

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 2**

**IN THE MATTER OF:  
Kmart Corporation**

**Respondent**

**Kmart #3829, St. Thomas, V.I.  
Kmart #3972, St. Croix, V.I.  
Kmart #7413, St. Croix, V.I.**

**Proceeding under Section 3008 of the  
Solid Waste Disposal Act, as amended,  
42 U.S.C. § 6928**

**Docket No. RCRA-02-2009-7147**

**U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2009 NOV 25 AM 11:03  
REGIONAL HEARING  
CLERK**

**UNOPPOSED MOTION FOR LEAVE TO FILE ANSWER OUT OF TIME**

Comes now Respondent Kmart Corporation, by and through its undersigned counsel, pursuant to Rule 22.16(a) of the Consolidated Rules of Practice (40 C.F.R. § 22.16(a)) and respectfully requests leave to file its Answer out of time. As grounds therefor, Respondent states as follows:

1. On September 25, 2009, EPA filed and served on Respondent by Certified Mail the Complaint initiating this matter. Prior to the deadline to file an Answer, Respondent contacted opposing counsel to discuss the possibility of settlement and was informed that the Agency would not discuss settlement until an Answer was filed.

2. Respondent immediately began seeking internal approvals required to hire outside counsel to assist in this matter and informed opposing counsel of its intent to file an Answer. Unfortunately, the process of retaining outside counsel extended beyond the deadline for filing an Answer.

3. Respondent communicated to opposing counsel its intent to late-file an Answer, and opposing counsel indicated in response that the Agency was not opposed Respondent's late filing of an Answer and would not seek a default judgment based on Respondent's intent to late-file an Answer.

4. The undersigned counsel has worked diligently to prepare and file this Motion and the attached Answer to minimize further delay in the filing of Respondent's Answer.

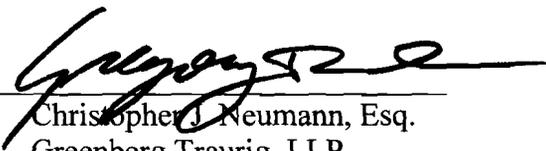
5. Prior to filing this Motion, the undersigned contacted opposing counsel regarding the relief requested herein, and counsel indicated that she does not oppose the Motion.

WHEREFORE, for the foregoing reasons, Respondent respectfully requests that the Regional Judicial Officer allow it to file its Answer out of time and that the Regional Judicial Officer accept the attached Answer for filing.

Dated: November 24, 2009

Respectfully Submitted,

GREENBERG TRAUIG, LLP

By: 

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ATTORNEYS FOR KMART  
CORPORATION

**CERTIFICATE OF SERVICE**

I certify that the foregoing **UNOPPOSED MOTION FOR LEAVE TO FILE OUT OF TIME**, dated November 24, 2009, was sent this day in the following manner to the addressees listed below:

Original and Copy by Federal Express  
Overnight Delivery to:

Regional Hearing Clerk  
U.S. EPA - Region 2  
290 Broadway, 16<sup>th</sup> floor - Room 1631  
New York, NY 10007-1866

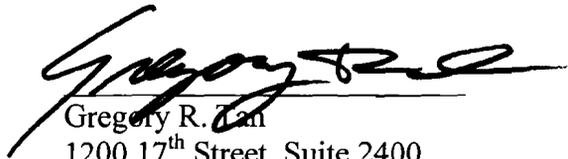
Copy by U.S. Mail to:

Attorney for Complainant:

Lourdes del Carmen Rodriguez, Esq.  
Assistant Regional Counsel  
U.S. EPA, Region 2  
Centro Europa Building, Suite 417  
1492 Ponce de Leon Avenue  
San Juan, PR 00907

Complainant:

Carl Axel Peter Soderberg, Director  
Caribbean Environmental Protection Division  
U.S. EPA, Region 2  
Centro Europa Building, Suite 417  
1492 Ponce de Leon Avenue  
San Juan, PR 00907



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Denver, CO 80202

Dated: November 24, 2009