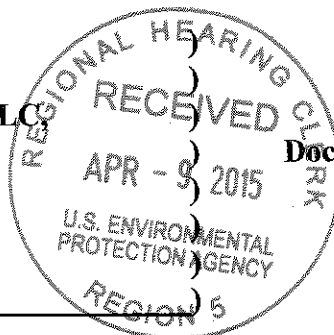


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

In the Matter of:

**Carbon Injection Systems LLC,
Scott Forster,
and Eric Lofquist.**

Docket No. RCRA-05-2011-0009



MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR REVIEW

The United States Environmental Protection Agency, Region 5 (“EPA” or “Agency”) hereby files this Motion for Extension of Time to File Petition for Review (“Motion”).

The hearing in this matter was held June 18-29, 2012 (in Cleveland, Ohio) and July 16, 2012 (in Augusta, Georgia). On March 17, 2015, Chief Administrative Law Judge (“ALJ”) Biro issued an “Order Regarding Redactions From Initial Decision on the Basis of CBI”¹ and an “Initial Decision” in this matter. The “Initial Decision” released on March 17, 2015, was signed by Chief ALJ Biro and each page was emblazoned with this watermark: “CONFIDENTIAL – CBI PROTECTED.” The “Order Regarding Redactions From Initial Decision on the Basis of CBI” states that “[t]he filing of any motion requesting redaction does not effect [sic] the finality of the order or the deadlines for appeal therefrom.” On March 24, 2015, EPA filed “Complainant’s First Status Report” informing Chief ALJ Biro that counsel for EPA and counsel for Respondents conferred and agreed that the Initial Decision does not contain confidential business information (“CBI”). Neither party filed a motion requesting redactions of CBI from

¹ It should be noted that the majority of the CBI in this matter is information generated by non-parties.

the Initial Decision. A non-watermarked Initial Decision was first observed by counsel for EPA on the Office of Administrative Law Judges website on April 6, 2015.

The deadline for filing a petition is “[w]ithin 30 days after the initial decision is served.” 40 C.F.R. § 22.30(a). In this case, the watermarked Initial Decision was served via certified mail (return receipt) and e-mail. The email version of the watermarked Initial Decision was received by EPA on March 17, 2015, and the certified mail (return receipt) version of the watermarked Initial Decision was received by EPA on March 23, 2015. On November 21, 2013, Chief ALJ Biro issued a “Standing Order Authorizing Filing and Service By E-mail in Proceedings Before the Office of Administrative Law Judges” (“Standing Order”) (Attachment A). The Standing Order authorizes the filing and service of documents by e-mail, “other than the complaint, rulings, order, and decisions.” Standing Order at 1. Therefore, the filing deadline for a petition in this matter is thirty days from March 23, 2015, or, April 22, 2015. EPA hereby requests an extension from this April 22, 2015, deadline to May 21, 2015 (forty-five calendar days after the date a non-confidential Initial Decision in this matter was issued by Chief ALJ Biro).

Under the Environmental Appeals Board (“Board”) procedural rules, motions for extensions of time must be filed “sufficiently in advance of the due date to allow other parties to have a reasonable opportunity to respond to the request for more time,” and to provide the Board with a reasonable opportunity to prepare an order. 40 C.F.R. § 22.7(b). This motion is being filed well in advance of the due date for the petition in this matter.

Available case law indicates that the Board has discretion to relax or modify its procedural rules. *See Am. Farm Lines v. Black Ball Freight Serv.*, 397 U.S. 532, 539 (1970). (“[I]t is always within the discretion of a court or an administrative agency to relax or modify its procedural rules adopted for the orderly transaction of business before it when in a given case the

ends of justice require it.”); *In re Indeck-Elwood, LLC*, 13 E.A.D. 126, 139 & n.36 (EAB 2006)

