

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG.11

2010 SEP 17 A 9:29

REGIONAL HEARING  
CLERK

-----X  
In the Matter of :  
 :  
PSC, LLC, a/k/a Philip Services :  
Corporation, LLC, and Chemical :  
Pollution Control, LLC of New :  
York, a/k/a CPC, LLC of New York, :  
Respondents. :  
 :  
Proceeding Under Section 3008 :  
of the Solid Waste Disposal Act, :  
as amended. :  
-----X

**DOCKET NUMBER:**  
**RCRA-02-2010-7101**

Honorable Barbara A. Gunning,  
Presiding Officer

MOTION TO EXTEND TIME TO FILE PREHEARING EXCHANGES

Complainant, EPA's (Region 2) Director of the Division of Enforcement and Compliance Assistance, now moves this Court for an additional period of two months to extend the times for the parties to file their prehearing exchanges. Respondents' counsel has orally informed the undersigned (telephone conversation on September 15, 2010) that he does not object to the relief herein being sought. For this and other reasons set forth below, EPA submits that good cause exists for granting this motion.

This administrative proceeding commenced under authority of Section 3008 of the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6928,<sup>1</sup> alleges three counts<sup>2</sup> against Respondent for the improper handling and managing of hazardous waste in connection with the operation of a

---

<sup>1</sup> As noted in the complaint, the law is also referred to as the "Resource Conservation and Recovery Act." The acronym used in the complaint ("RCRA") will henceforth be used in this motion.

<sup>2</sup> The complaint consists of four counts, but the third and fourth ones constitute alternate pleadings.

facility in Bay Shore (Long Island), New York.<sup>3</sup> The complaint seeks a total penalty of approximately \$84,000. Pursuant to the “Prehearing Order” of this Court, dated and issued June 29, 2010, EPA is required to submit its initial prehearing exchange by September 27, 2010, Respondents must submit theirs by October 25<sup>th</sup> and any rebuttal prehearing exchange by EPA must be submitted by November 8<sup>th</sup>.<sup>4</sup> EPA’s status report of July 20, 2010 included the following:

Last week, the parties reached a settlement in principle. A consent agreement has been drafted and is currently circulating for internal concurrence. It is expected that a draft of the document, by then having completed initial Regional concurrence, will be sent to Respondents’ counsel shortly, perhaps by late next week, and, if not by then, most likely sometime during the following week. As this settlement involves a cash payment and does not involve a Supplemental Environmental Project, it is presently anticipated that the parties should be able to execute the necessary settlement papers within (approximately) the next two months.

Since the issuance of the July 20<sup>th</sup> report, a draft agreement was in fact sent to Respondents’ counsel, and they have returned it with comments; Regional personnel are presently reviewing and evaluating those comments.

The status report was, unfortunately, a bit overly optimistic in its projected timing of the conclusion of the settlement process. It has taken longer than initially estimated, and, combined with other end-of-fiscal year commitments, the process will require a bit more time.

---

<sup>3</sup> Respondents’ activities are alleged to be violations of New York State regulations. New York has been authorized by EPA, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), to enforce a number of hazardous waste regulations that EPA has promulgated under authority of RCRA. *See* page 2 of the complaint.

<sup>4</sup> The June 29<sup>th</sup> order also required that the parties meet for a settlement conference prior to July 30<sup>th</sup> and that EPA provide a status report by August 11<sup>th</sup>. In its July 20<sup>th</sup> status report, EPA informed the Court that a settlement conference had been held in March.

Accordingly, Complainant, in order not to run afoul of the Court's previously established schedule for the filing of the parties' respective prehearing exchanges, now moves this Court for the requested additional time.

