

January 28, 2008

VIA FACSIMILE (312-886-9697) &
FedEx OVERNIGHT

Regional Hearing Clerk (E-13J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Re: *Behnke Lubricants, Inc.*
Docket No. FIFRA-05-2007-0025

Dear Sir or Madam:

Enclosed for filing is an original and one copy of Respondent's Motion Requesting an Extension of Time to File Opposition to Complainant's Motion for Accelerated Decision.

By copy of this letter, Judge Barbara A. Gunning and Attorney Nidhi O'Meara are being served with copies of the enclosed.

Very truly yours,



Linda S. Isnard

LSI/meb
Enclosures

cc: Judge Barbara A. Gunning (via facsimile and FedEx Overnight)(202-565-0044)
Nidhi O'Meara, w/encl. (via facsimile and FedEx Overnight)
Eric Peter, w/encl. (via facsimile)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

BEHNKE LUBRICANTS INC.
MENOMONEE FALLS, WISCONSIN

Docket No. FIFRA-05-2007-0025

Respondent.

**RESPONDENT'S MOTION REQUESTING AN EXTENSION OF TIME TO FILE
OPPOSITION TO COMPLAINANT'S MOTION FOR ACCELERATED DECISION**

By Order dated January 14, 2008, the hearing in this matter is scheduled to commence on Monday, March 31, 2008. Two days after entry of the Order, on January 16, 2008, Complainant filed a 58-page Motion to Strike Respondent's Affirmative Defenses, and Complainant's Motion to Compel Discovery ("Motion to Strike"). A copy of this motion was sent to Respondent's counsel via commercial carrier on that same date and received on January 18, 2008.

In accordance with the January 14 Order and 20 CFR §§22.7(c) and 22.16, Respondent's response to the Motion to Strike must be filed with the Regional Hearing Clerk on or before Tuesday, February 5, 2008. Respondent anticipates that it will have sufficient time to prepare and file a timely response to this motion.

Less than one week later, however, on January 22, 2008, Complainant filed a 62-page Motion for Accelerated Decision on Liability and on Defenses and Memorandum in Support of the Motion ("Motion for Accelerated Decision"). Three Declarations totaling an additional 27 pages accompanied the motion. Copies of the motion and declarations were sent to Respondent's counsel via commercial carrier on that same date and received on January 23, 2008. In accordance with the January 14 Order and 20 CFR §§22.7(c) and 22.16, Respondent's response to the Motion for Accelerated Decision must be filed on or before February 6, 2008.

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For the reasons stated herein, Respondent hereby respectfully requests that a short extension of time not to exceed fifteen (15) days be granted to file a response to the Motion for Accelerated Decision. Based on prior conversations with Complainant's counsel, it is our understanding that Complainant generally does not take a position with regard to requests for extension of time. Therefore, Respondent makes the request directly to this Tribunal rather than seeking a stipulation with Complainant's counsel.

Motions for accelerated decision and dismissal under 40 CFR §22.20(a) are akin to motions for summary judgment under Fed. R. Civ. P. 56. *In the Matter of Coast Wood Preserving, Inc.*, Docket No. EPCRA-9-2000-001 (June 28, 2001). In short, in its Motion for Accelerated Decision Complainant seeks judgment as a matter of law as to liability for all eleven counts alleged in the Complaint.

Given the importance of the motion and serious relief sought, the length (62-pages) and breadth of the motion, and the need for Respondent to counter the extensive factual and legal contentions therein (which, at a minimum, will require the preparation of affidavit and documentary evidence to counter Complainant's claims), Respondent seeks additional time to adequately prepare a response to the motion. This is particularly true since at or about the same time, Complainant filed a Motion to Strike and Respondent must prepare and file a response to this 58-page motion.

Rule 22.77(b) provides that an extension of time for filing any document may be granted: upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties...

This Tribunal must "assure that the facts are fully elicited, adjudicate all issues and avoid delay," and is empowered to "take all measures necessary for the ...efficient, fair and impartial

adjudication of issues.” *In the Matter of Martex Farms, Inc.*, Docket No. FIFRA-02-2005-5301(August 16, 2005)(citing 40 CFR §§22.4(c) and (c)(10)).

This matter has been pending since May of 2007. Nevertheless, shortly after this Tribunal filed its Order setting the date for hearing in this matter, Complainant filed two extensive motions totaling more than 120-pages seeking extreme relief against the Respondent. Absent an extension, responses to these motions will be due at or about the same time.

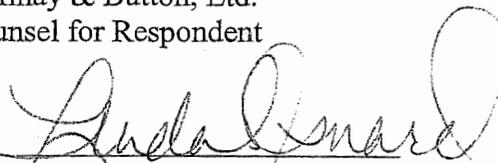
The January 14 Order and Consolidated Rules of Practice only provide a short period of time within which to file a response to motions. In the federal context, thirty (30) days are traditionally allowed for filing responses to motions for summary judgment and the length of the memoranda in support of same are limited. *See, e.g.*, Civil L. R. 7.1(c) for the Eastern District Court of Wisconsin. In the administrative context, fifteen days are allowed and there is no limit on the length of the motions and supporting papers and only fifteen days are allowed for the preparation of a response.

Respondent does not believe Complainant will be prejudiced by a short extension of time for the filing of a response to its Motion for Accelerated Decision and, in the alternative, Respondent will be seriously prejudiced by having to prepare responses to these lengthy motions in such a short period of time. Under the circumstances presented here and serious nature of the effects of Complainant’s motions should it prevail, Respondent maintains “good cause” has been shown for a short extension of time to file a response to Complainant’s Motion for Accelerated Decision. For these reasons, Respondent respectfully requests that an extension of time not to exceed fifteen (15) days be granted to file a response to the Motion for Accelerated Decision.

Dated: January 28, 2008.

McInay & Button, Ltd.
Counsel for Respondent

By:

A handwritten signature in cursive script, appearing to read "Linda S. Isnard", written over a horizontal line.

Bruce A. McInay

Linda S. Isnard

P.O. Address:
1150 Washington Street
Grafton, WI 53024
(262) 376-1287

CERTIFICATE OF SERVICE

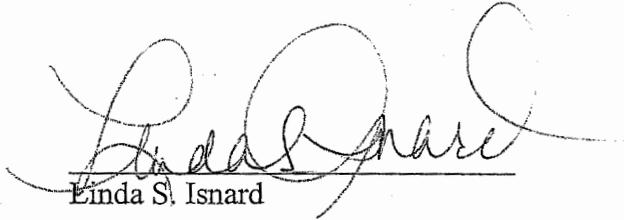
The undersigned hereby certifies that she has caused a true and correct copy of foregoing
RESPONDENT'S MOTION REQUESTING AN EXTENSION OF TIME TO FILE
OPPOSITION TO COMPLAINANT'S MOTION FOR ACCELERATED DECISION therein to
be served upon the following on the date indicated below:

Regional Hearing Clerk(E-13J)(via facsimile and original/one copy via FedEx Overnight)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Judge Barbara A. Gunning (via facsimile and FedEx Overnight)
Office of the Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-2001

Nidhi O'Meara (C-14J) (via facsimile and FedEx Overnight)
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Dated January 28, 2008


Linda S. Isnard

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