

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

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In the Matter of :
 : Hon. Susan L. Biro, Presiding Officer
Caribbean All Metal Recyclers Corp., :
 :
 : Respondent. :
 : Docket Number RCRA-02-2016-7103
Proceeding under Section 3008 of the :
Solid Waste Disposal Act, as amended. :
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Motion For Extensions Of Time

For the reasons set forth below, Complainant seeks a 60-day (two month) extension of time for the deadlines set in the Prehearing Order of January 27, 2017. Respondent, through counsel, has authorized the undersigned to state that it is in agreement with the extension being sought.¹

Background

This proceeding against the Caribbean All Metal Recyclers Corp. was commenced autumn 2016 with the issuance of the administrative complaint pursuant to Section 3008(a) of the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6928(a) (hereinafter SWDA). The complaint alleges two counts: (a) the unlawful export of seven shipments of spent lead acid batteries to China, each shipment a violation of 40 C.F.R. §§ 262.52(a), 262.52(c), 262.53(c) and 262.80(a) [Section 262.80(a) incorporating by reference the substantive obligations set out in 40 C.F.R. § 262.53], with each such regulatory provision constituting a requirement of Subchapter III of the SWDA, 42 U.S.C. §§ 6921-6939(e); and (b) the unlawful export of 23 shipments of

¹ This motion is also intended to provide this Court with a status of this proceeding.

spent lead acid batteries to South Korea, each shipment a violation 40 C.F.R. §§ 262.83(b) and 266.80 [Section 262.80(a) incorporating by reference the substantive obligations set out in 40 C.F.R. § 262.83], with each such regulatory provision constituting a requirement of Subchapter III of the SWDA, 42 U.S.C. §§ 6921-6939(e). The complaint seeks a penalty of \$30,400, approximately \$14,000 for the first count, the remainder for the second.² Respondent timely filed its answer on or about December 12, 2016, disputing liability, requesting a hearing, requesting an informal settlement conference and asserting, *inter alia*, an inability to pay the sought-for penalty (page 9 of the answer).

Preliminary Settlement Efforts

The parties already have discussed settlement. Based on the inability to pay assertion in the answer, EPA requested financial corroboration. In mid-January Respondent provided financial information for the years 2013-2015. In late January this information, with Respondent's permission, was sent to an independent financial analyst for evaluation.³ The undersigned was given the results of the analysis (it was orally conveyed via telephone) on February 2nd. The analysis was not conclusive about Respondent's present ability to pay the penalty; nor was the analyst able to extrapolate with any degree of certainty with regard to Respondent's near-future ability to pay the penalty. Instead, the conclusions drawn solely pertained to Respondent's financial condition during the years for which Respondent had

² The first count sought \$14,111.00, the second \$16,339.00. The numbers have been rounded off, yielding \$30,400.00.

³ The delay in transmitting the information was occasioned by the need for the Region to ensure the availability of the services of the consultant and the extra steps required to provide the information in accordance with Confidential Business Information requirements and protocol.

provided the documentation.

Follow-Up Efforts to Obtain Information from Respondent

Following up on the information provided in this evaluation, the undersigned requested additional financial information from Respondent, specifically the information needed for an analysis of Respondent's present and anticipated near-future financial condition. In an e-mail dated February 2nd, the following information was sought from Respondent:

- 1) "Financial information for calendar year 2016";
- 2) "Any accounting or other financial projections for 2017";
- 3) "[A] detailed narrative as to why respondent believes it has an inability to pay and why it asserts it would be unable to pay the penalty sought."

The Region now awaits receipt of the information requested.

The Prehearing Order

The Prehearing Order of January 27, 2017 establishes a number of deadlines. For settlement matters, it directs the parties to hold a conference on or before February 24th, and Complainant must within one week thereafter, by March 3rd, file a status report as to where the parties stand regarding settlement. If they parties have by then reached a settlement, a fully executed consent agreement/final order is to be filed by March 10th.

The order further provides that, "[s]hould a Consent Agreement and not be finalized on or before the latter date, the parties must prepare for a hearing and shall strictly comply with [specified] prehearing requirements...." The order then establishes a schedule for the filing of the parties' prehearing exchanges:

- 1) March 10, 2017 for Complainant's Initial Prehearing Exchange;

2) March 24, 2017 for Respondent's Prehearing Exchange; and

3) March 31, 2017 for Complainant's Rebuttal Prehearing Exchange

In addition, the order provides that any dispositive motion, such as a motion for accelerated decision pursuant to 40 C.F.R. § 22.20(a), be filed within 30 days of the due date for Complainant's rebuttal PHE (*i.e.* April 30th).⁴

Why The Time Extensions Are Being Sought

Both parties, based on a number of discussions, believe that this case is both amenable to settlement and should be settled. They wish to have maximum latitude and flexibility to explore settlement possibilities and scenarios, including to exchange offers and counter-offers, without having to concern themselves with upcoming and imminent litigation obligations that might distract from or otherwise derail settlement efforts. The parties recognize that a settlement conference would be most meaningful and productive if it were held subsequent to a financial evaluation of Respondent's fiscal condition being completed. Unless and until Respondent provides the updated financial information (or if Respondent admits it will not be forthcoming soon), any settlement conference held prior thereto would necessarily be premature and inconclusive. Accordingly, to date, the parties have not established a specific date on which to hold a settlement conference (although they have agreed that such a conference should be held at the appropriate time).

