

IN THE MATTER OF:

Valley Realty, Inc.

Respondent

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Docket No. CWA-08-2009-0023

FILED  
EPA REGION VIII  
HEARING CLERK

**PREHEARING ORDER**

As you have been previously notified, I have been designated to preside in the above captioned matter. This proceeding arises under the authority of Section §309 of the Clean Water Act (“Act”), 33 U.S.C. §1319. In the Complaint, EPA alleges that Valley Realty violated §§ 301(a), 308, and 402(p) of the Act, 33 U.S.C. §§1311(a), 1318, and 1342(p), at the Calico Prairie Apartments site in Fargo, North Dakota. The Environmental Protection Agency (“Agency” or “EPA”) Consolidated Rules of Practice (“Rules”), applicable in this administrative enforcement proceeding, are found in 40 C.F.R. Part 22.

As provided in the Rules, § 22.18(a), it is the Agency’s policy to encourage settlement of proceedings without the necessity of a formal hearing. However, the continuation of settlement negotiations will not provide good cause for not meeting the following schedule set in this Prehearing Order.

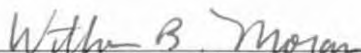
The schedule can now be set for the filing of prehearing exchanges under 40 C.F.R. § 22.19 in accord with the following procedure:

1. Each Party shall submit a list of all expert and other witnesses it intends to call with a brief narrative summary of their expected testimony; and copies of all documents and exhibits it intends to introduce into evidence. The exhibits should include a resume for each proposed expert witness.
2. The Complainant shall submit a statement explaining in detail how the proposed penalty amount was determined, including a description of how the specific provisions of any EPA penalty or enforcement policies or guidelines were applied in calculating the penalty.
3. The Complainant shall submit a statement on the applicability of the Paperwork Reduction Act (“PRA”), 44 U.S.C. § 3501 et seq., to this proceeding, including whether there is a current Office of Management and Budget control number involved and whether the provisions of Section 3512 of the PRA may apply to this case.
4. Each party shall submit its views on the place for the hearing pursuant to §§22.21(d)

The Parties must simultaneously make their initial prehearing exchanges by **Monday, March 29, 2010**. If Respondent does not intend to present a direct case, but does wish to cross-examine Complainant's witnesses, it must submit a statement to that effect instead of a prehearing exchange. After the initial exchanges, the parties may file supplements to their prehearing exchanges (including any reply or rebuttal material), without motion, until 30 days before the date scheduled for the hearing. However, supplements must involve new evidence or witnesses. The parties have a good faith obligation to list all known exhibits & witnesses when the initial prehearing exchange is made. **In addition to the paper filings required under the Rules for motions and post-hearing briefs, the parties are also to submit such filings on a CD so that the court may efficiently copy relevant portions from those documents into any orders and decisions it may issue.**

Upon completion of the prehearing exchanges, the parties are directed to confer with one another in order to determine those issues which remain genuinely in dispute, so that the hearing may be focused on such matters. The parties shall then submit a statement to me identifying those issues.

The original and one copy of all filings, with attachments, shall be sent to the Regional Hearing Clerk, and copies sent to the opposing party and the Administrative Law Judge.

  
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William B. Moran  
U.S. Administrative Law Judge

Dated: January 27, 2010  
Washington, D.C.

If sending by:  
**Fed Ex, UPS or any type of Courier service**

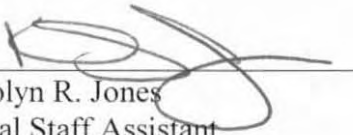
Judge William B. Moran  
U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
Franklin Court Building  
1099 14<sup>th</sup> Street N.W. Suite 350  
Washington, DC 20460

If sending by:  
**Regular U.S. mail**

Judge William B. Moran  
U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
1200 Pennsylvania Ave., N.W.  
**Mail Code 1900L**  
Washington, DC 20005

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Prehearing Order**, dated January 27, 2010 was sent in the following manner to the addressees listed below.

  
Knolyn R. Jones  
Legal Staff Assistant

Dated: January 27, 2010

Original and One Copy by Pouch Mail to:

Tina Artemis  
Regional Hearing Clerk  
U.S. EPA  
1595 Wynkoop Street  
Denver, CO 80202

Copy by Facsimile and Pouch Mail to:

Peggy Livingston, Esq.  
Assistant Regional Counsel  
U.S. EPA  
1595 Wynkoop Street  
Denver, CO 80202

Copy by Facsimile and Regular Mail to:

Tami L. Norgard, Esq.  
Vogel Law Firm  
218 NP Avenue