



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

**In the Matter of:** )  
 )  
**Dave Erlanson, Sr.,** ) **Docket No. CWA-10-2016-0109**  
 )  
**Respondent.** )

**ORDER EXTENDING DEADLINE TO RESPOND TO COMPLAINANT’S MOTIONS**

On November 5, 2018, I issued a Notice of Hearing Order that scheduled the hearing to commence on February 12, 2019, and established deadlines for the filing of documents prior to the hearing.

On December 14, 2018, Complainant filed a Motion to Compel Additional Discovery and Compliance with Second Prehearing Order, and a Motion in Limine.

On December 18, 2018. Respondent’s attorney notified Complainant and this Tribunal that he was withdrawing from representing Respondent in this matter.<sup>1</sup>

Pursuant to the procedural rules governing this proceeding, set forth at 40 C.F.R. Part 22, a party is provided fifteen days to file a response to a motion. 40 C.F.R. § 22.16(b). “Any party who fails to respond within the designated period waives any objection to the granting of the motion.” *Id.* In this case, responses to Complainant’s motions were due by December 31, 2019.<sup>2</sup> To date, Respondent has not filed a response to either of Complainant’s motions.

On December 28, 2018, the U.S. Environmental Protection Agency along with many other federal government agencies shut down due to an appropriations lapse, and the Office of Administrative Law Judges was closed. The cease in operations of the U.S. EPA interrupted the orderly processing of motions and other logistical processes required for the hearing in this case to proceed as scheduled. The office did not reopen until January 28, 2019. Consequently, on January 31, 2019, I rescheduled the hearing and established new prehearing filing deadlines.

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<sup>1</sup> On February 21, 2019, Respondent sent an email to my staff attorney informing him that he was unable to find legal representation. A copy of the email is attached to this Order.

<sup>2</sup> The fifteenth day after Complainant’s motions were filed was Saturday, December 29, 2019. Pursuant to the procedural rules a deadline that falls on a weekend is extended to the next business day. 40 C.F.R. § 22.7.

I could have considered Respondent's failure to respond to Complainant's motions a waiver of any objection that he may have had and issued an order, potentially granting Complainant's motions. However, the procedural rules give me the discretion to shorten or lengthen the time to respond to motions. 40 C.F.R. § 22.16(b). In this case, Respondent's failure to respond likely was the result of a combination of factors, including his attorney's withdrawal, his unfamiliarity with the administrative litigation process, and the closure of this office during the lapse in appropriations. Indeed, Respondent sent a letter to Complainant asking for an extension of "all matters related to this case" so that he could find new legal counsel.<sup>3</sup> On March 7, 2019, Respondent also called my staff attorney seeking clarification of deadlines in the January 31st Order Rescheduling Hearing, and to express his intention to file responses to Complainant's pending motions by mailing them overnight to this office and Complainant on March 11, 2019.<sup>4</sup>

Under the foregoing circumstances, I find that it is appropriate to extend the time within which Respondent may file responses to Complainant's December 14, 2018 motions. Accordingly, the deadline for filing written responses to Complainant's December 14, 2018 motions is extended to **March 15, 2019**. Respondent is on notice that if this Tribunal does not receive his responses to Complainant's motions by March 15th, he may be considered to have waived any objection to the granting of the motions.

**SO ORDERED.**

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Christine Donelian Coughlin  
Administrative Law Judge

Dated: March 8, 2019  
Washington, D.C.

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<sup>3</sup> The letter, dated December 20, 2018, was directed to my attention but this Tribunal never received a copy from Respondent. On January 30, 2019, Complainant's counsel emailed a copy of the letter to the Headquarters Hearing Clerk. Copies of that email and Respondent's letter are attached to this Order.

<sup>4</sup> During the telephone conversation, Respondent informed my staff attorney that he understood the implication of the Order on Complainant's Motion for Accelerated Decision (that he may not argue the merits of his liability of the charges but only the penalty) but that he intends to cross-examine any EPA witnesses and testify on his own behalf. He further stated that he does not intend to call any other witnesses to testify on his behalf.

**From:** [dave erlanson sr.](#)  
**To:** [Wright, MichaelB](#); [dave erlanson sr.](#)  
**Subject:** Re: In re Erlanson, Dkt No. CWA-10-2016-0109  
**Date:** Thursday, February 21, 2019 2:16:29 PM

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i have been unable to find counsel .....i will represent my self .....soon i will reply to your motion to add witness and to exclude mine .....ok ,thats it for now!

