



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
SAN PEDRO FORKLIFT,) DOCKET NO. CWA-09-2009-0006
)
)
RESPONDENT)

ORDER ON MOTIONS FOR EXTENSION TO FILE POST-HEARING BRIEFS

The hearing in this matter concluded on Saturday, January 29, 2011, in Los Angeles, California. On February 23, 2011, the undersigned received Complainant's Motion for Extension to File Post-Hearing Brief ("C's Mot.") in which Complainant requests an additional 30 days to file its Post-Hearing Brief. C's Mot. at 1. On February 25, 2011, the Regional Hearing Clerk for EPA Region 9 sent an email to all parties, including this Tribunal, announcing the availability of that the transcripts from the hearing. This notification contained the following language:

Pursuant to 40 C.F.R. Section 22.25, this e-mail will serve as notice of the availability of the hearing transcript in the matter of San Pedro Forklift, Docket No.: CWA-09-2009-0006. Parties to the matter who wish to receive a copy of the transcript should notify the Regional Hearing Clerk by responding to this e-mail, or by sending a written request to Regional Hearing Clerk, ORC-1, EPA - Region 9, 75 Hawthorne Street, San Francisco, CA 94105. Copies of the transcript are provided upon payment of reproduction costs, unless there is a demonstration that the cost is unduly burdensome.

E-mail communication from Corazon Tolentino, US EPA Region 9, dated Feb. 25, 2011.

On March 15, 2011, the undersigned received Respondent's Motion for Extension to File Post-Hearing Brief ("R's Mot.") in which Respondent also requests an additional 30 days to file its Post-Hearing Brief. R's Mot. at 2. Both Motions refer to a

deadline set at the hearing by the undersigned for the submission of post-hearing briefs. C's Mot. at 1; R's Mot. at 2.

Under 40 C.F.R. § 22.26, the parties are allowed to submit certain post-hearing briefs and documents in accordance with a schedule set forth by the ALJ. However, the ALJ "shall not require them before the last date for filing motions under § 22.25 to conform the transcript to the actual testimony." 40 C.F.R. § 22.26. Rule 22.25, in turn, states that the parties may file a motion to conform the transcript 45 days of being notified of the availability of the transcript (or 30 days of receiving the transcript, whichever is sooner). 40 C.F.R. § 22.25.

As the Rules of Practice indicate, no fixed deadline for post-hearing briefs can be set at the conclusion of the hearing because such a deadline necessarily depends on the time required by the court reporter to prepare the transcript. The unconformed transcript reads, in relevant part, as follows:

Judge Gunning: [...] Now, the transcript will be prepared and the rules pertaining to that are found in 40 CFR Section 22.25. The parties will have an opportunity to file proposed findings of fact, conclusions of law and a proposed order together with briefs in support thereof. The general schedule that we have, there are certain rules as to how many days after the preparation of the transcript, which is available, upon payment of the reproduction costs. Are there any special requests, at this time, to enlarge the briefing period beyond what -

Mr. Franceschi: What is the briefing period, Your Honor?

. . .

Judge Gunning: Well, we don't know when the transcript will be prepared as an absolute fact.

Mr. Franceschi: What I'm asking is how many days after the preparation?

Judge Gunning: Oh, as a general proposition, it is usually a month. Sometimes if it's right in the middle of the holidays, I'm amenable to extending it. Since we don't know when the transcript is coming out, let's assume this spring.

Tr. 2374-76.

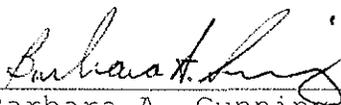
As indicated by the transcript, and supported by the Rules, both parties' Motions are premature. No motions to conform have been received and no briefing schedule has been set.^{1/} However, since the parties have both requested an extension of the eventual briefing schedule, I take these Motions under advisement.

In its Motion, Complainant states that it received an electronic transcript on February 22, 2011. Therefore, under the Rules, Complainant has until March 24, 2011, to file a motion to conform the transcript. The parties were notified of the availability of the transcript on February 25, 2011. Therefore, under the Rules, Respondent has until April 8, 2011, to file a motion to conform the transcript. Given the voluminous nature of the transcript, I find good cause to extend that deadline. The deadline for submitting motions to conform the transcript is hereby extended until **April 22, 2011**.

The briefing schedule is set forth as follows:

1. Initial post-hearing briefs, filed simultaneously, are due on or before **May 20, 2011**.
2. Reply briefs, filed simultaneously, are due on or before **June 10, 2011**.

So ORDERED.



Barbara A. Gunning
Administrative Law Judge

Dated: March 17, 2011
Washington, DC

^{1/} Respondent also states that it has not yet received the transcript. Respondent is directed to review the Regional Hearing Clerk's email notice and 40 C.F.R. § 22.25 for instructions on how to obtain a copy of the transcript.

**In the Matter of *San Pedro Forklift*, Respondent.
Docket No. CWA-09-2009-0006**

CERTIFICATE OF SERVICE

I hereby certify that copies of this **Order on Motions for Extension to File Post-Hearing Briefs**, issued by Barbara Gunning, Administrative Law Judge, in CWA-09-2009-0006, were sent to the following parties on this 17th day of March 2011, in the manner indicated:



Mary Angeles
Legal Staff Assistant

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Dated: March 17, 2011
Washington, D.C.