



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of:)
)
Detroit Renovations, LLC, and) Docket No. TSCA-HQ-2018-5006
Nicole Curtis)
)
Respondents.)

ORDER ON JOINT MOTION FOR SECOND EXTENSION OF TIME

On February 19, 2019, I issued the Prehearing Order in this proceeding, setting forth various prehearing filing deadlines and procedures. By order dated March 26, 2019, I granted the parties’ joint motion for extension of time, extending the prehearing filing deadlines by forty-five days. On May 10, 2019, Complainant filed a Joint Motion for Second Extension of Time (“Joint Motion”) on behalf of the parties. The Joint Motion requests a thirty-day extension of the deadline for the filing of Complainant’s Initial Prehearing Exchange, from May 17, 2019 to June 17, 2019, with the other deadlines to be extended accordingly. The Joint Motion explains that the parties have, in furtherance of their reported “substantial progress toward settlement,” “exchanged offers and spoke[n] on multiple occasions further discussing settlement options.” Joint Mot. at 1. However, the parties state that “[d]uring the negotiation period afforded by the Court’s [March 26th) Order, Respondent participated in various charitable endeavors and as a result the parties were unable to coordinate as many negotiation discussions as anticipated.” *Id.* Therefore, they request additional time to negotiate “in an earnest effort to agree upon a settlement.” *Id.*

The rules governing this proceeding, set forth at 40 C.F.R. Part 22, allow the Presiding Officer to “grant an extension of time for filing any document: upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties.” 40 C.F.R. § 22.7(b). The Joint Motion was timely, demonstrates good cause, and is agreed upon by the parties, and therefore, granting it is appropriate. Accordingly, the Joint Motion for Second Extension of Time is hereby **GRANTED**.

The parties shall strictly comply with the following prehearing requirements:

Settlement. The parties shall use the additional time granted by this Order to focus their efforts in resolving this matter. If the case is settled, a fully-executed Consent Agreement and Final Order shall be filed with the Clerk of the Environmental Appeals Board no later than **June 17, 2019**, and a courtesy copy shall be filed with the Headquarters Hearing Clerk.

If a fully-executed Consent Agreement and Final Order is not filed on or before **June 17, 2019**, the parties must prepare for hearing and shall strictly comply with the following prehearing requirements of this Order. *The pendency of settlement negotiations or the existence of a settlement in principle does not constitute a basis for failing to strictly comply with those*

requirements. Only the filing with the Clerk of the Environmental Appeals Board of a fully-executed Consent Agreement and Final Order, or an order of the undersigned, excuses noncompliance with filing deadlines.

Prehearing Exchange. This Order is issued pursuant to Section 22.19(a) of the Rules of Practice. Accordingly, it is directed that the following prehearing exchange take place between the parties:

1. Each party¹ shall file with the Headquarters Hearing Clerk, serve on the opposing party, and serve on the Presiding Judge:

(A) a list of names of the witnesses intended to be called at the hearing, identifying each as a fact witness or an expert witness, a brief narrative summary of their expected testimony, and a curriculum vitae or resume for each identified expert witness; or a statement that no witnesses will be called;

(B) a list of all exhibits, numbered in sequential order, that the party intends to produce at the hearing, along with a copy of each exhibit marked for identification as follows:

- i. Complainant's exhibits shall be identified as "CX."
- ii. Respondent's exhibits shall be identified as "RX." [Modify this as appropriate for multiple respondents.]
- iii. Each exhibit shall be labeled numerically with the corresponding exhibit number on each page of the exhibit. For example, the first exhibit provided by Complainant shall be labeled on each page of the exhibit as "CX 1," and the first exhibit provided by Respondent[s] shall be labeled on each page of the exhibit as "RX 1." The label for each exhibit shall be located at the bottom (footer) of the document and aligned to the right margin.
- iv. Any exhibit consisting of more than one page shall include page numbers at the bottom (footer) of each page, aligned to the right margin. The pages shall be numbered consecutively as follows: "Page X of [total of] Y," with "Page X" representing the page number in sequence beginning from the number 1 and "[total of] Y" representing the total number of pages in the exhibit. For example, to identify the third page of Complainant's first exhibit, which has five pages total, the bottom of the page shall read "CX 1 Page 3 of 5."

