

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

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ENVIR. APPEALS BOARD

IN RE: )  
SAN PEDRO FORKLIFT, )  
RESPONDENT. )  
\_\_\_\_\_ )

DOCKET NO. CWA-9-2009-006  
COMPLAINANT'S REQUEST  
FOR EXTENSION OF TIME  
TO FILE NOTICE OF APPEAL  
AND APPELLATE BRIEF

COMES NOW THE COMPLAINANT in the above-entitled action, the Director of the Water Division, United States Environmental Protection Agency, Region IX ("Complainant" or "EPA Region IX"), by its counsel of record, Julia Jackson, pursuant to the authority set forth at 40 C.F.R. § 22.16(a), and moves the Environmental Appeals Board for an order extending the time for the Complainant to file a notice of appeal and appellate brief in the action as authorized under 40 C.F.R. § 22.30(a).

I. INTRODUCTION

This matter concerns the enforcement of the prohibition against the discharge of pollutants without a permit set forth at Section 301(a) of the Clean Water Act ("CWA"), 33 U.S.C. § 1311(a). On September 29, 2009, and under the authority of Section 309(g) of CWA, 33 U.S.C. § 1319(g), EPA Region IX filed an administrative complaint against San Pedro Forklift ("Respondent"), charging Respondent with 3 violations of the CWA and proposing that an administrative penalty of \$120,000 be assessed against Respondent to address these

violations. In its answer dated November 13, 2009, Respondent did not admit or deny each allegation in the complaint, but denied that a permit was required and requested a hearing.

On November 12, 2010, EPA Region IX filed its Motion for Partial Accelerated Decision as to liability for Counts 1 and 2. By an Order dated January 7, 2011, the Presiding Officer denied EPA Region IX's Motion. A hearing was held in this matter from January 24-29, 2011 in Los Angeles, California at which both parties presented evidence and testimony.

On January 27, 2012, the Presiding Officer issued her Initial Decision, dismissing the Complaint for lack of jurisdiction.

## II. REQUEST

Complainant was served with the Initial Decision in this matter on February 2, 2012. According to 40 C.F.R. § 22.30(a), any party may appeal any adverse order or ruling of the Presiding Officer by filing a notice of appeal and appellate brief within 30 days after the initial decision is served. Thus, the deadline for filing a notice of appeal and accompanying brief in this matter is March 3, 2012.

Complainant hereby seeks a 45 day extension of time to file a notice of appeal and appellate brief to April 18, 2012. This extension of time would permit Complainant to consult the appropriate Agency officials in Washington, D.C. and the Regions and to take all other actions required by the current Environmental Appeals Board coordination procedures which are precedent to filing an appeal.

Respondent does not object to the granting of this Motion.

Respectfully submitted on this 9<sup>th</sup> day of February 2012,

A handwritten signature in cursive script that reads "Julia Jackson". The signature is written in black ink and is positioned above a horizontal line.

Julia A. Jackson  
Assistant Regional Counsel

CERTIFICATE OF SERVICE

I certify that the original and five copies of the foregoing Complainant's Request for an Extension of Time to File Notice of Appeal and Appellate Brief was sent by facsimile and inter-office pouch to:

U.S. Environmental Protection Agency  
Clerk of the Board, Environmental Appeals Board (MC 1103B)  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460-0001

and that a true and correct copy of the said document was sent by First Class United States Mail, addressed to the following:

Earnest J. Franceschi, Jr.  
445 S. Figueroa Street, # 2600  
Los Angeles, California 90071

John C. Glaser  
Glaser & Tonsich, LLP  
2500 Via Cabrillo Marina, Ste. 310  
San Pedro, California 90731

Dated: 2/9/2012

By: *Leatrice N. Stark*

Office of Regional Counsel  
USEPA, Region IX