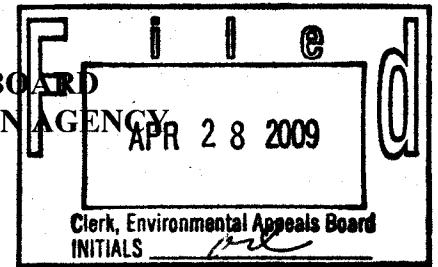


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



In re:)

Desert Rock Energy Company, LLC)

PSD Permit No. AZP 04-01)

PSD Appeal Nos. 08-03, 08-04,
08-05 & 08-06

**ORDER ESTABLISHING DEADLINE FOR RESPONSES TO REGION'S
MOTION FOR VOLUNTARY REMAND**

On April 27, 2009, United States EPA Region 9 ("Region") filed a motion with the Environmental Appeals Board ("Board") requesting a voluntary remand of the final prevention of significant deterioration ("PSD") permit (number AZP 04-01) ("the Permit") it had issued to Desert Rock Energy Company, LLC ("Desert Rock") on July 31, 2008. The Permit is the subject of four petitions for review currently before the Board pursuant to 40 C.F.R. § 124.19.¹ The Region filed its motion requesting a voluntary remand in lieu of filing a surreply brief. *See* EPA Region 9's Motion for Voluntary Remand at 1.

In its motion, the Region states that a remand will provide the Region the opportunity to reconsider its actions on several issues that were raised by Petitioners in this matter. *Id.* More

¹ The following parties filed petitions in this matter: Diné Care, Environmental Defense Fund, Grand Canyon Trust, Natural Resources Defense Council, San Juan Citizens Alliance, Sierra Club, and WildEarth Guardians; the State of New Mexico; Center for Biological Diversity; and Ms. Leslie Glustrom. In addition to the four Petitioners and the Region, the following entities have filed responses, amicus curiae, and/or nonparty briefs in the matter: the Navajo Nation, Desert Rock, the National Parks Conservation Association, the Diné Power Authority, the New Mexico Building and Construction Trades Council, and Physicians for Social Responsibility.


specifically, the Region states that “the Administrator’s office has stayed a portion of the PM_{2.5} rule applicable to this permit and has requested that Region 9 reconsider several parts of its permitting decision for Desert Rock Energy Facility.” *Id.*; *see also id.* Ex. A (letter stating the Agency intends to propose repealing the grandfather provision of the PM_{2.5} rule). In addition, the motion discusses several other issues the Region plans to reconsider should the Board grant its request for a voluntary remand. *See id.* at 8-25.

In its motion, the Region does not mention whether it had discussed the motion with the other participants in this matter or whether any participants oppose the motion. Desert Rock, however, has submitted a letter stating that it intends to file a response to the motion and to seek discovery. Letter from Jeffrey R. Holmstead, Attorney for Desert Rock, to Eurika Durr, Clerk of the Board (Apr. 28, 2009). Desert Rock indicates that it plans to file its response on or before May 13, 2009, unless the Board establishes a different deadline.² *Id.* Based upon the foregoing, the Board hereby establishes a ten-day deadline from today’s date for all participants who wish to respond to the Region’s motion. All responses to the Region’s motion are therefore due no later than May 8, 2009.

So ordered.

ENVIRONMENTAL APPEALS BOARD

April 28, 2009



Kathie A. Stein
Environmental Appeals Judge

² The EAB Practice Manual states that responses to motions should generally be filed with the Board within 15 days to assure consideration. EAB Practice Manual at 38-39 (2004).

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Establishing Deadline for Responses to the Region's Motion for Voluntary Remand in the matter of Desert Rock Energy Company, LLC, PSD Appeal Nos. 08-03, 08-04, 08-05, & 08-06 were sent to the following persons in the manner indicated:

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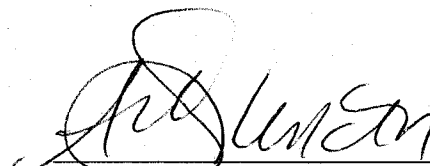
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Dated: APR 29 2009



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