



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY BEFORE THE ADMINISTRATOR

In the Matter of:)
Dave Erlanson, Sr.,) Docket No. CWA-10-2016-0109
Respondent.)

NOTICE OF HEARING ORDER

On February 24, 2017, I issued a Prehearing Order that established deadlines for the parties to engage in a prehearing exchange of information process.1 Complainant filed its Initial Prehearing Exchange on April 7, 2017, and Respondent filed his Prehearing Exchange on May 8, 2017.2 Complainant then concurrently filed its Rebuttal Prehearing Exchange and a Motion for Accelerated Decision and memorandum in support on June 5, 2017. By Order dated September 27, 2018, I granted Complainant’s Motion for Accelerated Decision (“Motion”) as to Respondent’s liability for the violation charged in this matter but denied the Motion as to the civil administrative penalty sought for the violation, thus leaving the issue of the appropriate penalty to impose against Respondent, if any, for resolution after a hearing on that issue.

Pursuant to the procedural rules governing this proceeding, set forth at 40 C.F.R. Part 22, I am responsible for scheduling the hearing and determining an appropriate location for the hearing, consistent with 40 C.F.R. §§ 22.21 and 22.19(d). I am also responsible for regulating the course of the hearing consistent with 40 C.F.R. § 22.4. Accordingly, prehearing filing deadlines and the hearing in this matter are scheduled as follows.3

Settlement Status Reports. Complainant is directed to file Status Reports as to the status of any settlement negotiations between the parties, which shall not include any specific

1 Those deadlines were extended by subsequent orders upon the request of the parties.

2 Respondent sought leave to revise or supplement his Prehearing Exchange, which was granted by Order dated May 9, 2017, on account of the purported incompleteness of that document, most notably the section relating to penalty. To date, however, Respondent has not filed a revised or supplemental prehearing exchange, aside from submitting on April 23, 2018, copies of the proposed exhibits identified in his Prehearing Exchange after prompting by a staff attorney for this Tribunal.

3 In earlier filings, both parties identified Bonneville County, Idaho, as their preferred location for a hearing. In the Order of September 27, 2018, I directed each party to file within 21 days of issuance of the Order a statement identifying any periods of unavailability for a hearing during the months of January, February, and March of 2019, and an estimate of the amount of time needed to present the party’s direct case. To date, Respondent has not filed any such statement. Complainant, on the other hand, timely filed a Statement of Availability requesting that the hearing be scheduled in February or March of 2019 due to one of its witnesses being unavailable to testify in January and indicating that it would require no more than three days to present its direct case.

terms of settlement. The first Status Report shall be filed on or before **November 16, 2018**, and the second Status Report shall be filed on or before **December 28, 2018**.

Joint Stipulations. The time allotted for the hearing is limited. Therefore, the parties shall make a good faith effort to stipulate as much as possible to matters that cannot reasonably be contested. This practice ensures that the hearing is concise and focused solely on those matters that can only be resolved after an evidentiary hearing. Any stipulations reached by the parties shall be filed as a Joint Set of Stipulated Facts, Exhibits, and/or Testimony on or before **January 11, 2019**.

Prehearing Conference. A prehearing conference will be scheduled in advance of the hearing and conducted by a staff attorney.

Prehearing Briefs. The parties may, if they wish, file prehearing briefs on or before **January 25, 2019**.

Other Deadlines. Consistent with the Prehearing Order dated February 24, 2017, non-dispositive motions, such as motions for additional discovery, motions for subpoenas, and motions in limine, shall be filed no later than **December 14, 2018**. Similarly, a party seeking to add witnesses, exhibits, or otherwise supplement its prehearing exchange may do so only by motion after **December 14, 2018**. Belated supplements to a party's prehearing exchange may be excluded from evidence at the undersigned's discretion.

Hearing. The hearing in this matter shall begin at **9:00 a.m.** on **Tuesday, February 12, 2019**, and continue as necessary through **Friday, February 15, 2019**, in or around Bonneville County, Idaho. The parties will be timely notified of the precise location for the hearing once sufficient space has been reserved by the Office of Administrative Law Judges.

Individuals requiring special accommodations at the hearing, such as wheelchair access or the services of an interpreter, shall contact Jennifer Almase, a staff attorney for the Office of Administrative Law Judges, at (202) 564-1170 or almase.jennifer@epa.gov, as soon as possible to ensure 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 as soon as possible. Any procedural questions or questions about what to expect at the hearing should be directed to Ms. Almase.

RESPONDENT IS ADVISED THAT FAILURE TO APPEAR AT THE HEARING, WITHOUT GOOD CAUSE HAVING BEEN SHOWN, MAY RESULT IN THE ENTRANCE OF DEFAULT JUDGMENT AGAINST HIM.

IF EITHER 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.

SO ORDERED.


Christine Donelian Coughlin
Administrative Law Judge

Dated: November 5, 2018
Washington, D.C.

In the Matter of *Dave Erlanson, Sr.*, Respondent
Docket No. CWA-10-2016-0109

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Notice of Hearing Order**, dated November 5, 2018, and issued by Administrative Law Judge Christine Donelian Coughlin, was sent this day to the following parties in the manner indicated below.



Mary Angeles
Paralegal Specialist

Original and One Copy by Hand Delivery to:

Mary Angeles
Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Ronald Reagan Building, Room M1200
1300 Pennsylvania Ave., NW
Washington, DC 20004

Copy by Regular and Electronic Mail to:

William M. McLaren
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 900, MS ORC-113
Seattle, WA 98101
Email: mclaren.william@epa.gov
Counsel for Complainant

Mark L. Pollot, Esq.
772 E. Lava Falls Street
Meridian, ID 83646
Email: conresctr@cableone.net
Counsel for Respondent

Dated: November 5, 2018
Washington, D.C.