

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

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In the Matter of :
 :
PSC, LLC, a/k/a Philip Services : **DOCKET NUMBER:**
Corporation, LLC, and Chemical : **RCRA-02-2010-7101**
Pollution Control, LLC of New :
York, a/k/a CPC, LLC of New York, :
 :
Respondents. : **Honorable Barbara A. Gunning,**
 : **Presiding Officer**
 :
Proceeding Under Section 3008 :
of the Solid Waste Disposal Act, :
as amended. :
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U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2010 NOV 22 P 2:59
REGIONAL HEARING
CLERK

MOTION FOR ADDITIONAL TIME TO FILE PREHEARING EXCHANGES

Complainant, EPA's (Region 2) Director of the Division of Enforcement and Compliance Assistance, hereby requests this Court to modify its prior order and grant the parties an additional two weeks (10 business days) to secure execution of the pending settlement document. Respondents' counsel has indicated (e-mail to the undersigned) there is no objection to such request.

The September 21, 2010 order of this Court directs that "[a] Consent Agreement and Final Order ('CAFO'), or Complainant's Initial Prehearing Exchange if no CAFO is filed, shall be due on or before November 29, 2010." The order further provided that, if no settlement has been attained by that date, Respondents must file their prehearing exchange by December 29, 2010, with Complainant's rebuttal then due by January 12, 2011.

The parties have reached a *de facto* settlement, *i.e.* a settlement but for final execution. The document is presently undergoing concurrence at EPA, and Respondents' counsel has orally

approved the few changes in language Complainant has effected in responses to their concerns. The settlement is for a sum certain previously agreed upon, is relatively straightforward (*e.g.*, it is not complicated by the presence of a Supplemental Environmental Project) and with the last issues regarding the precise language having been resolved between counsel, it is only a matter of time before the document is finalized. That said, however, securing the requisite signatures for the document's execution prior to November 29th might present a problem. Next week is traditionally a shortened one, with the Thanksgiving holiday coming on Thursday, November 25th. Given that at least one day will be lost (and more likely two days, as invariably many will take off the next day), the undersigned does not believe the parties can meet the Court's deadline, which falls on the Monday following the weekend after Thanksgiving. Thus Complainant moves for this extra amount of time, not only to give the parties a bit more latitude in obtaining the necessary signatures but also to ensure they do not run afoul of the deadlines established in the Court's September 21st order. With settlement essentially *fait accompli*, there is no need for them to prepare prehearing exchanges; doing so would represent a waste of time and resources when settlement is apodictically so close to fruition.

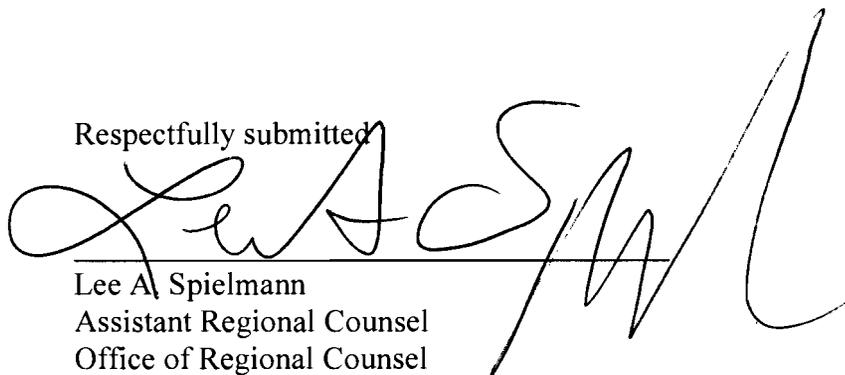
Under these circumstances, Complainant submits that such an extension is warranted. Neither party would be prejudiced by a grant of the additional time being sought as indeed they would be if compelled to expend resources on preparing and filing prehearing exchanges for a proceeding so soon to conclude. The Court should not suffer prejudice, as the parties are only asking for two additional weeks, no less at a time between Thanksgiving and the end-of-year holidays. Complainant further submits that these circumstances demonstrate the existence of the

requisite good cause condition precedent to the granting of such motion.¹

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 September 21st 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 weeks, *i.e.* for Complainant to file the initial prehearing exchange by December 13, 2010, Respondents to file theirs by January 12, 2011 and Complainant's rebuttal prehearing exchange by January 26, 2011.

Dated: November 19, 2010
New York, New York

Respectfully submitted



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

¹ Forth C.F.R. § 22.7(b) states, in part, 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....”

Office of Regional Hearing Clerk
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290 Broadway, 16th floor
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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 FOR ADDITIONAL TIME TO FILE PREHEARING EXCHANGES," dated November 19, 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

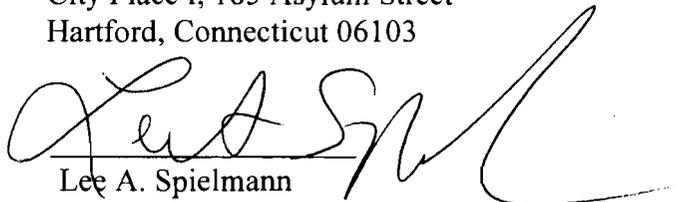
Copy by Fax Transmission,
202-565-0044, and Pouch Mail:

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,
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Dated: November 19, 2010
New York, New York


Lee A. Spielmann