



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

FILED

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BEFORE THE ADMINISTRATOR

REGIONAL HEARING CLERK EPA REGION VI

IN THE MATTER OF:

JOHN WILLIAM HANNAH
d/b/a CRM Energy Partners,

RESPONDENT.

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DOCKET NO. CWA-06-2007-1923

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 Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. §22.1 et seq., ("Rules of Practice"). The parties are advised to familiarize themselves with the applicable statute(s) and the Rules of Practice.

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 evidences that the parties previously participated in this Tribunal's Alternative Dispute Resolution Process and are commended for taking the initiative to attempt to resolve this matter informally and expeditiously. Although such efforts have to date been unsuccessful, 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 also 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 another settlement conference on or before **November 14, 2008**, and attempt to reach an amicable resolution of this matter. The Complainant shall file a status report regarding settlement on or before **November 21 2008**. If the case is settled, the Consent Agreement and Final Order signed by the parties should be filed no later than **December 19, 2008**, 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.

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

1. Pursuant to Section 22.19(a) of the Rules, each party shall file with the Regional Hearing Clerk and shall serve on the opposing party and on the Presiding Judge:

(A) the names of the expert and other witnesses intended to be called at hearing, with a brief narrative summary of their expected testimony, or a statement that no witnesses will be called;

(B) copies of all documents and exhibits intended to be introduced into evidence. Included among the documents produced shall be a curriculum vita or resume for each identified expert witness. The documents and exhibits shall be identified as "Complainant's" or "Respondent's" exhibit, as appropriate, and numbered with Arabic numerals (e.g., Complainant's Ex. 1); and

(C) a statement as to its views as to the appropriate place of hearing and estimate the time needed to present its direct case. See Sections 22.21(d) and 22.19(d) of the Rules.

2. In addition, the Complainant shall submit the following as part of its Initial Prehearing Exchange:

(A) a copy of the reports, if any, and any and all documents, photographs, maps, test results and/or measurements taken, and any other papers relating thereto, of the inspections referred to in Paragraphs 6-12 of the Complaint;

(B) a copy of the notices referred to in Paragraphs 15 and 16 of the Complaint;

(C) a detailed narrative statement that fully elaborates on the exact factual and legal basis and a copy of any and all documents in support of the allegations made in Paragraph 3 of the Complaint that each of the seven (7) "oil field facilities" identified in Paragraph 2 thereof would constitute a "point source" for the discharge of pollutants within the meaning of Section 502(14) the Clean Water Act, 33 U.S.C. § 1362(14), including a description of exactly what each of the identified facilities consists of, *i.e.* what is the "Hannah Energy Tank Battery;"

(D) a detailed narrative statement that fully elaborates on the exact factual and legal basis and a copy of any and all documents in support of the allegations made in Paragraph 3 of the Complaint that the water bodies identified therein are "waters of the United States," within the meaning of Section 502(7) the Clean Water Act, 33 U.S.C. § 1362(7);

(E) a detailed descriptive statement as to path which the pollutants allegedly discharged from each of the seven facilities identified in the Complaint followed in order to reach the "waters of the United States" as identified by Complainant, including the length of each such path, the amount of pollutants discharged from each facility into the "waters of the United States," and the date(s) such discharges occurred;

(F) a detailed descriptive statement of what exactly is "oil field brine," and a statement explaining the basis for the allegation that the same is a "pollutant," within the meaning of Section 502(6) the Clean Water Act, 33 U.S.C. § 1362(6);

(G) a detailed descriptive statement of what exactly is "salt staining," how such allegedly constitutes evidence of the discharge of "oil field brine," as alleged in Paragraph 7 of the Complaint, and whether such staining can be accurately dated;

(H) a detailed narrative response to the explanatory statements and allegations contained in Paragraphs 6-13 of Respondent's Answer including Respondent's claim that any recent spill from North Stuart Tank Battery never reached Bull Creek, that any recent spill from the South Stuart Tank Battery never reached Lost Creek, that the salt-staining observed by the inspector has existed for a significant period of time and is not reflective of any recent spills, that no oil or salt water was siphoned "down the hill and into the creek," that brine did not seep from the pits of the Hannah Energy Tank Battery; and that Respondent conducts inspections and/or timely responds to any leaks discovered;

(I) a copy of all documents used in the calculation of the penalty in this case, and a separate Penalty Calculation Worksheet detailing exactly how the proposed penalty was calculated; and

(J) a statement regarding whether the Paper Work 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.

3. The Respondent shall also submit the following as part of his Prehearing Exchange:

(A) For each of the seven facilities identified in the table contained in Paragraph 2 of the Complaint, provide the following:

1. a complete detailed narrative description of the facility, including its location, age, size, purpose, and design; the amount and composition of dischargable substances contained within, the parts thereof and/or any surrounding secondary containment units intended to provide notice of, prevent, or contain unintended discharges, spills, leaks, seepage, releases,

etc., and the nature and date of any repairs, improvements or alterations made thereto by Respondent in regard to discharges;

2. a narrative statement describing the full extent of Respondent's monitoring and/or inspection of the facility for discharges, spills, leaks, seepage, releases, *etc.*, for the period beginning six months prior to and continuing through the date of EPA's inspection of said facility; the results thereof, and provide copies of any and all documentary evidence reflecting such monitoring and/or inspections;

3. a list of all unintended discharges, spills, leaks, seepage, releases, *etc.*, from the facility occurring during the period beginning six months prior to and continuing through the date of EPA's inspection of said facility, identifying the date(s) thereof, the cause thereof, the substance involved, and the extent thereof including the amount of the substance released and extent of release beyond the facility, and any responsive actions taken by Respondent;

