

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

In re:

Smith Farm Enterprises, L.L.C.,

Docket No. CWA-03-2001-0022

CWA Appeal No. 08-02

ENVIR. APPEALS BOARD

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**COMPLAINANTS' RESPONSE TO MOTION FOR ADDITIONAL EXTENSION
OF TIME TO FILE RESPONDENT'S APPEAL BRIEF**

Complainants hereby respond to the Motion for Additional Extension of Time to File Respondent's Appeal Brief ("Motion"). The Motion seeks an additional extension of time from March 6, 2009 to April 8, 2009 for Respondent to file its Appeal Brief.

Complainants do not oppose the Motion, but respectfully request that, if the Motion is granted, Complainants be granted an extension from April 10, 2009 to June 2, 2009 to file their responsive brief. The basis for requesting an extension to June 2, 2009 is that there is currently pending before the Board a motion that, if granted, would require Complainants and their counsel to file responsive briefs in *Matter of Vico Construction Corp. & Amelia Venture Properties, LLC*, CWA App. 08-03 on May 8, 2009.

With respect to the Motion pending in this matter, Complainants further state that, as the Board is aware from prior filings, the Parties actively have engaged in good faith efforts to resolve this matter without further litigation, including a face-to-face meeting for which Complainants' counsel traveled to Norfolk, Virginia on January 30, 2009. Despite these efforts, the Parties thus far have been unable to reach an agreement in principle. As set forth in the Status Report filed by the Parties on February 6, 2009,

settlement of this matter is complex because it includes resolution of the status of the Site, and consequently requires coordination with the U.S. Army Corps of Engineers ("Corps") and the U.S. Department of Justice ("DOJ"). Respondent's Motion correctly states that Complainants are in the process of putting together a written offer of settlement and that written offer has been delayed due to the need to coordinate among EPA, DOJ and the Corps. Complainants will not involve the Board with the Parties' back and forth settlement discussions and therefore will not address each representation in the Motion. Complainants do wish to state for the record that the Motion represents Respondent's point of view, which Complainants do not necessarily share.

Complainants agree that Respondent is awaiting Complainants' written offer. Complainants do not wish to cause Respondent to unnecessarily incur additional attorney fees, and for that reason do not oppose the Motion. Nevertheless, it is Complainants' view that, once the written offer is received, the Parties will have had sufficient opportunity to explore all issues related to an agreement in principle.

Accordingly, if Respondent's Motion is granted, Complainants respectfully request an extension to June 2, 2009 to file their responsive brief.

Date: 2-18-09

Respectfully submitted,



Stefania D. Shamet
Senior Assistant Regional Counsel

Counsel for Complainants

CERTIFICATE OF SERVICE

I hereby certify that on this date I caused the foregoing Complainants' Response to Motion for Additional Extension of Time to File Respondent's Appeal Brief in the Matter of Smith Farm Enterprises, LLC, CWA Appeal No. 08-02 to be served in the following manner:

BY Facsimile and First Class Mail:

Hunter W. Sims
Kaufman & Canoles
150 West Main Street
Suite 2100
Norfolk, VA 23514

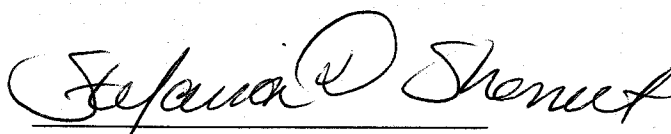
BY HAND DELIVERY:

Lydia Guy, Regional Hearing Clerk
EPA Region III (3RC00)
1650 Arch Street
Philadelphia, PA 19103

Original and Five Copies by Federal Express:

U.S. Environmental Protection Agency
Clerk of the Board, Environmental Appeals Board
Colorado Building
1341 G Street, N.W., Suite 600
Washington, D.C. 20005

2-18-09
Date


Stefania D. Shamet