UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 Renner Boulevard
Lenexa, Kansas 66219

JUL 12 2019

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
Article No.: 7014 1200 0000 6125 6337

Cory W. Poulsen
Superior Restoration & Construction LLC
7861 Mastin Drive
Overland Park, Kansas 66204

Re: In the Matter of Superior Restoration & Construction LLC
Docket No. TSCA-07-2016-0017

Dear Mr. Poulsen:

Enclosed please find a copy of the U.S. Environmental Protection Agency's recent filing in the matter of Superior Restoration & Construction LLC, Docket No. TSCA-07-2016-0017. This filing is the agency's motion for an extension of time to file a response to the Third Order to Supplement the Record, which the Presiding Officer issued on June 25, 2019. Pursuant to 40 C.F.R. § 22.16(b), the response of Superior Restoration & Construction LLC to this written motion must be filed within 15 days after service.

If you have any questions concerning this matter you may contact me at (913) 551-7793.

Sincerely,

Jared Pessetto
Assistant Regional Counsel

Enclosure

U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS

BEFORE THE ADMINISTRATOR

In the matter of	)	
	)	
SUPERIOR RESTORATION	)	
& CONSTRUCTION LLC,	)	**Docket. No. TSCA-07-2016-0017**
	)	
Respondent.	)	
	)	

MOTION FOR EXTENSION OF TIME TO FILE RESPONSE TO THIRD ORDER TO SUPPLEMENT THE RECORD

Pursuant to 40 C.F.R. § 22.16(a) and § 22.5(b)(2), Complainant respectfully requests the Presiding Officer's leave for an extension of time to file a response to the Third Order to Complainant to Supplement the Record, issued June 25, 2019. Complainant's legal research in response to the order revealed pleadings in a recently filed agency enforcement action that are incongruous with those of Complainant's in the current case. Complainant, therefore, requests an extension of 30 days to consult with appropriate headquarters personnel to resolve this issue.

The Consolidated Rules of Practice provide that "the Presiding Officer may grant an extension of time for filing any document: upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties; or upon its own initiative. Any motion for an extension of time shall be filed sufficiently in advance of the due date so as to allow other parties reasonable opportunity to respond and to allow the Presiding Officer . . . reasonable opportunity to issue an order." 40 C.F.R. § 22.7(b). Pursuant to 40 C.F.R. § 22.16(b), "[a] party's response to any written motion must be filed within 15 days after service

of such motion." 40 C.F.R. § 22.16(b). Nevertheless, "[t]he Presiding Officer or the Environmental Appeals Board may set a shorter or longer time for response or reply, or make other orders concerning the disposition of motions." Id.

The Third Order to Supplement requested that Complainant provide additional briefing by July 12, 2019, to specify the legal and factual basis for asserting that Respondent is an "unincorporated association which is subject to suit under a common name," a requisite finding for applicability of the service of process rule found at 40 C.F.R. § 22.5(b)(1)(ii)(A). Upon researching this issue for briefing, Complainant became aware of a recent unpublished decision of the Environmental Appeals Board declining to exercise *sua sponte* review of an Initial Decision and Order on Default issued in the matter of Spartan Diesel Technologies, LLC, Docket No. CAA-HQ-2017-8362, CAA Appeal No. 18-(03) (Dec.6, 2018). The Initial Decision of Administrative Law Judge Buschmann concluded that the respondent, a limited liability company, was "a corporation organized under the laws of North Carolina," as was pled in the U.S. Environmental Protection Agency's complaint. Spartan Diesel Technologies, LLC, 2018 WL 5887550, at *3 (ALJ Oct. 30, 2018); Compl., Spartan Diesel Technologies, LLC, Docket No. CAA-HQ-2017-8362, p. 1 (Oct. 19, 2017).

There is apparent inconsistency between the agency's pleading in the matter of Spartan Diesel Technologies, LLC, and the case currently under consideration. Complainant was not aware of this conflict, however, because its Motion for Default Order was filed on March 28, 2018, several months prior to the October 2018 date on which the Judge Buschmann issued the Initial Decision and Order on Default in the matter of Spartan Diesel Technologies, LLC. Complainant was therefore not aware of the agency's subsequent legal position with respect to

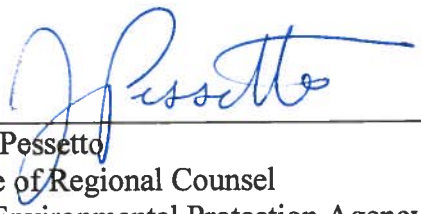
this service of process issue nor the disposition of that enforcement matter until two days prior to the deadline to file a supplement to the record.

The argument ultimately advanced by Complainant in its response to the Third Order to Supplement depends on the outcome of internal agency deliberations. Complainant, therefore, requires additional time to consult with appropriate headquarters personnel concerning the legal status of limited liability companies under the Consolidated Rules of Practice. An extension of 30 days will likely allow adequate time to schedule necessary management briefings both within Region 7 and with headquarters' enforcement and legal counseling offices. Complainant does not believe that a 30-day extension will prejudice Respondent because the additional time is sought to determine whether the Complaint and Motion for Default Order were properly filed against Respondent.

With respect to the timeliness of the motion, the eleventh-hour nature of this request is regrettable. Complainant acknowledges that the Presiding Officer may elect to rule on the motion after completion of the 15-day period for response allowed to Respondent. *See* 40 C.F.R. § 22.16(b) ("A party's response to any written motion must be filed within 15 days after service of such motion. . . . The Presiding Officer or the Environmental Appeals Board may set a shorter or longer time for response or reply, or make other orders concerning the disposition of motions."). Complainant appreciates the Presiding Officer's prudence in this respect despite Respondent's continued disengagement with these proceedings.

For the reasons stated above, Complainant respectfully requests that Presiding Officer grant Complainant a 30-day extension of time pursuant to 40 C.F.R. § 22.7(b), or for a shorter or longer period as deemed appropriate to the circumstances.

RESPECTFULLY SUBMITTED
this 12th day of July, 2019,



Jared Pessetto
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7

CERTIFICATE OF SERVICE

I hereby certify that the original and one true and correct copy of the foregoing Motion for Extension of Time File Response to Third Order to Supplement the Record were filed on July 12, 2019, by hand-delivery with the Regional Hearing Clerk of the U.S. Environmental Protection Agency, Region 7, at 11201 Renner Boulevard, Lenexa, Kansas.

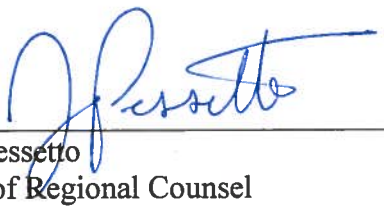
A true and correct copy of the foregoing Motion for Extension of Time File Response to Third Order to Supplement the Record were also served on the same date to the following persons in the manner indicated:

By Hand Delivery

Karina Borromeo
Regional Judicial Officer/Presiding Officer
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

By Certified Mail, Return Receipt Requested

Mr. Cory W. Poulsen
Superior Restoration & Construction LLC
7861 Mastin Drive
Overland Park, Kansas 66204



Jared Pessetto
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7

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JUL 12 2019

Sent To	Cory W. Poulsen
Street, Apt. No.; or PO Box No.	Superior Restoration & Construction LLC
City, State, ZIP+4	7861 Mastin Dr Overland Park, KS 66204

PS Form 3800, August 2006 — See Reverse for Instructions