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REGION 10

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IN THE MATTER OF:)	
)	Proceedings under Section 309(g)
BLACK DIAMOND ENGINEERING)	Clean Water Act
Sandpoint, Idaho)	33 U.S.C. §1319(g)
)	
Respondent)	DOCKET NO: CWA-10-2007-0147
)	

PREHEARING EXCHANGE ORDER

This action, initiated by the Director of the Office of Compliance and Enforcement, United States Environmental Protection Agency Region 10 ("EPA"), (hereinafter, the "Complainant"), seeks to assess an administrative penalty under section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g). Penalty actions brought pursuant to section 309(g) of the CWA are governed by procedures set forth in the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties* (Consolidated Rules). See 40 C.F.R. Part 22, Subpart I, published at 64 Fed. Reg. 40138 (July 23, 1999).

In order to process, hear and conclude this matter in an orderly fashion, a **prehearing exchange** in accordance with 40 C.F.R. § 22.19(a), is hereby ordered to be submitted by both parties on or before **Dec. 17, 2007**. This exchange should include, at a minimum, a list of witnesses with a brief narrative summary of their expected testimony, and copies of all documents, exhibits and/or prepared testimony each party intends to offer as evidence for demonstrative purposes at the hearing. Parties should detail any stipulations of factual and/or legal issues, use and authenticity of documents, as well as expert status of witnesses in order to reduce the number of contested issues. The exchange should also discuss recommendations for a time and location for the hearing and any additional items which may expedite the disposition of this proceeding.


The original and one copy of each pleading or document intended to be part of the record shall be filed with the Regional Hearing Clerk. See section 22.05(a) of the Consolidated Rules. A copy of each pleading or document filed in the proceeding shall be served on the Presiding Officer and on each party, § 22.05(b) of the Consolidated Rules. The submittal should be mailed to Carol Kennedy, Regional Hearing Clerk for EPA Reg. 10, whose telephone number is 206-553-0242, Fax No. is 206-553-0163, e-mail address is kennedy.carol@epa.gov, and address is:

Regional Hearing Clerk
EPA Region 10 (ORC-158)
Suite 900
1200 Sixth Ave. NW
Seattle, Washington 98101

In order to discuss any pre-hearing exchange issues and further proceedings in this matter, a **telephone conference call** is hereby ordered on **January 8, 2008 at 9 am**. Ms. Kennedy will contact the parties to provide call-in information. At the beginning of the telephone conference, each party shall advise me of those on their side participating in the conference call. The parties shall have their calendars available for the telephone conference to schedule further proceedings in this matter. During the conference call, that parties may request the opportunity to file responses to the opposing party's prehearing exchange prior to a hearing.

In the interim, the parties shall explore settlement of this matter. Agency policy encourages settlement. See Section 22.18(b) of the Consolidated Rules, 40 C.F.R. 22.18(b). The benefits of a negotiated settlement often outweigh the uncertainty, time and expense associated with a litigated proceeding. Should a settlement be reached prior to the date scheduled for the telephone conference, counsel for the Complainant and the Respondent are directed to file a joint status report reflecting that there is agreement and indicating a time frame for the filing of a consent agreement in accordance with 40 C.F.R. §§ 22.5 and 22.18(b).

SO ORDERED this 16th Day of October 2007.


Richard G. McAllister
Regional Judicial Officer


CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **PREHEARING EXCHANGE ORDER** in the matter of **BLACK DIAMOND ENGINEERING, DOCKET NO: CWA-10-2007-0147** was filed with the Regional Hearing Clerk on Oct. 16, 2007.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Courtney Hamamoto, Assistant Regional Counsel, U.S. EPA - Region 10, 1200 Sixth Avenue, Seattle, Washington 98101. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt on Oct. 16, 2007, to:

Joel W. Petty, P.E.
Black Diamond Engineering
1555 W. Ontario St.
Sand Point, Idaho 83864

Oct. 16, 2007



Carol Kennedy
Regional Hearing Clerk