



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

In the Matter of:)
)
Veolia ES Technical)
Solutions, L.L.C.,) **Docket No. RCRA-02-2019-7106**
)
Respondent.)

**ORDER ON COMPLAINANT’S MOTION
FOR EXTENSIONS OF TIME**

On March 5, 2019, I issued a Prehearing Order, scheduling certain prehearing filing deadlines in this proceeding. The Prehearing Order set the filing deadline for submission of a fully executed Consent Agreement and Final Order as April 26, 2019. Additionally, the Prehearing Order set April 26, 2019 as the filing deadline for Complainant’s Initial Prehearing Exchange; May 17, 2019 as the filing deadline for Respondent’s Prehearing Exchange; and May 31, 2019 as the filing deadline for Complainant’s Rebuttal Prehearing Exchange. The Prehearing Order further set the filing deadline for dispositive motions as 30 days after the due date for Complainant’s Rebuttal Prehearing Exchange.

On April 9, 2019, Complainant filed a Motion for Extensions of Time (“Motion”), seeking to have the prehearing filing deadlines set by the Prehearing Order extended as the parties are engaged in settlement negotiations and appear inclined to resolve this matter without further litigation. Specifically, Complainant requests the following extended filing deadlines: June 28, 2019 as the filing deadline for Complainant’s Initial Prehearing Exchange; July 19, 2019 as the filing deadline for Respondent’s Prehearing Exchange; and August 2, 2019 as the filing deadline for Complainant’s Rebuttal Prehearing Exchange. Additionally, Complainant further requests that the filing deadline for dispositive motions be extended to 30 days after the extended filing deadline for Complainant’s Rebuttal Prehearing Exchange. In its Motion, Complainant represents that Respondent agrees with its request to extend the filing deadlines set in the Prehearing Order.

The rules that govern this proceeding, set forth at 40 C.F.R. Part 22 (“Rules of Practice”), authorize the Presiding Officer to grant an extension of time for filing of any document for good cause shown upon motion, after consideration of prejudice to the other parties. 40 C.F.R. § 22.7(b). As the Complainant’s request to extend the filing deadlines set in the Prehearing Order shows good cause and is unopposed, granting it is appropriate. Accordingly, Complainant’s Motion is **GRANTED**. The prehearing filing deadlines are rescheduled as follows.

Settlement. 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**, and a courtesy copy shall be filed with the Headquarters Hearing Clerk.

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 pendency of settlement negotiations or the existence of a settlement in principle does not constitute a basis for failing to strictly comply with those requirements. Only the filing with the Regional Hearing Clerk of a fully-executed Consent Agreement and Final Order, or an order of the undersigned, excuses noncompliance with filing deadlines. **The parties are further advised that requests for repeated or prolonged extensions to filing deadlines on the basis of continued settlement negotiation may not be granted. Therefore, the parties should plan deliberations accordingly.***

Prehearing Exchange. The filing deadlines for the prehearing exchanges are extended as follows:

June 28, 2019	Complainant's Initial Prehearing Exchange
July 19, 2019	Respondent's Prehearing Exchange
August 2, 2019	Complainant's Rebuttal Prehearing Exchange

Section 22.19(a) of the Rules of Practice provides that, except in accordance with Section 22.22(a), any document not included in the prehearing exchange shall not be admitted into evidence, and any witness whose name and testimony summary are not included in the prehearing exchange shall not be allowed to testify. 40 C.F.R. § 22.19(a). Therefore, each party is advised to thoughtfully prepare its prehearing exchange.

In general, hearings are scheduled following the submission of the prehearing exchanges. The parties will be provided with adequate notice of the scheduled hearing to enable them to meet the remaining deadlines contained in this Order.

Supplement to Prehearing Exchange. Any addition of a proposed witness or exhibit to the prehearing exchange, submitted pursuant to Section 22.19(f) of the Rules of Practice, must be filed with an accompanying *motion to supplement the prehearing exchange* only when supplementation is sought within 60 days of the scheduled hearing.

