

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
U.S. ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

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In re: ESSROC Cement Corporation)	
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RCRA Permit No. IND 005 081 542)	Appeal No. RCRA 13-03
)	

UNOPPOSED MOTION FOR EXTENSION OF DATE FOR ORAL ARGUMENT

Region 5 of U.S. Environmental Protection Agency (“Région 5”), by and through its attorneys, respectfully requests that the Environmental Appeals Board (“Board”) reschedule the oral argument ordered for February 20, 2014 in the above-referenced proceeding to a later date given a scheduling conflict for the Office of General Counsel (“OGC”) attorney Laurel Celeste, who will be a participant of the oral argument on behalf of the Region.

On September 25, 2013, the Board issued an order granting Petitioner’s request for oral argument and ordered the parties to participate in such oral argument on November 7, 2013. On October 23, in response to an unopposed motion dated October 17, 2013, by Region 5 the Board rescheduled the oral argument to December 12, 2013.

By order dated November 6, 2013, the Board stayed the matter until February 10, 2014, to allow the parties time to pursue settlement. Order Staying Proceedings and Rescheduling Oral Argument (Nov. 6, 2013). After participating in an in-person settlement conference, the parties determined that they are at an impasse and unlikely to resolve this prior to oral argument on February 20, 2014. Joint Status Report (Jan. 8, 2014). Accordingly, by order dated January 14, 2014, the Board lifted the stay, and scheduled oral argument for February 20, 2014.

Region 5 seeks a brief delay of a few days, and rescheduling of the oral argument for a later date to allow Ms. Celeste to participate in oral argument. Ms. Celeste is precluded by a recently scheduled negotiating session in Singapore from participating on February 20 in oral argument in this proceeding.

Since 2009, when the United States Trade Representative notified Congress of the President's intent to negotiate a comprehensive free trade agreement, the United States has been engaged in negotiations with a number of countries to develop such an agreement, called the Trans-Pacific Partnership ("TPP") Agreement. Currently the negotiating parties are Australia, Brunei, Chile, Canada, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States, and Vietnam. Recently, a Ministerial meeting and negotiating session was scheduled to take place from February 17-22, 2014, with the intent to finalize the remaining issues and to complete the negotiations.

Since the inception of the negotiations, Ms. Celeste has represented EPA as legal counsel at these negotiations and works closely with USTR on drafting text and evaluating the proposals of other negotiating partners. One of the matters slated for discussion at the negotiating session are revisions to the chapter of the Agreement governing Sanitary and Phytosanitary ("SPS") Measures, which are generally defined as regulatory matters governing animal and plant health and food safety. The TPP Chapter on SPS issues will contain a series of commitments, including on the use of science and transparency in the development of SPS measures, which will have the potential to directly affect EPA's regulatory authority under both the Federal Insecticide, Fungicide, and Rodenticide Act, (7 U.S.C. 136a et. seq.) and the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a et. seq.) No other EPA attorney can adequately substitute for

her at these sessions, as he would not be familiar with the negotiating history of the provisions, nor have her long-standing relationship with the other negotiators.

As laid out in the attached affidavit from Ms. Jane Doherty, Director of Sanitary and Phytosanitary Affairs, Office of the United States Trade Representative, in the Executive Office of the President, this negotiating session was scheduled early in the week of January 27, 2014, and the decision was made based on the availability of the Ministers and chief negotiators from each of the 12 countries participating in the negotiations, as well as the availability of the venue. EPA was not consulted and had no involvement in either the decision to hold the negotiating session, or in the selection of the particular date. Ms. Celeste was only informed of the scheduled negotiations on January 28, 2014.

As laid out in its motion of October 17, 2013, the Region has long intended that Ms. Celeste represent EPA in the oral argument with respect to Issues 1 and 2 of the issues to be addressed in oral argument as identified in the September 25, 2013 Order, and believes it is imperative that Ms. Celeste participate in the oral argument given that she had direct involvement in the briefing and oral argument that in the case, *Cement Kiln Recycling Coalition v. EPA*, 493 F.3d 207 (D.C. Cir. 2007), which the Board has indicated it has particular interest to discuss in its Order on the oral argument. Replacing Ms Celeste at this late stage of the process would pose a significant hardship for the government.

The Region represents that counsel for Petitioner ESSROC Cement Corporation and *Amicus Curiae*, Cement Kiln Recycling Coalition were contacted with respect to this motion. Both parties have stated that they do not take a position in favor of or in opposition to the motion. However, both have requested that the EAB convene a status conference via telephone with all of the parties to discuss and agree upon a mutually convenient date for the rescheduled

oral argument. There is no prejudice to Petitioner as the mercury feed rate limit at issue in this permit appeal is not effective pending resolution of this appeal proceeding.

WHEREFORE, Region 5 respectfully requests that the Board reschedule the oral argument for a date later than February 20, 2014, and convene a status conference via telephone with all of the parties to establish a revised date for oral argument.

Respectfully submitted this 5th day of February, 2014



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CERTIFICATE OF SERVICE

Appeal No. RCRA 13-03

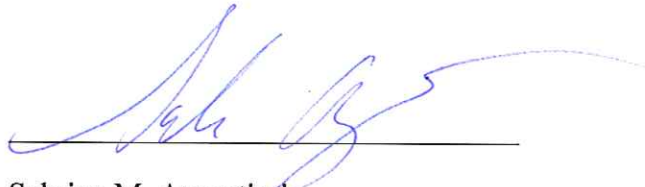
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I hereby certify that on this 5th day of February, 2014, I caused to be electronically filed the foregoing "Unopposed Motion for Extension of Date for Oral Argument", and caused to be mailed a true and correct copy of these documents to the Petitioner and *Amicus Curiae* by overnight delivery addressed as follows:

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Dated: February 5, 2014



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