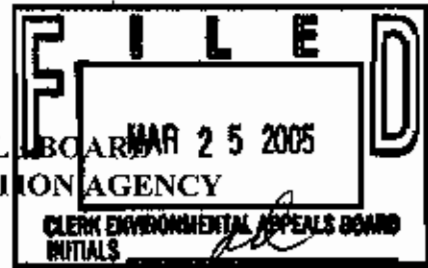


BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.



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In re: )  
 )  
FRM Chem, Inc., )  
a/k/a Industrial Specialties )  
 )  
Docket No. FIFRA-07-2004-0041 )  
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FIFRA Appcal No. 05-01

**ORDER GRANTING MOTION FOR EXTENSION OF TIME**

United States Environmental Protection Agency, Region 7 (the "Region") timely filed a Notice of Appeal on March 18, 2005, from the Initial Decision issued on February 16, 2005 (the "Initial Decision"), in the above-referenced matter. The Initial Decision was issued by Administrative Law Judge William B. Moran (the "ALJ") assessing a civil administrative penalty against FRM Chem, Inc. ("FRM"). The Notice of Appeal states that the Region "seeks review of the [ALJ's] penalty assessment and the grounds upon which the [ALJ] relied in concluding that a total penalty of \$1,800 was appropriate for the violations."

The Region also filed a motion requesting that it be granted a 45-day extension of time to file its appellate brief.<sup>1</sup> In the motion for extension of time, the Region states that, due to the issues being appealed, EPA's Headquarters enforcement staff will be participating in the

<sup>1</sup> See Motion for Extension of Time to File Appcal Brief (Mar. 16, 2005). Subsequently, the Region filed a Supplemental Motion for Extension of Time to File Appeal Brief (Mar. 17, 2005), in which the Region corrected a mistaken assertion in the first motion that FRM did not intend to object to the request for an extension of time.

appellate litigation, and that an attorney involved in preparing the appellate brief has other litigation-related commitments conflicting with work on the brief in the instant matter. The Region argues that this constitutes "good cause" under 40 C.F.R. §§ 22.7(b) and 22.16(b) for it to be granted the requested 45-day extension of time. FRM filed a response to the Region's motion stating that the long time between the initial inspection and conclusion of this matter "represents an undue hardship on [FRM's] ability to conduct business."


Upon consideration, we grant the Region's motion for a 45-day extension of time to file its appellate brief in this matter. The Consolidated Rules of Practice, 40 C.F.R. part 22 ("CROP"), allow parties to appeal from a presiding officer's initial decision by filing with the Board a notice of appeal and an appellate brief. 40 C.F.R. § 22.30(a). The notice of appeal "shall summarize the order or ruling, or part thereof, appealed from." *Id.* The preamble to the 1999 amendments to the CROP endorsed our prior practice of granting extensions of time in appropriate cases for the filing of appellate briefs. 64 Fed. Reg. 40,138, 40,166 (July 23, 1999). In the past, we have recognized that conflicting litigation deadlines and the need to coordinate between the Region and the Agency's Headquarters may constitute grounds for granting an extension of time. Conversely, FRM's allegation that an extension of time interferes with its ability to conduct business is not sufficiently specific to warrant consideration. FRM did not provide any explanation of how an extension of time would impact its business. In addition, we note that FRM did not file a certificate of service, as is required by 40 C.F.R. § 22.5(a)(3), showing that it had sent a copy of its response to the Region. Accordingly, we conclude that good cause exists for the Region's request for an extension of time.

For the foregoing reasons, the Region shall file its appellate brief in this matter on or before Thursday, May 5, 2005. In addition, FRM is hereby directed to comply with the service and filing requirements of 40 C.F.R. § 22.5, including the requirements that FRM provide to the Region a copy of any document FRM files in this matter and that FRM file a certificate of service along with each document stating that FRM has served the document on the Region and the manner of service (e.g., first class U.S. mail, or over-night delivery, or hand delivery, among others).

So ordered.

Dated: *3/25/05*

ENVIRONMENTAL APPEALS BOARD

By: 

Edward E. Reich  
Environmental Appeals Judge

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing Order Granting Motion for Extension of Time in the matter of FRM Chem, Inc., FIFRA Appeal No. 05-1, were sent to the following persons in the manner indicated:

By First Class, U.S. Mail:

Raymond E. Kastendieck  
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By Pouch Mail:

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Office of Regional Counsel  
U.S. EPA, Region 7  
901 N. Fifth Street  
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Dated: MAR 25 2005

  
Annette Duncan  
Secretary