

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

STATE OF ALASKA DEPARTMENT OF
TRANSPORTATION AND PUBLIC
FACILITIES,

Juneau, Alaska

Respondent.

DOCKET NO. CWA-10-2024-0154

**COMPLAINANT’S MOTION TO STAY
DEADLINES PENDING OUTCOME OF
COMPLAINANT’S MOTION FOR LEAVE
TO WITHDRAW COMPLAINT WITHOUT
PREJUDICE**

Pursuant to Section 22.7(b) of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Complaint or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits” (“Part 22 Rules”), the United States Environmental Protection Agency, Region 10 (“EPA”) hereby respectfully moves for this Tribunal to stay all deadlines associated with the EPA and State of Alaska Department of Transportation and Public Facilities’ (“Respondent”) cross motions for accelerated decision pending the outcome of the EPA’s October 1, 2025, Motion for Leave to Withdraw the Complaint Without Prejudice. Prior to filing this Motion to Stay Deadlines Pending Outcome of Complainant’s Motion for Leave to Withdraw Complaint Without Prejudice, the undersigned contacted Respondent’s counsel to determine whether Respondent would object to the relief sought in this Motion. Respondent’s counsel stated that they will oppose this Motion.

While the Part 22 Rules do not expressly authorize a stay of deadlines, 40 C.F.R. § 22.7(b) allows this Tribunal to “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

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**U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 155, 11-C07
Seattle, Washington 98101**

prejudice to other parties.” Further, 40 C.F.R. § 22.4(c)(10) authorizes this Tribunal 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 governed by these Consolidated Rules of Practice.”

As explained in the EPA’s Motion for Leave to Withdraw the Complaint Without Prejudice, the EPA seeks to withdraw the complaint without prejudice to allow the EPA to assess the impact, if any at all, of the EPA and Department of Army’s (“Agencies”) “waters of the United States” rulemaking process on the EPA’s decisions regarding the appropriate trajectory for this enforcement action. In the alternative, the EPA seeks a stay of any further proceedings until the Agencies’ final action on the proposed rule. If this Tribunal grants the EPA’s Motion for Leave to Withdraw the Complaint Without Prejudice, the EPA will withdraw the complaint, and the administrative litigation will be terminated. In that scenario, the cross motions for accelerated decision will be moot.

Alternatively, if this Tribunal determines it appropriate to stay any further proceedings until there is final action on the proposed “waters of the United States” rule, full briefing of the cross motions for accelerated decision would not be required until that stay is lifted.

Lastly, if this Tribunal denies the EPA’s Motion for Leave to Withdraw the Complaint Without Prejudice, the EPA could withdraw the complaint with prejudice. As articulated in that Motion, this would be an inequitable outcome. However, in that scenario, the administrative litigation will be terminated and the cross motions for accelerated decision will be moot.

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It is in the interest of judicial efficiency and equity for the parties for all deadlines associated with the cross motions for accelerated decision to be stayed pending the outcome of the EPA's October 1, 2025, Motion for Leave to Withdraw the Complaint Without Prejudice.

While indefinite extensions of time are not appropriate,¹ the EPA's request is time-limited and based on resolution of its Motion for Leave to Withdraw the Complaint Without Prejudice. Staying deadlines pending the outcome of another Motion has been deemed appropriate in another active proceeding currently before this Tribunal.² The EPA respectfully believes a stay is warranted and does not think that a short stay prejudices Respondent.

Respectfully submitted,

U.S. ENVIRONMENTAL PROTECTION
AGENCY, REGION 10:

DATE

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¹ See *In re: Johnson*, 2004 EPA ALJ LEXIS 15 (EPA, May 11, 2004).

² See *In re: Jackson & Son Distributors, Inc.*, 2025 EPA ALJ LEXIS 29 (EPA, Aug. 28, 2025).

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CERTIFICATE OF SERVICE

The undersigned certifies that the original COMPLAINANT'S MOTION TO STAY DEADLINES PENDING OUTCOME OF COMPLAINANT'S MOTION FOR LEAVE TO WITHDRAW COMPLAINT WITHOUT PREJUDICE in the above-captioned action was filed within the OALJ E-Filing System to:

Mary Angeles, Headquarters Hearing Clerk
Office of Administrative Law Judges
U.S. Environmental Protection Agency
https://yosemite.epa.gov/OA/EAB/EAB-ALJ_Upload.nsf

Further the undersigned certifies that a true and correct copy of the original COMPLAINANT'S MOTION TO STAY DEADLINES PENDING OUTCOME OF COMPLAINANT'S MOTION FOR LEAVE TO WITHDRAW COMPLAINT WITHOUT PREJUDICE was served on Respondent State of Alaska Department of Transportation and Public Facilities via email to:

Sarah E. Angell, Assistant Attorney General
State of Alaska Department of Law
sarah.angell@alaska.gov
ayla.lisenbee@alaska.gov

DATE

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