



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

**In the Matter of:** )  
 )  
**Jackson & Son Distributors, Inc.,** ) **Docket No. CWA-10-2025-0023**  
**d/b/a Jackson and Son Oil,** )  
 )  
**Respondent.** )

**ORDER ON COMPLAINANT’S MOTION FOR LEAVE  
TO FILE OUT OF TIME**

This proceeding was initiated on December 18, 2024, when Complainant, the Director of the Enforcement and Compliance Assurance Division in Region 10 of the U.S. Environmental Protection Agency (“EPA” or “Agency”), filed a Complaint against Respondent Jackson & Son Distributors, Inc., doing business as Jackson and Son Oil, pursuant to Section 311(b)(6) of the Clean Water Act (“CWA”), 33 U.S.C. § 1321(b)(6). Since that time, Complainant has twice been granted leave to amend the Complaint, and the parties have engaged in a prehearing exchange of information. After neither party filed a dispositive motion by the deadline for such motions,<sup>1</sup> this Tribunal began the process of scheduling the hearing in this matter by asking the parties for their availability. Subsequently, on March 27, 2026, Complainant filed a Motion for Leave to File Out of Time (“Motion”), seeking leave to file a motion for accelerated decision by April 6, 2026, two weeks past the deadline.

In the Motion, Complainant explains that at the time its counsel was contacted about scheduling the hearing, counsel had been working on the motion for accelerated decision, mistakenly believing that the deadline for dispositive motions had not yet passed. Mot. at 1. Complainant goes on that counsel proceeded to review the case docket again, communicate with staff for this Tribunal about the issue, and then take steps to ensure that the motion for accelerated decision, which requires review and approval by multiple offices at the EPA before filing, could be filed as soon as possible. *Id.* at 1, 3. Complainant urges that its proposed filing date of April 6, 2026,<sup>2</sup> “does not unduly delay these proceedings, and as a result, does not

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<sup>1</sup> Per the Prehearing Order that I issued on January 28, 2025, “[d]ispositive motions regarding liability, such as a motion for accelerated decision or motion to dismiss . . . , must be filed within 30 days after the due date for Complainant’s Rebuttal Prehearing Exchange.” Prehr’g Order at 5 (emphasis omitted). That due date was February 20, 2026, as set in my December 17, 2025 Order on Complainant’s Motion to Amend and Motion to Stay. Order at 3. Thus, the filing deadline for dispositive motions was March 23, 2026. See 40 C.F.R. § 22.7(a).

<sup>2</sup> Complainant indeed filed its Motion for Accelerated Decision on that date.

prejudice the Respondent.” *Id.* at 2. Rather, Complainant argues, a motion for accelerated decision serves to narrow the issues for hearing, furthering judicial efficiency and fulfilling the mandate in the governing procedural rules that requires an efficient, fair, and impartial adjudication of the issues. *Id.* (citing 40 C.F.R. § 22.4(c)). Complainant further argues that if a showing of “excusable neglect” is required as set out in Federal Rule of Civil Procedure 6(b)(1), Complainant satisfies that standard inasmuch as the slight delay of its motion for accelerated decision does not prejudice Respondent and has minimal impact on the proceedings; “[e]xcusable neglect includes late filings caused by inadvertence, mistake, or carelessness,” which is what occurred here; and “counsel acted in good faith and attempted to minimize the extension needed once it determined its error.” *Id.* at 2-3 (citing multiple cases). Finally, Complainant represents that Respondent does not object to the Motion. *Id.* at 1.

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 Procedure 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.<sup>3</sup> 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

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<sup>3</sup> An earlier version of the Rules of Practice did address motions for leave to file a document after the filing deadline, providing that a motion seeking an extension of the filing deadline for any document must be filed in advance of the deadline “unless the failure of a party to make timely motion for extension of time was the result of excusable neglect.” Consolidated Rules of Practices, 45 Fed. Reg. 24359, 24366 (Apr. 9, 1980) (to be codified at 40 C.F.R. § 22.07(b)). When the Rules of Practice were later revised, that exception was not included, with the Agency explaining in the preamble to the final rulemaking that it was “unnecessary” and that it could “encourage untimeliness.” Consolidated Rules of Practice, 64 Fed. Reg. 40176, 40148 (Nov. 3, 2000). However, the Agency still recognized that “[a] motion for leave to file a document beyond the time limit (‘out of time’), stating reasons for not having filed within the time limit, may be submitted” under the Rules as revised, although the Agency did not describe a standard for adjudicating such a motion. *Id.* Where, like here, 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. *See, e.g., Neman*, 5 E.A.D. 450, 455 n.2 (EAB 1994) (“When a procedural issue arises that is not addressed in Part 22, the Board has the discretion to resolve the issue as it deems appropriate. In the exercise of this discretion, the Board finds it instructive to examine analogous federal procedural rules and federal court decisions applying those rules.”) (citations omitted).

(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.” The United States Supreme Court has addressed the meaning of “excusable neglect” in the context of an appeal from a bankruptcy proceeding where the term was used in Federal Rule of Bankruptcy Procedure 9006(b)(1). *Pioneer Inv. Serv. Co. v. Brunswick Assoc. Ltd. P’ship*, 507 U.S. 380 (1993). The Court ruled that the question of whether a party’s neglect of a deadline was “excusable” should be answered by “taking account of all relevant circumstances surrounding the party’s omission,” including the danger of prejudice to the non-moving party, the length of the delay and its potential impact on the proceedings, the reason for the delay, and whether the moving party acted in good faith. *Pioneer*, 507 U.S. at 395. In sum, the Court held, “the determination is at bottom an equitable one.” *Id.*

Here, I find that good cause has been shown for the requested two-week extension of the deadline for Complainant to file its motion for accelerated decision and that the untimeliness of Complainant’s request to extend the deadline was due to “excusable neglect” of counsel, who, upon being prompted for potential dates for the hearing, acted swiftly to correct the oversight of the missed deadline. The hearing has not yet been scheduled, and I find that any potential delay in proceedings caused by affording Complainant the opportunity to file its motion for accelerated decision belatedly will not prejudice Respondent but will serve the interests of efficiency and judicial economy by potentially narrowing the issues for hearing. Accordingly, the Motion is hereby **GRANTED**. As previously noted, Complainant filed its Motion for Accelerated Decision on April 6, 2026. Respondent shall file any response to the Motion for Accelerated Decision by **May 1, 2026**, or within 15 days of the date of this Order, and Complainant shall file any reply within 10 days after service of such response. See 40 C.F.R. § 22.16(b).

**SO ORDERED.**



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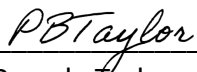
Michael B. Wright  
Chief Administrative Law Judge

Dated: April 16, 2026  
Washington, D.C.

In the Matter of *Jackson & Son Distributors, Inc., d/b/a Jackson and Son Oil*, Respondent  
Docket No. CWA-10-2025-0023

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Order on Complainant's Motion for Leave to File Out of Time, dated April 16, 2026, 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

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Dated: April 16, 2026  
Washington, D.C.