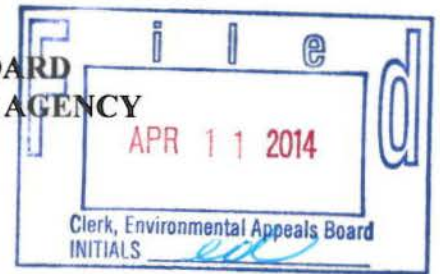


**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**



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In re: Energy Answers Arecibo, LLC)
(Arecibo Puerto Rico Renewable Energy)
Project))
)
)

PSD Appeal Nos. 13-05 to 13-09

**ORDER DENYING MOTION REQUESTING EXTENSION OF TIME
TO FILE FOR RECONSIDERATION**

On March 25, 2014, the Environmental Appeals Board (Board) issued a decision on five consolidated petitions for review of a prevention of significant deterioration (PSD) permit decision (“Final Decision”). The Board upheld the permit on nearly all grounds, but granted the Region’s motion for a limited remand to revise the permit to regulate biogenic greenhouse gas emissions. The Board considered, but did not require, the Region to reopen the permit for public comment on the proposed revisions. On April 4, 2014, Leonardo Ramos-Hernandez, together with Petitioner Eliza Llenza, filed¹ a Motion Requesting an Extension of Time to File for Reconsideration. Mr. Ramos simultaneously filed a motion with the Board requesting leave to

¹ The motion was emailed as an attachment to the Clerk of the Board rather than eFiled using the Board’s eFiling system. Mr. Ramos did not include any documentation of technical difficulties or other justification for this method of filing. Ordinarily sending documents for filing to the Clerk via email is authorized only as a fail-safe for when the Board’s system, through no fault of the user, is experiencing technical difficulties. Such difficulties must be documented appropriately in an email to the Clerk. Mr. Ramos and all parties before the Board are reminded that the failure to follow the proper procedures for filing may result in your filing being rejected by the Board. See 40 C.F.R. § 124.19(i)(2) (setting forth the methods of filing). Parties may obtain more information on electronic filing on the Boards website at www.epa.gov/eab.

intervene in this matter, which the Board denies as untimely in a separate order filed simultaneously with this one. Accordingly, the Board addresses this extension motion as if it were filed solely by Ms. Llenza, a petitioner in this matter, and denies the motion for the reasons that follow.

I. DISCUSSION

The rules governing permit appeals require motions for reconsideration of any final disposition of the Board to be filed within ten days after service of that order. *See* 40 C.F.R. § 124.19(m). The deadline for filing a motion for reconsideration of the final disposition in this matter was April 7, 2014.² Rather than filing a motion for consideration, Petitioner filed a motion seeking additional time to file a motion for reconsideration and included a summary of the issues to be raised. Petitioner justifies the extension of the deadline by stating that ten days is insufficient time to properly present the issues raised by the Board's "extensive" 98-page decision.

The Board generally is not inclined to grant an extension of time to file a motion for reconsideration in a PSD appeal. As the Board has often emphasized, PSD appeals are particularly time-sensitive because new source construction cannot begin prior to receiving a final permit. Order Governing Petitions for Review of Clean Air Act New Source Review Permits ("*Standing Order Governing NSR Appeals*") at 1 (EAB Apr. 19, 2011); *accord In re*

² The final decision was served by the Board on March 25, 2014. 40 C.F.R. § 124.20 provides that an additional three days are added to any deadline that requires action based on the service of notice by mail. Thirteen days after March 25, 2014 is April 7, 2014.

Shell Gulf of Mex., Inc. ("Shell 2012"), OCS Appeal Nos. 11-02 through 11-04 & 11-08, slip op. at 73-74 (EAB Jan. 12, 2012), 15 E.A.D. ___ (citing CAA § 165(c), 42 U.S.C. § 7475(c)); *Desert Rock*, slip op. at 48 n.51, 14 E.A.D. at ___; *see also* 78 Fed. Reg. 5,281, 5,283 (Jan. 25, 2013) (explaining that certain presumptions, tighter deadlines, briefing limitations and other procedures for PSD appeals that are now incorporated into 40 C.F.R. § 124.19 were intended to facilitate the expeditious resolution of new source review appeals).

To determine whether an extension is warranted in this particular PSD appeal, the Board has fully considered the issues Petitioner identified as ones she intends to raise if the deadline for reconsideration is extended in order to determine whether additional time to more fully brief the issues could result in a different outcome.

