

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 2

2017 JUL -3 AM 10:15

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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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June 30th Motion For Additional Extension Of Time

With apologies to this Tribunal for having mis-calculated in the motion of June 1st the time required to finalize the settlement agreed-upon by the parties and with the express consent of Respondent’s counsel to move for the additional extension of time here sought, Complainant now moves for an additional week for the parties to finalize a settlement that is ready to be signed but for the circumstances discussed below.¹ The chronology provided below demonstrates that good cause exists for the additional time the parties now seek.

On June 1st, a draft consent agreement was sent to Respondent’s counsel, with a revised versions sent on June 9th. The revisions were minor. The June 9th communication requested that counsel, “at [his] earliest convenience [provide EPA] with [his] comments, questions, etc.” (June 9th e-mail, 4:47 PM). On June 16th, Complainant received an e-mail communication from counsel indicating that “[w]e expect to make very minor, if any, comments to the agreement in a couple of days.” (June 16th e-mail, at 2:50 PM). After management approval for the document was secured in Region 2 (*i.e.* once Complainant’s formal approval was secured, the undersigned

¹ A recitation as to the background of this proceeding will not be made in this motion, as prior litigation papers have fully discussed this background.

was authorized *formally* to present the document for Respondent's execution), the undersigned sent a PDF version to counsel requesting his client's signature (June 22nd e-mail, at 6:18 PM). The following day, the undersigned received a request from counsel for a relatively slight revision in the language in one specific paragraph; that was the only change requested.² After securing management approval to effect the one change Respondent sought, the undersigned sent another PDF version to Respondent's counsel with that change (June 27th e-mail, 3:14 PM). The undersigned shortly thereafter inquired as to the status of the document, specifically when Respondent or its authorized representative would execute the consent agreement (June 29th e-mail, 4:48 PM).

The undersigned today (June 30th) spoke with Respondent's counsel. The undersigned was informed because of circumstances beyond Respondent's control, Respondent will be unable to sign the consent agreement until Wednesday, July 5th or Thursday, July 6th, a delay contributed to in part because of the intervening July 4th holiday. Once the document is received at EPA's Regional Office (in New York City), it will immediately be sent through for signature by Complainant; as noted above, her approval has already been secured and thus obtaining her signature is but a formality. At that point it will be submitted to the Regional Judicial Officer for her to execute the accompanying Final Order, and based upon the prior experience of the undersigned, her signing is a virtually certain probability.³

Thus it is circumstances beyond the control of either Complainant or Respondent that

² That e-mail communication (June 23rd, 12:00 PM) succinctly noted: "We only have one comment to the agreement. Very straightforward."

³ The undersigned has been a counsel employed by EPA, Region 2, for 28 years.

preclude the parties from executing the final document (and then filing it with this Court) by the July 6th deadline established in the June 12th order, circumstances of which the undersigned has only today been informed. Timing considerations aside, the execution of the settlement document is, however, for all intents and purposes guaranteed.

Under these circumstances as set forth above, the undersigned deems that good cause exists for this Court to grant the parties the additional week (eight days) to effectuate their settlement and file the consent agreement/final order (*i.e.* until Friday, July 7th). Therefore, Complainant now seeks, with the express consent of Respondent's counsel, an additional eight days in the deadlines the June 12th order sets for the parties to finalize settlement, or failing that, commence the prehearing exchange process. Therefore, Complainant respectfully now 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) vacating the settlement/PHE deadlines set forth (or incorporated by reference) in the June 12th order; and

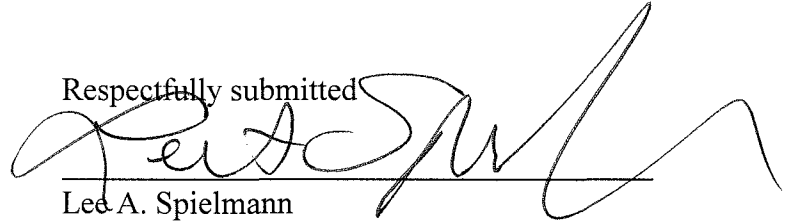
(b) extending each of those deadlines as follows: (1) the parties must file a fully executed settlement document by July 14, 2017; (2) if the parties fail to do so, Complainant must submit her initial prehearing exchange by July 14, 2017; (3) Respondent then to submit its PHE by July 28, 2017; (4) Complainant to submit any rebuttal PHE by August 4, 2017; and (5) any motion for accelerated decision or dismissal to be filed no later than September 1, 2017.

Given that the parties literally stand on the threshold of settlement and are not only ready to execute the consent agreement but authorized to do so, and given that, as the June 12th order noted, "this Tribunal favors settlements as a means of resolving disputes,"⁴ all these circumstances militate for granting this motion. Accordingly, the parties respectfully request this

⁴ This is consistent with Agency policy: "The Agency encourages settlement of a proceeding at any time...." 40 C.F.R. § 22.18(b)(1).

Tribunal to do so and to grant such other and further relief as it deems just, proper and lawful.⁵

Dated: June 30, 2017
New York, New York

Respectfully submitted


Lee A. Spielmann
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866
212-637-3222
spielmann.lee@epa.gov

TO: The Honorable Susan L. Biro
Chief Administrative Law Judge
Office of Administrative Law Judges
Ronald Reagan Building, M1200
U.S. Environmental Protection Agency
1300 Pennsylvania Avenue, N.W.
Washington, DC 20004

Headquarters Hearing Clerk
Office of Administrative Law Judges
Ronald Reagan Building, M1200
U.S. Environmental Protection Agency
1300 Pennsylvania Avenue, N.W.
Washington, DC 20004

Russell Del Toro, III, Esq.
Toro, Colon, Mullet, Rivera & Sifre, P.S.C.
P.O. Box 195383
San Juan, Puerto Rico 00919-5383⁶

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.

⁶ Counsel to whom prior communication were sent, Carlos Colón Franceschi, is on vacation. E-mail of June 23rd, 12:00 PM.

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 "June 30th Motion for Additional Extension of Time," dated June 30, 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
U.S. Environmental Protection Agency
Ronald Reagan Building, Room M1200
1300 Pennsylvania Avenue, N.W.
Washington, DC 20004

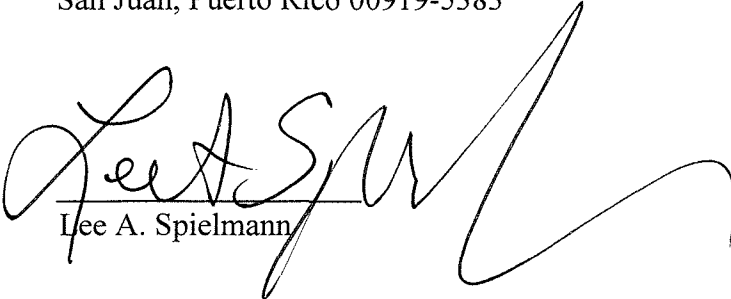
Copy by UPS Overnight:

Honorable Susan L. Biro
Chief Administrative Law Judge
U.S. Environmental Protection Agency
Ronald Reagan Building, Room M1200
1300 Pennsylvania Avenue, N.W.
Washington, DC 20004

Copy by E-mail (PDF)
and by First Class Mail:

Russell Del Toro, III, Esq.
Toro, Colón, Mullet, Rivera & Sifre, P.S.C.
P.O. Box 195383
San Juan, Puerto Rico 00919-5383

Dated: June 30, 2017
New York, New York



Lee A. Spielmann

