

Futerman, Andrew

From: Futerman, Andrew
Sent: Monday, May 24, 2021 7:00 AM
To: Rodrigo; Kari Anne
Subject: RE: PLEASE RESPOND: Motion to set a briefing schedule

Mr. and Mrs. von Marees:

As I explained, below, I will be asking the Court to set a briefing schedule in this matter, today. I will be asking the Court to set the following schedule:

June 23, 2021	Complainant's motion for accelerated decision
July 23, 2021	Respondent's response to Complainant's motion for accelerated decision
August 6, 2021	Complainant's reply to Respondent's response

But, before I do, I would like to understand your thoughts on this request. Please let me know what you think.

Please also understand that if the Court denies my request then your response to Complainant's Motion for Accelerated Decision will be due 15 days after I file that motion, or likely on July 8th. 40 C.F.R. section 22.16(b).

Thank you,

Andrew Futerman,

Attorney Advisor
U.S. Environmental Protection Agency - Region 5
Office of Regional Counsel; Multi Media Branch I, Section III
77 W. Jackson Blvd., M/S C-14J, Chicago, IL 60604
312.353.2325
Futerman.Andrew@epa.gov
(he/him)

From: Futerman, Andrew
Sent: Wednesday, May 19, 2021 1:01 PM
To: Rodrigo <rad@greenbuild.us.com>; Kari Anne <kad@greenbuild.us.com>
Subject: PLEASE RESPOND: Motion to set a briefing schedule

Mr. and Mrs. von Marees:

I am writing today to discuss an important topic with you. Pursuant to the Court's February 3 and March 3, 2021 orders, on June 23, 2021, EPA will likely be filing what is called a Motion for Accelerated Decision on liability.

40 C.F.R. section 22.19 says:

(a) The Presiding Officer may at any time render an accelerated decision in favor of a party as to any or all parts of the proceeding, without further hearing or upon such limited additional evidence, such as affidavits, as he may require, if no genuine issue of material fact exists and a party is entitled to judgment as a matter of law

(b) Effect. (1) If an accelerated decision or a decision to dismiss is issued as to all issues and claims in the proceeding, the decision constitutes an initial decision of the Presiding Officer, and shall be filed with the Regional Hearing Clerk.

In other words, I am going to be arguing to the Judge that based on all of the evidence in the record, and even when viewing all of the evidence in the light most favorable to GreenBuild, there are no genuine issue of material fact here and EPA is entitled to judgment as a matter of law. If the Court agrees and grants EPA's motion, the Court will be officially determining that GreenBuild violated the RRP Rule and TSCA as EPA has alleged. You are allowed to respond to my motion, and argue why you disagree with the points that I make. Therefore, your response to EPA's motion is very important. And, if you do not respond by the deadline, you may be found to have waived any objection to the granting of that motion. 40 C.F.R. section 22.16(b).

So, recognizing that this is a very important step in these proceedings, I am planning on asking the court to set a briefing schedule. Right now, pursuant to the rules of procedure, your response to EPA's motion would be due 15 days after I file that motion, or likely on July 8th. I am planning on asking the Court to provide you with a month to file your response, so that it would be due on July 23, 2021. Then, I would ask the Court to provide 2 weeks for me to reply to your response, which would make my reply due on August 6, 2021.

I think that asking the Court to set a briefing schedule will benefit both parties, as you will be provided with an entire month to ensure that you are able to fully understand and reply to my motion for accelerated decision, rather than 15 days. And I will be able to ensure that GreenBuild is treated as fairly and equitable as possible under the circumstances.

So, my question for you today is, would you agree to me asking the court to set that briefing schedule. I am not asking if you agree with my motion for accelerated decision; I just want your consent on the scheduled due dates that I outlined above. If you agree, I will make a motion with the court in the near future, asking it to set that schedule.

Please know, however, that if the Court does not grant that schedule, then you will still have to respond to EPA's motion for accelerated decision. And your response will be due 15 days after I file that motion, unless the Court says otherwise.

Please let me know if you have any questions about this.

Separately, I want to remind you that you are required to serve on me all documents that you file with the Court. On Tuesday, you filed Respondent's Prehearing Exchange with the Court, but you never served that document on me. Please send me that document, via e-mail, as soon as you can. And please send whatever documents you file with the Court to me. You are required to do so by 40 C.F.R. section 22.5(b)(2).

Thank you,

Andrew Futerman,

Attorney Advisor
U.S. Environmental Protection Agency - Region 5
Office of Regional Counsel; Multi Media Branch I, Section III
77 W. Jackson Blvd., M/S C-14J, Chicago, IL 60604
312.353.2325
Futerman.Andrew@epa.gov
(he/him)