



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of:)
)
Top Gas and Mini Mart, LLC, and) Docket No. RCRA-03-2019-0103
Ezra Reuven,)
)
Respondents.)

PREHEARING ORDER

As you have been previously notified, I am designated to preside over this proceeding. 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”). 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 Office of Administrative Law Judges (“OALJ”), and significant decisions issued by the Administrative Law Judges are accessible on the OALJ website at www.epa.gov/alj.

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. 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 **Friday, January 10, 2020**, 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 **Friday, January 17, 2020**. If the case is settled, a fully-executed Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk no later than **Friday, February 7, 2020**, and a copy submitted to the undersigned.

Should a Consent Agreement not be finalized on or before February 7, 2020, the parties must prepare for hearing and shall strictly comply with the following prehearing requirements of this Order. *The pendency of settlement negotiations or 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 undersigned, excuses noncompliance with filing*

deadlines.

No later than **Friday, January 17, 2020**, each party shall file a statement identifying the party's preference for the location of the hearing. Respondent Reuven's statement shall also state whether he requests a hearing.

Prehearing Exchange. This Order is issued pursuant to Section 22.19(a) of the Rules of Practice. *See* 40 C.F.R. § 22.19(a). Accordingly, the parties are hereby directed to engage in the following prehearing exchange of information:

1. Each party¹ 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," if filing jointly, or "RX TG" or "RX ER," as appropriate.
- 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 Respondents shall be labeled on each page of the exhibit as "RX 1" (modified appropriately if Respondents do not file a joint prehearing exchange). 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

¹ Multiple respondents are permitted to submit one collective prehearing exchange, or individual prehearing exchanges.

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 Respondents' Answer(s);

(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;

(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; and

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

(A) a copy of any documents in support of the denials made in their 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 Respondents consider relevant to the assessment of a penalty and any supporting documentation; and

(D) if Respondents take 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 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(s) as to provisions 3(A) through 3(D) above.

(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 proposed civil penalty section of the Complaint.

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

February 7, 2020	Complainant's Initial Prehearing Exchange
February 28, 2020	Respondents' Prehearing Exchange
March 13, 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. Therefore, each party should 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.

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 the other party or parties to determine whether the other party has 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. However, 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, a reply, and/or the issuance of a ruling on the motion before any relevant deadline set by this or any subsequent order. *See generally* Sections 22.16(b) and 22.7(c) of the Rules of Practice.

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 40 C.F.R. § 22.20(a), 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. *Motions not filed in a timely manner may not be considered.*

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 Office of Administrative Law Judges has access to videoconferencing technology that may be utilized for oral arguments on motions, and that may minimize the expenditure of time and monetary resources in connection with such arguments. A request for oral argument may be granted, in my discretion, where further clarification and elaboration of arguments would be of assistance in ruling on the motion.

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”). Respondent Reuven’s Answer to the Complaint did not contain a request for a hearing. However, the Rules provide that the “Presiding Officer may hold a hearing if issues appropriate for adjudication are raised in the answer.” 40 C.F.R. § 22.15(c). 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, Respondent Reuven has the right to defend against Complainant’s charges by way of direct evidence, rebuttal evidence or through cross-examination of Complainant’s witness(es). Respondent Reuven is entitled to elect any or all three means to pursue its defenses.

The Respondents are 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.

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 Clerk.² Documents may be filed electronically³ by visiting the website for OALJ at https://yosemite.epa.gov/OA/EAB/EAB-ALJ_Upload.nsf. Parties may also file by U.S. mail, personal delivery, courier, or commercial delivery service. 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 electronically should be submitted online using the OALJ E-Filing System.⁴ Parties must first register to use the OALJ E-Filing System. Registration is not automated. There may be a delay of one to two business days between when a party applies for registration and when that party will be able to upload documents into the system. Documents filed electronically must be in Portable Document Format (“PDF”), 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 electronically are deemed to constitute both the original and one copy of the document. **NOTE:** The OALJ E-Filing 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 electronically, the undersigned will consider all confidentiality claims waived.

² 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/alj.

³ Electronic filing is the preferred method of submitting documents to the OALJ on cases assigned to a litigation ALJ.

⁴ More information about electronic filing may be found in the Standing Order Authorizing Electronic Filing in Proceedings Before the Office of Administrative Law Judges, available on the OALJ website at www.epa.gov/alj.

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

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

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

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 to the OALJ E-Filing System is considered “filed” at the time and date of electronic reception as recorded by the OALJ E-Filing System. To be considered timely, documents submitted by e-mail to the OALJ E-Filing System must be received by 11:59 p.m. Eastern Time on the date the document is due, unless another time is specified by the Presiding Judge. The OALJ E-Filing system will generate an electronic receipt of the submission that will be sent by e-mail to both the party submitting the document and the Headquarters Hearing Clerk. There may be a delay between document submission and transmission of the electronic receipt.⁵ The use of the OALJ E-Filing System constitutes consent to the service of orders by electronic mail to the e-mail address used to register for the OALJ E-Filing System.

