

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
HAROLD G. RUETH) Docket No. CWA-A-0-007-92
RUETH DEVELOPMENT COMPANY)
)
Respondents)

**ORDER RESCHEDULING HEARING AND DIRECTING LIST OF DOCUMENTS TO
BE INTRODUCED BY THE RESPONDENT**

Under consideration is the respondent's motion for postponement of hearing and motion to compel respondents to comply with outstanding orders to file a complete prehearing exchange, filed August 29, 1996. The hearing in this case was scheduled for October 15, 1996 in Hammond, Indiana. The respondent does not object to postponing the hearing. At the parties request the hearing will now be held on November 26 and 27 in Chicago, Illinois. No further postponement of the hearing will be granted. Moreover, the parties are directed to use the additional time to try again to reach a settlement.

Complainant also maintains, despite respondents' representations, that the respondents have not identified all documents and exhibits they intend to introduce into evidence. Rule § 22.19 (b) provides that parties will exchange "copies of all documents and exhibits which each party intends to introduce into evidence." In addition, all documents are to be marked for identification. Rule § 22.19 (b) provides that "[d]ocuments that have not been exchanged and witnesses whose names have not been exchanged shall not be introduced into evidence or allowed to testify." The respondents' current response runs the risk of leaving the respondents

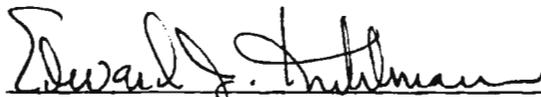
without any direct case at the hearing. It also delays any assessment by the complainant of the strength of its case in the face of respondents' showing. This could work to the respondents' disadvantage in effectuating a settlement. Failure to identify all documents and witnesses and to describe the scope of their testimony introduces the element of surprise into the proceeding and would be contrary to concept of fairness.

Therefore, the respondents should within 15 days of release of this order amend their prehearing exchange by providing a complete list of testifying witnesses with a summary of their testimony and all documents which they intend to introduce at the hearing. The exhibits should be appropriately marked. The other alternative is for the respondents to indicate that they do not intend to introduce any documents and that they will rely on those presented by the complainant. If the respondents select the second course, they should file a written statement indicating that choice within 15 days of the release of this order. Failure to comply will result in the application of rule §22.19 (b) at the hearing.

The Regional Hearing Clerk is directed to cancel the hearing arrangement made for Hammond, Indiana and reschedule the hearing in Chicago, Illinois for November 26 and 27, 1996. The hearing will begin at 9:00 a.m. on November 26, 1996. The Regional Hearing Clerk is directed to make arrangements for reporting services and for a suitable hearing room and inform the parties and the presiding officer of its location.

ACCORDINGLY, IT IS ORDERED that the complainant's motion for postponement of hearing IS GRANTED and the hearing scheduled in Hammond, Indiana for October 15, 1996 IS CANCELED and the hearing is rescheduled for 9:00 a.m on November 26 and 27, 1996 in Chicago, Illinois at a location to be designated by the Region 5 Hearing Clerk.

IT IS FURTHER ORDERED, that the motion to compel respondents to comply with outstanding orders regarding the prehearing exchange IS GRANTED to the extent indicated in this order. The respondent IS DIRECTED to comply within fifteen days of the release of this order.



Edward J. Kuhlmann
Administrative Law Judge

September 10, 1996
Washington, D.C.

IN THE MATTER OF Harold G. Rueth.,
Respondents, Docket No. CWA A-0-007-92

CERTIFICATE OF SERVICE

I certify that the foregoing Order Rescheduling Hearing and Directing List of Documents to be Introduced by the Respondent, dated Sept. 10, 1996, was sent in the following manner to the addressees listed below:

Original by Pouch Mail to: Jodi L. Swanson-Wilson
Regional Hearing Clerk
U.S. Environmental Protection
Agency, Region V
77 West Jackson Blvd.
Chicago, IL 60604-3507

Copy by Regular Mail to:

Counsel for Complainant: Jane D. Woolums, Esq.
Rudolph C. Tanasijevich, Esq.
Associate Regional Counsel
U.S. Environmental Protection
Agency, Region V
77 West Jackson Blvd.
Chicago, IL 60604-3507

Counsel for Respondent: Michael Muenich, Esq.
Hand, Muenich & Wilk
3235 - 45th Street
Highland, Indiana 46322


Aurora Jennings
Legal Assistant
Office of Administrative
Law Judges
Environmental Protection Agency
Washington, DC 20460

Dated: Sept 10, 1996
Washington, DC