

RECEIVED
U.S. E.P.A.

2005 MAR 17 AM 9:48



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII ENVIRONMENTAL APPEALS BOARD
OFFICE OF REGIONAL COUNSEL
901 N. FIFTH STREET
KANSAS CITY, KANSAS 66101

TO: EAB Clerk (202) 233-0121
DATE: March 16, 2005
RE: FRM Chem, Inc., Docket No. FIFRA-07-2004-0041
MOTION FOR EXTENSION OF TIME TO FILE APPEAL BRIEF

MESSAGE:

Sent under this cover is a Motion for Extension of Time in which to File an Appeal Brief in the above-referenced matter. The original will be sent via Federal Express along with the Notice of Appeal on March 17, 2005.

FROM: Chris R. Dudding, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency
Region VII
901 N. Fifth Street
Kansas City, Kansas 66101

Sender's Direct Dial Telephone Number: (913) 551-7524
Sender's FAX Number: (913) 551-9524

pages including cover sheet

CONFIDENTIALITY NOTE

The information contained in this facsimile may be confidential or legally privileged. If you are not the individual named above as the intended recipient of this facsimile, please notify the sender immediately.

4

RECEIVED
U.S. E.P.A.

2005 MAR 17 AM 9:40

RUPERT G. THOMAS
Senior Assistant Regional Counsel

CIVIL APPEALS BOARD

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

**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

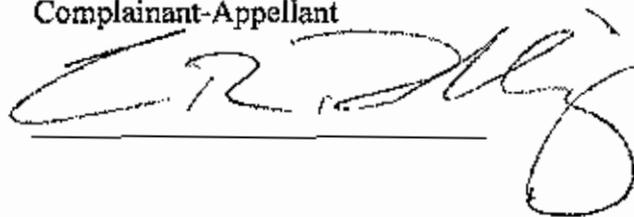
was appropriate, and in light of previous litigation-related commitments of EPA counsel, there is good cause to grant EPA's request for a forty-five (45) day extension to file its Appeal Brief in this matter. EPA has contacted Respondent regarding the Agency's intent to appeal the Initial Decision in 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 Saltzbar
Carl Eichenwald
Office of Enforcement and Compliance Assurance

RECEIVED
U.S. E.P.A.

2005 MAR 17 AM 9:48



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
OFFICE OF REGIONAL COUNSEL
901 N. FIFTH STREET
KANSAS CITY, KANSAS 66101

TO: EAB Clerk (202) 233-0121
DATE: March 16, 2005
RE: FRM Chem, Inc., Docket No. FIFRA-07-2004-0041
MOTION FOR EXTENSION OF TIME TO FILE APPEAL BRIEF

MESSAGE:

Sent under this cover is a Motion for Extension of Time in which to File an Appeal Brief in the above-referenced matter. The original will be sent via Federal Express along with the Notice of Appeal on March 17, 2005.

Certificate of Service

FROM: Chris R. Dudding, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency
Region VII
901 N. Fifth Street
Kansas City, Kansas 66101

Sender's Direct Dial Telephone Number: (913) 551-7524
Sender's FAX Number: (913) 551-9524

2 pages including cover sheet

CONFIDENTIALITY NOTE

The information contained in this facsimile may be confidential or legally privileged. If you are not the individual named above as the intended recipient of this facsimile, please notify the sender immediately.

Re: FRM Chem, Inc., a.k.a. Industrial Specialties
Docket No. FIFRA-07-2004-0041

CERTIFICATE OF SERVICE

I hereby certify that today I sent via facsimile Complainant's Motion for Extension of Time to File Appeal Brief to the U.S. EPA Environmental Appeals Board and to Respondent, and sent by Federal Express mail the originals of the Complainant's Notice of Appeal and of the Motion for Extension of Time to File Appeal Brief to the U.S. EPA Environmental Appeals Board, and mailed copies of these documents via First-Class Mail to the following.

Honorable William B. Moran
Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Ave, NW
Washington, D.C. 20460

Raymond E. Kastendieck
President
FRM Chem, Inc.
P.O. Box 207
50 Hilline Dr.
Washington, MO 63090

Dated: March 16, 2005

