

extension to the discovery deadlines. On this same date, the undersigned forwarded a draft CAFO for Respondent's review. [Exhibit - 1]

4. On November 14, 2011, the undersigned called Respondent's counsel to inquire about the status of the CAFO. EPA's call was not returned. On November 16, 2011, the undersigned again called Mr. Thorpe who stated that "with the holidays coming up, [he] was getting slammed..." and that he would "turn his attention to [the CAFO] right away and get it returned to EPA.
5. On November 30, 2011, the undersigned call to inquire about the CAFO markup not yet received from Respondent's counsel. Respondent's counsel did not return the phone call.
6. On December 8, 2011, the undersigned sent Respondent's counsel an email requesting an update as to the status of his review of the CAFO and reiterating the concern that given each side's concurrence process, the parties were not going to have sufficient time to file the documents before the January 20, 2012 deadline (the date that Respondent's prehearing exchange response was due after the ALJ provided a time extension) unless Complainant received the markup shortly. In addition, at that time the undersigned warned Respondent that the Chief ALJ might not continue granting extensions without evidence of some forward progress being made. [Exhibit - 2]
7. In that same email, Complainant again requested that Mr. Thorpe transmit his comments on the proposed CAFO.
8. On Dccember 15, 2011, over two months after receiving the CAFO, Mr. Thorpe transmitted comments to the Agency. [Exhibit - 3]

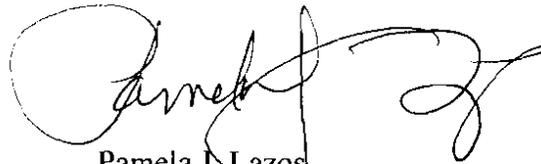
9. On December 19, 2011, comments on the CAFO were exchanged. On December 20, 2011, the undersigned sent the final agreed upon CAFO to counsel for Respondent for execution by his client with a request to return the signed CAFO as soon as possible. [Exhibit – 4]
10. On January 12, 2011, counsel for Respondent forwarded a Motion for Extension of time to the ALJ, stating that he planned to submit the CAFO to the Board at the February 14, 2012 meeting because the Board “doesn’t like to consider regular agendas on its January meeting, instead being inundated with obligatory start of year nominations and assignments.” Under the circumstances and despite the already significant lapse of time, EPA agreed to the extension. [Exhibit – 5]
11. On February 16, 2012, the undersigned emailed counsel for Respondent inquiring after the status of the signed CAFO. [Exhibit – 6] Counsel for Respondent did not respond.
12. On February 20, 2012, having received nothing from Respondent, the undersigned telephoned counsel for Respondent to request the status of the CAFO and was advised that it had not been signed. Counsel said he was waiting for an Administrative Order on Consent associated with the violations at issue. The undersigned explained that the Agency was not going to proceed with addressing the issues surrounding the AO until such time as the CAFO was filed. At that time Mr. Thorpe told Respondent he would put the CAFO on the agenda for February 28, 2012 and would send a *pdf* copy to the undersigned on the 29th.
13. On March 2, 2012, the undersigned called and later emailed counsel for Respondent inquiring as to whether the CAFO was signed on the 28th. [Exhibit – 7]
14. On March 12, 2012, the undersigned called counsel for Respondent and was told he was not available. Minutes later, counsel got on the line and told the undersigned he hadn’t gotten the requested signature, but that he had a pre-board meeting on March 13th and he would

discuss the matter with the County Manager. It was Complainant's understanding that this matter had already been discussed with the County Manager when the matter was originally settled in October 2011.

15. From the beginning, Respondent has been dilatory in his approach to settling this matter. The undersigned believes it is unreasonable to agree to a further 60-day extension. The Agency has been diligent in providing documents and addressing Respondent's comments with all haste. Respondent has not been responsive to existing deadlines in this matter.

Therefore, while Complainant still welcomes the prospect of settlement of this matter, it cannot agree Respondent's Motion for another 60-day Extension of Time.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Pamela J. Lazos', with a large, stylized initial 'P' and a long, sweeping flourish extending to the right.

