



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY BEFORE THE ADMINISTRATOR

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In the Matter of:)
Special Interest Auto Works, Inc., and) Docket No. CWA-10-2013-0123
Troy Peterson,)
Respondents)

ORDER ON MOTION TO AMEND ANSWER AND PREHEARING ORDER

On July 15, 2013, the U.S. Environmental Protection Agency, Region 10 ("Complainant") filed a Complaint seeking the imposition of civil penalties against Special Interest Auto Works, Inc., and Troy Peterson ("Respondents") for alleged violations of Sections 301(a) and 308 of the Clean Water Act ("Act"), 33 U.S.C. §§ 1331(a), 1318.1 On July 31, 2013, Respondents, through counsel, filed an Answer, Affirmative Defenses and Request for Hearing ("Answer"). On August 12, 2013, Respondents served Complainant with a Motion for Leave to File Amended Answer ("Motion"), requesting therein leave to amend their Answer to add additional information regarding voluntary upgrades to the facility, and the acts or omissions of third parties. Respondents attached the Amended Answer to its Motion. On August 22, 2013, this office received a copy of the parties' pleadings and Respondents' Motion. The parties were offered the opportunity to participate in the Office of Administrative Law Judges ("OALJ") Alternative Dispute Resolution ("ADR") program on August 27, 2013, and did so through January 6, 2014, on which date the undersigned was designated to preside.

1 The Complaint seeks the imposition of class II civil penalties up to a maximum of \$177,500, pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B). A hearing on the record in accordance with Section 554 of Title 5 of the United States Code, 5 U.S.C. § 554, shall be held in cases in which a civil penalty is sought pursuant to Section 309(g)(2)(B) of the Act. Sections 309(g)(4)(A) and (B) of the Act provide that before issuing an order assessing a class II civil penalty, the Administrator shall provide public notice of and reasonable opportunity to comment on the proposed issuance of such order and that any person who comments on a proposed assessment of a class II penalty shall be given notice of any hearing, an opportunity to be heard and present evidence at the hearing, and notice of the order assessing such penalty. 33 U.S.C. § 1319(g)(4)(A), (B); see 40 C.F.R. § 22.45 (notice to the public "shall be provided within 30 days following proof of service of the complaint on respondent"). There is no indication in the Complaint that EPA has given public notice pursuant to the Act and Rules.

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, 40 C.F.R. §§ 22.1 to 22.45 (“Rules of Practice” or “Rules”). Pursuant to the Rules, responses to motions must be filed within 15 days of service of the motion, and if no response is filed within that time, any objections to the motion are deemed waived. 40 C.F.R. § 22.16(b). To date, Complainant has not filed a response to Respondent’s Motion.² The Rules provide that an answer may be amended “upon motion granted by the Presiding Officer.” 40 C.F.R. § 22.15(e). In support of its Motion, Respondents point out that their Amended Answer was filed within the 30-day timeframe for answers to be filed after service of the Complaint. Mot. 1-2. Respondents also argue that leave to amend should, as under Federal Rule of Civil Procedure 15(a), be freely given when justice so requires, and that such motions should be denied only in the event of prejudice, bad faith, or futility, none of which is present here. Mot. 2. Having received no objection from Complainant, and noting that the Amended Answer appears to have been filed within the time period Respondents were permitted to answer the Complaint, Respondent’s Motion is hereby **GRANTED**.

The parties are advised to familiarize themselves with the applicable statute(s) and the Rules of Practice. An informal Practice Manual, Citizen’s Guide to proceedings before the EPA OALJ, and significant decisions issued by the Administrative Law Judges are accessible on the OALJ website at: <http://www.epa.gov/oalj>.

Settlement. Agency policy strongly supports settlement, and the procedures regarding settlements are set forth in Section 22.18 of the Rules of Practice, 40 C.F.R. § 22.18. The parties are commended for attempting to resolve this matter through the Alternative Dispute Resolution process. Each party is reminded that pursuing this matter through a hearing and possible appeals will require the expenditure of significant amounts of time and financial resources. The parties should realistically consider the risk of not prevailing in the proceeding despite such expenditures. A settlement allows the parties to control the outcome of the case, whereas a judicial decision takes such control away.

With these considerations in mind, the parties are directed to engage in a settlement conference on or before **January 31, 2014**, and to attempt to reach an amicable resolution of this matter. Without mentioning any specific terms of settlement, Complainant shall file a Status Report regarding this conference and the status of settlement, on or before **February 7, 2014**. If the case is settled, a fully-executed Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk no later than **February 28, 2014**, and a copy submitted to the undersigned.

