

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2013 JAN 17 AM 11:20

FILED
REGION VIII
HEARING CLERK

IN THE MATTER OF:)
)
City of Dupree, South Dakota)
Dupree, South Dakota)
NPDES Permit No. SDG589116)
)
Respondent.)
)
)
)
_____)

Proceeding under Section 309(g)
of the Clean Water Act,
U.S.C. § 1319(g)

Docket No. CWA-08-2011-0040

FOURTH ORDER TO FILE PREHEARING INFORMATION EXCHANGE

Complainant filed a Status Report on October 1, 2012 stating that settlement discussions were in progress and the parties anticipated filing a Consent Agreement by the end of November 2012. Complainant states in the report, "if the parties fail to file a Consent Agreement by the end of November 2012, Complainant requests that the presiding officer, subject to her discretion, issue a fourth prehearing order or schedule a prehearing conference call..." A Consent Agreement has not been filed to date.

Therefore, pursuant to 40 C.F.R. § 22.19 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules"), the parties shall file a prehearing exchange of information. The prehearing exchange shall include all documents and witnesses intended to be introduced as evidence at the hearing. See, 40 C.F.R. § 22.19(a)(1)-(4). Specifically, the prehearing exchange shall also include the following:

1. **Complainant and Respondents** – Pursuant to 40 C.F.R. § 22.19(a)(4) all factual information each party considers relevant to the assessment of a penalty shall be included in the prehearing exchange.
2. **Respondents** – Any financial information necessary to show an inability to pay the penalty if Respondent is claiming such.

Prehearing exchanges will be submitted consecutively according to the following schedule:

Complainant's Prehearing Exchange is due on or before March 1, 2013.

Respondents' Prehearing Exchange is due on or before March 29, 2013.

Complainant's Rebuttal Prehearing Exchange is due on or before April 12, 2013.

Pursuant to 40 C.F.R. § 22.19(b), a prehearing conference will be held within two weeks after the completion of prehearing exchange to determine if any additional discovery is necessary and to schedule a hearing date. **Please note, this is the fourth and FINAL Prehearing Exchange Order.**

Pursuant to 40 C.F.R. §§ 22.19(d) and 22.21(d) the location of the prehearing conference and the hearing “shall be held in the county where the respondent resides or conducts the business which the hearing concerns, in the city which the relevant Environmental Protection Agency Regional Office is located....unless the Presiding Officer determines that there is good cause to hold it at another location or by telephone.” In their respective prehearing exchange, the parties shall advise the court of their preference for the location of the prehearing conference and hearing.

ORDER

1. Prehearing exchanges are due **March 1, 2013, March 29, 2013, and April 12, 2013, respectively;**
4. Second Prehearing Conference will be held on **April 25, 2012**. The place and time is yet to be determined.

SO ORDERED This 17th Day of January, 2013.



Elyana R. Sutin
Presiding Officer

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **FOURTH ORDER TO FILE PREHEARING INFORMATION EXCHANGE** in the matter of **CITY OF DUPREE, SOUTH DAKOTA; DOCKET NO.: CWA-08-2011-0040** was filed with the Regional Hearing Clerk on January 17, 2013.

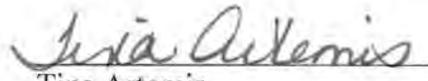
Further, the undersigned certifies that a true and correct copy of the document was delivered to Amy Swanson, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. A true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt requested and e-mailed on January 17, 2013, to:

Eric H. Bogue
Bogue & Bogue, LLP
Butler Insurance Building, Suite 2
104 West 1st Street/P. O. Box 250
Faith, SD 57626-0250
boguelaw@faithsd.com

e-mailed to:

Honorable Elyana R. Sutin
Regional Judicial Officer
U. S. Environmental Protection Agency, Region 8
1595 Wynkoop Street (8RC)
Denver, CO 80202

January 17, 2013


Tina Artemis
Paralegal/Regional Hearing Clerk