Pamela J. Lazos
Sr. Asst. Regional Counsel
US EPA Region III



RE: CWA-03-2011-0139 
Pamela Lazos to: Thorp, Benjamin

10/12/2011 04:13 PM

Hi Ben,

I just got your message and am running out the door for an appt. We are comfortable representing to the court that we have an agreement in principle. If you would like to send a letter requesting an extension of time to our discovery deadlines, we will support that.

In the interim, enclosed please find a draft CAFO for your review. Let me know if you have any comments.

Thanks much,

Pam



Henrico.CAFO2.pdf

Exhibit "1"



RE: CWA-03-2011-0139 
Pamela Lazos to: Thorp, Benjamin
Cc: Chris Menen

12/08/2011 11:10 AM

Ben,

As indicated in your message below, we reached an agreement in principle in this matter approximately two months ago. Shortly thereafter, I forwarded to you EPA's proposed Consent Agreement and Final Order (CAFO). When I spoke to you on November 16, 2011, you indicated that you would be sending the CAFO right out with whatever comments you had. To date, I have not received your markup. As I indicated to you in our last telephone call, we have an extensive concurrence process. Depending on your requested changes, we may be entering a period of negotiation for which I will need to get managerial approval for any changes to the language in the CAFO. In addition, once we have a document that both sides can agree on, we will need to have that document concurred upon by both Chris's and my programs. Even without changes, and because of the holidays, this process could take a significant amount of time.

I tell you this because your prehearing exchange is due on January 20, 2012. Unless the CAFO has been signed by both parties and filed with the Regional Hearing Clerk, you will have to submit that prehearing exchange. I do not believe that the ALJ will be so lenient in granting an additional amount of time for us to complete our settlement negotiations given that she has already moved the deadlines back by a period of several months. Judge Biro is particularly notorious for keeping to "the schedule" and while one extension is likely granted in good faith and the spirit of settlement, my sense is that a second extension will not be so easily granted given that this is a relatively simple matter that should have been filed by now.

Having said that, I request, yet again, that you get me the comments to the proposed CAFO as soon as possible that the parties have a chance of filing the executed document before the expiration of the current extension period.

Thank you for your attention and anticipated cooperation in this matter,
Pam Lazos

"Thorp, Benjamin" Pam: I will send a letter requesting an extension... 10/12/2011 04:19:25 PM

From: "Thorp, Benjamin" <tho18@co.henrico.va.us>
To: Pamela Lazos/R3/USEPA/US@EPA
Date: 10/12/2011 04:19 PM
Subject: RE: CWA-03-2011-0139

Pam:

I will send a letter requesting an extension of discovery deadlines, stating therein that EPA supports our request. I was looking through my materials from the Admin judge this weekend. AM I correct that we do not have an actual trial date set? We have a host of other deadlines, but no "trial" date.

I will also begin reviewing the CAFO. Thanks,

Benjamin A. Thorp
Assistant County Attorney
County of Henrico
tho18@co.henrico.va.us
phone: 804-501-4337
fax: 804-501-4140

Exhibit "2"



RE: CWA-03-2011-0139

Thorp, Benjamin

to:

Pamela Lazos, Chris Menen

12/15/2011 01:27 PM

Hide Details

From: "Thorp, Benjamin" <tho18@co.henrico.va.us>

To: Pamela Lazos/R3/USEPA/US@EPA, Chris Menen/R3/USEPA/US@EPA

History: This message has been replied to and forwarded.

1 Attachment



CAFOWord_BAT.doc

Pam:

Please see my edits to the CAFO, attached. I did not use track changes, but rather altered the font color (to red) for my insertions and used font strikeouts for my deletions. As you will see, my only changes are instead of admitting certain factual and legal allegations and denying others, which I originally planned on doing, I have just used "neither admits nor denies" language. I know is permissible pursuant to 40 C.F.R. Part 22.

I understand that this is very late in getting to you. Should you agree to my changes, I anticipate moving for an additional extension for getting approval from our respective superiors (for me, the Board of Supervisors).