² From August 12, 2013, the date Respondents served the Motion on Complainant, and September 10, 2013, the date the parties entered ADR, 28 days had passed, more time than Rule 22.16(b) permits for responses to motions. Since January 6, 2014, when ADR was terminated and the undersigned was designated to preside, an additional 10 days have passed.

Should a Consent Agreement not be finalized on or before the latter date, the parties must prepare for hearing and shall strictly comply with the following prehearing requirements of this Order.

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 following 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 judge, excuses noncompliance with filing deadlines.

Prehearing Exchange. This Order is issued pursuant to Section 22.19(a) of the Rules of Practice. Accordingly, it is directed that the following prehearing exchange take place between the parties:

1. Each party shall file with the Headquarters Hearing Clerk, serve on the opposing party, and serve on the Presiding Judge:
 - (A) a list of names of the expert and other witnesses intended to be called at 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) copies of all documents and exhibits intended to be introduced into evidence, identified as “Complainant’s” or “Respondents’” exhibit, as appropriate, and numbered with Arabic numerals (e.g., CX 1 or RX 1); and
 - (C) a statement explaining its views as to the appropriate place for the hearing and an estimate of the time needed to present its direct case. *See* Sections 22.21(d) and 22.19(d) of the Rules of Practice. Also, state whether translation services are necessary in 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) 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 Respondents’ Answer;
 - (B) a copy of the site inspection report referenced in Paragraph 3.14 of the Complaint;
 - (C) all factual information Complainant considers relevant to the assessment of a penalty, any supporting documentation, and a copy or statement of the internet address (URL) of

any Agency policy or guidance intended to be relied upon in calculating a proposed penalty; and

(D) a statement describing the number of violations (where applicable, days of violation), in accordance with 40 C.F.R. § 22.14(a)(4)(ii).

3. In addition, Respondents shall submit the following as part of their Prehearing Exchange:

(A) a copy of any documents in support of the denials asserted in Respondents' Answer to any factual allegations made in the Complaint;

(B) a copy of any documents in support of the allegations in Respondents' Affirmative Defenses and an explanation of their arguments in support of such Affirmative Defenses;

(C) all factual information Respondents consider relevant to the assessment of a penalty, and any supporting documentation; and

(D) if Respondents take the position that any 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 their position and a copy of any and all documents upon which they intend 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 Respondents' Prehearing Exchange as to provisions 3(A) through 3(D) above; and

(B) a specific penalty proposal and narrative explanation of how the proposed penalty was calculated in accordance with the applicable criteria set forth in the Act.

The prehearing exchanges called for above shall be filed *in seriatim* fashion, pursuant to the following schedule:

February 28, 2014	Complainant's Initial Prehearing Exchange
March 21, 2014	Respondents' Prehearing Exchange
April 4, 2014	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. 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. The Complaint in this matter gave Respondents notice and opportunity for a hearing, in accordance with Section 554 of the Administrative Procedure Act, 5 U.S.C. § 554 (“APA”). Respondents’ Answer to the Complaint contained a request for a hearing. In this regard, Section 554(c)(2) of the APA sets out that a hearing be conducted under Section 556 of the APA. 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, Respondents have the right to defend against Complainant’s charges by way of direct evidence, rebuttal evidence or through cross-examination of Complainant’s witness. Respondents are entitled to elect any or all three means to pursue their defenses.

Respondents are hereby notified that their failure to comply with the prehearing exchange requirements set forth herein may result in the entry of a default judgment against them. 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.

Filing and Service. Consistent with 40 C.F.R. § 22.5, the original and one copy of all documents intended to be part of the record in this proceeding (excluding a Consent Agreement and Final Order, which must be filed with the Regional Hearing Clerk), shall be filed with the Headquarters Hearing Clerk³ by U.S. mail, personal delivery, courier, commercial delivery service, or e-mail. Regardless of submission method, all documents submitted for filing must be signed, accompanied by a certificate of service, and served on the undersigned judge and on each party.

Documents filed by mail via the United States Postal Service (“USPS”) should be addressed to:

Sybil Anderson, Headquarters Hearing Clerk
Office of Administrative Law Judges
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW

³ Pursuant to the Headquarters Hearing Clerk Pilot Project, the OALJ and Headquarters Hearing Clerk shall keep the official record and be the proper filing location for all contested cases in which an answer was filed after May 1, 2012. For more information, see the OALJ website at www.epa.gov/oalj.

