

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

In the matter of:

Dimmid, Inc.,

Respondent.

Proceeding Under Section 16(a) of the Toxic
Substances Control Act, as amended, 15
U.S.C. § 2615(a).

Docket No. TSCA-02-2023-9226

MOTION FOR EXTENSION OF PREHEARING EXCHANGE DEADLINES

Complainant, the now-Acting Director¹ of the of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region 2 (hereinafter, “Complainant” or “EPA”), moves this Tribunal for an order extending the deadline for the filing of the Prehearing Exchanges (“PHE”) as set forth in its October 10, 2023 Prehearing Order (“PHE Order”) for two months. EPA submits the circumstances described below, including Respondent’s consent to EPA seeking this relief, demonstrate that no prejudice will result to Respondent as a consequence of this motion and that the relief sought would be proper. Under the operative circumstances, the requisite good cause exists standard² for the granting of this motion exists.

Responsive papers from Respondent, if any, are to be filed in accordance with the provisions of 40 C.F.R. § 22.16(b).

¹ Complainant upon whose signature the matter was initiated has retired, effective the end of October 2023.

² In part, 40 C.F.R. § 22.7 authorizes the Presiding Officer 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....”

Pleadings

This proceeding was formally initiated with service of a “Complaint and Notice of Opportunity for Hearing,” bearing Docket Number TSCA-02-2023-9226, on or about June 12, 2023. This administrative proceeding has been commenced under authority of Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), and is before this Tribunal pursuant to 40 C.F.R. § 22.1(a)(5). Respondent is Dimmid, Inc. (“Respondent” or “Dimmid”), a New York corporation based in Brooklyn, New York. Respondent’s operations entail the commercial importation into the United States of “chemical substances.”³ The Complaint alleges four separate counts, each asserting Respondent failed:

[1] COUNT 1 --- Timely (*i.e.* between June 1, 2020 and January 29, 2021) to have filed a “Chemical Data Report” (“CDR”) required under 40 C.F.R. Part 711 for its commercial importation of dichloromethane⁴ on 10 separate days between May 5, 2016 and October 17, 2018, and for its commercial importation of 19 separate shipments of trichloroethylene between January 7, 2016 and February 13, 2019, a failure alleged to constitute a failure or refusal to comply with 40 C.F.R. §711.5;

[2] COUNT 2 --- To have provided the company to which it sold subsequent to August 26, 2019 nearly 20 metric tons of dichloromethane a “Safety Data Sheet” (formerly known as a “Material Safety Data Sheet”) containing the notification provisions set forth in, and required by, 40 C.F.R. § 751.107, a failure alleged to constitute a failure or refusal to comply with said regulation;

[3] COUNT 3 --- To have filed a pre-manufacture notice prior to its importations of a chemical substance commercially identified as “Clerane 180” (Respondent having imported it for commercial purposes on eight separate days (10 separate shipments) between April 5, 2018 and May 18, 2018), a failure alleged to constitute a failure or refusal to comply with 40 C.F.R. § 720.22; and

[4] COUNT 4 --- To have truthfully and accurately complied with the certification requirements of 19 C.F.R. § 12.121 pertaining to Dimmid’s commercial importations of the Clerane 180, a failure alleged to constitute a failure or refusal to comply with this regulation.

Each of the aforementioned failures is alleged to constitute an unlawful act pursuant to, and thus a

³ As such term is defined in Section 3(2) of TSCA, 15 U.S.C. § 2602(2).

⁴ Dichloromethane is also known as methylene chloride.

violation of, Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), and, as a consequence, subjects Respondent to liability to the United States pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a). The Complaint does not seek a specified penalty, referencing the procedure authorized under 40 C.F.R. § 22.19(a)(4).

On or about August 7, 2023, Respondent sent an e-mail to the Regional Hearing Clerk of EPA, Region 2, the Regional Judicial Officer and Complainant (through counsel). That e-mail, accepted as an answer for purposes of 40 C.F.R. § 22.15, essentially constitutes a general denial.⁵ In it Respondent, appearing *pro se*, requests the “case be dismissed” and “all charges and complaints [sic] dropped.” That e-mail further asserts Respondent “is a small manufacturer with very limited resources” and it “den[ies] all counts against DIMMID as a manufacturer.” No hearing was requested in that e-mail.

