

ATTACHMENT 1



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

VIA FAX and FEDERAL EXPRESS

Brian Sargent, President
Sargent Enterprises, Inc.
732 Center Street
Jim Thorpe, PA 18229

DEC 28 2009

Re: Docket No. CAA-03-2009-0189

Dear Mr. Sargent:

Enclosed please find a true and correct copy of the MOTION FOR EXTENSION OF TIME TO FILE COMPLAINANT'S REBUTTAL PREHEARING EXCHANGE, ISSUANCE OF SHOW CAUSE ORDER AND OTHER APPROPRIATE RELIEF filed today in the above-referenced matter.

Sincerely

A handwritten signature in black ink, appearing to read "Jennifer M. Abramson".

Jennifer M. Abramson
Senior Assistant Regional Counsel

Enclosure

cc: Lydia Guy (w/o enclosure)
Stephen Forostiak (w/o enclosure)





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

VIA FAX and FEDERAL EXPRESS

DEC 9 9 2009

The Honorable Judge Barbara A. Gunning
Office of Administrative Law Judges
U.S. Environmental Protection Agency
1099 14th Street, NW
Suite 350
Washington, D.C. 20005

Re: Docket No.: CAA-03-2009-0189

Dear Judge Gunning:

Enclosed please find a true and correct copy of the MOTION FOR EXTENSION OF TIME TO FILE COMPLAINANT'S REBUTTAL PREHEARING EXCHANGE, ISSUANCE OF SHOW CAUSE ORDER AND OTHER APPROPRIATE RELIEF filed today in the matter referenced above. A copy has been served upon Respondent Sargent Enterprises, Inc. as described in the enclosed Certificate of Service.

Sincerely

A handwritten signature in black ink, appearing to read "Jennifer M. Abramson".

Jennifer M. Abramson
Senior Assistant Regional Counsel

Enclosure

cc: Lydia Guy (w/o enclosure)
Brain Sargent (w/o enclosure)
Stephen Forostiak





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

In the Matter of:
School District of Upper Dublin
1580 Fort Washington Avenue
Maple Glen, PA 19002
Sargent Enterprises, Inc.
732 Center Street
Jim Thorpe, PA 18229
RESPONDENTS

DOCKET NO. CAA-03-2009-0189
MOTION FOR EXTENSION OF
TIME TO FILE COMPLAINANT'S
REBUTTAL PREHEARING
EXCHANGE, ISSUANCE OF SHOW
CAUSE ORDER AND OTHER
APPROPRIATE RELIEF

I hereby certify that the
within is a true and correct copy
of the original Monow
filed in this matter.

[Signature]
Attorney for EPA

I. INTRODUCTION.

Pursuant to the requirements of 40 C.F.R. § 22.16, Complainant hereby moves this Court for an extension of time to file its rebuttal prehearing exchange in this matter, for the issuance of an Order to Show Cause why Respondent Sargent Enterprises, Inc. should not be found in default for its failure to comply with the December 22, 2009 Prehearing Exchange deadline set forth in this Court's September 24, 2009 Prehearing Order and with additional information exchange requirements set forth therein and at 40 C.F.R. § 22.19(a), and for such other relief as this Court deems appropriate and just.

II. STATEMENT OF THE CASE.

On June 4, 2009 Complainant issued an "Administrative Complaint and Notice of Opportunity For Hearing" ("Complaint") to the School District of Upper Dublin ("Upper Dublin"), 1 Source Safety and Health, Inc. ("1 Source") and Sargent Enterprises, Inc. ("Sargent") under the authority of Section 113(a)(3) and (d) of the Clean Air Act, 42 U.S.C. § 7413(a)(3) and (d). Consisting of one (1) count, the Complaint sought a total proposed civil penalty of \$21,900

jointly from the Respondents for their alleged failure to ensure that removed or stripped RACM remained adequately wet until collected and contained or treated in preparation for disposal in accordance with 40 C.F.R. § 61.150, as required pursuant to 40 C.F.R. §§ 61.145(c)(6)(i), and Section 112 of the Clean Air Act, 42 U.S.C. § 7412.

