

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

In the Matter of:)	
)	
LIMETREE BAY TERMINALS, LLC)	
LIMETREE BAY REFINERY, LLC)	
)	Appeal No.: CAA 20-02M
Permittee)	
)	
Plantwide Applicability Limit)	
Permit No. EPA-PAL-VI001/2019)	
Docket No. EPA-R02-OAR-2019-0551)	

**OPPOSITION TO MOTION FOR EXTENSION OF TIME AND MOTION TO
RECONSIDER**

The U.S. EPA Region 2 Office (“Region 2”), after consultation with the Office of General Counsel and the Office of Air and Radiation, opposes the December 21, 2020 motion (“Motion”) by the St. Croix Environmental Association, Center for Biological Diversity, Sierra Club, and Elizabeth Neville (“Petitioners”) for the Environmental Appeals Board (“EAB”) to extend for 30 days, to February 3, 2021, the time for filing a petition for review for the Plantwide Applicability Limit (“PAL”) issued by the Administrator for Limetree Bay Terminal and Limetree Bay Refinery (“Limetree Bay”) and asks the EAB, under 40 C.F.R. § 124.19(n), to reconsider its December 22, 2020 Order granting the Motion (“Order”). The grounds cited by the Motion do not provide good cause to grant it.

In the example cited by the Petitioners, *In re Invensys Sys., Inc.*, (Apr. 21, 2016), the permittee filed a motion for an extension 10 days after the permit was issued. By contrast, the Petitioners waited nearly three weeks to file their request for an extension. The Motion provides

no justification for why it was not filed sooner as, even if they did provide good cause, all of the grounds cited in the Motion were present when the Permit was noticed.

The EAB has recognized that NSR permits are time sensitive. *See* Revised Order Governing Petitions for Review of Clean Air Act New Source Review Permits at 2. While a PAL is a slightly different type of NSR permit, and Limetree Bay can operate as is without it, the PAL will provide the facility the flexibility to respond to changing market conditions. The PAL application was deemed complete nearly two years ago on December 31, 2018. As described below, the Petitioners have not provided good cause to grant the Motion and therefore the EAB should give the quick resolution of the Permit its “highest priority” and reconsider its Order granting the Motion. *Id.*

The grounds identified in the Motion do not provide good cause to grant the extension. The Petitioners claim that “the inability to reach key persons impair Petitioners’ ability to ask basic questions about the Permit and to receive or review records related to the Permit.” Motion at 2. In short, Petitioners’ motion fails to explain how their failure to reach Region 2 staff after the issuance of the Permit has somehow affected their ability to file a timely petition. The Permit and Permit record have been available on Region 2’s website. *See* <https://www.epa.gov/caa-permitting/caa-permits-issued-epa-region-2#palpermits>.¹ Supporting materials are also publicly available. *See* Docket ID EPA-R02-OAR-2019-0551, <https://beta.regulations.gov/docket/EPA-R02-OAR-2019-0551/document>. In fact, the Motion’s own attachments suggest that the inquires that the Petitioners made of Region 2 staff merely regarded the *status* of the Permit, not any questions about the content of the Permit or Permit record themselves that would frame any

¹ While the modeling files and accompanying data set, which EPA did not rely upon in making the final permitting decision, are not available online, a representative of the Petitioners was given access to those files at Region 2’s offices. *See* Response to Comment 129.

petition for EAB review. Any other attempted contact with Region 2 staff appears to have been several weeks after the Permit was noticed. *See* Motion at 2 (citing a December 21, 2020 recorded voice message for Richard Ruvo). The Motion briefly mentions a delay in processing FOIA requests in Region 2, but does not cite to any outstanding FOIA requests or explain why the delay in processing a FOIA request would impair the Petitioners' ability to prepare a petition for review, when as noted, the Permit and Permit record are publicly available. In sum, there are no grounds identified by the Motion that would suggest that the absence of Region 2 staff actually impairs or has impaired the Petitioners' ability to develop and file a timely petition for EAB review of the Permit and the EAB should reconsider granting the Motion.

The Petitioners next argue that an extension should be granted because of the ongoing COVID-19 pandemic. While Region 2 appreciates that the pandemic has been disruptive, it disagrees that, at this point, the pandemic provides good cause for an extension for time to file a petition for review. EAB granted the two COVID-related extensions cited by the Petitioners much earlier this year when the situation with the COVID-19 pandemic was more in flux and people were still adapting to a changing environment. By now, both the Petitioners and Region 2 have been dealing with these disruptions for more than 9 months. If the COVID-19 pandemic provides good cause for the Petitioners' Motion, it would provide good cause for *all* such motions for an extension of time, turning the exception into the rule. Further, the Motion provides no explanation for why the inability to travel to the Virgin Islands inhibits the Petitioners' ability to develop and file a petition for review of the Permit when the Permit and Permit record are both publicly available, nor have they explained how the proposed extension of time will remedy such travel concerns. Therefore, the EAB should reconsider granting the Motion as it does not provide good cause for doing so.

Finally, the Petitioners cite changes from the draft Permit and the changes to EAB appeal procedures as justification for an extension of time to file a petition for EAB review. Neither of those grounds provide good cause to grant the Motion. First, many permits inevitably change between draft and final versions based on public comment. For these types of changes to provide good cause would, once again, turn the exception of granting an extension into the rule. Had the EAB intended such a result, 40 C.F.R. § 124.19 would explicitly provide for additional filing time in these instances. Moreover, the change mentioned by the Motion, an increase in the NO_x limit, is clearly explained in the Response to Comments, which is publicly available. *See* Response to Comment 16, https://www.epa.gov/sites/production/files/2020-12/documents/response_to_comments-limetree_pal_permit.pdf. Petitioners have failed to explain how this issue or EPA's response to the comment necessitate that EAB provide them with additional time beyond the normal amount prescribed by the regulation. Finally, as to the changes to the EAB appeal procedures, not only have they been publicly available since August, but they are just that – *procedural* changes. And Petitioners have failed to explain how those procedural changes impact their ability to file a timely petition on the merits for EAB review of the Permit.

The Petitioners' motion does not provide good cause to grant an extension of time for them to file a petition for review of the Limetree Bay PAL. Therefore, Region 2 respectfully requests that the EAB reconsider its Order and deny the Petitioners' Motion for an extension of time.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify, pursuant to the Rules of the Environmental Appeals Board of the U.S. Environmental Protection Agency, that on **December 22, 2020**, the foregoing was filed electronically with the Clerk of the Environmental Appeals Board using the EAB eFiling System, as authorized in the August 12, 2013, Standing Order titled Revised Order Authorizing Electronic Filing Procedures Before The Environmental Appeals Board Not Governed By 40 C.F.R. Part 22.

/s/

John T. Krallman