

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of)	
)	
Chester Aytch and 5631 Corporation,)	Docket No. RCRA-03-2009-0322
)	
Respondents.)	
)	

**ORDER GRANTING MOTION TO POSTPONE HEARING
AND RESCHEDULING PREHEARING SUBMISSIONS**

The hearing in this matter is currently scheduled to begin on August 17, 2010. By Motion dated June 17, 2010, Complainant moves for a postponement on grounds that counsel for Complainant has a previously planned vacation scheduled for August 14-18 and August 24 to September 3, and that its key witness Marie Owens will be unable to prepare for the hearing because she is a key witness in a federal court trial scheduled July 27 through August 6 for the liability phase, and which may likely be extended for the penalty phase. Counsel for Respondents represents that his clients do not oppose the Motion.

The Motion is hereby, **GRANTED**, as set forth below:

Section 22.21(c) of the Rules of Practice, 40 C.F.R. part 22 ("Rules"), provides that "[n]o request for postponement of a hearing shall be granted except upon motion and for good cause shown." The Administrative Procedure Act provides that "[i]n fixing the time and place for hearings, due regard should be had for the convenience and necessity of the parties or their representatives." 5 U.S.C. § 554(b). The Rules provide that the presiding judge may take such measures as are "necessary for the maintenance of order and for the *efficient*, fair and impartial adjudication of issues arising in proceedings" 40 C.F.R. § 22.4(c)(10) (emphasis added).

Respondents' Prehearing Memorandum, dated June 4, 2010, states that Respondents "will not present a direct case" but "will, based on the Complainant's case, present testimony and exhibits" and "will timely supplement . . . with the details on our rebuttal case, including identification of witnesses, a narrative of the testimony and copies of exhibits." To date, no such supplement has been received by the undersigned. Respondents in their Answer generally deny the allegations of violation in the Complaint and indicate that they may claim an inability to pay the proposed penalty. At this point, a determination cannot be made as to the issues in this case which are genuinely in dispute in order to ensure that the hearing is focused on those matters. It is in the interest of justice for parties and their witnesses to have adequate time to prepare for the hearing.

Therefore, good cause exists for the granting of the Motion and for rescheduling prehearing submissions. Given that the undersigned currently has a full hearing schedule for October and November, the hearing is set to commence in the first available week but the prehearing submissions are scheduled so that the hearing can be rescheduled for an earlier week if a hearing in another case is cancelled.

1. Respondents shall, **on or before July 2, 2010**, file with the Regional Hearing Clerk, and shall serve on the opposing party and on the Presiding Judge, a supplemental prehearing exchange which includes:
 - (A) the names of all expert and other witnesses intended to be called at hearing, identifying each as a fact witness or expert witness, with a brief narrative summary of the expected testimony of each witness, or a statement that no witnesses will be called;
 - (B) copies of all documents and exhibits intended to be introduced into evidence, including a curriculum vita or resume for each identified expert witness, and identifying each document or exhibit with Arabic numerals (e.g., RX 1, etc.);
 - (C) if any Respondent takes the position that it is unable to pay the proposed penalty, a statement of its position and a copy of any and all documents it intends to rely upon in support of such position; and
 - (D) if Respondents take the position that the penalty should be reduced or eliminated on any other grounds, a copy of any and all documents they intend to rely upon in support of such position.

The parties are advised that Section 22.19(a) of the Rules of Practice provides that, except in accordance with Section 22.22(a), any document not included in the prehearing exchange shall not be admitted into evidence, and any witness whose name and testimony summary are not included in the prehearing exchange, shall not be allowed to testify.

2. The parties are directed to hold a settlement conference on or before **July 16, 2010** and attempt to reach an amicable resolution of this matter. The Complainant shall file a status report regarding such conference and the status of settlement on or before **July 23, 2010**.
3. In the event the parties have failed to reach a settlement by that date, they shall strictly comply with the requirements of this Order and prepare for a hearing. In connection therewith, on or before **August 20, 2010**, 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 which cannot reasonably be contested so the hearing can be concise and focused solely on those matters which can only be resolved after a hearing.

4. Any pre-hearing motions, such as motions to amend and motions in limine, must be filed on or before **September 10, 2010.**
5. The parties may, if they wish, file prehearing briefs. The deadline for filing such briefs is Friday **October 1, 2010.** A copy of the briefs should be *received* by the undersigned by that date. The briefs should specifically state the issues to be presented at hearing as to liability and penalty, and as to each such issue, indicate which witnesses and exhibits will address it.
6. The hearing in this matter is hereby **RESCHEDULED to commence promptly at 9:30 a.m. on Tuesday, November 30, 2010** in Philadelphia, Pennsylvania, continuing on December 1-3, 2010 as necessary. The Regional Hearing Clerk will cancel the existing courtroom arrangements and will make appropriate arrangements for a courtroom on November 30 - December 3. 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 accommodations at the hearing, including wheelchair access, should contact the Regional Hearing Clerk, as soon as possible so that appropriate arrangements can be made.

THE RESPONDENT IS HEREBY ADVISED THAT FAILURE TO APPEAR AT THE HEARING, WITHOUT GOOD CAUSE BEING SHOWN THEREFOR, MAY RESULT IN A DEFAULT JUDGMENT BEING ENTERED AGAINST IT.

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.



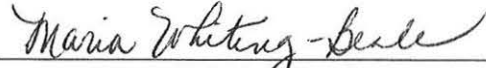
Susan L. Biro
Chief Administrative Law Judge

Dated: June 18, 2010
Washington, D.C.

In the Matter of Chester Aytch and 5631 Corp., Respondents
Docket No. RCRA-03-2009-0322

CERTIFICATE OF SERVICE

I certify that the foregoing **Order Granting Motion To Postpone Hearing And Rescheduling Prehearing Submissions**, dated June 18, 2010, was sent this day in the following manner to the addressees listed below:



Maria Whiting-Beale
Staff Assistant

Dated: June 18, 2010

Original And A Copy By Pouch Mail To:

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