

7/1/96

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of )  
)  
S.B. McLaughlin ) Docket No. CWA-A-0-002-95  
Participation Development )  
Corporation )  
)  
Respondent )

ORDER ACCEPTING RESPONDENT'S  
PREHEARING EXCHANGE  
and  
ORDER SCHEDULING HEARING

The former presiding Administrative Law Judge ("ALJ") in this proceeding, Chief ALJ Jon G. Lotis, issued an Order extending the time for filing prehearing exchanges to May 31, 1996 for the initial exchanges, and June 20, 1996 for the reply exchanges. The undersigned ALJ was redesignated to preside in this proceeding on June 26, 1996.

Complainant submitted its prehearing exchange on time on May 31, 1996. Respondent did not submit its prehearing exchange until June 14, 1996 along with a motion requesting an extension of time and acceptance of its late filing. Although the reasons given for the late filing, involving settlement discussions and travel commitments, do not alone constitute good cause for a late submission, Respondent's prehearing exchange is accepted. There can be no prejudice to Complainant, since it was submitted before the date for filing reply exchanges. Anything in the June 14 prehearing exchange could have been submitted by June 20, even if Respondent had not filed any initial prehearing exchange. Indeed, that is essentially what occurred here, since Respondent received Complainant's exchange two weeks before it filed its prehearing exchange. There is nothing inherently unfair or improper in this sequence since the Complainant bears the burden of going forward to establish a prima facie case at the hearing in any event, under 40 C.F.R. §22.24.

In addition, it is my policy, in order to promote an efficient hearing, to allow parties to freely amend or supplement their prehearing exchanges upon adequate notice, at least up to 30 days in advance of the hearing. Thus, even after the date for filing reply exchanges, the parties may modify or supplement their prehearing exchanges without filing a motion for leave, up to 30 days in advance of the hearing, and on motion after that.

Therefore, Respondent's June 14 prehearing exchange is accepted as its initial prehearing exchange. This ruling only addresses the timeliness of the exchange, and does not purport to rule on the admissibility or propriety of any of the matter included in Respondent's prehearing exchange. The date for filing reply exchanges is extended to July 26, 1996.

For the reasons given above, Complainant's motion for additional time to file a reply and opposition to Respondent's motion to file a late prehearing exchange is denied.

There appears to be some confusion over the correct name of the Respondent in the caption of this proceeding. Respondent asserts that the correct name of the owner of the subject property is Participation Development Corporation [Minnesota], Inc. The parties are directed to attempt to stipulate to the correct name of the Respondent, or otherwise address this matter, by July 26, 1996, with their reply exchanges.

#### Order Scheduling Hearing

The hearing in this matter will be held beginning at 9:30 A.M. on October 1, 1996 in Minneapolis-St. Paul, Minnesota, or vicinity, continuing if necessary through October 4, 1996. The parties will be advised of the exact location and of other hearing procedures after those arrangements are made by the Regional Hearing Clerk.



Andrew S. Pearlstein  
Administrative Law Judge

Dated: July 1, 1996  
Washington, D.C.

In the Matter of S.B. McLaughlin Participation Development Corp.  
Docket No. CWA-A-0-002-95

**CERTIFICATE OF SERVICE**

I certify that the foregoing Order Accepting Respondent's Prehearing Exchange and Order Scheduling Hearing, dated July 1, 1996, was sent in the following manner to the addressees listed below.

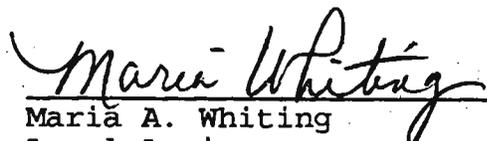
**First Class Mail:**

Jodi L. Swanson-Wilson  
Regional Hearing Clerk  
U.S. EPA Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604-3590

**Fax and First Class Mail:**

Felipe N. Gomez, Esq.  
Assistant Regional Counsel  
U.S. EPA Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604-3590  
Fax: (312) 886-0747

Christopher J. Dietzen, Esq.  
Larkin, Hoffman, Daly & Lindgren, Ltd.  
1500 Norwest Financial Center  
7900 Xerxes Avenue South  
Bloomington, MN 55431-1194  
Fax: (612) 896-3333

  
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Maria A. Whiting  
Legal Assistant  
U.S. EPA, Mail Code 1900  
Ofc. Of Adm. Law Judges  
401 M Street SW  
Washington, DC 20460

Dated: July 1, 1996  
Washington, D.C.