Subsequent to the filing and service of the instant Complaint in this proceeding, Complainant negotiated individual settlement agreements with Respondents Upper Dublin and 1 Source. These settlement agreements, in the form of a Consent Agreement and Final Order (“CAFO”) between Complainant and each of those Respondents, fully and finally settled and resolved Upper Dublin’s and 1 Source’s civil penalty liability in this proceeding. The CAFO between Complainant and 1 Source, memorializing 1 Source’s agreement to pay a \$2,700 civil penalty for the violation alleged against it in the Complaint, was filed with the Regional Hearing Clerk on August 13, 2009 and was subsequently served on all parties. The CAFO between Complainant and Upper Dublin, memorializing Upper Dublin’s agreement to pay a \$1,800 civil penalty for the violation alleged against it in the Complaint, was filed with the Regional Hearing Clerk on September 29, 2009 and was subsequently served upon Respondents Upper Dublin and Sargent and Your Honor.

The remaining Respondent Sargent filed its “Answer to the Complaint” on or about June 14, 2009. By Prehearing Order dated September 24, 2009, and pursuant to 40 C.F.R. § 22.19(a), Your Honor directed that an in seriatim prehearing exchange take place between the parties. Such Prehearing Order, issued prior to the settlement between Complainant and Respondent Upper Dublin, amended the caption of this proceeding to reflect the settlement between Complainant and Respondent 1 Source only and directed that Complainant’s Initial Prehearing Exchange be filed on or before November 24, 2009 specifying with particularity the required

content of such exchange. Complainant thereafter filed its Initial Prehearing Exchange on November 24, 2009. Complainant's Initial Prehearing Exchange met each of the applicable substantive, procedural, filing and service requirements of Your Honor's Prehearing Order and the regulatory requirements of 40 C.F.R. §§ 22.19(a) and 22.5, respectively.

Your Honor's September 24, 2009 Prehearing Order further directed that Respondent's Prehearing Exchange be filed on or before December 22, 2009 and specified with particularity the required content of such exchange. In this respect, Your Honor's September 24, 2009 Prehearing Order specifically provides that:

If any Respondent elects only to conduct cross-examination of Complainant's witnesses and to forego the presentation of direct and/or rebuttal evidence, that Respondent shall serve a statement to that effect on or before the date for filing its prehearing exchange. Each party is hereby reminded that failure to comply with the prehearing exchange requirements set forth herein, including a Respondent's statement of election only to conduct cross-examination of the Complainant's witnesses, can result in the entry of a default judgment against the defaulting party. See Section 22.17 of the Rules of Practice, 40 C.F.R. §22.17.

Prehearing Order at 4.

Your Honor's September 24, 2009 Prehearing Order also directed that, subsequent to the receipt of the Respondent's Prehearing Exchange, Complainant's Rebuttal Prehearing Exchange be filed on or before January 7, 2010. *Id.*

Counsel for Complainant did not receive a copy of Respondent Sargent's Prehearing Exchange by mail, or otherwise, by day's end on Tuesday December 22, 2009. Complainant's counsel found that no such copy had arrived upon on Monday December 28, 2009. Upon

personally checking with the Regional Hearing Clerk and Your Honor's legal assistant, on the morning of December 28, 2009, Complainant's counsel herein represents that, as of the morning of December 28, 2009, Respondent Sargent's Prehearing Exchange has not been filed with the Regional Hearing Clerk and has not been served upon Your Honor or the Complainant.

