



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

U.S. ENVIRONMENTAL PROTECTION AGENCY-REG. II

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BEFORE THE ADMINISTRATOR REGIONAL HEARING CLERK

In the Matter of:

Valiant Aluminum Products Co., Inc., d/b/a Valiant Home Remodelers,

Respondent.

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Docket No. TSCA-02-2011-9166

PREHEARING ORDER

As you were previously notified, I have been designated to preside in the above-captioned proceeding. This proceeding arises under the authority of Section 16(a) of the Toxic Substances Control Act ("TSCA"), as amended, 15 U.S.C. § 2615(a), 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. §§ 22.1-22.45. Several resources, including the Rules of Practice, an informal Practice Manual, a Citizen's Guide, and significant decisions issued by the office of the undersigned, may be found on the office's website at www.epa.gov/oalj. The parties are strongly advised to familiarize themselves with these materials and the applicable statute(s).

The United States Environmental Protection Agency ("EPA" or "Agency"), Region 2 ("Complainant"), initiated this proceeding on October 4, 2011, by filing a Complaint and Notice of Opportunity for Hearing ("Complaint") against Valiant Aluminum Products Co., Inc., d/b/a Valiant Home Remodelers ("Respondent"). The Complaint alleges in two counts that Respondent violated Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with the regulatory requirements found at 40 C.F.R. Part 745, Subpart E. Appearing pro se, Respondent filed an Answer in the form of a letter on December 8, 2011.

EPA policy, found at Section 22.18(b) of the Rules of Practice, 40 C.F.R. § 22.18(b), strongly supports settlement of a proceeding without the necessity of a formal hearing. If settlement discussions have already been undertaken, the parties are commended for taking the initiative to resolve this matter informally and expeditiously. If settlement discussions have not yet commenced or have stalled, the parties are reminded that the pursuit of this matter through a hearing will require the expenditure of significant amounts of time and financial resources. Each party should consider the risk of not prevailing in the proceeding despite such expenditures. Moreover, while a negotiated settlement allows the parties to control the outcome of the proceeding, a judicial decision eliminates that control. With these considerations in mind, the parties are directed to engage in a settlement conference on or before February 3, 2012, to

attempt to reach an amicable resolution of this matter. Complainant shall file a status report regarding the conference and the status of settlement on or before **February 10, 2012**. If the case is settled, a fully-executed Consent Agreement and Final Order shall be filed no later than **March 2, 2012**, with a copy contemporaneously sent to the undersigned.

If a Consent Agreement and Final Order is not finalized on or before the deadline set forth above, the parties shall prepare for the hearing and strictly comply with the requirements of this Order, as follows.

Prehearing Exchange. Pursuant to Section 22.19(a) of the Rules of Practice, 40 C.F.R. § 22.19(a), each party is directed to prepare and submit a “prehearing exchange” of information. The parties’ prehearing exchanges shall contain the information identified below.

1. Each party shall submit the following as part of its prehearing exchange:

(A) a list of the names of any witnesses the party intends to call at the hearing or a statement that no witnesses will be called. The list of witnesses must identify each witness as a fact witness or an expert witness, include a brief narrative summary of each witness’s expected testimony, and be accompanied by a curriculum vitae or resume for each expert witness. The list of witnesses must also state whether translation services are necessary for the testimony of any witness, and, if so, the language to be translated.

(B) copies of all documents and other exhibits the party intends to introduce into evidence. Each document and other exhibit must be identified as Complainant’s or Respondent’s exhibit, as appropriate, and numbered with Arabic numerals (e.g., “CX 1” or “RX 1”).

(C) a statement explaining the party’s views as to the appropriate location for the hearing and the estimated amount of the time the party needs to present its case. See 40 C.F.R. §§ 22.21(d), 22.19(d).

2. In addition, Complainant shall submit the following as part of its Initial Prehearing Exchange:

(A) a copy of any reports, notes, or other pertinent documentation produced as a result of the inspection referred to in Paragraphs 4 and 5 of the Complaint.

(B) a copy of any documents in support of the factual allegations in Paragraphs 6, 8, 11-15, and 20 of the Complaint.

(C) a narrative statement, and a copy of any documents in support, explaining in detail how the proposed penalty was calculated, including a discussion of each penalty assessment factor set forth in Section 16 of TSCA, 15 U.S.C. § 2615.