(explaining the Board’s decision to grant petitioners’ motion to amend their petition for review of a PSD permit because it caused no discernable prejudice to permittee, the amended petition was filed before any responsive pleadings, and the issue raised involved important policy considerations); *In re Footprint Power*, PSD Appeal No. 14-02 (Order Granting Motion for Extension of Time to File Petition for Review dated March 6, 2014, where Board extended deadline for filing of amended petition for review of a PSD permit after petitioners were without counsel for a crucial period and petitioners were required to digest and address a complex administrative record)(Attachment B); *In re Ms. Dessie Brumfield*, TSCA Appeal No. 13-(04) (December 20, 2013 Order in which Board granted a motion for extension of time for EPA to file a notice of appeal and brief due in part to the need for the regional office to coordinate with EPA headquarters offices on potentially nationally-significant issues and the fact that lead counsel for EPA was to be out of the office for a significant period) (Attachment C); *In re City of Homedale*, NPDES Appeal No. 13-10 (Order Granting Region 10’s Motion for Extension of Time dated October 30, 2013, where Board extended filing deadline for a response to a petition related to an NPDES permit due to a partial government shutdown due to a lapse in appropriations)(Attachment D); *In re Circle T Feedlot, Inc.*, 14 E.A.D. 653, (Order Denying Review dated June 7, 2010 where Board determined that petitions for review in a permitting matter should not be dismissed because they were untimely filed since there was a lengthy delay between the postmark date of the petition and the Board’s receipt of the petitions since the petitions were delayed at a post office anthrax decontamination center). EPA can show good cause to relax the petition deadline in this case.

First, the decision regarding whether or not to appeal must be coordinated at many levels within EPA – both within the regional office and at EPA headquarters offices. This is of particular concern in this matter, which EPA considers to involve potentially nationally-significant issues. Until April 6, 2015, the EPA case team only had a watermarked Initial Decision marked “CONFIDENTIAL – CBI PROTECTED.” Although on March 24, 2015, the parties informed Chief ALJ Biro of their belief that the Initial Decision did not contain CBI, Chief ALJ Biro nonetheless may have decided to redact any public version of the Initial Decision. In order to best protect CBI and lower the risk of an accidental release of CBI, the EPA case team waited until a public version of the Initial Decision was available to disseminate among numerous EPA employees – rather than disseminating the watermarked Initial Decision marked “CONFIDENTIAL – CBI PROTECTED”. This precaution has hindered decision making by EPA regarding whether or not to appeal. Second, the Initial Decision is 95 pages in length and was issued over 2-1/2 years after the hearing concluded and over 2 years from the filing of the last post-hearing brief in the matter. EPA is required to digest and address a complex and lengthy decision and the Agency requires additional time to ensure a complete notice of appeal and accompanying appellate brief. Third, the lead counsel for EPA has long-scheduled vacation plans for April 10-18, 2015. Finally, at the time this case was heard in June and July of 2012 by Chief ALJ Biro (and during post-hearing briefing in late 2012 and early 2013), EPA was represented by three staff attorneys. Now, one of the three (Moore) has left the Agency, leaving only two (Garypie and Cahn) staff attorneys to handle the complex analysis required by this Initial Decision.

EPA contacted counsel for Carbon Injection Systems LLC, Scott Forster, and Eric Lofquist, and those parties agree with an extension to May 6, 2015 (thirty calendar days after the

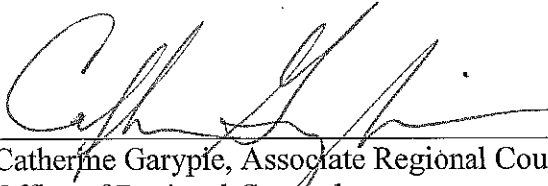
date a non-confidential Initial Decision in this matter was issued by Chief ALJ Biro), but not to
May 21, 2015.

It is for these reasons that EPA hereby requests that the April 22, 2015 petition filing
deadline be extended to May 21, 2015 (forty-five calendar days after the date a non-confidential
Initial Decision in this matter was issued by Chief ALJ Biro).

Respectfully Submitted,

Counsel for EPA:

3/8/15
Date



Catherine Garypie, Associate Regional Counsel
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U.S. EPA Region 5
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PH (312) 886-5825
Email: garypie.catherine@epa.gov

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ATTACHMENTS

A - Standing Order Authorizing Filing and Service By E-mail in Proceedings Before the Office of Administrative Law Judges (November 21, 2013)

B - *In re Footprint Power*, PSD Appeal No. 14-02 (March 6, 2014)

C - *In re Ms. Dessie Brumfield*, TSCA Appeal No. 13-(04) (December 20, 2013)

D - *In re City of Homedale*, NPDES Appeal No. 13-10 (October 30, 2013)

CERTIFICATE OF SERVICE

**In the Matter of Carbon Injection Systems LLC, Scott Forster, and Eric Lofquist
Docket No. RCRA-05-2011-0009**

I certify that the foregoing "~~Motion for Extension of Time to File Petition for Review~~", dated April 8, 2015, was sent this day in the following manner to the addressees listed below:

An electronic filing was made to:

Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
1201 Constitution Avenue, NW
WJC East, Room 3332
Washington, DC 20004

Copy via hand-delivery to:

