

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

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IN THE MATTER OF: :
:
ADVANCED RECOVERY, INC :
:
RESPONDENT :
:
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DOCKET NO: RCRA-02-2013-7106

**UPDATED STATUS REPORT AND MOTION TO REQUEST EXTENSION OF TIME
TO AMEND THE DEADLINE FOR FILING DISPOSITIVE MOTIONS TO GRANT
COMPLAINANT LEAVE TO FILE A MOTION FOR ACCELERATED DECISION ON
LIABILITY**

The Complainant, in the above captioned matter, does hereby submit this Updated Status Report, as provided in Judge Coughlin's Scheduling and Hearing Order dated June 11, 2014 (the "Order"). Complainant also provides a Motion to Request Extension of Time to Amend the Deadline to Grant Complainant Leave to File a Dispositive Motion for Accelerated Decision pursuant to 40 C.F.R. §22.16.

Updated Status Report

This Updated Status Report is filed, pursuant to the Judge's Order that Complainant file Status Reports as to the status of any settlement between the parties, on or before July 11, 2014 and August 1, 2014.

The parties were not able to schedule a settlement conference call before the July 11, 2014 deadline due to Counsel for Respondent's schedule. Complainant submitted a timely Updated Status Report on July 11, 2014 demonstrating its good-faith attempts to contact Respondent's Counsel in order to schedule a settlement conference call prior to July 11, 2014.

The parties did schedule and hold a settlement conference call on July 15, 2014. Unfortunately, the parties were not able to arrive at a settlement in principle during the settlement conference call. Complainant had requested an update on the status of Respondent's 2013 tax return which would help Complainant evaluate the validity of Respondent's assertion that it has a limited ability to pay a civil penalty. Respondent had indicated the tax return was not available but has apparently recently obtained it. Complainant has recently reiterated its request for this document EPA has also requested additional financial documentation which has not as yet been forthcoming from Respondent.

Motion

By way of this motion, the Complainant requests an extension in the deadline time for filing dispositive motions, so that Complainant may file a Motion for an Accelerated Decision on Liability in this matter. Complainant acknowledges that the previously established deadline for filing dispositive motions has passed. The Court's March 10, 2014 Order provided that dispositive motions were due to be filed in this matter within 30 days after Complainant's Rebuttal Prehearing Exchange. Pursuant to this schedule, such a Motion had to be filed by early July.

Nonetheless, Complainant believes that granting its motion for an extension of time to file dispositive motions and granting Complainant leave to file a Motion for an Accelerated Decision will streamline the issues that need to be tried at Hearing. Complainant believes that one or both of the counts in the Complaint lend themselves to such a Motion. For instance, the allegation in Count 2 of the Complaint that Respondent was storing hazardous waste without a permit seems to raise no genuine issues of material fact. We believe that following a motion for accelerated decision, a hearing can be focused on penalty issues, where there are genuine issues of fact.

If the Court grants Complainant's motion for an extension of time for filing dispositive motions, Complainant suggests the following amended schedule for the Complainant to file its dispositive motion:

Complainant shall file its dispositive motion on or before August 20, 2014.

Respondent shall file its Response, if any, on or before September 5, 2014.

Complainant shall file its Reply, if any, by September 16, 2014.

Complainant would have no objection to the same deadlines applying to Respondent for any dispositive motion it elects to file.

Complainant acknowledges that if the Court grants this motion to extend the deadline for filing dispositive motions that the Court may conclude that other deadlines including the date of the scheduled hearing may need to be revisited. Complainant contends that it is nevertheless advantageous to narrow the issues for hearing.

For the foregoing reasons, Counsel for Complainant requests that the Court grant this motion for to amend the deadline for filing dispositive motions to grant Complainant leave to file a dispositive Motion for an Accelerated Decision on liability. Counsel for Respondent has been consulted and advised of Complainant's Updated Status Report and this motion for to amend the deadline for filing dispositive motions.


COUNSEL FOR COMPLAINANT

Dated: *August 1, 2014*

Respectfully submitted

Melva J. Hayden, Esquire
Assistant Regional Counsel
U.S. Environmental Protection Agency – Region 2
New York, NY 10007-1866
Phone: 212/637-3230
Fax: 212/637-3202

In the Matter of Advanced Recovery, Inc.
Docket No. RCRA-02-2013-7106

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CERTIFICATE OF SERVICE

I certify that the foregoing Updated Status Report and Motion to Request Extension of Time to Amend the Deadline for Filing Dispositive Motions to Grant Complainant Leave to File a Motion for Accelerated Decision on Liability has been sent this day to the following addressees listed herein in the manner listed below:

Original and One Copy by Electronic and Regular Mail to:

Sybil Anderson
Headquarters Hearing Clerk
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, DC 20460
Email: OALJfiling@epa.gov

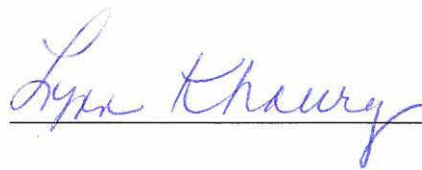
Copy by Electronic and Regular Mail to:

The Honorable Christine D. Coughlin
Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
Email: OALJfiling@epa.gov

Copy by Electronic and Regular Mail to:

Kirk O. Orseck, Esquire
Orseck Law Offices, PLLC
1924 State Route 52
POB 469
Liberty, NY 12754
Email: orsecklaw@yahoo.com

Dated: July 31, 2014
New York, NY


Lynn Khawry