



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of
Dependable Towing & Recovery, Inc.
and
David A. Whitehill,
Respondents

Docket No. CWA-02-2011-3

U.S. ENVIRONMENTAL PROTECTION AGENCY-REG.11
2012 MAR 22 A 10:34
REGIONAL HEARING CLERK

Order Rescheduling Hearing and Granting Joint Motion for Extension of Time

The Order Scheduling Hearing in this proceeding set the hearing in this matter to commence on April 17, 2012. The Order further provided that a joint set of stipulated facts, exhibits and testimony be filed by March 16, 2012 and prehearing briefs be filed by March 30, 2012. On March 16, 2012, the parties submitted a "Joint Motion for Extension of the Submissions Required by Order Scheduling Hearing," jointly seeking a 30 day extension of time to file stipulated facts, exhibits and testimony and prehearing briefs, and requesting that the hearing be rescheduled. Grounds stated in the Motion are that the parties have "agreed on a form of consent order and some of the elements of a settlement," but have not been able to agree on one significant element of the settlement. The Motion states that Respondent's environmental consultant submitted additional scientific and technical information on March 15, 2012, which Complainant needs additional time to review. The Motion also states that the parties have been focusing their efforts and resources on a settlement with remediation of the violations alleged in the Complaint.

The Rules of Practice governing this proceeding, 40 C.F.R. part 22, provide, "No request for postponement of a hearing shall be granted except upon motion and for good cause shown." 40 C.F.R. § 22.21(c). As to extensions of time to file documents, the Rules provide that the presiding officer may grant an extension of time for filing any document "upon timely motion . . . , for good cause shown, and after consideration of prejudice to other parties." 40 C.F.R. § 22.7(b).

It is in the interest of the parties and judicial economy for the parties to amicably and efficiently resolve this matter through settlement. Where the parties wish to postpone a hearing due to settlement of the case, it is preferable not to postpone a hearing until the parties have completed a Consent Agreement and Final Order. However, in the circumstances of this case and the undersigned's schedule, the hearing will be postponed and due dates for stipulations and briefs extended accordingly.

For good cause shown, the Joint Motion for Extension of the Submissions Required by Order Scheduling Hearing is **GRANTED**. In the event the parties have not filed a fully executed Consent Agreement and Final Order settling this matter beforehand, the parties shall file a joint set of stipulated facts, exhibits and testimony **on or before April 30, 2012**. The parties may file prehearing briefs, **on or before June 5, 2012**.

The hearing in this matter is hereby rescheduled and shall commence at 9:30 a.m. on Tuesday, **June 26, 2012**, in or around Buffalo, New York, and shall continue as necessary on June 27-29, 2012.

The Regional Hearing Clerk will make appropriate arrangements for a courtroom. The parties will be notified of the exact location and of other procedures pertinent to the hearing when those arrangements are complete.

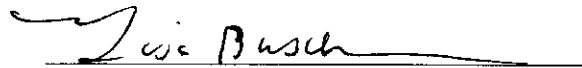
Individuals requiring special accommodations at the hearing, including wheelchair access, should contact the Regional Hearing Clerk, as soon as possible so that appropriate arrangements can be made.

**RESPONDENT IS HEREBY ADVISED THAT FAILURE TO APPEAR AT THE HEARING, WITHOUT GOOD CAUSE BEING SHOWN THEREFOR, MAY RESULT IN A DEFAULT JUDGMENT BEING ENTERED AGAINST IT. COMPLAINANT IS HEREBY ADVISED THAT FAILURE TO APPEAR AT THE HEARING MAY RESULT IN DISMISSAL OF THIS MATTER.**

If either 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.

**SO ORDERED.**

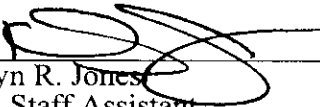
Dated: March 20, 2012

  
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M. Lisa Buschmann  
Administrative Law Judge

In the ADR matter of *Dependable Towing & Recovery, Inc. & David A. Whitehill.*, Respondent.  
Docket No. CWA-02-2011-36011

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order Rescheduling Hearing and Granting Joint Motion for Extension of Time**, dated March 20, 2012, was sent this day in the following manner to the addressees listed below.

  
\_\_\_\_\_  
Knolyn R. Jones  
Legal Staff Assistant

Original and One Copy by Pouch Mail to:

Karen Maples  
Regional Hearing Clerk  
US EPA, Region II  
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New York, NY 10007-1866

One Copy by Pouch Mail to:

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Office of Regional Counsel  
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One Copy by Regular Mail to:

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