

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

In re:)	
)	
)	
Florence Copper, Inc.)	UIC Appeal No. 17-04
)	Petition of Karen J. Wall
UIC Permit No. R9UIC-AZ3-FY11-1)	
)	
)	

**FLORENCE COPPER, INC.’s MOTION FOR DENIAL OF THE PETITION FOR
REVIEW FILED BY KAREN J. WALL FOR BEING UNTIMELY FILED**

Florence Copper, Inc. (“**FCI**”), the permit applicant in the above-captioned matter, respectfully moves the Environmental Appeals Board to deny the petition of Karen J. Wall for being untimely filed.

The applicable deadline for filing petitions for review of Region 9’s decision to issue UIC Permit No. R9UIC-AZ3-FY11-1 was thirty (30) days after Region 9 served its December 20, 2016 Notice of Final Permit Decision. 40 C.F.R. § 124.19(a)(3). Ms. Wall’s petition does not state when she received or became aware of the Notice of Final Permit Decision. However, Ms. Wall’s position as a councilmember on the Town Council of the Town of Florence—which timely filed its petition—means that she was at least constructively in receipt of service and was subject to the same filing deadline as the Town of Florence—which was January 19, 2017. Ms. Wall’s petition is dated January 31, 2017 and the Board received the petition on February 7, 2017, nearly three weeks after the filing deadline. Ms. Wall’s petition tacitly acknowledges, moreover, that it was filed late, and suggests erroneously that the Board’s Order of January 26, 2017 extended the deadline by which petitions needed to be filed. For its part, FCI learned of Ms. Wall’s petition only upon FCI’s examination on February 8, 2016 of the Board’s dockets.

The Board should not entertain Ms. Wall's petition or any other petitions that may yet be filed past the 30-day deadline. FCI is already well into drafting its response to the petitions in UIC Appeal Nos. 17-01, 17-02 and 17-03. It would be unfair for FCI to be expected to formulate its response to petitions when the universe of petitions is in flux. Nor does Ms. Wall's petition state or present special circumstances that justify its untimeliness. *See In re B&L Plating, Inc.*, 11 E.A.D. 183, 190 (EAB 2003) ("The Board does not excuse a late-filed appeal unless it finds special circumstances to justify the untimeliness. *In re Outboard Marine Corp.*, 6 E.A.D. 194 (EAB 1995), *In re Production Plated Plastics, Inc.*, 5 E.A.D. 101 (EAB 1994). In the case at bar, the appeal provides no explanation whatsoever for the late filing with the Board, and we are otherwise unaware of any special circumstances to excuse the untimeliness.").¹

Dated: February 10, 2017

Respectfully Submitted,



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¹ FCI reserves the right to challenge the sufficiency of petitions for review of the UIC permit decision relative to the petition content requirements of 40 C.F.R. § 124.19(a)(4).

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the attached **FLORENCE COPPER, INC.'s**
MOTION FOR DENIAL OF THE PETITION FOR REVIEW FILED BY KAREN J.
WALL FOR BEING UNTIMELY FILED to be served by e-mail upon the parties listed below
and also by first class mail to Ms. Karen J. Wall.

Dated: February 10, 2017



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