



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY BEFORE THE ADMINISTRATOR

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In the Matter of:
Stockton Oil Company, Respondent.

Docket No. RCRA-08-2014-0002

PREHEARING ORDER

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, 40 C.F.R. §§ 22.1 to 22.45 ("Rules of Practice" or "Rules").

Settlement. Agency policy strongly supports settlement, and the procedures regarding settlements are set forth in Section 22.18 of the Rules of Practice, 40 C.F.R. § 22.18.

With these considerations in mind, the parties are directed to engage in a settlement conference on or before June 6, 2014, and to attempt to reach an amicable resolution of this matter.

1 The United States Environmental Protection Agency ("Agency"), Region 8 ("Complainant"), initiated this proceeding on February 27, 2014, by filing a Complaint and Notice of Opportunity for Hearing ("Complaint") against Stockton Oil Company for violations allegedly committed at the Battlefield Express C-Store facility located at the junction of Highway 212 and I-90 in Crow Agency, Montana.

Without mentioning any specific terms of settlement, Complainant shall file a Status Report regarding this conference and the status of settlement on or before **June 13, 2014**. If the case is settled, a fully-executed Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk, and a copy shall be submitted to the undersigned. Should a Consent Agreement not be finalized on or before **June 27, 2014**, the parties shall prepare for hearing and strictly comply with the prehearing requirements of this Order, as set forth below.

The mere pendency of settlement negotiations or even the existence of a settlement in principle does not constitute a basis for failing to strictly comply with the following prehearing exchange requirements. Only the filing with the Regional Hearing Clerk of a fully-executed Consent Agreement and Final Order, or an order of the presiding judge, excuses noncompliance with filing deadlines.

Prehearing Exchange. This Order is issued pursuant to Section 22.19(a) of the Rules of Practice, 40 C.F.R. § 22.19(a). Accordingly, the parties are directed to engage in the following prehearing exchange of information:

1. Each party shall file with the Headquarters Hearing Clerk, serve on the opposing party, and serve on the undersigned:

(A) A list of names of the expert and other witnesses intended to be called at hearing, identifying each as a fact witness or an expert witness, providing a brief narrative summary of their expected testimony, and providing a curriculum vitae or resume for each identified expert witness, or a statement that no witnesses will be called;

(B) Copies of all documents and exhibits intended to be introduced into evidence, identified as “Complainant’s” or “Respondent’s” exhibit, as appropriate, and numbered with Arabic numerals (*e.g.*, “CX 1” or “RX 1”); and

(C) A statement explaining its views as to the appropriate place for the hearing and an estimate of the time needed to present its direct case. *See* 40 C.F.R. §§ 22.21(d), 22.19(d). Each party shall also state whether translation services are necessary in regard to the testimony of any witness(es) at the hearing and, if so, state the language to be translated.

2. In addition, Complainant shall submit the following as part of its Initial Prehearing Exchange:

(A) All factual information and supporting documentation relevant to the assessment of a penalty, and a copy, or a statement of the internet address (URL), of any policy or guidance intended to be relied upon by Complainant in calculating a proposed penalty; and

(B) A detailed explanation of the factors considered and methodology utilized in calculating the amount of the proposed penalty, in accordance with the statutory penalty factors and any policies or guidance as described in (A).

(C) A copy, or a statement of the internet address (URL), of any EPA guidance documents, policies, and any preambles to regulations that Complainant has relied upon with regard to the allegations set forth in the Complaint.

3. In addition, Respondent shall submit the following as part of its Prehearing Exchange:

(A) List the following paragraph numbers of the Complaint: 6, 7, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 29, and 30. Next to each number, state whether Respondent “admits,” “denies,” or “has no knowledge” of the facts alleged in the corresponding paragraph of the Complaint, or state the portion of the paragraph that Respondent admits and the portion that Respondent denies. For any paragraph that Respondent cannot admit or deny, provide an explanation in response to the facts alleged in the paragraph;

(B) A narrative statement, and a copy of any documents in support, explaining in detail the legal and/or factual bases for any denials provided in response to (A);

(C) All factual information Respondent considers relevant to the assessment of a penalty and any supporting documentation; and

(D) If Respondent takes the position that the penalty proposed in the Complaint should be reduced or eliminated on any grounds, such as an inability to pay, then provide a detailed narrative statement explaining the legal and/or factual bases for that position and a copy of any and all documents upon which Respondent intends to rely in support.