Mail Code 1900R
Washington, DC 20460

Documents filed by personal delivery, courier, or a commercial delivery service such as FedEx or UPS should be addressed to:

Sybil Anderson, Headquarters Hearing Clerk
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Ronald Reagan Building, Room M1200
1300 Pennsylvania Ave., NW
Washington, DC 20004

Documents filed by e-mail should be sent to OALJfiling@epa.gov.⁴ The subject line of the e-mail shall include the name and docket number of the proceeding. Documents filed as e-mail attachments must be in Portable Document Format (“PDF”),⁵ must be signed, and must contain the contact name, phone number, mailing address, and e-mail address of the filing party or its authorized representative. Documents filed by e-mail are deemed to constitute both the original and one copy of the document. **NOTE:** OALJ’s e-mail system is not designed to protect the privacy of any Confidential Business Information (“CBI”) or Personally Identifiable Information (“PII”), and whenever a document is filed by e-mail, the undersigned will consider all confidentiality claims waived.

A document submitted by U.S. mail, personal delivery, courier, or commercial delivery service is considered “filed” when the Headquarters Hearing Clerk receives it. A document submitted by e-mail to OALJfiling@epa.gov is considered “filed” at the time and date of electronic reception as recorded by the OALJ’s e-mail system. To be considered timely, documents submitted by e-mail to OALJfiling@epa.gov must be received by 11:59 p.m. Eastern Time on the date the document is due, unless another time is specified by order.

A copy of each document filed in this proceeding shall also be served on the undersigned and on each party, per 40 C.F.R. § 22.5(b). Documents may be served by first-class (including certified) or priority mail, personal delivery, reliable commercial delivery service, or e-mail if the party being served has provided a valid e-mail address in the record. Documents filed by e-mail are also deemed to have been “served” on the undersigned. A document is considered “served” upon mailing, when placed in the custody of a reliable commercial delivery service, or upon

⁴ More information about filing by e-mail may be found in the Standing Order Authorizing Filing and Service by E-Mail in Proceedings Before the Office of Administrative Law Judges, available on the OALJ website at www.epa.gov/oalj.

⁵ Electronic files exceeding 50 MB must be separated into files under 50 MB each or submitted on a compact disk (“CD”) by mail, courier, or personal delivery.

electronic transmission, per 40 C.F.R. § 22.7(c).

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

Privacy Act Statement; Notice of Disclosure of Confidential and Personal Information; Waiver of Confidentiality and Consent to Public Disclosure. The parties are cautioned that, unless redacted, all information filed with the court will be made publicly available. Thus, the parties are hereby advised not to file any Confidential Business Information (“CBI”) or Personally Identifiable Information (“PII”) pertaining to any person. Where filing of such information is necessary, the parties are hereby advised to redact (i.e., remove or obscure) the CBI or PII present in the materials filed. This may include information that, if disclosed to the public, would constitute an unwarranted invasion of personal privacy, such as Social Security numbers, medical records and personal financial information.

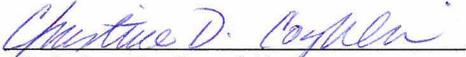
To the extent that any person files or submits any un-redacted CBI or PII pertaining to themselves or their client, that person thereby waives any claims to confidentiality and thereby consents to public disclosure by EPA, including posting on the Internet, of all such information they submit. Submission of such information via e-mail will also be considered a waiver of confidentiality. To protect such information against public disclosure, parties must follow the procedures specified on the OALJ website at www.epa.gov/oalj.

Contact Information. Contact may be made with my legal assistant, Mary Angeles, at (202) 564-6281 or Angeles.Mary@epa.gov to ask whether a document has been received or issued. For procedural questions, you may contact OALJ staff attorney Adrienne Fortin, at (202) 564-7862 or fortin.adrienne@epa.gov.

Motions. Prior to filing any motion, the moving party must contact the other party or parties to determine whether the other party or parties have any objection to the granting of the relief sought in the motion, and the motion shall state the position of the other party or 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 by the other party or parties and/or 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 allow a 15-day response period for motions, with an additional 5 days added thereto if the document 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 motion to dismiss under 40 C.F.R. § 22.20(a), it shall be filed within thirty (30) days after the due date for Complainant’s Rebuttal Prehearing Exchange.

Pursuant to 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 OALJ has access to videoconferencing technology that may be utilized for oral arguments on motions, and which may 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.


Christine D. Coughlin
Administrative Law Judge

Dated: January 17, 2014
Washington, D.C.

In the Matter of Special Interest Auto Works, Inc. and Troy Peterson, Respondents
Docket No. CWA-10-2013-0123

CERTIFICATE OF SERVICE

I certify that the foregoing **Order On Motion To Amend Answer And Prehearing Order**, dated January 17, 2014, was sent this day in the following manner to the addressees listed below:



Mary Angeles
Lead Legal Assistant

Dated: January 17, 2014

Original And One Copy To:

Sybil Anderson
Headquarters Hearing Clerk
U.S. EPA
Mail Code 1900R
1200 Pennsylvania Avenue, NW
Washington, DC 20460-2001

Copy By Regular Mail And E-Mail To:

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