



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of:)
)
Thomas Petroleum, LLC, and)
Pilot Thomas Logistics, LLC) Docket No. EPCRA-06-2019-0501
)
Respondents.¹)

ORDER RESCHEDULING PREHEARING SUBMISSIONS

As you were notified by order dated July 24, 2020, I am designated to preside over this proceeding following termination of this matter from the alternative dispute resolution process and reassignment to the litigation docket. 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. Prior to termination of the alternative dispute resolution process in this matter, the parties reported that they reached an agreement in principle with respect to settling this case, but require additional time to finalize and file their agreement. Accordingly, this status has been considered in rescheduling the prehearing filing deadlines in this Order. If this matter is settled, a fully-executed Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk no later than **August 28, 2020**, and a courtesy copy shall be filed with the Headquarters Hearing Clerk.

In the event that a fully-executed Consent Agreement and Final Order is not filed on or before **August 28, 2020**, the parties must prepare for hearing and shall strictly comply with the following prehearing requirements of this Order. *The pendency of settlement negotiations or the existence of a settlement in principle does not constitute a basis for failing to strictly comply with those requirements. Only the filing with the Regional Hearing Clerk of a fully-executed Consent Agreement and Final Order, or an order of the undersigned, excuses noncompliance with filing deadlines.*

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

¹ In the Complaint, Complainant identifies both Thomas Petroleum, LLC, and Pilot Thomas Logistics, LLC, as Respondents, but subsequently refers to these Respondents as a singular entity. If Complainant’s position is that these two identified Respondents are, in fact, one singular entity, it would be appropriate for Complainant to file an Amended Complaint identifying this singular entity as the only respondent in the matter, and articulating a basis for this position.

following prehearing exchange of information:

1. Each party² shall file with the Headquarters Hearing Clerk, serve on the opposing party, and serve on the undersigned:

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

(B) a list of all exhibits, numbered in sequential order, that the party intends to produce at the hearing, along with a copy of each exhibit marked for identification as follows:

- i. Complainant's exhibits shall be identified as "CX."
- ii. Respondents' exhibits shall be identified as "RX."
- iii. Each exhibit shall be labeled numerically with the corresponding exhibit number on each page of the exhibit. For example, the first exhibit provided by Complainant shall be labeled on each page of the exhibit as "CX 1," and the first exhibit provided by Respondents shall be labeled on each page of the exhibit as "RX 1." The label for each exhibit shall be located at the bottom (footer) of the document and aligned to the right margin.
- iv. Any exhibit consisting of more than one page shall include page numbers at the bottom (footer) of each page, aligned to the right margin. The pages shall be numbered consecutively as follows: "Page X of [total of] Y," with "Page X" representing the page number in sequence beginning from the number 1 and "[total of] Y" representing the total number of pages in the exhibit. For example, to identify the third page of Complainant's first exhibit, which has five pages total, the bottom of the page shall read "CX 1 Page 3 of 5."

(C) a statement specifying the amount of time needed to present its direct case. *See* 40 C.F.R. §§ 22.21(d), 22.19(d). Also, state whether the services of an interpreter are necessary with regard to the testimony of any witness(es), 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) documentation showing that service of the Complaint was completed in accordance with Section 22.5(b)(1) of the Rules of Practice, 40 C.F.R. § 22.5(b)(1);

(B) a statement clarifying its position regarding the legal status of the corporate Respondents and its basis for identifying both Respondents as appropriate parties to this proceeding, along with any documents providing support for this position;

(C) a brief narrative statement, and a copy of any documents in support, explaining in

² Multiple respondents are permitted to submit one collective prehearing exchange, or individual prehearing exchanges.

detail the factual and/or legal bases for the allegations denied or otherwise not admitted in Respondents' Answer;

(D) 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 on by Complainant in calculating a proposed penalty; and

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

3. In addition, Respondents shall submit the following as part of their Prehearing Exchange:

(A) a copy of any documents in support of the denials made in their Answer;

(B) a copy of any documents in support of any asserted affirmative defenses and an explanation of the arguments in support of any such affirmative defenses;

(C) all factual information Respondents consider relevant to the assessment of a penalty and any supporting documentation; and

(D) if Respondents take the position that any penalty assessed should be reduced or eliminated on any grounds, such as an inability to pay, then provide a detailed narrative statement explaining the precise factual and legal bases for their position and a copy of any and all documents upon which they intend to rely in support of such position.