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**From:** Wright, MichaelB <Wright.MichaelB@epa.gov>  
**Sent:** Thursday, January 31, 2019 5:36 PM  
**To:** McLaren, William; Moore, John (Matthew); tapawingoinc@msn.com  
**Subject:** In re Erlanson, Dkt No. CWA-10-2016-0109

Greetings:

Judge Coughlin issued the attached order rescheduling the hearing.

Kind regards,

Mike

Michael B. Wright  
Supervisory Attorney-Advisor  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW | Mail Code 1900R  
Washington, D.C. 20460  
Phone: 202-564-3247  
Email: [wright.michaelb@epa.gov](mailto:wright.michaelb@epa.gov)

Attached



In re Erlanson - Respondent's Request for Extension.pdf  
33 KB

**From:** McLaren, William  
**Sent:** Wednesday, January 30, 2019 1:19 PM  
**To:** Angeles, Mary <[Angeles.Mary@epa.gov](mailto:Angeles.Mary@epa.gov)>  
**Subject:** Letter requesting extension of time in Erlanson, Sr. CWA-10-2016-0109

Hello Ms. Angeles,

For the court's information, attached is a scanned copy of the letter addressed to Judge Coughlin that Complainant EPA Region 10 received in the matter of *Dave Erlanson Sr.*, CWA-10-2016-0109. I received a scanned copy of this letter by mail in late December, prior to the shutdown, and it is mentioned in EPA's Settlement Status Report from December 28, 2018. I offer it in case the original letter did not make it to your office due to the shutdown or any other issue.

Thank you for your time and attention to this matter. Complainant respectfully ask that court staff be in touch if any updates are made to the schedule—witness preparation and travel is in disarray as a result of the shutdown, and two of the pre-hearing deadlines were interrupted by the closure.

Will McLaren

U.S. EPA, Region 10  
Attorney-Adviser | Office of Regional Counsel  
1200 Sixth Ave., Suite 900, ORC-113  
Seattle, WA 98101-3140  
(206) 553-1938 | [mclaren.william@epa.gov](mailto:mclaren.william@epa.gov)



Confidential communication for internal deliberations only; attorney-client privilege, attorney work product and/or enforcement privilege; do not distribute outside EPA or DOJ

Dec 20, 2018  
8 A.M. MST

To: Administrative Law Judge  
Christine Doukias Coughlin

RE: Request for Extension in  
all matters concerning Dave  
Erlanson Sr. CWA 10-2016-0109

From: Dave Erlanson Sr.  
P.O. 46  
Swar Valley, ID 83449

RECEIVED BY OALS  
2018 DEC 21 PM 10:05

Ma'am,

Mr. Mark Pollot, due to health reasons,  
has ceased his representation, in regards to,  
case CWA-10-2016-0109 concerning myself, in-  
dividual, David W. Erlanson Sr..

I ask you to give me an extension in  
all matters related to this case so that  
I may have opportunity to seek out new  
counsel/representation in this matter. It  
is my opinion, that a delay for any action  
to March 10, 2019 should be sufficient for  
my needs.

Respectfully,  
Dave Erlanson Sr.

c c Mc Claren  
in care

In the Matter of *Dave Erlanson, Sr.*, Respondent  
Docket No. CWA-10-2016-0109

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **Order Extending Deadline to Respond to Complainant's Motions (with 3 attachments)**, dated March 8, 2019, and issued by Administrative Law Judge Christine Donelian Coughlin, was sent this day to the following parties in the manner indicated below.



Michael B. Wright  
Staff Attorney

Original and One Copy by Hand Delivery to:

Mary Angeles  
Headquarters Hearing Clerk  
U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
Ronald Reagan Building, Room M1200  
1300 Pennsylvania Ave., NW  
Washington, DC 20004

Copy by Electronic Mail to:

William M. McLaren  
Assistant Regional Counsel  
U.S. Environmental Protection Agency,  
Region 10  
Email: [mclaren.william@epa.gov](mailto:mclaren.william@epa.gov)  
*Counsel for Complainant*

J. Matthew Moore  
Assistant Regional Counsel  
U.S. Environmental Protection Agency,  
Region 10  
Email: [moore.johnm@epa.gov](mailto:moore.johnm@epa.gov)  
*Counsel for Complainant*

Dave Erlanson, Sr.  
Email: [tapawingoinc@msn.com](mailto:tapawingoinc@msn.com)  
*Pro se*

Dated: March 8, 2019  
Washington, D.C.