



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY BEFORE THE ADMINISTRATOR

In the Matter of:)
Aylin, Inc., Rt. 58 Food Mart, Inc.,) Docket No. RCRA-03-2013-0039
Franklin Eagle Mart Corp.,)
Adnan Kiriscioglu d/b/a New Jersey Petroleum)
Organization a/k/a NJPO,)
5703 Holland Road Realty Corp.,)
8917 South Quay Road Realty Corp., and)
1397 Carrsville Highway Realty Corp.)
Respondents.)

ORDER ON RESPONDENTS' MOTION FOR EXTENSION OF TIME TO RESPOND TO COMPLAINANT'S MOTIONS

On March 27, 2013, the United States Environmental Protection Agency, Director of the Land and Chemicals Division of Region 3 ("Complainant"), filed an Administrative Complaint, Compliance Order and Notice of Right to Request Hearing charging Aylin, Inc. ("Aylin"), Rt. 58 Food Mart, Inc. ("Rt. 58"), Franklin Eagle Mart Corp. ("Franklin Eagle"), and Adnan Kiriscioglu d/b/a New Jersey Petroleum Organization a/k/a NJPO ("Kiriscioglu") with violations of Section 9005(a) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6991d(a), and certain provisions of the Virginia Administrative Code. Aylin, Rt. 58, Franklin Eagle, and Kiriscioglu filed a joint Answer to Administrative Complaint, Compliance Order and Notice of Right to Request a Hearing on April 29, 2013.¹

On November 5, 2013, I issued a Prehearing Order and Order on Motion to Stay Proceedings, which set deadlines for the parties' prehearing exchange process and for the filing of dispositive motions regarding liability. The parties subsequently filed their prehearing

¹ By leave of this Tribunal, Complainant subsequently filed a First Amended Administrative Complaint, Compliance Order and Notice of Right to Request Hearing against Aylin, Rt. 58, Franklin Eagle, Kiriscioglu, 5703 Holland Road Realty Corp., 8917 South Quay Road Realty Corp., and 1397 Carrsville Highway Realty Corp. (collectively, "Respondents") on August 12, 2015. Respondents filed a joint Answer to First Amended Complaint, Administrative Complaint, Compliance [sic] Order and Notice of Right to Request a Hearing on August 31, 2015.

exchanges and engaged in extensive motions practice. By Order dated August 10, 2015, I ruled on the pending motions and established deadlines for a number of procedures, including the filing of any additional dispositive motions by November 20, 2015. Complainant thereafter filed a Motion for Partial Accelerated Decision on Liability (“Accelerated Decision Motion”) on Friday, November 20, 2015, and a Motion for Leave to File Supplemental Prehearing Exchange (“Motion to Supplement”) on Saturday, November 21, 2015.²

This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.1–22.45 (“Rules of Practice” or “Rules”). The Rules of Practice direct parties to file responses to any written motion within 15 days after service of such motion. 40 C.F.R. § 22.16(b). The Rules further provide that service of a motion is complete when placed in the custody of a reliable commercial delivery service and that “[w]here a document is served by . . . commercial delivery service, but not by overnight or same-day delivery, 5 days shall be added to the time allowed by these Consolidated Rules of Practice for the filing of a responsive document.” 40 C.F.R. § 22.7(c). Finally, the Rules specify that “Saturdays, Sundays, and Federal holidays shall be included” in the computation of any period of time prescribed or allowed by the Rules. Based upon those provisions and the Certificates of Service attached to Complainant’s Accelerated Decision Motion and Motion to Supplement, which represented that Complainant served those motions by “UPS next business day delivery,” rather than overnight or same-day delivery, Respondents are required to respond to Complainant’s Accelerated Decision Motion by December 10, 2015, and to the Motion to Supplement by December 11, 2015.

On December 8, 2015, Respondents filed a Motion for Extension of Time to Respond to Complainant’s Motions (“Motion for Extension”). Therein, Respondents request an extension of the deadline to respond to Complainant’s Motion to Supplement until December 11, 2015, and an extension of the deadline to respond to Complainant’s Accelerated Decision Motion until January 15, 2016. Respondents attached copies of emails to their Motion for Extension showing that Complainant opposes their request.

Section 22.7(b) of the Rules of Practice authorizes this Tribunal to grant extensions 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). Here, Respondents’ request for an extension of the deadline to respond to Complainant’s Motion to Supplement is deemed to be moot given that December 11 is already the filing deadline for a responsive document to that motion. As for Respondents’ request to extend the deadline to respond to Complainant’s Accelerated Decision Motion from December 10, 2015 to January 15,

² At present, this Tribunal does not appear to be in receipt of the Motion to Supplement. The case file reflects that Complainant filed a cover letter dated November 21, 2015, that refers to its “Motion Leave [sic] to File Supplemental Prehearing Exchange.” A number of unidentified documents were attached to the cover letter that presumably are those that Complainant wishes to add to its prehearing exchange, but no motion was enclosed.

2016, good cause has been shown for such an extension in Respondents' Motion for Extension and the attached Declaration of Jeffrey L. Leiter. Specifically, Respondents' counsel points to the length and complexity of the Accelerated Decision Motion as hindering his ability to prepare a response within the period prescribed by the Rules of Practice. Respondents' counsel also details numerous personal and work-related trips that he took since being served with the Accelerated Decision Motion, the hip replacement surgery that he is scheduled to undergo on December 15, and the upcoming holidays. As observed by Complainant, Respondents were long aware of the November 20, 2015 deadline for dispositive motions, and the requested extension reduces the amount of time available to this Tribunal to consider the parties' arguments and issue a ruling prior to the presumed start date of the hearing in this matter on April 25, 2016.³ Nevertheless, I find that Respondents have shown good cause for the requested extension of the filing deadline for a response to Complainant's Accelerated Decision Motion. Thus, for good cause shown and after consideration of any prejudice, the Motion for Extension is hereby **GRANTED**.

SO ORDERED.

Christine Donelian Coughlin
Administrative Law Judge

Dated: December 10, 2015
Washington, D.C.

³ By email on November 13 and 14, 2015, counsel for the parties notified a staff attorney for this Tribunal of their collective availability during the week of April 25, 2016, for a hearing in this matter. An order scheduling the hearing for that week is forthcoming.