

Attachment
5

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY



BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
CREATIVE LIQUID COATINGS, INC.)
(Formerly doing business as)
Creative Coatings, Inc.)^{1/})
)
U.S. EPA ID NO. INR 000 109 322) DOCKET NO. RCRA-05-2009-0012
)
ELITE ENTERPRISES, INC.)
)
AND)
)
RANDALL GEIST,)
)
RESPONDENTS)

ORDER SCHEDULING HEARING

This proceeding arises under the authority of Section 3008(a) of the Solid Waste Disposal Act, as amended, commonly referred to as the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 (collectively referred to as RCRA ("RCRA"), 42 U.S.C. § 6928(a)). The parties are reminded that this proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (the "Rules of Practice"), 40 C.F.R. §§ 22.1-22.32.

The parties have filed their initial prehearing exchanges in this matter pursuant to the undersigned's Prehearing Order entered

^{1/} Respondent Elite Enterprises, Inc. has not filed an Answer to date. However, Respondent Creative Liquid Coatings, Inc. formerly d/b/a Creative Coatings, Inc. ("Respondent Creative Liquid") and Respondent Randall Geist ("Respondent Geist") have filed a joint Answer and prehearing exchange in the above-captioned matter.

on October 22, 2009. On February 17, 2010, Complainant submitted a rebuttal to Respondent's prehearing exchange. The parties retain the right to make a motion to supplement their prehearing exchanges no later than fifteen (15) days before the hearing date. Sections 22.19(a) and 22.22(a) of the Rules of Practice, 40 C.F.R. §§ 22.19(a), 22.22(a), provide that documents or exhibits that have not been exchanged and witnesses whose names have not been exchanged at least fifteen (15) days before the hearing date shall not be admitted into evidence or allowed to testify unless good cause is shown for failing to exchange the required information.

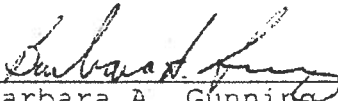
Further, the parties are advised that every motion filed in this proceeding must be served in sufficient time to permit the filing of a response by the other party and to permit the issuance of an order on the motion before the deadlines set by this order or any subsequent order. Section 22.16(b) of the Rules of Practice, 40 C.F.R. § 22.16(b), allows a fifteen-day (15) period for responses to motions and Section 22.7(c), 40 C.F.R. § 22.7(c), provides for an additional five (5) days to be added thereto when the motion is served by mail. The parties are hereby notified that the undersigned will not entertain last minute motions to amend or supplement the prehearing exchange absent extraordinary circumstances.

The file before me reflects that the parties have engaged in settlement negotiations, but no settlement has yet been reached. 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. However, the pursuit of settlement negotiations or an averment that a settlement in principle has been reached will not constitute good cause for failure to comply with the requirements or schedule set forth in this Order.

As the parties have not reached a settlement in this matter, they shall strictly comply with the requirements of this Order and prepare for a hearing. In connection therewith, on or before **April 30, 2010**, the parties shall file a joint set of stipulated facts, exhibits, and testimony. See Section 22.19(b)(2) of the Rules of Practice, 40 C.F.R. § 22.19(b)(2). The time allotted for the hearing is limited. Therefore, the parties must 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 only be resolved after a hearing.

The Hearing in this matter will be held beginning at 9:30 a.m. on Tuesday, May 18, 2010, in Fort Wayne,^{2/} Indiana, continuing if necessary through May 21, 2010. The Regional Hearing Clerk will make appropriate arrangements for a courtroom and retain a stenographic reporter. 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 accommodation at this hearing, including wheelchair access, should contact the Regional Hearing Clerk at least five business days prior to the hearing so that appropriate arrangements can be made.

IF ANY 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.



Barbara A. Gunning
Administrative Law Judge

Dated: February 24, 2010
Washington, DC

^{2/} Provided an appropriate facility is available.

on October 22, 2009. On February 17, 2010, Complainant submitted a rebuttal to Respondent's prehearing exchange. The parties retain the right to make a motion to supplement their prehearing exchanges no later than fifteen (15) days before the hearing date. Sections 22.19(a) and 22.22(a) of the Rules of Practice, 40 C.F.R. §§ 22.19(a), 22.22(a), provide that documents or exhibits that have not been exchanged and witnesses whose names have not been exchanged at least fifteen (15) days before the hearing date shall not be admitted into evidence or allowed to testify unless good cause is shown for failing to exchange the required information.

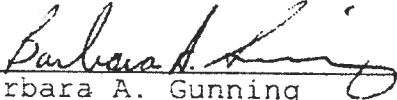
Further, the parties are advised that every motion filed in this proceeding must be served in sufficient time to permit the filing of a response by the other party and to permit the issuance of an order on the motion before the deadlines set by this order or any subsequent order. Section 22.16(b) of the Rules of Practice, 40 C.F.R. § 22.16(b), allows a fifteen-day (15) period for responses to motions, and Section 22.7(c), 40 C.F.R. § 22.7(c), provides for an additional five (5) days to be added thereto when the motion is served by mail. The parties are hereby notified that the undersigned will not entertain last minute motions to amend or supplement the prehearing exchange absent extraordinary circumstances.

The file before me reflects that the parties have engaged in settlement negotiations, but no settlement has yet been reached. 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. However, the pursuit of settlement negotiations or an averment that a settlement in principle has been reached will not constitute good cause for failure to comply with the requirements or schedule set forth in this Order.

As the parties have not reached a settlement in this matter, they shall strictly comply with the requirements of this Order and prepare for a hearing. In connection therewith, on or before **April 30, 2010**, the parties shall file a joint set of stipulated facts, exhibits, and testimony. See Section 22.19(b)(2) of the Rules of Practice, 40 C.F.R. § 22.19(b)(2). The time allotted for the hearing is limited. Therefore, the parties must 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 only be resolved after a hearing.

The Hearing in this matter will be held beginning at 9:30 a.m. on Tuesday, May 18, 2010, in Fort Wayne,^{2/} Indiana, continuing if necessary through May 21, 2010. The Regional Hearing Clerk will make appropriate arrangements for a courtroom and retain a stenographic reporter. 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 accommodation at this hearing, including wheelchair access, should contact the Regional Hearing Clerk at least five business days prior to the hearing so that appropriate arrangements can be made.

IF ANY 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.



Barbara A. Gunning
Administrative Law Judge

Dated: February 24, 2010
Washington, DC

^{2/} Provided an appropriate facility is available.

In the Matter of *Elite Enterprises, Inc.*, (U.S. EPA ID No. IND 985 102 607); *Creative Liquid Coatings, Inc.*, (Formerly doing business as *Creative Coatings, Inc.*) and *Randall Geist*, Respondents.

Docket No. RCRA-05-2009-0013

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order Scheduling Hearing**, dated February 24, 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:

LaDawn Whitehead
Regional Hearing Clerk
U.S. EPA, Region V, E-19J
77 West Jackson Blvd., 13th Floor
Chicago, IL 60604-3590

Copy by Pouch Mail to:

Richard J. Clarizio, Esq.
Associate Regional Counsel
U.S. EPA, Region V, C-14J
77 West Jackson Blvd.
Chicago, IL 60604-3590

Copy by Regular Mail to:

David L. Hatchett, Esq.
Jaime K. Saylor, Esq.
Hatchett & Hauck, LLP
111 Monument Circle, Suite 301
Indianapolis, IN 46204-5124

Dated: February 24, 2010
Washington, D.C.