



UNITED STATES
 ENVIRONMENTAL PROTECTION AGENCY
 BEFORE THE ADMINISTRATOR

U.S. ENVIRONMENTAL
 PROTECTION AGENCY REGIONAL
 HEARING CLERK
 2010 JUN 21 AM 11:19
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IN THE MATTER OF)
)
 CARIBBEAN PROPERTIES)
 INVESTMENT, INC., and) DOCKET NO. CWA-02-2008-3461
 VPI CONSTRUCTION CORP.)
)
 RESPONDENTS)

PREHEARING ORDER

As you previously have been notified, I have been designated by the June 28, 2010 Order of the Chief Administrative Law Judge to preside in the above captioned matter.^{1/} 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.^{2/} The parties are advised to familiarize themselves with both the applicable statute(s) and the Rules of Practice.

United States Environmental Protection Agency ("EPA") policy, found in the Rules of Practice at Section 22.18(b), 40 C.F.R. § 22.18(b), encourages settlement of a proceeding without the necessity of a formal hearing. The benefits of a negotiated settlement may far outweigh the uncertainty, time, and expense associated with a litigated proceeding.

^{1/} The Chief Administrative Law Judge issued this Order after Complainant declined to participate in the Alternative Dispute Resolution ("ADR") process offered by this office.

^{2/} The Complaint in this matter was filed September 30, 2008. The record indicates that the Answer was filed in June 2010, but the Regional Hearing Clerk's date stamp is not discernible.

The file before me reflects that the parties have not reached a settlement in this case. The parties are directed to hold a settlement conference on this matter on or before **July 29, 2010**, to attempt to reach an amicable resolution. See Section 22.4(c)(8) of the Rules of Practice, 40 C.F.R. § 22.4(c)(8). Complainant shall file a status report regarding such conference and the status of settlement on or before **August 6, 2010**.

In the event that the parties fail to reach a settlement, they shall strictly comply with the requirements of this Prehearing Order and prepare for a hearing. The parties are encouraged to initiate or 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). As such, it is directed that the following prehearing exchange takes place:

1. Each party^{3/} shall submit:
 - (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

^{3/} Respondents Caribbean Properties Investment, Inc. ("CPI"), and VPI Construction Corp. ("VPI") filed a joint Answer to Complaint and Request for Hearing ("Answer") and are represented by the same counsel. Respondents may choose to file a joint prehearing exchange, or each Respondent may file separately.

"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. Complainant shall submit a statement 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.
- 3. Each Respondent shall submit a statement explaining why the proposed penalty should be reduced or eliminated. If either Respondent intends to take the position that it is unable to pay the proposed penalty or that payment will have an adverse effect on its ability to continue to do business, that Respondent shall furnish supporting documentation such as certified copies of financial statements or tax returns.
- 4. Complainant shall submit a statement regarding whether the Paperwork Reduction Act of 1980 ("PRA"), 44 U.S.C. §§ 3501 *et seq.*, applies to this proceeding; whether there is a current Office of Management and Budget control number involved herein; and whether the provisions of Section 3512 of the PRA are applicable in this case.

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

The prehearing exchange delineated above shall be filed in *seriatim* manner, according to the following schedule:

September 3, 2010 - Complainant's Initial Prehearing Exchange

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

- October 5, 2010 - Respondents' Prehearing Exchange(s), including any direct and/or rebuttal evidence
- October 20, 2010 - Complainant's Rebuttal Prehearing Exchange (if necessary)

In their Answer, Respondents exercised their right under Section 554 of the Administrative Procedure Act ("APA"), 5 U.S.C. § 554, to request a hearing in this matter. If the parties cannot settle with a Consent Agreement and Final Order, a hearing will be held in accordance with Section 556 of the APA, 5 U.S.C. § 556. 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.

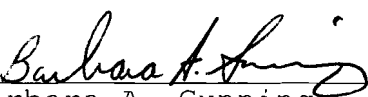
The original and one copy of all pleadings, statements, and documents (with any attachments) required or permitted to be filed by this Order (including a ratified Consent Agreement and Final Order) shall be filed with the Regional Hearing Clerk, and copies (with any attachments) shall be sent to the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

Judge Barbara A. Gunning
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460-2001

Hand-delivered packages transported by Federal Express or another delivery service which x-rays their packages as part of their routine security procedures, may be delivered directly to the Office of the Administrative Law Judges at 1099 14th Street, NW, Suite 350, Washington, D.C. 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 29, 2010
Washington, D.C.

**In the Matter of *Caribbean Properties Investment, Inc., and VPI Construction Corp.,*
Respondent.**

Docket No. CWA-02-2008-3461

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Prehearing Order**, dated June 29, 2010, was sent this day in the following manner to the addressees listed below.



Mary Angeles
Legal Staff Assistant

Original and One Copy by Pouch Mail to:

Karen Maples
Regional Hearing Clerk
US EPA, Region II
290 Broadway, 16th Floor
New York, NY 10007-1866

Copy by Pouch Mail to:

Hector L. Velez Cruz, Esq.
Office of Regional Counsel
U.S. EPA, Region II
Caribbean Field Division
Centro Europa Building
1492 Ponce de Leon Ave., Ste. 417
San Juan, PR 00907-4127

Copy by Regular Mail to:

Eduardo J. Mayoral Garcia, Esq.
Attorney for Respondents
USDC-PR No. 17025, PMB 157
P.O. Box 194000
San Juan, PR 00919-4000

Dated: June 29, 2010
Washington, D.C.