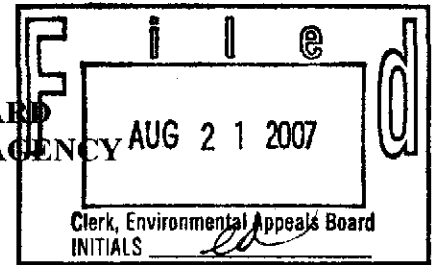


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



_____)
In re:)
)
Zaclon Inc., Zaclon L.L.C.,) RCRA Appeal No. 07-(03)
& Independence Land Development Co.)
)
Docket No. RCRA-05-2004-0019)
_____)

**ORDER GRANTING COMPLAINANT'S SECOND MOTION
FOR EXTENSION OF TIME TO FILE NOTICE OF APPEAL**

On July 24, 2007, Chief Administrative Law Judge Susan Biro issued a Confidential Business Information ("CBI")-redacted version of her Initial Decision in the above-captioned case. She had previously issued a version containing CBI on June 4, 2007, and Region 5 of the U.S. Environmental Protection Agency, Complainant below, had sought and been granted an extension in the normal thirty-day period provided by the regulations at 40 C.F.R. part 22 for the filing of an appeal. At present, the appeal deadline is thirty days from the date of service of the CBI-redacted version of the Initial Decision (plus five days if service was effected via first class mail or commercial delivery service), pursuant to 40 C.F.R. §§ 22.30(a) and 22.7(c).

By motion filed August 15, 2007, Region 5 requests a second extension of time to file an appeal of Judge Biro's decision. The Region reports that it has circulated the CBI-redacted decision to multiple offices within EPA Headquarters and Regions 1 and 5 and states that it has become apparent that CBI-approved personnel in each of these offices will be needed to review the unredacted Initial Decision and supporting record evidence that has been claimed as CBI. The Region claims that it is burdened by being unable to freely discuss the facts upon which Judge Biro based her decision because many of them are claimed as CBI, and that the restrictions

imposed by the CBI regulations continue to constrain all intra-Agency conversations about this matter. Accordingly, the Region requests another extension of time, until October 24, 2007, in which to file a notice of appeal and supporting brief in this case. Counsel for Zaclon, Inc., Zaclon L.L.C., and Independence Land Development Co. (collectively "Zaclon"), Respondents, reports that Zaclon does not object to the granting of this request, provided that Zaclon is also granted the same extension of time in which to appeal Judge Biro's ruling, should it desire to do so.

For good cause shown, the Region's motion is hereby **GRANTED**. If either Region 5 or Zaclon elects to appeal the Initial Decision, their notices of appeal and appellate briefs must be filed with the Clerk of the Environmental Appeals Board on or before Wednesday, October 24, 2007.¹


So ordered.

Dated: _____

8/21/07

ENVIRONMENTAL APPEALS BOARD

By: _____


Edward E. Reich
Environmental Appeals Judge

¹ This order extends the appeal deadline beyond the period (45 days from the date of service of the CBI-redacted Initial Decision) within which the Board would ordinarily determine, under 40 C.F.R. § 22.30(b) and its prior Order Granting Complainant's Motion for Extension of Time to File Notice of Appeal, whether to undertake *sua sponte* review of an unappealed Initial Decision. Normally, because the time for a party to file an appeal is 30 days from the date of service of the Initial Decision, the Board has 15 additional days to make its determination respecting *sua sponte* review. To preserve this interval in this case, the Board will defer any consideration of *sua sponte* review until after the parties' revised deadline for filing an appeal expires on October 24, 2007. See 40 C.F.R. § 22.1(c) (when a procedural issue arises that is not explicitly addressed in the Consolidated Rules of Practice at 40 C.F.R. part 22, the Board has discretion to resolve the issue as it deems appropriate). As a result, the Initial Decision shall be regarded as the final order of the Environmental Appeals Board pursuant to 40 C.F.R. § 22.27(c) *only* if: (1) no appeal is filed by Region 5 or Zaclon on or before October 24, 2007; and (2) the Board does not elect to review the Initial Decision *sua sponte* on or before November 8, 2007 (the 15th day after the parties' revised deadline for filing an appeal).

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Granting Complainant's Second Motion for Extension of Time to File Notice of Appeal in the matter of Zaclon, Inc., RCRA Appeal No. 07-(03), were sent to the following persons in the manner indicated:


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Date: AUG 21 2007


Annette Duncan
Secretary