

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC**

In re: Final RCRA Permit for)	
)	
)	
Evoqua Water Technologies, LLC and)	
Colorado River Indian Tribes)	Appeal No. RCRA 18-01
2523 Mutahar Street)	
Parker, Arizona 85344)	US EPA REGION IX's
)	MOTION FOR AN
EPA RCRA ID No. AZD982441263)	EXTENSION OF DEADLINE
)	TO FILE SUPPLEMENTAL
)	BRIEFS RESPONDING TO
)	BOARD'S QUESTIONS

The United States Environmental Protection Agency, Region IX (the Region) hereby requests and moves for an extension of time for the Parties (*i.e.*, the Region, Petitioner Evoqua Water Technologies, LLC [Petitioner] and Co-Permittee the Colorado River Indian Tribes [CRIT]) to file Supplemental Briefs in accordance with the Environmental Appeals Board's (the Board's) December 14, 2018 Order For Further Briefing On Evoqua's Motion For Stay Of Permit Provisions Pending Board Review (12-14-2018 Order).

The extension would move the date by which the Parties must file the requested Supplemental Briefs out a total of three weeks, from January 8, 2019 to January 29, 2019. As grounds for this Motion, the Region states the following:

1. On October 25, 2018, Petitioner filed with the Board a Petition for Review of the final hazardous waste treatment and storage permit issued to Petitioner and CRIT under the Resource Conservation and Recovery Act (RCRA). This Petition was assigned Appeal No. RCRA 18-01.

2. On November 1, 2018, the Region identified the stayed provisions of the final RCRA permit for the Permittees' hazardous waste treatment and storage facility (the Facility) in accordance with Title 40 of the Code of Federal Regulations (40 CFR) §124.16(a)(2) and filed its Notification with the Board. Among the provisions noticed as stayed is Permit Condition I.A.6, which identifies both Petitioner and CRIT as permittees. The Notification stated that provision was stayed only as to CRIT as a permittee.
3. The November 1, 2018 Notification indicated that all other conditions of the Final Permit not stayed would become fully effective enforceable obligations of the Permit as of December 1, 2018.
4. On November 14, 2018, Petitioner filed a Motion to Remand EPA Notice of Stayed Permit Provisions or in the Alternative Motion to Stay Permit Pending Appeal (Motion to Remand). The Region filed a Response Brief on November 29, 2018 and the Petitioner filed a Reply Brief on December 6, 2018.
5. The Board's 12-14-2018 Order requires the Parties, by January 8, 2019, to file Supplemental Briefs answering three specific questions regarding the scope of the Board's authority to review the Motion to Remand. The 12-14-2018 Order includes a requirement that the Parties meet and confer prior to filing their Supplemental Briefs *and* requires the Region to confer with EPA's Office of General Counsel (OGC) in the preparation of its Supplemental Brief.
6. The questions posed by the Board require careful consideration by Regional management as well as consultation with EPA Headquarters, including the requirement that the Region confer with OGC.


7. Both the Christmas and New Year's holidays fall during the period between the date of the Board's 12-14-2018 Order and the January 8, 2019 date by which the Parties' Supplemental Briefs must be filed. Multiple Regional staff and managers assigned to this matter as well as the primary consulting OGC attorney on this matter have previously scheduled leave during these upcoming holiday weeks. The primary OGC attorney is already on leave and will not return until January 3, 2019. Coordinating the Region's responses to the Board's questions among a variety of managers in the Region and at EPA Headquarters, including OGC consultation, over the holidays is complicated by these scheduled absences.
8. The 12-14-2018 Order also requires the Parties undertake a meet and confer process so that the Parties might narrow the areas upon which there is disagreement for the Board's consideration. Ensuring that this process is fruitful should involve the Region preparing its initial responses to the Board's questions before it meets and confers with the other Parties. It makes sense, therefore, for the Region to participate in the required meet and confer effort only after first vetting the Board's questions with Regional managers and EPA Headquarters.
9. Therefore, in order to allow sufficient time for the preparation of Supplemental Briefs in accordance with the Board's 12-14-2018 Order, including the necessary meet and confer process to be undertaken between the Parties, and the requirement that the Region consult with OGC, the Region requests the above-referenced extension of time to file its Response to the Petition for three weeks after the current due date to January 29, 2019.

10. On December 18, 2018, in an email message to the EPA regional attorney, Petitioner's attorney indicated that the Petitioner objects to this Motion and the proposed extended deadline for filing Supplemental Briefs.
11. On December 18, 2018, the EPA regional attorney received an email message from CRIT's counsel in this matter, indicating that the Tribe has no objection to this Motion or the proposed extended deadline for filing Supplemental Briefs.
12. Accordingly, the Region respectfully requests that the Board grant an extension of time to file Supplemental Briefs answering the questions identified in the Board's 12-14-2018 Order, for three weeks, to January 29, 2019.

Statement of Compliance with the Word Limitation

Undersigned counsel for the Region hereby certifies that this Motion complies with the word limit of 40 CFR §124.19(f)(5) because this Motion contains less than 7,000 words.

Respectfully submitted,



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Date: 12 - 18 - 2018

CERTIFICATE OF SERVICE

I hereby certify that, on behalf of the United States Environmental Protection Agency, Region IX, a true and correct copy of the foregoing **"US EPA Region IX's Motion for An Extension Of Deadline To File Supplemental Briefs Responding To Board's Questions,"** has been served on the following parties via the following methods on this 18th day of December 2018:



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12/18/2018

Date

*Clerk of the US EPA
Environmental Appeals Board (EAB):*

Eurika Durr, Clerk
US Environmental Protection Agency
Environmental Appeals Board

Service on the Clerk of the EAB is made via the EAB's electronic filing system at https://yosemite.epa.gov/OA/EAB/EAB-ALJ_Upload.nsf/HomePage?ReadForm [and via U.S. mail for documents over 50 pages] in accordance with 40 CFR § 124.19.

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