

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 9

75 Hawthorne Street

San Francisco, CA 94105

FILED

2008 OCT 10 PM 2:18

U.S. EPA REGION IX
REGIONAL HEARING CLERK

IN THE MATTER OF

American Metal and Iron, Inc.

11665 Berryessa Road
San Jose, CA 95133

and

1045 Commercial Court
San Jose, CA 95133

Respondent

) Docket No. CWA 09-2008-0003

)

) **RESPONDENT AMERICAN METAL
) AND IRON, INC.'S MOTION FOR AN
) EXTENSION OF TIME TO ANSWER
) THE COMPLAINT; DECLARATION
) OF KEITH M. CASTO**

)

)

) Proceedings Under Section 309(g)(2)(B)
) of the Clean Water Act, as amended,
) 33 U.S.C. § 1319(g)(2)(B)

)

)

INTRODUCTION

Respondent American Metal and Iron, Inc. ("AMI") hereby moves for an extension of time to answer the complaint in this matter on the grounds that EPA and AMI are currently engaged in settlement discussions and it is in the interests of this court and the parties to avoid engaging in costly and potentially unnecessary litigation while those discussions are ongoing. AMI therefore respectfully requests that the court extend the time to answer by thirty days, from November 3, 2008 to December 3, 2008. EPA has represented through counsel that it will not oppose this motion.

DISCUSSION

The Presiding Officer may grant an extension of time for filing "any document" if the motion is "timely" and "good cause" is shown. 40 C.F.R. §22.7(b). In addition, the court must consider "prejudice to other parties." *Ibid.* A motion for extension of time must be filed "sufficiently in advance" of the due date so as to allow other parties "reasonable opportunity to respond" and allow the Presiding Officer "reasonable opportunity" to issue an order. *Ibid.*

This motion is timely, as it will be on file about three weeks prior to AMI's response to EPA's complaint, which is currently due on November 3, 2008. Declaration of Keith Casto ("Casto Decl."), ¶ 4. The motion will also be filed sufficiently in advance of that date to permit the issuance of an order. EPA will not oppose the motion, and the Presiding Officer will have a reasonable opportunity to rule on the motion prior to the response deadline.

The only other party to this matter, EPA, has represented through counsel that it will not oppose a motion to seek a thirty day extension of the time in which to file an answer. Casto Decl., ¶ 5, Ex. A. There is, therefore, no question of prejudice to EPA.


Finally, there is good cause for a brief extension of time in which to file a responsive pleading. AMI and EPA are currently in the midst of settlement negotiations and both EPA (as indicated in the attached letter from counsel for EPA) and AMI are hopeful that the case will resolve without the need to engage in costly litigation. Casto Decl., ¶ 5, Ex. A; ¶ 6. Rather than expend valuable time and resources on litigation, AMI would prefer to focus on settlement talks with EPA and move forward towards a resolution of this case. This would benefit both the Presiding Officer and the parties by conserving scarce judicial resources and avoiding the distraction and expense of litigation for a short period of time while the parties review, analyze and prepare settlement offers and counter-offers.

CONCLUSION

Good cause exists to grant this timely motion to extend the date by which the complaint must be answered and AMI respectfully requests that the Presiding Officer extend said date from November 3, 2008 to December 3, 2008.

DATED: October 10, 2008

SEDGWICK, DETERT, MORAN & ARNOLD LLP

By: 
Keith M. Casto
Attorneys for Respondent
AMERICAN METAL AND IRON, INC.

DECLARATION OF KEITH M. CASTO

I, Keith M. Casto, declare:

1. I am an attorney licensed to practice before all of the courts of the State of California and am a member of the law firm of Sedgwick, Detert, Moran & Arnold, attorneys of record for American Metal & Iron, Inc. ("AMI").

2. I am one of the attorneys responsible for the handling of this file and, in this capacity, have personal knowledge of the facts set forth in this declaration. If called as a witness, I would testify as set forth herein.

3. This declaration is made in support of AMI's Motion for an Extension of Time to Answer the Complaint.

4. AMI's response to EPA's Complaint is currently due on November 3, 2008.

5. The only other party, EPA, has represented through counsel that it will not oppose this motion. Attached hereto as Exhibit A is a true and correct copy of a letter dated September 29, 2008 in which counsel for EPA, Michael Massey, states that EPA will not oppose this motion. In addition, I spoke to Mr. Massey on the telephone on September 29, 2008, and he agreed that he would not oppose a request for a 30 day extension of the date by which AMI must file an answer.

