



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

In the Matter of:

**Timothy Wilson, d/b/a
Wilson's Pest Control,**

Respondent.

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Docket No. FIFRA-07-2023-0135

**ORDER ON RESPONDENT'S MOTION FOR LEAVE
TO FILE INITIAL POST-HEARING BRIEF OUT OF TIME**

The evidentiary hearing in this matter was held on Tuesday, February 24, 2025, in St. Louis, Missouri. After the Headquarters Hearing Clerk received the official transcript of testimony taken at the hearing, electronic copies of the transcript were provided to the parties, and I issued an Order Scheduling Post-Hearing Submissions, which established deadlines for the parties to file post-hearing briefs.

After Complainant timely filed its Initial Post-Hearing Brief on May 15, 2025, the briefing schedule was modified at Respondent's request by Order dated June 12, 2025. The basis for Respondent's request was that his counsel lacked adequate time to prepare his initial post-hearing brief by the original deadline due to other work commitments, and he thus moved for the deadline to be extended by 17 days to June 30, 2025. That request was granted, but Respondent did not file anything by the new deadline. Rather, five days later on July 5, 2025, Respondent filed a Motion for Leave to File Initial Post-Hearing Brief Out of Time ("Motion"), to which Respondent attached his Initial [sic] Post-Hearing Brief. In his Motion, Respondent represents that his counsel expected the new deadline of June 30, 2025, to afford him sufficient time to complete Respondent's initial post-hearing brief, but that because of counsel's competing work priorities, it proved not to be enough of an extension, "notwithstanding diligent effort" and counsel "working on the brief at all times reasonably available to [him]." Mot. at 1. Respondent thus requests that his brief be accepted out of time and that the schedule for additional post-hearing submissions be extended accordingly. To avoid further delay, Respondent explains, he did not ascertain Complainant's position on the Motion, but counsel for Complainant subsequently advised this Tribunal that it does not object.

This matter is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Rules of Practice" or "Rules") set forth at 40 C.F.R. Part 22. The Rules of Practice provide that I "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(b). The Rules do not speak to motions for extensions of deadlines that are *untimely* – that, in other words, seek leave to file a document after the filing deadline has passed – but the Federal Rules of Civil Procedure¹ indicate that the moving party in such circumstances bears a heavier burden than one would if the motion had been filed prior to the deadline’s expiration. Specifically, Federal Rule of Civil Procedure 6(b)(1) states:

(1) *In General.* When an act may or must be done within a specified time, the court may, for good cause, extend the time:

(A) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires; or

(B) on motion made after the time has expired if the party failed to act because of excusable neglect.

Fed. R. Civ. Pro. 6(b)(1). Thus, when a motion for an extension of time is made prior to the expiration of a deadline, the Rules of Practice direct this Tribunal to consider any potential prejudice to other parties and whether the moving party has shown good cause for the requested extension. But when a motion for an extension of time is made after the deadline has passed, Federal Rule of Civil Procedure (6)(b)(1) counsels in favor of considering an additional factor, namely, whether the moving party has shown that its failure to act was due to “excusable neglect.”

Here, I find that good cause existed for a further extension of the June 30, 2025 deadline for Respondent’s initial post-hearing brief and that there is nothing in the record to suggest that Complainant would be prejudiced by another brief extension. While Respondent has not explained why he failed to seek such an extension in advance of the deadline, as he had done once before, I note that the Rules require me to “conduct a fair and impartial proceeding, assure that the facts are fully elicited, adjudicate all issues, and avoid delay” and “[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 [these] proceedings.” 40 C.F.R. § 22.4(c), (c)(10). Under this mandate, I find, based on the circumstances of this case, that the interests of fairness and full development of the issues outweigh the need for a showing of “excusable neglect” by Respondent, such that he should be afforded a fair and full opportunity to present his arguments for my consideration. Accordingly, his Motion is hereby **GRANTED**, and Respondent’s initial post-hearing brief is accepted. The remaining post-hearing briefs shall be filed in accordance with the following schedule:

¹ Where the Rules of Practice are silent on a particular subject, the Environmental Appeals Board has looked to the Federal Rules of Civil Procedure and related caselaw for guidance on analogous circumstances. *Carroll Oil Co.*, 10 E.A.D. 635, 649 (EAB 2002).

Complainant's Reply Post-Hearing Brief

Monday, July 21, 2025

Respondent's Reply Post-Hearing Brief

Monday, August 4, 2025

SO ORDERED.

A handwritten signature in black ink, appearing to read 'M. Wright', with a long horizontal stroke extending to the right.

Michael B. Wright
Chief Administrative Law Judge

Dated: July 14, 2025
Washington, D.C.

In the Matter of Timothy Wilson, d/b/a Wilson's Pest Control, Respondent
Docket No. FIFRA-07-2023-0135

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Order on Respondent's Motion for Leave to File Initial Post-Hearing Brief Out of Time, dated July 14, 2025, and issued by Chief Administrative Law Judge Michael B. Wright, was sent this day to the following parties in the manner indicated below.



Pamela Taylor
Paralegal Specialist

Original by OALJ E-Filing System to:

U.S. Environmental Protection Agency
Office of Administrative Law Judges
<https://yosemite.epa.gov/OA/EAB/EAB-ALJ Upload.nsf>

Copy by Electronic Mail to:

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Counsel for Respondent

Dated: July 14, 2025
Washington, D.C.