

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

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In re:)	
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Limetree Bay Terminals, L.L.C. and Limetree Bay Refining, L.L.C.)	CAA Appeal Nos. 20-02 and 20-03
)	
PAL Permit No. EPA-PAL-VI-001/2019)	
)	

ORDER GRANTING MOTION FOR EXTENSION OF TIME TO FILE RESPONSE

On February 10, 2021, the EPA Offices that developed the Plantwide Applicability Limit (“PAL”) permit at issue in these appeals filed a motion seeking an extension of time until March 26, 2021, to file a response to the petitions for review filed by Limetree Bay Terminals, L.L.C. and Limetree Bay Refining, L.L.C. (collectively, “Limetree”) and the St. Croix Environmental Association, Center for Biological Diversity, Sierra Club, and Elizabeth Neville (collectively, “Environmental Petitioners”). Motion for Extension of Time (Feb. 10, 2021) (“Motion”). The motion notes that the permit was issued by EPA Region 2 under the signature of then-EPA Administrator Andrew Wheeler to Limetree for a refinery facility and related terminal operations in St. Croix, U.S. Virgin Islands. *See id.* at 1; Region 2, U.S. EPA, *Plantwide Applicability Limit for Limetree Bay Refining and Limetree Bay Terminals, St. Croix, U.S. Virgin Islands, EPA – PAL -VI-001/2019* (Dec. 1, 2020). Limetree and the Environmental Petitioners each timely filed a petition for review on February 3, 2021. *See Order Granting Extension of Time to File Petition for Review, CAA Appeal No. 20-02* (EAB Dec. 22, 2020);

Order Granting Extension of Time for Permittees to File Petition for Review, CAA Appeal No. 20-03 (EAB Dec. 28, 2020). The EPA Offices represent that they have contacted counsel for all parties in this matter and that “no party has conveyed opposition to the requested extension.” Motion at 3.

The EPA Offices base their request for an extension on essentially two grounds. *First*, they state that in light of the recent change in Administration and EPA leadership, EPA staff responsible for preparing the response to the petitions for review need additional time to advise the incoming leadership “about the nature of the PAL permit, the disputed issues in the matter, and options for responding to the petitions for review.” Motion at 2. *Second*, they cite a recently issued executive order that directs federal agencies to “‘immediately review all existing regulations, orders, guidance documents, policies, and any other similar agency actions (agency actions) promulgated, issued, or adopted between January 20, 2017, and January 20, 2021, that are or may be inconsistent with, or present obstacles to’ the policy objectives set forth in the order.” Motion at 2 (quoting Exec. Order No. 13,990, 86 Fed. Reg. 7037, 7037 (Jan. 25, 2021)). They state that “[t]he decision to issue the PAL Permit * * * was based in part on a decision to discontinue applying a longstanding EPA policy under the New Source Review (NSR) permitting program” and that the incoming EPA leadership need time “to review whether this and other aspects of the permitting decision are consistent with the policies adopted by the President before EPA Offices file a response to the petitions for review.” Motion at 2, 3.

The request for an extension of time in this matter is reasonable in order to allow time to brief the incoming Agency leadership and to allow time to conduct any review in light of the executive order. As the Board has recognized, “[t]he executive order’s plain language reflects

that the new Administration plans to undertake a broad review of the prior Administration's environmental actions and 'consider suspending, revising, or rescinding' those actions."

In re Granite Shore Power Merrimack, L.L.C., NPDES Appeal Nos. 20-05 and 20-06, at 2 (EAB Feb. 9, 2021) (Order Granting Motion for Continuance of Oral Argument Date and Abeyance).

In addition, the requested extension to allow time to brief the incoming Agency leadership is reasonable so that the EPA Offices can provide the Board a coordinated legal position for these appeals. Under longstanding EPA procedures, the Agency's Regional and Headquarters offices must coordinate with respect to their views on issues raised in permit appeals so that the positions presented to the Board consistently represent those of the Agency as a whole, which also properly takes into account the views of a new Administration. *See* Memorandum from Ray Ludwiszewski, Acting Gen. Counsel, Office of Gen. Counsel, and Herbert H. Tate, Jr., Ass't Adm'r, Office of Enforcement, U.S. EPA, to Reg'l Counsels, Assoc. Gen. Counsels, and Enforcement Counsels (Jan. 25, 1993) (attaching procedures for coordination of matters before the Environmental Appeals Board); *see also In re Evoqua Water Techs. LLC*, RCRA Appeal No. 18-01, at 4 (Order for Further Briefing on Evoqua's Motion for Stay of Permit Provisions Pending Board Review) (Dec. 14, 2018) (directing the "Region * * * to confer with the EPA's Office of General Counsel to ensure that the Region's responses * * * reflect the Agency's views").


Based upon the representations in the motion, the Board **GRANTS** the motion and the EPA Offices' response to each petition for review (and other responsive filings required by

40 C.F.R. § 124.19(b)) must be filed with the Board on or before **March 26, 2021**.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: February 12, 2021

By: 

Aaron P. Avila
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I certify that copies of the foregoing **ORDER GRANTING MOTION FOR EXTENSION OF TIME TO FILE RESPONSE** in the matter of *Limetree Bay Terminals, L.L.C. & Limetree Bay Refinery, L.L.C.*, CAA Appeal Nos. 20-02 and 20-03, were sent to the following persons by electronic mail:

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Dated: Feb 12, 2021



Eurika Durr
Clerk of the Board