

## RECEIVED U.S. E.P.A.

## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION III 1650 Arch Street 2006 NOV 30 AN IO: 50

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ENVIR. APPEALS BOARD

Benjamin D. Fields Senior Assistant Regional Counsel

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November 29, 2006

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

Re:

Euclid of Virginia, Inc, U.S. EPA Docket Number RCRA-3-2002-0303

Dear Clerk of the Board:

Enclosed for filing is the original of Complainant's Response to Respondent's Motion for Extension Of Time and Complainant's Associated Motion for Extension of Time to Consider Cross-Appeal. A copy of this submission has been submitted electronically through the Environmental Appeals Board's CDX system.

Sincerely,

Benjamin D. Fields

Senior Assistant Regional Counsel

cc:

Thomas F. DeCaro, Jr.

## BEFORE THE ADMINISTRATOR

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:		)		Š		
Euclid of Virginia, Inc 4225 Connecticut Avenue		) ) )	U.S. EPA Docket Number	. APPE	OE AU	RECEI U.S. E.
Washington, D.C. 20008		) )	RCRA-3-2002-0303	VLS BO	<b>1</b>	P.A.
	RESPONDENT	)		AR	Š	

# 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.<sup>1</sup>

Respectfully submitted,

11-29-06

Date

BENJAMIN D. FIELDS

Senior Assistant Regional Counsel

A. J. D'ANGELO

Senior Assistant Regional Counsel

<sup>&</sup>lt;sup>1</sup>This 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