

Anderson, Sybil

From: Sharke, Janet
Sent: Tuesday, June 10, 2014 2:21 PM
To: oaljfiling
Cc: Anderson, Sybil; Angeles, Mary; Jeffrey Leiter
Subject: FW: Aylin, Inc., et al (Docket No. RCRA-03-2013-0039)
Attachments: 0812_001.pdf

Janet

From: Sharke, Janet
Sent: Tuesday, June 10, 2014 2:04 PM
To: Anderson, Sybil; 'oaljfiling'; Angeles, Mary; 'Jeffrey Leiter'
Cc: Ramalho, Louis; Nearhood, Jennifer; Ma, Andrew
Subject: IMO: Aylin, Inc., et al (Docket No. RCRA-03-2013-0039)

Dear Ms. Anderson,
Please find enclosed for filing a Joint Motion for Extension of Time and accompanying Memorandum of Law in the above referenced matter.
Please advise me when you receive this.
Thank you in advance.

Janet E. Sharke
Sr. Asst. Regional Counsel
EPA, Region III
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215-814-2689

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

Via Email

June 10, 2014

Sybil Anderson, Headquarters Hearing Clerk
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Ronald Reagan Building, Room M1200
1300 Pennsylvania Ave., NW
Washington DC 20004-3002

Re: In the Matter of: Aylin, Inc., et al (Docket No. RCRA-03-2013-0039)

Dear Ms. Anderson:

Please find enclosed for filing a Joint Motion for Extension of Time and accompanying Memorandum of Law in the above-referenced matter. Please advise me when you receive this. Thank you in advance for your assistance.

Sincerely,



Janet E. Sharke
Senior Assistant Regional Counsel (3RC50)
sharke.janet@epa.gov
215-814-289

cc: Jeffrey Leiter, Esq.

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

In the Matter of:)	
)	
Aylin, Inc., Rt. 58 Food Mart, Inc., Franklin Eagle Mart Corp., and Adnan Kiriscioglu d/b/a New Jersey Petroleum Organization a/k/a NJPO)	Docket No. RCRA-03-2013-0039
)	
)	
Respondents.)	Joint Motion for Extension of Time
)	
)	

JOINT MOTION FOR EXTENSION OF TIME

In accordance with Rules 22.7(b) and 22.16(b) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation/Termination or Suspension of Permits* ("Consolidated Rules of Practice"), 40 C.F.R. §§ 22.7(b) and 22.16(b), the Parties to this proceeding, Complainant, the Director of the Land and Chemicals Division of the United States Environmental Protection Agency, Region III, and Respondents Aylin, Inc., Rt. 58 Food Mart, Inc., Franklin Eagle Mart Corp. and Adnan Kiriscioglu hereby submit this Joint Motion for Extension of Time for the filing of dispositive motions regarding liability.

This Court's Prehearing Order and Order on Motion to Stay Proceedings ("Prehearing Order") issued November 5, 2013, required, among other things, that the Parties file any dispositive motions regarding liability within 30 days after the due date of Complainant's Rebuttal Prehearing Exchange -- then set as April 18, 2014. The due date for Complainant's Rebuttal Prehearing Exchange was extended, upon motion, to May 20, 2014, by the Presiding Officer's Order of April 10, 2014, thereby rendering June 20, 2014, as the new deadline for filing dispositive motions on liability. For the reasons set forth in the Parties' accompanying Memorandum of Law, the Parties seek an extension of time for the filing of any such motions. The Parties believe that this request conforms to the standard articulated in 40 C.F.R. § 22.7(b) as the motion is timely filed and demonstrates good cause, and the granting of such motion will prejudice none of the Parties.

WHEREFORE, for the reasons set forth above and in the accompanying Memorandum of Law, Complainant and Respondents respectfully request this Court grant this Joint Motion for Extension of Time extending the due date of any dispositive motions regarding liability to 60 days following the disposition of the Motions currently pending before this Court.

Respectfully submitted,

6/10/2014

Date



Janet E. Sharke
Senior Assistant Regional Counsel (3RC50)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
COUNSEL FOR COMPLAINANT

June 10, 2014

Date



Jeffrey L. Leiter
Leiter and Cramer PLLC
1707 L Street, NW, Suite 560
Washington, DC 20036
COUNSEL FOR RESPONDENTS

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

In the Matter of:)	
)	
Aylin, Inc., Rt. 58 Food Mart, Inc.,)	Docket No. RCRA-03-2013-0039
Franklin Eagle Mart Corp., and)	
Adnan Kiriscioglu d/b/a New Jersey)	
Petroleum Organization a/k/a NJPO)	
)	
)	Memorandum of Law
Respondents.)	
)	
)	

**MEMORANDUM OF LAW IN SUPPORT
OF JOINT MOTION FOR EXTENSION OF TIME**

In accordance with 40 C.F.R. § 22.7 and 22.16 of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, the Parties to this proceeding, Complainant, the Director of the Land and Chemicals Division of the United States Environmental Protection Agency, Region III, and Respondents Aylin, Inc., Rt. 58 Food Mart, Inc., Franklin Eagle Mart Corp., and Adnan Kiriscioglu hereby submit this Memorandum of Law in Support of their Joint Motion for Extension of Time.

