

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	DOCKET NO.
	)	CWA-10-2020-0181
Kirk Wilson, Individual	)	
	)	<b>JOINT MOTION FOR AN</b>
Glennallen, Alaska	)	<b>EXTENSION OF TIME TO FILING</b>
	)	<b>DEADLINES</b>
Respondent.	)	

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Complainant, the United States Environmental Protection Agency, Region 10 and Respondent Kirk Wilson (collectively, Parties), by and through their respective attorneys, submit the following joint motion to extend the deadline to file a fully-executed Consent Agreement and Final Order (CAFO) and the prehearing exchanges in the above captioned matter pursuant to the 40 C.F.R. § 22.7(b) and in accordance with 40 C.F.R. § 22.16 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Rules of Practice).

The Rules of Practice provide that the Presiding Officer 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. 40 C.F.R. § 22.7(b). Chief Administrative Law Judge Biro issued a Prehearing Order (Docket No. 8), dated December 31, 2020, that sets the deadline by which the Parties to this proceeding must file a fully-executed CAFO with the Tribunal or file with the Tribunal and serve on each other a sequence of prehearing exchanges pursuant to 40 C.F.R. § 22.19(a). The first such deadline is February 12, 2021.

The Parties believe good cause exists to grant their request for an extension of time to file a fully-executed CAFO, should the parties reach a settlement, or to file the prehearing exchanges. First, the Prehearing Order clarified that the “Preamble” in Respondent’s Answer

(Docket No. 3) appeared, on its face, to contain the elements of a motion as required by 40 C.F.R. § 22.16(a) and ordered Complainant to file a response to Respondent’s “Motion to Dismiss for Failure to State A Complaint and/or a Motion for Summary Judgment” by January 15, 2021. Complainant filed its response on January 15, 2021. Concurrently with its response, Complainant filed a motion to partially strike Respondent’s Answer.<sup>1</sup> The Parties believe that a ruling on the issues raised by the above referenced motions and responses may impact the matter before the Tribunal, including issues to be addressed during the prehearing exchange and any subsequent hearing.

Second, Respondent recently asserted an inability to pay an administrative civil penalty. Complainant is obligated to take Respondent’s ability to pay into account in accordance with Section 309(g)(3) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g)(3). Pursuant to the Prehearing Order, Complainant is required to include in its prehearing exchange, a detailed explanation of the factors considered and methodology utilized in calculating the amount of the proposed penalty, in accordance with the criteria set forth in the CWA and in the proposed civil penalty section of the Complaint. Respondent intends to submit information related to his ability to pay an administrative civil penalty and Complainant requires time to evaluate Respondent’s submission before it can determine or explain an appropriate penalty that takes ability to pay into account.

Finally, following their settlement conference on January 11, 2021, the Parties have made additional progress toward settlement. The Parties recognize that the benefits of a negotiated settlement far outweigh the uncertainty, time, and expense associated with a litigated proceeding

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<sup>1</sup> Complainant’s Opposition to Respondent’s Motion to Dismiss and/or Motion for Accelerated Decision and Complainant’s Motion to Strike has not yet been docketed.

and request the opportunity to continue their efforts to reach a negotiated settlement by devoting time and resources to further settlement discussions.

The Parties make this motion in a timely manner because the initial deadline is more than ten days away. The Parties are also in agreement, so no party will be prejudiced. Accordingly, the Parties request that the Presiding Officer revise the deadlines in the Prehearing Order as follows:

If the case is settled, Complainant will file a fully-executed CAFO with the Tribunal no later than April 30, 2021. In the absence of a settlement, the prehearing exchanges shall be filed pursuant to the following schedule:

**April 30, 2021 Complainant's Initial Prehearing Exchange**

**May 21, 2021 Respondent's Prehearing Exchanges**

**June 3, 2021 Complainant's Rebuttal Prehearing Exchange**

In evaluating the proposed schedule, the Parties request that the Presiding Officer take into account that Complainant must notify the public before assessing a civil penalty. Such notice shall be provided no less than 40 days before the issuance of an order assessing a civil penalty. 40 C.F.R. § 22.45(b)(1).

Dated this 1st day of February 2021.

Respectfully submitted,

*/s/ Caitlin M. Soden*  
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**JOINT MOTION FOR AN EXTENSION OF  
TIME TO FILING DEADLINES - 3**  
**In the matter of: Kirk Wilson**  
**Docket No. CWA-10-2020-0181**

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

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\_\_\_\_\_ )

**CERTIFICATE OF SERVICE**

The undersigned certifies that the original **JOINT MOTION FOR AN EXTENSION OF TIME TO FILING DEADLINES** in the above-captioned action, dated February 1, 2021, was filed electronically with the Clerk of the Office of Administrative Law Judges using the ALJ e-filing system, which sends a Notice of Electronic Filing to Respondent and constitutes service on the Presiding Officer, the Honorable Susan L. Biro.

The undersigned also certifies that a true and correct copy of the aforementioned document was served on Respondent Kirk Wilson via electronic mail at [kirkakfish@yahoo.com](mailto:kirkakfish@yahoo.com) and Respondent's counsel via electronic mail at [phillippaulw@me.com](mailto:phillippaulw@me.com) and [phillippaulw@gmail.com](mailto:phillippaulw@gmail.com).

Dated this 1st day of February 2021.

Respectfully submitted,

/s/ Caitlin M. Soden

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