



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY BEFORE THE ADMINISTRATOR

RECEIVED BY OALJ 2014 MAR 10 AM 8:22

In the Matter of:)
Advanced Recovery, Inc.,)
Respondent)

Docket No. RCRA-02-2013-7106

PREHEARING ORDER

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").

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.

With these considerations in mind, the parties are directed to engage in a settlement conference on or before March 21, 2014, and to attempt to reach an amicable resolution of this matter.

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 “Respondent’s” 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* 40 C.F.R. §§ 22.21(d), 22.19(d). Each party shall 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 Respondent’s Answer;
 - (B) 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
 - (C) a detailed explanation of the factors considered and methodology utilized in calculating the amount of the proposed penalty, in accordance with the penalty factors set forth in the Resource Conservation and Recovery Act and any policies or guidance as described in (B).
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 the Answer and the letter attached to the Answer;

(B) a copy of any documents in support of Respondent's defenses and an explanation of its arguments in support of such defenses;

(C) all factual information 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 as to provisions 3(A) through 3(D) above.

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

April 18, 2014	Complainant's Initial Prehearing Exchange
May 2, 2014	Respondent's Prehearing Exchange
May 9, 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 Respondent notice and opportunity for a hearing, in accordance with Section 554 of the Administrative Procedure Act, 5 U.S.C. §§ 554 to 559 ("APA"). Respondent's 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, Respondent has the right to defend against Complainant's charges by way of direct evidence, rebuttal evidence or through cross-examination of Complainant's witness. Respondent is entitled to elect any or all three means to pursue its defenses. If Respondent intends to elect only to conduct cross-examination of Complainant's witnesses and to forgo the presentation of direct and/or rebuttal evidence, Respondent shall serve a statement to that effect on or before the date for filing its prehearing exchange.

Respondent is hereby notified that its failure to either comply with the prehearing exchange requirements set forth herein or to state that it is electing only to conduct cross-examination of Complainant's witnesses, can 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. Pursuant to the Headquarters Hearing Clerk Pilot Project, rather than filing all documents with the Regional Hearing Clerk as specified in 40 C.F.R. § 22.5(a), the original and one copy of any documents filed in this proceeding, including prehearing exchange information and motions (excluding a Consent Agreement and Final Order, which must be filed with the Regional Hearing Clerk), shall be filed with the Headquarters Hearing Clerk by mail, courier, personal delivery, or e-mail at the following addresses:

If sent by regular mail via the United States Postal Service (USPS) :

Sybil Anderson, Headquarters Hearing Clerk
Office of Administrative Law Judges
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Mail Code 1900R
Washington, DC 20460

If sent via a non-USPS courier, such as FedEx or UPS, or by hand-delivery:

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

If sent via e-mail:¹

OALJfiling@epa.gov

For documents submitted by mail, courier, or personal delivery, a document is “filed” when the Headquarters Hearing Clerk receives it. A document is “served” upon mailing or when placed in the custody of a reliable commercial delivery service. Additionally, the parties are encouraged to send a courtesy copy to the Office of Administrative Law Judges by email to OALJfiling@epa.gov, or by facsimile to (202) 565-0044, followed by service of a hard copy of the document.

For documents submitted by e-mail to OALJfiling@epa.gov, an e-mail and any attachments thereto are “filed” at the time and date of electronic reception as recorded by the Office of Administrative Law Judges’ e-mail system. Documents submitted by e-mail for filing shall be deemed to constitute both the original and one copy of the document, in satisfaction of the duplicate-filing requirement of Section 22.5(a)(1) of the Consolidated Rules. Documents other than the complaint and rulings, orders, and decisions of the undersigned, may be served by e-mail if a valid e-mail address for the party being served has been provided in the record. 40 C.F.R. § 22.5(b)(2). Documents submitted by e-mail are also deemed “served” on the Presiding Judge. To be considered timely, documents submitted by e-mail to OALJfiling@epa.gov for filing must be received by 11:59 p.m. Eastern Time on the day the document is required to be filed. The subject line of the e-mail shall include the name and docket number of the proceeding. Documents submitted by e-mail must be in Portable Document Format (“PDF”), and must contain a contact name, phone number, mailing address, and e-mail address of the filing party or its authorized representative. 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.

Regardless of submission method, all documents submitted for filing must be signed, accompanied by a certificate of service, and served on the Presiding Judge and on each party.

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.

¹ Effective November 21, 2013, documents may be filed with the Headquarters Hearing Clerk and served on the Presiding Judge by e-mail in matters that are pending before the Office of Administrative Law Judges and governed by the Rules of Practice codified at 40 C.F.R. Part 22, subject to specific limitations. For additional details, see the Standing Order Authorizing Filing and Service by E-Mail in Proceedings Before the Office of Administrative Law Judges, available at http://www.epa.gov/oalj/orders/2013/Standing_Order_2013-11-21_E-Mail_Filing_%26_Service_Signed.pdf.

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, or, where filing is necessary, to redact (i.e., remove or obscure) any CBI or PII. 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.

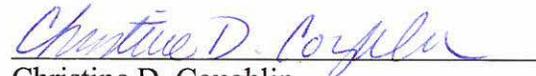
To the extent that any person files or submits any un-redacted CBI or PII pertaining to themselves or their client, that person thereby waives any claims to confidentiality and thereby consents to public disclosure by EPA, including posting on the Internet, of all such information they submit. To protect such information against public disclosure, parties must follow the procedures specified on the Office of Administrative Law Judges 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 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 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. The mere consent of the other parties to the relief sought does not assure that the motion will be granted. Further, all motions must be submitted in sufficient time to permit the filing of a response by the other party 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 either 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 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 Office of Administrative Law Judges has access to videoconferencing technology, and strongly encourages the parties to consider utilizing such technology for oral arguments on motions, so as to 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: March 10, 2014
Washington, D.C.

**In the Matter of *Advanced Recovery*, Respondent.
Docket No. RCRA-02-2013-7106**

CERTIFICATE OF SERVICE

I hereby certify that true copies of this **Prehearing Order**, issued by Christine D. Coughlin, Administrative Law Judge, in Docket No. RCRA-02-2013-7106, were sent to the following parties on this 10th day of March 2014, in the manner indicated:



Mary Angeles
Lead Legal Assistant

Original and One Copy by Hand Delivery to:

Sybil Anderson
Headquarters Hearing Clerk
U.S. EPA / Office of Administrative Law Judges
Mail Code 1900R
1200 Pennsylvania Ave., NW
Washington, DC 20460

Copy by Electronic and Regular Mail to:

Melva J. Hayden, Esq.
Assistant Regional Counsel
ORC, U.S. EPA, Region II
290 Broadway, 16th Floor
New York, NY 10007-1866
Email: hayden.melva@epa.gov

Kirk O. Orseck, Esq.
Orseck Law Offices, PLLC
1924 State Route 52
P.O. Box 469
Liberty, NY 12754
Email: orsecklaw@yahoo.com

**Dated: March 10, 2014
Washington, DC**