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ENVIR. APPEALS BOARD

October 23, 2006

Clerk of the Board
Environmental Appeals Board (MC 1103B)
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-0001

Re: In the Matter of Knauf Insulation GmbH

**Appeal Numbers: PSD 06-01
PSD 06-02
PSD 06-03
PSD 06-04
PSD 06-05
PSD 06-06**

Dear Clerk:

Enclosed please find an original and five copies of a "Motion to File Response; Concurrence with EPA's Motion to Strike Petitioners' Untimely Filings; and Motion for Expeditious Summary Disposition Ruling" for filing with the Environmental Appeals Board.

Please return a file-marked copy to me in the self-addressed, postage prepaid envelope enclosed for your convenience.

Thank you for your assistance in this matter. If you have any questions, please feel free to contact me.

Sincerely,



David M. Heger

DMH:naw
Enclosures

INDS01 DHEGER 893008v1

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

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ENVIRONMENTAL APPEALS BOARD

ENVIR. APPEALS BOARD

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|---------------------------------|---|--------------------------|
| IN THE MATTER OF: |) | |
| |) | Appeal Numbers PSD 06-01 |
| KNAUF INSULATION GmbH |) | PSD 06-02 |
| 240 ELIZABETH STREET |) | PSD 06-03 |
| SHELBYVILLE, INDIANA |) | PSD 06-04 |
| PERMIT NO. NSR 4-4-4, SAC 03-01 |) | PSD 06-05 |
| |) | PSD 06-06 |
| RESPONDENT |) | |

MOTION TO FILE RESPONSE; CONCURRENCE WITH EPA'S MOTION TO STRIKE PETITIONERS' UNTIMELY FILINGS; AND MOTION FOR EXPEDITIOUS SUMMARY DISPOSITION RULING

Knauf Insulation GmbH ("Knauf") hereby moves the Environmental Appeals Board (the "Board") for permission to file this motion to strike the documents untimely filed by Petitioners on and after July 26, 2006 (the "Late-Filed Documents").¹ The Late-Filed Documents provide no new information for the Board to consider and only serve to further prolong the summary disposition process. Therefore, Knauf respectfully requests that the Board strike the Late-Filed Documents and expeditiously issue a ruling on Knauf's and Region 9's summary disposition motions, as further delay would be "unreasonable."

On October 13, 2006, Region 9 filed a motion to strike the Late-Filed Documents. Knauf's position is closely aligned with that taken by Region 9 in its well-reasoned motion. Thus, Knauf hereby concurs with, and incorporates, Region 9's arguments, including that the Board should disregard the Late-Filed Documents because they were untimely filed, add no new information, and simply reiterate public comments to which EPA has already responded. The

¹ The Late-Filed Documents include documents filed by Petitioners Patricia Jiminez on July 26, 2006; Serafin Jiminez on July 26, 2006; Henry Francis on August 1, 2006; and Celeste Draisner on September 5, 2006. The Late-Filed Documents were submitted after the July 24, 2006 deadline for responding to the summary disposition motions filed by Region 9 and Knauf.

Late-Filed Documents serve no other purpose than to further delay a ruling on Knauf's and Region 9's summary disposition motions, which were timely-filed on July 11 and 12, 2006.

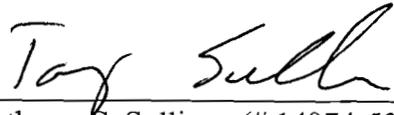
The rules provide that the Board "shall issue an order granting or denying" a petition for review within a "reasonable time following the filing of the petition for review." 40 C.F.R. § 124.19(c). Between June 12 and June 20, 2006, Petitioners filed petitions for review (the "Petitions") of the revised PSD permit NSR-4-4-4, SAC 03-01 issued to Knauf (the "Permit Modification").² As discussed in Knauf's summary disposition motion, the Petitions are clearly deficient because, among other reasons, they fail to identify any specific objections to the Permit Modification, as required by the Board's rules.³ Allowing the Late-Filed Documents -- which also fail to meet basic requirements -- to further delay disposition of plainly deficient petitions which were filed more than four months ago is unreasonable. It also would conflict with the Board's policy to "avoid delay in PSD proceedings." *See, e.g., In re: Prairie State Generation Company, LLC*, "Order Granting Petitioners' Request to File a Brief," at 2 (E.A.B. Mar. 21, 2006) (limiting the petitioner's time for filing a response).

Further delays in these proceedings also cause an injustice to Knauf. As noted in Knauf's motion for summary disposition, Knauf experiences substantial harm from any delay in ruling on the Permit Modification. By contrast, Petitioners are not required to submit a bond or face any other type of consequence by filing their plainly deficient Petitions and untimely supplementary filings. In light of this unfairness, Knauf requests that the Board strike the Late-Filed Documents and act expeditiously in dismissing the Petitions.

² Three of the petitioners, Colleen Leavitt, Mary Scott, and Celeste Draisner, additionally filed a motion for an extension of time to file an appeal (the "Motion for Extension"). As noted in Knauf's response in opposition (filed contemporaneously with Knauf's motion for summary disposition and dismissal), the Motion for Extension is not allowed by the Board's rules or decisions. Further, the Motion for Extension did not identify any valid basis upon which the Board could grant an extension.

³ Knauf incorporates here the arguments made in its motion for summary disposition and dismissal. The summary disposition brief submitted by Region 9 notes that some of the Petitions fail for the additional and independent reasons that (1) they raise issues outside of the Board's jurisdiction; and/or (2) Petitioners lack standing for failure to raise the subject of the Petitions in the public comment period.

Respectfully submitted,

A handwritten signature in black ink that reads "Tony Sullivan". The signature is written in a cursive style with a horizontal line underneath it.

Anthony C. Sullivan (# 14974-53)
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Phone: (317) 231-7472

Attorney for Knauf Insulation GmbH

Certificate of Service

The undersigned hereby certifies that a copy of "Motion to File Response: Concurrence with EPA's Motion to Strike Petitioners' Untimely Filings; and Motion for Expeditious Summary Disposition Ruling" has been served this 23rd day of October 2006, by depositing a copy of the same in the United States mail, first class postage prepaid and properly addressed to the following:

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