



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of;)
)
DESARROLLOS ALTAMIRA I, INC.,)
and) DOCKET NO. CWA-02-2009-3462
CIDRA EXCAVATION, S.E.,)
)
Respondents.)

ORDER GRANTING MOTION FOR EXTENSION OF TIME

On June 30, 2010, Respondent Cidra Excavation, S.E., (“Respondent Cidra”) filed a Motion for Partial Accelerated Decision or Dismissal (“Motion”) with the Regional Hearing Clerk for Region 2. According to the accompanying certificate of service, that Motion was served on the Regional Hearing Clerk by certified mail, return receipt requested. The certificate of service also indicates that copies of the Motion were “notified” to this Tribunal, Ms. Silvia Carreño-Coll for Region 2, Mr. Roberto Durango for Region 2, and Mr. Hernández Mayoral for Respondent Desarrollos Altamira I, Inc. See Motion at 12-13. Section 22.16(b) of the Rules of Practice (40 C.F.R. § 22.16(b)) provides a 15-day response period for all motions. Section 22.7(c) states that when a document is served by first class mail, 5 days shall be added to the time allowed for the filing of a responsive document. 40 C.F.R. § 22.7(c). Complainant’s response period expired on July 20, 2010 without any additional filings.

On July 27, 2010, in an effort to clarify the meaning of the term “notified” as used in the certificate of service for the Motion, a staff attorney for the undersigned contacted EPA Counsel of Record, Mr. Roberto Durango, to determine whether a full copy of the Motion had been received or whether EPA had simply received a notification of the Motion. Mr. Durango stated in a reply email that he had not received a copy of nor been notified about the Motion. As a courtesy, the staff attorney forwarded a copy of the Motion received by the Regional Hearing Clerk.

On July 28, 2010, Complainant filed a Motion for Extension seeking an 20-day extension of time to file a response to the Motion for Partial Accelerated Decision or Dismissal. Because the response period for the original Motion has already expired, the relief requested in the Motion for Extension is more appropriately requested in the form of a Motion for Leave to File Out of Time. However, Counsel for each Respondent has indicated that neither Respondent opposes the extension. Thus, the Motion for Extension is interpreted to ask for leave to file a response out of time on or before August 17, 2010.

The Motion for Extension states that a copy of the Motion “was not sent directly to [Mr. Roberto Durango],” the attorney of record in this matter, and that “Complainant did not receive a copy of such Motion until July 28, 2010.” Motion for Extension at 2.

The Motion for Extension is hereby, **GRANTED**, as set forth below:

Good cause exists for the granting of the Motion for Extension despite its untimeliness because it is in the interest of the parties and judicial economy for the parties to fully brief any matter of dispute in this case. Moreover, fairness requires that counsel for Complainant be given an opportunity to respond to the Motion, which he claims not to have received until July 28, 2010, a date that was already outside the original response period. The original Motion seeks a dispositive order that could directly affect the outcome of this matter. The hearing date, although set, is not until November 2010. Thus, no prejudice will result from a brief delay. In addition, the Respondents do not object to Motion for Extension. The Complainant shall have until **August 17, 2010**, to file its response to Respondent Cidra’s Motion for Partial Accelerated Decision or Dismissal.




Susan L. Biro
Chief Administrative Law Judge

Dated: July 30, 2010
Washington, D.C.

In the Matter of Desarrollos Altamira Inc. & Cidra Excavation, Inc., S.E., Respondents
Docket No. CWA-02-2009-3462

CERTIFICATE OF SERVICE

I certify that the foregoing **Order Granting Motion For Extension Of Time**, dated July 30, 2010, was sent this day in the following manner to the addressees listed below:


Maria Whiting-Beale
Staff Assistant

Dated: July 30, 2010

Original And One Copy To:

Karen Maples
Regional Hearing Clerk
U.S. EPA
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Copy By Regular Mail To:

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