

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

IN THE MATTER OF: :
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: :
Dimmid, Inc., :
: :
: :
Respondent :
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Docket No. TSCA-02-2023-9226

**ORDER SUMMARIZING TELECONFERENCE, GRANTING EXTENSION OF
TIME AND SETTING DEADLINE FOR FILING OF JOINT STATUS REPORT**

TELECONFERENCE:

The Undersigned summarizes the Status Teleconference held on June 28, 2023, as follows:

PARTICIPANTS:

Presiding: Helen Ferrara, Regional Judicial Officer
For Respondent: Mikhail Vernovsky, Vice President, Dimmid, Inc.
For Complainant: Lee Spielmann, Attorney
Stephen Anton, Intern

The Regional Judicial Officer (RJO) opened the teleconference by emphasizing the informal nature of the call, discussing various procedural options, and offering the representatives of the parties the opportunity to state their interpretation of the proceedings to date and their positions going forward.

Mr. Vernovsky reiterated that Respondent, Dimmid, Inc. (Dimmid), a two-person operation with limited resources and approximately one million dollars in annual revenue, had complied with

the Complainant's demands and submitted financial records as requested, and was still awaiting an offer of settlement from Complainant. Mr. Vernovsky once again explained that he felt that Dimmid was being penalized for failing to report the importation of chemicals which it did not import and/or regarding which Dimmid had no knowledge or control.

Mr. Spielmann explained that the initial complaint, signed, filed, and served in March 2023, was not properly executed. Therefore, the second complaint, signed in April 2023, and filed and served on June 12, 2023, is in fact the original, and not an amended, Complaint. Mr. Spielmann further explained that the Complaint was in the form of a notice pleading which cited alleged violations and statutory maximums per violation but did not specify a total amount that was being sought by EPA.

Mr. Spielmann, summarizing settlement negotiations to date, referenced a conference between the parties in June of 2022, and stated that EPA had asked for three years of tax returns to support Dimmid's inability to pay argument. EPA and an outside financial analyst analyzed the financial information submitted by Dimmid, and EPA, based on the information submitted and an analysis thereof, made a settlement offer to Dimmid. Dimmid made a counteroffer, which was unacceptable to EPA. EPA, based on the recommendation of the outside financial analyst, requested further proof of financial hardship to support Dimmid's position that it could not pay an amount close to the amount which EPA was seeking in its offer.

Mr. Vernovsky stated that he felt that EPA is being unfair by not treating Dimmid as it has treated similarly situated Respondents. In response, Mr. Spielmann explained that EPA follows guidance set forth in applicable penalty policies, and bases settlement offers on the applicable policy as applied to the specific facts of each case, including a respondent's ability to pay. Mr. Spielmann requested, and Mr. Vernovsky agreed, to produce Dimmid's 2022 tax records, although Mr. Vernovsky made clear that there were other financial records which EPA has requested which Dimmid does not maintain in the usual course of its business. Mr. Spielmann also reiterated that a condition of settlement would be that Dimmid produce 2020 Chemical Data Records (CDRs), as required by the applicable regulations, for any chemicals imported during the reporting period, and that going forward, all "chemical substances," as defined in the applicable provision of the Toxic Substances Control Act (TSCA), will be imported in compliance with applicable statutes and regulations.

Mr. Vernovsky replied by reiterating that one of the chemicals listed in the Complaint, dichloromethane, had not been imported by Dimmid during the relevant reporting period. Mr. Spielmann restated that Dimmid must comply with the applicable regulations, including 40 C.F.R. Part 751 Subpart B, and that Dimmid cannot import any regulated chemical not listed on the inventory. The RJO inquired as to whether Mr. Vernovsky could consult with a technical expert at EPA to discuss the allegations against Dimmid and Dimmid's obligations regarding forms and filings.

Mr. Spielmann recommended that Mr. Vernovsky talk to Jesse Miller, Ph.D., of EPA Region 2's Enforcement and Compliance Assurance Division (ECAD), for guidance in navigating the system. There was much discussion as to which forms need to be submitted by Dimmid, what is required of Dimmid as an importer of the chemicals at issue, which chemicals

Dimmid has actually imported, and the difference, if any, between a manufacturer and importer for purposes of reporting requirements. Mr. Spielmann and Mr. Vernovsky agreed that Mr. Spielmann will contact Mr. Miller, requesting that Mr. Miller re-review the allegations contained in the Complaint and Dimmid's positions regarding these allegations. Once this review is complete, Mr. Vernovsky agreed to further discuss outstanding issues with Mr. Miller and Mr. Spielmann, including any additional information that would be required of Dimmid to settle this matter.

EXTENSION OF TIME:

By email dated June 28, 2023, Mr. Vernovsky requested an extension of time through August 15, 2023, to file an answer to the June 12th Complaint, and Mr. Spielmann responded by email stating that EPA does not oppose this request. By this Order, the Undersigned hereby confirms her June 28th email, by which she granted Mr. Vernovsky's request for an extension.

JOINT STATUS REPORT:

The Undersigned believes that it is in the best interest of the parties to file a Joint Status Report no later than August 11, 2023. That report should update the Undersigned on the procedural status of discussions between the parties without including any specific information or details regarding the settlement. If necessary, the parties, in that Joint Status Report, could also request an additional extension of time for the Respondent to answer the Complaint.

Based on the information contained herein, the Undersigned issues the following Order:

IT IS HEREBY ORDERED:

The Undersigned recognizes that the parties have expressed an interest in engaging in informal settlement discussions, including further consultation with technical personnel at EPA and outside financial analysts, as necessary, as well as the exchange of information and documentation as agreed to by the parties.

In light of the above, the Undersigned confirms that Respondent's request for an extension of time through August 15, 2023, in which to answer the Complaint, said request being made for good cause shown and with the concurrence of Complainant, has been granted.

In addition, the Undersigned directs the parties to file a Joint Status Report with the Undersigned no later than August 11, 2023.

The parties have ten (10) days from the date of service of this Order to contest, challenge or request further clarification of any information contained herein.

Effective Date

The effective date of this Order shall be the date it is signed, below.

Date: July 12, 2023

Helen S. Ferrara
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