Regional Hearing Clerk
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Copy via overnight mail to:

Attorneys for Respondents:

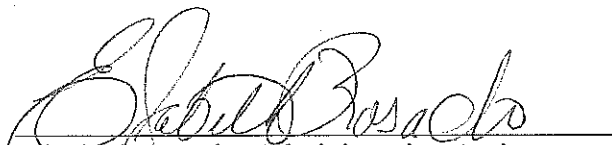
Carbon Injection Systems LLC, Scott Forster, Eric Lofquist
c/o Keven D. Eiber
Meagan L. Moore
Brouse McDowell
600 Superior Avenue East
Suite 1600
Cleveland, OH 44114

Carbon Injection Systems LLC, Scott Forster, Eric Lofquist
c/o Lawrence W. Falbe
Quarles & Brady LLP
300 N. LaSalle Street, Suite 4000
Chicago, IL 60654

Presiding Judge:

The Honorable Susan L. Biro, Chief Administrative Law Judge
U.S. EPA Office of the Hearing Clerk
1099 14th St. NW
Suite 350, Franklin Court
Washington, DC 20005

4/8/2015
Date


Elizabeth Rosado, Administrative Assistant

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

In the Matter of:)

Carbon Injection Systems LLC,)
Scott Forster)
And Eric Lofquist)

) Appeal No.
)
)
)
)
)
)

CERTIFICATION

I certify that the foregoing (1) Motion For Extension Of Time To File Petition For Review; (2) its four Attachments; (3) This Certification; and (4) a Certificate of Service are identical copies of the original paper documents electronically filed in this case with the Environmental Appeals Board on April 8, 2015.

4/8/15
Date


Elizabeth Rosado (C-14J)

Administrative Program Assistant,
MM1-3, ORC5

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Chicago, IL 60604-3590
(312) 886-1432
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ATTACHMENT A

OFFICE OF ADMINISTRATIVE LAW JUDGES
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C.



**STANDING ORDER AUTHORIZING FILING AND SERVICE BY E-MAIL
IN PROCEEDINGS BEFORE THE OFFICE OF ADMINISTRATIVE LAW JUDGES**

The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, set forth at 40 C.F.R. Part 22 ("Consolidated Rules of Practice"), state that "[t]he Presiding Officer . . . may by order authorize . . . electronic filing, subject to any appropriate conditions and limitations," and "may by order authorize . . . electronic service, subject to any appropriate conditions and limitations." 40 C.F.R. § 22.5(a)(1), (b)(2). Pursuant to this authority, the Chief Administrative Law Judge hereby authorizes the filing and service of documents by e-mail, other than the complaint, rulings, orders, and decisions, in all cases currently before or subsequently transferred to the Office of Administrative Law Judges ("OALJ") that are governed by the Consolidated Rules of Practice¹ and adopts the following conditions and limitations to facilitate filing and service by e-mail.²

¹ The authority granted by this Order shall also apply to proceedings under those other provisions in Title 40 that expressly utilize 40 C.F.R. Part 22 procedures. See, e.g., 40 C.F.R. Part 17 (applications for awards under the Equal Access to Justice Act that require filing and service consistent with Part 22); 40 C.F.R. § 66.91 (Clean Air Act enforcement appeals hearings governed by 40 C.F.R. Part 22 in conjunction with supplemental regulations at 40 C.F.R. Part 66). This Order shall not apply to proceedings under other provisions in Title 40 that do not expressly incorporate the Part 22 procedures. See, e.g., 40 C.F.R. Part 7 (nondiscrimination in programs or activities receiving federal assistance from the EPA); 40 C.F.R. Part 27 (administrative procedures for imposing civil penalties and assessments pursuant to the Program Fraud and Civil Remedies Act of 1986, 31 U.S.C. §§ 3801-3812); 40 C.F.R. Part 78 (providing that the Environmental Appeals Board may refer an appeal under the Acid Rain program to the Chief Administrative Law Judge to conduct an evidentiary hearing to resolve disputed facts); 40 C.F.R. Part 85 (public hearings conducted under the mobile sources of air program); 40 C.F.R. Part 164 (rules of practice governing several types of non-enforcement hearings under the Federal Insecticide, Fungicide, and Rodenticide Act); 40 C.F.R. Part 209 (rules governing proceedings under the Noise Control Act of 1972).

