



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
JIPANGU INTERNATIONAL, INC.,) DOCKET NO. EPCRA-09-2010-0031
)
)
RESPONDENT)

PREHEARING ORDER

As you previously have been notified, I have been designated by the August 16, 2011, Order of the Chief Administrative Law Judge to preside in the above captioned matter. This proceeding arises under the authority of Section 325(c) of the Emergency Planning and Community Right to Know Act ("EPCRA"), 42 U.S.C. § 11045(c), and is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits (the "Rules of Practice"), 40 C.F.R. §§ 22.1-22.52. The parties are advised to familiarize themselves with both the applicable statute 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 have participated in the Alternative Dispute Resolution process offered by this office and have reached a settlement-in-principle. However, a fully executed Consent Agreement and Final Order ("CAFO") has not been filed. The CAFO should be filed by September 6, 2011. If it is not, the parties are instructed to prepare for hearing.

The parties are free to continue to engage in settlement discussions during and after preparation of their prehearing exchange. However, the parties are advised that extensions of time will not be granted absent a showing of good cause. 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 prehearing requirements or to meet the schedule set forth in this Prehearing Order.

The following requirements of this Order concerning prehearing exchange information are authorized by Section 22.19(a) of the Rules of Practice, 40 C.F.R. § 22.19(a). As such, it is directed that the following prehearing exchange take place:

1. Each party 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 which each party intends to introduce into evidence at the hearing. The exhibits should include a curriculum vitae or resume for each proposed expert witness. If photographs are submitted, the photographs must be actual unretouched photographs. The documents and exhibits shall be identified as "Complainant's" or "Respondent's" exhibit, 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.

See Sections 22.19(a), (b), (d) of the Rules of Practice, 40 C.F.R. §§ 22.19(a), (b), (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. Respondent shall submit a statement explaining why the proposed penalty should be reduced or eliminated. If 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, Respondent shall furnish supporting documentation such as certified copies of financial statements or tax returns.

4. Respondent is instructed to submit a narrative statement separately explaining in detail the factual and legal bases for any Affirmative Defenses that it intends to assert, along with list of, and a copy of, any documents it intends to rely upon in supporting its defense(s).
5. Complainant shall submit a statement addressing 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 exchanges delineated above shall be filed *in seriatim* manner, according to the following schedule:

- September 12, 2011 - Complainant's Initial Prehearing Exchange
- October 11, 2011 - Respondent's Prehearing Exchange, including any direct and/or rebuttal evidence
- October 25, 2011 - Complainant's Rebuttal Prehearing Exchange

If the parties cannot settle with a Consent Agreement and Final Order, a hearing will be held in accordance with Section 556 of the Administrative Procedure Act ("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, Respondent has the right to defend itself against Complainant's charges by way of direct evidence, rebuttal evidence, or through cross-examination of Complainant's witnesses. Respondent is entitled to elect any or all three means to pursue its defense. If 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 of election 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 in 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 sent to 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 sent to the Presiding Judge, 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 Ave. NW
Mail Code 1900L
Washington, DC 20460

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

EPA Office of Administrative Law Judges
1099 14th St. 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.



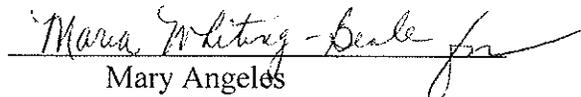
Barbara A. Gunning
Administrative Law Judge

Dated: August 17, 2011
Washington, DC

In the Matter of Jipangu International, Inc., Respondent
Docket No. EPCRA-09-2010-0031

CERTIFICATE OF SERVICE

I certify that the foregoing **Prehearing Order**, dated August 17, 2011, was sent this day in the following manner to the addressees listed below.


Mary Angeles
Legal Staff Assistant

Dated: August 17, 2011

Original And One Copy By Pouch Mail To:

Bryan Goodwin
Regional Hearing Clerk
U.S. EPA
Mail Code WST-1
75 Hawthorne Street
San Francisco, CA 94105

Copy By Pouch Mail To:

David Kim , Esquire
Assistant Regional Counsel
U.S. EPA
75 Hawthorne Street, ORC-2
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