

# KAUFMAN & CANOLES

— | A Professional Corporation | —

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February 12, 2009

KC No.: 0058659

## Via Federal Express

U.S. Environmental Protection Agency  
Clerk of the Board, Environmental Appeals Board  
1341 G Street, NW  
Suite 600  
Washington, DC 20005

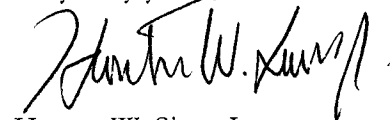
Re: ***In the Matter of VICO Construction Corporation and Amelia Venture Properties, LLC***  
**CWA Appeal No.: 08-03; Docket No.: CWA-03-2001-0021**

Dear Sir or Madam:

Enclosed are an original and five copies of an Uncontested Motion for Extension of Time to File Respondents' Appeal Brief and Accompanying Request by the EPA for Extension to File its Brief, which I ask you to file on behalf of the Respondents in the captioned case.

Please call me if you have any questions. Otherwise, thank you for your assistance in this regard.

Very truly yours,



Hunter W. Sims, Jr.

HWS/lsw

Enclosures

cc: Ms. Lydia Guy, Regional Hearing Clerk (*via* Federal Express w/enc.)  
Stefania D. Shamet, Esquire (*via* Fax and Federal Express w/enc.)

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**BEFORE THE ENVIRONMENTAL APPEALS BOARD**

United States Environmental Protection Agency

Washington, D.C

In the Matter of )  
 )  
VICO Construction Corporation and ) CWA Appeal No.: 08-03  
Amelia Venture Properties, LLC, )  
Docket No.: CWA-03-2001-0021 )  
 )  
Respondents. )

**UNCONTESTED MOTION FOR EXTENSION OF TIME TO FILE  
RESPONDENTS' APPEAL BRIEF AND ACCOMPANYING REQUEST BY THE EPA  
FOR EXTENSION TO FILE ITS BRIEF**

NOW COME Respondents, VICO Construction Corporation and Amelia Venture Properties, LLC ("Respondents") by counsel, and for their uncontested motion for extension of time to file Respondents' Appeal Brief and accompanying request by the EPA for extension of time to file its brief, state as follows:

1. Respondents move for an extension of time from February 23, 2009 (the date Respondents' brief is currently due) to and including March 27, 2009 within which to file the Respondents' Appeal Brief to allow the parties to complete their on-going settlement negotiations before the Respondents must begin preparation of their Appeal Brief to save the costs to prepare the brief.

2. The extension is requested because the factual background of the case is complex, technical and requires consideration of the records of two proceedings, and one of the Respondents' trial counsel, who was one of the two attorneys representing the Respondents at the evidentiary hearings before two Administrative Law Judges who heard this matter, and who was the principal attorney in charge of Respondents' Appeal Brief, has retired from Kaufman &

Canoles, P.C. and another attorney, who was not previously involved in the matter, Mary Jane Hall of Kaufman & Canoles, P.C., will be the principal attorney to prepare Respondents' Appeal Brief and requires additional time to become familiar with the voluminous record. In addition, the legal issues implicated revolve around the decision by the Supreme Court of the United States in *Rapanos v. United States*, 126 S.Ct. 2208 (2006), which remains a very unsettled area of the law. Respondents believe the additional time will permit full consideration of the issues and will also permit settlement discussions to conclude, hopefully resulting in the resolution of this matter before Respondents incur significant legal fees to prepare and file their Appeal Brief.

3. The Respondents have submitted a written settlement proposal to the EPA which, as counsel for the Respondents has been informed, is now under consideration and review by the EPA, the U.S. Army Corps of Engineers, and the U.S. Department of Justice. EPA's counsel has informed Respondents' counsel that, because of this review process by these three governmental agencies, it is likely that a response from the EPA to Respondents' settlement demand will not be forthcoming in the next seven to ten days. Therefore, without the requested extension, the Respondents must immediately commence to prepare their Appeal Brief so that it can be filed by the deadline now in place of February 23, 2009. As explained above, the attorney now assigned to prepare the appeal brief was not present during the Hearing on Remand and will have to familiarize herself with the transcripts of the proceedings and the exhibits and then prepare Respondents' Appeal Brief in an area of the law after the decision by the Supreme Court of United States in *Rapanos, supra*, is still evolving. It is anticipated that this effort will be considerable, which will equate to significant legal fees being incurred by the Respondents, a small closely held corporation (VICO Construction) and a limited liability company ("Amelia Venture Properties) owned by two individuals.

4. The Respondents seek this extension to give the EPA sufficient time to complete its review of the Respondents' settlement offer, obtain any necessary input from the U.S. Army Corps of Engineers and the U.S. Department of Justice and then respond to Respondents' settlement proposal and continue negotiations on a path to resolving this matter, all of which, if it occurs, will eliminate the necessity for the Appeal Brief so that the Respondents do not have to incur the costs which will be incurred if the requested extension is not granted.

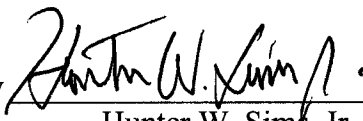
5. Counsel for the EPA has no objection to the requested extension and furthermore has requested that its brief be due on May 8, 2009.

6. For good cause shown and by agreement of counsel, it is respectfully requested that this Court grant the mutual extensions of time.

WHEREFORE, Respondents, VICO Construction Corporation and Amelia Venture Properties, LLC respectfully request an extension of time within which to file their Appeal Brief to March 27, 2009. It is also respectfully requested that the EPA be granted an extension to file its responsive brief to May 8, 2009.

Respectfully submitted,

**VICO CONSTRUCTION CORPORATION and  
AMELIA VENTURE PROPERTIES, LLC**

By   
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Hunter W. Sims, Jr.

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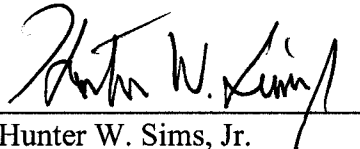
**CERTIFICATE OF SERVICE**

I hereby certify that on this 12<sup>th</sup> day of February 2009, the foregoing *Uncontested Motion for Extension of Time to File Respondents' Appeal Brief and Accompanying Request by the EPA for Extension to File its Brief* was served:

Via Federal Express (the original and five copies) to:  
U.S. Environmental Protection Agency  
Clerk of the Board, Environmental Appeals Board  
1341 G Street, N.W., Suite 600  
Washington, D.C. 20005

Via Federal Express to:  
Stefania D. Shamet, Esquire  
United States Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029  
Fax: (215) 814-2603

Via Federal Express to:  
Ms. Lydia Guy, Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region III  
1650 Arch Street (3RC00)  
Philadelphia, PA 19103

  
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Hunter W. Sims, Jr.