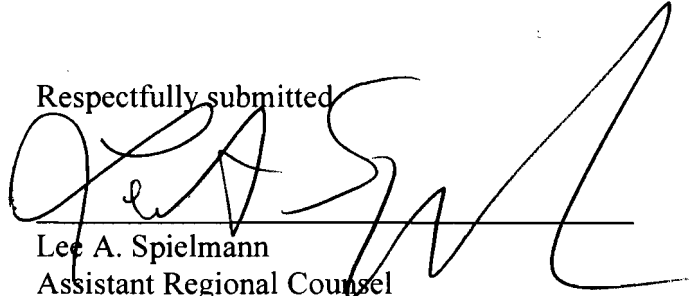
The undersigned submits that good cause exists for the granting of this motion, and the following considerations are sufficient to support the relief herein requested. In addition to Respondents' counsel having assented to the additional time being obtained, this is the first such request for an extension of time. Neither party should suffer prejudice (that Respondents do not object readily attests that they do not deem that their interests or litigation position would suffer prejudice by extending the exchange deadlines by two months), nor should the Court be adversely affected; there have been no dispositive motions filed (such as for accelerated decision or for additional disclosure) and no date has been established for a hearing. From the litigation point of view, this proceeding stands at too inchoate a stage for any prejudice to result from a one-time two-month extension. In addition, given that the likelihood of settlement is fairly certain, it would appear prudent for the sought-for extension to be granted so that neither party (nor the Court) would be required needlessly to expend time or resources on a litigation-related matter when the case stands literally on the threshold of settlement.

For all the reasons stated above, the undersigned submit that the good faith necessary for the granting of this motion is present to a sufficiently ample degree so as to justify this Court providing the relief this motion seeks.

Therefore, EPA respectfully moves this Court, pursuant to 40 C.F.R. §§ 22.4(c)(2), 22.7(b), 22.16(a) and 22.19(a)(1), for an order: **a)** vacating so much of the June 29<sup>th</sup> order directing the parties to file their prehearing exchanges by the dates therein prescribed; and **b)**

extending the time for them to so by two months, *i.e.* for Complainant to file the initial prehearing exchange by November 29, 2010, Respondents to file theirs by December 27, 2010 and Complainant's rebuttal prehearing exchange (if one were to be filed) by January 10, 2011.

Dated: September 16, 2010  
New York, New York

Respectfully submitted  
  
Lee A. Spielmann  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> floor  
New York, New York 10007-1866  
212-637-3222  
FAX: 212-637-3199

TO: Honorable Barbara A. Gunning  
Administrative Law Judge  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Mail Code 1900L  
Washington, DC 20460

Office of Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> floor  
New York, New York 10007-1866

Jennifer Mullen St. Hilaire, Esq.  
Brown Rudnick LLP  
CityPlace I  
185 Asylum Street  
Hartford, Connecticut 06103

***In re PSC, LLC and Chemical Pollution Control, LLC of New York***  
**Docket No. RCRA-02-2010-7101**

**CERTIFICATE OF SERVICE**

I certify that I have this day caused to be sent the foregoing "MOTION TO EXTEND TIME TO FILE PREHEARING EXCHANGES," dated September 16, 2010, in the following manner to the respective addressees listed below:

Original and One Copy  
By Inter-Office Mail:

Office of Regional Hearing Clerk  
U.S. Environmental Protection  
Agency - Region 2  
290 Broadway, 16th floor  
New York, New York 10007-1866

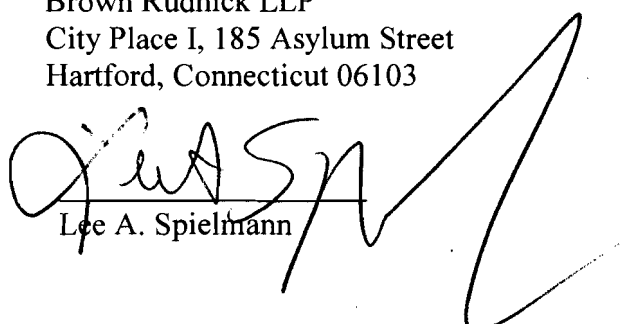
Copy by Fax Transmission,  
202-565-0044, and Pouch Mail:

Honorable Barbara A. Gunning  
Administrative Law Judge  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Mail Code 1900 L  
Washington, DC 20460

Copy by Fax Transmission,  
860-509-6501, and First Class Mail:

Douglas Cohen, Esq.  
Jennifer Mullen St. Hilaire, Esq.  
Brown Rudnick LLP  
City Place I, 185 Asylum Street  
Hartford, Connecticut 06103

Dated: September 16, 2010  
New York, New York

  
Lee A. Spielmann