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December 8, 2015

By E-filing

Ms. Sybil Anderson
Headquarters Hearing Clerk
U.S. EPA/Office of Administrative Law Judges
Room M-1200
1300 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Re: In the Matter of Aylin, Inc., et al.
EPA Docket No. RCRA-03-2013-0039

Dear Ms. Anderson:

I have enclosed for filing Respondents' Motion for Extension of Time to Respond to Complainant's Motions.

Sincerely,

Jeffrey L. Leiter

cc: Certificate of Service List

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of:)	
)	
Aylin, Inc.; Rt. 58 Food Mart, Inc.;)	Docket No. RCRA-0302-13-0039
Franklin Eagle Mart Corp.;)	
Adnan Kiriscioglu; 5703 Holland)	
Road Realty Corp.; 8917 South)	Proceeding under Section 9006
Quay Road Realty Corp.; and,)	of the Resource Conservation an
1397 Carrsville Highway Realty)	and Recovery Act, as amended,
Corp.,)	42 U.S.C. Section 6991e
)	
Respondents.)	

**RESPONDENTS' MOTION FOR EXTENSION OF TIME TO RESPOND TO COMPLAINANT'S
MOTIONS**

I. RELIEF REQUESTED

Pursuant to the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22 (“Rules of Practice”), Respondents Aylin, Inc., Rt. 58 Food Mart, Inc., Franklin Eagle Mart Corp., Adnan Kiriscioglu, 5703 Holland Road Realty Corp., 8917 South Quay Road Realty Corp., and 1397 Carrsville Highway Realty Corp. (collectively, the “Respondents”) respectfully move and request an Order from the Presiding Officer, granting (A) an extension of time to Friday, December 11, 2015 to respond to Complainant’s Motion for Leave to File Supplemental Prehearing Exchange Motion (“Complainant’s Prehearing Exchange”); and, (B) an extension of time to Friday, January 15, 2016 to respond to Complainant’s Motion for Partial Accelerated Decision on Liability and Memorandum of Law (“Complainant’s Partial Accelerated Decision

Motion”). By way of email exchanges on December 7, 2015, Complainant’s counsel has represented that Complainant opposes this instant motion.

II. PROCEDURAL HISTORY

Complainant served its Response to Respondents’ Motion for Leave to Conduct Additional Discovery and to Supplement Their Prehearing Exchanges to Add a Witness (“Complainant’s Response”) on November 19, 2015. Respondents filed their reply to Complainant’s Response on December 2, 2015.

Complainant served its Prehearing Exchange Motion and Motion for Partial Accelerated Decision on Respondents on Monday, November 23, 2015.

Complainant electronically served its Second Motion to Compel Discovery and Impose Sanctions (“Complainant’s Motion to Compel”) on the Respondents on Friday, December 4, 2015. Respondents shall respond to Complainant’s Motion to Compel on or before Monday, December 21, 2015.

III. DISCUSSION

Section 22.7(b) of the Rules of Practice authorizes the Presiding Officer to grant motions for extension of time “upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to the other parties.” 40 C.F.R. §22.7(b).

Respondents’ motion is timely made prior to the Respondents’ response dates for the Complainant’s two motions. As to Complainant’s Prehearing Exchange, and depending on how the days for response are counted under the Rules of Practice, Respondents are asking for a maximum of a one-day extension.

As to Complainant's Partial Accelerated Decision Motion, the Respondents are asking for a little over 30 days' extension – including through the Christmas and New Year's holidays -- to prepare and file their response to this motion. Complainant's Partial Accelerated Decision Motion runs 61-pages and asks for accelerated decision on liability on six complex areas of the Commonwealth of Virginia's underground storage tank regulations. Complainant's motion is accompanied by three affidavits and 163 exhibits.

As noted above, Respondents are not requesting an extension of time to respond to Complainant's Motion to Compel.

Good cause exists for Respondents' motion. Attached to this motion is the declaration of Respondents' counsel, setting forth in more detail reasons for their request. Respondents' motion is not submitted for purposes of delay.

There is no prejudice to the Complainant by the granting of this motion. Respondents' counsel conferred with Complainant's counsel by way of email exchanges on December 7, 2015. Complainant, through its counsel, objects to this motion being granted by the Presiding Officer on two grounds. First, Complainant's counsel said:

An extension of the dates for [Respondents'] reply to the accelerated decision motion and any EPA response would dramatically reduce to less than 3 months the already limited time available for the Judge to consider and issue her ruling prior to presumed start of the hearing on April 25, 2016.

