

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

In the matter of:

Dimmid, Inc.,

Respondent.

Proceeding Under Section 16(a) of the Toxic
Substances Control Act, as amended, 15
U.S.C. § 2615(a).

Docket No. TSCA-02-2023-9226

MOTION FOR EXTENSION OF FEBRUARY 2, 2024 DEADLINE

Complainant, the now-Acting Director¹ of the of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region 2 (hereinafter, “Complainant” or “EPA”), requests this Tribunal to grant the parties an order that would extend the February 2, 2024 deadline by three weeks (through February 23, 2024) for either the parties to file a fully executed consent agreement and final order or, failing that, for EPA by such date to file its initial prehearing exchange. The circumstances prompting the undersigned to move this Tribunal for such extension, combined with Respondent indicating it has no objection to the relief herein sought,² should be sufficient to meet the Part 22 “good cause standard” for requests for extensions of a time deadline.³

Responsive papers from Respondent, if any, are to be filed in accordance with the provisions of 40 C.F.R. § 22.16(b).

¹ Complainant upon whose signature the matter was initiated has retired, effective the end of October 2023.

² E-mail of Respondent’s executive vice-president to the undersigned, January 23, 2024 at 6:35 PM.

³ In part, 40 C.F.R. § 22.7 authorizes 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....”

The background to this proceeding has been documented in Complainant's November 7, 2023 motion and will not be repeated here. The Tribunal is respectfully directed thereto for such background information.

The Prehearing Order of October 10, 2023 established that the prehearing exchange (PHE) process commence with EPA filing its initial PHE by November 17, 2023. EPA moved to extend that deadline, and this Tribunal, in an order dated November 13, 2023, directed that the parties file a fully executed consent agreement/final order ("CA/FO") by January 19, 2024 or, failing that, EPA file by such date its initial PHE. By motion dated January 6, 2024, EPA moved to extend the latter deadline by two weeks, and that motion was granted; the resulting January 9, 2024 order directed that a fully executed CA/FO be filed by February 2, 2024 or, if the parties were unable to do that, then EPA was directed to file its initial PHE by said February 2nd deadline.

By the time the January 6th motion was filed, the parties had reached a settlement in terms of the monetary penalty amount. Subsequent to that agreement, a CA/FO was drafted and submitted to Respondent for its review. Comments were provided, and communications between the parties ensued. While the parties at present remain committed to the amount to which they agreed as the basis for settlement, full agreement on the precise language to be used in the CA/FO still eludes the parties; those provisions have been the subject of extended discussion. While these can be, in the opinion of the undersigned,⁴ resolved through a concerted effort,⁵ the effort to do so has taken more time than the undersigned envisioned or reasonably anticipated at the time the January 6th motion was filed.

Essentially, the undersigned mis-calculated the amount of time needed for the full panoply of the issues Respondent raised to be discussed, analyzed and resolved. This mis-calculation has been compounded by additional factors. The undersigned, not realistically foreseeing the time required to work out the language differences over which settlement finalization has been to date held up, did not anticipate that the time for the negotiations to be completed would overlap with the time for which the undersigned will be

⁴ Such opinion is premised upon the experience of working for EPA for nearly 35 years.

⁵ Something both sides have exhibited in the mutual effort to reach a negotiated settlement.

taking a long-contemplated annual leave.⁶ This oversight is further compounded by circumstances none predicted.

The latest draft of the revised CA/FO was sent to Respondent on Friday, January 19th; the transmittal e-mail included an extensive explanatory note attempting to address Respondent's questions and concerns, both on specific language and their conceptual underpinnings.⁷ Based on past exchanges with Respondent and its overall promptness in responding to communications with EPA, the undersigned assumed comments would be received early in the week of January 22nd. This did not occur because Respondent's representative⁸ indicated he is presently ill with the flu and would require additional time to review the latest draft ("Unfortunately I am sick with the flu. We are working on it. Need a couple days.")⁹

In summary, this extension is sought because the undersigned mis-judged the time it would be necessary to settle the remaining differences. To give the parties a full opportunity (which should be their last), this three-week extension of time is being sought. And, to be clear, both parties remain committed not only to attaining a negotiated settlement, a statement made based on the overall tone, tenor and substance of their e-mail exchanges, but specifically also to the linchpin of the settlement, the agreement on the settlement amount.

