

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

IN THE MATTER OF:
NORTHERN MICHIGAN
UNIVERSITY

)
)
)
)
)

APPEAL NUMBER: PSD 08-02

PSD PERMIT NUMBER: 60-07

NOTICE OF MOTION OF PETITIONER FOR LEAVE TO FILE REPLY

PLEASE TAKE NOTICE that I have sent, by overnight courier, to the Clerk of the Environmental Appeals Board a MOTION OF PETITIONER FOR LEAVE TO FILE A REPLY on behalf of Petitioner Sierra Club, a copy of which is here with served upon each of the representatives identified for the parties at issue in this case.

Respectfully submitted
Garvey McNeil & McGillivray S.C.


David C. Bender

GARVEY MCNEIL & MCGILLIVRAY, S.C.
634 W. Main Street
Madison, WI 53703
608.256.1003
608.256.0933 (fax)
bender@gmmattorneys.com

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

IN THE MATTER OF:
NORTHERN MICHIGAN
UNIVERSITY

)
)
)
)
)

APPEAL NUMBER: PSD 08-02
PSD PERMIT NUMBER: 60-07

MOTION OF PETITIONER FOR LEAVE TO FILE REPLY

Petitioner, Sierra Club, respectfully moves for leave to file a reply to the Response of the Michigan Department of Environmental Quality, which was filed with the Board on August 6, 2008, and a copy of which was received by Petitioner on August 8, 2008.

On June 13, 2008, Petitioner filed a Petition for Review and Request for Oral Argument in this docket. The Petition seeks review of a Prevention of Significant Deterioration ("PSD") permit proposed by the Michigan Department of Environmental Quality ("MDEQ") for a solid fuel (coal) fired boiler to be located on the Northern Michigan University ("NMU") campus in Marquette, Michigan.

On June 16, 2008, the Clerk to the Board sent a notification to MDEQ providing deadlines to file a response to the Petition.

On July 8, 2008, MDEQ moved the Board for an extension of time to file a Response to the Merits of the Petition. In its motion, MDEQ noted that the Board has never ruled on many of the legal issues raised in the Petition and that additional time was necessary to provide a complete response that would be beneficial to the Board's consideration of the issues in this case.

On July 10, 2008, the Board granted MDEQ's motion for an extension of time.

On August 6, 2008, MDEQ filed its response to the Petition. Petitioner received a copy of the Response on August 8, 2008.

Petitioner will be able to provide a reply on or before August 22, 2008.

Petitioner has conferred with counsel for Respondent MDEQ and is informed and authorized to represent that the MDEQ has no objection to Petitioner's request to file a reply.

Good cause exists for leave to file a reply. First, as noted by the MDEQ in its motion for an extension of time to respond, several of the issues raised by Sierra Club in its Petition have not previously been addressed in decisions of the Board. The Board would benefit from additional illumination of the issues through a reply brief. Second, the Board has granted leave to file a reply in similar cases, including *In re Conocophillips Company*, Appeal No. PSD 07-02; *In re Christian County Generation, LLC*, Appeal No. PSD 07-01; and *In re Prairie State Generating Company, LLC*, Appeal No. PSD 05-05. Third, the arguments presented by MDEQ, if accepted by the Board, will have broad ranging implications in this and other permit proceedings and Petitioner seeks the opportunity to provide its position on those important policy implications. Fourth, MDEQ has no objection to Petitioner's request.

WHEREFORE, Petitioner respectfully requests that the Board grant Petitioner leave to file a reply to MDEQ's response and that such reply should be filed on or before August 22, 2008.

Respectfully submitted this 13th day of August, 2008.

Garvey McNeil & McGillivray S.C.



David C. Bender

GARVEY MCNEIL & MCGILLIVRAY, S.C.
634 W. Main Street
Madison, WI 53703
608.256.1003
608.256.0933 (fax)
bender@gmmattorneys.com

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

IN THE MATTER OF:
NORTHERN MICHIGAN
UNIVERSITY

)
)
)
)
)

APPEAL NUMBER: PSD 08-02
PSD PERMIT NUMBER: 60-07


CERTIFICATE OF SERVICE OF PETITIONER'S NOTICE AND MOTION OF PETITIONER
FOR LEAVE TO FILE REPLY

On August 13, 2008, I caused to be served via Federal Express delivery a copy of the foregoing Notice of Motion and Motion of Petitioner for Leave to File Reply to:

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

Neil D. Gordon, Esq.
Department of the Attorney General
Environment Natural Resources and Agriculture Division
G. Mennen Williams Building, 7th Floor
525 W. Ottawa St.
Lansing, MI 48909
Attorney for Michigan Department of Environmental Quality

I declare that the foregoing is true to the best of my knowledge.


Laura Boyd