(D) a copy, or a statement of the internet address (URL), of any policy or guidance document relied upon by Complainant in calculating the proposed penalty, or intended to be relied upon if that penalty is adjusted, other than the “Guidelines for Assessment of Civil Penalties Under § 16 of the Toxic Substances Control Act” and the “Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair, and Painting Rule; and Lead-Based Paint Activities Rule Interim Final Policy” referenced on page 3 of the Complaint.

3. In addition, Respondent shall submit the following as part of its Prehearing Exchange:

(A) a list of the following paragraph numbers found in the Complaint: 2, 4, 5, 6, 8, 11, 12, 13, 14, 15, and 20. Next to each number, Respondent shall state whether it “admits,” “denies,” or “has no knowledge” of the facts alleged in the corresponding paragraph of the Complaint. For any paragraph that Respondent cannot admit, deny, or state that it has no knowledge, Respondent shall provide an explanation in response to the facts alleged in that paragraph.

(B) a narrative statement describing any defenses to the allegations and a copy of any documents or other evidence available to support those defenses.

(C) a narrative statement explaining in detail the reasons why the proposed penalty should be reduced or eliminated, such as Respondent’s inability to pay the proposed penalty or the adverse effect that payment of the proposed penalty would have on Respondent’s ability to continue to do business. Respondent shall also submit a copy of any documents or other evidence available to support Respondent’s position regarding the reduction or elimination of the proposed penalty, such as certified copies of recent financial statements or tax returns.

4. Finally, Complainant shall submit as part of its Rebuttal Prehearing Exchange:

(A) a statement and/or any documents responding to Respondent’s Prehearing Exchange as to provisions 3(A) - (C) above.

The parties shall file their prehearing exchanges as described above with the Regional Hearing Clerk on or before the following dates:

Complainant’s Initial Prehearing Exchange	<u>March 2, 2012</u>
Respondent’s Prehearing Exchange	<u>March 23, 2012</u>
Complainant’s Rebuttal Prehearing Exchange	<u>April 6, 2012</u>

Each party must also contemporaneously serve a copy of its prehearing exchange on the opposing party and on the undersigned. The hearing will be scheduled after all of the prehearing

exchanges have been filed and served.

The purpose of the prehearing exchange is to ensure that the parties have adequate notice of the contested issues in the case and ample opportunity to prepare to address those issues at the hearing. Section 22.19(a) of the Rules of Practice, 40 C.F.R. § 22.19(a), provides that, except in accordance with Section 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.

Supplement to Prehearing Exchange. Any addition of a proposed witness or exhibit to the prehearing exchange shall be filed with an accompanying motion to supplement the prehearing exchange.

Default and Opportunity for a Hearing. In its Answer, Respondent exercised its rights under Section 554 of the Administrative Procedure Act (“APA”), 5 U.S.C. § 554, to request a hearing in this matter. Pursuant to Section 554(c)(2) of the APA, a hearing will be conducted in accordance with Section 556 of the APA, 5 U.S.C. § 556. Section 556(d) 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, Respondent has the right to defend against Complainant’s charges by way of direct evidence, rebuttal evidence, or cross-examination of Complainant’s witnesses. Respondent is entitled to elect any or all three means to pursue its defense. If Respondent intends only to conduct cross-examination of Complainant’s witnesses and to forgo the presentation of direct and/or rebuttal evidence, Respondent shall serve a statement to that effect on or before the date for filing its Prehearing Exchange.

Respondent is hereby notified that, if it fails to comply with the prehearing exchange requirements set forth in this Order, a default judgment may be entered against it. Likewise, Complainant is hereby notified that failure to file its Initial and Rebuttal Prehearing Exchanges in a timely manner can result in a dismissal of the case with prejudice.

The mere pendency of settlement negotiations or even the existence of a settlement in principle does not constitute a basis for failing to strictly comply with the prehearing exchange requirements. Only the filing with the Regional Hearing Clerk of a fully-executed Consent Agreement and Final Order, or an order of the undersigned, excuses noncompliance with filing deadlines.

Filing and Service. A document is “filed” on the date the Regional Hearing Clerk receives it. Therefore, in order for a document to be timely filed, the filing party must send it far enough in advance of the filing deadline such that the Regional Hearing Clerk receives it on or before that deadline.