Accordingly, Complainant hereby moves this Tribunal, pursuant to 40 C.F.R. §§ 22.4(c)(2), 22.4(c)(10), 22.7(b) and 22.16(c), for an order vacating so much of the January 9th order that set the February 2nd CA/FO and, alternatively, EPA's initial PHE filing, deadline, and further establishing a new due date three weeks later, to February 23, 2024. With the settlement document having already been drafted and revised in response to comments received from Respondent, and now awaiting further review from Respondent (perhaps to be accompanied by discussion between

⁶ The annual leave obtained is for the one week beginning Monday, January 29, 2024. During the undersigned's absence, request is made that any e-mail communications from this Tribunal be made to William K. Sawyer, sawyer.william@epa.gov, 212-637-3196.

⁷ E-mail of the undersigned to Respondent's executive vice-president, January 19, 2024 at 1:45 PM.

⁸ Respondent is proceeding *pro se*.

⁹ Respondent's e-mail of January 23, 2024, at 3:04 PM.

the parties on the points articulated in EPA's January 19th transmittal e-mail to Respondent), the parties are literally at the doorstep of settlement. The additional time is being sought to bring the parties over the remaining threshold, which would conclude this matter. This extension, which in all likelihood will be the last one sought, should provide both parties with the necessary time and flexibility to work out their remaining differences, and also allow for the time needs of each party. With the parties' agreement having already been secured for an appropriate settlement amount and for a significant portion of the language to be used to memorialize settlement, it is now only a question of properly finding the remaining language.

Such an extension would benefit both parties, and certainly with Respondent expressly stating it has no objection to the three-week extension sought, it would not be prejudiced by this Tribunal granting such relief. Moreover, as previously noted, with the parties have already reached agreement on what previously had been the central point of contention (settlement amount), and what remains is to be done is for agreement to be effected on select paragraph provisions, their openly expressed commitment to settlement should make it readily self-evident no credible and realistic need for prehearing matters (PHE exchange, motion practice) or for hearing exists. This extension likely should not negatively impact this Tribunal's scheduling commitments, as it does not require altering, for example, a date when hearing is to occur.

In large measure, the undersigned misapprehended the overall time needed to settle last-minute issues. Apologizing to this Tribunal for any gallimaufry precipitated by his erroneous anticipation of the timing of future events, the undersigned apologizes to this Tribunal (and to Respondent) for such oversight, and now respectfully requests that it, in the exercise of the equitable discretion vested in it,¹⁰ grant such extension. Under these circumstances, as outlined above, EPA deems the "good cause" requirement for the granting of this motion has been amply

¹⁰ 40 C.F.R. § 22.4(c)(10).

demonstrated and respectfully requests this Tribunal grant the additional three-week time herein sought.¹¹

Dated: January 24, 2024
New York, New York

Respectfully submitted,

Lee Spielmann

Lee A. Spielmann

Counsel for Complainant

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Region 2

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¹¹ In the alternative, if this Tribunal is unable to grant the three week extension through February 23, 2024, EPA moves for a two-week extension, through February 16, 2024. In its January 23rd e-mail, at 3:04 PM, Respondent noted, “We would not object to an additional 2 weeks.”

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CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically sent the foregoing “MOTION FOR EXTENSION OF FEBRUARY 2, DEADLINE,” electronically signed and dated January 24, 2024, together with this Certificate of Service, to the addressees listed below:

By Electronic Mail via
https://yosemite.epa.gov/OA/EAB/EAB-ALJ_Upload.nsf/amain_menu?OpenForm

Mary Angeles
Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Washington, DC
(through EPA’s E-Filing system)

By Electronic Mail:

Dimmid, Inc.
Brooklyn, New York
dimmidmv@gmail.com
dimmidinc@aol.com

Dated: January 24, 2024
New York, New York

Lee Spielmann

Lee A. Spielmann