(C) a statement specifying the amount of time needed to present its direct case. *See* 40 C.F.R. §§ 22.21(d), 22.19(d). Also, state whether the services of an interpreter are necessary with regard to the testimony of any witness(es), and if so, state the language to be translated.

2. In addition, Complainant shall submit the following as part of its Initial Prehearing Exchange:

(A) a brief narrative statement, and a copy of any documents in support, explaining in

¹ Multiple respondents are permitted to submit one collective Prehearing Exchange, or individual Prehearing Exchanges.

detail the factual and/or legal bases for the allegations denied or otherwise not admitted in Respondents' Answer;

(B) all factual information and supporting documentation relevant to the assessment of a penalty, and a copy, or a statement of the internet address (URL), of any policy or guidance intended to be relied on by Complainant in calculating a proposed penalty;

(C) a detailed explanation of the factors considered and methodology utilized in calculating the amount of the proposed penalty, in accordance with the criteria set forth in the particular statute authorizing this proceeding and the penalty factors and policies referenced as referenced in Attachment C to the Complaint; and

(D) A copy, or a statement of the internet address (URL), of any EPA guidance documents and/or policies, including any updates or revisions to such guidance and/or policies, and any preambles to regulations that Complainant has relied upon with regard to the allegations set forth in the Complaint.

3. In addition, Respondents shall submit the following as part of their Prehearing Exchange:

(A) a copy of any documents in support of the denials made in the Answer;

(B) all factual information Respondents consider relevant to the assessment of a penalty and any supporting documentation; and

(C) if Respondents take the position that the proposed penalty should be reduced or eliminated on any grounds, such as an inability to pay, then provide a detailed narrative statement explaining the precise factual and legal bases for their position and a copy of any and all documents upon which they intend to rely in support of such position.

4. Finally, Complainant shall submit as part of its Rebuttal Prehearing Exchange:

(A) a statement and/or any documents in response to Respondents' Prehearing Exchange as to provisions 3(A) through 3(C) above.

The prehearing exchanges called for above shall be filed *in seriatim* fashion, pursuant to the following schedule:

June 17, 2019	Complainant's Initial Prehearing Exchange
July 8, 2019	Respondents' Prehearing Exchange(s)
July 22, 2019	Complainant's Rebuttal Prehearing Exchange

Section 22.19(a) of the Rules of Practice provides that, except in accordance with Section 22.22(a), any document not included in the prehearing exchange shall not be admitted into

evidence, and any witness whose name and testimony summary are not included in the prehearing exchange shall not be allowed to testify. Therefore, each party should thoughtfully prepare its prehearing exchange.

In general, hearings are scheduled following the submission of the prehearing exchanges. The parties will be provided with adequate notice of the scheduled hearing to enable them to meet the remaining deadlines contained in this Order.

Supplement to Prehearing Exchange. Any addition of a proposed witness or exhibit to the prehearing exchange, submitted pursuant to Section 22.19(f) of the Rules of Practice, must be filed with an accompanying *motion to supplement the prehearing exchange* only when supplementation is sought within 60 days of the scheduled hearing.

Motions. Prior to filing any motion, the moving party must contact all other parties to determine whether the other parties have any objection to the granting of the relief sought in the motion, and the motion shall state the position of the other parties. The mere consent of the other parties to the relief sought does not assure that the motion will be granted. Furthermore, all motions must be submitted in sufficient time to permit the filing of a response and a reply, as well as the issuance of a ruling on the motion, before any relevant deadline set by this or any subsequent order. See generally 40 C.F.R. §§ 22.16(b), 22.7(c). *Motions not filed in a timely manner may not be considered.*

Joint motions for the appointment of a neutral, filed pursuant to Section 22.18(d)(3) of the Rules of Practice, will not be entertained prior to the deadline for Complainant's Rebuttal Prehearing Exchange and shall be filed no later than seven days after that deadline. *Dispositive motions* regarding liability, such as a motion for accelerated decision or motion to dismiss under Section 22.20(a) of the Rules of Practice, must be filed within 30 days after the due date for Complainant's Rebuttal Prehearing Exchange. *Non-dispositive motions*, such as motions for additional discovery, motions for subpoenas, and motions in limine, must be filed no later than 60 days prior to the scheduled hearing.