² This Standing Order does not require the use of e-mail for filing or service in lieu of other methods for filing and/or service. Rather, it authorizes the use of e-mail *in addition to* those methods already authorized and enumerated in the Consolidated Rules of Practice, 40 C.F.R. § 22.5(a)(1), (b)(2). For documents filed through those non-electronic means, the inked date stamp physically applied by the Office of Administrative Law Judges to the paper copy of the documents will continue to serve as the official record of the date and time of filing. The Office of Administrative Law Judges is open to receive such paper filings between 8:30 a.m. and 4:30 p.m. Eastern Time, Monday through Friday. Any paper document received by the Office of

The conditions and limitations set forth herein may be amended or revoked generally or in regard to a specific case or group of cases by further order of the Chief Administrative Law Judge in her sole discretion at any time. In addition, the Administrative Law Judge presiding in a specific case may issue an order modifying these conditions and limitations if deemed appropriate in his or her discretion.

Filing of Documents by E-Mail

The Consolidated Rules of Practice, as modified by the current Headquarters Hearing Clerk Pilot Program (*see* www.epa.gov/oalj), require that “[t]he original and one copy of each document intended to be part of the record shall be filed with the [Headquarters] Hearing Clerk when the proceeding is before” an Administrative Law Judge.³ 40 C.F.R. § 22.5(a); *see* Memorandum from John Reeder, Deputy Chief of Staff, AO, & Lawrence Starfield, Principal Deputy Assistant Admin., OECA, Pilot Program to Migrate Certain Regional Hearing Clerk Functions to the Headquarters Hearing Clerk (Apr. 27, 2012) (available at http://www.epa.gov/oalj/orders/HrgClerk_PilotProject_Memo.pdf) (hereinafter cited as the “Starfield Memorandum”). A document is considered filed when the Headquarters Hearing Clerk receives it. 40 C.F.R. § 22.5(a)(1). Documents must be signed, must be accompanied by a certificate of service, and may be submitted to the Headquarters Hearing Clerk for filing in person, by mail, by courier, or by commercial delivery service. *Id.* Pursuant to this Order, documents may also be electronically submitted to the Headquarters Hearing Clerk for filing by e-mail, subject to the conditions and limitations set forth below.

Any party choosing to submit a document to the Headquarters Hearing Clerk by e-mail for filing must address the e-mail to OALJfiling@epa.gov.⁴ The subject line of the e-mail shall include the name and docket number of the proceeding. Documents submitted by e-mail must be in Portable Document Format (“PDF”), and must contain a contact name, phone number, mailing address, and e-mail address of the filing party or its authorized representative. All documents submitted for filing, regardless of submission method, must be signed and must be accompanied by a certificate of service in accordance with Section 22.5 of the Consolidated Rules of Practice.

Administrative Law Judges after 4:30 p.m. Eastern Time may be treated as having been filed the next business day.

³ **In an exception to this rule, any Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk, not the Headquarters Hearing Clerk.** *See* Memorandum from Susan L. Biro, Chief Administrative Law Judge, OALJ, Amendment of Hearing Clerk Pilot Procedures as to CAFOS (Mar. 14, 2013) (available at http://www.epa.gov/oalj/orders/HrgClerk_PilotProject_Memo_Amendment.pdf).

⁴ Electronic files exceeding 50 MB must be separated into files under 50 MB each or submitted on a compact disk (“CD”) by mail, courier, or personal delivery.

To be considered timely, documents submitted by e-mail to OALJfiling@epa.gov for filing must be received by 11:59 p.m. Eastern Time on the day the document is required to be filed. An e-mail and any attached documents shall be deemed to have been filed at the time and date of electronic reception as recorded by the Office of Administrative Law Judges' e-mail system. Documents submitted by e-mail for filing shall be deemed to constitute both the original and one copy of the document, in satisfaction of the duplicate-filing requirement of Section 22.5(a)(1) of the Consolidated Rules. See 40 C.F.R. § 22.5(a)(1) (must file original and one copy of each document). Documents submitted by e-mail shall also be deemed served on the presiding Administrative Law Judge. See 40 C.F.R. § 22.5(b).

Please note that documents sent to the e-mail address of a staff member within the Office of Administrative Law Judges, or to any e-mail address other than OALJfiling@epa.gov, *shall not* be accepted for filing, and shall not be deemed served on the presiding Administrative Law Judge.

