

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

In the Matter of

Veolia ES Technical
Solutions, L.L.C.

Respondent.

Proceeding under Section 3008 of the
Solid Waste Disposal Act, as amended.

Honorable Susan L. Biro, Presiding Officer

Docket Number RCRA-02-2019-7106

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MOTION FOR STAY OF PREHEARING EXCHANGE DEADLINES

Complainant, the Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region 2, herewith moves for a three-week (21-day) stay of the deadlines set forth in this tribunal's April 16, 2019 "ORDER ON COMPLAINANT'S MOTION FOR EXTENSION OF TIME." Respondent, Veolia ES Technical Solutions, L.L.C., through its representative/spokesperson, has indicated that it has no objections to the relief Complainant is seeking.

Background Summary

The facts underlying this proceeding were set out in Complainant's April 5th motion for an extension of time, and this tribunal is respectfully referred to that motion for a fuller recitation of the operative background facts. As noted in that motion, this administrative enforcement proceeding was commenced to address violations of two 40 C.F.R. Part 264, Subpart BB regulations (as incorporated into the facility's operating permit that was issued by the State of New Jersey).

The Parties' Settlement

After holding a telephone settlement conference on March 20th and several follow-up

discussions, the parties reached a settlement. A draft settlement document (the consent agreement, with a proposed accompanying final order; “CAFO”) was electronically transmitted to Respondent’s representative, John Schantz (Respondent is appearing *pro se*) on June 3rd (5:56 PM). Three days later, on June 6th, Mr. Schantz sent a reply e-mail stating, referring to the draft CAFO, “this is acceptable to me.” He further indicated that the document should be sent to him (9:44 AM e-mail). Upon receiving notice of Respondent’s acceptance of the settlement document, it was then prepared (finalized) for formal Regional concurrence; it was shortly thereafter circulated to secure the necessary signatures. It has, as of today (April 18th), secured all the necessary concurrences (*i.e.* from the Director of the Enforcement and Compliance Assurance Division [“ECAD”] and from the Regional Counsel) so that the CAFO is to be sent tomorrow (Wednesday, June 19th) via overnight mail to Respondent for its formal execution. Once it has been signed by Respondent and returned to EPA, Region 2, it will be submitted to the Director of ECAD for her signature (she is the Complainant) and then submitted to the Regional Administrator for him to execute the accompanying final order.

In the estimation of the undersigned, it is most probable that the Regional Administrator will sign the final order. The settlement terms are well within the prescribed settlement guidance policy. The CAFO also contains a provision to help ensure Respondent’s ongoing compliance with the Subpart BB air emissions regulations, a salient goal behind Region 2’s enforcement efforts in this and other proceedings. The parties thus stand on the literal threshold of entering into the previously agreed-upon settlement agreement, and the only remaining step is obtaining the various signatures. The outstanding issue, in the undersigned’s estimation, is not whether the formal executions of the CAFO will occur but when.

Reasons and Basis for the Requested Stay

Despite the seeming inevitability of the parties effecting this settlement, it is almost equally certain this will not occur by the deadline set in the April 16th order, which provides:

If the case is settled, a fully-executed Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk no later than June 28, 2019.....

In the event that a fully-executed Consent Agreement and Final Order is not filed on or before June 28, 2019, the parties must prepare for hearing and shall strictly comply with the following prehearing requirements of this Order.

The Order then directed that, if no executed CAFO is filed by June 28th, Complainant must file her initial prehearing exchange by June 28th, Respondent then has until July 19th to file its prehearing exchange, and then Complainant has until August 2nd to file a rebuttal prehearing exchange.

The process of formalizing settlement has taken longer than anticipated when the April 5th motion was served. Thus this request is made to stay the deadlines in the April 16th order. A number of factors support this extension.

The settlement, as attested to by the exchange of e-mails by the parties (as noted above), essentially constitutes a “done deal” but for the formality of securing the requisite signatures. This is not just a settlement in principle where the precise terms have still to be agreed upon; this is a settlement where the parties have already agreed to and accepted the specific terms and conditions of a settlement as to both penalty amount and what additional actions Respondent must undertake. It is a settlement in the interest of both parties, and indeed it is EPA policy to promote negotiated settlements.¹ Requiring the parties to engage in the exchange of information

¹ 40 C.F.R. § 22.18(b)(1): “The Agency encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the [statute authorizing the proceeding] and applicable regulations.”

when a settlement has been attained in all but formal signature (which will in all probability occur within the next two or three weeks) would represent an inordinately wasteful and unnecessary expenditure of time, effort, energy and resources by both parties. It would not serve any useful purpose or end if the parties were compelled to engage in prehearing exchange despite the imminence of settlement. Further, both parties agree to the relief sought. By e-mail dated June 14th (2:00 PM), the undersigned wrote to Mr. Schantz, stating the following: “Given that the settlement is, in my opinion, essentially a certainty but perhaps not by that date [June 28th], I was thinking of asking the court for an extension of time (an additional two or three weeks) to file the settlement papers.” Mr. Schantz promptly replied that day (2:34 PM), “this is acceptable to Veolia.” It should be self-evident that granting this motion will not result in any party suffering prejudice; indeed not granting this motion would result in prejudice inasmuch as the parties would then be required to engage in the prehearing exchange process when doing so would serve no valid purpose. In short, there is no need, reason or justification for the parties to engage in the prehearing exchange process. Accordingly, the undersigned on behalf of Complainant, with the concurrence of Respondent, seeks this three-week stay of the prehearing exchange deadline as set in the April 16th order.²

