



**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

In the Matter of:)	
)	
State of Alaska Department of)	Docket No. CWA-10-2024-0154
Transportation and Public Facilities,)	
)	
Respondent.)	

ORDER EXTENDING BRIEFING DEADLINES

On March 3, 2025, the parties filed timely cross motions for accelerated decision. See Complainant’s Mot. for Accelerated Decision; Resp’t’s Mot. for Accelerated Decision. Following multiple requests for extensions of time, I set deadlines for filing responses to the pending motions for September 2, 2025, and replies for September 23, 2025. See Order on Complainant’s Second Unopposed Mot. for Additional Extension of Time (May 28, 2025).

On August 27, 2025, the Agency asked for a 60-day extension to these briefing deadlines but reported that Respondent opposed the request. See Complainant’s Mot. for Additional Extensions to Deadlines to File Resps. and Replies to Mots. for Accelerated Decision (“Motion for Extension of Time”). I then postponed the deadlines by 10 days to allow Respondent time to file its response in opposition. See Order on Complainant’s Mot. for Additional Extensions to Deadlines (Aug. 28, 2025).

On September 5, 2025, Respondent submitted its Opposition to EPA’s Third Motion for Extension of Deadlines to File Responses and Replies to Motions for Accelerated Decision (“Response”). Respondent argues that EPA can no longer show good cause for an extension and that such an extension would prejudice Respondent.

Under the rules governing this proceeding, this Tribunal “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.” 40 C.F.R. § 22.7. In its Motion for Extension of Time, the Agency has stated that good cause exists because it is reconsidering its implementation of the Clean Water Act (“CWA”), and counsel needs to brief new administration officials about impacts to this case. Mot. at 4. In particular, the Agency asserts that it expects new regulations will be issued before the end of this year¹

¹ EPA has publicly noticed its plan to revise CWA regulations to address “concerns” that a prior regulatory revision “does not adequately comply” with *Sackett v. EPA*, 598 U.S. 651 (2023), the Supreme Court case that curtailed CWA jurisdiction. WOTUS Notice: The Final Response to SCOTUS; Establishment of a Public Docket; Request for Recommendations, 90 Fed. Reg. 13,428,

that directly relate to Respondent's jurisdictional arguments citing *Sackett v. EPA*, 598 U.S. 651 (2023). Mot. at 3. However, Respondent argues in its Response that "concerns over new regulations ring hollow" because EPA initiated this action after *Sackett* was decided and should have known that further changes to the regulations would be needed. Response at 2. It also notes that joint guidance issued by the EPA and U.S. Army Corps of Engineers² earlier this year could undermine EPA jurisdiction in this case and further argues that the Agency has already had plenty of time to brief new leadership. Response at 2-3. Additionally, Respondent contends it is prejudiced by further extensions because it halted its culvert maintenance work that is the subject of this action when EPA first notified it of potential violations in 2021. Response at 3. Respondent further states that it has postponed safety and infrastructure improvements throughout Alaska due to regulatory uncertainty created by this case. Response at 3-4.

In light of the arguments put forward by both parties, I find it appropriate to extend the deadlines by 30 days from September 2 and September 23, 2025. This should provide adequate time for EPA to conduct any additional briefings necessary to its further prosecution of this matter. The overall length of this proceeding will be shorter if EPA solidifies its litigation positions now rather than later. At the same time, uncertainty in the Agency's case caused by a change in Agency leadership is no fault of Respondent's, and any prejudice Respondent faces because of this should be mitigated.

Accordingly, the deadline for Response Briefs to the cross motions for accelerated decision is extended through **October 2, 2025**, and the deadline for Reply Briefs is extended through **October 23, 2025**.

SO ORDERED.



Michael B. Wright
Chief Administrative Law Judge

Dated: September 8, 2025
Washington, D.C.

13,429 (Mar. 24, 2025) (Notice). EPA initially revised its regulations to conform to *Sackett* in 2023. See Revised Definition of "Waters of the United States"; Conforming, 88 Fed. Reg. 61,964 (Sep. 8, 2023) (Final Rule).

² Memorandum to the Field Between the U.S. Department of the Army, U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency Concerning the Proper Implementation of "Continuous Surface Connection" Under the Definition of "Waters of the United States" Under the Clean Water Act (March 12, 2025) (available online at <https://www.epa.gov/system/files/documents/2025-03/2025cscguidance.pdf>).

In the Matter of *State of Alaska Department of Transportation and Public Facilities*,
Respondent.

Docket No. CWA-10-2024-0154

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order on Extension of Briefing Deadlines**, dated September 8, 2025, and issued by Chief Administrative Law Judge Michael B. Wright, was sent this day to the following parties in the manner indicated below.



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Dated: September 8, 2025

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