony, and admissions or stipulations of fact which will avoid unnecessary proof;
5. The limitation of the number of expert or other witnesses;
6. The time and place of the hearing; and
7. Any other matters which may expedite the disposition of the hearing.

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

CERTIFICATE OF SERVICE

This is to certify a true and correct copy of the Order Granting Extension of Time In the Matter of NSHE HI Narcissus, LLC (UIC-09-2022-0058) was sent to the following parties via electronic mail, as indicated below:

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