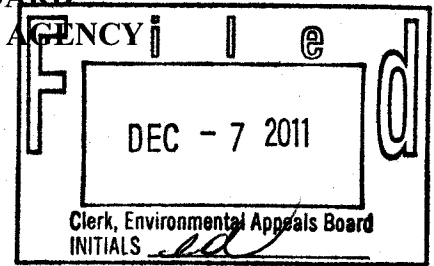


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC



In re:)
Willie P. Burrell &)
the Willie P. Burrell Trust)

TSCA Appeal No. 11-(05)

Docket No. TSCA-05-2006-0012)
_____)

**ORDER DENYING IN PART AND GRANTING IN PART MOTION
TO EXTEND TIME TO FILE NOTICE OF APPEAL, APPELLATE BRIEF, AND
RELATED PLEADINGS**

By motion dated November 29, 2011, Willie P. Burrell and the Willie P. Burrell Trust (collectively, "Burrell") sought an extension of time in which to file their notice of appeal, appeal brief, and any other related pleadings in the above-captioned matter. Burrell states in its motion that without an extension of time, its notice of appeal, appeal brief, and any other related pleadings would be due on December 23, 2011.¹ Burrell requests an extension until February 1, 2012, to file the notice of appeal, appeal brief, and related pleadings. For the following reasons, the motion is denied in part and granted in part.

In support of its motion, Burrell states that an extension until February 1, 2012, will accommodate the plans of Burrell's representative to be out of state from December 16, 2011 to

¹ Pursuant to 40 C.F.R. § 22.30(a), any party may appeal an initial decision to the Environmental Appeals Board ("Board") within thirty days after service of the initial decision by filing a notice of appeal and an accompanying brief. "Where a document is served by first class mail or commercial delivery service, but not by overnight or same-day delivery, 5 days shall be added to the time allowed by these Consolidated Rules of Practice for the filing of a responsive document." 40 C.F.R. § 22.7(c). In this case, the Default Order and Initial Decision that underlies this proceeding was served by first class U.S. Mail on November 23, 2011. Accordingly, the filing deadline for a notice of appeal and appeal brief in this matter is **December 28, 2011**, and not December 23, 2011, as stated in Burrell's motion.

December 30, 2011, and will allow Burrell's representative "an adequate amount of time in which to prepare and submit [Burrell's] Notice of Appeal, Appellate Brief, and related pleadings." Motion ¶¶ 5, 7. Burrell adds, "This motion has not been made for a vexatious purpose or undue delay." *Id.* ¶ 9. Finally, Burrell states that it "lack[s] knowledge as to whether the complainant below would object to this motion." *Id.* ¶ 11.

In appropriate cases, the Environmental Appeals Board ("Board") may grant extensions of filing deadlines. *E.g., In re Town of Marshfield*, NPDES Appeal No. 07-03, at 5 n.4 (EAB Mar. 27, 2007) (Order Denying Review); *see also Am. Farm Lines v. Black Ball Freight Serv.*, 397 U.S. 532, 539 (1970) ("It is always within the discretion of a court or an administrative agency to relax or modify its procedural rules adopted for the orderly transaction of business before it when in a given case the ends of justice require it.") (quoting *NRLB v. Monsanto Chem. Co.*, 205 F.2d 763, 764 (8th Cir. 1953)). Subsequent to the 1999 amendments to the Consolidated Rules of Practice that govern this proceeding, the U.S. Environmental Protection Agency ("EPA") relaxed the required contents of a notice of appeal. Appellants no longer were required to provide alternative findings of fact, conclusions of law, and proposed orders in their notices of appeal. With the 1999 amendments, the language of which remains effective, "the notice of appeal only must 'summarize the order or rule, or part thereof, appealed from.'" *In re Julie's Limousine & Coachworks, Inc.*, CAA Appeal No. 03-(06), at 3 (Order Regarding Motion for Extension of Time for Filing Appeal Brief) (Dec. 9, 2003) (quoting 40 C.F.R. § 22.30(a)). The Board reasoned that the regulatory "change made the filing of the notice of appeal separable from the appellate brief," *id.*, and after noting that the party seeking an extension of time "explained that it require[d] the additional time for preparation of its appellate

brief, but * * * expressed no similar need for the filing of the much simpler notice of appeal,” *id.*, the Board granted a filing extension for the appellate brief only.

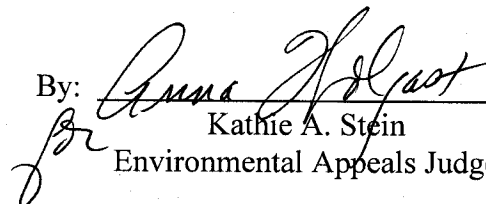
Although the complainant’s, U.S. EPA Region 5, position on the requested extension of time is unknown, Burrell has demonstrated good cause for warranting a filing extension for the appeal brief. Accordingly, the Board grants Burrell’s request for an extension of time in which to file the appeal brief, if any, in this matter.

Unlike the party seeking the filing extension in *Julie’s Limousine*, Burrell explicitly sought an extension of time in which to file the notice of appeal. Nevertheless, the Board’s grant of a filing extension is applicable only to Burrell’s appeal brief, if any. In this case, the Board believes that early summation of the “order or ruling, or part thereof, appealed from,” 40 C.F.R. § 22.30(a)(1), will advance “the efficient, fair, and impartial adjudication[],” *id.* § 22.4(a)(2), of this proceeding. Thus, the Board orders that in the event that Burrell wishes to appeal the Default Order and Initial Decision underlying this proceeding, Burrell shall file a notice of appeal with the Clerk of the Board no later than **December 28, 2011**. Should a notice of appeal be timely filed, Burrell’s appeal brief shall be due no later than **February 1, 2012**.

So ordered.

Dated: *December 7, 2011*

ENVIRONMENTAL APPEALS BOARD

By: 
Kathie A. Stein
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **Order Denying in Part and Granting in Part Motion to Extend Time to File Notice of Appeal, Appellate Brief, and Related Proceedings** in *In re Willie P. Burrell & the Willie P. Burrell Trust*, TSCA Appeal No. 11-(05), were sent to the following persons in the manner indicated:

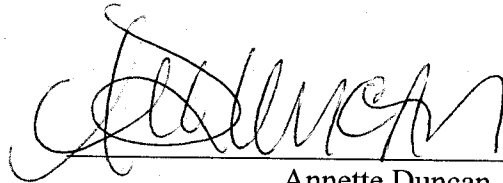
By Facsimile & First Class U.S. Mail:

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Kankakee, IL 60901
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Date: DEC -7 2011



Annette Duncan
Secretary