

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

| | | |
|---|---|-----------------------------------|
| IN THE MATTER OF: |) | Docket Number: RCRA-04-2008-4008 |
| |) | |
| FBF Nuclear Container, LLC |) | Proceeding under Section 3008(a) |
| and |) | of the Resource Conservation and |
| Metal Solutions Design & Fabrication, LLC |) | Recovery Act, 42 U.S.C. § 6928(a) |
| and |) | |
| M. David Berger |) | |
| |) | |
| Respondents. |) | |
| <hr/> | | |

RECEIVED
EPA REGION IV
2008 OCT 27 PM 2:02
HEARING CLERK

**MOTION FOR EXTENSION OF TIME TO FILE RESPONSE TO RESPONDENT'S
MOTION**

COMES NOW Complainant, the United States Environmental Protection Agency (EPA), through its counsel, who respectfully request a 45 day extension to the 15 days provided by 40 C.F.R. § 22.16(b) for filing a Response to Respondents' Motion for Additional Extension of Time to Answer which was filed on October 16, 2008. The additional time is needed to determine Complainant's position on Respondents' Motion.

Respondents' counsel originally filed a motion for an extension of sixty days of time in which to answer EPA's Complaint and Compliance Order. Complainant did not oppose that motion since the basis given for the motion was to "allow Respondents additional time to consider U.S. EPA's Complaint and for the parties to engage in settlement negotiations." The Motion was granted by an Order entered August 11, 2008, which extended Respondents' time in which to file an answer until October 12, 2008. On October 16, 2008, Respondents' Motion for Additional Extension of Time to Answer was filed requesting a further 60 day extension of time "to file an answer or pursue settlement discussions." Since additional time for settlement

discussions was a basis for the original motion and the instant motion, Complainant believes that it should have the opportunity to determine the good faith of Respondents in their pursuit of settlement of this matter before it is required to respond to Respondents' Motion.

The parties are in the process of arranging for settlement discussions but such discussions are likely to extend past the date that Complainant would have for responding to Respondents' Motion. Therefore, Complainant respectfully request that it be given a 45 day extension to the 15 days provided by 40 C.F.R. § 22.16(b) for filing a Response to Respondents' Motion. A proposed order is attached for the convenience of the Regional Judicial Officer.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael T. Newton", is written over a solid horizontal line.

Michael T. Newton
Associate Regional Counsel
Office of Environmental Accountability
United States Environmental Protection Agency
Region 4
Atlanta Federal Center
61 Forsyth Street
Atlanta, Georgia 30303-8960

CERTIFICATE OF SERVICE

I hereby certify that on this date the original of the foregoing Motion for Extension of Time to File Response to Respondent's Motion was served by hand delivery on the Regional Hearing Clerk and a true and correct copy was served in the manner indicated on the following addressees:

Honorable Susan B. Schub
Regional Judicial Officer
U.S. EPA – Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

(via Intra-Office Mail)

Brian M. Babb, Esq.
David A. Meyer, Esq.
Keating Muething & Klekamp PLL
One East Fourth Street, Suite 1400
Cincinnati, Ohio 45202

(Regular Mail)

Date: 10-27-08



Michael T. Newton

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:) Docket Number: RCRA-04-2008-4008
)
FBF Nuclear Container, LLC)
and)
Metal Solutions Design & Fabrication, LLC)
and)
Mr. David Berger)
)
Respondents.)
_____)

**ORDER GRANTING COMPLAINANT'S MOTION FOR
EXTENSION OF TIME**

PLEASE TAKE NOTICE, a Motion for an Extension of Time to Respond to Respondents' Motion ("EPA Motion") was filed in the above-captioned case on October 27, 2008, by Complainant, United States Environmental Protection Agency (EPA), seeking a forty-five (45) day extension of time to respond to Respondents' Motion.

Complainant requests this time so that the parties may engage in settlement negotiations. Based upon the reasons for the request, granting the EPA Motion is appropriate.

IT IS ORDERED:

The above-referenced EPA Motion is hereby GRANTED. Complainant's response to Respondents' Motion may be filed by December 15, 2008.

Dated: _____

Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing **Order Granting Complainant's Motion for Extension of Time**, in the Matter of FBF Nuclear Container, LLC and Metal Solutions Design & Fabrication, LLC and Mr. David Berger, Docket No.: RCRA-04-2008-4008, on the parties listed below in the manner indicated:

Brian M. Babb, Esq.
David A. Meyer, Esq.
Keating Muething & Klekamp PLL
One East Fourth Street, Suite 1400
Cincinnati, Ohio 45202

(Certified Mail - Return
Receipt Requested)

Michael T. Newton, Esq.
Associate Regional Counsel
U.S. Environmental Protection
Agency Region 4
61 Forsyth Street S.W.
Atlanta, Georgia 30303-8960

(via Intra-Office Mail)

Date: _____

Patricia A. Bullock
Regional Hearing Clerk
U.S. Environmental Protection Agency,
Regional 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303
404/452-9511