



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY BEFORE THE ADMINISTRATOR

In the Matter of: )
Birds Eye Foods, Inc., ) Docket Nos. MM-05-2018-0002
) CERCLA-05-2018-0005
) EPCRA-05-2018-0009
)
Respondent. )

ORDER ON RESPONDENT’S MOTION TO EXTEND DEADLINE FOR FILING OF RESPONDENT’S INITIAL PREHEARING EXCHANGE

On June 13, 2018, the Chief of the Emergency Response Branch 1, Superfund Division, United States Environmental Protection Agency, Region 5 (“Complainant”) initiated this proceeding by filing a Complaint against Birds Eye Foods, LLC (“Respondent”) under Section 109(b) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. § 9609(b), and Section 325(b)(2) of the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. § 11045(b)(2). On July 16, 2018, Respondent filed an Answer, Affirmative Defenses and Request for Hearing (“Answer”). By Prehearing Order dated July 20, 2018, I directed the parties to engage in a prehearing exchange of information in accordance with the schedule set forth in the Prehearing Order. Of particular relevance here, I ordered Respondent to file its Prehearing Exchange by September 21, 2018.

On September 14, however, Respondent filed a Motion to Extend Deadline for Filing of Respondent’s Initial Prehearing Exchange (“Motion”), in which Respondent requests an extension of that filing deadline to October 31. As grounds for this request, Respondent represents that the parties are presently engaged in good faith settlement negotiations, which involves reviewing highly technical and detailed data, and that the parties require additional time to complete this review. Respondent further represents that it recently learned that individuals with whom Respondent has been working for the pendency of this matter, and upon whom Respondent intended to rely for expert testimony, have a conflict that precludes them from serving as experts. Accordingly, Respondent asserts, it requires additional time to locate and retain an expert concerning the technical matters at issue. Finally, Respondent represents that Complainant does not object to the requested extension.

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”) 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).

Here, Respondent’s Motion was timely, shows good cause, and is unopposed. Accordingly, it is hereby **GRANTED**. As requested, Respondent shall now file its Prehearing Exchange no later than **October 31, 2018**. The deadline for Complainant’s Rebuttal Prehearing Exchange will correspondingly be extended, and Complainant shall file it no later than **November 14, 2018**.

**SO ORDERED.**



Christine Donelian Coughlin  
Administrative Law Judge

Dated: September 19, 2018  
Washington, D.C.

In the Matter of *Birds Eye Foods, LLC*, Respondent.  
Docket Nos. MM-05-2018-0002, CERCLA-05-2018-0005, EPCRA-05-2018-0009

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **Order on Respondent's Motion to Extend Deadline for Filing of Respondent's Initial Prehearing Exchange**, dated September 19, 2018, and issued by Administrative Law Judge Christine Donelian Coughlin, was sent this day to the following parties in the manner indicated below.

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Jennifer Almase  
Attorney-Advisor

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*For Complainant*

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*For Respondent*

Dated: September 19, 2018  
Washington, D.C.