The Respondents are sensitive to the Presiding Officer's time and do not make their motion for purposes of delay. However, when the parties were first contacted by the Presiding Officer's law clerk, Jennifer Almase, on November 4, 2015, about hearing dates, the first dates suggested by Ms. Almase were at the end of January or beginning of February 2016. If the parties agreed to this time period for the hearing, and barring any extensions, the Presiding Officer would have

had less than one month to consider Complainant's Partial Accelerated Decision Motion, Respondents' response, and any reply by the Complainant. At the same time, Respondents' Motion for Leave to Conduct Additional Discovery and to Supplement Their Prehearing Exchanges to Add a Witness and Complainant's Motion to Compel are pending before the Presiding Officer. The Presiding Officer has not issued an order setting the hearing date.

Second, Complainant's counsel contends, "[Respondents] have been on notice since August 10, 2015, when the Court issued her Order on Motions, setting Nov. 20, 2015, as the deadline for dispositive motions." This argument is wholly misplaced. Complainant and Respondent each were given a little over three months to prepare and file dispositive motions. The Complainant chose to file such motion. Given the above-noted length and detail of Complainant's Partial Accelerated Decision Motion, which was filed on the last day, it is prejudicial instead to the Respondents, notwithstanding their counsel's schedule issues noted in his declaration, to respond this motion under the Rules of Practice.

IV. CONCLUSION

Based upon the foregoing, Respondents respectfully request an Order from the Presiding Officer, granting (A) an extension of time to Friday, December 11, 2015 to respond to Complainant's Prehearing Exchange Motion; and, (B) an extension of time to Friday, January 15, 2016 to respond to Complainant's Partial Accelerated Decision Motion.

Dated: December 8, 2015

Respectfully submitted,



Jeffrey L. Leiter
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Fax: (202) 386-7672
Email: jll@leitercramer.com

Attorney for Respondents

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 8th day of December, 2015, the foregoing Respondents' Motion for Extension of Time to Respond to Complainant's Motion was sent electronically and by U.S. regular mail, postage prepaid:

Louis J. Ramalho, Esq.
Janet E. Sharke, Esq.
U.S. EPA, Region III (Mail Code 3RC50)
1650 Arch Street
Philadelphia, PA 19103-2029

Attorneys for Complainant

Jeffrey L. Leiter

Jeffrey L. Leiter

DECLARATION OF JEFFREY L. LEITER

I, Jeffrey L. Leiter, swear and affirm that:

1. I am counsel to the Respondents in *In the Matter of Aylin, Inc., et al.*, Docket No. RCRA-0302-13-0039. I had been in solo practice from January 1, 2014. I hired a first-year associate lawyer in February 2015. This associate lawyer has assisted me with some legal research for this matter.

2. I was electronically served Complainant's Response to Respondents' Motion for Leave to Conduct Additional Discovery and to Supplement Their Prehearing Exchanges to Add a Witness ("Complainant's Response") on Thursday, November 19, 2015.

3. I was served Complainant's Motion for Leave to File Supplemental Prehearing Exchange ("Complainant's Supplemental Motion") and Complainant's Motion for Partial Accelerated Decision on Liability and Memorandum of Law ("Complainant's Partial Accelerated Decision Motion") on Monday, November 23, 2015.

4. I was electronically served Complainant's Second Motion to Compel Discovery and Impose Sanctions ("Complainant's Motion to Compel") on Friday, December 4, 2015.

5. Complainant's Partial Accelerated Decision Motion is 61-pages long, and it includes three sworn statements and 163 exhibits. Since being served with this motion, I have been working on Respondents' response, but I am unable to complete timely the response.

6. I traveled on Wednesday afternoon, November 25, 2015 to Williamsburg, Virginia to spend the Thanksgiving holiday with my wife's family. During my time in Williamsburg, I began drafting Respondents' Reply to Complainant's Response. I also began analyzing Complainant's Partial Accelerated Decision Motion. I returned to my home in Northern Virginia on Sunday, November 29, 2015.

7. I traveled to and from Boston, Massachusetts on Monday, November 30, 2015, for a meeting of the performing parties at the Beede Waste Oil Superfund Site, which is located in Plaistow, New Hampshire. The Respondents are not involved with this Site.