Motions. Prior to filing any motion, the moving party must contact all other parties to determine whether the other parties have any objection to the granting of the relief sought in the motion, and the motion shall state the position of the other parties. The mere consent of the other parties to the relief sought does not assure that the motion will be granted. Furthermore, all motions must be submitted in sufficient time to permit the filing of a response and a reply, as well as the issuance of a ruling on the motion, before any relevant deadline set by this or any

subsequent order. *See generally* 40 C.F.R. §§ 22.16(b), 22.7(c). *Motions not filed in a timely manner may not be considered.*

Joint motions for the appointment of a neutral, filed pursuant to Section 22.18(d)(3) of the Rules of Practice, will not be entertained prior to the deadline for Complainant's Rebuttal Prehearing Exchange, as extended by this Order, and shall be filed no later than seven days after that deadline. *Dispositive motions*, such as a motion for accelerated decision or motion to dismiss under Section 22.20(a) of the Rules of Practice, must be filed within 30 days after the due date for Complainant's Rebuttal Prehearing Exchange, as extended by this Order. *Non-dispositive motions*, such as motions for additional discovery, motions for subpoenas, and motions in limine, must be filed no later than 60 days prior to the scheduled hearing.

Pursuant to Section 22.16(d) of the Rules of Practice, a party may submit a written request for oral argument upon filing a motion, a response to a motion, or a reply. 40 C.F.R. § 22.16(d). The requesting party shall propose an appropriate location for the argument. The OALJ has access to videoconferencing technology that may be utilized for oral arguments on motions, which may minimize the expenditure of time and monetary resources in connection with such arguments. A request for oral argument may be granted, in the undersigned's discretion, where further clarification and elaboration of arguments would be of assistance in ruling on the motion.

Default and Opportunity for a Hearing. The Complaint in this matter gave Respondent notice and opportunity for a hearing, in accordance with Section 554 of the Administrative Procedure Act ("APA"), 5 U.S.C. § 554. Respondent's Answer to the Complaint contained a request for a hearing. In this regard, Section 554(c)(2) of the APA sets out that a hearing be conducted under Section 556 of the APA. 5 U.S.C. § 554(c)(2). Section 556(d) provides that a party is entitled to present its case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. 5 U.S.C. § 556(d). Thus, Respondent has the right to defend against Complainant's charges by way of direct evidence, rebuttal evidence, or through cross-examination of Complainant's witness(es). Respondent is entitled to elect any or all three means to pursue its defenses.

Respondent is hereby notified that its failure to comply with the prehearing exchange requirements set forth herein may result in the entry of a default judgment against it. Complainant is notified that its failure to file its prehearing exchange in a timely manner can result in a dismissal of the case with prejudice.

Filing and Service. Consistent with Section 22.5 of the Rules of Practice, the original and one copy of all documents intended to be part of the record in this proceeding (excluding a fully-executed Consent Agreement and Final Order, which must be filed with the Regional Hearing Clerk), shall be filed with the Headquarters Hearing Clerk.¹ Electronic filing is strongly

¹ Pursuant to the Headquarters Hearing Clerk Pilot Project, the OALJ and Headquarters Hearing Clerk shall keep the official record and be the proper filing location for all contested cases in which an answer was filed after May 1, 2012. For more information, see the OALJ's website at www.epa.gov/oalj.

encouraged.² To file a document electronically, a party shall use a web-based tool known as the OALJ E-Filing System by visiting the website for the OALJ at www.epa.gov/oalj. Documents filed electronically are deemed to constitute both the original and one copy of the document.

Any party choosing to file electronically must first register with the OALJ E-Filing System at https://yosemite.epa.gov/OA/EAB/EAB-ALJ_Upload.nsf. There may be a delay of one to two business days between the time a party applies for registration and the time at which the party is able to upload documents into the system.

A document submitted to the OALJ E-Filing System is considered “filed” at the time and date of electronic reception, as recorded by the OALJ E-Filing System immediately upon reception. To be considered timely, documents submitted through the OALJ E-Filing System must be received by 11:59 p.m. Eastern Time on the date the document is due, unless another time is specified by the Judge. Within an hour of a document being electronically filed, the OALJ E-Filing System will generate an electronic receipt of the submission that will be sent by email to both the party submitting the document and the Headquarters Hearing Clerk.

The OALJ E-Filing System will accept any type of digital file, but the file size is limited to 70 megabytes.³ Electronically filed textual documents must be in Portable Document Format (“PDF”). A motion and any associated brief may be filed together through the OALJ E-Filing System. However, any documents filed in support of a brief, motion, or other filing, such as copies of proposed exhibits submitted as part of party’s prehearing exchange, should be filed separately as an attachment. Where a party wishes to file multiple documents in support of a brief, motion, or other filing, rather than filing a separate attachment for each such document, the documents should be compiled into a single electronic file and filed as a single attachment, to the extent technically practicable. Attached to this Order is further guidance on the use of the OALJ E-Filing System for purposes of electronic filing.

