UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

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In the Matter of:	)	
	)	
Hovensa LLC	)	**Docket No. CAA-02-2015-1206**
	)	
	)	
Respondent.	)	

PREHEARING ORDER

As you have been previously notified, I am designated to preside over this proceeding. 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"). The parties are advised to familiarize themselves with the applicable statute(s) (The Clean Water Act) and the Rules of Practice. An informal Practice Manual, Citizen's Guide to proceedings before the EPA Office of Administrative Law Judges ("OALJ"), and significant decisions issued by the Administrative Law Judges are accessible on the OALJ website at: http://www.epa.gov/oalj.

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. The parties are reminded that pursuing this matter through a hearing and possible appeals will require the expenditure of significant amounts of time and financial resources. The parties should realistically consider the risk of not prevailing in the proceeding despite such expenditures. A settlement allows the parties to control the outcome of the case, whereas a judicial decision takes such control away. With these considerations in mind, the parties are directed to engage in a settlement conference on or before **November 20, 2015**, and to attempt to reach an amicable resolution of this matter. Without mentioning any specific terms of settlement, Complainant shall file a Status Report regarding this conference and the status of settlement, on or before **November 25, 2015**. If the case is settled, a fully-executed Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk no later than **December 16, 2015**, *and a copy submitted to the undersigned.*

Should a Consent Agreement not be finalized on or before the latter date, the parties must prepare for hearing and shall strictly comply with the following prehearing requirements of this Order.

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 judge, excuses noncompliance with filing deadlines.

Prehearing Exchange. This Order is issued pursuant to Section 22.19(a) of the Rules of Practice. Accordingly, it is directed that the following prehearing exchange take place between the parties:

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

   (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, 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) 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* Sections 22.21(d) and 22.19(d) of the Rules of Practice. Also, state whether translation services are necessary in 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) a brief narrative statement, and a copy of any documents in support, explaining in detail the factual and/or legal bases for the allegations denied or otherwise not admitted in Respondent's Answer;

   (B) 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;

   (C) a detailed explanation of the factors considered and methodology utilized in calculating the amount of the proposed penalty in accordance with the criteria set forth in Clean Water Act; and

(D) 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(s):

(A) a copy of any and all documents it intends to rely upon in support of the denials made in its Answer;

(B) a copy of any and all documents it intends to rely upon in support of the allegations raised in support of Respondent's Defenses, if any, and an explanation of its arguments in support of each such Defense;

(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 proposed penalty 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 its position and a copy of any and all documents upon which the Respondent intends 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 Respondent's Prehearing Exchange as to provisions 3(A) through 3(D) above.

The prehearing exchanges called for above shall be filed *in seriatim* fashion, pursuant to the following schedule:

December 16, 2015	Complainant's Initial Prehearing Exchange
December 30, 2015	Respondent's Prehearing Exchange
January 11, 2016	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 should 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 ("APA"). Respondent's 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. 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 witness(es). Respondent is entitled to elect any or all three means to pursue its defenses.

Respondent is hereby notified that its failure to comply with the prehearing exchange requirements set forth herein may result in the entry of a default judgment against it. 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.

Filing and Service. Consistent with 40 C.F.R. § 22.5, the original and one copy of all documents intended to be part of the record in this proceeding (excluding a Consent Agreement and Final Order, which must be filed with the Regional Hearing Clerk), shall be filed with the Headquarters Hearing Clerk.[1] Documents may be filed electronically[2] by visiting the website for the Office of Administrative Law Judges https://yosemite.epa.gov/OA/EAB/EAB-ALJ_Upload.nsf. Parties may also file by U.S. mail, personal delivery, courier, or commercial delivery service. Regardless of submission method, all documents submitted for filing must be signed, accompanied by a certificate of service, and served on the undersigned judge and on each party.

Documents filed electronically should be submitted online using the OALJ E-Filing System.[3] Parties must first register to use the OALJ E-Filing System. Registration is not automated. There may be a delay of 1–2 business days between the time a party applies for registration and the time that party will be able to upload documents into the system. Documents filed electronically must be in Portable Document Format ("PDF"), 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 electronically are deemed to constitute both the original and one copy of the document. NOTE: The OALJ E-Filing System is not designed to protect the privacy of any Confidential Business Information ("CBI") or Personally Identifiable

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[1] Pursuant to the Headquarters Hearing Clerk Pilot Project, the Office of Administrative Law Judges and Headquarters Hearing Clerk shall keep the official record and be the proper filing location for all contested cases in which an answer was filed after May 1, 2012. For more information, see the Office of Administrative Law Judges' website at www.epa.gov/oalj.

