

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
2014 OCT 29 PM 2:23
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:)
)
Harper Valley Homeowners' Association, Inc.,) Docket No. CWA-06-2014-1879
A New Mexico corporation)
)
)
Respondent.) ORDER
)
)

This action, initiated by the Director of the Compliance Assurance and Enforcement Division, Region 6 (hereinafter, "Complainant"), United States Environmental Protection Agency, Region 6 ("EPA"), seeks to assess an administrative penalty under Section 309(g) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g). This action is governed by procedures set forth in the revised Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination and Suspension of Permits found at 40 Code of Federal Regulations ("CFR") part 22, including the Supplemental Rules for Administrative Proceedings not Governed by the Administrative Procedures Act (collectively, "Rules of Practice"). See 40 CFR Part 22, Subpart I, published at 64 Fed. Reg. 40138 (July 23, 1999). By delegation of the Regional Administrator dated July 31, 2014, the undersigned is serving as a Regional Judicial Officer for Region 6 and the Presiding Officer for this matter in accordance with 40 CFR §§ 22.4(b) and 22.51.

Complainant filed the Administrative Complaint ("Complaint") in this matter on August 26, 2014. On October 2, 2014, Respondent filed its Answer. Respondent's Answer did not (1) specifically request a hearing (although Respondent did express a desire to pursue settlement negotiations) or (2) specifically deny or admit the allegations set forth in the Complaint. However, Respondent did object to the assessment of an administrative penalty.

Settlement. EPA policy strongly supports settlement, and the procedures regarding settlements are set forth in 40 CFR § 22.18 of the Rules of Practice. 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 these considerations in mind, the parties are directed to engage in a settlement conference on or before **December 15, 2014**, and to attempt to reach an amicable resolution of this matter. Without mentioning any specific terms of settlement, Complainant shall file a Status Report regarding this conference and the status of settlement, on or before **December 22, 2014**. If the case is settled, a fully-executed Consent Agreement and Final Order ("CAFO") shall be filed with the Regional Hearing Clerk no later than **January 29, 2015**.

Should a CAFO not be finalized on or before the latter date, the parties must either (a) file a motion for an extension of time if the parties believe settlement of this matter is likely or (b) prepare for hearing, and shall strictly comply with the following prehearing requirements of this Order.

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 following prehearing exchange requirements. Unless a motion for an extension of time is filed and granted prior to the prehearing exchange deadline set forth herein, only the filing with the Regional Hearing Clerk of a fully-executed CAFO, or an order of the Presiding Officer, excuses noncompliance with filing deadlines.

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, and serve on the opposing party:

(A) a list of names of the expert(s) 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 “Respondent’s” 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 brief narrative statement, and a copy of any documents in support, explaining in detail the factual and/or legal basis for the allegations denied or otherwise not admitted in Respondent’s Answer;

(B) a copy of National Pollutant Discharge Elimination System Permit Number NM0029025 (“Permit”) referenced in paragraph 7 of the Complaint;

(C) all factual information Complainant considers relevant to the assessment of a penalty, a narrative explanation of how the proposed penalty was calculated in

accordance with the applicable criteria set forth in the CWA, any supporting documentation, and a copy or statement of the internet address (URL) of any EPA policy or guidance intended to be relied upon in calculating a proposed penalty;

(D) information regarding any alleged economic benefit, including delayed or avoided costs, in accordance with 40 C.F.R. § 22.52; and

(E) proof of public notice of the Complaint and proposed penalty as required by Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A) and 40 C.F.R. § 22.45(b), along with any comments filed by the public.

3. In addition, Respondent shall submit the following as part of its Prehearing Exchange:

(A) all factual information Respondents consider relevant to the assessment of a penalty, and any supporting documentation;

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

(C) a brief narrative statement, and a copy of any documents in support, explaining in detail the factual and/or legal basis for the allegations denied or otherwise not admitted in Respondent's Answer; and

(D) a copy of any and all filed discharge monitoring reports required by the Permit.

