



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NEW YORK 10007-1866

BY FACSIMILE AND POUCH MAIL

February 19, 2014

Honorable Christine D. Coughlin
Administrative Law Judge
U. S. Environmental Protection Agency
Mail Code 1900
401 M. Street, SW
Washington, D.C., 20460

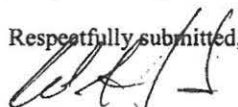
Re: T.C. Dunham Paint Company, Inc.
Docket No. RCRA-02-2013-7505

Dear Judge Gunning:

As per your Honor's Prehearing Order dated December 17, 2013, I am writing to report on the status of the above-captioned matter. The above-noted Order directed that the parties hold a settlement conference on or before February 7, 2014. Please be advised that the parties held such a conference on February 4, 2014, and made progress toward settlement. During this conference the parties discussed the possibility of including a Supplemental Environmental Project (SEP) as part of the settlement. Respondent will expeditiously consider its options regarding the SEP and propose a budget for it.

The parties are mindful of the prehearing exchange schedule established in your Honor's Order. As the parties intend to settle this matter without the added expense of engaging in unnecessary pre-litigation exercises, the parties will endeavor to move without delay toward settlement. As your Honor is aware, SEP project require time to fully develop, review and approve at the regional and, if necessary, headquarters levels. Still, the parties will endeavor to move this matter along and Complainant will keep the Court apprised as to our progress.

Respectfully submitted,


Carl R. Howard
Assistant Regional Counsel

cc: Frederick Eisenbud, Esq., for Respondent

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

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In the Matter of :
 :
T.C. Dunham Paint Company, Inc. : MOTION FOR EXTENSION OF TIME TO
 : FILE PREHEARING EXCHANGE
 :
Respondent. : Docket No. RCRA-02-2013-7105
 :
Proceeding Under Section 3008 :
of the Solid Waste Disposal Act, :
as amended :
-----X

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MOTION FOR EXTENSION OF TIME TO FILE PREHEARING EXCHANGES

Counsel for Complainant and counsel for Respondent have conferred on this Motion and counsel for Respondent has authorized the under-signed to submit this Motion for Extension of Time to File Prehearing Exchanges.

As per your Honor's Prehearing Order dated December 17, 2013, Complainant's Pre-hearing Exchange (PHE) is due on or before March 7, 2014. As noted in Complainant's Status Report, dated February 5, the parties are engaged in settlement discussions. During the settlement conference of February 4, 2014, Complainant showed Respondent a black and white photo-copy of color digital photographs taken during Complainant's inspection of Respondent's facility on May 24, 2012. Respondent requested to see the color photographs and Complainant agreed to provide them to Respondent.

Subsequently, Complainant researched its policy regarding sharing digital camera photos. The only permissible way to transmit inspection photographs is through burning a CD-R and mailing the CD to Respondent. Transmitting evidence photos via internet to a site where it can be shared (an option explored by the parties), and in a format where pictures could be altered, would not conform to EPA's digital camera policy. In conformance with its policy, Complainant has copied approximately 130 photographs onto a DVD-R disc and has sent them via certified mail to Respondent on February 12, 2014. As of this writing, Respondent has not received them (counsel advised that his office is closed due to a major storm in the area and that no one will be at the office to receive certified mail today).


Once Respondent has reviewed the photographs, Respondent's counsel will communicate with the undersigned and see if progress can be made with regard to disagreement between the parties with regard to the penalty proposed in the Complaint. Respondent's counsel did not see the condition of Respondent's facility at or around the time of EPA's inspection and would like to have a better understanding of the conditions on the ground which gave rise to the Complaint before submitting Respondent's position on the proposed penalties.

In addition, as noted in the above-noted Status Report, the parties discussed the possibility of a Supplemental Environmental Project. The parties will continue to discuss whether or not such a SEP is feasible.

Based on the above, and Respondent's wish not to incur unnecessary costs reviewing and possibly preparing pre-hearing exchanges, Complainant respectfully requests the grant of additional time for the parties to file PHEs. The grant of an additional sixty (60) days should be sufficient for the parties to determine whether or not this matter can be settled. Respondent's attorney joins in this request.

Respectfully submitted,

2-19-14
Dated



Carl R. Howard
Assistant Regional Counsel
Environmental Protection Agency - Region 2
290 Broadway
New York, New York 10007-1866
(212) 637-3216

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

CERTIFICATE OF SERVICE

I certify that I have this day caused (or am causing) to be sent the foregoing Motion For Extension of Time to File Prehearing Exchanges to the following addressees listed herein in the manner listed below:

Copy by
Electronic mail to:

Honorable Christine D. Coughlin
Administrative Law Judge
U. S. Environmental Protection Agency

And,

Headquarters Hearing Clerk

Sent via OALFiling@epa.gov.

Copy by Regular Mail
courtesy copy via
Electronic mail to
Attorney for Respondent:

Frederick Eisenbud
Law Office of Frederick Eisenbud
The Environmental Law Firm
6165 Jericho Turnpike
Commack, New York 11725-2803

2-19-17