



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of:)
)
Edward and Theresa Washines,) Docket No. RCRA-10-2014-0100
Da Stor at Lillie’s Corner,)
)
Respondents.)
_____)

**ORDER DENYING COMPLAINANT’S UNOPPOSED MOTION
FOR EXTENSION OF TIME TO THE HEARING SCHEDULE**

On April 30, 2014, the United States Environmental Protection Agency (“Agency”), Region 10 (“Complainant”), initiated this proceeding by filing a Complaint, Compliance Order, and Notice of Opportunity for Hearing (“Complaint”) against Edward and Theresa Washines and Da Stor at Lillie’s Corner (“Respondents”). The Complaint charges Respondents with violations of the regulations set forth at 40 C.F.R. part 280, which govern owners and operators of underground storage tanks (“USTs”), in connection with the three USTs located at Da Stor at Lillie’s Corner, a gasoline service station located at 50 West Wapato Road in Wapato, Washington. The Complaint is organized into three alleged violations that are then further divided into nine counts, with Violation 1 consisting of Counts 1 through 4, Violation 2 consisting of Counts 5 and 6, and Violation 3 consisting of Counts 7 through 9.

Through counsel, Respondents filed an Answer and Request for Hearing (“Answer”) on July 2, 2014. In their Answer, Respondents admit to the allegations set forth in Counts 1 through 4 and Counts 7 through 9. Respondents also do not dispute the penalties proposed for those Counts or the imposition of the Compliance Order sought in the Complaint. Respondents deny the allegations set forth in Counts 5 and 6, however, arguing that they did not violate 40 C.F.R. §§ 280.20 and 280.31 as alleged in those Counts and opposing the assessment of any penalty for the alleged violations. Respondents also assert two “affirmative defenses” related to Counts 5 and 6 and argue, in essence, that Complainant misinterpreted and misapplied the regulations at issue.

Following the parties’ prehearing exchange of information, Complainant filed a Motion for Leave to Amend the Complaint, which I granted by Order dated December 19, 2014. By Order dated January 8, 2015 (“Hearing Order”), I scheduled the hearing in this matter to commence on April 7, 2015, and established a number of prehearing deadlines, including

deadlines for the filing of non-dispositive motions and joint stipulations. Complainant subsequently filed an unopposed Supplemental Motion for Leave to Amend the Complaint (“Supplemental Motion to Amend”) on February 3, 2015, and an unopposed Motion for an Extension of Time to the Hearing Schedule (“Motion for Extension”) on February 6, 2015. In its Motion for Extension, Complainant requests an extension of the schedule set forth in the Hearing Order “of sufficient length to allow for a ruling on Complainant’s Unopposed Supplemental Motion to Amend the Complaint, a filing of an amended Answer (if applicable), and consideration of a motion for accelerated decision on liability and any necessary counter-motions.” Complainant represents that such an extension “is in the interest of both parties as it will potentially facilitate the timely and efficient resolution of issues where there is no genuine issue of material fact to be determined at hearing.” Complainant also states that Respondents do not oppose the requested relief.

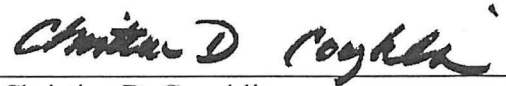
This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits set forth at 40 C.F.R. part 22 (“Rules of Practice”). Section 22.7(b) of the Rules of Practice authorizes the undersigned to grant extensions 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.” 40 C.F.R. § 22.7(b). Section 22.21(c), in turn, provides that “[n]o request for postponement of a hearing shall be granted except upon motion and for good cause shown.” 40 C.F.R. § 22.21(c).

Upon consideration, I find that good cause for an extension of the schedule set forth in the Hearing Order has not been shown at this time. First, Complainant has not offered any explanation as to why six weeks elapsed between the December 19, 2014 issuance of the Order first granting leave to Complainant to amend the Complaint and the filing of Complainant’s Supplemental Motion to Amend on February 3, 2015. Second, by Order dated February 11, 2015, I granted Complainant’s Supplemental Motion to Amend and directed Complainant to file and serve an amended complaint on or before February 17, 2015. Pursuant to Section 22.14(c) of the Rules of Practice, the filing deadline for an amended answer is 20 days from the date of service of an amended complaint, which would be no later than March 9, 2015, in this case. That date is more than four weeks before the scheduled date of the hearing, which is ample time for Complainant to review it and prepare for hearing. Finally, Complainant explains that it intends to file a motion for accelerated decision as to liability and identifies the deadline for such a document to be February 20, 2015, “by which date Respondent will likely not yet have filed an Amended Answer.” However, the Prehearing Order issued in this proceeding on August 26, 2014, instructed that “[i]f either party intends to file any dispositive motion regarding liability, such as a motion for accelerated decision . . . , it shall be filed within thirty (30) days after the due date for Complainant’s Rebuttal Prehearing Exchange.” Prehearing Order at 7 (emphasis in original). By Order dated September 9, 2014, the deadline for that document was extended to December 5, 2014. Thus, the filing deadline for dispositive motions regarding liability was, in

fact, January 5, 2015.¹

Based upon the foregoing discussion, Complainant's Motion for Extension is hereby **DENIED**.

SO ORDERED.



Christine D. Coughlin
Administrative Law Judge


Dated: February 12, 2015
Washington, D.C.

¹ Should Complainant still wish to file a motion for accelerated decision as to liability, it needs to be accompanied by a motion for leave to file out of time. Complainant may renew its request for an extension of the hearing schedule at that time. The parties are also reminded that they may narrow the scope of this proceeding by stipulating to those facts that cannot reasonably be contested. Pursuant to the Hearing Order, the deadline for joint stipulations is March 6, 2015.

In the Matter of Edward & Theresa Washines, Da Stor at Lillie's Corner, Respondents
Docket No. RCRA-10-2014-0100

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Denying Complainant's Unopposed Motion For Extension Of Time To The Hearing Schedule, dated February 12, 2015, were sent this in the following manner to the addressees listed below.


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Dated: February 12, 2015
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