October 10, 2023 Orders

In addition to an “Order of Designation,” the “Prehearing Order” (“PHE Order”) was issued October 10, 2023. Among its various provisions, it established a schedule for the parties to file their respective PHEs: EPA’s initial PHE to be filed by November 17, 2023; Respondent’s PHE to be filed by December 8, 2023; and EPA’s Rebuttal PHE to be filed by December 22, 2023.⁶ Page 4 of the PHE Order. The PHE Order further stipulated, “Prior to filing any motion, the moving party must contact all other parties to determine whether the other parties have any objection to the granting of the relief sought in the motion, and the motion shall state the position of the other

⁵ Regarding Count 1, the August 7th e-mail states, “We were not aware of the reporting requirements and guidelines.” For the next two counts, it states, “As importer and not manufacturer we deny any responsibility under Count 2” and “As importer and not manufacturer of Clerane 180 we deny any responsibility under Count 3.” It also asserts, “We deny any responsibility under Count 4.”

⁶ The October 10th PHE order also required EPA to file a report on the holding of a settlement conference and the overall status of settlement negotiations; it also required that each party file a “Preliminary Statement” regarding hearing preferences and e-mail contact addresses. In compliance with that directive, EPA filed a combined “Status Report/Preliminary Statement,” dated October 25, 2023, on or about October 27, 2023.

parties.” It further noted, “The mere consent of the other parties to the relief sought does not assure that the motion will be granted.” Page 4 of the PHE Order.⁷

The Parties’ Discussions

Prior to the formal commencement of these proceedings, the parties discussed settlement possibilities, as EPA contacted Respondent a year prior; it then provided notice of the violations EPA concluded Dimmid had committed (as subsequently set forth in the Complaint). The parties held settlement discussions, in a virtual meeting and through e-mail exchanges. EPA requested financial documentation from Respondent in an effort to corroborate Dimmid’s assertions, and such documentation has been analyzed. EPA subsequently sought additional information; Respondent has agreed to provide its latest federal tax return (covering the November 2022 through November 2023 period) when it becomes available in December. Upon receipt, EPA will have such documentation reviewed by its outside financial analyst, as Dimmid has already been informed. The parties’ efforts to reach a negotiated settlement have been protracted and ongoing, and such talks remain viable; both parties have expressed their desire and commitment to endeavor to reach a mutually agreeable settlement.

In conjunction with the overall settlement efforts, Complainant (through the undersigned) sent an e-mail to Dimmid (to Mikhail [Mike] Vernovsky) on October 27, 2023 (at 5:13 PM). After noting the PHE filing schedule set forth in the October 10th PHE Order and the reasons EPA was proposing requesting an extension of each of the PHE filing deadlines by two months (the e-mail listed the anticipated dates when the PHEs would become due were the motion, as requested, granted), the e-mail stated, “Do you have any objections to my requesting Judge Biro for such an across the board two-month extension? *** It is totally your call to oppose or support such a

⁷ The PHE Order addressed a number of other issues, such as procedures for a default and opportunity for a hearing, the particulars of filing and serving documents and provisions regarding confidentiality of materials submitted to this Tribunal as part of this proceeding. None of these matters is pertinent to the motion herein made.

request for the extension.” Dimmid (Mr. Vernovsky) promptly replied that evening (at 5:31 PM): “OK with us to ask for an extension.”⁸

Considerations Militating for the Relief Sought to be Granted

EPA is requesting, as noted above, a two-month extension of the PHE filing deadlines. In accordance with this request, EPA proposes the following: **(a)** Complainant’s initial PHE must be filed by (approximately) January 17, 2024; **(b)** Respondent’s PHE must be filed by (approximately) February 8, 2024; and **(c)** Complainant’s rebuttal PHE must be filed by (approximately) February 22, 2024. These were the dates tendered in EPA’s October 27th e-mail to Respondent. For the following reasons, this motion should be granted:

Respondent has not only not objected, it has affirmatively consented to the relief sought (as noted above, “OK with us to ask for an extension”). With Respondent’s consent, it should be self-evident the issue of possible prejudice to Dimmid’s position in this litigation should be dismissed; that potential factor accordingly should not warrant consideration in a decision as to whether the motion should be granted.

