



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 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. 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. Based on Respondent’s representations concerning progress made by the parties towards a settlement of this matter, I subsequently extended that deadline, first to October 31, 2018, and then to November 30, 2018.

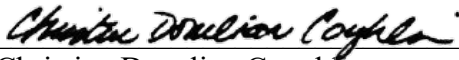
On November 29, Respondent requested another extension of the deadline, this time to December 31, 2018, in a Motion to Extend Deadline for Filing of Initial Prehearing Exchange (“Motion”). As grounds for this request, Respondent represents that the parties have agreed to the final terms and conditions of their settlement agreement, as approved by Respondent’s new parent company, and that the parties require an additional 30 days to obtain the required signatures and file the document. 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 **December 31, 2018**, unless a fully-executed Consent Agreement and Final Order is filed with the Regional Hearing Clerk, and a courtesy copy is filed with this Tribunal, on or before that date. The deadline for Complainant’s Rebuttal Prehearing Exchange will correspondingly be extended, and Complainant shall file it no later than **January 14, 2019**.

SO ORDERED.


Christine Donelian Coughlin
Administrative Law Judge

Dated: November 29, 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 Initial Prehearing Exchange**, dated November 29, 2018, and issued by Administrative Law Judge Christine Donelian Coughlin, was sent this day to the following parties in the manner indicated below.

Jennifer Almase
Attorney-Advisor

Original and One Copy by Personal Delivery to:

Mary Angeles, Headquarters Hearing Clerk
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Office of Administrative Law Judges
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Copy by Electronic Mail to:

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For Respondent

Dated: November 29, 2018
Washington, D.C.