8. On Wednesday, December 2, 2015, I traveled to Fort Myers, Florida to attend and speak at a two-day conference organized by the Oil Price Information Service ("OPIS"). This OPIS event had been on my calendar since at least June 2015. Prior to my Noon flight from Washington, D.C., I electronically filed Respondents' Reply to Complainant's Response.

9. On Friday afternoon, December 4, 2015, I drove from Fort Myers to Orlando, Florida to visit my daughter, who lives and attends school in the Orlando area. I electronically received Complainant's Motion to Compel while I was driving to Orlando. I returned to my home in Northern Virginia on Monday afternoon, December 7, 2015.

10. I have hip replacement surgery scheduled for Tuesday, December 15, 2015, at Sibley Hospital ("Sibley") in Washington, D.C. I have pre-surgical testing at Sibley on Wednesday, December 9, 2015, and a pre-surgery physical with my internist in his office the next day.

11. Following my surgery, I anticipate being hospitalized for two days. I return to the surgeon between 10 days to two weeks after discharge from Sibley to have the surgical staples removed and obtain clearance to resume driving. Other than the time I am hospitalized, receiving physical therapy at home, and spending the immediate Christmas holiday with my family, I expect to be able to work on this matter and matters for other clients while I am recuperating. I do not expect to return to my office until January 4, 2016.

12. While it would be my preference to delay Respondents' Response to Complainant's Partial Accelerated Decision Motion until after the Presiding Officer has ruled on Respondents' Motion for Leave to Conduct Additional Discovery and to Supplement Their Prehearing Exchanges to Add a Witness, it is not my intention to unduly delay the proceeding.

13. Given the scope of Complainant's Partial Accelerated Decision Motion, an extension of time for the Respondents to respond to this motion is reasonable and appropriate, even without my out-of-office travel since being served Complainant's two motions and my upcoming surgery. The Complainant has had a little over three months to prepare Complainant's Partial Accelerated Decision Motion. It is prejudicial to Respondents to have 15 days to respond.

14. Respondents will respond to Complainant's Supplemental Motion by Friday, December 11, 2015, and Complainant's Motion to Compel by Monday, December 21, 2015.

15. I exchanged emails with Complainant's counsel on Monday, December 7, 2015. I provided Complainant's counsel with drafts of Respondents' motion for the requested extensions of time and this declaration. Complainant's counsel, by email, said that Complainant opposes the Respondents' motion for extensions of time. I have attached a true copy of my email exchange with Complainant's counsel.

I declare under penalty of perjury that the foregoing is true and correct.

Date: December 8, 2015



Jeffrey L. Leiter

From: "Sharke, Janet" <Sharke.Janet@epa.gov>
Subject: RE: IMO Aylin, et al. -- Confidential
Date: December 7, 2015 3:52:24 PM EST
To: Jeffrey Leiter <jll@leitercramer.com>
Cc: "Ramalho, Louis" <Ramalho.Louis@epa.gov>

Jeff,

By our calculations, the due date for your responses is on or about Dec 11th. Nevertheless, while we are sympathetic to your personal circumstances, EPA DOES object to both requested extensions.

An extension of the dates for your reply to the accelerated decision motion and any EPA response would dramatically reduce to less than 3 months the already limited time available for the Judge to consider and issue her ruling prior to presumed start of the hearing on April 25, 2016.

You have been on notice since August 10, 2015, when the Court issued her Order on Motions, setting Nov. 20, 2015, as the deadline for dispositive motions.

Regards,

Janet

-----Original Message-----

From: Jeffrey Leiter [mailto:jll@leitercramer.com]
Sent: Monday, December 07, 2015 9:00 AM
To: Sharke, Janet <Sharke.Janet@epa.gov>; Ramalho, Louis <Ramalho.Louis@epa.gov>
Subject: IMO Aylin, et al.

Good morning, Janet and Lou.

I am getting ready to head for the Orlando airport. I would like to file the attached, draft motion, requesting an extension of time. Can I get your consent to the motion? As indicated, Respondents propose that Complainant be given an extension to file any replies.

I intend to object to two items in your prehearing exchange motion. I fail to see the relevance on any matters related to visas. The UST lender liability rule has no application to this proceeding.

I will be in the air between 1:00 and 4:00 p.m. today.

Thanks for your consideration.

Jeff