IMPORTANT INFORMATION REGARDING Confidential Business Information and Personally Identifiable Information

The Office of Administrative Law Judges is **NOT** equipped either to accommodate or to protect the privacy of Confidential Business Information ("CBI") or Personally Identifiable Information ("PII") contained in documents submitted to the Headquarters Hearing Clerk by e-mail for filing. Whenever a document is submitted by e-mail to OALJfiling@epa.gov for filing, the presiding Administrative Law Judge will consider all claims to confidentiality WAIVED. A party submitting information to the Office of Administrative Law Judges for which a claim of confidentiality is made must do so by filing paper copies of that information in the manner described in the Consolidated Rules of Practice, as modified by the Headquarters Hearing Clerk Pilot Project. See 40 C.F.R. § 22.5(d); the Starfield Memorandum; *see also* 40 C.F.R. Part 2. However, a redacted version of the document alleged to contain CBI or PII may be submitted by e-mail for filing so long as the party claiming confidentiality also files the unredacted version in accordance with the aforementioned requirements. See 40 C.F.R. § 22.5(d). For more information, please refer to the Office of Administrative Law Judges' Privacy Act Statement & Notice of Disclosure of Confidential and Personal Information (June 19, 2013) (available at http://www.epa.gov/oalj/orders/13-06-19_PrivacyActStatement_NoticeOfDisclosure.pdf).

Service of Documents by E-Mail

The Consolidated Rules of Practice require that "[a] copy of each document filed in the proceeding shall be served on the Presiding Officer . . . and on each party." 40 C.F.R. § 22.5(b). Pursuant to this Order, filed documents other than the complaint, rulings, orders, and decisions may be served by e-mail, in addition to the other methods of service identified in Section 22.5(b)(2) of the Consolidated Rules of Practice, subject to the conditions and limitations set forth below.

The subject line of the e-mail shall include the name and docket number of the proceeding. Documents served by e-mail must be in Portable Document Format ("PDF"), and must contain a contact name, phone number, mailing address, and e-mail address of the serving party or its authorized representative. All documents, regardless of the method of service, must be signed and must be accompanied by a certificate of service in accordance with Section 22.5 of the Consolidated Rules of Practice. Service of documents by e-mail is complete upon electronic transmission. Documents submitted by e-mail to OALJfiling@epa.gov for filing shall be deemed served on the presiding Administrative Law Judge.

SO ORDERED.



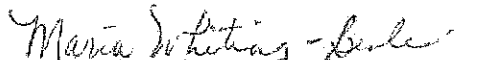
Susan L. Biro
Chief Administrative Law Judge

Dated: November 21, 2013
Washington, D.C.

In the Matter of Carbon Injection Systems LLC, Scott Forster and Eric Lofquist, Respondents
Docket No. RCRA-05-2011-0009

CERTIFICATE OF SERVICE

I certify that the foregoing **Standing Order Authorizing Filing And Service By E-Mail In Proceedings Before The Office Of Administrative Law Judges**, dated November 21, 2013, was sent this day in the following manner to the addressees listed below.



Maria Whiting-Beale
Staff Assistant

Dated: November 21, 2013

Copy By Regular To:

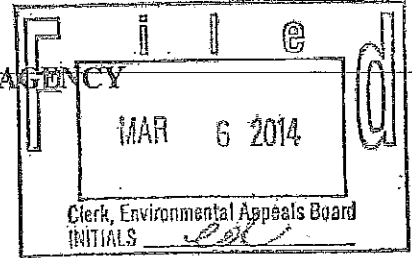
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Chicago, IL 60654

ATTACHMENT B

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



In re:)
)
)
Footprint Power)
Salem Harbor Development, LP)
)
)
Application No. NE-12-022)
Transmittal No. X254064)
)

PSD Appeal No. 14-02

**ORDER GRANTING MOTION FOR EXTENSION OF TIME TO FILE
PETITION FOR REVIEW**

On January 30, 2014, the Massachusetts Department of Environmental Protection (“DEP”) issued to Footprint Power Salem Harbor Development, LP (“Footprint”), a Clean Air Act (“CAA”) Prevention of Significant Deterioration (“PSD”) permit. The permit authorizes Footprint to construct a 692-megawatt combined cycle electric generating facility in Salem, Massachusetts. On March 3, 2014, four individuals (“Petitioners”) timely filed a joint petition for review of the PSD permit.¹ Petitioners simultaneously filed a motion requesting permission to file an amended petition for review no later than March 17, 2014. Petition for Review and Motion for Permission to File Amended Petition at 1 (Mar. 3, 2014) (“Petition”).

