

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY



BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
VALVO CONVENIENCE AND GAS, INC.,) DOCKET NO. RCRA-02-2011-7507
AND STEPHEN M. VALVO,)
INDIVIDUALLY,)
)
)
RESPONDENTS)

PREHEARING ORDER

As you were previously notified, I have been designated by the October 17, 2011 Order of the Chief Administrative Law Judge to preside in the above-captioned matter. This proceeding arises under the authority of Section 9006 of the Solid Waste Disposal Act, as amended, commonly referred to as the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 (collectively referred to as "RCRA"), 42 U.S.C. § 6991e. 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-.32. The parties are advised to familiarize themselves with both the applicable statute(s) and the Rules of Practice.

United States Environmental Protection Agency ("EPA") 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 record reflects that the parties participated in the Alternative Dispute Resolution process offered by this office for approximately two months but that the parties did not reach a settlement agreement to resolve this matter during that time. Accordingly, the parties shall strictly comply with the requirements of this Order and prepare for hearing.

The parties are encouraged to resume or continue to engage in settlement negotiations during and after preparation of the

prehearing exchange described below. However, the parties are advised that extensions of filing deadlines will not be granted absent a showing of good cause. See Section 22.7(b) of the Rules of Practice, 40 C.F.R. § 22.7(b). The pursuit of settlement negotiations or an averment that a settlement in principle has been reached will not constitute good cause for failing to comply with the prehearing requirements or to meet the schedule set forth in this Order.

The following requirements concerning the prehearing exchange of information are authorized by Section 22.19(a) of the Rules of Practice, 40 C.F.R. § 22.19(a). As such, the parties are directed to engage in the following prehearing exchange:

1. Each party^{1/} shall submit:
 - (a) the names of any expert or other witnesses it intends to call at the hearing, together with a brief narrative summary of each witness's expected testimony, or a statement that no witnesses will be called; and
 - (b) copies of all documents and exhibits that each party intends to introduce into evidence at the hearing. The exhibits shall include a curriculum vitae or resume for each proposed expert witness. If photographs are submitted, the photographs shall be actual unretouched photographs. The documents and exhibits shall be identified as "Complainant's" or "Respondents'" exhibits,^{2/} as appropriate, and numbered with Arabic numerals (e.g., "Complainant's Exhibit 1"); and
 - (c) a statement expressing its view as to the place for the hearing and the estimated amount of time needed to present its direct case.

^{1/} Respondents Valvo Convenience and Gas, Inc. ("Respondent Valvo C&G") and Stephen M. Valvo ("Respondent Valvo") filed a joint Answer and are represented by the same counsel. Respondents may choose to file a joint prehearing exchange, or each Respondent may file separately.

^{2/} If Respondents choose to file separate prehearing exchanges, the proposed exhibits should be identified as "Respondent Valvo C&G's" or "Respondent Valvo's" exhibits.

See Sections 22.19(a), (b), and (d) of the Rules of Practice, 40 C.F.R. §§ 22.19(a), (b), and (d); see also Section 22.21(d) of the Rules of Practice, 40 C.F.R. § 22.21(d).

2. Complainant shall submit a statement explaining in detail how the proposed penalty was determined, including a description of how the specific provisions of any Agency penalty or enforcement policies and/or guidelines were applied in calculating the penalty.
3. Each Respondent shall submit a statement explaining why the proposed penalty should be reduced or eliminated. If either Respondent intends to take the position that it is unable to pay the proposed penalty or that payment will have an adverse effect on its ability to continue to do business, that Respondent shall furnish supporting documentation such as certified copies of financial statements or tax returns.
4. Complainant shall submit a statement regarding whether the Paperwork 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.

See Section 22.19(a)(3) of the Rules of Practice, 40 C.F.R. § 22.19(a)(3).

