

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of:

August Mack Environmental, Inc.,

Requestor.

Docket No. CERCLA-HG-2017-0001

**REQUESTOR’S MOTION FOR EXTENSION OF TIME TO RESPOND TO EPA’S
MOTION FOR ACCELERATED DECISION**

Pursuant to 40 C.F.R. § 305.23, Requestor August Mack Environmental, Inc. (“AME”) files its motion for an extension of time in which to respond to the Motion for Accelerated Decision filed by the Environmental Protection Agency (“EPA”). In support of its motion, AME states the following:

1. On December 20, 2021, EPA filed its Motion for Accelerated Decision and 36-page Memorandum of Law in Support of Agency’s Motion for Accelerated Decision.
2. On December 23, 2021, AME filed its Motion to Compel Discovery, for Sanctions, and Motion to Extend Case Management Deadlines.
3. Therein, AME said that EPA’s motion for an accelerated decision should be held in abeyance to provide AME sufficient time to complete discovery and established there was good cause to do so given the Fourth Circuit’s Order, the Rules of Practice contained at 40 C.F.R. Pt. 305, the Prehearing Order, and the Constitution. (Mot. Compel, pp. 1-15.)

4. Approximately 45 minutes after serving EPA with its motion, counsel for EPA requested an extension of time to respond to AME's Motion to Compel and said that EPA would file its motion for extension by close of business.

5. Less than 30 minutes after EPA made its request, counsel for AME responded, stating no objection to EPA's response being due on February 7, 2022 (45 days from December 23, 2021).

6. EPA then filed its unopposed Motion for Extension of Time later that same day.

7. On December 27, 2021, counsel for AME sent counsel for EPA an email, notifying them of AME's intent to file this motion on December 28, 2021 and asking if EPA objects to the motion.

8. As of the time of this filing, counsel for EPA has not indicated whether EPA objects to this motion.

9. Under 40 C.F.R. § 305.23(b), AME's response to EPA's Motion for Accelerated Decision is due on December 30, 2021, and this time has not expired.

10. AME requests that EPA's Motion for Accelerated Decision be held in abeyance pending the completion of discovery. Once AME completes discovery, it will file a notice with the Tribunal indicating that discovery has been completed. AME will file its response to EPA's Motion for Accelerated Decision within 30 days of AME filing its notice.

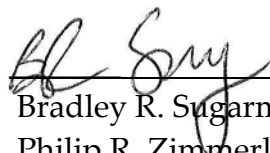
11. There is good cause to grant this motion. In an effort to conserve the parties' and Tribunal's resources, AME incorporates the facts and arguments contained in its Motion to Compel hereto as they establish the good cause for granting the motion. (Mot. Compel, pp. 1-15.) In short, requiring AME to respond to EPA's Motion for Accelerated Decision before discovery takes place would be unduly prejudicial and unfair to AME and conflict with the Constitution, the Fourth Circuit's Order, and the Rules of Practice.

12. The requested extension of time will not prejudice EPA. This matter has not been set for hearing, and EPA has a pending unopposed motion to extend the time to respond to AME's Motion to Compel up to and including February 7, 2022.

13. Moreover, granting this motion is warranted given the Fourth Circuit's Order, the Constitution, and the Rules of Practice.

WHEREFORE, AME requests that it be granted an enlargement of time in which to respond to EPA's Motion for Accelerated Decision, that EPA's motion be held in abeyance pending the completion of discovery, and for all other relief just and proper.

Respectfully submitted,



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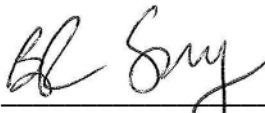
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Certificate of Service

I certify that the foregoing was filed and served on the Chief Administrative Law Judge Biro on December 28, 2021 through the Office of Administrative Law Judge's e-filing system, and that a copy of this document was also served on opposing counsel at the following e-mail addresses: cohan.benjamin@epa.gov and Swenson.erik@epa.gov.



Bradley R. Sugarman