

CWA-08-2012-0025: Settlement Status Report and Unopposed Motion For Extension of Time

Charles Figur

to:

oaljfiling

06/17/2013 05:59 PM

Cc:

Becky Summerville

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From: Charles Figur/R8/USEPA/US

To: oaljfiling

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1 Attachment



Status Report and Motion for extension.prehearing exchange.pdf

To Whom it May Concern -

Attached please find electronic copy of Complainant's *Settlement Status Report, and Unopposed Motion for Extension of Time to File a Consent Agreement and Final Order or Prehearing Exchanges* in the above referenced matter. This copy is being sent at the suggestion of Chief Administrative Law Judge Biro, Presiding Officer in this matter, made in the Prehearing Order dated May 17, 2013.

Sincerely,

Charles L. Figur  
Senior Enforcement Attorney  
EPA Region 8 (Mailcode ENF-L)  
1595 Wynkoop Street  
Denver, Co 80202  
(303) 312 6915

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of:

Nelcon, Inc.

Respondent

)  
)  
)  
)  
)

Docket No. CWA-08-2012-0025

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SETTLEMENT STATUS REPORT

AND

UNOPPOSED MOTION FOR EXTENSION OF TIME  
TO FILE A CONSENT AGREEMENT AND FINAL ORDER  
OR PREHEARING EXCHANGES

Settlement Status Report

Complainant United States Environmental Protection Agency Region 8 (Complainant), by and through undersigned counsel, respectfully reports that the parties have reached a settlement in principle. The parties' agreement resolves all allegations made in the complaint, as well as additional matters discovered by Complainant after the complaint was filed.

Unopposed Motion for Extension of Time to  
File a Consent Agreement and Final Order  
or Prehearing Exchanges

The Presiding Officer's Prehearing Order in this matter dated May 17, 2013, directs the parties to file a fully executed consent agreement and final order no later than June 28, 2013, or submit prehearing exchanges according to the following schedule: June 28, 2013 - Complainant's initial prehearing exchange; July 19, 2013 - Respondent's prehearing exchange; August 2, 2013 -

Complainant's rebuttal prehearing exchange. Complainant United States Environmental Protection Agency Region 8, by and through undersigned counsel, respectfully moves for an extension of these deadlines (Motion).

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.

Although the parties have reached a settlement in principle, the parties have not had the opportunity to negotiate and execute a consent agreement. Further, because the parties intend to settle both the matters alleged in the complaint and other related matters discovered by Complainant after the complaint was filed, Complainant must first move this court to allow the amendment of the complaint to incorporate the additional matters. Counsel for Respondent has authorized the undersigned to inform the Presiding Officer that counsel for Respondent presently does not expect to object to Complainant's motion to amend the complaint.

If the Presiding Officer grants the motion to amend the complaint the parties will execute a consent agreement as promptly as possible thereafter and file the executed consent agreement with the Regional Judicial Officer for inclusion in a consent order, if appropriate, pursuant to 40 C.F.R. § 22.18(b)(2).

Complainant, therefore, requests an extension of time to file either the fully executed consent agreement and final order, or its initial prehearing exchange from June 28, 2013, to July 26, 2013; and if necessary, an extension of time for Respondent to file its prehearing exchange to August 16, 2013, and Complainant to file its rebuttal prehearing exchange to August 30, 2013.

Respectfully submitted,

United States Environmental Protection Agency Region 8

Date: 6/17/13

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.	)	Docket No. CWA-08-2012-0025
	)	
Respondent	)	

**PROPOSED**  
**ORDER GRANTING EXTENSION OF TIME**

Having considered Complainant's Unopposed Motion for Extension of Time to File a Fully Executed Consent Agreement and Final Order or Prehearing Exchanges, and good cause being shown,

IT IS HEREBY ORDERED THAT the parties shall have until July 26, 2013, to file a fully executed consent agreement and final order, or Complainant shall file its initial prehearing exchange on July 26, 2013, Respondent shall file its prehearing exchange on August 16, 2013, and Complainant shall file its rebuttal prehearing exchange on August 30, 2013.

\_\_\_\_\_  
Susan L. Biro  
Chief Administrative Law Judge

Dated: June \_\_\_\_, 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 *Settlement Status Report and Unopposed Motion for Extension of Time to File a Consent Agreement and Final Order or Prehearing Exchanges* 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 Order of Designation in this matter dated May 7, 2013, the original and one copy of the foregoing *Settlement Status Report and Unopposed Motion for Extension of Time to File a Consent Agreement and Final Order or Prehearing Exchanges* 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, pursuant to the Prehearing Order of the Presiding Officer in this matter dated May 17, 2013, an electronic copy of the execution original of the foregoing *Settlement Status Report and Unopposed Motion for Extension of Time to File a Consent Agreement and Final Order or Prehearing Exchanges* was emailed to the Office of Administrative Law Judges at ([oyaljfilings@epa.gov](mailto:oyaljfilings@epa.gov)), with a courtesy copy to counsel for Respondent.

Date: 6/17/13

By:   
\_\_\_\_\_  
Charles L. Figur