Pursuant to Section 22.16(d) of the Rules of Practice, a party may submit a written request for oral argument upon filing a motion, a response to a motion, or a reply. 40 C.F.R. § 22.16(d). The requesting party shall propose an appropriate location for the argument. The OALJ has access to videoconferencing technology that may be utilized for oral arguments on motions, which may minimize the expenditure of time and monetary resources in connection with such arguments. A request for oral argument may be granted, in the undersigned's discretion, where further clarification and elaboration of arguments would be of assistance in ruling on the motion.

Default and Opportunity for a Hearing. The Complaint in this matter gave Respondents notice and opportunity for a hearing, in accordance with Section 554 of the Administrative Procedure Act, 5 U.S.C. § 554 ("APA"). Section 554(c)(2) of the APA sets out that a hearing be conducted under Section 556 of the APA. Section 556(d) provides that a party is entitled to present its case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure

of the facts. Thus, Respondents have the right to defend against Complainant's charges by way of direct evidence, rebuttal evidence or through cross-examination of Complainant's witness(es). Respondents are entitled to elect any or all three means to pursue their defenses.

Respondents are hereby notified that their failure to comply with the prehearing exchange requirements set forth herein may result in the entry of a default judgment against them. Complainant is notified that its failure to file its prehearing exchange in a timely manner can result in a dismissal of the case with prejudice.

Filing and Service. Consistent with 40 C.F.R. § 22.5, the original and one copy of all documents intended to be part of the record in this proceeding (excluding a Consent Agreement and Final Order, which must be filed with the Clerk of the Environmental Appeals Board), shall be filed with the Headquarters Hearing Clerk.² Electronic filing is strongly encouraged.³ To file a document electronically, a party shall use a web-based tool known as the OALJ E-Filing System by visiting the website for the OALJ at www.epa.gov/alj. Documents filed electronically are deemed to constitute both the original and one copy of the document.

Any party choosing to file electronically must first register with the OALJ E-Filing System at https://yosemite.epa.gov/OA/EAB/EAB-ALJ_Upload.nsf. There may be a delay of one to two business days between the time a party applies for registration and the time at which the party is able to upload documents into the system.

A document submitted to the OALJ E-Filing System is considered "filed" at the time and date of electronic reception, as recorded by the OALJ E-Filing System immediately upon reception. To be considered timely, documents submitted through the OALJ E-Filing System must be received by 11:59 p.m. Eastern Time on the date the document is due, unless another time is specified by the Judge. Within an hour of a document being electronically filed, the OALJ E-Filing System will generate an electronic receipt of the submission that will be sent by email to both the party submitting the document and the Headquarters Hearing Clerk.

The OALJ E-Filing System will accept any type of digital file, but the file size is limited to 70 megabytes.⁴ Electronically filed textual documents must be in Portable Document Format

² Pursuant to the Headquarters Hearing Clerk Pilot Project, the OALJ and Headquarters Hearing Clerk shall keep the official record and be the proper filing location for all contested cases in which an answer was filed after May 1, 2012. For more information, see the OALJ website at www.epa.gov/alj.

³ More information about electronic filing may be found in the Standing Order Authorizing Electronic Filing in Proceedings Before the Office of Administrative Law Judges available on the OALJ website at www.epa.gov/alj.

⁴ If your multimedia file exceeds 70 megabytes, you may submit the file on a compact disc and mail it to the Headquarters Hearing Clerk, or contact the main number for the Office of Administrative Law Judges at (202) 564-6255 for instructions on alternative electronic filing methods.

("PDF"). A motion and any associated brief may be filed together through the OALJ E-Filing System. However, any documents filed in support of a brief, motion, or other filing, such as copies of proposed exhibits submitted as part of party's prehearing exchange, should be filed separately as an attachment. Where a party wishes to file multiple documents in support of a brief, motion, or other filing, rather than filing a separate attachment for each such document, the documents should be compiled into a single electronic file and filed as a single attachment, to the extent technically practicable. Attached to this Order is further guidance on the use of the OALJ E-Filing System for purposes of electronic filing.