Petitioners aver that until very recently they were represented by the Conservation Law Foundation (“CLF”). *Id.* at 1-2. Petitioners state that CLF reached a settlement with Footprint, and on February 18, 2014, more than half way through the thirty-day appeal period, CLF notified

¹ The four individuals, represented by the same counsel, are Jeff Brooks, Andrea Celestine, William Dearstyn, and Linda Haley. Petitions for review of a PSD permit are due within thirty days after the permitting authority issues a final permit. 40 C.F.R. § 124.19(a)(3). Petitions for review in the above-captioned matter were due on March 2, 2014, which fell on a Sunday. Pursuant to 40 C.F.R. § 124.20(e), the 30-day time period to timely file was extended until Monday, March 3, 2014.

Petitioners that the terms of the settlement prevented CLF from providing Petitioners with any further legal assistance. *Id.* at 2. As a result, Petitioners aver that they were unable to retain counsel to replace CLF until March 1, 2014, two days prior to the deadline for filing a petition for review. *Id.* As a result, counsel for Petitioners had two days to obtain and review the relevant documents and prepare the petition for review. *Id.*

Petitioners acknowledge that under the Board's procedural rules, motions for extensions of time must be filed "sufficiently in advance of the due date to allow other parties to have a reasonable opportunity to respond to the request for more time," and to provide the Board with a reasonable opportunity to prepare an order. 40 C.F.R. § 124.19(g), *cited in* Petition at 2.

Petitioners maintain that because counsel was not retained until two days prior to the filing deadline (on a Saturday), compliance with this rule was impossible, but that they nonetheless filed a "summary petition for review that represents their absolute best effort to properly raise issues for appeal." Petition at 2, n.1. Petitioners also state that they are willing to extend the deadline for responses from Footprint and DEP to ensure that neither of them is forced to respond without knowing whether the Board will allow the initial petition to be amended.² *Id.*

In support of their motion requesting an extension of time to file an amended petition for review, Petitioners aver that the circumstances underlying their request are extraordinary. In

² In addition to the motion for extension of time to file an amended petition, the petition for review raises several substantive challenges to the final permit. In particular, Petitioners argue that the carbon monoxide, sulfuric acid, and particulate matter emission limits changed substantially subsequent to the close of the public comment period. Petition at 3-6. Petitioners also challenge DEP's use of regional air monitoring data, the exclusion of de minimis sources from DEP's evaluation of potential national ambient air quality standard ("NAAQS") violations, and the failure to apply best available control technology ("BACT") to volatile organic compound ("VOC") emissions given that they are ozone precursors. *Id.* at 6-8.

particular, Petitioners cite the unanticipated loss of counsel less than two weeks before the deadline to file a petition for review. *Id.* at 2. In addition, Petitioners note that “[t]his is a significant project that has generated a complicated record,” such that the truncated period for preparation of an appeal has diminished Petitioners’ ability to cite to the administrative record to support their allegations that the final permit has changed substantially. *Id.* at 2-3. Petitioners state that they requested representatives of Footprint and DEP to consent to their motion for an extension of time to file an amended petition. *Id.* at 2; *see* 40 C.F.R. § 124.19(f)(2). Footprint opposes Petitioners’ motion, whereas Petitioners did not receive a response from DEP before they had to file their petition to ensure it was timely. Petition at 2.

The Board hereby grants Petitioners’ request for an additional fourteen days to file an amended petition for review that sets forth in full detail all of their arguments. As Petitioners point out, the Board has discretion to relax or modify its procedural rules.³ 40 C.F.R. § 124.19(n); *see also Am. Farm Lines v. Black Ball Freight Serv.*, 397 U.S. 532, 539 (1970) (“[I]t is always within the discretion of a court or an administrative agency to relax or modify its procedural rules adopted for the orderly transaction of business before it when in a given case the ends of justice require it.”); *In re Indeck-Elwood, LLC*, 13 E.A.D. 126, 139 & n.36 (EAB 2006) (explaining the Board’s decision to grant petitioners’ motion to amend their petition for review of

³ The Board strictly construes threshold procedural requirements, including the timely filing of a petition. *See* 124.19(a)(3); *see also In re Sierra Pacific Industries*, PSD Appeal No. 13-01, at 2-3 (EAB Mar. 21, 2013) (Order Denying Extension of Time to File Appeal Brief). In this instance, Petitioners’ timely filed their petition for review, and thus they have already invoked the Board’s jurisdiction under 40 C.F.R. § 124.19. *See In re Desert Rock Energy Co.*, PSD Appeal Nos. 08-03 & 08-04, at 5 n.2 (EAB Aug. 21, 2008) (Order Granting Desert Rock’s Motion to Participate, Granting a 30-Day Extension of Time, and Denying a Stay of Briefing on Certain Issues) (“Desert Rock Order”).

a PSD permit because it caused no discernible prejudice to permittee, the amended petition was filed before any responsive pleadings, and the issue raised involved important policy considerations).

