

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)	
)	
Edward L. Murray, Jr.,)	Docket No. TSCA-05-2007-0013
)	
Respondent.)	

ORDER GRANTING RESPONDENT’S MOTION FOR EXTENSION OF TIME

A Prehearing Order was issued in this matter on April 15, 2008, setting a due date of May 23, 2008 for the Complainant’s prehearing exchange or a Consent Agreement and Final Order (“CAFO”), and a due date of June 13 for Respondent’s prehearing exchange. On May 5, 2008, Complainant filed a status report stating that on April 21, it sent a proposed CAFO to Respondent for review, and that Complainant anticipates that the parties will be in a position to finalize the settlement by the May 23 due date. On May 19, 2008, Respondent filed a “Motion for Enlargement of Time to File Consent Agreement and Final Order” (“Motion), requesting an additional 45 days (until July 7) to finalize the CAFO.

The Motion states that the parties are in the process of finalizing the CAFO, that the Motion is made in good faith and not for purposes of delay, and that counsel for Complainant has no objection to the Motion. The Motion, however, was not served on the undersigned for a ruling, as required by the applicable procedural rule, 40 C.F.R. § 22.5(b), but was only sent to the Regional Hearing Clerk and Complainant’s counsel. Neither party filed a prehearing exchange, and when the undersigned’s staff inquired of the status from the Regional Hearing Clerk, the latter sent a copy of the Motion to the undersigned’s office.

The Consolidated Rules of Practice at 40 C.F.R. § 22.17(a) states that “[a] party may be found in default . . . upon failure to comply with the information exchange requirements of § 22.19(a) or *an order* of the Presiding Officer . . .” (emphasis added). The parties were specifically warned in the Prehearing Order at page 4: **“THE MERE PENDENCY OF SETTLEMENT NEGOTIATIONS OR EVEN THE EXISTENCE OF A SETTLEMENT IN PRINCIPLE DOES NOT CONSTITUTE A BASIS FOR FAILING TO STRICTLY COMPLY WITH THE PREHEARING EXCHANGE REQUIREMENTS. ONLY THE FILING OF A FULLY EXECUTED CONSENT AGREEMENT AND FINAL ORDER, OR AN ORDER OF THE JUDGE, EXCUSES NONCOMPLIANCE WITH FILING DEADLINES.”** When an order granting the Motion was not received before the due date for the prehearing exchange, to avoid being held in default, each party should have either filed its prehearing exchange or inquired whether any ruling was issued on the Motion, which would have brought the Respondent’s

omission in serving the Motion to the attention of all concerned.¹

Nevertheless, the Motion is hereby **GRANTED**. Good cause exists for the granting of the Motion in that it is in the interest of the parties and judicial economy for the parties to settle this matter on mutually agreeable terms rather than litigate the matter to conclusion. In that a hearing in this case has not been scheduled, no prejudice will result from a brief delay.

Accordingly, the parties shall file the fully executed Consent Agreement and Consent Order (CAFO), **or their prehearing exchanges**, on or before **July 7, 2008**.

Susan L. Biro
Chief Administrative Law Judge

Date: June 18, 2008
Washington, D.C.

¹ The parties are hereby advised to familiarize themselves with and adhere to the Consolidated Rules of Practice.