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ENVIR. APPEALS BOARD

**From:** Thomas Martin

**Fax#:** \_\_\_\_\_

**Date:** 10 Jan 08

**Subject:** Motion For Extension

**Number of Pages:** 5



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

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ENVIR. APPEALS BOARD

In the Matter of: )

Robert J. Hesel, )  
 Centralia, Illinois )

and )

Andrew Hesel )  
 Centralia, Illinois, )

Respondents. )

Docket No. CWA 05-2006-0002

MOTION FOR EXTENSION OF TIME

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**INTRODUCTION**

Pursuant to 40 C.F.R. §§ 22.16(a), 22.7(b) and 22.30, Region 5 of the Environmental Protection Agency ("EPA") moves for an extension of time to file its Notice of Appeal and Brief in this matter. Because the Region has shown good cause and lack of prejudice to Respondents, the Environmental Appeal Board ("EAB") should grant the Region's request.

**BACKGROUND**

The Presiding Officer filed and served his Initial Decision in this matter on December 19, 2007. Under 40 C.F.R. § 22.30(a), Complainant has 30 days from the date that the Initial Decision was served to file its Notice of Appeal, making EPA's brief due no later than January 18, 2008.

### COMPLAINANT HAS SHOWN GOOD CAUSE FOR THE EXTENSION

The Presiding Officer's Initial Decision covers a large number of factual and legal issues with respect to the statute of limitations provision set forth at 28 U.S.C. § 2462. The Region has identified numerous potential issues for appeal to the EAB. Because of the broad implications of the Presiding Officer's ruling in this matter, EPA regional counsel will need to consult with EPA Headquarters and counsel in several different offices of the EPA. The Region will also need to coordinate a possible appeal with U.S. Army Corps of Engineers, which shares regulatory authority under § 404 of the CWA. Consequently, Region 5 respectfully submits that it cannot effectively brief these important issues by January 18, 2008.

The EAB has the authority to grant the requested extension of time pursuant to 40 C.F.R. § 22.7(b). Under that subsection, a motion for extension can be granted for good cause, after consideration of the prejudice to other parties. EPA submits that the nationally significant issues raised in the Presiding Officer's ruling and the need for coordination between various offices within EPA and the Corps all constitute good cause for the requested extension. EPA also submits that it is unlikely that a 45-day extension of time for the filing of its brief could prejudice or harm the Respondents in any way.<sup>1</sup> EPA therefore respectfully requests an extension of 45 days to file its brief in support of its appeal, making EPA's Notice of Appellate Brief due no later than Monday, March 3, 2008.

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<sup>1</sup> On January 10, 2008, Complainant attempted to obtain from Respondents a stipulation regarding this Motion for Extension of Time, but Respondents' counsel objected.

RESPECTFULLY SUBMITTED this 10<sup>th</sup> day January, 2008.



Thomas J. Martin  
Associate Regional Counsel  
Region 5

Of Counsel:

Richard Witt  
EPA Office of General Counsel

Gary Jones  
EPA Office of Enforcement and  
Compliance Assurance

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Complainant's Motion for Extension of Time to File Notice of Appeal in the matter of Robert J. Hesel and Andrew Hesel, Docket No. CWA-05-2006-0002, were sent to the following persons in the manner indicated:

Facsimile and Fed Ex: Environmental Appeals Board  
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First Class Mail: Honorable William B. Moran  
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U.S. Environmental Protection Agency  
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Dated: January 10, 2008

  
Leslie Payne  
Administrative Program Assistant