

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

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IN THE MATTER OF:)
) Docket No. RCRA-04-2008-4008
FBF Nuclear Container, LLC)
and)
Metal Solutions Design & Fabrication, LLC)
and)
Mr. David Berger)
_____)

**ORDER GRANTING LIMITED EXTENSION OF TIME
FOR COMPLAINANT'S RESPONSE**

PLEASE TAKE NOTICE, on October 27, 2008, Complainant, the United States Environmental Protection Agency, filed a *Motion for Extension of Time to File Response to Respondents' Motion* (Complainant's Motion). Complainant seeks an additional 45 days to respond to *Respondents' Motion for Additional Extension of Time to Answer*, (Respondents' Motion) filed on October 21, 2008.¹

Previously, by *Order Granting Unopposed Motion for Extension of Time*, issued on August 12, 2008, Respondents' deadline to respond to the Complaint was extended to October 12, 2008. However, as noted above, Respondents now seek an additional 60 day extension to file an Answer. Counsel for Respondents indicates that due to a recent death in his immediate family, and his unexpected absence from the office for several days, the time lapsed for Respondents to file an answer or seek another extension.

In accordance with Section 22.15 of the Consolidated Rules, 40 C.F.R. §22.15, Complainant has 15 days to respond to Respondents' Motion. Complainant seeks additional time to respond, indicating that while it was unopposed to Respondents' first extension of time request, Complainant should have the opportunity to determine Respondents' good faith in their pursuit of settlement of the matter before responding to Respondents' Motion. While the parties are arranging for settlement, such discussions will likely extend beyond the deadline for Complainant to respond to Respondents' Motion. On this basis, Complainant seeks a 45 day extension for filing a response.

¹ Complainant refers to Respondents' Motion as having been filed on October 16, 2008. Although the cover letter attached to Respondents' Motion reflects that date, the date-stamp on the document indicates that it was entered by the Regional Hearing Clerk on October 21, 2008. The undersigned was not served with a copy of Respondent's Motion and only became aware that it had been filed when served with Complainant's Motion. Pursuant to Section 22.5(b) of the Consolidated Rules, 40 C.F.R. a copy of each document filed in the proceeding shall be served on the Presiding Officer.

In accordance with Section 22.16(b) of the Consolidated Rules, 40 C.F.R. §22.16(b), the Presiding Officer “may set a shorter or longer time for response or reply, or make other orders concerning the disposition of motions.” Section 22.7 of the Consolidated Rules, 40 C.F.R. §22.7, pertaining to extensions of time, provides, in pertinent part, that the “. . . Presiding Officer may grant an extension of time for filing any document: upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties; or upon its own initiative.”

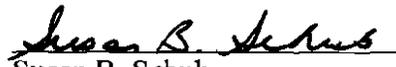
The occurrence of a death in Respondents’ Counsel’s immediate family, would, in and of itself, constitute good cause for granting Respondents’ Motion. Although I am inclined to grant the motion at this time pursuant to authority set forth at 40 C.F.R. §22.16(b), in light of Complainant’s expressed intension to respond to Respondents’ Motion, granting a limited and reasonable additional length of time for that purpose is appropriate. However, the sixty day period requested is unnecessarily long and leaves Respondents in a state of uncertainty during settlement discussions, regarding their status in this action should they wish to proceed to hearing.

IT IS ORDERED:

Complainant’s Response to Respondent’s Motion is due on or before **November 18, 2008**.

Upon receipt of Complainant’s response, the undersigned will issue on Order on Respondents’ Motion.

Dated: Oct. 30, 2008


Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Order Granting Limited Extension of Time for Complainant's Response in the Matter of FBF Nuclear Conatiner, LLC and Metal Solutions Design & Fabrication, LLC and Mr. David Berger, Docket No., RCRA-04-2008-4008, on the parties listed below in the manner indicated:

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U.S. Environmental Protection Agency
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(via Intra-Office Mail)

Date: 10-30-08



Patricia A. Bullock
Regional Hearing Clerk
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