

**BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:

Dilbag Khera
AM Food and Gas
11670 Jones Bridge Road
Alpharetta, Georgia 30005

Respondent.

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*
* Proceeding under Section 9006 of the
* Resource Conservation and Recovery
* Act, as amended, 42 U.S.C. §6991e
*
* Docket No. RCRA-UST-04-2009-0001
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**RESPONDENT'S MOTION TO EXTEND TIME TO
RESPOND TO ADMINISTRATIVE COMPLAINT**

COMES NOW the Respondent, DILBAG KHERA D/B/A AM FOOD AND GAS ("Respondent"), and files this Motion to Extend Answer Deadline, showing the following:

1.

The Administrative Complaint against Respondent was filed on June 1, 2009. A certified letter containing a copy of same was delivered to Respondent's address on June 5, 2009, in South Carolina, however, Respondent was not present at the time of delivery, and did not sign for the mailing.

2.

The commercial property location at issue within this Proceeding is located within the State of Georgia, and individual Respondent resides within South Carolina.

3.

Respondent was not timely notified of the contents of the certified letter, as he had not been aware of its delivery.

4.

Respondent experienced difficulty in locating and retaining local counsel in Atlanta, Georgia on short notice, which was exacerbated by Respondent's geographic location.

5.

Respondent was able to locate and retain local counsel on July 8, 2009, three days after the initial expiration of the thirty (30) day answer deadline.

6.

Respondent is not involved in the operation, possession, control or otherwise, of the property at issue, making the location and retrieval of all relevant daily business operational records unduly burdensome.

7.

Respondent contends that Service as effectuated was ineffective and improper. However, to the extent that it was effected notoriously upon Respondent, the period for timely response to the Administrative Complaint should be tolled to allow Respondent's Answer to be filed simultaneously herewith.

8.

A Motion for Default has not been filed by Complainant as of the date of the instant Pleading.

9.

Under the terms of 40 C.F.R. § 22.7, and 45 F.R. 24363, the Presiding Officer may extend the period of time within which to respond for good cause shown, and excusable neglect in filing the Motion to Extend.

10.

In the instant case, Respondent was not properly served with the Administrative Complaint, was unable to timely locate and retain local counsel, and faced the burdensome requirement of retrieving voluminous operational records for a non-existent business, all based on Respondent's geographic and time limitations.

11.

Respondent is ready, willing, and able to proceed, and shows that he has prepared an Answer to be filed simultaneously with the instant pleading. The Answer to be filed is attached hereto and incorporated herein by reference.

12.

Complainant would not be unduly prejudiced by Respondent's filing of an Answer, where Complainant anticipated and prepared for a timely responsive pleading to be filed by Respondent, and must already provide sufficient cause on the record to justify entry of Default against Respondent with the allegations of the Administrative Complaint.

WHEREFORE, Respondent respectfully requests as follows:

- (a) That the Presiding Officer issue an Order extending the time to Respond to the Administrative Complaint;
- (b) That Respondent be permitted to file his Answer simultaneously with the instant pleading;
- (c) that this Court award Respondent all other relief as this Court deems just and proper.

[Signature Page To Follow]

Respectfully submitted,

MILLS & HOOPES, LLC
Attorneys for Respondent

By: 

Steven M. Mills
Georgia Bar Number 509772
Eckhart Blackert
Georgia Bar Number 060464

MILLS & HOOPES, LLC
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CERTIFICATE OF SERVICE

I hereby certify that on the date hereof, I filed the Foregoing Pleading with the Regional Hearing Clerk and mailed a copy of same by First Class U.S. Mail, with sufficient postage affixed thereto, to the following attorneys of record:

Susan Capel
Associate Regional Counsel
U.S. EPA Region 4
Office of Environmental Accountability
61 Forsyth Street
Atlanta, GA 30303-8909

This the 9th day of July, 2009.

Respectfully submitted,

MILLS & HOOPES, LLC
1550 North Brown Road
Suite 130
Lawrenceville, Georgia 30043
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MILLS & HOOPES, LLC
Attorneys for Respondent
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