4. Finally, Complainant shall submit as part of its Rebuttal Prehearing Exchange:

(A) a narrative statement and/or any documents in response to Respondent’s Prehearing Exchange as to provisions 3(A) through 3(D) above.

The prehearing exchanges described above shall be filed pursuant to the following schedule:

June 27, 2014	Complainant’s Initial Prehearing Exchange
July 18, 2014	Respondent’s Prehearing Exchange
August 1, 2014	Complainant’s Rebuttal Prehearing Exchange

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. Therefore, each party is advised to thoughtfully prepare its prehearing exchange.

Supplement to Prehearing Exchange. Any addition of a proposed witness or exhibit to the prehearing exchange shall be filed with an accompanying motion to supplement the prehearing exchange.

Default and Opportunity for a Hearing. The Complaint in this matter gave Respondent notice and opportunity for a hearing, in accordance with Section 554 of the Administrative Procedure Act, 5 U.S.C. §§ 554 to 559 (“APA”). Appearing *pro se*, Respondent requested a hearing by letter dated April 3, 2014. Section 554(c)(2) of the APA sets out that a hearing be conducted under Section 556 of the APA. Section 556(d) 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 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 defenses. If Respondent intends to elect only to conduct cross-examination of Complainant’s witnesses and to forgo the presentation of direct and/or rebuttal evidence, Respondent shall serve a statement to that effect on or before the date for filing its prehearing exchange.

Respondent is hereby notified that its failure either to comply with the prehearing exchange requirements set forth herein or to state that it is electing only to conduct cross-examination of Complainant’s witnesses may result in the entry of a default judgment against it. Complainant is hereby notified that its failure to file its prehearing exchange in a timely manner may result in a dismissal of the case with prejudice.

Filing and Service. Consistent with Section 22.5 of the Rules of Practice, 40 C.F.R. § 22.5, the original and one copy of any documents intended to be part of the record in this proceeding (including prehearing exchange information and any motions, but excluding a Consent Agreement and Final Order) shall be filed with the Headquarters Hearing Clerk by U.S. mail, personal delivery, courier, commercial delivery service, or e-mail. Regardless of the submission method, all documents submitted for filing shall be signed, accompanied by a certificate of service, and served on the undersigned judge and the opposing party.

Documents filed by mail via the U.S. Postal Service (“USPS”) shall be addressed to:

Sybil Anderson, Headquarters Hearing Clerk
Office of Administrative Law Judges

U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Mail Code 1900R
Washington, DC 20460

Documents filed by personal delivery, courier, or a commercial delivery service such as FedEx or UPS shall be addressed to:

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

Documents filed by e-mail shall be sent to OALJfiling@epa.gov.² The subject line of the e-mail shall include the name and docket number of the proceeding. Documents filed as e-mail attachments must be in Portable Document Format (“PDF”),³ must be signed, and must contain the contact name, phone number, mailing address, and e-mail address of the filing party or its authorized representative. Documents filed by e-mail are deemed to constitute both the original and one copy of the document. NOTE: The OALJ’s e-mail system is not designed to protect the privacy of any Confidential Business Information (“CBI”) or Personally Identifiable Information (“PII”), and whenever a document is filed by e-mail, the undersigned will consider all confidentiality claims waived.

A document submitted by U.S. mail, personal delivery, courier, or commercial delivery service is considered “filed” when the Headquarters Hearing Clerk receives it. A document submitted by e-mail to OALJfiling@epa.gov is considered “filed” at the time and date of electronic reception as recorded by the OALJ’s e-mail system. To be considered timely, documents submitted by e-mail to OALJfiling@epa.gov must be received by 11:59 p.m. Eastern Time on the date the document is due, unless another time is specified by order.

A copy of each document filed in this proceeding shall also be served on the undersigned and on each party pursuant to Section 22.5(b) of the Rules of Practice, 40 C.F.R. § 22.5(b). Documents may be served by first-class (including certified) or priority mail, personal delivery, reliable commercial delivery service, or e-mail if the party being served has provided a valid e-mail address in the record. Documents filed by e-mail are deemed to have been “served” on the

² More information about filing by e-mail may be found in the Standing Order Authorizing Filing and Service by E-Mail in Proceedings Before the Office of Administrative Law Judges, available on the OALJ’s website at www.epa.gov/oalj.

