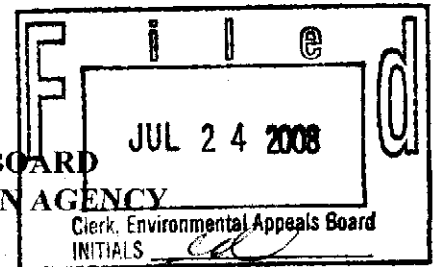


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



In re:)
))
Smith Farm Enterprises, L.L.C.) CWA Appeal No. 08-02
))
Docket No. CWA-03-2001-0022)
_____))

**ORDER GRANTING REQUESTS FOR EXTENSION OF TIME TO FILE APPEAL AND
REPLY BRIEFS**

In a motion filed by Appellant/Respondent Smith Farm Enterprises (“Smith Farm”) on July 14, 2008, Smith Farm requests a ninety-day extension of time to file its appeal brief in support of its notice of appeal filed on the same date. The Initial Decision in this matter was served on June 27, 2008,¹ and Smith Farm’s appeal brief is due on July 27, 2008 in accordance with the thirty-day time period allowed for appealing initial decisions pursuant to the Consolidated Rules of Procedure (“CROP”), 40 C.F.R. pt. 22, that govern this proceeding. See 40 C.F.R. § 22.30(a)(1) (allowing thirty days to file a notice of appeal and accompanying appeal brief following service of the initial decision).

In support of its request for additional time to file its appeal brief, Smith Farm notes that the “the case is complex and technical and requires consideration of the records of two

¹ On June 27, 2008, EPA Administrative Law Judge (“ALJ”) William B. Moran issued a “Supplement to Decision Upon Remand” (“Supplemental Decision”) in the proceedings below. In the Supplemental Decision, the ALJ noted that the Supplemental Decision is a reissuance of a previous March 7, 2008 “Decision Upon Remand” that incorporates a recent stipulation by the parties regarding the final penalty to be applied in this matter. In the Supplemental Decision, the ALJ indicated that “the date for calculation of all time periods regarding the Decision Upon Remand begins to run with the date of issuance of the [Supplemental Decision].”

proceedings[,]” and that the case also involves “a very unsettled area of the law” as reflected in the Supreme Court’s decision in *Rapanos v. United States Army Corps of Engineers*, 547 U.S. 715 (2006). Smith Farm further notes that additional time will allow “full consideration of the issues” and continued settlement discussions.

In addition, Smith Farm reports that U.S. EPA Region 3 (“Region 3”) has requested an extension of time, until December 12, 2008, to file its reply brief in response to Smith Farm’s appeal brief.² In this regard, Smith Farm states that neither party objects to its opposing party’s request for additional time to file its brief on appeal.

For good cause shown, the Board grants the parties’ requests for an extension of time to file their briefs on appeal. Accordingly, Smith Farm must file its appeal brief with the Board by October 24, 2008, and Region 3 must file its reply brief with the Board by December 12, 2008. The parties’ briefs must be received by the Board on or before these dates.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: July 24, 2008

By: Charles J. Sheehan
Charles J. Sheehan
Environmental Appeals Judge

² Region 3 seeks an extension of time to file its reply brief beyond the twenty-day time period allowed for filing a responsive brief following service of the notice of appeal and appeal brief. See 40 C.F.R. § 22.30(a)(2).

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Granting Requests for Extension of Time to File Appeal and Reply Briefs in the matter of Smith Farm Enterprises, L.L.C., CWA Appeal No. 08-02, were sent to the following persons in the manner indicated:

By Pouch Mail and Facsimile:


Stephanie D. Shamet, Esq.
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JUL 24 2008

Date: _____



Annette Duncan
Secretary