

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY REGION 2  
2010 FEB -2 AM 8:39  
REGIONAL HEARINGS  
CLERK

In the Matter of:

Philadelphia Furniture, LLC  
Salamanca, New York

Respondent

CAA-02-2009-1215

Hon. Barbara A. Gunning,  
Administrative Law Judge

In a proceeding under the Clean Air Act,  
42 U.S.C. § 7401, et seq., 42 U.S.C.  
§ 7413(d), Section 113(d)

**MOTION FOR AN EXTENSION OF TIME TO FILE PREHEARING EXCHANGES**

Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, EPA, Region 2 (EPA), through her attorney, requests the Court grant a 60-day extension of time for the parties to file their prehearing exchanges, an extension concurred upon by Philadelphia Furniture, LLC, Respondent, in this proceeding, through their attorney John T. Kolaga of Damon Morey, LLP. For the reasons set forth below, the parties submit that good cause exists, within the meaning of 40 C.F.R. § 22.7(b), for granting the motion.

On August 13, 2009, pursuant to 42 U.S.C. § 7401, et seq., 42 U.S.C. § 7413(d), Section 113(d), the Clean Air Act (CAA or the Act), Complainant filed an administrative Complaint and Notice of Opportunity to Request a Hearing against Respondent for

violations of the Respondent's Federal Title V Operating Permit, issued pursuant to 40 C.F.R. Part 71, the Federal Title V Operating Permit Program, promulgated pursuant to Section 502(b) of the Clean Air Act. The total amount of the penalty proposed in the complaint is \$241,137. Respondent filed an Answer, Affirmative Defenses, and Request for a Hearing dated September 15, 2009.

By Prehearing Order (Order) dated October 7, 2009, the Court directed the parties to submit their prehearing exchanges as per the following schedule:

- December 15, 2009 - Complainant's Initial Prehearing Exchange;
- January 15, 2010 - Respondent's Prehearing Exchange, including any direct and/or rebuttal evidence; and
- January 29, 2010 - Complainant's Rebuttal Prehearing Exchange.

On October 23, 2009 Respondent filed a Motion for Extension of Time to File Prehearing Exchanges, in order to pursue settlement negotiations and to organize Respondent's financial documents. Complainant concurred upon this motion. On October 28, 2009, the Court granted Respondent's Motion for Extension, and directed the parties to submit their prehearing exchanges as per the following revised schedule:

- February 10, 2010 - Complainant's Initial Prehearing Exchange;
- March 10, 2010 - Respondent's Prehearing Exchange, including any direct and/or rebuttal evidence; and
- March 25, 2010 - Complainant's Rebuttal Prehearing Exchange.

On November 17, 2009, and again on January 7, 2010, Complainant filed a Status Report with the Court describing the course of settlement negotiations and the status of Respondent's submission of financial documentation to Complainant

documents to Complainant on October 14, 2009, November 25, 2009, and January 6, 2010. Respondent has not provided Complainant with a copy of Respondent's 2008 tax returns. Respondent indicated that it cannot provide Respondent's 2008 tax returns because those tax returns were filed as part of the consolidated tax returns of Artone Holdings, LLC. Respondent has indicated that Artone Holdings, LLC is Respondent's parent company. Tax returns show financial information in the most complete and consistent form for analysis. In order to review the financial documents submitted by Respondent instead of its 2008 tax returns, EPA is seeking the assistance of Industrial Economics, Inc. (IE).

In accordance with 40 C.F.R. § 22.7(b), EPA believes that good cause exists for granting this Motion for Extension of Time to File Prehearing Exchanges to allow for IE review of the financial information submitted by Respondent instead of its 2008 tax returns. This has prolonged the settlement negotiations that both parties are interested in pursuing.

If this Motion for Extension is granted, Complainant anticipates that it will need additional time as follows:

- 1 week to continue efforts to secure a contract with IE;
- 2 weeks for IE to review financial documentation submitted and to request and receive additional financial documentation and information;
- 1 week for review and analysis of any additional financial documentation and information by IE and EPA;
- 2 weeks to meet with Respondent and continue settlement negotiations; and

- 2 weeks to finalize Consent Agreement and Final Order and to allow for follow-up meetings or calls if needed.

It is in the interest of both parties and judicial economy to further pursue settlement negotiations prior to incurring the costs involved in preparing and submitting prehearing exchanges. These negotiations are ongoing, but Complainant requires the services of financial consultants before it is able to proceed. Neither party will be prejudiced by an additional period of time.

EPA respectfully moves the Court, pursuant to 40 C.F.R. §§ 22.4(c)(2), 22.7(b), 22.16(a) and 22.19(a), for an order amending the October 28 , 2009 Order to extend each of the prehearing exchange dates set forth in said Order by a period of 60-days.

Dated: February 1, 2010  
New York, New York



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CERTIFICATE OF SERVICE

This is to certify that I have this day caused to be mailed a copy of the foregoing Motion for an Extension of Time to File Prehearing Exchanges, dated February 1, 2010, bearing the docket number CAA-02-2009-1215, and this Certificate of Service by Pouch Mail to:

Honorable Barbara A. Gunning  
Administrative Law Judge  
U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
Mail Code 1900L  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460-2001

I also certify that I have this day hand-carried the original and one copy of the foregoing Motion for an Extension of Time to File Prehearing Exchanges, along with the original of this Certificate of Service to the office of the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

I also certify that I have this day caused to be mailed a copy of the foregoing Motion for an Extension of Time to File Prehearing Exchanges, and this Certificate of Service by Regular Mail to:

John T. Kolaga, Esq.  
Damon Morey, LLP  
The Avant Building – Suite 1200  
200 Delaware Avenue  
Buffalo, NY 14202-2150

Dated: February 1, 2010  
New York, New York

  
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Denise C. Leong