I. Procedural Background

On March 27, 2013, Complainant filed an Administrative Complaint, Compliance Order, and Notice of Right to Request Hearing (“Complaint”) commencing this proceeding. On or about April 29, 2013, Respondents filed their Answer.

The Parties participated in the Alternative Dispute Resolution (“ADR”) process under the auspices of the Office of Administrative Law Judges but could not achieve settlement, hence ADR was terminated on September 23, 2013. (From October 1, 2013, to October 17, 2013, all nonessential EPA employees, including counsel for Complainant, were furloughed due to a lapse in appropriations.)

On October 31, 2013, the Parties filed a Joint Status Report and Motion to Stay Proceedings, which this Court granted in part and denied in part, as set forth in the November 5, 2013, Prehearing Order and Order on Motion to Stay Proceedings (“Prehearing Order”). Among other things, the Prehearing Order set April 18, 2014, as the due date for Complainant’s

Rebuttal Prehearing Exchange, and required that any dispositive motions regarding liability be filed within 30 days thereafter.

On February 20, 2014, Complainant filed a Motion for Discovery seeking, *inter alia*, information about Respondents' finances as well as Respondent Kiriscioglu's involvement in the management of the underground storage tanks at the facilities.

On March 12, 2014, this Court issued an Order on Complainant's Motion for Discovery ("Discovery Order"), granting Complainant's motion and setting April 4, 2014, as the date by which Respondents were to file their discovery responses together with their Prehearing Exchange.

On or about March 14, 2014, Complainant filed its Initial Prehearing Exchange.

On March 31, 2014, Respondents filed a Consent Motion for Extension of Time to respond to the Discovery Order.

On April 2, 2014, this Court issued an Order granting Respondents' Motion for Extension of Time, setting May 5, 2014, as the new due date for Respondents' discovery responses.

On or about April 4, 2014, Respondents filed their Initial Prehearing Exchange.

On April 7, 2014, Complainant filed its Response to Respondents' Consent Motion for Extension of Time and Motion for Extension of Time.

On April 10, 2014, this Court granted Complainant's Motion for Extension of Time setting May 20, 2014, as the new due date for Complainant's Rebuttal Prehearing Exchange.

On May 6, 2014, Respondents filed a partial response to the Discovery Order.

On May 6, 2014, Respondent Adnan Kiriscioglu filed a Motion for Partial Accelerated Decision and a Motion to Defer Discovery Response.

On May 20, 2014, Complainant filed its Rebuttal Prehearing Exchange.

On May 21, 2014, Complainant filed its Motion to Strike Respondent Adnan Kiriscioglu's Motion for Partial Accelerated Decision.

II. Legal Analysis

The standard for granting extensions of time is set forth in 40 C.F.R. § 22.7(b), which states, in pertinent part, that:

[T]he Presiding Officer may grant an extension of time: upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to the other parties; or upon its own initiative. Any motion for an extension of time shall be filed sufficiently in advance of the due date so as to allow other parties reasonable opportunity to respond and to allow the Presiding Officer ... reasonable opportunity to issue an order.

The request is timely filed.

This request is filed 10 days in advance of the due date for dispositive motions of June 20, 2014, as established by the Prehearing Order and extended by this Court's Order of April 10, 2014. Because this motion is jointly filed, it obviates the need to await a party response and allows the Presiding Officer reasonable opportunity to issue an order.

The Parties have demonstrated good cause.

An issue central to this case is the liability of Respondent Adnan Kiriscioglu for the alleged violations at the three Facilities. As set forth in his Motion for Partial Accelerated Decision, Mr. Kiriscioglu contends, *inter alia*, that he is not liable as he is neither an owner nor an operator of the underground storage tanks at any of the Facilities. Complainant contends otherwise as set forth in its responsive Motion to Strike Adnan Kiriscioglu's Motion for Partial Accelerated Decision. Both motions are pending before this court as is Respondent Kiriscioglu's Motion to Defer Discovery Response.

Good cause has been shown as all of the requested information bearing on an issue central to this case is still outstanding, including discovery, and hence, an extension of time for the Parties to file dispositive motions is warranted until sixty days following the disposition of the pending motions.

Granting the request will not prejudice any Party

The Presiding Officer must consider whether granting the extension will prejudice the other parties. Granting this extension will not prejudice any Party as evidenced by the consensual nature of this motion. The Parties request an extension of time of sixty days following the date on which this Court rules on the pending motions in which to file any additional dispositive motions regarding liability.

WHEREFORE, for the foregoing reasons, Complainant and Respondents request this Court issue an Order granting this Joint Motion for Extension of Time.

Respectfully Submitted,

6/10/2014
Date



Janet E. Sharke
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1650 Arch Street
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COUNSEL FOR COMPLAINANT

June 10, 2014
Date



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1707 L Street, NW, Suite 560
Washington, DC 20036
COUNSEL FOR RESPONDENTS

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, I sent via electronic mail the attached Joint Motion for Extension of Time and accompanying Memorandum of Law, Docket No. RCRA-03-2013-0039, to the following addressees:

Sybil Anderson, 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

Mary Angeles, Lead Legal Staff Assistant
The Hon. Christine D. Coughlin
Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Ronald Reagan Building, Room M1200
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6/10/2014
Date



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