

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 10

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EPA--REGION 10

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

PREHEARING ORDER AND NOTICE OF HEARING

This action, initiated by the Director of the Office of Compliance and Enforcement, United States Environmental Protection Agency Region 10 ("EPA" or "Complainant"), seeks to assess an administrative penalty under section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g). This penalty action brought pursuant to section 309(g) of the CWA is governed by procedures set forth in Subpart I of 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).

The Parties participated in a conference call on February 5, 2008, in which the Parties discussed further proceedings, and the following schedule is hereby ordered:

1. By close of business on Friday, February 15, 2008, EPA shall provide any response it has to the Pre-hearing exchange submitted by Respondent.
2. By close of business on Tuesday, March 4, 2008, Respondent shall provide any reply it has to the EPA response.
3. By close of business on Tuesday, March 5, 2008, the Parties shall submit any motions to be considered prior to the Hearing that conform to the requirements of § 22.16(a) of the Consolidated Rules, which shall be served as provided by § 22.5(b)(2) of the Consolidated Rules.
4. By close of business on Tuesday, April 15, 2008, the Parties shall provide any response

to any written motion. The moving Party shall provide any reply to any written response within 10 days after service of such response, and such reply shall be limited to issues raised in the response, as provided by § 22.16(b) of the Consolidated Rules.

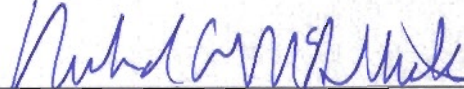
5. If the proceeding continues to present genuine issues of material fact, a hearing shall held on May 13, 2008, at the Bonner County Courthouse, Idaho, as provided by Subpart D of the Consolidated Rules. Prior to the date set for that hearing, I may issue decisions, additional orders, and notices to the Parties, as warranted by the intervening circumstances.

Submittals required by this order 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 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 12th Day of February 2008.


Richard G. McAllister
Regional Judicial Officer

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **PREHEARING ORDER AND NOTICE OF HEARING** in the matter of **BLACK DIAMOND ENGINEERING**, **DOCKET NO: CWA-10-2007-0147** was filed with the Regional Hearing Clerk on February 12, 2008.

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. A true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt on January 11, 2008, to:

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



Carol Kennedy
Regional Hearing Clerk

February 12, 2008