



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY BEFORE THE ADMINISTRATOR

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In the Matter of:)
Everyday Group, LLC,) Docket No. FIFRA-02-2012-5201
Respondent.)

ORDER ON MOTION FOR EXTENSION OF TIME

The United States Environmental Protection Agency ("EPA" or "Agency"), Region 2 ("Complainant"), initiated this proceeding on October 11, 2012, by filing a Complaint and Notice of Opportunity for Hearing against Everyday Group, LLC ("Respondent"). The Complaint alleges in three counts that Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), and 40 C.F.R. § 152.15 by engaging in the distribution or sale of unregistered pesticides. Through counsel, Respondent filed an Answer on November 9, 2012.

By Prehearing Order dated January 4, 2013, the undersigned established deadlines for a number of prehearing procedures, including the filing of a status report regarding the status of settlement negotiations between the parties and a prehearing exchange of information. On January 30, 2013, Complainant timely filed a Status Report and Motion for Extension of Time ("Motion"). Under the heading "Status Report," Complainant relates that the parties met for a settlement conference on December 4, 2012, at which "Respondent indicated that it would provide EPA with information in support of the positions it was asserting." Motion at 1. Complainant further relates that Respondent's counsel informed counsel for Complainant on January 29, 2013, that they "recently conferred with their client and anticipates [sic] shortly inform [sic] EPA with a concrete schedule regarding their providing such materials." Id.

Under the heading "Motion for Extension of Time for the Filing of Prehearing Exchanges," Complainant requests a two-month extension of the deadlines established by the Prehearing Order for the parties' prehearing exchange. Complainant offers a multitude of arguments in support of this request. First, Complainant asserts that settlement negotiations between the parties are ongoing and that "each [party] believes that this case should most appropriately be resolved through settlement and not through the formal administrative adjudicatory process."¹ Motion at 2. Accordingly, Complainant asserts, the parties wish "to

¹ The undersigned notes, however, that Complainant informed the undersigned's legal staff assistant on December 3, 2012, that it had decided not to participate in the Alternative Dispute Resolution process offered by this office.

engage in bona fide settlement discussion without having to concern themselves with meeting litigation deadlines that in all likelihood will be, based on the substance and tenor of the discussion held at the settlement conference, unnecessary.” *Id.* Complainant further contends that “this case remains in an embryonic state,” in that no substantive motions have been filed and a hearing date has not yet been set. *Id.* Next, Complainant points out that the Motion is the first request for an extension of time in this proceeding. *Id.* Complainant also represents that Respondent does not oppose the Motion. *Id.* at 1-2. Therefore, Complainant contends, an extension of the prehearing deadlines would not prejudice Respondent. *Id.* at 2. Finally, Complainant argues that this Tribunal would not be prejudiced by an extension “given the inchoate state of this proceeding.” *Id.*

This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.1–22.45 (“Rules of Practice”). Section 22.7(b) of the Rules of Practice authorizes the undersigned to grant extensions 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 other parties.” 40 C.F.R. § 22.7(b). In turn, Section 22.4(c) of the Rules of Practice requires the undersigned to “avoid delay” and authorizes the undersigned to “[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 proceedings.” 40 C.F.R. § 22.4(c).

Upon consideration, the undersigned finds that Complainant has shown good cause for an extension of the filing deadlines established by the Prehearing Order. As noted in the Prehearing Order, Agency policy strongly supports settlement of a proceeding without the necessity of a formal hearing. 40 C.F.R. § 22.18(b)(1). Undoubtedly, the interests of the parties and judicial economy are best served by the parties resolving this matter informally and expeditiously, and the undersigned recognizes that time and resources must be expended to prepare a prehearing exchange. Moreover, Respondent does not oppose the Motion.

On the other hand, the undersigned finds that Complainant has failed to identify any circumstances necessitating the lengthy extension requested in the Motion, which would set the filing deadline for Complainant’s Initial Prehearing Exchange at April 22, 2013, nearly three months from the date of this Order. Approximately two months have already elapsed since the parties’ initial settlement conference on December 4, 2012. While Complainant contends that “time was inevitably lost because of the intervening end-of-year/new year holidays,” Motion at 2 n.1, such a consideration does not sufficiently explain why Respondent has yet to provide Complainant with even “a concrete schedule” of the submission of materials supporting its position in this proceeding, let alone the materials themselves. When an extension of a filing deadline is granted for purposes of allowing the parties to pursue settlement negotiations, the parties must make diligent efforts to do so.

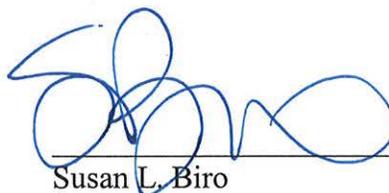
Based upon the foregoing discussion, the Motion is hereby **GRANTED, IN PART**. A 30-day extension of the filing deadlines for the parties’ prehearing exchange is deemed sufficient.

Accordingly, the filing deadlines for the parties' prehearing exchange are hereby extended, as follows:

March 25, 2013	Complainant's Initial Prehearing Exchange
April 15, 2013	Respondent's Prehearing Exchange
April 29, 2013	Complainant's Rebuttal Prehearing Exchange

Further, Complainant shall file another status report regarding the status of the parties' settlement negotiations on or before **March 1, 2013**.

SO ORDERED.



Susan L. Biro
Chief Administrative Law Judge

Dated: January 31, 2013
Washington, D.C.

In the Matter of Everyday Group, LLC, Respondent
Docket No. FIFRA-02-2012-5201

CERTIFICATE OF SERVICE

I certify that the foregoing **Order On Motion For Extension Of Time**, dated January 31, 2013 was sent this day in the following manner to the addressees listed below.



Maria Whiting-Beale
Staff Assistant

Dated: January 31, 2013

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