



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
DEPENDABLE TOWING & RECOVERY,) DOCKET NO. CWA-02-2011-3601
INC., AND DAVID A. WHITEHILL,)
)
RESPONDENTS)

ORDER SCHEDULING HEARING

This proceeding arises under the authority of Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act ("CWA"), as amended, 33 U.S.C. § 1319(g). The parties are reminded that 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. §§ 22.1-22.32.

Pursuant to the Prehearing Order issued by the undersigned on October 5, 2011, the parties have filed their initial prehearing exchanges. Complainant subsequently filed a Rebuttal Prehearing Exchange in which it proposed a civil administrative penalty of \$174,418 for the violations alleged in the Complaint. Accordingly, this matter is now ready to be scheduled for hearing.

The file before me reflects that the parties have engaged in settlement negotiations but that no settlement has been reached. 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 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. Complainant shall file a Status Report as to the status of any settlement negotiations between the parties on or before **February 24, 2012**.

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is incomplete, inaccurate, or outdated, and the additional information has not otherwise been disclosed to the opposing party. The parties retain the right to move to supplement their prehearing exchanges no later than 15 days before the hearing date. Sections 22.19(a) and 22.22(a) of the Rules of Practice, 40 C.F.R. §§ 22.19(a), 22.22(a), provide that documents or exhibits that have not been exchanged and witnesses who have not been properly identified 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 hereby advised that the undersigned will not entertain last minute motions to amend or supplement their prehearing exchanges absent extraordinary circumstances.

The parties are further advised that all non-dispositive prehearing motions, such as motions for subpoenas and motions in limine, must be filed on or before **March 2, 2012**. On or before **March 16, 2012**, the parties shall file a Joint Set of Stipulated Facts, Exhibits, and Testimony. The time allotted for hearing is limited. Therefore, the parties must make a good faith effort to stipulate as much as possible to matters that cannot reasonably be contested so that the hearing can be concise and focused solely on those matters that can be resolved only after a hearing.

The parties may, if they wish, file prehearing briefs by **March 30, 2012**. The parties should e-mail or hand-deliver a copy of their briefs to the undersigned by that date, in addition to filing the official copy with the Regional Hearing Clerk. If filed, Complainant's brief should specifically state each count of the Complaint and each claim therein that will be tried at the hearing and indicate which counts and claims will not. If filed, Respondents' brief should identify each of the defenses Respondents intend to pursue at the hearing.

The hearing in this matter will be held beginning at 9:30 a.m. on Tuesday, April 17, 2012, in or around Buffalo, New York, and continue as necessary through April 20, 2012. 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 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 ten 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: January 5, 2012
Washington, D.C.