

2007 MAY 16 AM 8: 41

ENVIR. APPEALS BOARD

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

)

) }

In the matter of:

Leed Foundry, Inc.

Docket No. RCRA 03-2004-0061 CWA 03-2004-0061

Respondent.

### MOTION FOR EXTENSION OF TIME

#### INTRODUCTION

Pursuant to 40 C.F.R. §§ 22.16(a), 22.7(b), and 22.30(e), Region 3 of the U.S.

Environmental Protection Agency ("Complainant" or "Appellant") moves for an extension of time to file its Notice of Appeal and supporting appeal Brief in this matter. Appellant submits that the reasons set forth below constitute good cause for requesting an extension of time and such an extension will not cause prejudice to Respondent.<sup>1</sup> Accordingly, Appellant respectfully requests that the Environmental Appeals Board ("EAB") grant this Motion for Extension of Time to file the Notice of Appeal and supporting Brief in this matter.

1

<sup>&</sup>lt;sup>1</sup> On May 9, 2007 counsel for the parties discussed the possibility that Complainant might appeal this case. At that time, Respondent's Counsel indicated preliminarily that he did not plan to object if Appellant requested an extension of time to file an appeal. After determining the necessity of this Motion, the undersigned counsel attempted to re-contact Respondent's Counsel by telephone to obtain confirmation that Respondent will not object to this Motion, however, such attempts over the last few days were not successful, so confirmation of Respondent's position was not obtained prior to the filing of this Motion.

#### BACKGROUND

The Initial Decision in this matter was sent to the parties by regular mail on April 25, 2007. 40 C.F.R. §§ 22.30(a) and 22.7(c) allow a party 30 days, plus an additional 5 days when service is by regular mail, from the date of service of the Initial Decision to appeal an Initial Decision, making Appellant's Notice of Appeal and Brief due no later than May 30, 2007.

# COMPLAINANT HAS GOOD CAUSE FOR REQUESTING AN EXTENSION OF TIME

The Presiding Officer's Initial Decision and Preliminary Order focus on an area of law, the "Bevill Amendment" of the Resource Conservation and Recovery Act, 42 U.S.C. § 6921(b), which has a complex regulatory history. Because the Presiding Officer's ruling in this matter is based on his interpretation of statutory language in an area where the Agency has already engaged in formal rulemaking, EPA counsel needs to consult with several different offices within EPA Headquarters and Region III. Consequently, Counsel for Appellant respectfully submits that the important issues raised by the Initial Decision can not be briefed effectively by May 30, 2007.

The EAB has the authority to grant the requested extension of time pursuant to 40 C.F.R. § 22.7(b). Under that subsection, a motion for extension can be granted for good cause shown, after consideration of prejudice to other parties. Appellant submits that the complexity and national significance of the issues raised in this case and the need for coordination among various offices within EPA constitute good cause for the requested extension. Appellant also submits that a 30-day extension of time for the filing of its Notice of Appeal and Brief will not cause prejudice or harm to Respondent in any way. Appellant therefore respectfully requests an extension of 30 days to determine whether to appeal this decision and, if so, to file its Brief in

2

support of its appeal, making Appellant's Notice of Appeal and Brief due no later than Friday,

3

June 29, 2007.

**RESPECTFULLY SUBMITTED,** 

ugyew

John Ruggero Counsel for Appellant EPA Region III Office of Regional Counsel (3RC00) 1650 Arch St. Philadelphia, PA 19103-2029 (215)814-2142

Of Counsel:

Pete Raack Gary Jonesi Office of Enforcement and Compliance Assurance

P.04/04

## CERTIFICATE OF SERVICE

I hereby certify that on this date the original and one copy of the foregoing Complainant's Motion for Extension of Time in *In the Matter of: Leed Foundry, Inc.*, RCRA/CWA 03-2004-0061, was sent by Federal Express overnight delivery service and by telefax to the Clerk of the Environmental Appeals Board, at the address below. In addition, a copy was sent by Federal Express overnight delivery service and by telefax to each of the other entities listed below and a copy of the Motion was hand delivered to the Regional Hearing Clerk in EPA Region III.

Clerk of the Environmental Appeals Board Colorado Building, Suite 600 1341 G Street, NW Washington, D.C. 20005 (202)233-0121

Honorable William B, Moran Offices of the Administrative Law Judges Suite 350 Franklin Court Building 1099 14<sup>th</sup> Street, NW Washington, D.C. 20005 (202)565-0044

Timothy J. Bergere, Esquire Montgomery, McCracken, Walker & Rhoads, LLP 123 South Broad Street Philadelphia, PA 19109 (215)772-7620

Mey 15,2007

higuo

Som Ruggero Sr. Asst. Regional Counsel US EPA Region III (3RC00) 1650 Arch St. Philadelphia, PA 19103-2029 (215)814-2142