The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Rules of Practice"), 40 C.F.R. Part 22 (copy provided to Sargent with the Complaint), sets forth specific procedures for requests for extensions of time. At 40 C.F.R. §§ 22.7(b) and 22.16(a), the Rules of Practice specify that any such request be made by motion, and that such motion be served in accordance with 40 C.F.R. § 22.5(b)(2). 40 C.F.R. §§ 22.7(b) and 22.16(a). Section 40 C.F.R. § 22.7(b) further provides that: The Environmental Appeals Board or the Presiding Officer may 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; or upon its own initiative. Any motion for an extension of time shall be filed sufficiently in advance of the due date so as to allow other parties reasonable opportunity to respond and to allow the Presiding Officer or Environmental Appeals Board reasonable opportunity to issue an order. "

In the instant matter, Respondent Sargent has filed no such motion for an extension to its Prehearing Exchange filing deadline. Respondent Sargent's failure to timely file its Prehearing Exchange, or to timely seek an extension to the filing deadlines set forth in Your Honor's Prehearing Order, creates the potential of significant prejudice to the Complainant absent relief from this Court. Complainant will be prejudiced by the Respondent Sargent's failure to comply with this Court's Prehearing Order in that the deadline for its own Rebuttal Prehearing Exchange — January 7, 2010 — is rapidly approaching and the Complainant is wholly without: any

identification of the witnesses Respondent Sargent intends to call in this matter, or any statement as to their anticipated testimony; any documents Respondent Sargent intends to introduce into evidence in support of its position in this matter; any indication as to the position Respondent Sargeant has with respect to the penalty proposed against it in this matter, its ability or inability to pay the same and any documents upon which it intends to rely in support of its penalty position; and any indication as to whether Respondent Sargent intends to forego the presentation of direct and/or rebuttal evidence.

Under these circumstances, and absent relief from this Court, Respondent Sargent's entire position in this proceeding remains largely undisclosed to the Complainant and Complainant effectively is prevented from filing any meaningful Rebuttal Prehearing Exchange due to the Respondent Sargent's complete failure to file it own initial Prehearing Exchange in a timely and appropriate manner.

Sections 22.16(b) and 22.7(c) of the Rules of Practice generally provide for a fifteen day response period for motions, with an additional five days added thereto if the pleading is served by mail. 40 C.F.R. §§ 22.16(b) and 22.7(c). Section 40 C.F.R. § 22.7(b) of the Rules of Practice specifically provides, however, that motions for an extension of time are to be filed "sufficiently in advance of the due date so to allow other parties to respond and to allow the Presiding Officer reasonable opportunity to issue an order." 40 C.F.R. § 22.7(b). Due in part to the short nature of the filing deadline between the date set for the filing of Respondent's Prehearing Exchange and Complainant's Rebuttal Prehearing Exchange (i.e., exactly 15 days) and the intervening Christmas Day holiday, this motion will not be filed in time to allow a fifteen day response period but should be found to be filed sufficiently in advance of the January 7, 2010 due date so to allow Respondent Sargent to respond and to allow Your Honor reasonable opportunity to

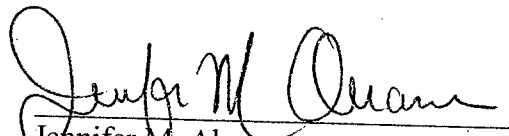
issue an order.

III. COMPLAINANT'S REQUEST FOR RELIEF.

WHEREFORE, in consideration of the above, Complainant moves:

1. for an extension of time to file its Rebuttal Prehearing Exchange in this matter for such reasonable and appropriate time — after the filing of Respondent's Prehearing Exchange — as this Court deems reasonable, just and proper;
2. for the issuance by this Court of an Order to Show Cause why Respondent Sargent should not be found in default for its failure to comply with the December 22, 2009 Prehearing Exchange deadline set forth in this Court's September 24, 2009 Prehearing Order and with the additional information exchange requirements of this Court's Prehearing Order and of 40 C.F.R. § 22.19(a); and
3. for such other relief as this Court deems appropriate and just.

Respectfully submitted,



Jennifer M. Abramson
Senior Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Tel. (215) 814-2066
Fax (215) 814-3113

DEC 28 2009



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION III
 1650 Arch Street
 Philadelphia, Pennsylvania 19103-2029

In the Matter of:)	DOCKET NO. CAA-03-2009-0189
)	
School District of Upper Dublin)	MOTION FOR EXTENSION OF
1580 Fort Washington Avenue)	TIME TO FILE COMPLAINANT'S
Maple Glen, PA 19002)	REBUTTAL PREHEARING
)	EXCHANGE, ISSUANCE OF SHOW
Sargent Enterprises, Inc.)	CAUSE ORDER AND OTHER
732 Center Street)	APPROPRIATE RELIEF
Jim Thorpe, PA 18229)	
)	
RESPONDENTS)	

