

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

-----X
In the Matter of :
 :
U.S. Department of Veterans :
Affairs, :
 :
Respondent. :
 :
Proceeding Under Section 9006 :
of the Solid Waste Disposal Act, :
as amended :
-----X

MOTION FOR EXTENSION OF TIME TO
FILE PREHEARING EXCHANGE

Docket No. RCRA-02-2008-7507

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2009 DEC -9 PM 3:55
REGIONAL HEARING
OFFICE

MOTION FOR EXTENSION OF TIME TO FILE PREHEARING EXCHANGE

Counsel for Complainant and Respondent have conferred on this Motion and counsel for Respondent has authorized counsel for Complainant to submit this Motion for Extension of Time to File Prehearing Exchange.

This is the second Motion for Extension of Time filed by the parties in this matter. By your Honor's Prehearing Order dated June 18, 2009, the parties were directed to hold a settlement conference on or before July 31, 2009. The parties did so and had numerous settlement discussions since that date as well. Complainant was ordered to file a status report on or before August 12, 2009. Complainant filed such a report on August 12, 2009 informing your Honor that the parties were making good progress toward a settlement and that such a settlement involved a Supplemental Environmental Project (SEP). Complainant noted that the parties were mindful of the Prehearing Exchange deadline and indeed considerable progress has been made on the specifics of the proposed SEP. On September 22, 2009, on behalf of both parties, Complainant filed the first Motion for Extension of Time and on that same date your Honor granted the parties until December 21, 2009. Your honor noted that a further extension of time would not be granted absent a showing of extraordinary circumstances. As noted below, the parties respectfully represent that such extraordinary circumstances support the instant Motion.

Both parties in this matter are large federal agencies. The parties have developed a consent agreement and consent order as well as a SEP. Both documents have undergone extensive review within both of our agencies. The SEP involves compliance assistance to owners and operators of underground storage tanks on Puerto Rico who will benefit from the free training that will be offered to them through the implementation of the SEP. The parties are pleased to be able to offer such compliance assistance as it will also protect the island's fragile ecosystem and ground water. To get to this point, numerous federal employees and contractors have been consulted and the details of the SEP have been negotiated and reduced to writing. This has been a lengthy process but it will produce good and tangible results.

The parties further represent that given the amount of work that has been done and the reviews that have been completed to date, the likelihood of an expeditious settlement is high. Complainant has sent Respondent a final draft of the CAFO and it is undergoing a thorough review by the necessary officials within Respondent's Agency. Please note too that the Washington, DC, headquarters offices of both parties are also involved in this settlement and both headquarters offices have been sent a copy of the draft agreement and review is on-going in Washington as well.

Given the size of the two bureaucracies involved, the number of reviewing offices and officials, and additional reviews required due to the SEP, we are extremely unlikely to be able to push the settlement through to final execution within the remaining time. The parties very much wish to expend the resources within our respective programs solely on executing this agreement and carrying out the compliance assistance program that we have developed. For the parties to now have to drop the settlement and SEP and focus instead on the production of a wholly unnecessary pre-hearing exchange would constitute a total waste of scarce federal resources and delay further the implementation of the compliance assistance that we wish to offer on an expedited basis in Puerto Rico. Finally, while the parties will continue to expeditiously move this matter toward resolution, the approach of the holidays and vacations of persons necessary to the lengthy governmental concurrence processes that must occur in both of our Agencies again makes the December 21, 2009 deadline unlikely.

The parties respectfully submit that the above facts constitute extraordinary circumstances within the context of our limited request for the grant of an additional thirty (30) days to fully resolve this matter.

Complainant respectfully proposes that its Prehearing Exchange due date be extended to January 20, 2010.

Respectfully submitted,

12-8-09

Dated



Carl R. Howard

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In the Matter of U.S Department of Veterans Affairs,
Docket No. RCRA-02-2008-7507

CERTIFICATE OF SERVICE

I certify that I have this day caused (or am causing) to be sent the foregoing Joint Motion For Extension of Time to File Prehearing Exchanges to the following addressees listed herein in the manner listed below:

Copy by facsimile and
Pouch Mail:

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

Original and One Copy
Hand Delivered to:

Ms. Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection
Agency, Region II
290 Broadway
New York, NY 10007-1866

Copy by Regular Mail to
Attorney for Respondent:

Ms. Joy Vilardi Rizzuto, Esq.
Senior Attorney
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10 Casia Street
San Juan, PR 00921-3201

12-8-09
Date


