



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

In the Matter of:)
)
Total Petroleum Puerto Rico, Corp.,) **Docket No. RCRA-02-2018-7101**
)
Respondent.)

ORDER ON JOINT MOTION FOR EXTENSION OF TIME

On November 2, 2018, I issued a Prehearing Order in this case setting a December 14, 2018 deadline for the parties to begin the prehearing exchange process or file a fully-executed Consent Agreement and Final Order (“CAFO”).

Two days before the deadline, the parties asked for a 45-day extension to submit a CAFO. The extension was granted, giving the parties until January 28, 2019 to file their CAFO or initial prehearing exchange documents. *See* Order Granting Joint Motion Requesting an Extension of Time (Dec. 13, 2018).

On December 28, 2018, the U.S. Environmental Protection Agency along with many other federal government agencies shut down due to an appropriations lapse, and the Office of Administrative Law Judges was closed. The office did not reopen until January 28, 2019.

On January 29, 2019, citing time lost due to the government shutdown, the Agency filed a Motion Requesting an Extension of Time asking for an additional 45 days to submit an executed CAFO. The motion was granted, extending to March 15, 2019 the deadline for filing a CAFO or prehearing exchange. *See* Order on Agency’s Motion Requesting Extension of Time (Jan. 31, 2019).

A day before the March deadline, the Agency asked for 10 more days to finalize the CAFO. *See* Motion Requesting a 10-Day Extension of Time to File Consent Agreement and Final Order (March 18, 2019). That motion was granted. *See* Order on Agency’s Motion Requesting 10-Day Extension of Time (March 19, 2019).

Two days after the previously extended deadline, on April 1, 2019, the Agency requested a “final” extension of 15 days to submit a CAFO. I granted that motion, giving the Agency until April 19, 2019 to file a CAFO or its initial prehearing exchange. *See* Order on Agency’s Motion Requesting 15-Day Extension of Time (April 2, 2019).

Now, it appears the Agency’s last request for an extension was in fact not “final.” On

April 23, 2019, four days after the deadline they were given, the parties filed a joint motion seeking an additional 30 days to file an executed CAFO. *See* Joint Motion Requesting an Extension of Time to Allow for Additional Inquiry and Certification (“Motion”). According to the parties, more time is required “to make sure that all necessary inquiries regarding federal appropriations have been satisfied.” Mot. at 1. Additionally, the parties state that Respondent is working with state agencies from two different territories for the proposed Supplemental Environmental Project (“SEP”), which involves a “particularly intricate” inquiry relating to whether it is already receiving federal funding for activity similar to the SEP. Mot. at 2.

This Tribunal “may grant an extension of time for filing any document: upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties; or upon its own initiative.” 40 C.F.R. § 22.7(b). I find, for the final time, that the parties have presented good cause for an extension. Accordingly, the Motion is **GRANTED** as follows:

The parties shall file a fully executed CAFO with the Regional Hearing Clerk and a courtesy copy with the Headquarters Hearing Clerk no later than **June 14, 2019**. Although a CAFO may still be filed thereafter, no further extensions of the prehearing exchange deadlines will be granted.

In the event that a fully executed CAFO is not filed on or before June 14, 2019, the parties shall engage in the prehearing exchange of information described in the Prehearing Order pursuant to the following schedule:

June 14, 2019	Complainant’s Initial Prehearing Exchange
July 8, 2019	Respondent’s Prehearing Exchange
July 22, 2019	Complainant’s Rebuttal Prehearing Exchange

As previously stated in the Prehearing 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 these 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.

Further, Respondent is again 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. Likewise, Complainant is also reminded that its failure to file its prehearing exchange in a timely manner can result in a dismissal of the case with prejudice.

SO ORDERED.



Susan L. Biro
Chief Administrative Law Judge

Dated: April 24, 2019
Washington, D.C.

In the Matter of *Total Petroleum Puerto Rico, Corp.*, Respondent.
Docket No. RCRA-02-2018-7101

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order on Joint Motion for Extension of Time**, dated April 24, 2019, and issued by Chief Administrative Law Judge Susan L. Biro, was sent this day to the following parties in the manner indicated below.



Matt Barnwell
Attorney Advisor

Original and One Copy by Hand Delivery to:

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Dated: April 24, 2019
Washington, D.C.