

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR



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PROTECTION AGENCY

IN THE MATTER OF)
)
RONALD R. UNDERWOOD^{1/}) DOCKET NO. TSCA-05-2011-0016^{2/}
)
)
RESPONDENT)

PREHEARING ORDER

As you were previously notified, I have been designated by the October 25, 2011 Order of the Chief Administrative Law Judge to preside in the above-captioned matter. This proceeding arises under the authority of Section 16(a) of the Toxic Substances Control Act ("TSCA"), as amended, 15 U.S.C. § 2615(a), and 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-.32. The parties are advised to familiarize themselves with both the applicable statute(s) and the Rules of Practice.

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 record reflects that both parties declined to participate in the Alternative Dispute Resolution ("ADR") process offered by this office. The parties are directed to hold a settlement conference

^{1/} The United States Environmental Protection Agency ("EPA" or "Agency"), Region 5 ("Complainant"), initiated this proceeding on September 8, 2011, by filing a Complaint against the Ronald R. Underwood Trust, an entity doing business in the State of Ohio. Complaint ¶ 3. The caption of the Complaint, however, identifies Mr. Ronald R. Underwood as the Respondent. Complainant is hereby advised to clarify who the named respondent is in this matter and to file a motion to amend the Complaint as necessary.

^{2/} The Order of Designation issued on October 25, 2011, mistakenly identifies the Docket Number of this case as TSCA-05-2010-0016. As set forth herein, the correct Docket Number is TSCA-05-2011-0016.

on or before **November 18, 2011**, to attempt to reach an amicable resolution of this matter. See Section 22.4(c)(8) of the Rules of Practice, 40 C.F.R. § 22.4(c)(8). Complainant shall file a status report regarding such conference and the status of settlement on or before **December 2, 2011**.

In the event that the parties fail to reach a settlement, they shall strictly comply with the requirements of this Prehearing Order and prepare for a hearing. The parties are encouraged to resume or continue to engage in settlement discussions during and after preparation of the prehearing exchange described below. However, the parties are advised that extensions of filing deadlines will not be granted absent a showing of good cause. See Section 22.7(b) of the Rules of Practice, 40 C.F.R. § 22.7(b). The pursuit of settlement negotiations or an averment that a settlement in principle has been reached will not constitute good cause for failing to comply with the prehearing requirements or to meet the schedule set forth in this Order.

The following requirements concerning the prehearing exchange of information are authorized by Section 22.19(a) of the Rules of Practice, 40 C.F.R. § 22.19(a). As such, the parties are directed to engage in the following prehearing exchange:

1. Each party shall submit:
 - (a) the names of any expert or other witnesses it intends to call at the hearing, together with a brief narrative summary of each witness's expected testimony, or a statement that no witnesses will be called; and
 - (b) copies of all documents and exhibits that each party intends to introduce into evidence at the hearing. The exhibits shall include a curriculum vitae or resume for each proposed expert witness. If photographs are submitted, the photographs shall be actual unretouched photographs. The documents and exhibits shall be identified as "Complainant's" or "Respondent's" exhibits, as appropriate, and numbered with Arabic numerals (e.g., "Complainant's Exhibit 1"); and
 - (c) a statement expressing its view as to the place for the hearing and the estimated amount of time needed to present its direct case.

See Sections 22.19(a), (b), and (d) of the Rules of Practice, 40 C.F.R. §§ 22.19(a), (b), and (d); see also Section 22.21(d) of the Rules of Practice, 40 C.F.R. § 22.21(d).

2. Complainant shall submit a statement explaining in detail how the proposed penalty was determined, including a description of how the specific provisions of any Agency penalty or enforcement policies and/or guidelines were applied in calculating the penalty.
3. Respondent shall submit a statement explaining why the proposed penalty should be reduced or eliminated. If Respondent intends to take the position that it is unable to pay the proposed penalty or that payment will have an adverse effect on its ability to continue to do business, Respondent shall furnish supporting documentation such as certified copies of financial statements or tax returns.
4. Complainant shall submit a statement regarding whether the Paperwork Reduction Act of 1980 ("PRA"), 44 U.S.C. §§ 3501 *et seq.*, applies to this proceeding; whether there is a current Office of Management and Budget control number involved herein; and whether the provisions of Section 3512 of the PRA are applicable in this case.

