

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 EXTENSIONS OF TIME

Complainant, the Director of the Division of Enforcement and Compliance Assistance of the United States Environmental Protection Agency, Region 2, herewith moves for a 60-day extension of time for deadlines established in this tribunal's March 5, 2019 Prehearing Order. Respondent, Veolia ES Technical Solutions, L.L.C., through its representative/spokesperson, has stated that that he agrees with the relief herein sought and has authorized the undersigned to so inform this tribunal.

Background

This proceeding commenced with the service of the administrative complaint on or about December 28, 2018; the complaint was issued under authority of Section 3008(a) of the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6928(a). The complaint alleges Respondent committed two violations in its operation of its Middlesex, New Jersey facility: (a) the failure to place a prescribed capping device on between 50 to 60 lines (pipes) through which hazardous waste was moving/being moved, a violation of 40 C.F.R. § 264.1056(a)(1), as incorporated into the Middlesex facility's operating permit (Respondent obtained a permit from the New Jersey Department of Environmental Protection to operate the Middlesex facility as a hazardous waste storage, treatment, and transfer and solid waste transfer facility), and (b) the failure to list in a log

kept in the facility's operating record the identification numbers of equipment subject to the requirements of 40 C.F.R. § 264.1052 through 40 C.F.R. § 264.1060, a requirement of 40 C.F.R. § 264.1064(g)(1), as incorporated into the Middlesex facility's operating permit. The violations are alleged to have occurred at the time of EPA's inspection of the Middlesex facility in May 2018 (as well as "for periods of time before and after"). Complainant seeks to assess a penalty of \$52,900 for the first count, \$23,300 for the second count.

Respondent, appearing *pro se*, served its answer on or about February 21, 2019. Denominated "Formal Hearing Request & Answer to the Complaint," the answer does not address the factual allegations underlying EPA's assertion that Respondent is liable for the violations alleged. Rather, for each count, Respondent asserts it "is contesting the gravity of the penalty," and sets forth its reasons why it believes a lesser penalty is warranted for each.

This tribunal issued a Prehearing Order on or about March 5, 2019. Among other things, the order directed that the parties hold a settlement conference by March 22, 2019 and that Complainant provide a status report concerning settlement efforts by no later than March 29, 2019. The order also established a schedule for the parties to submit their respective prehearing exchanges, as follows: (a) Complainant to file her initial prehearing exchange by no later than April 26, 2019; (b) Respondent to file its prehearing exchange by no later than May 17, 2019; and (c) Complainant to file her rebuttal prehearing exchange by no later than May 31, 2019. The order also set additional deadlines: (a) dispositive motions must be filed within 30 days of the May 31st deadline, and (b) non-dispositive motions must be filed no later than 60 days before the start of a scheduled hearing. The order did not specify when a hearing (if one were required)

would start.¹

Settlement Conferences

As reported in Complainant's March 25th Status Report, the parties held a (telephone) settlement conference on March 20th. As noted therein, "[p]reliminary settlement offers were tendered, and each side stated that it would discuss the offers, however tentative, with its respective management." As also noted, they agreed to hold up a follow-up call on April 3rd. During the April 3rd call, the undersigned conveyed the results of internal EPA, Region 2 discussions with middle management, and Respondent's representative (Mr. Schantz) stated he would convey EPA's settlement position to Respondent's management. Other ideas that potentially might result in an additional penalty reduction were exchanged; Respondent stated it would provide EPA with additional information for Complainant's consideration (such material has already been provided). EPA is now internally considering and discussing the additional ideas and measures that had been discussed with Mr. Schantz.

The parties agreed to revisit settlement on May 8th.

As previously noted, during the April 3rd call, Mr. Schantz was specifically informed of Complainant's intention to move for an extension of the prehearing exchange deadlines. He noted his assent, "I agree."

¹ Because Respondent's answer does not address the predicate factual allegations necessary for liability to be established (it does not admit, deny or otherwise explain the specific allegations of either count) and only contests the appropriateness of the penalty sought in each count, the March 5th order advised Respondent that, pursuant to 40 C.F.R. § 22.15, its failure to address the underlying factual allegations results in those allegations being deemed admitted. The order permitted Respondent, "if it wish[es] to contest liability for the violations alleged in the Complaint...to file an Amended Answer...identif[y]ing all of the factual allegations regarding liability...that are in dispute...no later than April 5, 2019" (emphasis omitted). To date (April 5, 2019), at the time of this writing (6:00 PM), no amended answer has been received by the undersigned (Respondent transmitted its February 21st Formal Hearing Request via e-mail).

