

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
BEFORE THE ADMINISTRATOR

FILED
2012 MAY 30 AM 9: 29
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:

NUSTAR REFINING LLC

BEXAR COUNTY, TEXAS

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EPA DOCKET NO.
CAA-06-2012-3444

**COMPLAINANT'S UNOPPOSED MOTION FOR EXTENSION
OF TIME TO FILE PRE-HEARING EXCHANGES**

1. Pursuant to Rule 22.7(b), 40 CFR § 22.7(b), Complainant, U.S. EPA—Region 6 (EPA), respectfully requests a thirty (30) day extension of time to file pre-hearing exchanges and as good cause therefore states as follows:

2. EPA commenced this proceeding for the assessment of civil penalties pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), by filing a Complaint and Notice of Opportunity for a Hearing pursuant to 40 CFR §§ 22.13, and 22.34(b). Respondent filed an Answer on February 28, 2012.

3. On April 30, 2012, a Prehearing Order was issued establishing deadlines for filing prehearing exchanges.

4. The Parties have worked diligently to settle this matter and desire to complete the settlement without expending additional resources to conduct pre-hearing exchanges, dispositive motions or a formal administrative hearing. The Parties have conferred through counsel on numerous occasions and through a settlement telephone conference on March 22, 2012. As a result of these efforts, the Parties reached an agreement in principal on settlement and have

prepared and exchanged drafts of a CAFO, including a draft as recently as May 18, 2012. The draft CAFO is in the process of review and approval by EPA management, which is necessary before the CAFO can be issued for execution and completion of the remaining steps to obtain a final order ratifying the CAFO.

5. Although the Parties have reached an agreement in principal and have progressed substantially to complete the CAFO document, additional time is needed for EPA to complete its review of the CAFO terms, to issue the CAFO for execution, and to file the executed CAFO with the regional judicial officer to secure an order ratifying the CAFO and concluding this proceeding pursuant to 40 CFR § 22.18(b)(2)&(3).

6. EPA therefore requests an extension of the deadlines in Section I.D. of the Prehearing Order for filing of the initial and rebuttal prehearing exchanges as follows:

- July 9, 2012 Complainant's Initial Prehearing Exchange
- August 6, 2012 Respondent's Prehearing Exchange, including any direct and/or rebuttal evidence
- August 20, 2012 Complainant's Rebuttal Prehearing Exchange

7. Pursuant to Rule 22.7(b) of the Consolidated Rules of Practice, 40 CFR § 22.7(b), the Presiding Officer 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 other parties; or upon its own initiative. Any motion for an extension of time shall be filed sufficiently in advance of the due date so as to allow other parties reasonable opportunity to respond and to allow the Presiding Officer or Environmental Appeals Board reasonable opportunity to issue an order.

8. This motion is timely under Section VI of the Prehearing Order establishing procedures for motions and extensions of time.

9. There is good cause for granting the extension. The CAFO will establish the terms of settlement of this proceeding, so the review and approval of the CAFO by EPA management is prudent and necessary before it is issued for execution and filed with the regional judicial officer to obtain a final order. EPA reasonably expects that, although a settlement in principle has been reached, EPA will not be able to file the executed CAFO and obtain a final order from the regional judicial officer by June 8, 2012. Unless the deadlines in the Prehearing Schedule are extended as requested in this motion, EPA would be required to prepare and file its Initial Prehearing Exchange rather than focus on completing the remaining settlement steps. Considering that the Parties, through substantial efforts, have agreed to a settlement in principle and are in the process of finalizing a CAFO to resolve this proceeding without the need for prehearing exchanges, the extension requested by this motion is warranted to avoid expenditure of substantial time and resources to prepare and file prehearing exchanges in a proceeding that the Parties reasonably expect will be settled.

10. Granting the requested extension of time will not prejudice Respondent. The proposed extension would not prejudice Respondent because it would extend all of the prehearing exchange deadlines (including the deadline for Respondent's prehearing exchange) by thirty (30) days. Also, prior to filing this motion, the undersigned conferred with Respondent as to the extension requested by this motion, and Respondent's indicated that it does not oppose the motion.

11. Therefore, for good cause shown, Complainant requests issuance of an order extending the prehearing exchange deadlines as described herein.

Respectfully submitted,



Jonathan Bull
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[May 29, 2012]

CERTIFICATE OF SERVICE

I hereby certify that on the 30 day of May, 2012, a true and correct copy of the foregoing **Unopposed Motion for Extension of Time** was delivered in the following matter to the addressees listed below.

Original by Hand Delivery to:

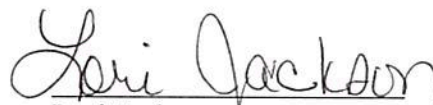
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