



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of:)
)
New York State) **Docket No. CWA-02-2016-3403**
Department of Transportation,)
)
Respondent.)

ORDER ON RESPONDENT’S MOTIONS FOR EXTENSION OF TIME

A Superseding Hearing Notice and Order was issued in this case on September 14, 2017, which scheduled the hearing to begin on January 16, 2018, and established deadlines for prehearing submissions. On November 8, 2017, Complainant timely filed a Motion for Partial Accelerated Decision on Liability.

In addition to Complainant’s November 8 Motion, pending before the Tribunal are Respondent’s November 21, 2017 Motion for Extension of Time (“November 21 Motion”) and its November 22, 2017 Motion for Extension of Time (“November 22 Motion”), wherein Respondent seeks the modification of the prehearing submission deadlines set forth in the September 14, 2017 Order, and a postponement of the hearing date. Respondent specifically requests that the prehearing submission deadlines and the date of the hearing be established according to the following schedule:

- 1. December 11, 2017¹ Responses to dispositive motions
- 2. December 21, 2017 Replies to responses to dispositive motions
- 3. December 29, 2017 Motions to supplement prehearing exchanges of information
- 4. January 12, 2107[sic] Joint stipulations
- 5. January 26, 2017[sic] Prehearing briefs
- 6. February 12-16, 2018 Hearing

In its motions, Respondent states that “[t]he causes for the requested extensions are unforeseen workload issues occasioned by a reduction in staff, as well as the complexity of, and large record in, this matter, as well as the holidays and vacation schedules of staff needed to prepare the subject filings.” Nov. 22 Motion; *see* Nov. 21 Motion. Respondent’s counsel represents, in its motions, that Complainant’s attorney consents to the motions and agrees with the proposed dates set for therein.

The rules governing this proceeding, set forth at 40 C.F.R. Part 22, allow the Presiding Officer to “grant an extension of time for filing any document: upon timely motion of a party to the

¹ Respondent’s November 21 Motion requested an extension of time to November 27, 2017, to respond to dispositive motions. In its motion filed the next day, Respondent requested that deadline to be extended to December 11, 2017.

proceeding, for good cause shown, and after consideration of prejudice to other parties.” 40 C.F.R. § 22.7(b). Respondents Motions were timely, demonstrate good cause, and are agreed upon by the parties. Therefore, granting them is appropriate. Accordingly, the November 21, 2017 Motion for Extension of Time and the November 22, 2017 Motion for Extension of Time are hereby **GRANTED, in part**. Consequently, the prehearing submission deadlines and the date of the hearing are modified as set forth below.

Settlement Status Reports. Complainant is directed to file Status Reports as to the status of any settlement negotiations between the parties, *which shall not include any specific terms of settlement*, on or before **December 8, 2017**.

Supplements to Prehearing Exchange. An addition of a proposed witness or exhibit to the prehearing exchange may be filed without an accompanying motion until 60 days before the hearing is scheduled to commence. Thereafter a motion shall be required. Notwithstanding the deadline set forth in 40 C.F.R. § 22.22(a)(1), if a party fails to supplement their prehearing exchange by **December 29, 2017**, the document, exhibit, or testimony shall not be admitted into evidence unless the non-exchanging party had good cause for failing to exchange the required information and provided the required information to all other parties as soon as it had control of the information, or had good cause for not doing so. Motions to supplement the prehearing exchange filed after **January 12, 2018**, will not be considered absent extraordinary circumstances. A document or exhibit that has not been included in prehearing information exchange shall not be admitted into evidence, and any witness whose name and testimony summary has not been included in prehearing information exchange shall not be allowed to testify.

Joint Stipulations. On or before **January 12, 2018**, the parties shall file a Joint Set of Stipulated Facts, Exhibits, and Testimony. The time allotted for the hearing is limited. Therefore, the parties must make a good faith effort to stipulate as much as possible to matters that cannot reasonably be contested so that the hearing can be concise and focused solely on those matters that can only be resolved after an evidentiary hearing.

Prehearing Motions. All non-dispositive prehearing motions, such as motions for subpoenas or motions in limine, must be filed on or before **January 16, 2018**.

Prehearing Briefs. The parties may, if they wish, file prehearing briefs on or before **January 26, 2018**. If filed, Complainant’s brief should specifically state each count of the Complaint and each claim therein that will be tried at the hearing and indicate which counts and claims will not. If filed, Respondent’s brief should identify each of the defenses Respondent intends to pursue at the hearing.

Prehearing Conference. A prehearing conference will be scheduled in advance of the hearing and conducted by a staff attorney.

Hearing. The hearing in this matter shall begin promptly at **9:00 a.m.** on **Tuesday, February 13, 2018**, and shall continue if necessary through Friday, February 16, 2018, at the following location:

**James T. Foley Courthouse
Suite 509
445 Broadway
Albany, NY 12207**

Individuals requiring special accommodations at the hearing, including wheelchair access and translation services, must contact Mary Angeles, Headquarters Hearing Clerk, at (202) 564-6281, no later than 30 days prior to the scheduled hearing, so that appropriate arrangements can be made. A staff attorney for the undersigned, Michael B. Wright, can be contacted should you have any procedural questions or questions about what to expect at the hearing, at (202) 564-3247 or wright.michaelb@epa.gov.

RESPONDENTS ARE ADVISED THAT FAILURE TO APPEAR AT THE HEARING, WITHOUT GOOD CAUSE HAVING BEEN SHOWN, MAY RESULT IN THE ENTRANCE OF DEFAULT JUDGMENT AGAINST THEM.

IF ANY PARTY DOES NOT INTEND TO ATTEND THE HEARING, OR HAS GOOD CAUSE FOR NOT BEING ABLE TO ATTEND THE HEARING AS SCHEDULED, IT SHALL NOTIFY THE UNDERSIGNED AT THE EARLIEST POSSIBLE MOMENT.

SO ORDERED.

Susan L. Biro
Chief Administrative Law Judge

Date: November 22, 2017
Washington, DC

In the Matter of *New York State Department of Transportation*, Respondent.
Docket No. CWA-02-2016-3403

CERTIFICATE OF SERVICE

I hereby certify that true copies the foregoing **Order on Respondent's Motions for Extension of Time**, issued by Chief Administrative Law Judge Susan L. Biro, was sent this day to the following parties in the manner indicated below.



Michael B. Wright
Staff Attorney

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
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Copy by Electronic Mail to:

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For Complainant

Copy by Electronic Mail to:

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For Respondent

Dated: November 22, 2017
Washington, DC