4. a detailed narrative statement as to Respondent's knowledge as to the facility's history of unintended discharges, spills, leaks, seepage, releases, *etc.*, including exactly what Respondent was told in regard thereto by those from whom he purchased or leased the facility, when he was told such information, and including therein any and all information in regard to any actions taken by any local, state or federal authorities in regard unintended discharges, spills, leaks, seepage releases, *etc.* at the facility;

5. if Respondent is denying that the stains and flow path from the facility to the point of entry into the relevant creek observed by the inspector as alleged in the Complaint and/or amount of total soluble salts found at the creek entry point reflect a recent discharge of oil field brine from the facility into the creek, provide a detailed narrative statement of the factual and legal basis for Respondent's denial and a copy of any and all documents, photographs, or other evidence in support thereof;

(B) if Respondent takes the position that it is unable to pay the proposed penalty, a narrative statement explaining the factual and legal basis for its position and a copy of any and all documents it intends to rely upon in support of such position; and

(C) if Respondent takes the position that the proposed penalty should be reduced or eliminated on any other grounds, a narrative statement explaining the factual and legal basis for its position and a copy of any and all documents it intends to rely upon in support of such position.

4. Complainant shall submit as part of its Rebuttal Prehearing Exchange a statement and/or any documents in response to Respondent's Prehearing Exchange submittals 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:

- December 19, 2008** - Complainant's Initial Prehearing Exchange
- January 9, 2009** - Respondent's Prehearing Exchange, including any direct and/or rebuttal evidence
- January 30, 2009** - 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. Any supplements to prehearing exchanges shall be filed with an accompanying motion to supplement the prehearing exchange.

The Complaint herein gave the Respondent notice and opportunity for a hearing, in accordance with Section 554 of the Administrative Procedure Act (APA), 5 U.S.C. § 554. In its Answer to the Complaint, the Respondent requested such 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, the Respondent has the right to defend itself against the Complainant's charges by way of direct evidence, rebuttal evidence or through cross-examination of the Complainant's witnesses. Respondent is entitled to elect any or all three means to pursue its defenses. If the Respondent intends to elect only to conduct cross-examination of Complainant's witnesses and to forgo the presentation of direct and/or rebuttal evidence, the Respondent shall serve a statement to that effect on or before the date for filing its prehearing exchange. The Respondent is hereby notified that its failure to either comply with the prehearing exchange requirements set forth herein or to state that it is electing only to conduct cross-examination of the Complainant's witnesses, can result in the entry of a default judgment against it. The 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 PENDING 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.**

Prehearing exchange information required by this Order to be sent to the Presiding Judge, as well as any other further pleadings, if sent by mail, shall be addressed as follows:

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

Hand-delivered packages transported by Federal Express or another delivery service which x-rays their packages as part of their routine security procedures, may be delivered directly to the Offices of the Administrative Law Judges at 1099 14th Street, N.W., Suite 350, Washington, D.C. 20005.

Telephone contact may be made with my legal assistant, Maria Whiting-Beale at (202) 564-6259 or my staff attorney, Lisa Knight, Esquire at (202) 564-6291. The facsimile number is (202) 565-0044.

If any party wishes to receive, by e-mail or by facsimile, an *expedited courtesy copy* of decisions and substantive orders issued in this proceeding, the party shall submit a request for expedited courtesy copies by letter addressed to Maria Whiting-Beale, Legal Staff Assistant, Office of Administrative Law Judges, U.S. Environmental Protection Agency, Mail Code 1900L, 1200 Pennsylvania Ave. N.W., Washington, D.C. 20460. The letter shall include the case docket number, the e-mail address or facsimile number to which the copies are to be sent, and a statement as to whether the party requests: (A) expedited courtesy copies of the initial decision and/or any orders on motion for accelerated decision or dismissal, or (B) expedited courtesy copies of 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.

Prior to filing any motion, the moving party is directed to 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. The motion shall then 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 and no reliance should be placed on the granting of an unopposed motion. Furthermore, all motions which do not state that the other party has no objection to the relief sought must be submitted in sufficient time to permit the filing of a response by that party and 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, 40 C.F.R. §§22.16(b) and 22.7(c), allow a fifteen-day response period for motions with an additional five days added thereto if the pleading is served by mail. Motions and responses not filed in a timely manner will not be considered without motion for leave to file the document and a showing of good cause.

Furthermore, upon the filing of a motion, a response to a motion, or a reply to a motion, a party may submit a written request for an **oral argument** on the motion, pursuant to 40 C.F.R. § 22.16(d). Included in the request for oral argument shall be a statement as to the proposed appropriate location(s) for the argument to take place. The Office of Administrative Law Judges recently acquired access to state of the art videoconferencing capabilities, 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.

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.**



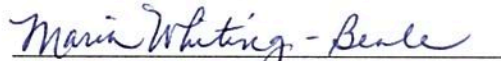
Susan L. Biro
Chief Administrative Law Judge

Dated: October 14, 2008
Washington, D.C.

In the Matter of John William Hannah d/b/a CRM Energy Partners Respondent
Docket No. CWA-06-2007-1923

CERTIFICATE OF SERVICE

I certify that the foregoing **Prehearing Order**, dated October 14, 2008, was sent this day in the following manner to the addressees listed below:



Maria Whiting-Beale
Staff Assistant

Dated: October 14, 2008

Original And One Copy By Pouch Mail To:

Lorena Vaughn
Regional Hearing Clerk
U.S. EPA
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Copy By Pouch Mail To:

Yerusha Beaver, Esquire
Assistant Regional Counsel
U.S. EPA
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Copy By Regular Mail To:

John W. Hannah
d/b/a CRM Energy Partners
16540 Ranchland Road
Skiatook, OK 74070