See Section 22.19(a)(3) of the Rules of Practice, 40 C.F.R. § 22.19(a)(3).

The prehearing exchange delineated above shall be filed in *seriatim* manner, according to the following schedule:

- | | |
|--------------------------|---|
| December 30, 2011 | - Complainant's Initial Prehearing Exchange |
| January 27, 2012 | - Respondent's Prehearing Exchange, including any direct and/or rebuttal evidence |
| February 10, 2012 | - Complainant's Rebuttal Prehearing Exchange (if necessary) |

In its Answer, Respondent exercised its right under Section 554 of the Administrative Procedure Act ("APA"), 5 U.S.C. § 554, to request a hearing in this matter. If the parties cannot settle with a Consent Agreement and Final Order, a hearing will be held in accordance with Section 556 of the APA, 5 U.S.C. § 556. Section 556(d) of the APA 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, Respondent has the right to defend itself against Complainant's charges by way of direct evidence, rebuttal evidence, or through cross-examination of Complainant's

witnesses. Respondent is entitled to elect any or all three means to pursue its defense.

If Respondent elects only to conduct cross-examination of Complainant's witnesses and to forgo the presentation of direct and/or rebuttal evidence, Respondent shall serve a statement to that effect on or before the date for filing its prehearing exchange. Each party is hereby reminded that failure to comply with the prehearing exchange requirements set forth herein, including Respondent's statement electing only to conduct cross-examination of Complainant's witnesses, can result in the entry of a default judgment against the defaulting party. See Section 22.17 of the Rules of Practice, 40 C.F.R. § 22.17.

The original and one copy of all pleadings, statements, and documents (with any attachments) required or permitted to be filed by this Order (including a ratified Consent Agreement and Final Order) shall be filed with the Regional Hearing Clerk, and copies (with any attachments) shall be served upon the undersigned and all other parties. The parties are advised that e-mail correspondence with the Administrative Law Judge is not authorized. See Section 22.5(a) of the Rules of Practice, 40 C.F.R. § 22.5(a).

The prehearing exchange information required by this Order to be served upon the undersigned, as well as any other further pleadings, shall be addressed as follows:

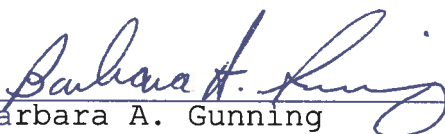
If sending by United States Postal Service (USPS):

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

Telephone contact may be made with my legal staff assistant, Mary Angeles, at (202) 564-6281. The facsimile number is (202) 565-0044.


Barbara A. Gunning
Administrative Law Judge

Dated: October 27, 2011
Washington, D.C.

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**In the Matter of *Ronald R. Underwood*, Respondent.
Docket No. TSCA-05-2011-0016**

CERTIFICATE OF SERVICE

I hereby certify that true copies of this **Prehearing Order**, issued by Barbara A. Gunning, Administrative Law Judge, in Docket No. TSCA-05-2011-0016, dated October 27, 2011, were sent to the following parties on this 2nd day of November 2011, in the manner indicated:



Mary Angeles
Legal Staff Assistant

Original and One Copy by Pouch Mail to:

LaDawn Whitehead
Regional Hearing Clerk
U.S. EPA, Region V, MC-E-19J
77 West Jackson Blvd.
Chicago, IL 60604-3590

Copy by Pouch Mail to:

Steven P. Kaiser, Esq.
Office of Regional Counsel
U.S. EPA / Region V, MC-14J
77 West Jackson Blvd.
Chicago, IL 60604-3590

Copy by Regular Mail to:

Joseph A. Gregg, Esq.
Eastman & Smith Ltd.
One SeaGate, 24th Floor
P.O. Box 10032
Toledo, OH 43699-0032

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**Dated: November 2, 2011
Washington, DC**