As the Board's procedural regulations make clear, in addition to identifying contested permit condition(s) or other specific challenge(s) to the permit, Petitioners must clearly set forth, with legal and factual support, why the petition should be reviewed, and demonstrate that each challenge to the permit is based on a clearly erroneous finding of fact or conclusion of law, or an important policy consideration. 40 C.F.R. § 124.19(a)(4) (noting that a petitioner must make specific reference to the administrative record to demonstrate participation in proceedings below and to support any contention that the permit issuer's response to comments was clearly erroneous). Among other things, the Board finds significant the fact that Petitioners must digest and address the relevant portions of a complex administrative record, including a 100-page response to comments and likely several additional attachments. *See, e.g.,* Desert Rock Order at 4 (allowing extension of time to file petition for review based on complexity and length of administrative record); *In re City & County of Honolulu*, NPDES Appeal No. 09-01, at 1,3 (EAB Feb. 2, 2009) (Order Granting Alternative Motion for Extension of Time to File Petitions for Review) (same). In addition, the Board is cognizant that the Petitioners were without counsel at a crucial time during the 30-day time period within which they could appeal this PSD permit.

As the Board has explained before, PSD matters are time-sensitive. Nonetheless, the Board concludes that its decisionmaking process will benefit from affording Petitioners the additional time provided in this order to fully present their arguments. The Board believes that, on balance, this will lead to a more efficient briefing process that will increase the Board's

efficacy and potentially expedite its analysis of the issues Petitioners raise.

Petitioners are required to file their amended petition for review with the Board no later than Monday, March 17, 2014. DEP's response, as well as a certified index of the administrative record and relevant portions of the administrative record, must be filed with the Board no later than Monday, April 7, 2014. Footprint's response must also be filed no later than Monday, April 7, 2014.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Date: March 6, 2014

By:



Randolph L. Hill
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Granting Motion for Extension of Time to File Petition for Review in the matter of Footprint Power Salem Harbor Development, LP, PSD Appeal No. 14-02, were sent to the following persons in the manner indicated:

By Facsimile and First Class U.S. Mail:

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Facsimile: (617) 338-5511
madelyn.morris@state.ma.us

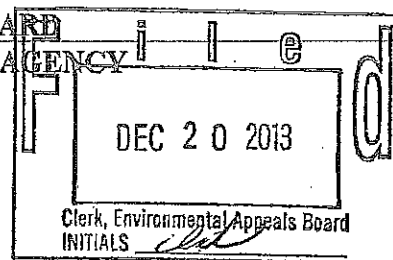
Dated: MAR - 6 2014



Annette Duncan
Secretary

ATTACHMENT C

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



In re:)
Ms. Dessie L. Brumfield,)
d/b/a Brumfield Properties, LLC,)
)
Docket No. TSCA-05-2010-0014)
)

TSCA Appeal No. 13-(04)

ORDER GRANTING MOTION FOR EXTENSION OF TIME

By motion dated December 18, 2013, U.S. Environmental Protection Agency (EPA), Region 5 (Region), requested a thirty-day extension of time to file a notice of appeal and brief in the above-captioned matter. *See generally* Motion for 30-Day Extension of Time to File Notice Appeal and Appellate Brief. The Region requests the extension of time due to the need to coordinate with other EPA offices on potentially nationally-significant issues in the appeal. *Id.* at 1. According to the Region, “Due to the current holiday season, many persons at EPA with whom Complainant must coordinate on an appeal are, or soon will be, out of the office until January 6, 2014.” *Id.* at 2. Moreover, the Region explains that its lead counsel for this matter is undergoing surgery and will also be out of the office until January 6, 2014. *Id.*

Ms. Brumfield’s position on this motion is unknown. The Region states that it is unable to contact Ms. Brumfield by telephone because her last two known telephone numbers are no longer in service, and as of the date of the motion, she has not responded to the Region’s attempts to contact her by e-mail. *Id.*

For good cause shown, the Region’s motion for an extension of time to file its notice of

appeal and brief is GRANTED. Because the Initial Decision was served to the Region by mail on December 4, 2013, under the relevant Agency regulations, Region's notice of appeal and brief would be due within thirty days of service of the Initial Decision, plus an additional five days, on January 8, 2014. 40 C.F.R. §§ 22.7(c), 30(a). In light of the extension the Board is granting the Region, the Region's notice of appeal and brief are now due on Friday, February 7, 2014, and Ms. Brumfield's response brief (and, if appropriate, notice of appeal) is due within twenty days of service of the Region's appeal. *Id.*

So ordered.