[2] Electronic filing is the preferred method of submitting documents to the Office of Administrative Law Judges on cases assigned to a litigation ALJ.

[3] More information about electronic filing may be found in the Standing Order Authorizing Electronic Filing in Proceedings before the Office of Administrative Law Judges, available on the Office of Administrative Law Judges' website at www.epa.gov/oalj.

Information ("PII"), and whenever a document is filed electronically, the undersigned will consider all confidentiality claims waived.

Documents filed by mail via the United States Postal Service ("USPS") should 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 should 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

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 to the OALJ E-Filing System is considered "filed" at the time and date of electronic reception as recorded by the OALJ E-Filing System. To be considered timely, documents submitted by e-mail to the OALJ E-Filing System must be received by 11:59 p.m. Eastern Time on the date the document is due, unless another time is specified by the Presiding Judge. The OALJ E-Filing system will generate an electronic receipt of the submission that will be sent by email to both the party submitting the document and the Headquarters Hearing Clerk. There may be a delay between document submission and transmission of the electronic receipt.[4] The use of the OALJ E-Filing System constitutes consent to the service of orders by electronic mail to the email address used to register for the OALJ E-Filing System.

A copy of each document filed in this proceeding shall also be served on the undersigned and on each party, per 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 via the OALJ E-Filing System are also deemed to have been "served" on the undersigned. A document is considered "served" upon mailing, when placed in the custody of a reliable commercial delivery service, or upon electronic transmission, per 40 C.F.R. § 22.7(c).

The parties are advised NOT to include, attach, or refer to any terms of settlement

[4] The Hearing Clerk may not be able to confirm receipt of the document earlier than one hour after the transmission of the electronic receipt.

offers or agreements in any document submitted to the Presiding Judge, and no copies of Consent Agreements and Final Orders shall be submitted, or attached to any document submitted, to the Presiding Judge 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 Confidential Business Information ("CBI") or Personally Identifiable Information ("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 Office of Administrative Law Judges website at www.epa.gov/oalj.

Contact Information. Contact may be made with my legal assistant, Danielle Pope, at (202) 564-6022 or pope.danielle@epa.gov to ask whether a document has been received or issued. For procedural questions, you may contact Ryan D. Yaeger, Staff Attorney in the Office of Administrative Law Judges, at (202) 564-4898 or yaeger.ryan@epa.gov.

Motions. *Prior to filing any motion*, the moving party must 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. Furthermore, 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 thirty (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 Office of Administrative Law Judges has access to videoconferencing technology that may be utilized for oral arguments on motions, and which may minimize the expenditure of time and monetary resources in connection with such arguments. A request for oral argument may be granted, in my discretion, where further

clarification and elaboration of arguments would be of assistance in ruling on the motion.

SO ORDERED.

Susan L. Biro
Chief Administrative Law Judge

Dated: October 30, 2015
Washington, D.C.

In the Matter of Hovensa LLC, Respondent
Docket No. CAA-02-2015-1206

CERTIFICATE OF SERVICE

I certify that the foregoing **Pre Hearing Order,** dated October 30, 2015, was sent this day in the following manner to the addressees listed below:

Danielle L. Pope
Paralegal

Original And One Copy To:

Sybil Anderson
Headquarters Hearing Clerk
U.S. EPA
Mail Code 1900R
1200 Pennsylvania Avenue, NW
Washington, DC 20460-2001

Copy By Regular Mail And E-Mail To:

Franklin G. Quow, Esquire
Chief Legal Officer and Secretary
Hovensa LLC
1 Estate Hope
Christiansted, VI 00820

Jean Regna, Esquire
Office of Regional Counsel
U.S. EPA Region II
290 Broadway, 16th Floor
New York, New York 10007-1866
regna.jean@epa.gov

Dated: October 30, 2015
Washington, DC