A document is “served” upon mailing or when placed in the custody of a reliable commercial delivery service. In addition to serving the document by mail or commercial delivery service, the parties are encouraged to send a courtesy copy to the Office of Administrative Law Judges by facsimile or email as physical delivery is often subject to significant delay. The facsimile number for the Office of Administrative Law Judges is (202) 565-0044, and the email address is oaljfilng@epa.gov. Pursuant to Section 22.5(a)(3) of the Rules of Practice, 40 C.F.R. § 22.5(a)(3), a signed certificate of service must be attached to all filed documents.

All documents required or allowed to be filed in this proceeding shall be served upon the undersigned at one of the following addresses:

If sent by the U.S. Postal Service (USPS):

The Honorable Susan L. Biro, Chief Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W., Mail Code 1900L
Washington, DC 20460

If hand-delivered or sent by a non-USPS delivery service, such as Federal Express or UPS:

The Honorable Susan L. Biro, Chief Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
1099 14th Street, N.W., Suite 350
Washington, DC 20005

The parties are advised NOT to include, attach, or refer to any terms of settlement offers or agreements in any document submitted to the undersigned, and no copies of Consent Agreements and Final Orders shall be submitted, or attached to any document submitted, to the undersigned except those that are fully executed and filed with the Regional Hearing Clerk.

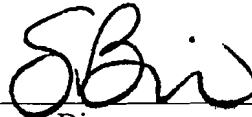
Contact Information. Telephone contact may be made with my legal assistant, Maria Whiting-Beale, at (202) 564-6259 to ask whether a document has been received or issued. Email or telephone contact may be made with my staff attorney, Jennifer Wolff, Esq., at (202) 564-1170 or wolff.jennifer@epa.gov, for procedural questions.

Motions. Prior to filing any motion, the moving party shall contact the non-moving party to determine whether the non-moving party objects to the granting of the relief sought in the motion, and the motion shall state the position of the non-moving party. The mere consent of the non-moving party to the relief requested does not assure that the motion will be granted.

Additionally, all motions must be filed in sufficient time to permit the filing of a response by the non-moving party and the issuance of a ruling on the motion before any relevant deadline set by this or any subsequent order. Sections 22.16(b) and 22.7(c) of the Rules of Practice, 40 C.F.R. §§ 22.16(b), 22.17(c), allow a 15-day response period for motions, with an additional five days added thereto if the motion is served by mail. Motions not filed in a timely manner may not be considered. **If any party intends to file any dispositive motion regarding liability, such as a motion for accelerated decision or a motion to dismiss pursuant to Section 22.20(a) of the Rules of Practice, 40 C.F.R. § 22.20(a), it shall file such motion within 30 days after the due date for Complainant's Rebuttal Prehearing Exchange.**

Pursuant to Section 22.16(d) of the Rules of Practice, 40 C.F.R. § 22.16(d), a party may submit a written request for oral argument upon filing a motion, a response to a motion, or a reply. The requesting party shall propose an appropriate location for the argument. The office of the undersigned has access to videoconferencing technology and strongly encourages the parties to consider utilizing such technology for oral arguments on motions so as to minimize the expenditure of time and monetary resources in connection with such arguments. A request for oral argument may be granted, in the undersigned's discretion, where further clarification and elaboration of arguments would be of assistance in ruling on the motion.

SO ORDERED.



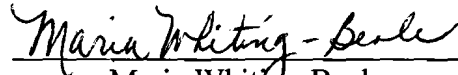
Susan L. Biro
Chief Administrative Law Judge

Dated: January 20, 2012
Washington, D.C.

In the Matter of Valiant Aluminum Products Co., Inc. d/b/a Valiant Home Remodelers, Respondent
Docket No. TSCA-02-2011-9166

CERTIFICATE OF SERVICE

I certify that the foregoing **Prehearing Order**, dated January 20, 2012, was sent this day in the following manner to the addressees listed below.



Maria Whiting-Beale
Staff Assistant

Dated: January 20, 2012

Original And One Copy By Regular Mail To:

Karen Maples
Regional Hearing Clerk
U.S. EPA
290 Broadway, 16th Floor
New York, NY 10007-1866

Stuart Keith, Esquire
Assistant Regional Counsel
U.S. EPA
290 Broadway, 16th Floor
New York, NY 10007-1866

Paul F. Pelosi
Business Manager
Valiant Home Remodelers
578 Roosevelt Avenue
Carteret, NJ 07008