The prehearing exchanges called for above shall be filed pursuant to the following schedule:

January 29, 2015 Complainant's Initial Prehearing Exchange

February 12, 2015 Respondents' 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.

Opportunity for a Hearing. The Complaint in this matter gave Respondent an opportunity for a hearing in accordance with Part 22, Subpart I, of the Rules of Practice. Respondent has not specifically elected to avail itself of that option in its Answer, stating however, that it seeks to resolve this matter through an informal settlement conference. I will interpret the aforementioned request, coupled with the fact that Respondent contests the assessment of an administrative penalty, as choosing to continue this matter by way of a hearing if settlement cannot be achieved. If such a hearing does occur, the parties are entitled to present their case or defense by oral or documentary evidence, to submit direct or rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

Respondents are hereby notified that their failure to comply with the prehearing exchange requirements set forth herein may 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.

Filing and Service. Consistent with 40 CFR § 22.5, the original and one copy of all documents intended to be part of the record in this proceeding shall be filed with the Regional Hearing Clerk by U.S. mail, personal delivery, courier or commercial delivery service. Regardless of submission method, all documents submitted for filing must be signed, accompanied by a certificate of service, and served on the undersigned and on each party.

Documents filed by mail via the United States Postal Service (“USPS”) should be addressed to:

Lorena Vaughn (6RC-D)
Regional Hearing Clerk
U.S. EPA, Region 6
1445 Ross Ave., Ste. 1200
Dallas, Texas 75202-2733

A document submitted by U.S. mail, personal delivery, courier, or commercial delivery service is considered “filed” when the Regional Hearing Clerk receives it. A copy of each document filed in this proceeding shall also be served on each party, per 40 CFR § 22.5(b). Documents may be served by first-class (including certified) or priority mail, personal delivery or reliable commercial delivery service. A document is considered “served” upon mailing, when placed in the custody of a reliable commercial delivery service as stated in 40 CFR § 22.7(c).

Contact Information. For questions or to inquire whether documents have been received, contact Regional Hearing Clerk, Lorena Vaughn at (214)665-2139 or vaughn.lorena@epa.gov.

Motions. Prior to filing any motion, the moving party must contact the other party or parties to determine whether the other party or parties have 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 or parties 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 document is served by mail. Unopposed motions shall be filed no less than 3 days prior to the date for which an extension is being sought. Motions not filed in a timely manner may not be considered.

Pursuant to 40 CFR § 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 videoconferencing technology that may be utilized for oral arguments on motions, and which may 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.

SO ORDERED, this 29th day of October, 2014



THOMAS RUCKI
REGIONAL JUDICIAL OFFICER

CERTIFICATE OF SERVICE

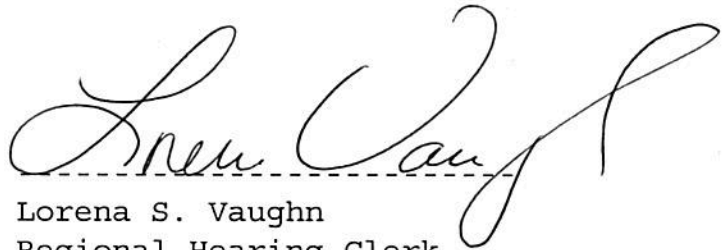
I, Lorena S. Vaughn, the Regional Hearing Clerk, do hereby certify that a true and correct copy of the Order for Class I - CWA 06-2014-1879 was provided to the following on the date and in the manner stated below:

Larry Hathaway
Harper Valley Homeowners'
Association, Inc.
90 Road 6050 NBU #1001
Farmington, NM 87401

CERTIFIED MAIL

Tucker Henson
Environmental Protection Agency
1445 Ross Avenue
Dallas, Texas 75202

INTEROFFICE MAIL



Lorena S. Vaughn
Regional Hearing Clerk

10/29/14

Date