



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
ROBERT M. LOOMIS AND) DOCKET NO. CWA-10-2011-0086
NANCY M. LOOMIS,)
)
)
RESPONDENTS)

ORDER SCHEDULING HEARING

This proceeding arises under the authority of Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act ("CWA"), as amended, 33 U.S.C. § 1319(g).^{1/} 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 respective Initial Prehearing Exchanges in this matter pursuant to the undersigned's Prehearing Order issued on August 18, 2011. In their Prehearing Exchange,

^{1/} The Complaint alleges that Respondent violated Sections 301 and 404 of the CWA, 33 U.S.C. §§ 1311 and 1344. For these alleged violations, Complainant seeks a [class II] civil administrative penalty of \$85,000 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 CWA. Sections 309(g)(4)(A) and (B) of the CWA 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 and of the order assessing such penalty. See 40 C.F.R. § 22.45. The file before me indicates that Complainant notified the public of the filing of this Complaint and has afforded the public 30 days to comment on the Complaint and proposed penalty. See Public Notice (Filed August 23, 2011).

Respondents requested that the hearing be held in Haines, Alaska, at some point during the months of May to September. On November 18, 2011, Complainant filed a Rebuttal Prehearing Exchange in which it proposed a penalty of \$85,000 for the alleged violations. This matter is now ready to be scheduled for hearing.

The file before me reflects that the parties have engaged in settlement negotiations, but no settlement has 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. Given that the hearing is being scheduled to accommodate the request of Respondents, the parties are ordered to file Joint Status Reports on or before **January 6, 2012**, and **February 3, 2012**, to apprise the undersigned of the case status and any progress made towards settlement.

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 who have not been properly identified 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. The parties are hereby notified that the undersigned will not entertain last minute motions to amend or supplement the prehearing exchange absent extraordinary circumstances.

Further, the parties are advised that all non-dispositive prehearing motions, such as motions for subpoenas and motions in limine, must be filed on or before **March 16, 2012**. On or before **March 30, 2012**, the parties shall file a Joint Set of Stipulated Facts, Exhibits, and Testimony. The time allotted for 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 be resolved only after a hearing.

The parties may, if they wish, file prehearing briefs by **April 13, 2012**. A copy of the briefs should be e-mailed or hand-delivered to the undersigned by that date in addition to the

official copy filed with the Regional Hearing Clerk. If filed, Complainant's brief should specifically state each count of the Complaint and each claim therein that will be tried at the hearing and indicate which counts and claims will not. If filed, Respondents' brief should identify each of the defenses Respondents intend to pursue at the hearing.

 The hearing in this matter will be held beginning at 9:30 a.m. on Tuesday, **May 1, 2012**, in or around Haines, Alaska,^{2/} continuing as necessary through May 10, 2012. 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 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 ten 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: November 23, 2011
Washington, DC

^{2/} The hearing will be held in Haines provided the Regional Hearing Clerk is able to reserve a courtroom and a court reporter for the designated time. Otherwise, the hearing may be held in Juneau, Alaska.