



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY BEFORE THE ADMINISTRATOR

In the Matter of:)
Great Lakes Dredge and Dock, LLC,) Docket No. MPRSA-04-2019-7500
Respondent.)

ORDER LIFTING STAY AND RESETTING PREHEARING DEADLINES

A Prehearing Order was issued in this matter on November 8, 2019, setting deadlines for filing a prehearing exchange and other documents. On December 2, 2019, before the date set for the Agency to file its initial prehearing exchange, Respondent filed a Motion to Dismiss. Thereafter, I stayed all outstanding deadlines set by the Prehearing Order pending a ruling on the Motion to Dismiss. See Order Granting Complainant’s Motion for Extension of Time to File Prehearing Exchange and Staying Further Filing Deadlines (Dec. 17, 2019).

On May 28, 2020, I denied Respondent’s Motion to Dismiss. See Order Denying Respondent’s Motion to Dismiss. Now that I have issued a ruling on Respondent’s motion, it is appropriate to set new prehearing deadlines. Accordingly, the previously issued stay is lifted, and the following prehearing deadlines shall now apply:

Prehearing Exchange. The parties are directed to engage in the following prehearing exchange of information under 40 C.F.R. § 22.19(a):

1. Each party shall file with the Headquarters Hearing Clerk, serve on the opposing party, and serve on the undersigned:

(A) a list of names of the witnesses intended to be called at the hearing, identifying each as a fact witness or an expert witness, a brief narrative summary of their expected testimony, and a curriculum vitae or resume for each identified expert witness; or a statement that no witnesses will be called;

(B) a list of all exhibits, numbered in sequential order, that the party intends to produce at the hearing, along with a copy of each exhibit marked for identification as follows:

- i. Complainant’s exhibits shall be identified as “CX.”
ii. Respondent’s exhibits shall be identified as “RX.”
iii. Each exhibit shall be labeled numerically with the corresponding exhibit number on each page of the exhibit. For example, the first exhibit provided by Complainant shall be labeled on each page of the exhibit as “CX 1,” and the first

exhibit provided by Respondent shall be labeled on each page of the exhibit as “RX 1.” The label for each exhibit shall be located at the bottom (footer) of the document and aligned to the right margin.

- iv. Any exhibit consisting of more than one page shall include page numbers at the bottom (footer) of each page, aligned to the right margin. The pages shall be numbered consecutively as follows: “Page X of [total of] Y,” with “Page X” representing the page number in sequence beginning from the number 1 and “[total of] Y” representing the total number of pages in the exhibit. For example, to identify the third page of Complainant’s first exhibit, which has five pages total, the bottom of the page shall read “CX 1 Page 3 of 5.”

(C) a statement specifying the amount of time needed to present its direct case. *See* 40 C.F.R. §§ 22.21(d), 22.19(d). Also, state whether the services of an interpreter are necessary with regard to the testimony of any witness(es), and if so, state the language to be translated.

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

(A) documentation showing that service of the Complaint was completed in accordance with Section 22.5(b)(1) of the Rules of Practice, 40 C.F.R. § 22.5(b)(1);

(B) a brief narrative statement, and a copy of any documents in support, explaining in detail the factual and/or legal bases for the allegations denied or otherwise not admitted in Respondent’s Answer;

(C) all factual information and supporting documentation relevant to the assessment of a penalty, and a copy, or a statement of the internet address (URL), of any policy or guidance intended to be relied on by Complainant in calculating a proposed penalty; and

(D) a copy, or a statement of the internet address (URL), of any EPA guidance documents and/or policies, including any updates or revisions to such guidance and/or policies, and any preambles to regulations that Complainant has relied upon with regard to the allegations set forth in the Complaint.

