

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

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In the Matter of	:	
Wolfe Landau,	:	Hon. Susan L. Biro,
	:	<u>Presiding Officer</u>
Respondent.	:	
	:	Docket No.
Proceeding under Section 16(a) of	:	<u>TSCA-02-2009-9267</u>
Toxic Substances Control Act,	:	
15 U.S.C. § 2615(a).	:	
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U.S. ENVIRONMENTAL
PROTECTION AGENCY-REGION 2
2010 JAN 26 PM 4:44
REGIONAL HEARING
CLERK

STATUS REPORT AND MOTION TO EXTEND TIME FOR FILING

This following status report is submitted in compliance with this Court's January 14, 2010 "ORDER GRANTING MOTION TO MODIFY CONFERENCE DEADLINES." In addition, Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, EPA, Region 2 (EPA), through her attorney, requests this Court grant a two-month extension of time for the parties to file their prehearing exchanges, an extension concurred in by Respondent. For the reasons set forth below, EPA submits that good cause exists for granting this motion.

This is a case administratively prosecuted under Section 16(a) of the Toxic Substances Control Act, 15 U.S.C. § 2615(a), in which EPA seeks a civil penalty of \$46,210 for alleged violations of Section 409 of TSCA, 15 U.S.C. § 2689, regarding lead paint disclosures at buildings Respondent owns or leases; of the eleven counts, approximately half pertain to a building the complaint alleges Respondent sold, and the remaining portion of the complaint

pertains to eight buildings it alleges Respondent has leased. The prehearing order of this Court, dated January 5, 2010, directs Complainant to serve her initial prehearing exchange by February 19, 2010, Respondent to serve his by March 12, 2010 and Complainant to file a rebuttal prehearing exchange by March 25, 2010. The January 14th order directs that the parties hold a settlement conference on or before January 27th and that a status report be filed on or before February 1st.

The parties yesterday (January 26th) met for a settlement conference. Respondent asserted a predicate factual basis is lacking with regard to half the counts, and Respondent has agreed to provide to EPA, no later than February 5th, documentation in support of that assertion. As for the remaining counts, the parties tentatively agreed, if EPA is able to conclude that the promised documentation indeed supports Respondent's assertion, to settle them for a sum certain.

In light of the above, Complaint requests an extension of time for the parties to file their prehearing exchanges. EPA would need time to review and evaluate the documentation Respondent has agreed to provide by February 5th. Moreover, as EPA explained to Respondent, settlement would also require additional documentation to demonstrate Respondent's on-going compliance with the applicable lead paint disclosure provisions for the remaining properties. For EPA to properly evaluate all documents necessarily would take some time.

Thus the requested extension is being sought so that the parties have sufficient opportunity to pursue what appears to be a promising settlement possibility without having to concern themselves, and concomitantly divert their resources, to quickly approaching litigation deadlines that quite likely may never come to fruition. As previously noted, Respondent has verbally informed the undersigned he has no objection to the relief herein sought. Given these

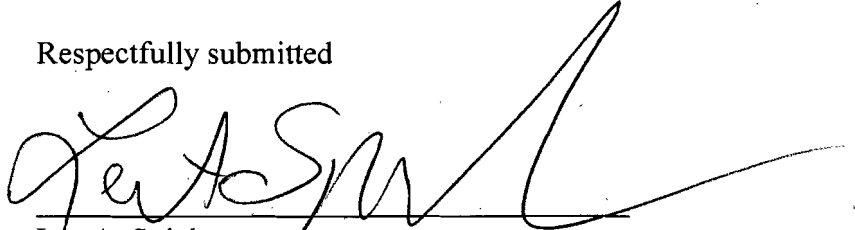
and additional underlying circumstances, Complainant submits that the good cause requirement of 40 C.F.R. § 22.7(b) exists for the granting of this motion. Issue was recently joined (in December). There have not been any litigation developments (such as the filing of any motions), and this is the first request for an extension. The evidentiary record has not been formally developed, no hearing date has been set and there has been no specific schedule set for the filing of dispositive motions.¹ Certainly the requested extension would not prejudice either party. The parties are simply seeking additional time so that *bona fide* settlement possibility can be given adequate time to be concretized. Under these circumstances, a two-month extension of time should not be unreasonable, and, Complainant submits, is warranted by any reasonable measurement.

Therefore, EPA respectfully moves this Court, pursuant to 40 C.F.R. §§ 22.4(c)(2), 22.7(b), 22.16(a) and 22.19(a), for an order: **a)** vacating so much of the January 5th prehearing order as directed the parties to serve their prehearing exchanges by the dates therein set forth, and **b)** extending the deadline for each submission set forth in said order by a period of two months, *i.e.* EPA would be required to file its initial prehearing exchange by April 19, 2010, Respondent would be required to file his by May 12th, and any rebuttal by EPA would have to be filed by May 25th.

¹ The January 5th order does, however, provide that dispositive motions regarding liability must “be filed within thirty days after the due date for Complainant’s Rebuttal Prehearing Exchange” (bolded emphasis omitted).

Dated: January 27, 2010
New York, New York

Respectfully submitted



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In re Wolfe Landau.

Docket No. TSCA-02-2009-9267

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing "STATUS REPORT AND MOTION TO EXTEND TIME FOR FILING," dated January 27, 2010, in the following manner to the respective addressees listed below:

Original and One Copy
By Inter-Office Mail:

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

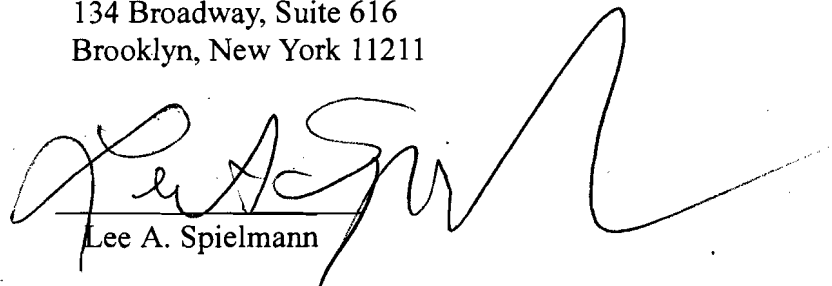
Copy by Fax,
202-565-0044, and
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Honorable Susan L. Biro
Chief Administrative Law Judge
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Dated: January 27, 2010
New York, New York


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