

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
U.S. ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

)	
)	
In re: ESSROC Cement Corporation)	
)	
RCRA Permit No. IND 005 081 542)	Appeal No. RCRA 13-03
)	

UNOPPOSED MOTION FOR EXTENSION OF DATE FOR ORAL ARGUMENT

Region 5 of U.S. Environmental Protection Agency (“Region 5”), by and through its attorneys, respectfully requests that the Environmental Appeals Board (“Board”) reschedule the oral argument ordered for November 7, 2013 in the above-referenced proceeding to the week of January 13, 2014 due to: (1) a scheduling conflict for the Office of General Counsel (“OGC”) attorney Laurel Celeste, who will be a participant of the oral argument on behalf of the Region; and (2) the recent federal government shutdown and the impact it has had on federal court hearing dates and briefing and discovery deadlines and other important work obligations affecting the schedules of EPA counsel for this proceeding.

On September 25, 2013, the Board issued an order granting Petitioner’s request for oral argument and ordered the parties to participate in such oral argument on November 7, 2013. On October 1, 2013, the federal government was shut down due to a lapse in appropriations, and EPA personnel, including EPA counsel for this proceeding, were furloughed and prohibited from working. Soon after the federal government shutdown went into effect, several federal courts in cases in which EPA is a party had stayed or rescheduled the dates for various hearings and brief filing deadlines. The shutdown also necessitated the rescheduling of discovery activities to meet federal court-imposed deadlines that EPA has no control over. EPA counsel for this ESSROC

permit appeal proceeding are counsel for EPA in several cases in which such federal court-imposed obligations have been affected by the shutdown. In addition, other various work-related commitments of EPA counsel in this proceeding were put on hold or rescheduled due to the shutdown. On October 3, 2013, the United States District Court of the District of Columbia in the case *Appalachian Voices et al v. Jackson* (Case 1:12-cv-00523-RBW), reset a status conference in the case to November 7, 2013 at 10:00 AM Eastern Time. Ms. Celeste is EPA counsel in the *Appalachian Voices* case and must attend this status conference. On October 17, 2013, the federal government shutdown ended and EPA personnel were ordered back to work.

Region 5 seeks a rescheduling of the oral argument for a later date for two reasons. First, Ms. Celeste is precluded by a federal court status conference conflict from participating on November 7 in oral argument in this proceeding. The Region has intended that Ms. Celeste represent EPA in the oral argument with respect to Issues 1 and 2 of the issues to be addressed in oral argument as identified in the September 25, 2013 Order, and believes it is imperative that Ms. Celeste participate in the oral argument given that she had direct involvement in both the development of the regulation at issue in this appeal as well as the briefing and oral argument that in the case *Cement Kiln Recycling Coalition v. EPA*, 493 F.3d 207 (D.C. Cir. 2007), all matters of which the Board has indicated it has particular interest to discuss at oral argument in its Order.

Second, the federal government shutdown has negatively impacted the ability of EPA counsel to fully prepare for the scheduled November 7 oral argument. The shutdown, which lasted more than two weeks and started just days after EPA counsel received notice of the Order scheduling the oral argument, has precluded EPA counsel from having adequate time to prepare for oral argument. Further, because of the shutdown, several federal courts cases in which EPA

counsel for this proceeding are involved have moved or are anticipated to move hearing dates and discovery and brief deadlines into November, causing competing time demands on EPA counsel. Moreover, other federal court obligations still are in the process of being rescheduled by the courts or in negotiation, which could negatively impact EPA counsel time between now and November 7th even further. Also, certain other non court-related commitments originally scheduled for October now have been rescheduled to occur in November, which additionally complicates EPA counsel availability. For instance, a trade negotiation meeting in Belgium that Ms. Celeste was supposed to attend on behalf of EPA in October was rescheduled for the week of November 11, the week after the scheduled oral argument date.

Given that several federal court and other obligations affecting EPA counsel are still in flux in the aftermath of the federal government shutdown, the Region proposes that the Board reschedule the oral argument for the week of January 13, 2014. The Region represents that it has contacted counsel for Petitioner ESSROC Cement Corporation and *Amicus Curiae* Cement Kiln Recycling Coalition with respect to this motion, and counsel for both parties have indicated that they have no objection to rescheduling the oral argument for a later date and have no objection to rescheduling the oral argument to the week of January 13, 2014. There is no prejudice to Petitioner as the mercury feed rate limit at issue in this permit appeal is not effective pending resolution of this appeal proceeding.

WHEREFORE, Region 5 respectfully requests that the Board reschedule the oral argument for a date later than November 7, 2013, preferably for some time the week of January 13, 2014.

Respectfully submitted this 17th day of October, 2013



Sabrina Argentieri
Mark J. Palermo
Associate Regional Counsel
U.S. EPA, Region 5
77 W. Jackson Blvd. (C-14J)
Chicago, IL 60604
Tel: (312) 353-5485; (312) 886-6082
Fax: (312)-385-5527
Email: argentieri.sabrina@epa.gov;
palermo.mark@epa.gov

OF COUNSEL: Laurel Celeste
Senior Attorney
U.S. EPA
Washington, DC
(202) 564-1751

CERTIFICATE OF SERVICE

Appeal No. RCRA 13-03

**ESSROC Cement Corporation
RCRA Permit IND 005 081 542**

I hereby certify that on this 17th day of October 2013, I caused to be electronically filed the foregoing "Unopposed Motion for Extension of Date for Oral Argument", and caused to be mailed a true and correct copy of these documents to the Petitioner by regular mail delivery and email addressed as follows:

Counsel for Petitioner, ESSROC Cement Corporation
Philip J. Schworer
Frost Brown Todd, LLC
7310 Turfway Road, Suite 210
Florence, KY 41042-1374

Counsel for Amicus Curiae, Cement Kiln Recycling Coalition
Richard G. Stoll
Catherine M. Basic
Foley & Lardner LLP
3000 K Street, N.W.
Washington, DC 20007-5109

Dated: October 17, 2013



Mark J. Palermo
Associate Regional Counsel
U.S. Environmental Protection Agency
(312) 886-6082
palermo.mark@epa.gov