6. AMI and EPA are currently in the midst of settlement negotiations which may prove to be fruitful. As noted in Exhibit A, the parties are "working on settlement of this matter" and EPA "hope[s] to finalize a settlement as soon as possible."

7. Copies of all documents relating to these proceedings, including those filed with the Regional Hearing Clerk, should be sent to:

Keith M. Casto, Esq.
Sedgwick, Detert, Moran & Arnold LLP
One Market Plaza, Steuart Tower, 8th Floor
San Francisco, CA 94105
Tel.: (415) 781-7900
Direct: (415) 627-1534
Fax: (415) 781-2635
e-mail: keith.casto@sdma.com

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on this 10th day of October, 2008, at San Francisco, California.



Keith M. Casto



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

September 29, 2008

BY CERTIFIED MAIL #: 7004 2510 0006 9180 4155
RETURN RECEIPT REQUESTED

Keith Casto
Sedgwick, Detert, Moran & Arnold LLP
One Market Plaza, Steuart Tower, 8th Floor
San Francisco, California 94105

Re: Administrative Complaint Docket No. CWA-09-2008-0003

Dear Mr. Casto:

The United States Environmental Protection Agency, Region 9 ("EPA") alleges that your client, American Metal & Iron Inc. ("AMI"), violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a), by discharging industrial storm water into waters of the United States at its two San Jose, California facilities without authorization under the California Storm Water General Permit.

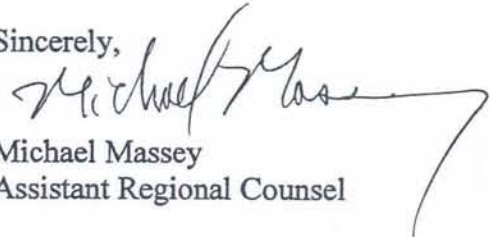
When we met to discuss EPA's allegations on September 22, I explained that EPA would be filing a complaint against AMI before September 30, 2008. In order to continue working on settlement of this matter and to enable your client to preserve its rights, we suggest that you file a Motion for an Extension of Time to Answer a Complaint. EPA will not oppose such motion.

In addition to the Complaint, we are enclosing a copy of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits* (40 CFR Part 22) for your reference. These rules require a 30-day public notice and comment period prior to the assessment of a civil penalty. 40 CFR § 22.45(b)(1). At the close of the comment period, the parties may file an executed Consent Agreement and a Proposed Final Order, which will require the Regional Judicial Officer's approval to conclude the proceedings. 40 CFR § 22.18(b)(3).

EXHIBIT A

We appreciate AMI's and your cooperation on this matter and hope to finalize a settlement as soon as possible. If you have any questions, please feel free to contact me at (415) 972-3034.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Massey", with a long, sweeping horizontal line extending to the right.

Michael Massey
Assistant Regional Counsel

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 9

75 Hawthorne Street

San Francisco, CA 94105

IN THE MATTER OF

American Metal and Iron, Inc.

11665 Berryessa Road
San Jose, CA 95133

and

1045 Commercial Court
San Jose, CA 95133

Respondent

) Docket No. CWA 09-2008-0003
)
) **[PROPOSED] ORDER GRANTING**
) **AMERICAN METAL AND IRON,**
) **INC.'S MOTION FOR AN**
) **EXTENSION OF TIME TO ANSWER**
) **THE COMPLAINT**
)
)
) Proceedings Under Section 309(g)(2)(B)
) of the Clean Water Act, as amended,
) 33 U.S.C. § 1319(g)(2)(B)
)
)

Respondent American Metal and Iron, Inc.'s Motion for an Extension of Time to Answer the Complaint was timely submitted and no opposition was received. Having considered the Motion, and good cause appearing therefore,

IT IS HEREBY ORDERED THAT:

Respondent American Metal and Iron, Inc.'s Motion for an Extension of Time to Answer the Complaint is hereby granted, and the date by which American Metal and Iron, Inc. must answer the complaint is December 3, 2008.

IT IS SO ORDERED.

Dated: October ___, 2008

REGIONAL JUDICIAL OFFICER

CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing Motion for an Extension of Time to Answer the Complaint; Declaration of Keith M. Casto, and [Proposed] Order was filed with the Regional Hearing Clerk, Region 9, and that a copy was sent by U.S. Mail to:

Michael Massey
Assistant Regional Counsel (ORC-3)
U.S. EPA Region 9
75 Hawthorne Street
San Francisco, California 94105

October 10, 2008
Date

Penelope Prill
Penelope Prill