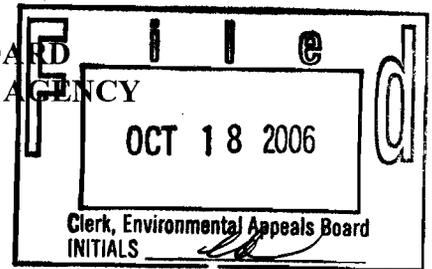


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



In re:)

Rhee Brothers, Inc.)

Docket No. FIFRA-03-2005-0028)
_____)

FIFRA Appeal No. 06-02

**ORDER GRANTING REGION III'S MOTION
FOR EXTENSION OF TIME TO FILE APPEAL BRIEF**

On September 19, 2006, Administrative Law Judge Susan L. Biro issued an Initial Decision in the above-captioned case. On October 12, 2006, Region III of the U.S. Environmental Protection Agency, Complainant below, filed a notice of appeal of Judge Biro's Initial Decision, along with a motion for a thirty-day extension of time to file a supporting appeal brief. Region III contends in its motion that the penalty analysis set forth in the Initial Decision substantially deviates from the applicable EPA penalty policy and "raises many issues of significance to the national FIFRA program." Motion at 2. Accordingly, the Region requests an additional thirty days to file its appeal brief so that it can consult with EPA Headquarters and ensure the Agency's position on the penalty approach is accurately portrayed.

Counsel for the Region reports that on October 10, 2006, she contacted counsel for Rhee Brothers, Inc., Respondent below, to determine whether Respondent objects or consents to this motion, as required by the Environmental Appeals Board's Practice Manual. *See* EAB Practice Manual 23 (Nov. 1994). Counsel reports that she had not received a response from Respondent at the time of filing of this motion, but that Region III is of the view that a grant of the motion would not prejudice Respondent in any way.

For good cause shown, this motion is hereby **GRANTED**. Region III's appellate brief shall henceforth be filed with the Clerk of the Environmental Appeals Board on or before Monday, November 20, 2006.¹

So ordered.

Dated: October 18, 2006

ENVIRONMENTAL APPEALS BOARD

By: Anna L. Wolgast
Anna L. Wolgast
Environmental Appeals Judge

¹This order extends EPA Region III's deadline beyond the period (45 days from the date of service of the Initial Decision) within which the Board would ordinarily determine, under 40 C.F.R. § 22.30(b), whether to undertake *sua sponte* review of an unappealed Initial Decision. Normally, because the time for a party to file an appeal is 30 days from the date of service of the Initial Decision, the Board has 15 additional days to make its determination respecting *sua sponte* review. To preserve this interval in this case, the Board will defer any consideration of *sua sponte* review until after the Region's revised deadline for filing an appeal expires on November 20, 2006. See 40 C.F.R. § 22.1(c) (when a procedural issue arises that is not explicitly addressed in the Consolidated Rules of Practice at 40 C.F.R. part 22, the Board has discretion to resolve the issue as it deems appropriate). As a result, the Initial Decision shall be regarded as the final order of the Environmental Appeals Board pursuant to 40 C.F.R. § 22.27(c) *only* if: (1) no appeal brief is filed by Region III on or before November 20, 2006; and (2) the Board does not elect to review the Initial Decision *sua sponte* on or before December 5, 2006 (the 15th day after the Region's revised deadline for filing an appeal).

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **Order Granting Region III's Motion for Extension of Time to File Appeal Brief** in the matter of Rhee Brothers, Inc., FIFRA Appeal No. 06-02, were sent to the following persons in the manner indicated:

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Annette Duncan
Secretary