



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF
DUVALL DEVELOPMENT CO., INC.,
and JEFFREY H. DUVALL,
RESPONDENTS
DOCKET NO. CWA-04-2010-5505

2010 NOV 24 AM 9:47
HEARING CLERK
EPA

ORDER SCHEDULING HEARING

This proceeding arises under the authority of Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act ("CWA"), as amended, 33 U.S.C. § 1319(g). The parties are reminded that 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 (the "Rules of Practice"), 40 C.F.R. §§ 22.1-22.32.

The parties have filed their initial prehearing exchanges in this matter pursuant to the undersigned's Prehearing Order entered on August 10, 2010. On November 12, 2010, Complainant filed a rebuttal prehearing exchange in which it proposed a penalty of \$177,500 for the alleged violations. The parties retain the right to make a motion to supplement their prehearing exchanges no later than fifteen (15) days before the hearing date. Sections 22.19(a) and 22.22(a) of the Rules of Practice, 40 C.F.R. §§ 22.19(a), 22.22(a), provide that documents or exhibits that have not been exchanged and witnesses whose names have not been exchanged at least fifteen (15) days before the hearing date shall not be admitted into evidence or allowed to testify unless good cause is shown for failing to exchange the required information.

Further, the parties are advised that every motion filed in this proceeding must be served in sufficient time to permit the filing of a response by the other party and to permit the issuance of an order on the motion before the deadlines set by this order or any subsequent order. Section 22.16(b) of the Rules of Practice, 40 C.F.R. § 22.16(b), allows a fifteen-day (15) period for responses to motions and Section 22.7(c), 40 C.F.R. § 22.7(c), provides for an additional five (5) days to be added thereto when the motion is served by mail. The parties are hereby notified that the undersigned will not entertain last minute motions to amend or supplement the prehearing exchange absent extraordinary circumstances.

The file before me reflects that the parties have engaged in settlement negotiations, but no settlement has been reached. United States Environmental Protection Agency ("EPA") policy, found in the Rules of Practice at Section 22.18(b), 40 C.F.R. § 22.18(b), encourages settlement of a proceeding without the necessity of a formal hearing. The benefits of a negotiated settlement may far outweigh the uncertainty, time, and expense associated with a litigated proceeding. However, the pursuit of settlement negotiations or an averment that a settlement in principle has been reached will not constitute good cause for failure to comply with the requirements or schedule set forth in this Order.

As the parties have not reached a settlement in this matter, they shall strictly comply with the requirements of this Order and prepare for a hearing. In connection therewith, on or before **March 28, 2011**, the parties shall file a joint set of stipulated facts, exhibits, and testimony. See Section 22.19(b)(2) of the Rules of Practice, 40 C.F.R. § 22.19(b)(2). The time allotted for the hearing is limited. Therefore, the parties must make a good faith effort to stipulate, as much as possible, to matters which cannot reasonably be contested so that the hearing can be concise and focused solely on those matters which can only be resolved after a hearing.

The Hearing in this matter will be held beginning at 9:30 a.m. on Tuesday, April 26, 2011, in or around Atlanta, Georgia, continuing as necessary through April 29, 2011. The Regional Hearing Clerk will make appropriate arrangements for a courtroom and retain a stenographic reporter. The parties will be notified of the exact location and other procedures pertinent to the hearing when those arrangements are complete. Individuals requiring special accommodation at this hearing, including wheelchair access, should contact the Regional Hearing Clerk at

least ten business days prior to the hearing so that appropriate arrangements can be made.

IF ANY 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.




Barbara A. Gunning
Administrative Law Judge

Dated: November 19, 2010
Washington, DC

In the Matter of Duvall Development Co., Inc. & Jeffrey H. Duvall
Docket No. CWA-04-2010-5505

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order Scheduling Hearing**, dated November 19, 2010, was sent on this 19th day of November 2010, in the following manner to the addressees listed below.



Mary Angeles
Legal Staff Assistant

Original and One Copy by Mail to:

Patricia Bullock
Regional Hearing Clerk
U.S. EPA / Region 4
61 Forsyth Street
Atlanta, GA 30303

One Copy by Mail to:

Robert Caplan, Esq.
Assistant Regional Counsel
U.S. EPA, Region 4
61 Forsyth Street
Atlanta, GA 30303

One Copy by Mail to:

Edwin Schwartz, Esq.
Sweetnam & Schwartz, LLC
Suite 1700
Three Ravinia Drive, Suite 1700
Atlanta, GA 30346

Dated: November 19, 2010
Washington, DC