

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

JACKSON & SON DISTRIBUTORS, INC.,
dba JACKSON AND SON OIL,

Seaside, Oregon

Respondent.

DOCKET NO. CWA-10-2025-0023

**COMPLAINANT’S MOTION FOR
LEAVE TO FILE OUT OF TIME**

COMES NOW, the United States Environmental Protection Agency Region 10 (“EPA” or “Complainant”), by and through its undersigned counsel to respectfully request that this Tribunal grant an extension of time for Complainant to file a motion for accelerated decision, until April 6, 2026. Counsel for Complainant has conferred with counsel for Respondent, and Respondent does not oppose this motion.

On March 24, 2026, this Tribunal inquired of counsel regarding availability for a hearing. This email came as a surprise as counsel had been working on a motion for accelerated decision and caused counsel to re-review the docket, including the Tribunal’s January 28, 2025, Prehearing Order. Counsel had been under the mistaken impression that the deadline for dispositive motions on liability had not yet passed. Upon re-reviewing the Prehearing Order, counsel immediately ensured that it could file its motion for accelerated decision as soon as possible. Review of the motion for accelerated decision is required by multiple offices at the EPA, and as a result, Complainant respectfully requests leave to file a motion for accelerated decision by April 6, 2026.

When a motion for an extension of time is made prior to the deadline, 40 C.F.R. § 22.7(b) requires consideration of potential prejudice to the other parties and whether the moving party has shown good cause. Where, as here, a motion for an extension of time is made after the

deadline has passed, this Tribunal has looked to Federal Rule of Civil Procedure 6(b)(1), which requires consideration of excusable neglect.¹

Complainant's proposed filing date is two weeks after the deadline for dispositive motions on liability.² Such an extension does not unduly delay these proceedings, and as a result, does not prejudice the Respondent. Rather, the extension is in the interest of justice because Complainant's motion aims to narrow the issues at hearing, furthering judicial efficiency. Indeed, this Tribunal is required to "conduct a fair and impartial proceeding, assure that the facts are fully elicited, adjudicate all issues, and avoid delay" and "[d]o all other acts and take all measures necessary for the maintenance of order and for the efficient, fair and impartial adjudication of issues arising in [these] proceedings."³ As a result of this mandate, this Tribunal has granted a motion for leave to file out of time where the interests of fairness and full development of the issues outweigh the need for a showing of excusable neglect.⁴ Similarly here, a motion for accelerated decision will allow for full development and efficient adjudication of the issues,⁵ which weighs in favor of granting Complainant's request.

Even if a showing of excusable neglect is required, Complainant meets that standard. For excusable neglect, courts consider: (1) the danger of prejudice to the Respondent; (2) the length of the delay and its potential impact on the proceedings; (3) the reason for the delay, including whether it was within the reasonable control of the movant; and (4) whether the movant acted in

¹ *In re Wilson*, 2025 EPA ALJ LEXIS 27, at *4-5 (Jul. 14, 2025).

² Based on this Court's Prehearing Order and its December 17, 2025, Order on Complainant's Motion to Amend and Motion for Stay, the deadline for dispositive motions was March 23, 2026.

³ 40 C.F.R. § 22.4(c).

⁴ *In re Wilson*, 2025 EPA ALJ LEXIS 27, at *4-5.

⁵ *Wynne v. Tufts Univ. Sch. of Med.*, 976 F.2d 791, 794 (1st Cir. 1992) (stating that summary judgment, the equivalent of a motion for accelerated decision here, serves "to pierce the boilerplate of the pleadings and assay the parties' proof in order to determine whether trial is actually required," thereby conserving judicial resources).

good faith.⁶ The equitable weighing of these factors is left to the discretion of the court.⁷ As to the first factor, because the only impact on the Respondent is a slight delay, there is no prejudice to the Respondent.⁸ As to the second factor, case law supports a two week delay as having a minimal impact on the proceedings.⁹ As to the third factor, counsel admittedly made a mistake regarding when dispositive motions on liability were due. Excusable neglect includes late filings caused by inadvertence, mistake, or carelessness,¹⁰ which occurred here. As to the fourth factor, counsel has acted in good faith and attempted to minimize the extension needed once it determined its error. As stated above, counsel became aware of this issue as a result of an email from the Court on March 24, 2026, and communicated with the Court about this procedural issue on March 25, 2026. Counsel has also ensured approval for a review schedule from the relevant offices so that it could include the April 6, 2026, filing date that Complainant now proposes to the Court.

⁶ *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993).

⁷ *Pincay v. Andrews*, 389 F.3d 853, 860 (9th Cir. 2004).

⁸ *Est. of Taschek v. Fid. Life Ass'n*, 740 F. Supp. 3d 1072, 1079-80 (D. Nev. 2024) (finding that, where a filing was a week late due to a calendaring error, the delay did not result in prejudice to the nonmoving party); *Bateman v. U.S. Postal Serv.*, 231 F.3d 1220, 1225 (9th Cir. 2000) (finding that the loss of a quick victory and the mere possibility of prejudice from delay is insufficient to find prejudice). While *Bateman* evaluates excusable neglect in the context of Federal Rule of Civil Procedure 60(b)(1), the standard is the same as for Federal Rule of Civil Procedure 6(b)(1). See, e.g., *Brady v. Hanger Orthopedic Grp., Inc.*, 348 Fed. Appx. 325 (9th Cir. 2009). Cf. *Torres v. Autozone, Inc.*, 2025 U.S. Dist. LEXIS 271442, at *11 (Dec. 31, 2025) (finding prejudice where granting the relief sought would result in the non-movant having to file a third motion to dismiss causing an unnecessary prolonging of litigation that the movant had failed to prosecute in the first place); *Malek v. Amato*, 2025 U.S. Dist. LEXIS 225071, at *11 (Sept. 30, 2025) (finding prejudice to the nonmoving party where movant had failed to prosecute, had stopped communicating with opposing counsel, and failed to attend a hearing).

⁹ See *Bateman*, 231 F.3d at 1225 (holding that a one-month delay in filing a motion for relief, after plaintiff's request to rescind summary judgement was denied, was a minimal length of delay and had minimal impact on the proceedings); *Pincay*, 389 F.3d at 855 (finding that a delay in filing a motion for relief, where the delay was under the thirty-day grace period for appeal, was small). See also *Est. of Taschek v. Fid. Life Ass'n*, 740 F. Supp. 3d at 1079-80.

¹⁰ *Pioneer*, 507 U.S. at 388; *Bateman*, 231 F.3d at 1225; *Pincay*, 389 F.3d at 860; *Est. of Taschek v. Fid. Life Ass'n*, 740 F. Supp. 3d at 1079-80.

In sum, Complainant respectfully requests that this Court grant its motion for leave to file a motion for accelerated decision out of time, by April 6, 2026.

Respectfully submitted,

U.S. ENVIRONMENTAL PROTECTION
AGENCY, REGION 10:

DATE

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In the Matter of *Jackson & Son Distributors, Inc., d/b/a Jackson and Son Oil*, Respondent.
Docket No. CWA-10-2025-0023

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Complainant's Motion for Leave to File Out of Time**, dated March 27, 2026, was sent this day to the following parties in the manner indicated below.

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https://yosemite.epa.gov/OA/EAB/EAB-ALJ_Upload.nsf

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Dated: March 27, 2026