Although motions for reconsideration are authorized pursuant to 40 C.F.R. § 124.19(m) to correct manifest errors in a Board decision, reconsideration of a decision is not granted as a matter or course. Reconsideration is generally reserved for cases in which the Board has made a demonstrable error, such as a mistake of law or fact. *See In re Knauf Fiber Glass, GmbH*, PSD Appeal Nos. 98-3 through 98-20, at 2 (EAB Feb. 4, 1999) (Order on Motions for Reconsideration). Board precedent establishes that the reconsideration process should not be regarded as “an opportunity to reargue the case in a more convincing fashion.” *Knauf*, at 2-3 (quoting *In re S. Timber Prods., Inc.*, 3 E.A.D. 880, 889 (JO 1992)). *See also, e.g., In re Russell City Energy Ctr.*, PSD Appeal Nos. 10-01 to 10-05 (EAB Dec. 17, 2010) (Order Denying Motion and Supplemental Motion for Reconsideration and/or Clarification and Stay); *In re Pyramid*

Chemical Co., RCRA-HQ-2003-0001 (EAB Nov. 8, 2004) (Order Denying Motion for Reconsideration) (denying reconsideration of an argument raised and rejected by the Board in the Board's prior order); *In re Environmental Disposal Systems, Inc.*, UIC Appeal No. 07-03 (EAB Aug. 25, 2008) (Order Denying Motion for Reconsideration) (concluding that the motion for reconsideration simply reiterated arguments previously considered and rejected by the Board and did not identify any error warranting reconsideration); *In re District of Columbia Water and Sewer Authority*, NPDES Appeal Nos. 05-02, 07-10, 07-11, and 07-12 (EAB Apr. 23, 2008) (Order Denying Motion for Reconsideration) (explaining that while the permittee clearly disagreed with the Board's conclusion, the permittee had not articulated any clear error in the Board's legal or factual conclusions, but was simply rearguing assertions previously considered and rejected by the Board).

Federal courts employ a similar standard. *See, e.g., Ahmed v. Ashcroft*, 388 F.3d 247 (7th Cir. 2004) (noting that the rule governing motions for reconsideration, applies generally, and that "[t]o be within a mile of being granted, a motion for reconsideration has to give the tribunal to which it is address a reason for changing its mind," such as "a change of law" or "perhaps an argument or aspect of the case [that] was overlooked"); *Publishers Res., Inc. V. Walker-Davis Publ'ns., Inc.*, 762 F.2d 557, 561 (7th Cir. 1985) ("Motions for Reconsideration serve a limited function: to correct manifest errors of law or fact or to present newly discovered evidence. Such motions cannot in any case be employed as a vehicle to introduce new evidence that could have been adduced during the pendency of the [original] motion. * * * Nor should a motion for reconsideration serve as the occasion to tender new legal theories for the first time.") (citation

omitted); *see also Arcega v. Mukasey*, 302 Fed. Appx. 182 (4th Cir. 2008) (quoting *Ahmed v. Ashcroft* and upholding the Board of Immigration Appeal’s denial of a motion for reconsideration because the petitioner failed to show how the Board erred as a matter of law or fact in reaching its decision).

Having fully considered the issues that Petitioner intends to more fully brief if the deadline to file a motion for reconsideration is extended, the Board concludes that an extension of time to file a motion for reconsideration is not warranted. From the summary of issues provided, every issue identified falls into one of two categories: (1) it is either a new issue, or is based on an argument that was not raised in her petition; or 2) it is not based on any error of fact or law in the Board’s decision that could result in the Board reconsidering and altering its Final Decision.³ In sum, the Board is not persuaded that good cause has been shown to warrant extending the time allowed for filing a motion for reconsideration of this matter.

³ For example, the motion asserts that “El Vocero is not, and was not at the time of publication of the Public Notices, a general circulation newspaper.” Motion at 1. The Board did not characterize El Vocero as a publication of general circulation. *See* Final Decision at 54, n.37. Even if it had and that was in error, the distribution of El Vocero was not critical to the Board’s determination that the Region complied with the regulatory requirements for public notice, as El Vocero was only one of several publications in which notice was provided and the method of publication was not at issue in the case. *See* Final Decision at 12 n.2, 52-57. Additional time to prepare a motion for reconsideration will not render this issue more likely a basis for reconsideration. The other issues identified by Ms. Llenza are similarly insufficient to warrant more time to draft a motion for reconsideration.

II. *CONCLUSION AND ORDER*

For the reasons stated above, the Board denies the Motion Requesting Extension of Time to File for Reconsideration.

So ordered.

Dated:

April 11, 2014

ENVIRONMENTAL APPEALS BOARD

By: *Kathie A. Stein*

Kathie A. Stein
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I certify that copies of the foregoing *Order Denying Motion Requesting Extension of Time to File for Reconsideration* in the matter of Energy Answers Arecibo, LLC, PSD Appeal Nos. 13-05 through 13-09, were sent to the following persons in the manner indicated:

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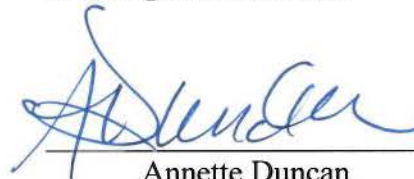
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Dated: APR 11 2014



Annette Duncan
Secretary