

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

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

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

Respondent, Birds Eye Foods, LLC, by its counsel, Attorney Jodi Arndt Labs, Law Firm of Conway, Olejniczak & Jerry, S.C., hereby submits the instant Motion to Extend Deadline for Filing of Initial Prehearing Exchange.

Respondent files this Motion pursuant to 40 C.F.R. § 22.16 to request the Court to extend the current deadline for filing of Respondent’s Initial Prehearing Exchange to November 30, 2018.

1. On July 20, 2018, this Honorable Court entered its Prehearing Order and included deadlines for the parties Prehearing Exchanges. Per the Prehearing Order, Respondent was to file its Initial Prehearing Exchange on or before September 21, 2018.
2. On September 14, 2018, Respondent filed a motion to extend the deadline for filing its Initial Prehearing Exchange in order to allow the parties to continue to engage in good faith settlement discussions.
3. On September 19, 2018, this Honorable Court granted Respondent’s motion and extended the deadline for filing Respondent’s Initial Prehearing Exchange to October 31, 2018.

4. Since September 19, 2018, the parties have continued to engage in good faith settlement discussions, which included the exchange of technical information. As of today's date, the parties believe they have a settlement in principle. The parties are working on the final details which they expect to have completed within the next few weeks.
5. In the meantime, the parties have learned that the parent company of Birds Eye Foods, LLC is being acquired by another corporate entity; the transaction is expected to close on or before October 31, 2018. As a result of this transaction, Birds Eye Foods, LLC will need to submit the proposed settlement terms to the acquiring company for formal review and approval. This will require additional time that the parties had not anticipated when Respondent filed its first request for an extension of time.
6. The pending acquisition of Birds Eye Foods, LLC and its parent company, Pinnacle Foods, may also raise some additional legal questions that the parties need to address prior to filing a consent decree with this Court.
7. Respondent's counsel has conferred with Complainant's counsel concerning this motion and Complainant does not oppose Respondent's motion.

WHEREFORE, Respondent requests the Court to extend the deadline for filing of Respondent's Initial Prehearing Exchange from October 31, 2018 to November 30, 2018.

Dated this 18th day of October, 2018.

LAW FIRM OF CONWAY OLEJNICZAK & JERRY, S.C.
Attorneys for Respondent, Birds Eye Foods, LLC

By: s/Jodi Arndt Labs
Jodi Arndt Labs (WI State Bar #1003359)

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

CERTIFICATE OF SERVICE

I hereby certify that I filed with the Office of Administrative Law Judge E-Filing System at www.epa.gov/alj and thus also provided the Presiding Officer Administrative Law Judge Christine Donelian Coughlin a copy of Motion to Extend Deadline for Filing of Respondent's Initial Prehearing Exchange.

I further certify that I e-mailed a copy of Respondent's Motion to Extend Deadline for Filing of Respondent's Initial Prehearing Exchange to Jeffery M. Trevino, Associate Regional Counsel, at trevino.jeffery@epa.gov.

On the 18th day of October, 2018.

s/Jodi Arndt Labs

Jodi Arndt Labs

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