Given these circumstances, the undersigned submits that “good cause” exists for the granting of the relief herein being sought: both “good cause” within the meaning of 40 C.F.R. §

² Although the precise relief herein being sought is a stay of the deadlines, such a stay is the functional equivalent of, and constitutes for 40 C.F.R. Part 22 purposes, an extension of time. Moreover, under the Part 22 rules, this tribunal is not only expressly authorized to grant extensions of time (40 C.F.R. § 22.7(b)), the Presiding Officer has the additional authority to grant a stay of any deadline established by this tribunal. 40 C.F.R. §§ 22.1(c), 22.4(c)(10).

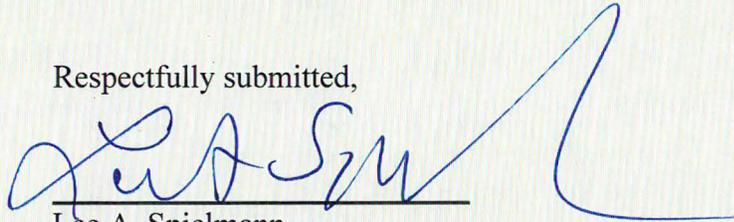
22.7(b)³ and within the implicit “good cause” requirement in the April 16th order.⁴

Relief Sought

Complainant therefore respectfully seeks, with Respondent’s agreement, a stay of the prehearing exchange deadlines established in the April 16th order. Complainant now moves this tribunal, pursuant to 40 C.F.R. §§ 22.4(c), 22.7(b), 22.16(a) and 22.19, for an order staying each of the deadlines set forth on the second page of said order, *i.e.* (a) staying the June 28th deadline until July 19, 2019; (b) staying the July 19th deadline until August 9, 2019; and (c) staying the August 2nd deadline until August 23, 2019. Therefore, for all the reasons stated above, Complainant respectfully requests that this tribunal grant the relief herein sought and that it also grant such other and further relief as it deems just, proper and lawful.⁵

Dated: June 18, 2019
New York, New York

Respectfully submitted,



Lee A. Spielmann
Office of Regional Counsel
Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866
212-637-3222
spielmann.lee@epa.gov

³ “[T]he Presiding Officer may grant an extension of time for filing any document[] upon [*inter alia*] good cause shown....”

⁴ The April 16th order provides, “The parties are further advised that requests for repeated or prolonged extensions to filing deadlines on the basis of continued settlement negotiations may not be granted” (emphasis deleted).

⁵ The undersigned wishes to note that he will be out of the office from June 24th through July 10th. During this period, arrangements have been made so that another Region 2 employee will handle this matter in my absence.

TO:

The Honorable Susan L. Biro, Chief Administrative Law Judge

Headquarters Hearing Clerk, U.S. EPA, Washington DC

John P. Schantz, III, Veolia ES Technical Solutions, L.L.C.

In re Veolia ES Technical Solutions, L.L.C.
Docket Number RCRA-02-2019-7106

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent on June 19, 2019 the foregoing "MOTION FOR STAY OF PREHEARING EXCHANGE DEADLINES," dated June 18, 2019, in the above-referenced administrative enforcement proceeding in the following manner to the addressees listed below:

Original and One Copy
By UPS Overnight Mail:

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

Copy by UPS Overnight Mail:

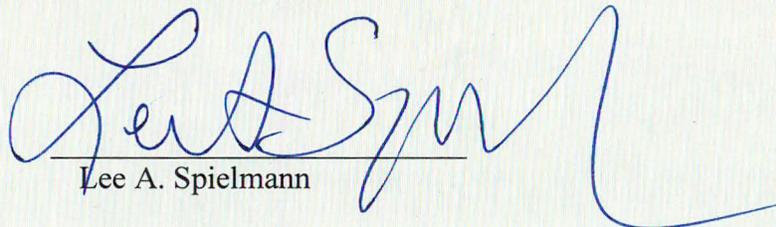
The Honorable Susan L. Biro
Chief Administrative Law Judge
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Ronald Reagan Building, Room M1200
1300 Pennsylvania Avenue, N.W.
Washington, DC 20004

Copy by First Class Mail:

John P. Schantz, III
Veolia ES Technical Solutions
1 Eden Lane
Flanders, New Jersey 07836

I further certify that I have today sent via e-mail a copy of said "MOTION FOR STAY OF PREHEARING EXCHANGE DEADLINES," together with this certificate, to Mr. Schantz at john.schantz@veolia.com

Dated: June 19, 2019
New York, New York



Lee A. Spielmann