The prehearing exchange delineated above shall be filed in *seriatim* manner, according to the following schedule:

- | | |
|-------------------|--|
| November 23, 2011 | - Complainant's Initial Prehearing Exchange |
| December 23, 2011 | - Respondents' Prehearing Exchange(s), including any direct and/or rebuttal evidence |
| January 6, 2012 | - Complainant's Rebuttal Prehearing Exchange (if necessary) |

In their Answer, Respondents exercised their right under Section 554 of the Administrative Procedure Act ("APA"), 5 U.S.C. § 554, to request a hearing. If the parties cannot settle with a Consent Agreement and Final Order, a hearing will be held in accordance with Section 556 of the APA, 5 U.S.C. § 556. Section

556(d) of the APA 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, Respondents have the right to defend themselves against Complainant's charges by way of direct evidence, rebuttal evidence, or through cross-examination of Complainant's witnesses. Each Respondent is entitled to elect any or all three means to pursue its defense.

If a Respondent elects only to conduct cross-examination of Complainant's witnesses and to forgo the presentation of direct and/or rebuttal evidence, that Respondent shall serve a statement to that effect on or before the date for filing its prehearing exchange. Each party is hereby reminded that failure to comply with the prehearing exchange requirements set forth herein, including a Respondent's statement electing only to conduct cross-examination of Complainant's witnesses, can result in the entry of a default judgment against the defaulting party. See Section 22.17 of the Rules of Practice, 40 C.F.R. § 22.17.

The original and one copy of all pleadings, statements, and documents (with any attachments) required or permitted to be filed by this Order (including a ratified Consent Agreement and Final Order) shall be filed with the Regional Hearing Clerk, and copies (with any attachments) shall be served upon the undersigned and all other parties. The parties are advised that e-mail correspondence with the Administrative Law Judge is not authorized. See Section 22.5(a) of the Rules of Practice, 40 C.F.R. § 22.5(a).

The prehearing exchange information required by this Order to be served upon the undersigned, as well as any other further pleadings, shall be addressed as follows:

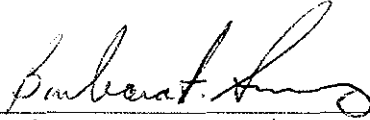
If sending by United States Postal Service (USPS):

EPA Office of Administrative Law Judges
1200 Pennsylvania Avenue, NW
Mail Code 1900L
Washington, DC 20460-2001

If sending by a non-USPS courier, such as UPS or Federal Express:

EPA Office of Administrative Law Judges
1099 14th Street, NW
Suite 350, Franklin Court
Washington, DC 20005

Telephone contact may be made with my legal staff assistant,
Mary Angeles, at (202) 564-6281. The facsimile number is (202)
565-0044.

A handwritten signature in cursive script, appearing to read "Barbara A. Gunning".

Barbara A. Gunning
Administrative Law Judge

Dated: October 19, 2011
Washington, D.C.

**In the Matter of *Valvo Convenience and Gas, Inc., and Stephen M. Valvo, Individually,*
Respondent.
Docket No. RCRA-02-2011-7507**

CERTIFICATE OF SERVICE

I hereby certify that true copies of this **Prehearing Order**, issued by Barbara A. Gunning, Administrative Law Judge, in Docket No. RCRA-02-2011-7507, were sent to the following parties on this 19th day of October 2011, in the manner indicated:



Mary Angeles
Legal Staff Assistant

Original and One Copy by Pouch Mail to:

Karen Maples
Regional Hearing Clerk
US EPA, Region II
290 Broadway, 16th Floor
New York, NY 10007-1866

Copy by Pouch Mail to:

Beverly Kolenberg, Esq.
Assistant Regional Counsel
U.S. EPA / Region II
290 Broadway, 16th Floor
New York, NY 10007-1866

Copy by Regular Mail to:

Paul A. Chiaravalotti, Esq.
Attorney at Law
1967 Wehrle Drive, Suite 1
Williamsville, NY 14221

**Dated: October 19, 2011
Washington, DC**