

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2008 JAN 23 AM 7:46
REGIONAL HEARING
CLERK

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In the Matter of :
 :
Deltech Resin Co., :
 :
Respondent. :
 : Docket Number RCRA-02-2007-7111
Proceeding under Section 3008 of the :
Solid Waste Disposal Act, as amended. :
-----X

MOTION FOR AN EXTENSION OF TIME TO FILE PREHEARING EXCHANGE

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 one-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 3008 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928, in which EPA seeks a civil penalty of \$29,510 for violations allegedly occurring at Respondent's facility in Newark, New Jersey. The prehearing order of this Court, dated October 24, 2007, directs that Complainant's initial prehearing exchange be submitted by January 29, 2008, Respondent's by February 29th and Complainant's rebuttal prehearing exchange, if any, by March 14th. The parties met for a settlement conference on August 16th and then held another one on December 17th. Since that time, they have been engaged in intensive settlement negotiations. To date, they have reached an

agreement on the essential terms of settlement and have narrowed down the issue of penalty amount to the point that only a nominal difference separates the amounts tendered by each party. The undersigned expects that quite shortly the parties will be able to report having reached a settlement in principle, the likelihood of which is realistically increased given the overall amount sought in the complaint.

EPA accordingly seeks a one-month extension of time to provide the parties with “breathing room” to close the existing (and quite narrow) gap in settlement positions. EPA wishes the parties be given a sufficient opportunity for them to finalize the one remaining impediment to settlement without having to concern themselves with imminently pending litigation deadlines; this one month is being sought in order to permit the parties to focus exclusively, and thus without distraction, upon closing and eliminating this one relatively small difference in dollar amounts. Counsel for Respondent has informed the undersigned that he consents to EPA’s request for this one-month extension.

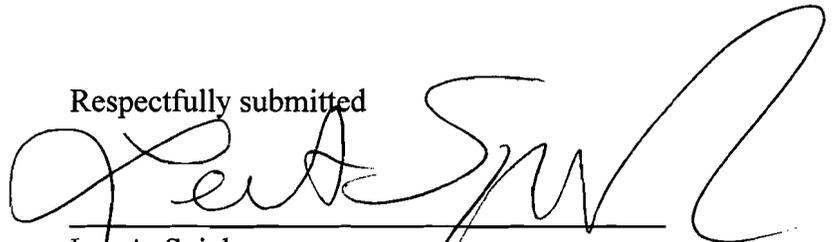
Complainant submits the above considerations demonstrate that the good cause requirement of 40 C.F.R. § 22.7(b) exists for the granting of this motion. Moreover, other factors militate for this Court to grant the relief herein sought. This is the first such extension of time requested. To date, no hearing has been scheduled and no dispositive or other substantive motions have been filed. Neither party would be prejudiced by this additional period of time, and the Court should not be prejudiced either, if only because to date activities in this litigation have been, at most, minimal.

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 October 24th 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 thirty (30) days.¹

Dated: January 22, 2008
New York, New York

Respectfully submitted



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TO: Honorable Barbara A. Gunning
Administrative Law Judge
U.S. Environmental Protection Agency
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Mail Code 1900L
Washington, DC 20005

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U.S. Environmental Protection Agency, Region 2
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¹ If this motion were granted, EPA would be required to file its initial prehearing exchange by February 29, 2008, Respondent would be required to file its prehearing exchange by March 30th, and any rebuttal by EPA would have to be filed by April 14th.

In re Deltech Resin Co.
Docket No. RCRA-02-2007-7111

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing Complainant's Motion for Extension of Time to File Prehearing Exchange, dated January 22, 2008, 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

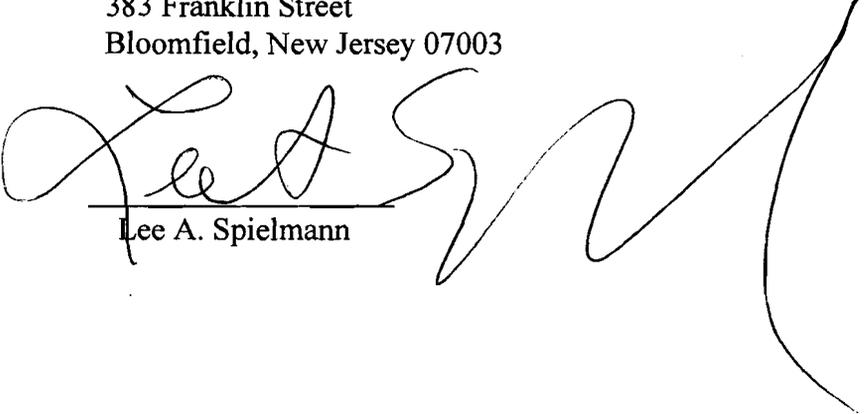
Copy by fax transmission,
202-565-0044, and
by Pouch Mail:

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

Copy by fax transmission,
973-680-8066, and
by First Class Mail:

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Bloomfield, New Jersey 07003

Dated: January 22, 2008
New York, New York



Lee A. Spielmann