

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

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In the Matter of:) Docket No. TSCA-05-2007-0013
)
Edward L. Murray, Jr.) Proceeding to Assess a Civil Penalty
Indianapolis, Indiana,) Under Section 16(a) of the Toxic
) Substance Control Act
Respondent.)
_____)

**RESPONDENT'S REPLY TO COMPLAINANT, US EPA'S RESPONSE TO
RESPONDENT'S SECOND REQUEST FOR AN EXTENSION OF TIME TO FILE A
CONSENT AGREEMENT AND FINAL ORDER**

Comes now Respondent, Edward L. Murray, Jr., by counsel, and in reply to US EPA's Response to Respondent's Second Request for an Extension of Time to File a Consent Agreement and Final Order (CAFO), states:

1. The parties have reached agreement in principle regarding the Claimant's allegations against Respondent. However, due to the calendars of the persons involved and Respondent's desire that he and his representatives be personally involved in completion of the CAFO, the parties have not yet reached final agreement on language of the CAFO and thus, are not yet in a position to file a CAFO in this matter. Due to the time frames contained in the Presiding Judge's Order granting Respondent's First Motion for an Extension of Time to File a Consent Agreement and Final Order, it was necessary for Respondent to file his Second Request for Extension of Time.

2. Claimant has now filed its Response to Respondent's Second Request for Extension of Time asking that a Default Judgment be entered against Respondent in this matter, based on Claimant's inaccurate assertion that Respondent has not complied with the Presiding Judge's Order to file a Prehearing Exchange.

3. Pursuant to the Presiding Judge's Order, the parties were to file a CAFO or Prehearing Exchanges no later than July 7, 2008. In accordance with the applicable Rules of Procedure, Respondent filed and served Claimant a copy of his Prehearing Exchange, by certified mail on July 7, 2008. Consequently, Claimant's allegation that Respondent has failed to comply with the Order's of the Presiding Judge is simply incorrect. As a result, entry of a Default Judgment would be inappropriate.

4. Additionally, Claimant asserts that Respondent did not advise Claimant's counsel of his intent to file a Second Motion for Extension of Time. Attached hereto as Exhibit "A" is a copy of an e-mail the undersigned received from Claimant's counsel on June 23, 2008, in which Claimant's counsel asks the undersigned to file a Second Request for Extension of Time. Additionally, the undersigned attempted to contact Claimant's counsel by telephone to discuss various issues including the Second Motion for Extension of Time, but Claimant's counsel has not returned the undersigned's telephone call.

5. Further, the undersigned has previously forwarded correspondence to Claimant's to continue the process of completing the CAFO, but as of the filing of this reply, continues to await response from Claimant's counsel.

6. Respondent has filed his Prehearing Exchange in compliance with the Court's Order, previously forwarded correspondence to Claimant's counsel regarding the CAFO language and attempted to contact counsel by phone to discuss various issues in this matter. Entry of Default Judgment as requested by Claimant would be appropriate. Further, Respondent anticipates that parties will be able to conclude the resolution of this matter and reach agreement on the terms of the CAFO within the additional time requested in Respondent's Second Motion for Extension of Time.

WHEREFORE, Respondent, by counsel, respectfully requests that the Presiding Judge deny Claimant's Request for Default Judgment, that it grant Respondent's Second Motion for Extension of Time to File a Consent Agreement and Final Order, and for all other relief appropriate under the premises.

DUFFIN & HASH, LLP



Robert W. Hash
Attorney No.: 16422-49

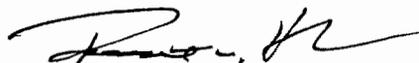
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Indianapolis, IN 46204
(317) 580-9348
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Attorney for Respondent,
Edward L. Murray, Jr.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following by First Class, United States Mail, postage prepaid, this 8th day of July, 2008.

Ms. Cynthia A. King
Associated Regional Counsel
U.S. EPA – Region 5
77 W. Jackson Boulevard
Chicago, IL 60604

Ms. Sonja Brooks-Woodard
Regional Hearing Clerk
U.S. EPA
77 W. Jackson Boulevard, E-13J
Chicago, IL 60604



Robert W. Hash

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U.S. EPA REGION 5

Rob Hash

From: King.Cynthia@epamail.epa.gov
Sent: Monday, June 23, 2008 2:08 PM
To: Rob Hash
Cc: Puchalski.Connie@epamail.epa.gov; Bonace.Terence@epamail.epa.gov
Subject: RE: Ed Murray

Mr. Hash:

I believe that we have now missed the deadline that you requested from the ALJ. Without a further request for extension, the ALJs have been known to simply require the filing of a Pre-Hearing Exchange within a short time frame. I have not received a response to our latest draft, so we will need an additional extension. Can you please request the further extension?

Thanks.

EXHIBIT "A"