

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.11
2012 MAY 10 A 10:04
REGIONAL HEARING
CLERK

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In the Matter of :
Valvo's Convenience & Gas, Inc. :
And Stephen Valvo, Individually :
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: :
: :
: :
Proceeding under Section 9006 the :
Solid Waste Disposal Act, as amended :
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**MOTION FOR EXTENSION OF
TIME FOR HEARING DATE**

Docket No. RCRA-02-2011-7507

Pursuant to 40 C.F.R. § 22.21(c) and §§ 22.1(c), 22.4(c), Complainant respectfully moves for an extension of time for commencement of the hearing in this case for good cause shown as explained herein. The hearing is presently scheduled to be held beginning on Tuesday, July 10, 2012 and continuing as necessary through July 13, 2012.

Background

On June 3, 2011, Complainant filed a Complaint, Compliance Order and Notice of Opportunity for Hearing that alleged Respondents Valvo Convenience and Gas, Inc. and Stephen M. Valvo, individually, violated certain provisions of the underground storage tank regulations at 40 C.F.R. Part 280 at three facilities in Silver Creek, New York. The parties participated in two mediations sessions. When mediation terminated, Respondents filed an Answer with Affirmative Defenses on July 12, 2011. Pursuant to the October 19, 2011 Order of Judge Barbara A. Gunning, the parties filed their Prehearing Exchanges. By motion, dated December 8, 2011, Complainant moved for a slight change in the name of the Corporate Respondent. On December 21, 2011, Judge Gunning granted Complainant's motion for change in the name of the Corporate Respondent to Valvo's Convenience & Gas, Inc. Subsequently, an Order on the Applicability of the Paperwork Reduction Act ("PRA") was issued on February 7, 2012, holding that the information request letters questioned by Respondents in their Prehearing Exchange were part of a compliance investigation and exempt from the requirements of the PRA pursuant to 44 U.S.C. § 3518(c)(1) and the implementing regulations at 5.C.F.R. § 1320.4(a)(2).

On February 15, 2012, Judge Gunning issued an Order Scheduling Hearing. By Order of Redesignation, dated February 23, Judge M. Lisa Buschmann was designed as Administrative Law Judge to preside over this proceeding. Complainant filed its first status report on February 27, 2012. Complainant issued its Amended Complaint on March 28, 2012, and Respondents served their Amended Answer on April 19, 2012. On May 3, 2012, Complainant filed its second status report on the status of settlement negotiations in this case reporting that the parties had not come to any agreement on compliance and the amount of the penalty, but they were continuing to work on clarifying these settlement issues.

Need to Extend the Time for the Hearing

Complainant respectfully requests that the date of the hearing currently scheduled for July 10, 2012 be extended for about eight weeks to commence no earlier than the week of September 10, 2012 due to the unavailability of Complainant's counsel for medical reasons. In the event that the week of September 10, 2012 is not available, Complainant suggests the weeks of October 8, 2012 and October 15, 2012, which do not conflict with the religious observance of Complainant's witness at the end of September or the Agency's concerns about adequate funding for travel during the first week of the new fiscal year. Counsel for Respondents has been consulted, and he has authorized counsel for Complainant to state that he agrees with the proposed extension of time and the proposed dates for the hearing. This is the first request for an extension of time in this matter.

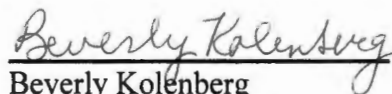
In consideration of the requested extension of time for the date of the hearing, Complainant respectfully requests that the related dates for dispositive and non-dispositive motions, the filing of the Joint Set of Stipulated Facts, Exhibits and Testimony and the Prehearing Briefs, if any, be rescheduled during the six week period immediately before the date of the hearing.

Relief Sought

For the reason stated, above, Complainant respectfully moves this Court pursuant to 40 C.F.R. § 22.21(c) and §§ 22.1(c) and 22.4(c) for an order that the hearing commence no earlier than the week of September 10, 2012, and the dates of the related motions and prehearing submissions to the Court be scheduled within about the six week time period before the commencement date of the hearing, and granting such other and further discretionary relief as this Court deems just and proper.

Dated: May 9, 2012
New York, New York

Respectfully submitted,



Beverly Kolenberg
Assistant Regional Counsel
Counsel for Complainant
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007-1866

To: Honorable M. Lisa Buschmann
Administrative Law Judge
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Mail Code 1900L
Washington, DC 20460

Office of Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

Paul A. Chiaravalloti, Esq., for the Respondents
1967 Wehrle Drive
Suite 1
Williamsville, New York 14221

CERTIFICATE OF SERVICE

This is to certify that I have this day caused to be mailed copies of the foregoing Motion for Extension of Time for Hearing Date, bearing the Docket Number RCRA-02-2011-7507 by pouch mail to Honorable M. Lisa Buschmann, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Mail Code 1900L, Washington, D.C. 20460-2001 and by regular mail to Paul A. Chiaravalloti, Esq., counsel for the Respondents, 1967 Wehrle Drive, Suite 1, Williamsville, N.Y. 14221.

I hand-carried the original and a copy of the foregoing Complaint to the Office of Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

Dated: May 9, 2012
New York, New York

Beverly Kalenberg