



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

FILED  
JUL 16 2011  
OFFICE OF THE ADMINISTRATOR  
WASHINGTON, D.C.

In the Matter of: )  
)  
Jose P. Jazmin and Betty Jazmin, )  
Trustees of the Jazmin Family Trust, )  
)  
Respondents. )

Docket No. UIC-09-2010-0006

PREHEARING ORDER

As you have been previously notified, I am designated to preside over this proceeding. This proceeding will be 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, a recently updated Citizen's Guide to proceedings before the EPA Office of Administrative Law Judges, and significant decisions issued by the Office are accessible on the world wide web at: <http://www.epa.gov/oalj>.

Agency policy strongly supports settlement, and the procedures regarding documenting settlements are set forth in Section 22.18 of the Rules of Practice, 40 C.F.R. § 22.18. The record shows that the parties participated in the Alternative Dispute Resolution process offered by this office for approximately four months, but were unable to reach a settlement. The parties are commended for taking the initiative to resolve this matter informally and expeditiously. Each party is reminded that pursuing this matter through a hearing and possible appeals will require the expenditure of significant amounts of time and financial resources. The parties should realistically consider the risk of not prevailing in the proceeding despite such expenditures. A settlement allows the parties to control the outcome of the case, whereas a judicial decision takes such control away. With such thoughts in mind the parties are directed to engage in a settlement conference on or before **June 24, 2011**, and attempt to reach an amicable resolution of this matter. Complainant shall file a status report regarding settlement on or before **July 1, 2011**. If the case is settled, the fully-executed Consent Agreement and Final Order should be filed no later than **July 22, 2011**, with a copy sent to the undersigned.

Should a Consent Agreement not be finalized on or before the latter date, the parties must prepare for hearing and shall strictly comply with the prehearing requirements of this Order.

**Prehearing Exchange.** This Order is issued pursuant to Section 22.19(a) of the Rules of Practice. Accordingly, it is directed that the following prehearing exchange take place between the parties:

1. Each party shall file with the Regional Hearing Clerk, serve on the opposing party, and serve on the Presiding Judge:
  - (A) a list of names of the expert and other witnesses intended to be called at hearing, identifying each as a fact witness or an expert witness, a brief narrative summary of their expected testimony, and a curriculum vitae or resume for each identified expert witness, or a statement that no witnesses will be called;
  - (B) copies of all documents and exhibits intended to be introduced into evidence, identified as "Complainant's" or "Respondents'" exhibit, as appropriate, and numbered with Arabic numerals (*e.g.*, CX 1 or RX 1); and
  - (C) a statement explaining its views as to the appropriate place for the hearing and an estimate of the time needed to present its direct case. See Sections 22.21(d) and 22.19(d) of the Rules of Practice. Also, state whether translation services are necessary in regard to the testimony of any witness(es), and, if so, state the language to be translated.
  
2. In addition, Complainant shall submit the following as part of its Initial Prehearing Exchange:
  - (A) a copy of any documents in support of each of the factual allegations in the Complaint, particularly those in Paragraphs 8-19, that Respondents have denied or otherwise not admitted in their Answer;
  - (B) a detailed narrative explanation of the proposed penalty and any other relief sought, addressing, in particular, the relevant penalty factors; and
  - (C) a copy, or the internet address (URI), of any policies, worksheets or guidance documents relied on or intended to be relied on by Complainant in calculating the proposed penalty and any other relief sought.
  
3. In addition, Respondents shall submit the following as part of their Prehearing Exchange, except for the motion referenced in (D) below, ***which, if made, shall be separately filed and served in accordance with the motion requirements of 40 C.F.R. §§ 22.5 and 22.16:***
  - (A) a clear admission, denial or explanation for each of the factual allegations in Paragraphs 8-19 of the Complaint to which Respondents have any knowledge, pursuant to 40 C.F.R. § 22.15(b) (failure to admit, deny, or explain any material factual allegation

contained in the Complaint constitutes an admission of the allegation under 40 C.F.R. § 22.15(d));

(B) a narrative statement and a copy of any and all documents in support of the Affirmative Defenses in Paragraphs 3 through 7 of the Answer;

(C) if Respondents take the position that the proposed penalty should be reduced or eliminated on any grounds, such as an inability to pay, a detailed narrative statement explaining the precise factual and legal basis for their position and a copy of any and all documents upon which they intend to rely in support of such position; and

(D) if Respondents intend to pursue dismissal of the action, an appropriate motion, such as a motion to dismiss or motion for accelerated decision, which includes detailed legal arguments and any supporting documents.

4. Finally, Complainant shall submit as part of its Rebuttal Prehearing Exchange:

(A) a statement and/or any documents in response to Respondents' Prehearing Exchange as to provisions 3(A) through 3(C) above.

The prehearing exchanges called for above shall be filed in seriatim fashion, pursuant to the following schedule:

<b>July 22, 2011</b>	Complainant's Initial Prehearing Exchange
<b>August 12, 2011</b>	Respondents' Prehearing Exchange
<b>August 26, 2011</b>	Complainant's Rebuttal Prehearing Exchange

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

**Supplement to Prehearing Exchange.** Any addition of a proposed witness or exhibit to the prehearing exchange shall be filed with an accompanying motion to supplement the prehearing exchange.

