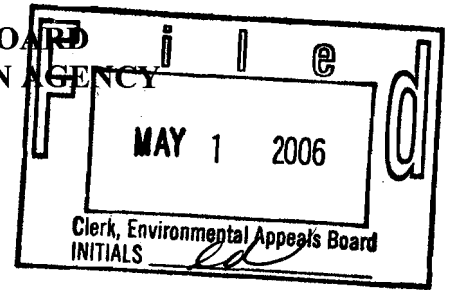


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



_____)
In re:)
))
General Motors Automotive -)
 North America)
))
Docket No. RCRA-05-2004-0001)
_____)

RCRA Appeal No. (3008) 06-02

**ORDER CLARIFYING DATE UPON WHICH
APPELLATE BRIEF IS DUE**

On April 27, 2006, General Motors Corporation (“GM”), the Respondent-Appellant in this matter, served a notice of appeal of the Initial Decision issued by Administrative Law Judge (“ALJ”) Barbara A. Gunning in the above-captioned matter. Along with its notice of appeal, GM also filed a request for a ten-day extension of time to file the supporting appellate brief.¹ See General Motors Corporation’s Motion to Extend the Time for Filing Its Supporting Appellate Brief (“Motion”) at 2. GM has asked for this extension of time because the lead trial counsel’s father passed away on April 20, 2006, and this counsel is unable to continue to advise and represent GM in the appeal. *Id.* 1-2. GM thereafter sought to affiliate additional counsel to serve as co-counsel with GM’s in-house counsel, which it has apparently found. See Notice of Appearance (filed Apr. 27, 2006). According to the Motion, counsel for U.S. EPA Region V (the “Region”) – the Complainant-Appellee in this matter – has indicated that it has no objection to the ten-day extension. Motion at 2.

¹ In its Motion, GM assumes that its supporting brief is due on May 4, 2006. It requests a ten-day extension, which, because the tenth day would fall on a Sunday, would mean that, if the extension were granted, its brief would be due on Monday, May 15, 2006. Motion at 2 & n.1.

Under the Consolidated Rules of Practice, 40 C.F.R. part 22, a party may appeal an initial decision “by filing an original and one copy of a notice of appeal and an accompanying appellate brief with the Environmental Appeals Board” within 30 days “after the initial decision is served.”² 40 C.F.R. § 22.30(a)(1). In this case, the Initial Decision was initially issued (and presumably served) on March 30, 2006. That version, however, was subsequently determined to contain potential confidential business information (“CBI”). *See* Errata at 1 (ALJ Apr. 14, 2006). Consequently, the ALJ ordered that version of the decision to be destroyed and issued and served a second, redacted Initial Decision on April 14, 2006. *Id.* Depending upon which of those two dates is considered the date upon which the “initial decision was served” under the Consolidated Rules of Practice, the deadline for filing the notice of appeal and the supporting appellate brief would be either Thursday, May 4, 2006 or Friday, May 19, 2006.

The Agency’s procedural regulations do not provide specific guidance as to which date should be used in calculating the relevant time frames for filing appeals and other motions, etc. in circumstances such as these. The regulations do, however, provide that “[i]n exercising its duties and responsibilities under these Consolidated Rules of Practice, the Environmental Appeals Board may do all acts and take all measures as are necessary for the efficient, fair and impartial adjudication of issues arising in a proceeding.” 40 C.F.R. § 22.4(a)(2). Accordingly, on those occasions where there have been gaps in the Consolidated Rules of Practice or where unusual fact patterns have occurred that the rules did not cover, the Board has acted as a gap-filler by providing guidance and/or interpreting the part 24 procedural regulations. Here, because

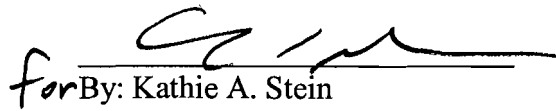
² The regulations allow five additional days for filing an appeal where the initial decision is served by first class mail. *See* 40 C.F.R. § 22.7(c).

the March 30, 2006 Initial Decision has, for all intents and purposes, been permanently withdrawn from the record in this proceeding, we will consider the Initial Decision to have been issued and served on the date the redacted version was issued, in other words, April 14, 2006. Thus, under this interpretation of the part 24 regulations, GM's supporting brief is due on Friday, May 19, 2006.

Accordingly, while we would have been inclined to grant GM's Motion because it has demonstrated good cause for its extension request, we need not decide the issue because we conclude that GM's brief in support of its notice of appeal is due on May 19, 2006, four days after the date sought in its extension request.

So ordered.

ENVIRONMENTAL APPEALS BOARD


for By: Kathie A. Stein
Environmental Appeals Judge

Date: May 1, 2006

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Clarifying Date Upon Which Appellate Brief is Due in the matter of General Motors Automotive - North America, RCRA Appeal No. (3008) 06-02, were sent to the following persons in the manner indicated:

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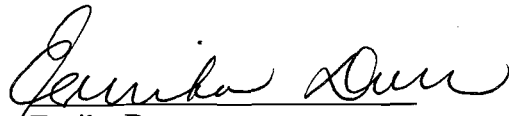
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Dated: 5/1/06


Eureka Durr
Clerk of the Board