



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

In the Matter of:)
) EPA Docket Number
) CERCLA-HQ-2017-0001
)
)
August Mack Environmental, Inc.)
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)
Requestor.) Before Chief Administrative Law Judge
) Susan L. Biro
)
)
Big John Salvage)
Hoult Road)
Fairmont, West Virginia)
)
)
Facility.)
)
)

**EPA’S MOTION FOR EXTENSION OF TIME TO RESPOND TO REQUESTOR
AUGUST MACK ENVIRONMENTAL’S MOTION TO COMPEL FURTHER
DISCOVERY**

Pursuant to 40 C.F.R. Part 305, *Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Administrative Hearing Procedures for Claims Against the Superfund*, the United States Environmental Protection Agency (EPA or Agency) respectfully moves that the Presiding Officer grant EPA an extension of thirty-five (35) days, through February 7, 2022, within which to file its Response in Opposition to August Mack Environmental’s (AME’s) Motion to Compel Discovery, for Sanctions, and Motion to Extend Case Management Deadlines (filed 12/23/21)(Motion to Compel). In Support thereof, and in accordance with 40 C.F.R. §§ 305.6 and 305.23, EPA states as follows:

1. On December 23, 2021 at 2:14 pm, AME Counsel e-served EPA Counsel with a Motion to Compel. EPA counsel immediately emailed AME Counsel to determine if AME had any objection to the subject Motion for Extension of time. Counsel for AME Bradley Sugarman stated via email at 3:22 pm that “AME has no objection to [EPA’s] response being due on Feb 7.” Therefore, the following Motion is **not opposed** by AME.
2. Pursuant to 40 C.F.R. § 305.23(b), EPA’s Response to the Motion to Compel is due within ten (10) days of service – January 3, 2022. This time frame has not yet passed.
3. EPA reasonably requires additional time within which to file its Response to an extensive pleading totalling over fifty pages, inclusive of Exhibits.
4. The requested extension will cause no prejudice to AME, as this matter has not been set for hearing, and it is anticipated that dispositive motions practice will precede any decision as to the need for further hearing – at the Court’s discretion, of course. This timing also accords with the Court’s Prehearing Order regarding the timing of motions practice.
5. EPA asserts good cause for this requested extension as follows: 1) because this is the heart of the holiday season and many folks have decided to take annual leave so that they can spend time with loved ones, EPA Regional Counsel cannot confer or otherwise timely consult with his co-counsel, chain-of-command, client representatives, or otherwise conduct the necessary due diligence to properly respond in opposition to AME’s motion to compel; 2) lead regional counsel has set aside time during the holidays to take care of family members who are not well, or otherwise need support during this extraordinary pandemic; 3) AME’s extraordinary allegations

- and discovery demands are very burdensome, very broad, and require, *inter alia*, chasing down multiple people (including high level management), documents so that EPA can determine how to respond in opposition; 4) it is believed that some or all of the deponents, for example, are taking “use or loose” leave, sick leave, or annual leave through the end of December and into early January.
6. Accordingly, EPA respectfully requests an extension of thirty-five (35) days through February 7, within which to file its Response in Opposition to AME’s Motion to Compel.
 7. This request is: 1) made in good faith; and 2) not intended to unduly delay accelerated resolution of this matter. No prior extension of time has been requested by EPA relating to the litigation at bar.

WHEREFORE, EPA respectfully requests this thirty-five (35) day extension of time, through February 7, 2022, to file its Response in Opposition to AME’s Motion to Compel Discovery.

Respectfully submitted,

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For the Agency

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For the Agency

CERTIFICATE OF SERVICE

I certify that the foregoing Agency's Motion for Extension of Time to Respond to Requestor's Motion to Compel in the *Matter of August Mack Environmental, Inc.*, Docket No. CERCLA-HQ-2017-0001, was filed and served on the Chief Administrative Law Judge Susan L. Biro this day through the Office of Administrative Law Judge's E-Filing System.

I also certify that an electronic copy of EPA's Prehearing Exchange was sent this day by e-mail to the following e-mail addresses for service on Requestor's counsel: Bradley Sugarman @ bsugarman@boselaw.com; Philip Zimmerly @ pzimmerly@boselaw.com; and Jackson Schroeder @ jschroeder@boselaw.com.

Date

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