

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

In re:)	PSD Appeal Nos. 06-01 through 06-06
)	
Knauf Insulation GmbH)	EPA REGION 9'S MOTION TO FILE
)	RESPONSE; MOTION TO STRIKE
)	FILINGS AS UNTIMELY
)	
PSD Permit No. NSR 4-4-4, SAC 03-01)	
)	

The United States Environmental Protection Agency, Region 9 (Region 9), moves for permission to file this response to four late-filed documents in the above-captioned matter and moves to strike the four documents from the record.

After Region 9 filed its Response to the Appeals 06-01 through 06-06 in this matter, certain petitioners filed four additional documents. The Environmental Appeals Board (EAB) received and filed those documents as follows: (1) Petitioner Patricia Jiminez's letter (Docket #18) on July 26, 2006; (2) Petitioner Serafin Jiminez's letter (Docket #19) on July 26, 2006; (3) Petitioner Henry Francis' letter (Docket #20) on August 1, 2006; and (4) Petitioner Celeste Draiser's Motion to Remand (Docket #21) on September 5, 2006 (collectively, the "Late-Filed Documents").

Each of the Late-Filed Documents should be struck from the docket because they are untimely, because they do not add any information or allegations to the record, and because allowing protracted briefing would defeat the purpose of expediting the proceeding through the use of a summary disposition.

**EPA REGION 9'S MOTION TO FILE A RESPONSE AND MOTION TO STRIKE
PSD Appeal Nos. 06-01 through 06-06**

First, each of the Late-Filed Documents was filed outside of the briefing schedule set by the EAB. After each of the original petitions for review was filed, the EAB addressed identical letters to Region 9 and to each petitioner (EAB Docket Entries 2, 4, 6, 8, 10, 12). In those letters, the EAB set forth a briefing schedule. Region 9's response was due by July 11, 2006, and each petitioner had "10 days from the date of service of a response seeking summary disposition to file a reply with the Board." See EAB Docket Entries 2, 4, 6, 8, 10, and 12 at 1. The letters also provided that "[n]o further briefing will be allowed except by order of the Board." *Id.* at 3. The date of service of Region 9's Response was July 10, 2006. See Certificate of Service, EAB Docket #17. Even assuming that the EAB's order refers only to working days and not calendar days, any response by a petitioner was due to be received no later than July 24, 2006. See EAB Practice Manual at 11 ("If the EAB establishes a briefing schedule by order, any date the EAB specifies for filing a pleading means the date by which it must be *received*, unless otherwise specified in the order.") Moreover, the EAB clearly set forth that no other briefing would be allowed without an order of the EAB. Accordingly, the Late-Filed Documents, all of which were received and filed after July 24, 2006, should be struck from the docket.

Second, this is not a case in which the EAB should equitably extend the deadline for filing because of extenuating circumstances, because the petitions offer new information, or because they offer information that could not be ascertained prior to the deadline. None of the Late-Filed Documents requests an exception to the briefing schedule or provides a rationale to justify such an exception. In fact, each of the Late-Filed Documents merely reiterates arguments that were raised and addressed during the permitting process, in the EAB petitions, or both.

Patricia Jiminez's letter reiterates generalized grievances that do not directly relate to the PSD permitting process or provide any ground upon which to overturn the permit issued to

Knauf Insulation GmbH (“Knauf”). Serafin Jiminez and Henry Francis similarly reiterate the arguments they made in their original petitions.

