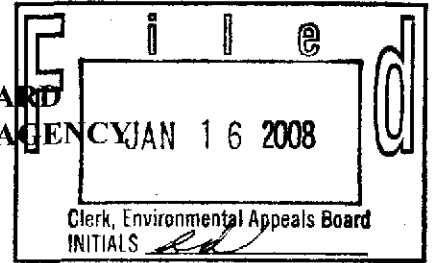


BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.



In re: )  
 )  
Robert J. Heser and Andrew Heser )  
 )  
Docket No. CWA 05-2006-0002 )  
 )

Appeal No. CWA 07-(03)

**ORDER GRANTING MOTION FOR EXTENSION OF TIME**

On May 1, 2006, U.S. Environmental Protection Agency Region 5 (the "Region") filed a complaint alleging that, in August and September 1999, Mr. Robert J. Heser and Mr. Andrew Heser ("Heser and Heser") violated Section 301(a) of the Clean Water Act, 33 U.S.C. § 13311(a). On December 19, 2007, Administrative Law Judge William B. Moran (the "ALJ") entered an "Order of Dismissal" dismissing the Region's Complaint as time-barred. On January 11, 2008, the Region filed a Motion for Extension of Time requesting a 45-day extension of time until Monday, March 3, 2008, for the Region to file its notice of appeal and brief from the ALJ's Order of Dismissal. The Region states that, without an extension of time, its notice of appeal is due on January 18, 2008. The Region explains that "[b]ecause of the broad implications of the Presiding Officer's ruling in this matter, EPA regional counsel will need to consult with EPA Headquarters and counsel in several different offices of the EPA. The Region will also need to coordinate a possible appeal with U.S. Army Corps of Engineers, which shares regulatory authority under § 404 of the CWA." Motion at 2. The Region also states that it has

identified numerous potential issues for appeal and that the ALJ's decision covers a large number of factual and legal issues. In its motion, the Region states that counsel for Heser and Heser objects to the Region's motion.

On January 15, 2008, Heser and Heser filed a statement of their reasons for objecting to the Region's motion as required by the Board's order dated January 14, 2008. Heser and Heser state that they believe 30 days is sufficient for EPA to coordinate between various offices within EPA as EPA has previously submitted a brief on the same issues to the ALJ. Objection at 2. Heser and Heser also note that the Army Corps of Engineers is not a party to this action. *Id.* Heser and Heser also state that there is no just reason to grant EPA additional time merely because EPA would like more time to draft its brief. *Id.*

Upon consideration, the Region's motion requesting a 45-day extension of time to file its notice of appeal and brief from the ALJ's Order of Dismissal is hereby granted. Where an ALJ's decision addresses issues of national significance, the Board has often granted additional time to afford coordination of the appellate argument among EPA offices that may be affected by the decision. Here, Heser and Heser have not argued that the ALJ's decision is not of national significance, and they have not identified any prejudice that they would suffer as a result of a 45-day extension of time. Accordingly, the Region's notice of appeal and brief shall be filed with the Board on or before Monday, March 3, 2008.<sup>1</sup> Although they have not requested it,

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<sup>1</sup> Documents are "filed" with the Board on the date they are *received*.

Heser and Heser shall also have until March 3, 2008, to file a direct appeal in this matter should they chose to do so.<sup>2</sup>


So ordered.

Dated:

1/16/08

ENVIRONMENTAL APPEALS BOARD

By:



Edward E. Reich

Environmental Appeals Judge

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<sup>2</sup> The period for filing cross-appeals under 40 C.F.R. § 22.30(a)(1) shall still run from the date an appeal is filed. Further, this order extends the deadline for filing an appeal beyond the period (45 days from the date of service of an Initial Decision) within which the Board would ordinarily determine, under 40 C.F.R. § 22.30(b), whether to undertake *sua sponte* review of an ALJ's decision. Normally, because the time for a party to file an appeal is 30 days from the date of service of the 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 Region's revised deadline for filing an appeal expires on March 3, 2008. 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. pt. 22, the Board has discretion to resolve the issue as it deems appropriate). As a result, the ALJ's decision shall become a final order pursuant to 40 C.F.R. § 22.27(c) *only* if: (1) no appeal is filed by either the Region or Heser and Heser on or before March 3, 2008; and (2) the Board does not elect to review the decision *sua sponte* on or before Tuesday, March 18, 2008 (the 15th day after the revised deadline for filing a notices of appeal).

CERTIFICATE OF SERVICE

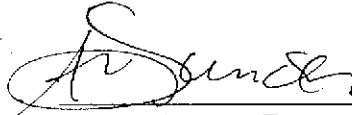
I hereby certify that copies of the foregoing Order Granting Motion for Extension of Time, in the matter of Robert J. Hesel and Andrew Hesel, Appeal No. CWA 07-(03), were sent to the following persons in the manner indicated:

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Dated: JAN 16 2008



Annette Duncan  
Secretary