



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

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In the Matter of:

Cindy Draher,

Respondent.

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Docket No. TSCA-05-2012-0001

ORDER ON SHOWING OF GOOD CAUSE AND ORDER RESCHEDULING DEADLINES

By Prehearing Order dated January 11, 2012, Ms. Cindy Draher ("Respondent") was required to file a prehearing exchange of information on or before March 9, 2012. Respondent did not file a prehearing exchange, and an Order to Show Cause was issued on March 19, 2012, directing Respondent to explain why she had good cause for failing to submit a prehearing exchange and why a default should not be entered against her.

On March 22, 2012, Respondent's counsel filed a Response to Order to Show Cause ("Response").¹ In the Response, Respondent's counsel states that Respondent has suffered from serious and debilitating health conditions that have prevented counsel from accessing the information necessary to proceed in a timely fashion. Response at 1. Respondent's counsel states that he attempted to work with Respondent's office staff, and has tried to negotiate a settlement to the extent possible. Response at 1. Respondent's counsel also states that he has been in continuous communication with Complainant's counsel, and that the parties have arrived at a proposed consent decree. Response at 1. Furthermore, Respondent's counsel states that he no longer intends to withdraw from this proceeding due to the substantial advances achieved in the settlement negotiations. Response at 2. At the conclusion of the Response, Respondent's counsel requests that the deadline for filing the prehearing exchange be extended by 90 days to allow the parties time to proceed with a settlement. Response at 3.

On March 26, 2012, Respondent's counsel filed a Supplemental Response to the Respondent's Response to Order to Show Cause ("Supplement"). In the Supplement, Respondent's counsel states that Respondent has agreed to provide her office manager with the authority to work with Respondent's counsel and conclude this matter. Supplement at 1.

¹ The Response was properly filed with the Regional Hearing Clerk for Region 5, but was not provided to the Office of Administrative Law Judges. Parties are required to serve a copy of each filed document on the Presiding Officer. 40 C.F.R. § 22.5(b).

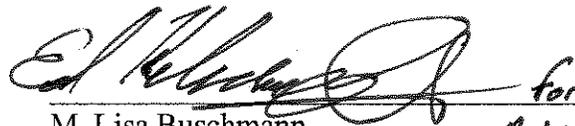
Respondent's counsel requests "that every consideration be given to this Respondent in the process of completing a consent decree to promptly conclude this matter," and asks for a 30-day extension in which to complete a settlement. Supplement at 1-2. Respondent's counsel affirms that arrangements have been made that will allow Respondent's counsel to prepare a prehearing exchange, if necessary.

Complainant's counsel has indicated that Complainant does not oppose an extension.

After considering Respondent's counsel's assertions and the circumstances of this case, Respondent will not be held in default for failing to file a timely prehearing exchange. The best practice would have been for Respondent's counsel to inform the Tribunal of Respondent's difficulties and request an extension of time before the March 9, 2012 deadline had passed. However, given Respondent's poor health, the new involvement of capable authorized individuals on Respondent's behalf, the apparent immanence of a settlement agreement, and Complainant's acquiescence to an extension, there is good cause to excuse Respondent's failure to file. Likewise, there is good cause to extend the applicable filing deadlines pursuant to 40 C.F.R. § 22.7(b). In the Response, Respondent requested a 90-day extension, but in the Supplement requested a 30-day extension. The deadline for filing Respondent's prehearing exchange will be extended to 30 days from the date of this Order, for an effective filing deadline of April 30, 2012. The dates established in the Prehearing Order are therefore amended as set forth below.

Accordingly, **IT IS ORDERED THAT:**

1. Respondent shall file a prehearing exchange **on or before April 30, 2012.**
2. Complainant shall file any rebuttal prehearing exchange **on or before May 14, 2012.**
3. If any party intends to file any dispositive motion regarding liability, such as a motion for accelerated decision or motion to dismiss under 40 C.F.R. § 22.20(a), it shall be filed **on or before June 13, 2012.**
4. The parties shall continue in good faith to attempt to negotiate a settlement of this case.


M. Lisa Buschmann *for* M. Lisa Buschmann
Administrative Law Judge

Dated: March 29, 2012
Washington, DC

**In the Matter of *Cindy Draher*, Respondent.
Docket No. TSCA-05-2012-0001**

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CERTIFICATE OF SERVICE

I certify that copies of the foregoing **Order on Showing of Good Cause and Order Rescheduling Deadlines**, dated March 29, 2012, was sent in the following manner to the addressees listed below.


Knolyn R. Jones
Legal Staff Assistant

Original and One Copy by Regular Mail to:

La Dawn Whitehead
Regional Hearing Clerk
U.S. EPA, Region V, MC-E19J
Office of Enforcement and Compliance Assurance
77 West Jackson Blvd.
Chicago, IL 60604-3590
Fx: 312.692.2405

Copy by Facsimile and Regular Mail to:

Jeffery M. Trevino, Esq.
Associate Regional Counsel
U.S. EPA, Region V, C-14J
77 West Jackson Blvd.
Chicago, IL 60604-3590
Fx: 312.692.2987

Copy by Facsimile and Regular Mail to:

Archie W. Skidmore, Esq.
Skidmore & Associates
PNC Center
One Cascade Plaze, 12th Floor
Akron, OH 44308
Fx: 330.253.9657

**Dated: March 29, 2012
Washington, D.C.**