



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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BEFORE THE ADMINISTRATOR

REGIONAL HEARING CLERK EPA REGION III, PHILA. PA

In the Matter of:)
Henrico County, Virginia,)
Respondent)

Docket No. CWA-03-2011-0139

ORDER ON SECOND MOTION FOR 60 DAY EXTENSION OF TIME

This action was initiated on April 6, 2011, when Complainant filed an Administrative Penalty Complaint and Notice of Opportunity to Request Hearing with the Office of the Regional Hearing Clerk. A Prehearing Order was issued in this matter on June 6, 2011, establishing a series of deadlines by which prehearing exchanges of information were to occur. On July 7, 2011, Respondent filed an unopposed motion requesting that the prehearing deadlines be extended by eight weeks to provide the parties with additional time in which to discuss a settlement. The undersigned issued an order on July 11, 2011, granting the motion and extending the deadlines. On October 17, 2011, the deadlines were extended for an additional ninety days.

On or about January 13, 2012, Respondent requested that the deadlines be extended by an additional sixty days to allow Respondent to present an agreed-upon Consent Agreement and Final Order to Henrico County's elected Board of Supervisors at their February 2012 meeting. Respondent alleges that it cannot settle this matter without the Board's approval. On January 17, 2012, the undersigned granted Respondent's request and extended the deadlines for a third time.

On or about March 14, 2012, Respondent submitted a motion requesting another extension of time ("Motion"). While Respondent has titled this as its "Second Motion for 60 Day Extension of Time," it is in fact the fourth motion to enlarge the deadlines in this matter. Respondent reiterates that the parties "have reached an agreement on the contents and language of the proposed Consent Agreement/Final Order ("CAFO")." Motion at 1. Respondent explains that the CAFO was not presented to the Board at its February 14, 2012 meeting, because Respondent's counsel "mistakenly believed [he] was waiting for additional documentation from EPA." Motion at 1-2. The County Manager has since "expressly confirmed his support for the agreed upon CAFO and stated his belief that the Board will approve it." Motion at 2. Respondent states that the County Manager will "present the CAFO to the Board at its work session on March 27, 2012. Depending on the Board's schedule, it will vote on this matter later that same evening at the formal public meeting, or at the Board's next formal public meeting on April 10, 2012." Motion at 2. Respondent states that in any event, the CAFO cannot be presented to the Board before March 27, 2012. Motion at 2. Respondent requests an extension

of sixty days to allow the parties adequate time to finalize and execute the CAFO. Motion at 3. Respondent does not indicate in the Motion whether it contacted Complainant to determine whether Complainant objected to the relief being sought.

On March 19, 2012, Complainant filed its response opposing Respondent's Motion ("Response"). In the Response, Complainant states that the parties had an agreement in principle in this matter as early as October 5, 2011. Response at 1. Complainant indicates its understanding that the settlement proposal was presented to the Board on October 11, 2011, and that the Board "passed a resolution authorizing the County Manger [sic] to sign the" CAFO at that time. Response at 1. Complainant then details a series of unreturned telephone calls and unanswered requests before asserting that "Respondent[']s counsel] has been dilatory in his approach to settling this matter" and "has not been responsive to existing deadlines in this matter." Response at 3-5. Complainant asserts that while it "still welcomes the prospect of settlement of this matter," it would be "unreasonable to agree to a further 60-day extension" and Complainant therefore "cannot" consent to the relief being sought. Response at 5.

The Rules of Practice empower a presiding Administrative Law Judge to extend the deadline "for filing any document: upon timely motion of a party . . . , for good cause shown, and after consideration of prejudice to other parties; or upon its own initiative." 40 C.F.R. § 22.7(b). As a preliminary matter, the undersigned notes that Respondent's Motion suffers from two procedural defects. First, Respondent did not file a copy of the Motion with the Regional Hearing Clerk for EPA Region III. See Motion at 3 (certificate of service). As a consequence, the Regional Hearing Clerk did not receive a copy of the Motion, and the Motion was never properly filed. Both the Rules of Practice and the Prehearing Order of June 6, 2011, state that all documents "intended to be part of the record shall be filed with the Regional Hearing Clerk," and that "[a] document is filed when it is received by the appropriate Clerk." 40 C.F.R. §§ 22.5(a), 22.16(a). Though severe, this defect is not fatal to Respondent's case in this instance because the Rules allow the undersigned to extend a deadline *sua sponte*. 40 C.F.R. § 22.7(b). The Motion's second defect is that it does not indicate whether Respondent contacted Complainant before serving it and does not state the Complainant's position, as required by the Prehearing Order. This defect is also not fatal, because Complainant did have an opportunity to respond. Because the undersigned did receive a copy of Respondent's Motion, and because Complainant has had an opportunity to file its Response, the undersigned will consider the merits of Respondent's request.

Almost one full year has passed since this action was initiated, and Respondent's prehearing exchange was originally due to be filed over six months ago. This lengthy delay alone would counsel against granting any additional extension of the applicable deadlines. Complainant's opposition to the extension, and the pattern of dilatory conduct outlined in its Response, further strengthen the case against enlarging the deadlines in this matter. Nonetheless, the parties have apparently reached an agreement, and Complainant remains open to settlement. Therefore, relatively little benefit will accrue from forcing Respondent to file its prehearing exchange on what should be the eve of settlement. Furthermore, Complainant does not claim

that an extension would prejudice its position.

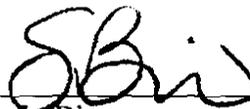
Because the parties both state that they have reached a proposed settlement, and because the additional time is needed to allow that settlement to be executed, there is good cause to extend the deadlines in this matter. In accordance with 40 C.F.R. § 22.7(b), the request for an extension is therefore **GRANTED** in part. Respondent indicates in the Motion that the Henrico County Board of Supervisors will act on the CAFO as early as March 27, 2012, and no later than April 10, 2012. Thus, rather than the sixty (60) days requested in the Motion, an extension of thirty (30) days will suffice. The revised deadlines are as follows:

April 19, 2012 Respondent's Prehearing Exchange

May 3, 2012 Complainant's Rebuttal Prehearing Exchange

Additionally, Respondent is directed to serve a copy of its Second Motion for 60 Day Extension of Time on the Regional Hearing Clerk no later than **March 23, 2012**.

SO ORDERED.



Susan L. Biro
Chief Administrative Law Judge

Dated: March 20, 2012
Washington, D.C.

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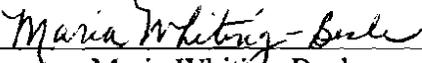
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CERTIFICATE OF SERVICE REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

I certify that the foregoing **Order On Second Motion For 60 Day Extension Of Time**, dated March 20, 2012, was sent this day in the following manner to the addressees listed below:



Maria Whiting-Beale
Staff Assistant

Dated: March 20, 2012

Original And One Copy By Regular Mail To:

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Regional Hearing Clerk (3RC00)
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Philadelphia, PA 19103-2029

Copy By Regular Mail And Facsimile To:

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