Dated: *December 20, 2013*

ENVIRONMENTAL APPEALS BOARD

By: *Ruth A. Steen for Randolph L. Hill*
Randolph L. Hill
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **Order Granting Motion for Extension of Time** in *In re Ms. Dessie L. Brumfield, d/b/a Brumfield Properties, LLC*, TSCA Appeal No. 13-(04), were sent to the following persons in the manner indicated:

By First Class U.S. Mail:

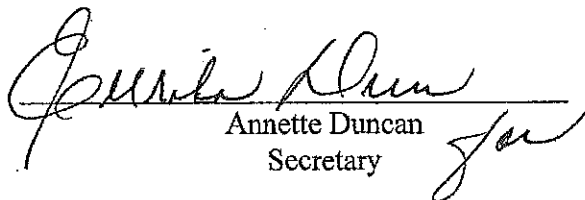
Dessie L. Brumfield
5067 North 37th Street
Milwaukee, WI 53290

By EPA Pouch Mail:

Jeffrey M. Trevino
Office of Regional Counsel
U.S. EPA Region 5
77 West Jackson Boulevard, C-14J
Chicago, IL 60604-3590

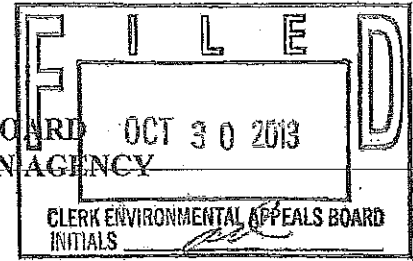
Date:

12/20/2013


Annette Duncan
Secretary

ATTACHMENT D

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



In re:)

City of Homedale)
Wastewater Treatment Plant)

NPDES Permit No. ID-002042-7)

NPDES Appeal No. 13-10

ORDER GRANTING REGION 10'S MOTION FOR EXTENSION OF TIME

On September 30, the Idaho Conservation League ("ICL") filed a petition for review of NPDES Permit ID-002042-7 that the United States Environmental Protection Agency ("EPA"), Region 10 ("Region") issued to the City of Homedale Wastewater Treatment Plant. Due to a lapse in appropriations, however, the U.S. government was partially shut down from October 1, 2013 through October 16, 2013, reopening October 17, 2013. The Environmental Appeals Board was closed during the shutdown, as was the majority of the EPA. Pursuant to 40 C.F.R. § 124.19(b)(2), the Region must file its "response to the petition for review, a certified index of the administrative record, and the relevant portions of the administrative record within 30 days after" the petition is filed. On October 25, 2013, the United States Environmental Protection Agency ("EPA"), Region 10 ("Region") filed a motion seeking until December 6, 2013, to file its response brief to the petition.

The Region requests additional time based in part on the partial government shutdown, noting that the Regional Attorney assigned to the matter did not return to the office until October

21, 2013. The Region also indicated that the EPA permit writer was out of the office and would not have the opportunity to review the petition for review until October 28, 2013, that the attorney from EPA's Office of General Counsel who is assigned to review the Region's response brief is scheduled to be out of the office on November 14th and 15th, and that multiple EPA staff members needed to review the response brief are out during the week of November 25, 2013 for the Thanksgiving holiday. In accordance with 40 C.F.R. § 124.19(f)(2), the Region contacted ICL, and reports that ICL does not object to the extension sought.

For good cause shown, the motion is hereby **GRANTED**. The Region must file its response to the petition, a certified index of the administrative record, and the relevant portions of the administrative record in this matter on or before **December 6, 2013**.

So ordered.

Dated: *October 30, 2013*

ENVIRONMENTAL APPEALS BOARD

By: *Leslye M. Fraser*

Leslye M. Fraser
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I certify that I sent copies of the foregoing *Order Granting Region 10's Motion for*

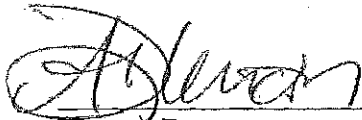
Extension of Time, NPDES Appeal No. 13-10, to the following persons in the manner indicated:

By U.S. First Class Mail:

Justin Hayes
Program Director
Idaho Conservation League
P.O. Box 844
Boise, ID 83701

By EPA Pouch Mail:

Courtney Weber
Assistant Regional Counsel
U.S. EPA Region 10
1200 Sixth Ave., Suite 900
Seattle, WA 98101



Annette Duncan
Secretary

OCT 30 2013

Date: _____