

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

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In the Matter of :
 :
Everyday Group, LLC, : Honorable Susan L. Biro,
 : Presiding Officer
 :
Respondent. :
 :
Proceeding under the Federal : Docket No.
Insecticide, Fungicide and : FIFRA-02-2012-5201
Rodenticide Act, as amended. :
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STATUS REPORT AND MOTION FOR EXTENSION OF TIME

I. Status Report

This status report is provided pursuant to the mandate of this Court's January 4, 2013 Prehearing Order, which stated that "the parties are directed to engage in a settlement conference on or before January 25, 2013, to attempt to reach an amicable resolution of this matter. Complainant shall file a status report regarding this conference and the status of settlement on or before February 1, 2013" (emphases deleted).

The parties met for a settlement conference in early December (December 4th), and since then they have been in periodic contact to discuss settlement-related issues. To date no settlement has been reached, but discussion is ongoing. At the conference, Respondent indicated that it would provide EPA with information in support of the positions it was asserting, *i.e.* information relating to the specific ingredients of some of the substances cited in the complaint and information on the appropriateness of the penalty amount sought. The undersigned has been informed during a phone conversation earlier today that Respondent's counsel recently conferred with their client and anticipates shortly inform EPA with a concrete schedule regarding their providing such materials.

II. Motion for Extension of Time for the Filing of Prehearing Exchanges

Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, EPA, Region 2 (EPA), through her attorney, requests this Court grant a two-month extension of time with regard to the deadlines set forth in the Court's Prehearing Order. Respondent's counsel has orally informed the undersigned that Respondent does not oppose or object to the relief Complainant is seeking. For that and for the additional reasons discussed below, EPA submits that the requisite good cause threshold for the granting of this motion is

satisfied.

The Prehearing Order directs that the prehearing exchanges (PHE) be filed in accordance with this schedule: EPA's initial PHE by February 22, 2013; Respondent's PHE by March 15, 2013; and EPA's rebuttal PHE by March 29, 2013.

As noted above, the parties have been discussing settlement since they met for their December settlement conference. EPA now awaits receipt of the information Respondent stated it would provide in support of its arguments for a reduction in the penalty amount. Both EPA and Respondent expressed the view that each believes that this case should most appropriately be resolved through settlement and not through the formal administrative adjudicatory process. The parties now seek additional time to engage in bona fide settlement discussion without having to concern themselves with meeting litigation deadlines that in all likelihood will be, based on the substance and tenor of the discussion held at the settlement conference, unnecessary.¹

Moreover, this case remains in an embryonic state. No motions, certainly no substantive motions have been filed. No hearing date has been set. There have been no stipulations filed, nor has there been any other movement to establish an evidentiary record. There have been no other litigation developments.

In addition, this is the first request for an extension of time. As stated above, Respondent's counsel has indicated it does not oppose or object to EPA seeking this two-month extension; such an extension thus would not prejudice Respondent. Similarly, given the inchoate state of this proceeding, this Court should not be prejudiced by granting the parties an additional eight weeks of time to reach a settlement before the PHE litigation deadlines become operative.

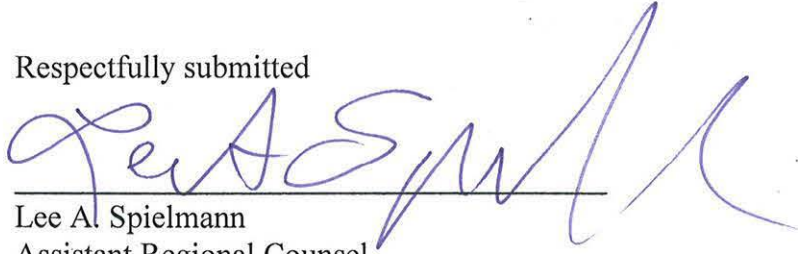
In light of these circumstances, the undersigned requests that the Court grant a two-month extension of time to the above-referenced deadlines. Under this extended schedule, the EPA's initial PHE would have to be filed **April 22, 2013**; Respondent's PHE by **May 15, 2013**; and EPA's rebuttal PHE by **May 29, 2013**. Complainant submits that the totality of the circumstances as set forth above demonstrates that the good cause requirement of 40 C.F.R. § 22.7(b) exists for the granting of this motion.

Therefore, EPA respectfully moves this Court, pursuant to 40 C.F.R. §§ 22.4(c)(2), 22.7(b), 22.16(a) and 22.19(a), for an order: **a)** vacating so much of the January 4th prehearing order as directed the parties to file their prehearing exchanges starting February 22nd; **b)** extending the deadline for the filing of the respective prehearing exchanges in accordance with the schedule as outlined on page 2, above; and/or **c)** granting the parties such other and further as this Court deems just and proper.

¹ Although the settlement conference was held in early December, time was inevitably lost because of the intervening end-of-year/new year holidays.

Dated: January 29, 2013
New York, New York

Respectfully submitted



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² As noted on page 5 of the January 4th prehearing order, "Pursuant to the Headquarters Hearing Clerk Pilot Project, rather than filing all documents with the Regional Hearing Clerk as specified in...40 C.F.R. § 22.5(a), the **ORIGINAL and one copy of each document filed in this proceeding shall be filed with the Headquarters Hearing Clerk...**" (emphases in original).

In re Everyday Group, LLC.
Docket No. FIFRA-02-2012-5201

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing "STATUS REPORT AND MOTION FOR EXTENSION OF TIME," dated January 29, 2013, in the above-referenced proceeding in the following manner to the respective addressees listed below:

Original and one copy by
Pouch Mail, and one copy by
Fax Transmission, 202-565-0044:

Sybil Anderson
Headquarters Hearing Clerk
Office of Administrative Law Judges
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Mail Code 1900L
Washington, DC 20460-2001

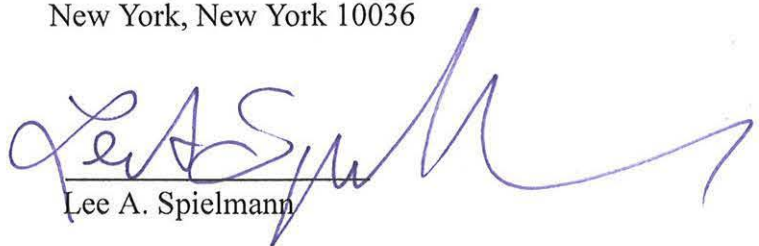
Copy by Fax Transmission,
202-565-0044, and Pouch Mail:

Honorable Susan L. Biro
Chief Administrative Law Judge
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Mail Code 1900 L
Washington, DC 20460

Copy by Fax Transmission,
212-575-0671, and First Class Mail:

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Dated: January 29, 2013
New York, New York


Lee A. Spielmann