Thanks,

Benjamin A. Thorp
Assistant County Attorney
County of Henrico
tho18@co.henrico.va.us
phone: 804-501-4337
fax: 804-501-4140

Exhibit "37"



County of Henrico - Motion

Thorp, Benjamin

to:

Pamela Lazos

01/12/2012 02:49 PM

Hide Details

From: "Thorp, Benjamin" <tho18@co.henrico.va.us>

To: Pamela Lazos/R3/USEPA/US@EPA

History: This message has been replied to.

1 Attachment



Final Motion for Extension.doc

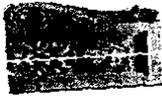
Pamela:

I plan on presenting the CAFO to the County's Board of Supervisors at its February 14, 2012 meeting. Our Board doesn't like to consider regular agendas on its January meetings, instead being inundated with obligatory start of year nominations and assignments. With your permission, I will file the attached today.

Thanks,

Benjamin A. Thorp
Assistant County Attorney
County of Henrico
tho18@co.henrico.va.us
phone: 804-501-4337
fax: 804-501-4140

Exhibit "4"



RE: CWA-03-2011-0139 
Pamela Lazos to: Thorp, Benjamin, Chris Menen

12/20/2011 01:25 PM

Okay, I understand you're argument. We will leave your requested language in paragraph 5. Please get the executed document to me as soon as possible. We will then put it through our concurrence.
Thank you and have a good holiday,
Pam Lazos



Henrico.CAFO4.Final.pdf

Exhibit "5"



Re: Henrico 
Pamela Lazos to: Thorp, Benjamin, Chris Menen

02/16/2012 01:54 PM

Did the CAFO get signed, Ben? If so, can you pdf me a copy and mail me the original signature page?

Also, can we schedule a meeting with you for next week to talk about the Administrative Order?
Preferably Wednesday, Thursday, or Friday for me. Chris, what days work for you?

Thanks,
Pam

"Thorp, Benjamin" Pam: I received your voicemail message from T... 01/27/2012 02:35:54 PM

From: "Thorp, Benjamin" <tho18@co.henrico.va.us>
To: Pamela Lazos/R3/USEPA/US@EPA
Date: 01/27/2012 02:35 PM
Subject: Henrico

Pam:

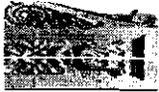
I received your voicemail message from Tuesday (I think). When I brought up the matter of the Administrative Order early in our negotiations, you suggested that we should deal with it after we had settled on something for the Consent Order and penalty. I bring that to your attention only to explain why you haven't seen any reports or plans subsequent to the initial one we provided (a few months after receiving the Complaint and Order).

That being said, I definitely would be interested in rolling a Consent Administrative Order into the mix along with the Consent Agreement and Final Order. If it's easy for you to do, could you e-mail me an initial draft or an example? I just want to get a sense of what you're thinking, particularly in terms of specificity?

Thanks,

Benjamin A. Thorp
Assistant County Attorney
County of Henrico
tho18@co.henrico.va.us
phone: 804-501-4337
fax: 804-501-4140

Exhibit "6"



Re: Henrico 
Pamela Lazos to: Thorp, Benjamin

03/02/2012 01:36 PM

Hello, Ben,

Have you gotten the CAFO signed on the 28th as you stated earlier? If so, can you please forward me a pdf of the signature page and put a hard copy in the mail to me asap.

Thank you,
Pam Lazos

Exhibit "7"

CERTIFICATE OF SERVICE

I hereby certify that I filed on March 19, 2012, the original Complainant's Response to Respondent's Motion for Extension filed on March 14, 2012 with the Office of Administrative Law Judges, with the Regional Hearing Clerk, US EPA Region III, and by delivering via first class mail, return receipt requested, a copy of the original Response to the following:

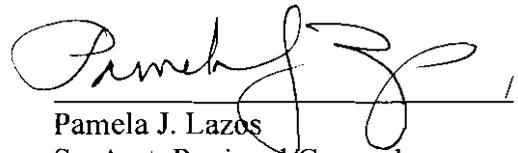
Benjamin A. Thorp
County of Henrico
Office of the County Attorney
4301 East Parham Road
Henrico, VA 23228-2752

And by pouch mail to:

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

Date: _____

3/19/12



Pamela J. Lazos
Sr. Asst. Regional Counsel