³ Electronic files exceeding 50 MB must be separated into files under 50 MB each or submitted on a compact disk (“CD”) by mail, courier, or personal delivery.

undersigned. A document is considered “served” upon mailing, when placed in the custody of a reliable commercial delivery service, or upon electronic transmission pursuant to Section 22.7(c) of the Rules of Practice, 40 C.F.R. § 22.7(c).

The parties are advised NOT to include, attach, or refer to any terms of settlement offers or agreements in any document submitted for filing, and no copies of Consent Agreements and Final Orders shall be submitted, or attached to any document submitted, except those that are fully executed and filed with the Regional Hearing Clerk.

Privacy Act Statement; Notice of Disclosure of Confidential and Personal Information; Waiver of Confidentiality and Consent to Public Disclosure. The parties are cautioned that, unless redacted, all information filed with the court will be made publicly available. Thus, the parties are hereby advised not to file any CBI or PII pertaining to any person. Where filing of such information is necessary, the parties are hereby advised to redact (i.e., remove or obscure) the CBI or PII present in the materials filed. This may include information that, if disclosed to the public, would constitute an unwarranted invasion of personal privacy, such as Social Security numbers, medical records, and personal financial information.

To the extent that any person files or submits any un-redacted CBI or PII pertaining to themselves or their client, that person thereby waives any claims to confidentiality and thereby consents to public disclosure by EPA, including posting on the Internet, of all such information they submit. Submission of such information via e-mail will also be considered a waiver of confidentiality. To protect such information against public disclosure, parties must follow the procedures specified on the OALJ’s website at www.epa.gov/oalj.

Contact Information. Contact may be made with my legal assistant, Mary Angeles, at (202) 564-6281 or angeles.mary@epa.gov to ask whether a document has been received or issued. For procedural questions, you may contact my staff attorney, Jennifer Almase, at (202) 564-1170 or almase.jennifer@epa.gov.

Motions. Prior to filing any motion, the moving party shall contact the other party or parties to determine whether the other party has any objection to the granting of the relief sought in the motion, and the motion shall state the position of the other party or parties. The mere consent of the other parties to the relief sought does not assure that the motion will be granted. Further, all motions must be submitted in sufficient time to permit the filing of a response by the other party and/or the issuance of a ruling on the motion before any relevant deadline set by this or any subsequent order. Sections 22.16(b) and 22.7(c) of the Rules of Practice allow a 15-day response period for motions, with an additional 5 days added thereto if the document is served by mail. Motions not filed in a timely manner may not be considered. If either party intends to file any dispositive motion regarding liability, such as a motion for accelerated decision or motion to dismiss under 40 C.F.R. § 22.20(a), it shall be filed within 30 days after the due date for Complainant’s Rebuttal Prehearing Exchange.

Pursuant to 40 C.F.R. § 22.16(d), a party may submit a written request for oral argument upon filing a motion, a response to a motion, or a reply. The requesting party shall propose an appropriate location for the argument. The OALJ has access to videoconferencing technology that may be utilized for oral arguments on motions and that may minimize the expenditure of time and monetary resources in connection with such arguments. A request for oral argument may be granted, in the undersigned's discretion, where further clarification and elaboration of arguments would be of assistance in ruling on the motion.

SO ORDERED.


Christine D. Coughlin
Administrative Law Judge

Dated: May 15, 2014
Washington, D.C.

In the Matter of *Stockton Oil Company*, Respondent.
Docket No. RCRA-08-2014-0002

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Prehearing Order, dated May 15, 2014, were sent this 15th day of May 2014, in the following manner to the addressees listed below.



Mary Angeles
Lead Legal Assistant

Original and One Copy By Hand Delivery To:

Sybil Anderson
Headquarters Hearing Clerk
U.S. EPA / Office of Administrative Law Judges
Mail Code 1900R
1200 Pennsylvania Ave., NW
Washington, DC 20460

Copy By Electronic and Regular Mail To:

Amy Swanson, Esq.
Sr. Enforcement Attorney
U.S. EPA, Region VIII
Mail Code ENF-L
Denver, CO 80202-1129
Email: swanson.amy@epa.gov

Copy By Facsimile and Regular Mail To:

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Fx: 406.259.9598

Dated: May 15, 2014
Washington, DC