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**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

BEFORE THE ADMINISTRATOR

In the Matter of)
)
EDWARD L. MURRAY, JR.) **Docket No. TSCA-05-2007-0013**
)
Respondent)

**COMPLAINANT, U.S. EPA'S, RESPONSE TO RESPONDENT'S SECOND REQUEST
FOR AN EXTENSION OF TIME TO FILE A CONSENT AGREEMENT AND FINAL
ORDER**

The United States Environmental Protection Agency, Region 5 (U.S. EPA or Complainant) respectfully submits the following response to Respondent's Motion for a Second Enlargement of Time to File a Consent Agreement and Final Order:

1. This Court's April 15, 2008 Prehearing Order stated that if the case settled, the Consent Agreement and Final Order (CAFO) should be filed no later than May 23, 2008.
2. On April 24, 2008, U.S. EPA provided Respondent with an initial draft of the CAFO. In the cover letter that accompanied the draft CAFO, Complainant made clear to Respondent's counsel that in order to meet the filing deadline of May 23, 2008, Respondent had to have comments to U.S. EPA by Monday, April 28, 2008.
3. On May 1, 2008, U.S. EPA e-mailed Respondent's counsel and indicated that a response to the draft CAFO was needed.
4. On May 2, 2008, Respondent's counsel replied by e-mail that he would review the CAFO the following week.
5. On May 6, 2008, U.S. EPA again e-mailed Respondent's counsel indicating that

in order to meet the May 23, 2008 deadline in the Prehearing Order, U.S. EPA needed comments on the draft CAFO. U.S. EPA outlined the time constraints of the sign-off policy within the Agency and indicated that if Respondent needed more time, Respondent should file a Motion for Extension of Time.

6. On May 9, 2008, via e-mail, Respondent's counsel responded that he had reviewed the draft CAFO and was giving it to his client for review. U.S. EPA responded that given the late date, that the CAFO could not get through Agency sign-off procedure and that if Respondent wanted to file a Motion for Extension of Time, U.S. EPA would concur.

7. On May 19, 2008, Respondent filed a Motion for Enlargement of Time to file the CAFO, but failed to serve the Presiding Officer. U.S. EPA was not aware of this issue.

8. On June 3, 2008, Respondent provided his comments on the draft CAFO to U.S. EPA.

9. On June 9, 2008, Complainant provided its response to Respondent's comments.

10. On June 23, 2008, after failing to get any additional response from Respondent's counsel, Complainant e-mailed Respondent and indicated that the date by which Respondent had requested for an extension of time was going to pass and that Respondent needed to file an additional request for an extension of time.

11. On June 26, 2008, Complainant received the Order Granting the Enlargement of Time from the Presiding Judge. Counsel for Complainant called and e-mailed Respondent's counsel as well as faxing the Order to counsel as counsel's address had changed. In her communications to Respondent's counsel, counsel for Complainant reiterated that U.S. EPA had

not received further comments from Respondent's counsel and, as a result of the late date, that U.S. EPA could not get the CAFO through Agency sign-off within a week in order to meet the Presiding Judge's deadline.

12. In addition, counsel for Complainant indicated that she was on vacation the week of June 30, 2008.

13. During the mid-afternoon of June 26, 2008, counsel for Complainant received a call from someone in Respondent's counsel's office indicating that counsel had received the call, e-mail and fax, and that counsel was in a meeting and would call later in the day. At that time, counsel for Complainant stated that she could not get a CAFO through sign-off in the next week and that Respondent should proceed to file a Prehearing Exchange in order to comply with the Presiding Judge's Order.

14. On July 1, 2008, while Complainant's counsel was on vacation, Respondent faxed his comments to the draft CAFO.

15. On July 7, 2008, in accordance with in accordance with the April 15, 2008 Prehearing Order issued by the Presiding Judge, Susan L. Biro, and the June 18, 2008 Order Granting Respondent's Motion for Extension of Time, Complainant submitted its Prehearing Exchange.

16. Prior to filing the Motion, Respondent did not discuss his intent to file a Motion for a Second Enlargement of Time with Complainant's counsel.

17. Given the time and effort required to comply with the prehearing exchange requirements, Complainant believes it would be prejudiced by the prior settlement terms agreed

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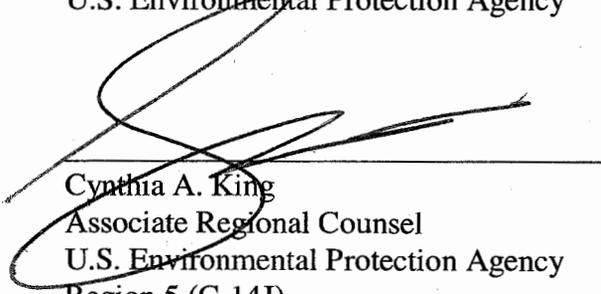
to by Complainant.

18. The April 15, 2008 Prehearing Order states in bold: “[t]he Respondent is hereby notified that its failure to . . . comply with the prehearing exchange requirements set forth herein . . . can result in the entry of a default judgment against it.”

19. For these reasons, Complainant requests that the Presiding Judge deny the Respondent’s Motion for a Second Enlargement of Time to File the Consent Agreement and Final Order and enter a Default Judgment against Respondent for his failure to comply with the Orders of this Presiding Judge and the requirements of Part 22, and assess a penalty in the amount of \$27,170 as outlined in Complainant’s Prehearing Exchange.

Respectfully submitted,

U.S. Environmental Protection Agency



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In the Matter of Edward L. Murray, Jr.
Docket No. TSCA-05-2007-0013

CERTIFICATE OF SERVICE

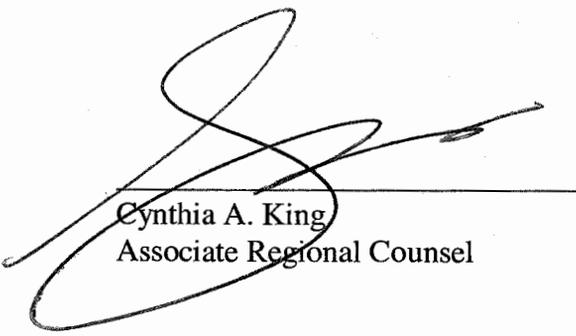
I hereby certify that on the 7th day of July, 2008, I filed the original and one copy of this Response to Respondent's Motion for a Second Enlargement of Time to File a Consent Agreement and Final Order with Sonja Brooks-Woodard, Regional Hearing Clerk, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois 60604, and placed a copy for pickup to be mailed by Pouch Mail to:

Chief Judge Susan L. Biro
Office of the Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-2001

and placed a copy for pickup to be mailed by certified mail, certified receipt number

7001 0320 0005 8916 8701 To:

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