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

(A) a copy of any documents in support of the denials made in its Answer;

(B) a copy of any documents in support of any asserted affirmative defenses and an explanation of the arguments in support of any such affirmative defenses;

(C) all factual information that Respondent considers relevant to the assessment of a penalty and any supporting documentation; and

(D) if Respondent takes the position that the proposed penalty should be reduced or

eliminated on any grounds, such as an inability to pay, then provide a detailed narrative statement explaining the precise factual and legal bases for its position and a copy of any and all documents upon which it intends to rely in support of such position.

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

(A) a statement and/or any documents in response to Respondent's Prehearing Exchange(s) as to provisions 3(A) through 3(D) above; and

(B) a detailed explanation of the factors considered and methodology utilized in calculating the amount of the proposed penalty, in accordance with the criteria set forth in the particular statute authorizing this proceeding and as referenced in the relief section of the Complaint.

The prehearing exchanges called for above shall be filed pursuant to the following schedule:

July 10, 2020	Complainant's Initial Prehearing Exchange
July 31, 2020	Respondent's Prehearing Exchange
August 14, 2020	Complainant's Rebuttal Prehearing Exchange

Section 22.19(a) of the Rules of Practice 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. 40 C.F.R. § 22.19(a). Therefore, each party is advised to thoughtfully prepare its prehearing exchange.

In general, hearings are scheduled following the submission of the prehearing exchanges. The parties will be provided with adequate notice of the scheduled hearing to enable them to meet the remaining deadlines contained in this Order.

Respondent is hereby notified that its failure to comply with the prehearing exchange requirements set forth herein may result in the entry of a default judgment against it. Complainant is notified that its failure to file its prehearing exchange in a timely manner can result in a dismissal of the case with prejudice.

Supplement to Prehearing Exchange. Any addition of a proposed witness or exhibit to the prehearing exchange, submitted pursuant to Section 22.19(f) of the Rules of Practice, must be filed with an accompanying *motion to supplement the prehearing exchange* only when supplementation is sought within 60 days of the scheduled hearing.

Motions. Prior to filing any motion, the moving party must contact all other parties to determine whether the other parties have any objection to the granting of the relief sought in the motion, and the motion shall state the position of the other parties. The mere consent of the other

parties to the relief sought does not assure that the motion will be granted. Furthermore, all motions must be submitted in sufficient time to permit the filing of a response and a reply, as well as the issuance of a ruling on the motion, before any relevant deadline set by this or any subsequent order. *See generally* 40 C.F.R. §§ 22.16(b), 22.7(c). *Motions not filed in a timely manner may not be considered.*

Joint motions for the appointment of a neutral, filed pursuant to Section 22.18(d)(3) of the Rules of Practice, will not be entertained prior to the deadline for Complainant's Rebuttal Prehearing Exchange and shall be filed no later than seven days after that deadline. *Dispositive motions* regarding liability, such as a motion for accelerated decision or motion to dismiss under Section 22.20(a) of the Rules of Practice, must be filed within 30 days after the due date for Complainant's Rebuttal Prehearing Exchange. *Non-dispositive motions*, such as motions for additional discovery, motions for subpoenas, and motions in limine, must be filed no later than 60 days prior to the scheduled hearing.

Contact Information. For any questions about this Order, the Rules, or any other procedural, scheduling, or logistical issues, you may contact Matt Barnwell, Attorney-Advisor, at (202) 564-3245 or barnwell.matt@epa.gov.

SO ORDERED.



Susan L. Biro
Chief Administrative Law Judge

Dated: May 28, 2020
Washington, D.C.

In the Matter of *Great Lakes Dredge and Dock, LLC*, Respondent.
Docket No. MPRSA-04-2019-7500

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order Lifting Stay and Resetting Prehearing Deadlines**, dated May 28, 2020, and issued by Chief Administrative Law Judge Susan L. Biro, was sent this day to the following parties in the manner indicated below.



Matt Barnwell
Attorney Advisor

Original by Electronic Delivery to:
Mary Angeles, Headquarters Hearing Clerk
U.S. Environmental Protection Agency
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Dated: May 28, 2020
Washington, D.C.