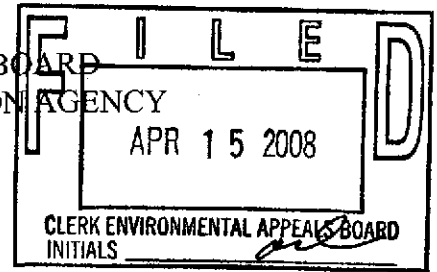


BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.



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In re: )

BHP Billiton Navajo Coal Company )

NPDES Permit No. NN0028193 )

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) NPDES Appeal No. 08-06

**ORDER REQUESTING REGION'S POSITION ON EXTENSION**

On April 10, 2008, the Environmental Appeals Board ("Board") received from San Juan Citizens Alliance a request for a two-week extension of time to file a Petition for Review of the final NPDES Permit issued by U.S. EPA Region 9 to BHP Billiton Navajo Coal Company ("Final Permit"). On April 11, 2008, the Board received a similar letter from Jeffrey Stant, "as the principal author of the comments submitted [on the draft permit] by Clean Air Task Force, San Juan Citizens Alliance, and Dine CARE," also requesting a two-week extension of time to file a petition for review of the Final Permit. Both letters indicate as a basis for the request that Jeffrey Stant never formally received notice of the Final Permit decision.

Pursuant to 40 C.F.R. § 124.19, "any person who filed comments on [a] draft [NPDES] permit or participated in the public hearing may petition the Environmental Appeals Board to review any condition of the permit decision" within 30 days after notice of the final permit decision is served, unless otherwise specified by the permit issuer. The Final Permit in this case appears to have been issued by Region 9 on March 5, 2008. Thus, the time for appeal would

ordinarily have run on April 7, 2008, assuming it was served by mail on the date of issuance.<sup>1</sup>

Neither San Juan Citizens Association nor Jeffrey Stant indicate whether Region 9 consents to or opposes the request. To assist the Board in its consideration of this matter, the Board requests that Region 9 inform the Board whether it consents to or opposes the extension requested by **close of business on Wednesday, April 16, 2008**. If the Region opposes the request, it should provide the basis for its opposition, along with any record support for its position, including citation to any notice provided.

So Ordered.

Date: \_\_\_\_\_

4/15/08

ENVIRONMENTAL APPEALS BOARD



\_\_\_\_\_  
Edward E. Reich  
Environmental Appeals Judge

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<sup>1</sup> 40 C.F.R. § 124.20(d) provides for an additional three days to the prescribed time for appeal to account for service by mail.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Requesting Region's Position on Extension in the matter of *BHP Billiton Navajo Coal Company*, NPDES Appeal No. 08-06, were sent to the following persons in the manner indicated.

**By Facsimile and Certified Mail Return Receipt Requested:**

Jeffrey Stant  
Director PPW Project / Safe Disposal Act  
Clean Air Task Force  
217 South Audubon Road  
Indianapolis, IN 46219  
**Fax: 317-351-1170**

**By Certified U.S. Mail, Return Receipt Requested:**

Mike Eisenfeld  
San Juan Citizens Alliance  
108 North Behrend, Suit I  
Farmington, NM 87402

Lori Goodman  
Dine CARE  
1022 Main Avenue  
Durango, CO 81302

**By Facsimile and Pouch Mail:**

Nancy J. Marvel, Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105  
**Fax: 415-947-3571**  
Mail Code: ORC-1

Alexis Strauss, Director  
Water Division  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105  
**Fax: 415-947-3549**  
Mail Code: WTR-1

Dated: APR 15 2008

  
Annette Duncan  
Secretary