



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

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HEARINGS CLERK
EPA -- REGION 10

IN THE MATTER OF:)	
)	
MIKE VIERSTRA)	DOCKET NO. CWA-10-2010-0018
d/b/a VIERSTRA DAIRY,)	
)	
)	
)	
)	
RESPONDENT)	

ORDER SCHEDULING HEARING

As you previously have been notified, I have been designated by the May 13, 2010 Order of the Chief Administrative Law Judge to preside in the above captioned matter.⁴ This proceeding arises under the authority of Section 309(g)(2)(B) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g)(2)(B). The parties are reminded that

⁴ The Honorable William B. Moran was originally designated to preside in this case on January 12, 2010. Because of Judge Moran's subsequent departure from the Office of Administrative Law Judges, this case was reassigned to the undersigned Administrative Law Judge on May 13, 2010, as noted above.

⁴ The United States Environmental Protection Agency, Region 10, Office of Compliance and Enforcement ("Complainer"), initiated the proceeding on October 16, 2009, by filing a Complaint against Mike Vierstra, doing business as Vierstra Dairy ("Respondent"). The Complaint alleges violations of Section 301(a) of the CWA, 33 U.S.C. § 1311(a). For these alleged violations, Complainer seeks a class II civil administrative penalty of \$30,000 pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B). A hearing on the record in accordance with 5 U.S.C. § 554 shall be held in civil penalty cases brought under Section 309(g)(2)(B) of the CWA. Sections 309(g)(4)(A) and (B) of the CWA provide that, before issuing an order assessing a class II civil penalty, the
(continued...)

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 (the "Rules of Practice"), 40 C.F.R. §§ 22.1-22.32.

Pursuant to the Prehearing Order issued by Judge Moran on January 13, 2010, the parties have filed their initial prehearing exchanges in this case. Complainant states in its initial prehearing exchange that it reserves the right to supplement its initial prehearing exchange if necessary prior to the hearing. Pursuant to the Prehearing Order, the parties may file supplements to their initial prehearing exchanges, without motion, until 30 days before the hearing date. Such supplements must contain information that was unknown to the party at the time it filed its initial prehearing exchange.

In addition, Section 22.19(f) of the Rules of Practice, 40 C.F.R. § 22.19(f), requires parties to promptly supplement their initial prehearing exchanges when they learn that the information therein is incomplete, inaccurate, or outdated, and the additional information has not otherwise been disclosed to the opposing party. However, Sections 22.19(a) and 22.22(a) of the Rules of Practice, 40 C.F.R. §§ 22.19(a) and 22.22(a), provide that documents or exhibits that have not been exchanged and witnesses whose names or testimony summaries have not been exchanged at least 15 days before the hearing date shall not be admitted into evidence or allowed to testify unless good cause is shown for failing to exchange the required information. The parties are advised that the undersigned will not entertain last minute attempts to supplement prehearing exchanges absent extraordinary circumstances.

The parties are also advised that every motion filed in this proceeding must be served in sufficient time to permit the filing

^{2/} (...continued)

Administrator shall provide public notice of and reasonable opportunity to comment on the proposed issuance of such order and that any person who comments on a proposed assessment of a class II civil penalty shall be given at least 20 days notice of any hearing and of the order assessing such penalty. 40 C.F.R. §§ 1319(g)(4)(A) and (B). See also 40 C.F.R. § 22.45. The file before me contains documentary proof that Complainant published the public notice described above on May 18, 2010. The public notice period ends on June 17, 2010. Pursuant to Section 22.45(c)(1) of the Rules of Practice, 40 C.F.R. § 22.45(c)(1), the office of the undersigned will subsequently provide at least 20 days notice of the hearing scheduled herein to any individual who submits comments in accordance with the public notice and the Rules of Practice.

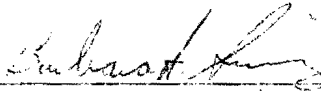
of a response by the non-moving party and to permit the issuance of an order on the motion before the deadlines set by this Order or any subsequent order. Section 22.16(b) of the Rules of Practice, 40 C.F.R. § 22.16(b), requires a party's response to a motion to be filed within 15 days of service of the motion, and Section 22.7(c), 40 C.F.R. § 22.7(c), provides for an additional five days to be added to that 15-day period when the motion is served by mail.

United States Environmental Protection 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 benefits of a negotiated settlement may far outweigh the uncertainty, time, and expense associated with a litigated proceeding. However, the pursuit of settlement negotiations or an averment that a settlement in principle has been reached will not constitute good cause for failure to comply with the requirements or schedule set forth in this Order.

As the parties have not reached a settlement in this matter, they shall strictly comply with the requirements of this Order and prepare for a hearing. In connection therewith, on or before **June 29, 2010**, the parties shall file a joint set of stipulated facts, exhibits, and testimony. See Section 22.19(b)(2) of the Rules of Practice, 40 C.F.R. § 22.19(b)(2). The time allotted for the hearing is limited. Therefore, the parties must make a good faith effort to stipulate, as much as possible, to matters which cannot reasonably be contested so that the hearing can be concise and focused solely on those matters which can only be resolved after a hearing.

The Hearing in this matter will be held beginning at 9:30 a.m. on Tuesday, July 13, 2010, in Twin Falls, Idaho, continuing if necessary through July 15, 2010. The Regional Hearing Clerk will make appropriate arrangements for a courtroom and retain a stenographic reporter. The parties will be notified of the exact location and of other procedures pertinent to the hearing when those arrangements are complete. 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.



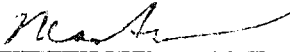
Barbara A. Gunning
Administrative Law Judge

Dated: May 20, 2010
Washington, DC

**In the Matter of Mike Vierstra, d/b/a Vierstra Dairy, Respondent.
Docket No. CWA-10-2010-0018**

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order Scheduling Hearing**, dated May 20, 2010, was sent this day in the following manner to the addressees listed below.



Mary Angeles
Legal Staff Assistant

Original and One Copy by Facsimile and Pouch Mail to:

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Dated: May 20, 2010
Washington, D.C.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF ADMINISTRATIVE LAW JUDGES
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FAX TRANSMITTAL PAGE

Date: Thurs., 5/20/10

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IMO Mike Vierstra, d/b/a Vierstra Dairy
Docket No. CWA-10-2010-0018

Urgent For Review For Your Information /Files

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Type of Document

Order	

REMARKS/COMMENTS: