

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

BEFORE THE ADMINISTRATOR

In the Matter of:)
)
AUGUST MACK ENVIRONMENTAL, INC.,) Docket No. CERCLA-HQ-2017-0001
)
Requestor.)

**MOTION FOR EXTENSION OF TIME TO RESPOND TO
RESPONDENT’S MOTION TO DISMISS**

Requestor, August Mack Environmental, Inc. (“AME”), by counsel, respectfully requests an extension of forty-five (45) days up to and including September 30, 2017, within which to file its Response in Opposition to Respondent’s Motion to Dismiss. In Support hereof, AME states as follows:

1. On August 16, 2017, the United States Environmental Protection Agency (“EPA” or “Respondent”) filed a series of documents it considers and identified as the “administrative record” with this Tribunal.

2. Respondent’s designated “administrative record” included the following documents: “[(1)] a letter of referral from James E. Woolford to Judge Susan L. Biro, date August 14, 2017 . . . [; (2)] AME Request for Hearing with Appendices Exhibits A through E^[1]; [(3)] AME letter from Sugarman to Pugh, requesting reimbursement from the Superfund, dated January 12, 2017; [(4)] EPA letter from Hodges to Sugarman, denying claim for reimbursement,

¹ Respondent’s filings incorrectly identify the exhibits and appendices filed with AME’s Request for Hearing and its Response Claim for Payment from the Hazardous Substance Superfund dated January 12, 2017 (the “Claim”). Exhibits A through E were submitted with AME’s Claim. Appendices 1 and 2 were submitted with AME’s Request for Hearing. Appendix 1 to AME’s Request for Hearing contained the Claim and Exhibits A through E to the Claim. Appendix 2 to AME’s Request for Hearing contained the February 8, 2017 letter from EPA Region III denying AME’s Claim.

dated February 8, 2017; [(5)] amended Certificate of Service . . . [; (6)] the EPA Answer to AME Request for hearing; [(7)] and EPA Answer Exhibit A.”

3. Also on August 16, 2017, Respondent filed its Motion to Dismiss and Memorandum in Support of Respondent’s Motion to Dismiss (collectively, the “Motion to Dismiss”) with this Tribunal.

4. Respondent served AME with what it designated as the “administrative record” and its Motion to Dismiss on August 16, 2017.

5. On August 17, 2017, this Tribunal issued the Order of Designation whereby Chief Administrative Law Judge Susan L. Biro was designated to serve as the Presiding Officer in the proceeding.

6. Pursuant to 40 C.F.R. § 305.23(b), AME’s Response to the Motion to Dismiss is due within ten (10) days of service, or August 26, 2017. This timeframe has not yet passed.

7. AME reasonably requires additional time within which to file its Response.

8. Respondent has been unresponsive to AME’s requests for status updates regarding Respondent’s informal review of AME’s Request for Hearing for over five months.

9. AME submitted its Request for Hearing on March 9, 2017.

10. Despite sending four letters to Respondent requesting information during the approximately five months since submitting its Request for Hearing, AME never received any response from the Respondent more than that it was working on a response.

11. Multiple requests for information AME sent to Respondent went unanswered.

12. Respondent never provided AME with any details regarding its review of the Request for Hearing, including but not limited to: the name of the Review Officer assigned to the

Request for Hearing; details on its “informal review” process; whether any progress had been made in that process; or when Respondent anticipated its review would be complete.

13. Further, Respondent filed and served its Motion to Dismiss on the same day as it provided notice to AME that the Review Officer – whose name was never provided to AME despite numerous requests – had referred the matter to this Tribunal.

14. This was also the same day that Respondent filed its Answer to AME’s Request for Hearing.

15. AME cannot reasonably be expected to respond to the Motion to Dismiss within ten (10) days after first receiving the name of the Review Officer, information that the Review Officer had referred the matter to this Tribunal, and Respondent’s Answer.

16. Moreover, Respondent filed its Motion to Dismiss with this Tribunal before a Presiding Officer was designated or affirmatively accepted jurisdiction.

17. Finally, AME recently had a change in its lead counsel on this matter, and such counsel reasonably requires additional time to review the relevant facts and issues.


18. Accordingly, AME respectfully requests an extension of forty-five (45) days, to and including September 30, 2017, within which to file its Response.

19. This Motion for Extension of Time is made in good faith and is not intended to unduly delay this matter.

20. No prior extension of time has been requested by AME relating to the Motion to Dismiss.

WHEREFORE, Requestor August Mack Environmental, Inc. requests an extension of time up to and including September 30, 2017 within which to file its Response in Opposition to Respondent's Motion to Dismiss.²

Respectfully submitted,



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Attorneys for Requestor, August Mack Environmental, Inc.

² A proposed Order granting this Motion is attached hereto as Exhibit 1.

Exhibit 1

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

In the Matter of:)
)
AUGUST MACK ENVIRONMENTAL, INC.,) Docket No. CERCLA-HQ-2017-0001
)
Requestor.)

**ORDER GRANTING REQUESTOR’S MOTION FOR EXTENSION OF TIME TO
RESPOND TO RESPONDENT’S MOTION TO DISMISS**

This matter is before the Tribunal on the Motion for Extension of Time to Respond to Respondent’s Motion to Dismiss. The Tribunal, having considered the same and being duly advised in the premises, now **GRANTS** said Motion for Extension of Time.

IT IS THEREFORE ORDERED AND DECREED that Requestor, August Mack Environmental, Inc., shall have up to and including September 30, 2017 within which to file its Response in Opposition to Respondent’s Motion to Dismiss.

Dated: _____

Susan L. Biro, Chief Administrative Law Judge
Presiding Officer

In the Matter of *August Mack Environmental, Inc.*, Requestor.
Docket No. CERCLA-HQ-2017-0001

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order Granting Requestor's Motion for Extension of Time to Respond to Respondent's Motion to Dismiss**, dated _____, 2017, and issued by the Presiding Officer, Chief Administrative Law Judge Susan L. Biro, was sent this day to the following parties in the manner indicated below.

Name: _____

Title: _____

Original and One Copy by Hand Delivery to:

Mary Angeles
Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Ronald Reagan Building, Room M1200
1300 Pennsylvania Ave., NW
Washington, DC 20004

Copy by Electronic Mail to:

Aaron F. Tuley
Krieg DeVault LLP
Email: atuley@kdlegal.com
For Requestor

Stephen A. Studer
Krieg DeVault LLP
Email: sstuder@kdlegal.com
For Requestor

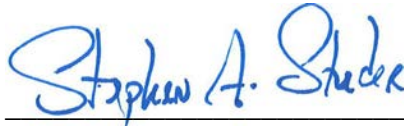
Benjamin M. Cohan, Esq.
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency, Region III
Email: cohan.benjamin@epa.gov
For Respondent

Dated: _____, 2017
Washington, D.C.

CERTIFICATE OF SERVICE

I certify that the foregoing Motion for Extension of Time along with Exhibit 1 thereto were filed with the Headquarters Hearing Clerk this day through the Office of Administrative Law Judges' E-Filing System. Electronic service on the Presiding Officer is thus deemed completed by that e-filing. I further certify that an electronic copy of the foregoing was sent this day by electronic mail (e-mail) to the following individuals:

Benjamin M. Cohan, Esq.
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency, Region III
Email: cohan.benjamin@epa.gov
For Respondent



Stephen A. Studer

Dated: August 18, 2017