

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
2010 DEC -2 AM 10: 58
REGIONAL HEARING CLERK
EPA REGION VI

In the Matter of:)
)
Enerco Operating Corp.,) CWA-06-2010-1901
)
Respondent.)

NOTICE OF ASSIGNMENT AND INITIAL SCHEDULING ORDER

This action, initiated by the Complainant, the Director of the Compliance Assurance and Enforcement Division, Environmental Protection Agency, Region 6, seeks to assess a Class I administrative penalty under Section 309(g) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g). Class I penalty actions are governed by the procedures set forth in 40 C.F.R. Part 22, Subpart I, Administrative Proceedings Not Governed by Section 554 of the Administrative Procedure Act. I have been assigned to act as Presiding Officer in this case.

Complainant filed the Administrative Complaint ("Complaint") in this matter on October 13, 2010. On November 3, 2010, Respondent, Enerco Operating Corp., filed its Answer to Administrative Complaint ("Answer"), in which, among other things, the Respondent requested a hearing in this matter.

THEREFORE, IT IS ORDERED:

1. The parties shall confer regarding the possibility of settlement of this matter on or before **December 23, 2010**. This conference may be in person or by telephone.
2. On or before **December 30, 2010**, the parties shall file a report on the status of settlement negotiations in this matter (without disclosing the substance of settlement negotiations), including, at a minimum, the date and outcome of the settlement conference ordered in paragraph 1 above, a summary of other contacts between the parties regarding this case, an assessment of whether settlement of this matter is likely, a statement concerning whether a settlement-in-principle has been reached, and, if applicable, a projected date for the filing of a consent agreement and final order. If the parties cannot agree on a joint status report, they shall file separate reports.
3. Both Complainant and Respondent shall submit a prehearing exchange, as provided for in 40 C.F.R. §§ 22.52 and 22.19(a), for use at the hearing to be held in this matter. The prehearing exchange shall be filed no later than **January 27, 2011**. This submission shall, at a minimum, include:
 - a. The name of each witness, including experts, each party intends to present at the hearing, as well as a brief description of the witness' connection to the case, the

witness' qualifications (in the case of an expert witness), and a narrative of the witness' expected testimony. If the Respondent does not plan to call any witnesses (and thus rely solely on cross-examination of the Complainant's witnesses), Respondent must affirmatively state that it does not plan to call any witnesses at the hearing.

- b. A statement as to whether any witness will need an interpreter in order to testify, and, if so, what language.
- c. A statement as to whether any special accommodations under the Americans with Disabilities Act are needed for counsel or any witness or party representative.
- d. Copies of exhibits (including an index of the exhibits) intended for introduction into evidence at the hearing. The documents shall be submitted as part of the prehearing exchange even if they previously have been filed with the Regional Hearing Clerk. The exhibits shall include a resume or curriculum vitae for each proposed expert witness. If Respondent does not plan to introduce any exhibits into evidence, Respondent must affirmatively state that it does not plan to introduce any exhibits into evidence at the hearing.

The exhibits shall be identified as "Complainant's" or "Respondent's" exhibit, as appropriate, and numbered with Arabic numerals (for example, "Complainant's Ex. 1").

Documents used solely for impeachment do not have to be included.

- e. A statement of the party's estimate of how long it will take to put on its case.
 - f. A statement of the party's position regarding the location of the hearing, keeping in mind that the rules provide that the hearing shall be held in the county where the Respondent resides or conducts the business which the hearing concerns, in the city in which the relevant Environmental Protection Agency Regional Office is located, or in Washington, D.C., unless the Presiding Officer determines that there is good cause to hold it in another location. 40 C.F.R. §§ 22.21(d) and 22.19(d).
 - g. The Complainant shall provide an explanation of how its proposed penalty was calculated in accordance with the criteria set forth in the Safe Drinking Water Act.
 - h. The Respondent shall provide an explanation of why the proposed penalty should be mitigated or eliminated.
4. Any response by a party to the prehearing exchange filed by the other party shall be filed not later than **February 17, 2011**.

5. The parties shall participate in a prehearing conference with the Presiding Officer on **February 24, 2011, beginning at 2:00 P.M. central time.** The parties should be prepared to address the matters identified in 40 C.F.R. § 22.19(b) during the conference. The conference will be conducted by telephone. Each party shall join the call by calling the following **dial in number: 866-299-3188.** At the prompt, dial in the following **conference code: 214-665-2143, followed by the # sign.** If a party encounters problems connecting to the call, immediately contact Lorena Vaughn, the Regional Hearing Clerk, at 214-665-8021.

Failure by the Complainant or the Respondent to comply with the prehearing exchange requirements or to appear for the telephone conference may result in that party being found in default. 40 C.F.R. § 22.17(a). Failure by a party to list witnesses or submit documents as part of the prehearing exchange may result in exclusion of those witnesses from testifying or the documents not being admitted into evidence. 40 C.F.R. §§ 22.19(a) and 22.22(a).

The Complainant's or the Respondent's failure to comply with any part of this Order may result in any sanction authorized by 40 C.F.R. Part 22.

It is so ordered, this 2nd day of December, 2010.



MICHAEL C. BARRA
REGIONAL JUDICIAL OFFICER

CERTIFICATE OF SERVICE

I, Lorena S. Vaughn, the Regional Hearing Clerk, do hereby certify that a true and correct copy of the Notice of Assignment and Initial Scheduling Order for CWA - 06-2010-1901 was provided to the following on the date and in the manner stated below:

John F. Peiserich
PERKINS & TROTTER, P.L.L.C.
P.O.Box 251618
Little Rock, Arkansas 72225-1618

CERTIFIED MAIL

Efren Ordonez
U.S. Environmental Protection Agency
1445 Ross Avenue
Dallas, Texas 75202

INTEROFFICE MAIL



Lorena S. Vaughn
Regional Hearing Clerk

12-2-10

Date