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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of:	)	
	)	
AMERICAN ACRYL, N.A., L.L.C.,[1]	)	**Docket No. CAA-06-2011-3302**
	)	
Respondent.	)	

PREHEARING ORDER

As you have been previously notified, I am designated to preside over this proceeding. This proceeding will be 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. §§ 22.1-22.45 ("Rules of Practice"). The parties are advised to familiarize themselves with the applicable statute(s) and the Rules of Practice. An informal Practice Manual, a recently updated Citizen's Guide to proceedings before the EPA Office of Administrative Law Judges, and significant decisions issued by the Office are accessible on the world wide web at: http://www.epa.gov/oalj.

Agency policy strongly supports settlement, and the procedures regarding documenting settlements are set forth in Section 22.18 of the Rules of Practice, 40 C.F.R. § 22.18. If the parties have taken the initiative to resolve this matter informally and expeditiously, they are commended. Each party is 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 such thoughts in mind the parties are directed to engage in a settlement conference on or before **July 1, 2011**, and attempt to reach an amicable resolution of this matter. Complainant shall file a status report regarding settlement on or before **July 8, 2011**. If the case is settled, the fully-executed Consent Agreement and Final Order should be filed no later than **July 29, 2011**, with a copy sent 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 prehearing requirements of this Order.

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[1] The Complaint identified Respondent as "American Acryl, N.A., L.L.C." However, in its Answer, Respondent represented that its correct corporate name is "American Acryl L.P." Answer ¶ 3. To date, no motion to change the caption or amend the Complaint has been filed.

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 Regional 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 copy of any documents in support of the allegations in Paragraphs 18-19 and 21-22 of the Complaint, to the extent Respondent denied those allegations in its Answer; and

   (B) all factual information and supporting documentation relevant to the assessment of a penalty regarding the relevant penalty factors, and a copy, or a statement of the internet address (URL), of any policy or guidance upon which Complainant relied in calculating a proposed penalty.

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

   (A) a copy of any documents in support of the denials made in Paragraphs 18-19 and 21-22 of the Answer;

   (B) a brief narrative statement, and a copy of any documents in support, explaining the assertions in Paragraphs 7 and 16 of the Answer;

   (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, 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 it 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:

July 29, 2011	Complainant's Initial Prehearing Exchange
August 19, 2011	Respondent's Prehearing Exchange
September 2, 2011	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 et seq. ("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. 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 to either 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, can 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.

> **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 prehearing exchange requirements. Only the filing with the Hearing Clerk of a fully-executed Consent Agreement and Final Order, or an order of the judge, excuses noncompliance with filing deadlines.**

Filing and Service. A document is "filed" when the Regional Hearing Clerk receives it. A document is "served" upon mailing or when placed in the custody of a reliable commercial delivery service. However, the parties are encouraged to send a courtesy copy to the Office of Administrative Law Judges by facsimile or email, in addition to the mailed hard copy, as physical mail delivery is often subject to significant delay. The facsimile number for the Office of Administrative Law Judges is (202) 565-0044, and the email address is oaljfiling@epa.gov. A signed certificate of service must be attached to all filed documents.

All documents served on the undersigned shall be addressed as follows if sent by regular mail:

The Honorable Susan L. Biro, Chief Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W., Mail Code 1900L
Washington, DC 20460

All documents served on the undersigned via Federal Express or any delivery service that x-rays its packages as part of its routine security procedures may be delivered directly to:

The Honorable Susan L. Biro, Chief Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
1099 14th Street, N.W., Suite 350
Washington, DC 20005

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

Contact Information. Telephone contact may be made with my legal assistant, Maria Whiting-Beale at (202) 564-6259 to ask whether a document has been received or issued. Email or telephone contact may be made with my staff attorney, Adrienne Fortin, Esq., at (202) 564-7862 (fortin.adrienne@epa.gov) for other procedural questions.

Courtesy Copies. If any party wishes to receive, by e-mail or facsimile, an expedited courtesy copy of decisions and substantive orders issued in this proceeding, the party shall submit a request for such copies by letter addressed to Maria Whiting-Beale at one of the addresses above. The letter shall include the case docket number, the party's e-mail address or facsimile number, and a statement as to whether the party requests expedited courtesy copies of (a) the initial decision and/or any orders on motion for accelerated decision or dismissal, or (b) all decisions and substantive orders. The undersigned's office will endeavor to comply with such requests, but does not guarantee the party's receipt of expedited courtesy copies.

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 pleading 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 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, and strongly encourages the parties to consider utilizing such technology for oral arguments on motions so as to 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.

Susan L. Biro
Chief Administrative Law Judge

Dated: June 16, 2011
Washington, D.C.

In the Matter of American Acryl N.A., L.L.C., Respondent
Docket No.CAA-06-2011-3302

CERTIFICATE OF SERVICE

I certify that the foregoing **Prehearing Order**, dated June 16, 2011, was sent this day in the following manner to the addressees listed below.

Maria Whiting-Beale

Maria Whiting-Beale
Staff Assistant

Dated: June 16, 2011

Original And One Copy By Pouch Mail To:

Lorena Vaughn
Regional Hearing Clerk
U.S. EPA
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Copy By Pouch Mail To:

Carlos Zequeira, Esquire
Assistant Regional Counsel
U.S. EPA
1445 Ross Avenue
Dallas, TX 75202-2733

Copy By Regular Mail To:

George O. Wilkinson, Esquire
Vinson & Elkins, L.L.P.
First City Tower
1001 Fannin Street, Suite 2500
Houston, TX 77002-6760