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UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

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BEFORE THE ADMINISTRATOR

In the Matter of )

John Biewer Co. Of Ohio, Inc. )

Respondent )

) Docket No. RCRA-05-2008-0006  
)  
)

PREHEARING ORDER

As you have been previously notified, I have been designated to preside in the above captioned matter. This proceeding arises under the authority of Section 3008(a) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a). This action is also instituted pursuant to Sections 22.1(a)(4), 22.13 and 22.37 of The Environmental Protection Agency ("Agency" or "EPA") Rules of Practice ("Rules"), applicable in this administrative enforcement proceeding, which are found in 40 C.F.R. Part 22.

At the outset, the Court notes that, on June 26, 2008, EPA filed a Motion for Partial Accelerated Decision, seeking to close the door on the Respondent's ability to raise the defense of an inability to pay the proposed penalty. While no response is yet due, the Court takes note that amendments to an answer or, for that matter, to a complaint are freely allowed in modern pleading. Therefore, the Court is not inclined to grant such a motion absent either a respondent's express statement that it does not intend to raise such a defense in its response to the motion or through an election not to file an amended answer, raising the defense. However, these observations do not alter the fact that a respondent is required to respond to the outstanding motion, perhaps in one of the manners just described, within the time afforded by the Rules.

Apart from the issue discussed in the paragraph next above, as provided in the Rules, §22.18(a), it is the Agency's policy to encourage settlement of proceedings without the necessity of a formal hearing. However, the continuation of settlement negotiations will not provide good cause for not meeting the following schedule set in this Prehearing Order.

The schedule can now be set for the filing of prehearing exchanges under 40 C.F.R. §22.19 in accord with the following procedures:

1. Each party shall submit a list of all expert and other witnesses it intends to call with a brief narrative summary of their expected testimony; and copies of all documents and exhibits it intends to introduce into evidence. The exhibits should include a resume for each proposed expert witness.

2. The Complainant shall submit a statement explaining in detail how the proposed penalty amount was determined, including a description of how the specific provisions of any EPA penalty or enforcement policies or guidelines were applied in calculating the penalty.

3. If the Respondent intends to take the position that it is unable to pay the proposed penalty, or that payment will have an adverse effect on Respondent's ability to continue in business, Respondent shall furnish supporting documentation such as financial statements or tax returns.

4. The Complainant shall submit a statement on the applicability of the Paperwork Reduction Act ("PRA"), 44 U.S.C. § 3501 et seq., to this proceeding, including whether there is a current Office of Management and Budget control number involved and whether the provisions of Section 3512 of the PRA may apply to this case.

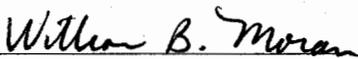
5. Each party shall submit its views on the place for the hearing pursuant to §§22.21(d) and 22.19(d) of the Rules. Each party should also indicate when they would be available for the hearing, and give an estimate of the time needed to present its direct case.

The Parties must simultaneously make their initial prehearing exchanges by **Tuesday, August 26, 2008**. If Respondent does not intend to present a direct case, but does wish to cross-examine Complainant's witnesses, it must submit a statement to that effect instead of a prehearing exchange. After the initial exchanges, the parties may file supplements to their prehearing exchanges (including any reply or rebuttal material), without motion, until 30 days before the date scheduled for the hearing.

I will schedule the hearing after I receive the parties' initial exchanges.

**Upon completion of the prehearing exchanges, the parties are directed to confer with one another in order to determine those issues which remain genuinely in dispute, so that the hearing may be focused on such matters. The parties shall then submit a statement to me identifying those issues.**

**The original and one copy of all filings, with attachments, shall be sent to the Regional Hearing Clerk, and copies sent to the opposing party and the Administrative Law Judge.**

  
William B. Moran  
United States Administrative Law Judge

Dated: June 27, 2008  
Washington, DC

