

RUPERT G. THOMAS  
Senior Assistant Regional Counsel

CHRIS R. DUDDING  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region VII  
901 N. 5<sup>th</sup> Street  
Kansas City, KS 66101  
Tel: (913) 551-7524  
Fax: (913) 551-7925

05 MAR 17 PM 1:16  
ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ENVIRONMENTAL APPEALS BOARD

WASHINGTON, DC

In the Matter of	)	
	)	
FRM Chem, Inc.,	)	Docket No. FIFRA-07-2004-0041
a.k.a. Industrial Specialties	)	
	)	
Respondent	)	

**MOTION FOR EXTENSION OF TIME TO FILE APPEAL BRIEF**

Pursuant to Sections 22.7(b) and 22.16(a) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Rules of Practice”), 40 C.F.R. §§ 22.7(b) and 22.16(a), the United States Environmental Protection Agency (“Agency” or “EPA”), hereby files the instant Motion for Extension of Time to File Appeal Brief and requests a forty-five (45) day extension. On March 17, 2005, EPA will file its Notice of Appeal, seeking review of the Initial Decision for the above-referenced case served to Complainant and filed with the Regional Hearing Clerk on February 18, 2005.

Under the Rules of Practice, the Environmental Appeals Board may grant an extension of time for filing any document upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to the other parties. See 40 C.F.R. §§ 22.7(b); 22.16(b). The Rules of Practice further provide that any motion for an extension of time must be filed sufficiently in advance of the due date to allow other parties a reasonable opportunity to respond, and to allow the Environmental Appeals Board an opportunity to issue an order. See 40 C.F.R. § 22.7(b). Under the Rules of Practice, a document is filed when it is received by the appropriate Clerk, in this case the EPA Region 7 Regional Hearing Clerk. See 40 C.F.R. § 22.5(a).

In the case at bar, the Presiding Officer found Respondent liable, as alleged in the Complaint, but substantially deviated from the applicable Enforcement Response Policy (“ERP”) and the Agency’s proposed penalty of \$16,500, assessing a total penalty of \$1,800 for the three violations. The Agency is seeking review of the Presiding Officer’s penalty assessment and the grounds upon which the Presiding Officer relied in concluding that a total penalty of \$1,800 was appropriate for the violations.

Due to the significance of this issue, EPA Headquarters is participating in this appeal. However, Headquarters enforcement counsel has another ongoing matter pending before the Office of Administrative Law Judges with several significant calendar commitments through the third week of April. These litigation-related commitments have already been rescheduled by the Presiding Officer to accommodate the schedules of counsel for both Complainant and Respondent, and the Presiding Officer is unlikely to grant further schedule changes.

The Agency submits that, due to the nature of the issue appealed in the instant proceeding, i.e., whether the Presiding Officer’s substantial departure from the applicable ERP

was appropriate, and in light of previous litigation-related commitments of EPA counsel, there is good cause to grant EPA's request for a forty-five (45) day extension to file its Appeal Brief in this matter. EPA has contacted Respondent regarding the Agency's intent to appeal the Initial Decision in this matter and to file this Motion. Respondent voiced no objection to this Motion. Granting this Motion for Extension of Time will not result in any prejudice to Respondent.

For the foregoing reasons, EPA submits that it has demonstrated good cause for this extension and requests an additional 45 days from the initial due date of Monday, March 21 in which to submit its Appeal Brief, making its filing due on or before May 5, 2005.

Respectfully submitted,

Chris R. Dudding  
Assistant Regional Counsel  
Complainant-Appellant

By: \_\_\_\_\_



OF COUNSEL:

Gary Jonesi  
Ilana Saltzbart  
Carl Eichenwald  
Office of Enforcement and Compliance Assurance