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 via the OALJ E-Filing System 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 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

⁵ The emailed electronic receipt is your only proof that the OALJ received the submitted document. The absence or presence of a document on the OALJ online E-Docket Database (https://yosemite.epa.gov/oarm/alj/alj_web_docket.nsf) is not proof that the document was or was not received. If the electronic receipt is not received within one hour after submitting the document online, the Hearing Clerk may be able to confirm receipt of the document but not earlier than one hour after the document was submitted.

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 OALJ 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 unredacted CBI (except in accordance with 40 C.F.R. Part 2) 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 through the OALJ E-Filing System 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/alj and in 40 C.F.R. Part 2.

Contact Information. Any questions about this Order, the Rules, or any other procedural, scheduling, or logistical issues, you may contact my Staff Attorney, Michael B. Wright, at (202) 564-3247 or wright.michaelb@epa.gov.



Susan L. Biro
Chief Administrative Law Judge

Dated: December 19, 2019
Washington, D.C.

In the Matter of *Top Gas and Mini Mart, LLC, and Ezra Reuven*, Respondents.
Docket No. RCRA-03-2019-0103

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Prehearing Order**, dated December 19, 2019, and issued by Chief Administrative Law Judge Susan L. Biro, was sent this day to the following parties in the manner indicated below.



Michael B. Wright
Attorney-Advisor

Original by Internal Electronic Mail to:
Mary Angeles, Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Ronald Reagan Building, Room M1200
1300 Pennsylvania Ave., NW
Washington, DC 20004
Email: angeles.mary@epa.gov

Copy by Electronic Mail to:
Louis F. Ramalho
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 3
1650 Arch Street
Mail Code 3RC40
Philadelphia, PA 19103-2029
Email: ramalho.louis@epa.gov
Attorney for Complainant

Kenneth L. Mirsky, Esq.
2033 Walnut Street
Philadelphia, PA 19103-4403
Email: klmirsky@comcast.net
Attorney for Respondent Ezra Reuven

Copy by Regular Mail to:
Sadiq Amin
Farzana Amin
Top Gas and Mini Mart, LLC
4548 Baltimore Avenue
Philadelphia, PA 19143
Representatives for Respondent Top Gas and Mini Mart, LLC

Dated: December 19, 2019
Washington, D.C.

OFFICE OF ADMINISTRATIVE LAW JUDGES
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

GUIDANCE ON USE OF OALJ E-FILING SYSTEM

The Office of Administrative Law Judges (“OALJ”) utilizes a web-based tool known as the OALJ E-Filing System to allow registered users to file documents electronically. Sending a document to oaljfilings@epa.gov or an email address of a staff member within the OALJ is not a valid method of electronic filing, unless otherwise specified in writing by the presiding Administrative Law Judge. The OALJ E-Filing System is accessible at www.epa.gov/oalj. Documents filed electronically are deemed to constitute both the original and one copy of the document, and are deemed to have been both filed with the Headquarters Hearing Clerk and served electronically on the presiding Administrative Law Judge.

Any party choosing to file electronically must first register with the OALJ E-Filing System at https://yosemite.epa.gov/OA/EAB/EAB-ALJ_Upload.nsf. Registration is not automated. There may be a delay of one to two business days between the time a party applies for registration and the time at which the party is able to upload documents into the system. Parties are advised to plan accordingly.

To be considered timely, documents submitted through the OALJ E-Filing System must be received by 11:59 p.m. Eastern Time on the day the document is required to be filed, unless another time is specified by the presiding Administrative Law Judge. Immediately upon reception by the OALJ E-Filing System, the document will be marked with the official filing date and time. The OALJ E-Filing system will then generate an electronic receipt of the submission that will be sent by email to both the party submitting the document and the Headquarters Hearing Clerk. There may be a delay of approximately one hour between submission of the document and transmission of the electronic receipt.

The OALJ E-Filing System will accept any type of digital file, but the file size is limited to 70 megabytes. Electronically filed textual documents must be in Portable Document Format (“PDF”).

A motion and any associated brief may be filed together through the OALJ E-Filing System. However, any documents filed in support of a brief, motion, or other filing, such as copies of proposed exhibits submitted as part of a party’s prehearing exchange of information, should be submitted separately as an attachment. Where a party wishes to file multiple documents in support of a brief, motion, or other filing, rather than filing a separate attachment for each such document, the documents should be compiled into a single electronic file and filed as a single attachment, to the extent technically practicable. For example, where a party is filing copies of 12 proposed exhibits as part of its prehearing exchange, those 12 proposed exhibits should be submitted together as one attachment consisting of a single electronic file, to the extent technically practicable.

The OALJ E-Filing System is not equipped either to accommodate or to protect the privacy of confidential business information (“CBI”) or sensitive personally identifiable information (“PII”) that could be used to identify or trace an individual, such as Social Security numbers, medical records, or personal financial information. If a party wishes to electronically file a document containing such information, the party shall redact (i.e., remove or obscure) that information from the document before filing the redacted version of the document through the OALJ E-Filing System. If the party wishes for the presiding Administrative Law Judge to consider the CBI or PII contained in the document, the party shall also file a paper copy of the unredacted version of the document by means other than the OALJ E-Filing System, in accordance with the procedures specified on the OALJ’s website at www.epa.gov/oalj. To the extent that any person files any un-redacted CBI or PII through the OALJ E-Filing System, that person thereby waives any claims to confidentiality and consents to public disclosure of all such information.