

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

2008 MAY -1 PM 2:04

BEFORE THE ADMINISTRATOR

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)

THE THREE AFFILIATED TRIBES)
and YOLANDA BEARS TAIL, individually,)

Respondents)

Docket No. RCRA-08-2008-0002

ORDER GRANTING EXTENSION OF TIME
FOR FILING CONSENT AGREEMENT

On April 28, 2008, Complainant submitted a "Settlement Status Report" which indicates that on April 25, 2008 the parties reached a settlement in principle which involves the performance of a Supplemental Environmental Project (SEP). Further, in the last paragraph of the filing Complainant requests that the "settlement filing deadline of May 16, 2008 be extended by two weeks until May 30, 2008, to allow sufficient time to obtain cost estimates and other information underlying the SEP."

As a preliminary matter it is noted that -

- A) The Settlement Status Report was filed by Complainant out of time in that the Prehearing Order of March 28, 2008 established a deadline of April 25, 2008 for the filing of such report;
- B) The applicable procedural rules provides that requests for relief are to be in the form of "motions." *See*, 40 C.F.R. 22.16. Inclusion of a request for relief in a pleading titled "Settlement Status Report" is not appropriate in that it does not provide either the opposing party or the Tribunal with notice that relief is being sought so that responsive action may be taken within the appropriate time;
- C) The Prehearing Order issued in this case required a party prior to filing a motion, *i.e.* requesting any relief from this Tribunal, to contact the opposing party and solicit its position on the relief sought and to then note the same in the motion subsequently filed. The Status Report does not reflect that Complainant has fulfilled this obligation.

The Complainant has not requested the extension of any deadline other than the time for filing the Consent Agreement. The Complainant is free to file the Consent Agreement and Final

Order in this case up until the week before hearing. It shall otherwise comply with all other prehearing filing deadlines in this case.

A handwritten signature in black ink, appearing to read 'S. Biro', written over a horizontal line.

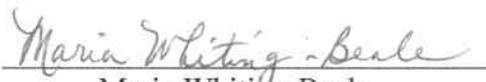
Susan L. Biro
Chief Administrative Law Judge

Dated: April 29, 2008
Washington, D.C.

In the Matter of The Three Affiliated Tribes and Yolanda Bears Tail, individually, Respondent
Docket No. RCRA-08-2008-0002

CERTIFICATE OF SERVICE

I certify that the foregoing **Order Granting Extension Of Time For Filing Consent Agreement**, dated April 29, 2008, was sent this day in the following manner to the addressees listed below.



Maria Whiting-Beale
Staff Assistant

Dated: April 29, 2008

Original And One Copy By Pouch Mail To:

Tina Artemis
Regional Hearing Clerk
U.S. EPA
1595 Wynkoop Street
Denver, CO 80202-1129

Copy By Pouch Mail To and Facsimile:

Amy Swanson, Esquire
Enforcement Counsel (8ENF-L)
U.S. EPA
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Copy By Regular Mail To:

Damon K. Williams, Esquire
Three Affiliated Tribes
Mandan, Hidatsa & Arikara Nation
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