

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY REGION IX
75 HAWTHORNE STREET
SAN FRANCISCO, CALIFORNIA 94105**

In the Matter of:)
)
Borla Performance Industries, Inc.,)
) Docket No. CAA-R9-2020-0044
 Respondent.)
 _____)

**UNOPPOSED MOTION FOR EXTENSION OF REPLY BRIEFING DEADLINE
REGARDING COMPLAINANT’S MOTION FOR ACCELERATED DECISION ON
LIABILITY AND TO STRIKE AFFIRMATIVE DEFENSES**

Pursuant to 40 C.F.R. §§ 22.16(b) and 22.7, The Director of the Region 9 Enforcement and Compliance Assurance Division of the U.S. Environmental Protection Agency (“Complainant”) files this motion requesting that the Presiding Officer extend the deadline for Complainant to file a reply brief as set forth in the Presiding Officer’s Order on Joint Motion to Extend Briefing Deadlines, issued April 26, 2021 (“Briefing Order”). The Briefing Order set forth an extension of the original briefing deadlines associated with Complainant’s Motion for Accelerated Decision on Liability and to Strike Affirmative Defenses. The Briefing Order set a deadline of June 11, 2021 for Borla Performance Industries, Inc. (“Respondent”) to file a response brief, and a deadline of July 12, 2021 for Complainant to file its reply brief. In this motion, Complainant requests an additional two weeks to file its reply brief, July 26, 2021.

Under the Consolidated Rules of Practice governing this proceeding, set out at 40 C.F.R. Part 22 (“Rules”), parties are allowed 15 days to respond to a written motion and 10 days to reply to a written response. 40 C.F.R. § 22.16(b). However, the Rules empower the Presiding Officer to “set a shorter or longer time for response or reply[.]” *Id.* The Rules also authorize the Presiding Office to “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[.]” *Id.* § 22.7(b).

Good cause exists for granting Complainant an extension of the reply brief deadline. Respondent’s response brief filed on June 11, 2021 raises several new legal and factual arguments, and the brief is 79 pages in length with 72 pages of attachments. To digest and respond to the full range of arguments raised by Respondent’s brief, Complainant needs reasonable additional time beyond the July 12, 2021 deadline to prepare its reply brief.

In addition, Complainant’s reply brief requires robust and careful review by several managers, as the legal issues to be addressed may have significant impact on the Agency’s National Compliance Initiative: Stopping Aftermarket Defeat Devices for Vehicles and Engines (this National Compliance Initiative is discussed at <https://www.epa.gov/enforcement/national-compliance-initiative-stopping-aftermarket-defeat-devices-vehicles-and-engines>). Complainant seeks to provide managers additional reasonable time to review and provide input into the reply brief before filing, as well as accommodate a key manager’s vacation schedule that conflicts with allowing this manager appropriate time to conduct a meaningful review before the July 12 current deadline.

No prejudice to any party will occur, as Respondent’s counsel has represented to Complainant that Respondent does not object to the deadline extension. There will be no delay in the proceeding because no hearing date has been established and no further deadlines are pending in the case at this time.

For these reasons, Complainant respectfully request that the Presiding Officer issue an order establishing the following deadline regarding Complainant’s reply brief: **July 26, 2021**.

Respectfully Submitted,



July 2, 2021

Date

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CERTIFICATE OF SERVICE

I certify that an electronic copy of the foregoing Complainant’s Unopposed Motion for Extension of Reply Briefing Deadline Regarding Complainant’s Motion for Accelerated Decision on Liability and to Strike Affirmative Defenses (“Motion”) in the Matter of Borla Performance Industries, Inc., Docket No. CAA-R9-2020-0044, was filed with the Headquarters Hearing Clerk via the OALJ E-Filing System and that a true and correct copy of the Motion was sent via email to:

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July 2, 2021

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