

Nelcon (Docket No. CWA-08-2012-0025) - Motion and Status Report

Charles Figur

to:

oaljfiling

09/19/2013 04:36 PM

Cc:

Becky Summerville

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From: Charles Figur/R8/USEPA/US

To: oaljfiling

Cc: Becky Summerville <bsummerville@dmlaw.com>

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1 Attachment



Motion and Status Report.September 2013.pdf

To Whom it May Concern –

Attached please find Complainant's motion for extension of time to file prehearing exchange and status report in the above referenced matter. Please note that the status report informs the court that the parties have fully settled and are attempting to have the execution original of the consent agreement filed with the Regional Judicial Officer no later than COB Monday September 23.

Sincerely,

Charles L. Figur

Senior Enforcement Attorney

for Hazardous Waste

US EPA Region 8

1595 Wynkoop Street

Denver, Co 80202

(303) 312 6915

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of:

Nelcon, Inc.,

Respondent.

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Docket No. CWA-08-2012-0025

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**UNOPPOSED MOTION FOR EXTENSION OF TIME**  
**AND STATUS REPORT**

Complainant United States Environmental Protection Agency Region 8, by and through undersigned counsel, respectfully moves for an extension of time for the date by which Complainant must file its prehearing exchange, and related deadlines. This motion is made pursuant to Section 22.7 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. § 22.7. The undersigned has spoken with counsel for Respondent about this Motion. Counsel for Respondent has authorized the undersigned to inform the Presiding Officer that counsel for Respondent has no objection to this Motion.

Complainant first notes that this motion is made after the due date for Complainant's prehearing exchange (September 13, 2013) as set forth in this Court's Order dated August 22, 2013. The Court's August 22, 2013, Order was made on Respondent's motion for an extension of time, which was made on the basis that a settlement in principle had been achieved in this matter but the details of the consent agreement were not yet final. Complainant can now report that as of Monday September 16, 2013, the parties are in full agreement on the consent agreement and are working to obtain signatures so that it may be filed with the Regional Judicial Officer.

Counsel for Respondent has informed the undersigned that Respondent's representative continues to work in remote areas as he has for most of the negotiating period in this matter. For this reason Respondent's Representative does not have any reasonable or adequate access to business equipment. Counsel for Respondent has informed the undersigned, however, Respondent's representative will be able to execute the consent agreement on Friday September 20, 2013, and that the execution original will be sent by overnight mail to the attention of the undersigned, for delivery on Monday September 23, 2013. The undersigned has requested that such overnight delivery service be directed to meet a morning delivery deadline so the undersigned has the opportunity to deliver the fully executed original to the Regional Judicial Officer on the same date.

Although not offered as an excuse for counsel for complainant's failure to either timely file the prehearing exchange, or timely move for yet another extension, the undersigned requests that this Court take the following information into consideration. By the morning of Wednesday September 11, the undersigned became extremely concerned about the safety of his home, community, and State, as the unprecedented rain event began in earnest in Colorado. Notwithstanding this concern, the undersigned attempted to wrap up the last issues with Counsel for Respondent through September 13, and the undersigned remained optimistic that he could inform this Court that the parties were executing the consent agreement on September 16 and 17.

Full agreement, however, was not reached until the afternoon of September 16, in part because of the floods, and in part because of Counsel for Respondent's travel schedule. Further, it was not until yesterday that the undersigned became fully aware that Respondent's signature would not be received until September 23.

The undersigned believes that Complainant will receive the execution original from Respondent on Monday September 23, 2013. The undersigned represents to this Court that upon receipt the undersigned will ensure that it is executed by the responsible Agency officials as expeditiously as possible, and then hand deliver it to the Regional Hearing Clerk's office. The undersigned trusts that it will be filed on September 23, or September 24.

Based on the foregoing, Complainant requests that the due date for Complainant's prehearing exchange be extended to October 4, 2013, with Respondent's prehearing exchange due October 25, 2013, and Complainant's rebuttal prehearing exchange, if any, on November 8, 2013.

Respectfully submitted,

Date: 9/19/13

By: 

Charles L. Figur, Senior Attorney  
Legal Enforcement Program (ENF-L)  
United States Environmental Protection Agency Region 8  
1595 Wynkoop Street  
Denver, Co 80202  
[Figur.Charles@epa.gov](mailto:Figur.Charles@epa.gov)  
(303) 312 6915

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
  
BEFORE THE ADMINISTRATOR

In the Matter of:

Nelcon, Inc.

Respondent

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)  
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Docket No. CWA-08-2012-0025

PROPOSED  
ORDER GRANTING EXTENSION OF TIME  
TO FILE PREHEARING EXCHANGE

Having considered Complainant's Unopposed Motion for Extension of Time to its Prehearing Exchange, and good cause being shown,

IT IS HEREBY ORDERED THAT Complainant shall have until October 4, 2013, to file its prehearing exchange.

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Susan L. Biro  
Chief Administrative Law Judge

Dated: September \_\_\_\_, 2013  
Washington, D.C.

# CERTIFICATE OF SERVICE

I certify that on the date below, I sent by first class mail, a copy of the foregoing *Unopposed Motion for Extension of Time and Status Report* to:

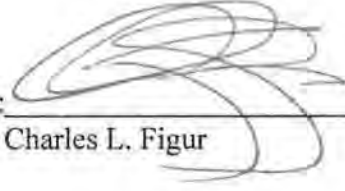
Rebecca L. Summerville  
Datsopoulos, MacDonald & Lind, P.C.  
Central Square Building  
201 W. Main Street, Suite 201  
Missoula, MT 59802

and, pursuant to the Amended Prehearing Order in this matter dated August 2, 2013, the original and one copy of the foregoing were mailed to:

Sybil Anderson  
Headquarters Hearing Clerk  
Office of the Administrative Law Judges  
Mail Code 1900R  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

and an electronic copy of the execution original of the foregoing was emailed to the Office of Administrative Law Judges at ([oadjfilings@epa.gov](mailto:oadjfilings@epa.gov)), with a courtesy copy to counsel for Respondent.

Date: 9/19/13

By:   
Charles L. Figur