

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 10

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EPA -- REGION 10

IN THE MATTER OF: )  
 )  
BLACK DIAMOND ENGINEERING ) Proceedings under Section 309(g)  
Sandpoint, Idaho ) Clean Water Act  
 ) 33 U.S.C. §1319(g)  
 )  
Respondent ) DOCKET NO: CWA-10-2007-0147  
 )

**PREHEARING ORDER**

This action, initiated by the Director of the Office of Compliance and Enforcement, United States Environmental Protection Agency Region 10 ("EPA"), (hereinafter, the "Complainant"), seeks to assess an administrative penalty under section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g). Complainant filed the Administrative Complaint ("Complaint") in this action on July 20, 2007. By letter dated August 21, 2007, Black Diamond Engineering (Respondent) filed its Answer, including a request for a hearing on all issues. Penalty actions brought pursuant to section 309(g) of the CWA are governed by procedures set forth in the revised rules for non-Administrative Procedures Act (non-APA) cases. *See* 40 C.F.R. Part 22, Subpart I, published at 64 Fed. Reg. 40138 (July 23, 1999). EPA has designated the undersigned to preside over these proceedings. Correspondence with, or service upon, the undersigned shall be directed to:

Honorable Richard G. McAllister  
Regional Judicial Officer  
U.S. Environmental Protection Agency Region 10  
1200 Sixth Avenue Suite 900  
Seattle, Washington 98101

An initial step in proceeding to a hearing is to schedule a telephone conference call with counsel for the Complainant and the Respondent. The purpose of the telephone conference is to establish a schedule for moving through the pre-hearing information exchange phase of this

proceeding, and to set a tentative date and time for a pre-hearing conference, or any other conferences that may be necessary to move this matter forward. Counsel for Complainant is directed to confer with the Respondent, and by Wednesday, October 10, 2007, confirm with Carol Kennedy, Regional Hearing Clerk for EPA Reg. 10, a date and time on my calendar for a telephone conference. Ms. Kennedy's telephone number is 206-553-0242. Her Fax No. is 206-553-0163, e-mail address is kennedy.carol@epa.gov.

At the beginning of the telephone conference, each party shall advise me of those on their side participating in the conference call. The parties shall have their calendars available for the telephone conference to schedule further proceedings in this matter. Unless there are compelling reasons for a face-to-face conference, I plan to conduct all such conferences by telephone, as indicated herein.

In the interim, the parties shall explore settlement of this matter. Agency policy encourages settlement. See Section 22.18(b) of the Consolidated Rules, 40 C.F.R. 22.18(b). The benefits of a negotiated settlement often outweigh the uncertainty, time and expense associated with a litigated proceeding. Should a settlement be reached prior to the date scheduled for the telephone conference, counsel for the Complainant and the Respondent are directed to file a joint status report reflecting that there is agreement and indicating a time frame for the filing of a consent agreement in accordance with 40 C.F.R. §§ 22.5 and 22.18(b).

**SO ORDERED** this 28<sup>th</sup> Day of September 2007.



Richard G. McAllister  
Regional Judicial Officer

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **PREHEARING EXCHANGE ORDER** in the matter of **BLACK DIAMOND ENGINEERING, DOCKET NO: CWA-10-2007-0147** was filed with the Regional Hearing Clerk on Sept. 28, 2007.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Courtney Hamamoto, Assistant Regional Counsel, U.S. EPA - Region 10, 1200 Sixth Avenue, Seattle, Washington 98101. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt on Sept. 20, 2006, to:

Joel W. Petty, P.E.  
Black Diamond Engineering  
1555 W. Ontario St.  
Sand Point, Idaho 83864

Sept. 28, 2007

  
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Carol Kennedy  
Regional Hearing Clerk