Alternatively, documents may be filed by U.S. mail, personal delivery, courier, or commercial delivery service. To file a document using the U.S. Postal Service, address the document to:

Headquarters Hearing Clerk
Office of Administrative Law Judges
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Mail Code 1900R
Washington, DC 20460

To file a document using UPS, FedEx, DHL, other courier or commercial delivery service, or personal delivery, address the document to:

² More information about electronic filing may be found in the Standing Order Authorizing Electronic Filing in Proceedings Before the Office of Administrative Law Judges available on the OALJ website at www.epa.gov/oalj.

³ If your multimedia file exceeds 70 megabytes, you may submit the file on a compact disc and mail it to one of the addresses above, or contact the main number for the Office of Administrative Law Judges at (202) 564-6255 for instructions on alternative electronic filing methods.

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

A document submitted by U.S. mail, personal delivery, courier, or commercial delivery service is considered “filed” when the Headquarters Hearing Clerk physically receives it, as reflected by the inked date stamp physically applied by the Headquarters Hearing Clerk to the paper copy of the document. The OALJ is open to receive such paper filings between 8:30 a.m. and 4:30 p.m. Eastern Time, Monday through Friday.

Regardless of the method of filing, all filed documents must be signed and must contain the contact name, telephone number, mailing address, and email address of the filing party or its authorized representative.

A copy of each document filed in this proceeding shall also be served on the undersigned and on each party. 40 C.F.R. § 22.5(b). Documents may be served by U.S. mail, personal delivery, reliable commercial delivery service, or email if the party being served has consented in writing to service by email and provided a valid email address. 40 C.F.R. § 22.5(b)(2). Documents filed through the OALJ E-Filing System are deemed to have been served on the undersigned. A document is considered served upon mailing, when placed in the custody of a reliable commercial delivery service, or upon electronic transmission. 40 C.F.R. § 22.7(c).

The parties are advised NOT to include, attach, or refer to any terms of settlement offers or agreements in any document submitted to the undersigned, and no copies of Consent Agreements and Final Orders shall be submitted, or attached to any document submitted, to the undersigned except those that are fully executed and filed with the Regional Hearing Clerk.

Privacy Act Statement; Notice of Disclosure of Confidential and Personal Information; Waiver of Confidentiality and Consent to Public Disclosure. The parties are cautioned that, unless redacted, all information filed with the OALJ will be made publicly available. Thus, the parties are hereby advised not to file any Confidential Business Information (“CBI”) or Personally Identifiable Information (“PII”) pertaining to any person. Where filing of such information is necessary, the parties are hereby advised to redact (i.e., remove or obscure) the CBI or PII present in the materials filed. This may include information that, if disclosed to the public, would constitute an unwarranted invasion of personal privacy, such as Social Security numbers, medical records, and personal financial information.

To the extent that any person files or submits any unredacted CBI or PII pertaining to themselves or their client, that person thereby waives any claims to confidentiality and thereby consents to public disclosure by EPA, including posting on the Internet, of all such information they submit. Submission of such information through the OALJ E-Filing System will also be

considered a waiver of confidentiality. To protect such information against public disclosure, parties must follow the procedures specified on the OALJ website at www.epa.gov/oalj.

Contact Information. For any questions about this Order, the Rules, or any other procedural, scheduling, or logistical issues, you may contact Andrea Priest, Attorney-Advisor, at (202) 564-4914 or priest.andrea@epa.gov.

SO ORDERED.



Susan L. Biro
Chief Administrative Law Judge

Dated: April 16, 2019
Washington, D.C.

In the Matter of *Veolia ES Technical Solutions, L.L.C.*, Respondent.
Docket No. RCRA-02-2019-7106

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order on Complainant's Motion for Extensions of Time**, dated April 16, 2019, and issued by Chief Administrative Law Judge Susan L. Biro, was sent this day to the following parties in the manner indicated below.



Andrea Priest
Attorney Advisor

Original and One Copy by Personal Delivery to:

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

Copy by Electronic Mail to:

Lee A. Spielmann
Assistant Regional Counsel
Office of Regional Counsel
US. Environmental Protection Agency, Region 2
Email: spielmann.lee@epa.gov
For Complainant

Copy by Electronic and Regular Mail to:

John P. Schantz III,
Environmental, Health, and Safety Manager
Veolia ES Technical Solutions, L.L.C.
1 Eden Lane
Flanders, NJ 07836
Email: john.schantz@veolia.com
For Respondent

Dated: April 16, 2019
Washington, D.C.