CERTIFICATE OF SERVICE

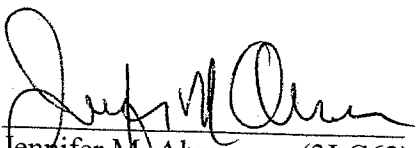
I hereby certify that I caused the original and one copy of the foregoing MOTION FOR EXTENSION OF TIME TO FILE COMPLAINANT'S REBUTTAL PREHEARING EXCHANGE, ISSUANCE OF SHOW CAUSE ORDER AND OTHER APPROPRIATE RELIEF to be hand-delivered to the Regional Hearing Clerk, EPA Region III, and that true and correct copies were sent to each of the following persons in the following manner:

Copy by FACSIMILE and FEDERAL EXPRESS

Brian Sargent, President
 Sargent Enterprises, Inc.
 732 Center Street
 Jim Thorpe, PA 18229
 Fax: (570) 325-8006

The Honorable Judge Barbara A. Gunning
 Office of Administrative Law Judges
 U.S. Environmental Protection Agency
 1099 14th Street, NW
 Suite 350
 Washington, DC 20005
 Fax: (202) 565-0044

Date **DEC 28 2009**


 Jennifer M. Abramson (3LC62)
 Senior Assistant Regional Counsel



FAX TRANSMISSION

EPA - REGION 3
WASTE & CHEMICALS MANAGEMENT DIVISION
1650 ARCH STREET
PHILADELPHIA, PA 19103-2029

Date: 12/28/2009

Number Page(s) 10 - includes cover sheet

To: BRIAN SARGENT

Phone: 570 325 8000

Fax: 570 325 8006

From: Jennifer M. Abramson

Fax: (215) 814-3114

Phone: (215) 814-2066

Comments:

NO.	COM	PAGES	FILE	DURATION	X/R	IDENTIFICATION	DATE	TIME	DIAGNOSTIC
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21	OK	001		00:00'26	XMT	918567950689	DEC-10	11:19	2840450377000
22	OK	001	104	00:00'32	RCV	Fax	DEC-10	11:57	0150270377000
23	OK	002	105	00:01'04	RCV	410 828 0876	DEC-11	10:01	0150260A37000
24	OK	003	106	00:02'20	RCV	13047680794	DEC-11	14:36	0150270477000
25	OK	003	107	00:01'44	RCV	215-814-2020	DEC-11	15:26	0150270237000
26	OK	028		00:14'44	XMT	916106967831	DEC-11	16:31	F800450377000
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Recipient's Name BRIAN SARGANT, Pres. Phone ()

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shipment will be delivered on Monday
unless SATURDAY Delivery is selected.

FedEx 2Day
Second business day, **Thursday
shipment will be delivered on Monday
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FedEx Express Saver
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FedEx 2Day Freight
Second business day, **Thursday
shipment will be delivered on Monday
unless SATURDAY Delivery is selected.

FedEx 3Day Freight
Third business day,
Saturday Delivery NOT available.

5 Packaging

FedEx Envelope*
 FedEx Pak*
 FedEx Small Pak
 FedEx Sturdy Pak
 FedEx Box
 FedEx Tube
 Other

6 Special Handling

SATURDAY Delivery
NOT Available for
FedEx Standard Overnight,
FedEx Priority Overnight, FedEx Express
Saver, FedEx 2Day, and FedEx First Overnight.
Does this shipment contain dangerous goods?
 No Yes Yes No Yes No

7 Payment Bill to:

Sender
 Recipient
 Third Party
 Credit Card
 Cash/Check

Total Packages Total Weight Total Declared Value*

Exp. Date

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8 Residential Delivery Signature Options

No Signature Required
Packages may be left without obtaining a signature for delivery.

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Signature at recipient's address is required for delivery. *Fee applies.*

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Signature at recipient's address is not required for delivery. *Fee applies.*

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