

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2010 JAN 11 PM 3:07
REGIONAL HEARING
CLERK

In the Matter of)
)
U.S. Department of the Army and Army &)
Air Force Exchange Service)
West Point Garrison) Docket No. RCRA-02-2009-7507
)
Respondent)

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 9006 of the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6901 *et seq.* (referred to collectively as the “Act” or “RCRA”). The Environmental Protection Agency (“Agency” or “EPA”) has promulgated regulations governing the handling and management of hazardous waste at 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. If the Respondent intends to take the position that it is unable to pay the proposed penalty, or that payment will have an adverse effect on Respondent’s ability to continue in business, Respondent shall furnish supporting documentation such as financial statements or tax returns.

4. 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.

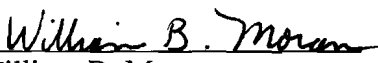
5. Each Party shall submit its views on the place for the hearing pursuant to §§ 22.21(d) and 22.19(d) of the Rules. Each Party should also indicate when they would be available for the hearing, and give an estimate of the time needed to present its direct case.

The Parties must simultaneously make their initial prehearing exchanges by **Monday, March 8, 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. **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.**

I will schedule the hearing after I receive the Parties' initial exchanges.

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.


William B. Moran
U.S. Administrative Law Judge

Dated: January 8, 2010
Washington, DC

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 14th 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

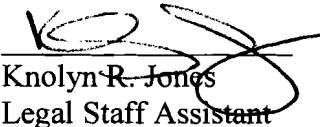
In the Matter of **U.S. Department of the Army and Army & Air Force Exchange Service
West Point Garrison**, Respondent
Docket No. RCRA-02-2009-7507

CERTIFICATE OF SERVICE

I certify that the foregoing **Prehearing Order**, dated January 8, 2010 was sent this day in the following manner to the addressees listed below:

Original and copy by pouch mail to:

Karen Maples
Regional Hearing Clerk
U.S. EPA
290 Broadway
New York, NY 10007


Knolyn R. Jones
Legal Staff Assistant

Copy by fax & regular mail to:

Attorney for Complainant:

Naomi Shapiro, Esq.
Assistant Regional Counsel
U.S. EPA
290 Broadway
New York, NY 10007

Respondent:

Jennifer A. Butkus
Chief, Environmental Division
U.S. Army Garrison, West Point
IMNE-MIL-PWE, 667A Ruger Road
West Point, NY 10996-1592

Michael C. Whittington, Esq.
Commercial and Financial Law Division
Army & Air Force Exchange Service
3911 S. Walton Walker Blvd.
Dallas, TX 75236-1598

Dated: January 8, 2010
Washington, DC