

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9
75 HAWTHORNE STREET
SAN FRANCISCO, CALIFORNIA 94105

FILED
2011 DEC 22 PM 1:1
REGIONAL HEARING CLET

IN RE:)
) DOCKET NO. CAA-9-2011-0004
KILAUEA CRUSHERS, INC.)
)
) SECOND MOTION TO
) EXTEND TIME TO RESPOND
) TO COMPLAINT
RESPONDENT)
)
_____)

TO THE REGIONAL JUDICIAL OFFICER:

Pursuant to the authority set forth in the Consolidated Rules of Practice, 40 C.F.R. Part 22, Complainant U.S. Environmental Protection Agency, Region 9 (“Complainant”) moves the Regional Judicial Officer to grant a 60-day extension of time to respond to the complaint in the above-entitled action (“Complaint”) to February 28, 2012. Complainant’s reasons for seeking an extension for time are set forth below.

BACKGROUND

On September 27, 2011, Complainant filed a civil administrative action against Respondent Kilauea Crushers, Inc. in the above-entitled action. The Complaint alleges violations of Regulation III, Rule 316 of Maricopa County Air Quality Department as incorporated into the State Implementation Plan for Arizona pursuant to Section 110 of the Act, 42 U.S.C. § 7410. Respondent was served with the Complaint on or about September 30, 2011.

On October 12, 2011, Complainant filed a Motion to Extend Time to Respond to Complaint. The Regional Judicial Officer granted this motion on October 13, 2011, extending the time to

respond to the Complaint to December 30, 2011.

ARGUMENT

The Regional Judicial Officer may grant an extension of time to file an answer upon filing of a timely motion, a showing of good cause and after consideration of prejudice to other parties to the action. 40 C.F.R. §§ 22.7(b); 22.16. This motion satisfies these criteria.

This motion is timely, having been filed prior to the date for Respondent's response to the Complaint.

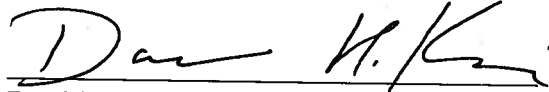
This motion also complies with the "good cause" requirement of 40 C.F.R. § 22.7(b). It is EPA's policy to encourage settlement and avoid litigation when consistent with the provisions and objectives of the law at issue. 40 C.F.R. § 22.18(b). Representatives of EPA and Respondent are discussing settlement of the above captioned matter, and a 60-day extension of time to answer will facilitate such negotiations. Respondent does not oppose this motion.

Finally, granting of this motion will not result in prejudice. As noted above, the parties are involved in settlement discussions and the requested extension will provide EPA and Respondent sufficient time to reach and finalize settlement and fully resolve the matter.

CONCLUSION

For the reasons set forth above, Complainant respectfully requests that the Regional Judicial Officer grant Complainant's second motion to extend time to file a response to and including February 28, 2012.

Dated at San Francisco, California on this 22nd day of December, 2011.

A handwritten signature in black ink, appearing to read "David H. Kim". The signature is written in a cursive style with a horizontal line underneath it.

David H. Kim

Assistant Regional Counsel
USEPA, Region 9

CERTIFICATE OF SERVICE

I certify that the original and a copy of the foregoing Second Motion to Extend Time to Respond to Complaint was hand delivered to:


Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

and that a true and correct copy of the Motion was placed in the United States Mail, addressed to the following:

William Nichols
Kilauea Crushers, Inc.
21940 N. 75th Avenue
Peoria, AZ 85383

Patrick J. Paul, Esq.
Snell & Wilmer, L.L.P.
One Arizona Center
400 East Van Buren Street, Suite 1900
Phoenix, AZ 85004-2202

Dated: 12-22-2011

By: 
Office of Regional Counsel
USEPA, Region 9