There are factors independent of Respondent’s aforementioned assent that militate for this Tribunal to grant the relief EPA seeks. The parties have engaged in extensive settlement discussions (and continue to do so), with Respondent having provided financial documentation to EPA; it has promised to provide its most recent tax return when it becomes available in December. Given that Dimmid’s most recent tax return only becomes available in December (which the undersigned considers might represent a possible “make-or-break” opportunity for the parties to reach settlement), EPA wishes that its outside analysis occur at a time when no litigation pressures (due dates for PHE material) are pending; EPA would not wish its outside analyst to rush or compromise its analysis in order that EPA know where settlement possibilities stand *prior* to a

⁸ If this Tribunal so requests, a copy of the two October 27 e-mails, one from EPA to Respondent, the other Dimmid’s response, can be electronically provided.

deadline date. Under the PHE order, EPA's rebuttal documentation is now due by December 22nd (also at time right on the heels of the end-of-year holidays). If the parties were able to settle, it would represent a huge and unnecessary expenditure of resources and time for both parties to produce their respective PHEs if they could reach a settlement in the midst of the PHE process. And if they were unable to settle, the disruption to their litigation positions should be substantially, if not wholly non-existent.

This would be the first extension sought; no prior motion seeking an extension of time (or any type for substantive or procedural relief) has been made. The litigation remains in an embryonic state, with no substantive filings having been made, no orders on any disputed factual or legal questions having been issued, no hearing date or Court-mediated conferences having been set or with no other substantive developments having occurred. All that has occurred is the threshold issuance of prehearing orders, and nothing in this proceeding has progressed beyond a most initial stage.

Under these circumstances, EPA submits that this sought-for two-month extension in PHE deadlines not only would not prejudice Respondent (indeed it might inure to its benefit), but it should not in any significant or substantial way disrupt the workings or scheduling arrangements of this Tribunal.

Complainant submits all these factors --- the entirety of the circumstances surrounding this proceeding --- argue for, and should persuade this Tribunal, that the extension sought is appropriate and fully warranted.

Authority for the Relief Sought; Prayer for Relief

Accordingly, EPA moves this Tribunal, under authority of 40 C.F.R. §§ 22.4(c)(2), 22.4(c)(10), 22.7(b) and 22.16(c), for an order: **(a)** vacating so much of the October 10th PHE Order as established the presently-existing PHE filing deadlines; **(b)** extending the time for the filing of the PHE materials as set forth above, specifically that (i) Complainant's initial PHE be

filed by January 17, 2024; (ii) Respondent’s PHE be filed by February 8, 2024; and (iii) Complainant’s rebuttal PHE be filed by February 22, 2024; and (c) granting Complainant such other and further relief as would be lawful and just. For the reasons outlined above, EPA deems the “good cause” threshold for the granting of this motion has been amply demonstrated.

Dated: November 7, 2023
New York, New York

Respectfully submitted,

Lee Spielmann

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CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically sent the foregoing “MOTION FOR EXTENSION OF PREHEARING EXCHANGE DEADLINES,” dated November 7, 2023, electronically signed and dated November 7, 2023, together with this accompanying Certificate of Service, to the addressees listed below in accordance with the manner set forth below:

By Electronic Mail (EPA’s OALJ Filing System):

Mary Angeles
Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Washington, DC

By Electronic Mail:

Dimmid, Inc.
Brooklyn, New York
dimmidmv@gmail.com
dimmidinc@aol.com

Dated: November 7, 2023
New York, New York

Lee Spielmann
