



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

U.S. ENVIRONMENTAL PROTECTION AGENCY-REG.11
2011 APR 19 A 8:53
REGIONAL HEARING CLERK

IN THE MATTER OF)
MUNICIPALITY OF ANASCO,) DOCKET NO. CWA-02-2010-3454
RESPONDENT)

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).1 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 ("Rules of Practice"), 40 C.F.R. §§ 22.1-22.32.

Pursuant to the Prehearing Order issued by the undersigned

1 The United States Environmental Protection Agency, Region 2, Caribbean Environmental Protection Division ("Complainant") initiated this proceeding on September 30, 2010, by filing a Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to Request a Hearing ("Complaint") against the Municipality of Anasco ("Respondent"). The Complaint alleges that Respondent violated Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342. For these alleged violations, Complainant seeks a class II civil administrative penalty in the amount of \$64,628, pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B). A hearing on the record in accordance with Section 554 of Title 5 of the United States Code, 5 U.S.C. § 554, shall be held in cases in which a civil penalty is sought pursuant to Section 309(g)(2)(B) of the CWA. Sections 309(g)(4)(A) and (B) of the CWA provide that, before issuing an order assessing a class II civil penalty, the Administrator shall provide public notice of and reasonable opportunity to comment on the proposed issuance of such order and that any person who comments on a proposed assessment of a class II penalty shall be given notice of any hearing and of the order assessing such penalty. See 40 C.F.R. § 22.45. The file before me contains no documentary proof of the publication of the public notice or the filing of comments, if any, described above.

on December 15, 2010, the parties have filed their initial prehearing exchanges.² Section 22.19(f) of the Rules of Practice, 40 C.F.R. § 22.19(f), requires parties to promptly supplement their initial prehearing exchanges when they learn that the information therein is incomplete, inaccurate, or outdated, and the additional information has not otherwise been disclosed to the opposing party. 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) and 22.22(a), provide that documents or exhibits that have not been exchanged and witnesses whose names or testimony summaries have not been exchanged at least 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 the information. The parties are advised that the undersigned will not entertain last minute attempts to supplement their prehearing exchanges absent extraordinary circumstances.

The parties are also advised that every motion filed in this proceeding must be served in sufficient time to permit the filing of a response by the non-moving 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), requires a party's response to a motion to be filed within 15 days of service of the motion, and Section 22.7(c), 40 C.F.R. § 22.7(c), provides for an additional five days to be added to that 15-day period when the motion is served by mail.

² Respondent served its Opening Prehearing Exchange on the undersigned by mail, but delivery of the document was delayed because Respondent sent it to the address used by non-United States Postal Service couriers, rather than the mailing address of the office of the undersigned. The parties are reminded that any documents required or allowed to be sent to the undersigned shall be addressed as follows:

If sending by United States Postal Service (USPS):
EPA Office of Administrative Law Judges
1200 Pennsylvania Avenue, NW
Mail Code 1900L
Washington, DC 20460-2001

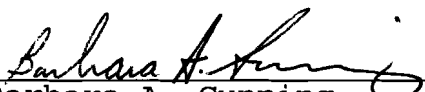
If sending by a non-USPS courier, such as UPS or Federal Express:
EPA Office of Administrative Law Judges
1099 14th Street, NW
Suite 350, Franklin Court
Washington, DC 20005

The file before me reflects that the parties have expressed a willingness to engage in settlement negotiations but that a settlement has not yet been reached. United States Environmental Protection Agency 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 **August 17, 2011**, the parties shall file a joint set of stipulated facts. 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 facts that 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 Wednesday, September 7, 2011, in San Juan, Puerto Rico, continuing if necessary through September 9, 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 of 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 five 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: April 14, 2011
Washington, D.C.

**In the Matter of *Municipality of Añasco*, Respondent.
Docket No. CWA-02-2010-3454**

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **Order Scheduling Hearing**, dated April 14, 2011, issued by Barbara Gunning, Administrative Law Judge, were sent this day in the following manner to the addressees listed below.



Mary Angeles
Legal Staff Assistant

Original and One Copy by Pouch Mail to:

Karen Maples
Regional Hearing Clerk
US EPA, Region II
290 Broadway, 16th Floor
New York, NY 10007-1866

One Copy by Pouch Mail to:

Hector L. Velez Cruz, Esq.
Assistant Regional Counsel
U.S. EPA, Region II
Caribbean Field Division
Centro Europa Building
1492 Ponce de Leon Ave., Ste. 417
San Juan, PR 00907-1417

One Copy by Regular Mail to:

Juan M. Casellas Rodriguez, Esq.
Nolla Palou & Casellas, LLC
Westernbank World Plaza
268 Muñoz Rivera Ave., Suite 2003
San Juan, PR 00919-5287

**Dated: April 14, 2011
Washington, D.C.**