



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

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In the Matter of:)
)
T.C. Dunham Paint Company, Inc.,) Docket No. RCRA-02-2013-7105
)
Respondent)

**ORDER ON MOTION TO FILE
MODIFIED PREHEARING EXCHANGE**

On October 18, 2013, the Director of the Division of Enforcement and Compliance Assistance in U.S. Environmental Protection Agency Region 2 (“Complainant”) initiated this action against T.C. Dunham Paint Company, Inc. (“Respondent”) by filing a Complaint, Compliance Order and Notice of Opportunity for Hearing (“Complaint”) with the Regional Hearing Clerk for Region 2. Respondent filed its Answer and Request for Hearing (“Answer”) on December 6, 2013.¹ On December 20, 2013, this Tribunal issued a Prehearing Order scheduling a series of deadlines to govern the parties’ prehearing exchange of information. The Prehearing Order directed Complainant to file its Initial Prehearing Exchange no later than March 7, 2014, and Respondent to file its Prehearing Exchange no later than March 28, 2014.

On February 18, 2014, Complainant filed a motion requesting that the prehearing exchange deadlines be extended by 60 days, and the motion was granted by order dated February 27, 2014. On April 17, 2014, Complainant file a second motion requesting that the prehearing exchange deadlines be extended by an additional 60 days. In an order dated April 21, 2014, the deadlines were extended by 30 days, rather than 60 as requested. On May 21, 2014, Complainant filed a third motion requesting to extend the prehearing deadlines, and another 30-day extension was granted.

On July 1, 2017, Complainant filed a Notice of Pending Settlement and Motion to File Modified Prehearing Exchange (collectively the “Motion”). In the Motion, Complainant avers “that the parties have tentatively agreed to a settlement and the settlement documents are circulating at EPA for management approval.” Mot. at 1. Complainant states that it is prepared to file its Prehearing Exchange (“PHE”) by the current deadline of July 7, 2014, but requests permission to omit from its PHE “hard copy attachments of . . . documents and evidence.” *Id.* Complainant explains that many of the documents and evidence listed as potential exhibits in its

¹ Complainant did not file the proof of service of the Complaint required by 40 C.F.R. § 22.5(b)(1)(iii), so the record does not show when service of process was accomplished. In a cover letter accompanying the Answer, Respondent’s counsel indicates that the Complaint was not served on Respondent until November 8, 2013.

PHE have already been shared with Respondent or are publicly available through the Internet, and argues that, given the likelihood that this case will settle, omitting hard copies of the potential exhibits from the PHE will save “time, energy and scarce resources.”² *Id.* Complainant promises to “provide the Court with all of the documents and evidence noted in its PHE” if the settlement discussions break down within twenty-five business days of the Motion. *Id.* Complainant avers that Respondent’s counsel joins in the Motion. *Id.*

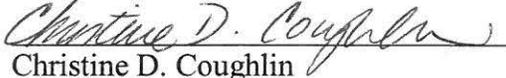
The Consolidated Rules of Practice (the “Rules”) that govern this proceeding, codified at 40 C.F.R. Part 22, require each party’s prehearing information exchange to include “[c]opies of all documents and exhibits which [the party] intends to introduce into evidence at the hearing.” 40 C.F.R. § 22.19(a)(2). Modifying this requirement to allow Complainant to knowingly file an incomplete PHE would create the risk of substantive evidentiary materials being mistakenly withheld from Respondent as Respondent prepared its own PHE, and could potentially cause significant administrative confusion. The Motion is therefore **DENIED**.

However, Complainant’s argument that resources should be conserved given the high likelihood of settlement in this matter is persuasive. Though presiding officers are tasked with avoiding delay in these proceedings, providing the parties with time to finalize their settlement appears, under the circumstances, to be the most efficient method of resolving this case. The Rules provide that the presiding officer may grant an extension of time for filing any document “upon its own initiative.” 40 C.F.R. § 22.7(b). There is good cause for extending the prehearing filing deadlines by an **additional 30 calendar days**, to provide the parties with time to finalize their settlement agreement. The parties are reminded that the requirements set out in the Prehearing Order issued by the undersigned on December 20, 2013, remain in effect with the exception of a revised prehearing exchange schedule. The parties shall file their prehearing exchanges pursuant to the following schedule:

- | | |
|---------------------------|--|
| August 6, 2014 | Complainant’s Initial Prehearing Exchange |
| August 27, 2014 | Respondent’s Prehearing Exchange |
| September 10, 2014 | Complainant’s Rebuttal Prehearing Exchange |

² Pursuant to 40 C.F.R. § 22.5(a)(1) and (b)(2), and the Standing Order Authorizing Filing and Service by E-Mail in Proceedings Before the Office of Administrative Law Judges, electronic copies of potential exhibits may be filed by e-mail in lieu of hard copy. Electronic copies may also be saved to a Compact Disk (“CD”) and filed in that form by mail, courier, or commercial delivery.

SO ORDERED.


Christine D. Coughlin
Administrative Law Judge

Dated: July 2, 2014
Washington, D.C.

In the Matter of *T.C. Dunham Paint Company, Inc.*, Respondent.
Docket No. RCRA-02-2013-7105

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Order on Motion to File Modified Prehearing Exchange, dated July 2, 2014, was sent this day in the following manner to the addressees listed below.



Mary Angeles
Legal Staff Assistant

Original and One Copy by Hand Delivery to:

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Dated: July 2, 2014
Washington, D.C.