

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of:)	
)	
Euclid of Virginia, Inc)	
4225 Connecticut Avenue)	U.S. EPA Docket Number
Washington, D.C. 20008)	RCRA-3-2002-0303
)	
RESPONDENT)	

**RESPONSE TO RESPONDENT’S MOTION FOR EXTENSION
OF TIME AND COMPLAINANT’S ASSOCIATED MOTION
FOR EXTENSION OF TIME TO CONSIDER CROSS-APPEAL**

Complainant does not contest Respondent’s Motion for Extension of Time for Submission of Brief on Appeal. However, Complainant requests that the Environmental Appeals Board (“EAB”) clarify that the 20 days within which Complainant may file a “cross-appeal” pursuant to 40 C.F.R. § 22.30(a)(1) does not begin to run until Complainant is served with Respondent’s brief. Complainant cannot make a decision as to whether it wishes to expend the resources necessary for a cross-appeal until it receives and reads Respondent’s appeal brief.

If the EAB does not agree that the additional 20 days for a cross-appeal under 40 C.F.R. § 22.30(a)(1) is *automatically* tolled until Complainant receives Respondent’s brief, then Complainant moves that the EAB rule that *in this instance* the time for cross-appeal shall be extended until 20 days after Respondent’s appeal brief is served. Alternatively, if the EAB does not so rule, this Response may be deemed as Complainant’s “protective” Notice of Appeal, and

Complainant moves that it be granted an extension for filing its cross-appeal brief until 20 days after service of Respondent's appeal brief.¹

Respectfully submitted,

11-29-06
Date

BENJAMIN D. FIELDS
Senior Assistant Regional Counsel
A. J. D'ANGELO
Senior Assistant Regional Counsel

¹This 20 day period is as set forth in 40 C.F.R. § 22.30(a)(1). Depending upon the scope of the issues set forth in Respondent's brief, Complainant may wish to ask for additional time in which to file a reply brief and/or cross-appeal brief. If such additional time is necessary, Complainant will file a motion for such an extension as soon as possible after receiving Respondent's appeal brief.

CERTIFICATE OF SERVICE

I hereby certify that on the date below I served the original and copies of the attached Response to Respondent's Motion for Extension Of Time and Complainant's Associated Motion for Extension of Time to Consider Cross-Appeal as follows:

Original via Federal Express, copy
via CDX Electronic Submission:

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

Copy via Hand Delivery:

Lydia Guy, Regional Hearing Clerk
U.S. Environmental Protection Agency – Region III

Copy via Pouch Mail:

Hon. Carl C. Charneski
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Copy via Federal Express:

Thomas F. DeCaro, Jr.
DeCaro & Howell, P.C.
Suite 201
14406 Old Mill Road
Upper Marlboro, Maryland 20772-3029

11-29-06
Date

Benjamin D. Fields
Senior Assistant Regional Counsel