**Default and Opportunity for a Hearing.** The Complaint in this matter gave Respondents notice and opportunity for a hearing, in accordance with Section 554 of the Administrative Procedure Act, 5 U.S.C. §§ 554 et seq. ("APA"). Respondents' Answer to the Complaint contained a request for a hearing. In this regard, Section 554(c)(2) of the APA sets out that a

hearing be conducted under Section 556 of the APA. Section 556(d) provides that a party is entitled to present its case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Thus, Respondents have the right to defend against Complainant's charges by way of direct evidence, rebuttal evidence or through cross-examination of Complainant's witness. Respondents are entitled to elect any or all three means to pursue their defenses. If Respondents intend to elect only to conduct cross-examination of Complainant's witnesses and to forgo the presentation of direct and/or rebuttal evidence, Respondents shall serve a statement to that effect on or before the date for filing their prehearing exchange. **Respondents are hereby notified that their failure to either comply with the prehearing exchange requirements set forth herein or to state that they are electing only to conduct cross-examination of Complainant's witnesses, can result in the entry of a default judgment against them. Complainant is notified that its failure to file its prehearing exchange in a timely manner can result in a dismissal of the case with prejudice.**

**The mere pendency of settlement negotiations or even the existence of a settlement in principle does not constitute a basis for failing to strictly comply with the prehearing exchange requirements. Only the filing with the Hearing Clerk of a fully-executed Consent Agreement and Final Order, or an order of the judge, excuses noncompliance with filing deadlines.**

**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. However, the parties are encouraged to send a courtesy copy to the Office of Administrative Law Judges by facsimile or email, in addition to the mailed hard copy, as physical mail delivery is often subject to significant delay. The facsimile number for the Office of Administrative Law Judges is (202) 565-0044, and the email address is oaljffiling@epa.gov. A signed certificate of service must be attached to all filed documents.

All documents served by regular mail may be mailed to:

The Honorable Susan L. Biro, Chief Administrative Law Judge  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
Mail Code 1900L  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

**Hand-delivered packages transported by Federal Express or any delivery service that x-rays its packages as part of its routine security procedures may be served at the following address:**

The Honorable Susan L. Biro, Chief Administrative Law Judge  
Office of Administrative Law Judges

U.S. Environmental Protection Agency  
1099 14th Street, N.W., Suite 350  
Washington, D.C. 20005

**The parties are advised NOT to include, attach, or refer to any terms of settlement offers or agreements in any document submitted to the Presiding Judge, and no copies of Consent Agreements and Final Orders shall be submitted, or attached to any document submitted, to the Presiding Judge except those that are fully executed and filed with the Regional Hearing Clerk.**

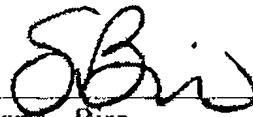
**Contact Information.** Telephone contact may be made with my legal assistant, Maria Whiting-Beale, at (202) 564-6259 or whiting-beale.maria@epa.gov, to ask whether a document has been received or issued. Contact may be made with my staff attorney, Adrienne Fortin, Esq., at (202) 564-7862, or fortin.adrienne@epa.gov, for other procedural questions.

**Courtesy Copies.** If any party wishes to receive, by e-mail or facsimile, an expedited courtesy copy of decisions and substantive orders issued in this proceeding, the party shall submit a request for such copies by letter addressed to Maria Whiting-Beale at one of the addresses above. The letter shall include the case docket number, the party's e-mail address or facsimile number, and a statement as to whether the party requests expedited courtesy copies of (a) the initial decision and/or any orders on motion for accelerated decision or dismissal, or (b) all decisions and substantive orders. The undersigned's office will endeavor to comply with such requests, but does not guarantee the party's receipt of expedited courtesy copies.

**Motions.** 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, and the motion shall state the position of the other party or parties. The mere consent of the other parties to the relief sought does not assure that 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 subsequent order. Sections 22.16(b) and 22.7(c) of the Rules of Practice allow a 15-day response period for motions, with an additional 5 days added thereto if the pleading is served by mail. Motions not filed in a timely manner may not be considered. **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 thirty days after the due date for Complainant's Rebuttal Prehearing 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 Office of Administrative Law Judges has access to 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. A request for oral argument may be granted, in the undersigned's discretion, where further clarification and elaboration of arguments would be of assistance in ruling on the motion.



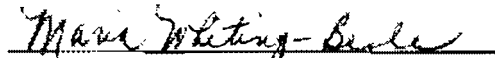
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Susan L. Biro  
Chief Administrative Law Judge

Dated: June 14, 2011  
Washington, D.C.

In the Matter of Jose P. Jazmin and Betty Jazman Trustees of the Jazmin Family Trust, Respondents  
Docket No. UIC-09-2010-0006

CERTIFICATE OF SERVICE

I certify that the foregoing **Prehearing Order**, dated June 14, 2011, was sent this day in the following manner to the addressees listed below.

  
\_\_\_\_\_  
Maria Whiting-Beale  
Staff Assistant

Dated: June 14, 2011

Original And One Copy By Pouch Mail To:

Bryan Goodwin  
Regional Hearing Clerk  
U.S. EPA  
Mail Code WST-1  
75 Hawthorne Street  
San Francisco, CA 94105

Copy By Pouch Mail And Facsimile To:

Brett Moffatt, Esquire  
Assistant Regional Counsel  
U.S. EPA  
75 Hawthorne Street, ORC-2  
San Francisco, CA 94105

Copy By Regular Mail And Facsimile To:

Jeffrey W. Allen, Esquire  
VAN DE PPE, LEVY & ALLEN, LLP  
1600 South Main Plaza, Suite 325  
Walnut Creek, CA 94596