Celeste Draisner’s Motion to Remand is, for the most part, a copy of public comments previously received by Region 9 from Eric Cassano and Ivan Hall. Region 9 has already responded to the material issues raised by Draisner, Cassano, and Hall, and Draisner’s motion fails to explain how Region 9’s response to those comments was in error. For example, Ms. Draisner’s complaints concerning Knauf’s emissions of higher levels of NOx than originally permitted, the handling of the 2004 Notice of Violation, operating capacity conditions for emissions testing, and the use of modeling data were all taken virtually verbatim from Eric Cassano’s public comment letter to Region 9. *See* Comments of Eric Cassano, Attachment 1, Region 9 Docket VIII-A-15. Region 9 responded to each of these issues in its Response to Comments. *See* Response to Comments, Exhibit A to EAB Docket #17, at Response 3.6b(NOx exceedances); Response 4a (modeling); Response 5b (handling of 2004 Notice of Violation); Response 3.3k (operating capacity for emissions testing). Additionally, Ms. Draisner refers to Ivan Hall’s public comments, which she believes show that Region 9’s permit contained an “absolute lack of BACT analysis.” Draisner Filing, EAB Docket #21, at 2. Mr. Hall submitted several comments during the public comment period, and these comments are attached as Exhibit 2. Region 9 responded to these comments. *See* Response to Comments, Exhibit A to EAB Docket #17, at Responses 2a, 2b, and 2c. Again, Ms. Draisner does not state how Region 9’s response to Mr. Hall’s comments was in error or otherwise inadequate.

Finally, Region 9 urges the EAB to strike the Late-Filed Documents as a policy matter because allowing petitioners to prolong the appeal process through subsequent filings and responses would defeat the purpose of summary disposition. Region 9 demonstrated in its

Response to the petitions that summary disposition and dismissal is appropriate because the issues raised by petitioners are outside of the EAB's jurisdiction, not presented with sufficient specificity, and/or had not been raised during the public comment period. Where, as here, the appeals present no viable basis for appeal, the public interest is best served by expedited review and dismissal. If the EAB allows petitioners to ignore its scheduling orders and to continue to file pleadings that merely reiterate comments made in both the public comment period and in the petitions, the public's interest in an efficient resolution to this permit challenge would be defeated.

DATED: October 13, 2006

Respectfully Submitted,
United States Environmental
Protection Agency, Region 9



M. Grady Mathai-Jackson
Assistant Regional Counsel

CERTIFICATE OF SERVICE

I hereby certify that the original of the United States Environmental Protection Agency's MOTION TO FILE RESPONSE AND MOTION TO STRIKE FILINGS AS UNTIMELY was sent by Pouch Mail to the Clerk of the of the Environmental Appeals Board on Friday, October 13, 2006, for filing on October 16, 2006, and that an electronic copy was sent to the EAB on October 13, 2006 pursuant to the Environmental Appeals Board Electronic Submission Policy at http://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/General+Information/Electronic+Submission (visited October 12, 2006). Additionally, one copy of the United States Environmental Protection Agency's MOTION TO FILE RESPONSE AND MOTION TO STRIKE FILINGS AS UNTIMELY was sent by First Class Mail, Postage Prepaid to:

Appeal No. PSD 06-01: Henry Francis
13613 Jaybird Way
Redding, CA 96003

Appeal No. PSD 06-02: Celeste Draisner, Colleen Leavitt, Mary Scott
c/o Celeste Draisner
1000 Shepard Court
Redding, CA 96002

Courtesy copy of Brief to:
Colleen Leavitt
P.O. Box 5538
Summit City, CA 96089

Mary Scott
12982 Beltline Road
Redding, CA 96003

Appeal No. PSD 06-03: Patricia Jiminez, Esq.
13613 Jaybird Way
Redding, CA 96003

Appeal No. PSD 06-04: Joy Louise Newcom
3702 Fujiyama Way
Redding, CA 96001

EPA REGION 9'S BRIEF IN SUPPORT OF SUMMARY DISPOSITION
PSD Appeal Nos. 06-01 through 06-06

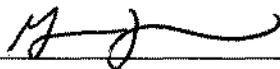
Appeal No. PSD 06-05: Serafin Jiminez
13613 Jaybird Way
Redding, CA 96003

Appeal No. PSD 06-06: Joanna L. Caul
21684 Elk Trl W
Redding, CA 96003

Permittee: Courtesy copy of Brief to:
Knauf Insulation GmbH
3100 Ashby Road
Shasta Lake, CA 96019

Anthony Sullivan, Esq.
Barnes & Thornburg
11 South Meridian Street
Indianapolis, Indiana 46204-3535

DATED: October 13, 2006



M. Grady Mathai-Jackson
U.S.E.P.A., Region IX