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

(A) a statement and/or any documents in response to Respondents' Prehearing Exchange as to provisions 3(A) through 3(D) above; and

(B) a statement of the proposed penalty and a detailed explanation of the factors considered and methodology utilized in calculating the amount of the proposed penalty, in accordance with the penalty factors and policies referenced in the civil penalty section of the Complaint.

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

| | |
|---------------------------|--|
| September 18, 2020 | Complainant's Initial Prehearing Exchange |
| October 9, 2020 | Respondents' Prehearing Exchange(s) |
| October 23, 2020 | 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. 40 C.F.R. § 22.19(a). Therefore, each party is advised to thoughtfully prepare its prehearing exchange.

In general, hearings are scheduled following the submission of the prehearing exchanges. The parties will be provided with adequate notice of the scheduled hearing to enable them to meet the remaining deadlines contained in this Order.

Supplement to Prehearing Exchange. Any addition of a proposed witness or exhibit to the prehearing exchange, submitted pursuant to Section 22.19(f) of the Rules of Practice, must be filed with an accompanying *motion to supplement the prehearing exchange* only when supplementation is sought within 60 days of the scheduled hearing.

Motions. Prior to filing any motion, the moving party must contact all other parties to determine whether the other parties have any objection to the granting of the relief sought in the motion, and the motion shall state the position of the other parties. The mere consent of the other parties to the relief sought does not assure that the motion will be granted. Furthermore, all motions must be submitted in sufficient time to permit the filing of a response and a reply, as well as the issuance of a ruling on the motion, before any relevant deadline set by this or any subsequent order. *See generally* 40 C.F.R. §§ 22.16(b), 22.7(c). *Motions not filed in a timely manner may not be considered.*

Dispositive motions regarding liability, such as a motion for accelerated decision or motion to dismiss under Section 22.20(a) of the Rules of Practice, must be filed within 30 days after the due date for Complainant's Rebuttal Prehearing Exchange. *Non-dispositive motions*, such as motions for additional discovery, motions for subpoenas, and motions in limine, must be filed no later than 60 days prior to the scheduled hearing.

Pursuant to Section 22.16(d) of the Rules of Practice, a party may submit a written request for oral argument upon filing a motion, a response to a motion, or a reply. 40 C.F.R. § 22.16(d). 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, which 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.

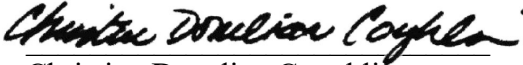
Default and Opportunity for a Hearing. The Complaint in this matter gave Respondents notice and opportunity for a hearing, in accordance with Section 554 of the Administrative Procedure Act ("APA"), 5 U.S.C. § 554. Respondents' Answer to the Complaint contained a request for a hearing. In this regard, Section 554(c)(2) of the APA sets out that a hearing be conducted under Section 556 of the APA. 5 U.S.C. § 554(c)(2). 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. 5 U.S.C. § 556(d). Thus, Respondents have the right to defend against Complainant's charges by way of direct evidence, rebuttal evidence, or through cross-examination of Complainant's witness(es). Respondents are entitled to elect any or all three means to pursue its defenses.

Respondents are hereby notified that their failure to comply with the prehearing exchange requirements set forth herein may result in the entry of a default judgment against them. Complainant is notified that its failure to file its prehearing exchange in a timely manner can result in a dismissal of the case with prejudice.

Contact Information. For any questions about this Order, the Rules, or any other procedural, scheduling, or logistical issues, you may contact Andrea Priest, Attorney-Advisor, at (202) 564-4914 or priest.andrea@epa.gov.

SO ORDERED.


Christine Donelian Coughlin
Administrative Law Judge

Dated: July 30, 2020
Washington, D.C.

In the Matter of *Thomas Petroleum, LLC and Pilot Thomas Logistics, LLC*, Respondents.
Docket No. EPCRA-06-2019-0501

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order Rescheduling Prehearing Submissions**, dated July 30, 2020, and issued by Administrative Law Judge Christine Donelian Coughlin, was sent this day to the following parties in the manner indicated below.



Andrea Priest
Attorney-Advisor

Copy by OALJ E-Filing System to:

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

Copy by Electronic Mail to:

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For Complainant

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For Respondents

Dated: July 30, 2020
Washington, D.C.