

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

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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.	)		

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

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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 Respondent's Initial Prehearing Exchange.

Respondent files this Motion pursuant to 40 C.F.R. § 22.16 to request the Court to extend the deadline for filing of Respondent's Initial Prehearing Exchange to October 31, 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 is to file its Initial Prehearing Exchange on or before September 21, 2018.
2. The parties are engaged in good faith settlement discussions at this time. The settlement discussions include highly technical and detailed data and the parties require third-party assistance to evaluate the data to allow for a full and thorough evaluation of the settlement offers. Accordingly, the parties require additional time to review the technical data and continue their good faith settlement discussions.
3. Respondent recently learned that the individuals it was going to rely on for expert testimony in this matter, individuals that Respondent has been working with

throughout the course of this matter and prior to the Complainant's filing of the complaint in this matter, has a conflict that prevents them from serving as an expert in this matter. Respondent, therefore, needs additional time to locate and retain an expert concerning the technical issues involved in this matter.

4. 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 September 21, 2018 to October 31, 2018.

Dated this 14<sup>th</sup> day of September, 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](http://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](mailto:trevino.jeffery@epa.gov).

On the 14<sup>th</sup> day of September, 2018.

s/Jodi Arndt Labs

Jodi Arndt Labs

Attorney for Birds Eye Foods, LLC

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