



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105

\*\* FILED \*\*  
22FEB2017 - 01:55PM  
U.S.EPA - Region 09

IN THE MATTER OF: )  
)  
ALOHA PETROLEUM, LTD., )  
CAPTAIN COOK, HAWAII. ) Docket No. UIC-09-2016-0003  
)  
Respondent. ) Dated: February 22, 2017

**PREHEARING ORDER**

In accordance with Section 1423(c)(3)(A) of the Safe Drinking Water Act, 42 U.S.C. § 300h-2(c)(3)(A), and 40 C.F.R. § 22.15(c), Respondent requested a hearing in the above-referenced lawsuit.

The undersigned is the Presiding Officer over the above-referenced lawsuit. 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. §§ 22.1-22.45 (“Rules of Practice”). The parties are advised to familiarize themselves with the applicable statute(s) and the Rules of Practice. An informal Practice Manual is accessible online at <http://www.epa.gov/oalj>.

**Correspondence and Motions**

Each party must provide the opposing party with a copy of all correspondence that it submits to the Presiding Officer. Failure to provide a copy of submissions to the opposing party may result in return of such submissions without consideration. I remind the parties it is their ongoing obligation to keep the Presiding Officer informed of their current contact information. Other than to clarify a procedural issue or during alternative dispute resolution, it is inappropriate for either party to engage in *ex parte* communications with the Presiding Officer.

Extensions of filing dates and postponements will not be granted, absent a prompt written request that establishes good cause for the extension.

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. The moving papers shall state whether the opposing party objects to the relief sought in the moving papers. The mere consent of the other parties to the relief sought does not assure the motion will be granted. Furthermore, 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 other subsequent order. Parties should consult Sections 22.16(b) and 22.7(c) of the Rules of Practice, which allow fifteen calendar days for a response period, with five additional calendar days if the pleading is served by regular First Class mail. 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 fifteen calendar days after the parties' Prehearing Information 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 Presiding Officer has access to conference space and 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.

### **Mandatory Settlement Conference**

Public policy strongly supports alternative resolution of the legal issues set forth in the Complaint and Answer. Therefore, I order the parties to participate in a settlement conference with Ann Coyle who serves as the Regional Judicial Officer in EPA, Region V. The parties may participate in the settlement conference by telephone or by video conference. If Ms. Coyle would like written settlement conference statements from the parties prior to the conference, Ms. Coyle will establish the appropriate briefing schedule and conference schedule according to her availability. Ms. Coyle will contact the parties to coordinate the settlement conference. The parties must participate and complete the settlement conference by **April 28, 2017**. The procedures for documenting settlements are set forth in Section 22.18 of the Rules of Practice, 40 C.F.R. § 22.18.

If the parties fail to resolve this matter in the mandatory settlement conference, the parties shall adhere to the following schedule:

### **Prehearing Exchange.**

The parties shall adhere to the requirements for a prehearing information exchange as set forth in 40 C.F.R. § 22.19. The parties must file their prehearing information exchange with the Region IX Regional Hearing Clerk by **May 12, 2017**. The parties shall participate in a Prehearing Conference on **May 26, 2017 at 3:00 p.m. (PST)**.

Section 22.19(a) of the Rules of Practice provides, 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.

The failure to exchange information in a timely fashion may result in one of the following:

1. An inference that the information would be adverse to the party failing to provide it;
2. The exclusion of the information from evidence; or
3. The issuance of a default order under 40 C.F.R. § 22.17(c).

### **Filing and Service**

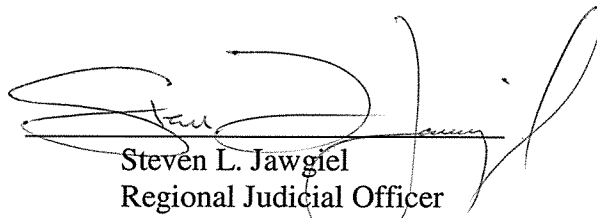
A document is “filed” when the Regional Hearing Clerk *receives* it. A document is “served” upon mailing or when placed in the custody of a reliable commercial delivery service. A signed certificate of service must be attached to all filed documents. Electronic filing is not permitted in this proceeding. The parties are advised NOT to include, attach, or refer to any terms of settlement offers or agreements in any document submitted to the Regional Judicial Officer. No copies of Consent Agreements and Final Orders shall be submitted, or attached to any document submitted to the Regional Judicial Officer, except those that are fully-executed and filed with the Regional Hearing Clerk.

My contact information is:

Steven L. Jawgiel  
Regional Judicial Officer  
EPA, Region IX  
75 Hawthorne Street, ORC-1  
San Francisco, CA 94105

Email: [Jawgiel.steven@epa.gov](mailto:Jawgiel.steven@epa.gov)

Telephone: (415) 972-3876



Steven L. Jawgiel  
Regional Judicial Officer  
U.S. EPA, Region IX

CERTIFICATE OF SERVICE

I hereby certify that the foregoing PREHEARING ORDER in the matter of *Aloha Petroleum Ltd.* (UIC-09-2016-0003), issued by the Regional Judicial Officer, has been filed with the Regional Hearing Clerk, and was served on Counsel for Respondent, and Counsel for EPA, as indicated below:

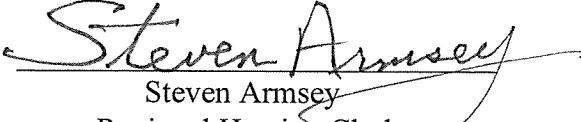
BY FIRST CLASS MAIL:

Respondent - Patricia J. McHenry, Esq.  
Cades, Schutte LLP  
1000 Bishop Street (Suite 1200)  
Honolulu, HI 96813

HAND DELIVERED:

Complainant - Julia Jackson, Esq.  
Office of Regional Counsel  
U.S. EPA, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

Dated at San Francisco, Calif., this 22nd of February, 2017.

  
Steven Armsey  
Regional Hearing Clerk  
EPA, Region 9