Reasons for the Requested Deadline Extensions

As noted above, the parties have exchanged settlement offers, and each has indicated it will discuss them with appropriate management officials. Respondent has subsequent to the April 3rd conference call indicated that it has effected an additional protective measure EPA recommended during the call, and this consideration is being evaluated and analyzed in light of applicable Agency penalty policy guidance. Both parties, in the opinion of the undersigned, appear committed to resolving this matter through a negotiated settlement, and both appear inclined, based upon the tenor of the March 20th and April 3rd conference calls, to avoid a resolution through litigation. From the two calls, the parties wish to pursue every opportunity to reach settlement, and it is equally obvious they wish to do so without having to concern themselves with imminent litigation requirements that might very well prove unnecessary. In short, they want the flexibility and latitude that the additional time, with the accompanying deadline extensions, will afford to explore every possible avenue leading to settlement.

Relief Sought

Complainant now respectfully seeks, with the full agreement of Respondent, an extension of the following deadlines established in the March 5th prehearing order. Therefore, 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:

- (a) Vacating the provision in the March 5th prehearing order requiring Complainant to file the initial her prehearing exchange by April 26th;
- (b) Vacating the provision in the March 5th prehearing order requiring Respondent to file its prehearing exchange by May 17th;
- (c) Vacating the provision in the March 5th prehearing order requiring Complainant to file the rebuttal prehearing exchange by May 31st;

- (d) Vacating the provision in the March 5th prehearing order requiring that dispositive motions be filed within 30 days after the due date for Complainant's rebuttal prehearing exchange;
- (e) Extending the deadline for Complainant to file the initial prehearing exchange through June 28, 2019;
- (f) Extending the deadline for Respondent to file its prehearing exchange through July 19, 2019;
- (g) Extending the deadline for Complainant to file the rebuttal prehearing exchange through August 2, 2019; and
- (h) Extending the deadline for the filing of dispositive motions within 30 days after August 2, 2019 (*i.e.* to September 4, 2019, two days after the Labor Day holiday).

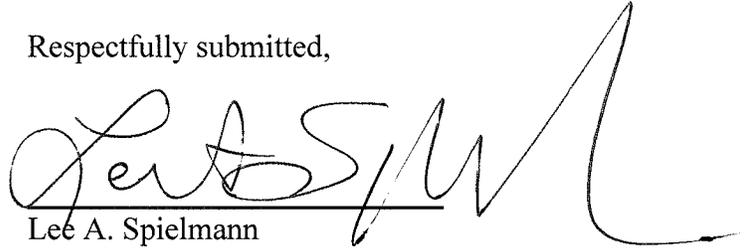
Good Cause

Complainant submits good cause exists for the granting of the relief sought in this motion. In addition to the fact that Respondent does not object or oppose the relief sought, and indeed affirmatively supports it, this is the first such application therefor. The proceeding is in its earliest stages; not only has there been no prehearing exchange, this is the first motion filed. No hearing date has been scheduled, and likely any hearing, if necessary, will not occur for a while (the undersigned would estimate that if a hearing were necessary, the earliest it would realistically be held would be in the autumn, some five months away). The relief sought would not result in prejudice to either party, as can be seen by both parties endorsing the effort for the extensions, and these initial extensions of two months, if granted, should not adversely impact the scheduling obligations of this tribunal, given that this request is made while this proceeding remains inchoate.

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.

Dated: April 5, 2019
New York, New York

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Lee A. Spielmann', written over a horizontal line.

Lee A. Spielmann
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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 April 8, 2019 the foregoing "MOTION FOR EXTENSIONS OF TIME," dated April 5, 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:

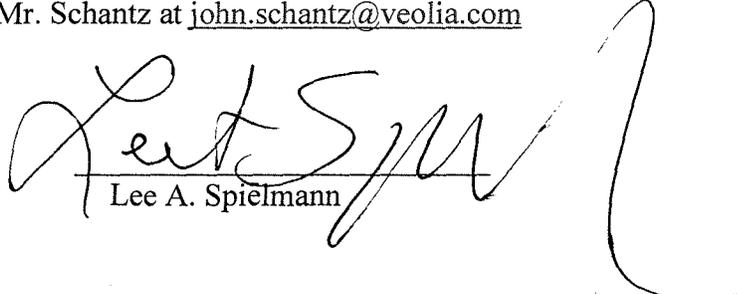
The Honorable Susan L. Biro
Chief Administrative Law Judge
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Ronald Reagan Building, Room M1200
1300 Pennsylvania Avenue, N.W.
Washington, DC 20004

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 sent via e-mail a copy said MOTIONS FOR EXTENSIONS OF TIME, together with this certificate, to Mr. Schantz at john.schantz@veolia.com

Dated: April 8, 2019
New York, New York



Lee A. Spielmann

