



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

U.S. ENVIRONMENTAL PROTECTION AGENCY-REG.11
2011 DEC -7 P 4: 09
REGIONAL HEARING CLERK

IN THE MATTER OF )
)
USVI DEPARTMENT OF HEALTH - )
DIVISION OF ENVIRONMENTAL ) DOCKET NO. RCRA-02-2010-7111
HEALTH - ST. THOMAS & )
ST. CROIX )
)
RESPONDENT )

ORDER RESCHEDULING HEARING AND SETTING PREHEARING DEADLINES

This proceeding arises under the authority of Section 3008 of the Solid Waste Disposal Act, as amended by various laws including the Resource Conservation and Recovery Act of 1976 and the Hazardous and Solid Waste Amendments of 1984 (collectively referred to as "RCRA"), 42 U.S.C. § 6928. 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.

The Prehearing Order in this case was issued on January 19, 2011. On July 6, 2011, this matter was scheduled for hearing in St. Thomas, United States Virgin Islands, beginning December 13, 2011. In the Order Scheduling Hearing, the parties were instructed to file joint stipulations on or before November 18, 2011. On October 12, 2011, the undersigned received a Status Report from Complainant stating that the parties had reached an agreement on September 8, 2011, and indicating that a Consent Agreement and Final Order ("CAFO") was forthcoming.

In response to a subsequent request by the undersigned, on November 14, 2011, Complainant submitted a second Status Report in which it stated that Complainant was drafting a CAFO memorializing the terms of the September 8, 2011 settlement and that the CAFO would be sent to Respondent that week. Complainant further stated it expected to have a fully executed CAFO by the end of November. The parties did not file any joint stipulations by the November 18, 2011 deadline. No CAFO was filed by the end of November.

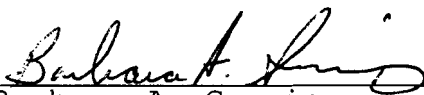
On December 1, 2011, the undersigned's legal staff assistant requested a written update from Complainant on the status of the pending CAFO in this matter. By email response, Counsel for

Complainant stated that she had "not been able to send the CA/FO for Respondent's signature since [she] had unexpected pressing matters to attend." Counsel stated further that the completion of the CAFO "is part of our administrative commitments for December." This statement by Counsel for Complainant indicates that no preparations have been made for the scheduled hearing.<sup>1/</sup> Moreover, the Regional Hearing Clerk has not notified the parties or the undersigned where the hearing is to be held. Therefore, the hearing must be postponed until proper arrangements have been made in accordance with the original Order Scheduling Hearing.

The parties are hereby **ORDERED** to submit a Consent Agreement and Final Order to be received no later than December 30, 2011. If no CAFO is submitted by that date, the parties are directed to file their joint stipulations of facts, testimony, and exhibits no later than January 10, 2012. Failure to comply timely may result in the dismissal of the case with prejudice.

The Hearing in this matter will now be held beginning at 9:30 a.m. on Tuesday, January 24, 2012, in St. Thomas, United States Virgin Islands, and continue if necessary through January 27, 2012. The Regional Hearing Clerk will make appropriate arrangements for a courtroom and retain a stenographic reporter. The Regional Hearing Clerk will notify the parties of the exact location and of other procedures pertinent to the hearing when those arrangements are complete, but no later than January 10, 2012. 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: December 2, 2011  
 Washington, DC

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<sup>1/</sup> Additionally, Counsel for Respondent contacted the office of the undersigned on December 2, 2011, indicating that Counsel for Complainant has not communicated the status of this case to Respondent. Counsel for Respondent explained, "I haven't been receiving information with what's going on from Puerto Rico . . . . I'm trying to figure what they've filed with you, if they've filed that we've settled, and what's going on."

**In the Matter of USVI Department of Health - Division of Environmental Health - St. Thomas  
& St. Croix, Respondent.  
Docket No. RCRA-02-2010-7111**

CERTIFICATE OF SERVICE

I hereby certify that copies of this **Order Scheduling Hearing and Setting Prehearing Deadlines**, dated December 2, 2011, issued by Barbara A. Gunning, Administrative Law Judge, in Docket No. RCRA-02-2010-7111, were sent to the following parties on this 2nd of December 2011, in the manner indicated:



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Mary Angeles  
Legal Staff Assistant

Original and One Copy by Facsimile and Pouch Mail to:

Karen Maples  
Regional Hearing Clerk  
US EPA, Region II  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007-1866  
Fx: 212.637.3115

Copy by Facsimile and Pouch Mail to:

Carolina Jordan-Garcia, Esq.  
Office of 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  
Fx: 787.729.7748

Copy by Facsimile and Regular Mail to:

Pamela R. Tepper  
Assistant Attorney General  
VI Department of Justice  
48B-50C Kronprindsens Gade  
GERS Building, 2<sup>nd</sup> Floor  
St. Thomas, VI 00802  
Fx: 340.774.9710

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