Relief Sought

Complainant now seeks, with the consent of Respondent, an extension of 60-days in the

⁴ As April 30th this year is a Sunday, the due date becomes the next business day, May 1, 2017. 40 C.F.R. § 22.7(a).

deadlines set forth in the January 2017 Prehearing Order. Therefore, Complainant respectfully moves this Court, pursuant to 40 C.F.R. §§ 22.4(c)(2), 22.7(b), 22.16(a) and 22.19(a), for an order:

- (a) staying for two months (60 days) so much of the Prehearing Order as directed the parties to hold a settlement conference by February 24, 2017;
- (b) staying for two months (60 days) so much of the Prehearing Order as directed Complainant to file a status report by March 3, 2017;
- (c) staying for two months (60 days) so much of the Prehearing Order requiring the parties, if they have by then settled, to file a fully executed consent agreement and final order by March 10, 2017;
- (d) staying for two months (60 days) the schedule for the respective submissions of the parties' prehearing exchanges;
- (e) staying for two months (60 days) the requirement that any dispositive motion be filed within 30 days of the filing of Complainant's rebuttal prehearing exchange;
- (f) extending the deadline for the parties to hold a settlement conference through to April 24, 2017;
- (g) extending the date for Complainant to submit a status report to May 1, 2017;
- (h) extending the deadline for the parties, if they have by then settled, to submit a fully executed consent agreement and final order to May 8, 2017;
- (i) extending the schedule for the submission of the prehearing exchanges as follows (if the parties have not settled by then): Complainant's initial submission to be filed by May 8, 2017, Respondent's prehearing exchange by May 22, 2017 and Complainant's rebuttal prehearing exchange by May 30, 2017; and
- (j) extending the deadline for the submission of any dispositive motion until June 26, 2017.

To the extent this Court is unable to grant the extensions sought herein, Complainant then respectfully requests, and moves this Court, for a least a one-month (30 day) stay of the deadlines established in the Prehearing Order, with an accompanying 30-day extension for each.

Good Cause Shown

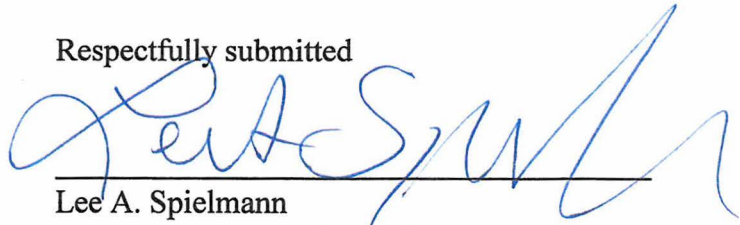
Complainant submits that, in addition to the reasons set forth above (“Why The Time Extensions Are Being Sought”), good cause exists for the following reasons. Respondent has consented to the relief being sought, and thus there can be no question as to whether the extensions sought might prejudice Respondent. This case is in an inchoate stage; for example the Prehearing Order was issued only 10 days ago. This request is being made early enough in the unfolding of this litigation that presumably that extensions sought should result in, at most, minimal disruption to the Court’s calendar. No prior request for an extension of time has been made. The parties’ seeking the additional time in order to channel their efforts and resources to attain a negotiated settlement accords with, as noted in the Prehearing Order, the strong Agency policy favoring negotiated settlements. All of these factors militate for granting the extensions of time this motion seeks.

Complainant therefore respectfully requests this Court grant the relief herein sought and that it also grant such other and further relief as it deems just, proper and lawful.⁵

Dated: February 7, 2017
New York, New York

⁵ In accordance with Agency policy to save resources and Regional policy to limit paper usage, two-sided printing is being used for this document. The undersigned will continue to do so unless the Court directs otherwise.

Respectfully submitted



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In re Caribbean All Metal Recyclers, Corp.
Docket No. RCRA-02-2016-7103

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing "MOTION FOR EXTENSIONS OF TIME," dated February 7, 2017, in the above-referenced proceeding in the following manner to the respective addressees listed below:

Original and one copy by
UPS Overnight:

Headquarters Hearing Clerk
Office of Administrative Law Judges
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Dated: February 7, 2017
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