Alternatively, documents may be filed by U.S. mail, personal delivery, courier, or commercial delivery service. To file a document using the U.S. Postal Service, address the document to:

Headquarters Hearing Clerk
Office of Administrative Law Judges
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Mail Code 1900R
Washington, DC 20460

To file a document using UPS, FedEx, DHL, other courier or commercial delivery service, or personal delivery, address the document to:

Headquarters Hearing Clerk
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Ronald Reagan Building, Room M1200
1300 Pennsylvania Ave., NW
Washington, DC 20004

A document submitted by U.S. mail, personal delivery, courier, or commercial delivery service is considered "filed" when the Headquarters Hearing Clerk physically receives it, as reflected by the inked date stamp physically applied by the Headquarters Hearing Clerk to the paper copy of the document. The OALJ is open to receive such paper filings between 8:30 a.m. and 4:30 p.m. Eastern Time, Monday through Friday.

Regardless of the method of filing, all filed documents must be signed and must contain the contact name, telephone number, mailing address, and email address of the filing party or its authorized representative.

A copy of each document filed in this proceeding shall also be served on the undersigned and on each party. 40 C.F.R. § 22.5(b). Documents may be served by U.S. mail, personal delivery, reliable commercial delivery service, or email if the party being served has consented in writing to service by email and provided a valid email address. 40 C.F.R. § 22.5(b)(2). Documents filed through the OALJ E-Filing System are deemed to have been served on the undersigned. A document is considered served upon mailing, when placed in the custody of a

reliable commercial delivery service, or upon electronic transmission. 40 C.F.R. § 22.7(c).

The parties are advised NOT to include, attach, or refer to any terms of settlement offers or agreements in any document submitted to the undersigned, and no copies of Consent Agreements and Final Orders shall be submitted, or attached to any document submitted, to the undersigned except those that are fully executed and filed with the Clerk of the Environmental Appeals Board.

Privacy Act Statement; Notice of Disclosure of Confidential and Personal Information; Waiver of Confidentiality and Consent to Public Disclosure. The parties are cautioned that, unless redacted, all information filed with the OALJ will be made publicly available. Thus, the parties are hereby advised not to file any Confidential Business Information (“CBI”) or Personally Identifiable Information (“PII”) pertaining to any person. Where filing of such information is necessary, the parties are hereby advised to redact (i.e., remove or obscure) the CBI or PII present in the materials filed. This may include information that, if disclosed to the public, would constitute an unwarranted invasion of personal privacy, such as Social Security numbers, medical records, and personal financial information.

To the extent that any person files or submits any unredacted CBI or PII pertaining to themselves or their client, that person thereby waives any claims to confidentiality and thereby consents to public disclosure by EPA, including posting on the Internet, of all such information they submit. Submission of such information through the OALJ E-Filing System will also be considered a waiver of confidentiality. To protect such information against public disclosure, parties must follow the procedures specified on the OALJ website at www.epa.gov/alj.

Contact Information. For any questions about this Order, the Rules, or any other procedural, scheduling, or logistical issues, you may contact Michael B. Wright, Attorney-Advisor, at (202) 564-3247 or wright.michaelb@epa.gov

SO ORDERED.



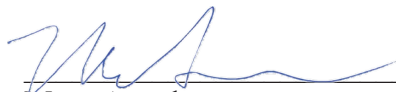
Susan L. Biro
Chief Administrative Law Judge

Dated: May 10, 2019
Washington, D.C.

In the Matter of *Detroit Renovations, LLC, and Nicole Curtis* Respondents.
Docket No. TSCA-HQ-2018-5006

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order on Joint Motion for Second Extension of Time**, dated May 10, 2019, and issued by Chief Administrative Law Judge Susan L. Biro, was sent this day to the following parties in the manner indicated below.



Mary Angeles
Paralegal Specialist

Original and One Copy by Personal Delivery to:

Mary Angeles, Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Ronald Reagan Building, Room M1200
1300 Pennsylvania Ave., NW
Washington, DC 20004

Copy by Electronic Mail to:

Mark Seltzer, Attorney Advisor
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W. (Mail Code 2249A)
Email: seltzer.mark@epa.gov
For Complainant

Raymond C. Bosch, Attorney Advisor
Britt Bieri, Attorney Advisor
U.S. Environmental Protection Agency, Reg. 7
11201 Renner Boulevard
Lenexa, Kansas 66219
Email: bosch.raymond@epa.gov
Email: bieri.britt@epa.gov
For Complainant

Copy by Electronic and Regular Mail to:

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For Respondents

Dated: May 10, 2019
Washington, D.C.