



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

September 12, 2011



**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**

Honorable Susan L. Biro
Office of Administrative Law Judges
U. S. Environmental Protection Agency
Ariel Rios Building, Mailcode: 1900L
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

RE: In The Matter of: **Misch Excavating d/b/a Rooterman (Downs, Illinois)**
Docket No.: **CWA-05-2011-0003**
Complaint Date: **January 7, 2011**
Total Proposed Penalty: **\$157,500.00**

Dear Judge Biro:

This letter serves as a confirmation for a reservation for a courtroom for an Administrative Hearing to commence at 9:30 a.m. on Tuesday, November 15, 2011 and continuing, through Thursday, November 17, 2011 in Chicago, Illinois.

Location of Hearing: Everett McKinley Dirksen United States Courthouse
US Bankruptcy Court
219 South Dearborn Street, Courtroom #615
Chicago, IL 60604

Point of Contact: Ms. Vina Springer, (312) 435-6036
Vina_Springer@ilnb.uscourts.gov

Court Reporter: Anne Pelini
AIM Reporting Service Inc.
5830 North Natoma Avenue
(773) 774-6367 or aimreporting@sbcglobal.net

If you have questions contact me at (312) 886-3713 or whitehead.ladawn@epa.gov .

Sincerely,

La Dawn Whitehead
Regional Hearing Clerk

Enclosure

cc: Thomas W. Daggett, Esquire

Maria Gonzalez, Esquire
Donald Ayres, Paralegal Specialist, MM2-4

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

2011 JUN 15 11:45 AM RECEIVED
HEARING CLERK
U.S. EPA REGION 5

BEFORE THE ADMINISTRATOR

2011 JUN 15 PM 5:45

In the Matter of:

Misch Excavating, LLC,
d/b/a Rooterman,

Respondent.

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Docket No. CWA-05-2011-0003

ORDER SCHEDULING HEARING

A review of the file reflects that the prehearing exchange process in this case has been completed and that the case is ripe for scheduling for hearing.

U.S. Environmental Protection Agency ("EPA" or "Agency") policy strongly supports settlement, and the parties are commended for their efforts to resolve this matter amicably. The parties are directed to engage in an additional settlement conference on or before **August 19, 2011**, and attempt to reach a settlement agreement in this case. Complainant shall file a Status Report regarding this conference and the status of settlement on or before **August 26, 2011**.

In the event that the parties fail to reach a settlement agreement by that date, they shall strictly comply with the requirements of this Order and prepare for a hearing. In connection therewith, on or before **October 21, 2011**, the parties shall file a Joint Set of Stipulated Facts, Exhibits, and Testimony. The time allotted for the hearing is limited. Therefore, the parties shall make a good faith effort to stipulate, as much as possible, to matters that cannot reasonably be contested so that the hearing can be concise and focused solely on those matters that can be resolved only after a hearing.

Any prehearing motions, such as motions to amend and motions in limine, shall be filed on or before **September 16, 2011**.

The parties may, if they wish, file prehearing briefs. The deadline for filing such briefs is **October 28, 2011**. A copy of any prehearing brief shall be faxed and/or hand-delivered to the undersigned by that date. Complainant's brief should specifically state each count of the Complaint, and each claim therein, that is to be tried at the hearing and indicate which counts and/or claims are not to be tried at the hearing. Respondent's brief should identify each of the defenses Respondent intends to pursue at the hearing.

The hearing in this matter will be held beginning promptly at 9:30 a.m. on Tuesday, November 15, 2011 in Chicago, Illinois, and continue if necessary through November 17, 2011.¹

¹ Complainant estimates in its Initial Prehearing Exchange that it will need approximately two days to present its direct case at the hearing. Respondent states in its Prehearing Exchange that "[i]t anticipates that day [sic] would be sufficient to present its direct case." The amount of time Respondent needs to present its direct case is unclear from this statement. If Respondent anticipates needing more than one day to present its direct case, it shall notify the undersigned as soon as possible.

The Regional Hearing Clerk will make appropriate arrangements for a courtroom. The parties will be notified of the exact location and of other procedures pertinent to the hearing when those arrangements are complete. Individuals requiring special accommodations at the hearing, such as wheelchair access, should contact the Regional Hearing Clerk as soon as possible so that appropriate arrangements can be made.

RESPONDENT IS HEREBY ADVISED THAT FAILURE TO APPEAR AT THE HEARING, WITHOUT GOOD CAUSE BEING SHOWN THEREFOR, MAY RESULT IN A DEFAULT JUDGMENT BEING ENTERED AGAINST IT.

IF EITHER PARTY DOES NOT INTEND TO ATTEND THE HEARING OR HAS GOOD CAUSE FOR NOT BEING ABLE TO ATTEND THE HEARING AS SCHEDULED, IT SHALL NOTIFY THE UNDERSIGNED AT THE EARLIEST POSSIBLE MOMENT.



Susan L. Biro
Chief Administrative Law Judge

Dated: June 13, 2011
Washington, D.C.

In the Matter of MISCH Excavating, LLC d/b/a Rooterman, Respondent
Docket No. CWA-05-2011-0003

REGIONAL HEARING CLERK
U.S. EPA REGION 5
2011 JUN 15 PM 5:45

CERTIFICATE OF SERVICE

I certify that the foregoing **Order Scheduling Hearing**, dated June 13, 2011, was sent this day in the following manner to the addressees listed below:



Maria Whiting-Beale
Staff Assistant

Dated: June 13, 2011

Original And One Copy By Pouch Mail To:

La Dawn Whitehead
Regional Hearing Clerk
U.S. EPA
77 West Jackson Boulevard, E-19J
Chicago, IL 60604-3590

Copy By Pouch Mail To:

Maria Gonzalez, Esquire
Associate Regional Counsel
U.S. EPA
77 West Jackson Boulevard, C-14J
Chicago, IL 60604-3590

Copy By Regular Mail To:

Thomas W. Daggett, Esquire
Daggett Law Firm
161 North Clark Street, Suite 4950
Chicago, IL 60601