

**BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

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IN RE: )

EXXONMOBIL CHEMICAL COMPANY, )  
BAYTON OLEFINS PLANT )

PSD Appeal No. 13-11

PSD Permit No. PSD-TX-102982-GHG )

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**MOTION FOR EXPEDITED REVIEW**

Pursuant to 40 C.F.R. § 124.19(f) and section IV.D.8 of the Environmental Appeals Board (“Board”) Practice Manual, permittee ExxonMobil Chemical Company (“ExxonMobil”) respectfully moves for expedited review of the above-captioned appeal.<sup>1</sup> In short, ExxonMobil seeks to apprise the Board of facts that support the urgent need for an expedited resolution of this matter to avoid extraordinary and irreparable harm to thousands of individuals, local communities and governments, and ExxonMobil that will be caused by each month, week, and day that final issuance of the Prevention of Significant Deterioration (“PSD”) permit at issue here is delayed. In support of its motion, ExxonMobil states the following:

1. Environmental Protection Agency (“EPA”) Region VI, as the PSD permitting authority for greenhouse gas emissions from Texas sources, issued PSD Permit No. PSD-TX-102982-GHG to ExxonMobil on November 25, 2013. This PSD permit authorizes the construction of a new ethylene production unit (“EPU” or “project”) at ExxonMobil’s existing

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<sup>1</sup> ExxonMobil has filed a notice of appearance in this matter and intends to file a timely response to the petition for review. Pursuant to the recently revised 40 C.F.R. § 124.19(b)(3), a separate motion to intervene by a permit applicant that has not filed a petition for review but that wishes to participate as a party is no longer necessary.

Baytown, Texas Olefins Plant. The purpose of the EPU is to provide high-quality ethylene feedstock for plastics production, which will allow ExxonMobil to meet the growing international demand for high-value plastics products and boost American exports. See Declaration of Donald J. Grimm ¶ 4 (Exhibit 1 hereto) (“Grimm Decl.”).

2. ExxonMobil applied to EPA Region VI for a PSD permit for the EPU on May 21, 2012, and the Region determined that ExxonMobil’s application was complete pursuant to 40 C.F.R. § 124.3(c) on December 10, 2012. See Grimm Decl. ¶¶ 4-5. Because the Clean Air Act requires EPA to grant or deny a permit application “not later than one year after the date” it is deemed complete, 42 U.S.C. § 7475(c); 40 C.F.R. § 124.3(c), the Administrator was obligated to grant or deny ExxonMobil’s PSD permit application by December 10, 2013. As a result of the instant petition for review filed by the Sierra Club, however, the PSD permit will not become a “final agency action” until the Board completes its review. 40 C.F.R. §§ 124.15(b), 124.19(a), (l)(1)-(2); see also Avenal Power Center, LLC v. USEPA, 787 F. Supp. 2d 1, 3-4 (D.D.C. 2011).

3. ExxonMobil recognizes and appreciates that this Board has recently revised its procedures to expeditiously rule on petitions for review of PSD permits in light of the statutory time limit. 78 Fed. Reg. 5,281 (Jan. 25, 2013); see also Order, In re ConocoPhillips Co., PSD Appeal No. 07-02, Dkt. No. 80 at 1-2 (E.A.B. Oct. 1, 2007). The purpose of this motion, in contrast, is to apprise the Board of independent factual bases for expedition, i.e., the substantial and irreparable harms that will occur each day ExxonMobil is unable to commence construction of the project due to this appeal.

4. Specifically, ExxonMobil expects the following substantial and irreparable harms to occur:

a. Harms to individuals. The hiring of a very substantial number of construction workers, as well as the collateral indirect and induced jobs that will be created by the project, will be delayed, thus affecting the lives of all the individuals concerned. See Grimm Decl. ¶ 10; Declaration of Stephen H. DonCarlos ¶¶ 5-6 (Exhibit 2) (“DonCarlos Decl.”). ExxonMobil estimates that 3,100 construction jobs as well as approximately 8,800 indirect and induced jobs are subject to delay. Grimm Decl. ¶ 10. Ultimately, a substantial delay would also impact the hiring of permanent employees to run the EPU once complete and collateral job growth related to the EPU’s operation (estimated to be over 9,000 jobs, total). Id. ¶ 11. The delay is particularly troublesome to the local Baytown community, where Lee College and others have been working with the support of ExxonMobil to provide training for individuals who are interested in the kind of work that the project will provide. Those individuals may end up looking for work elsewhere if jobs are not available in Baytown. DonCarlos Decl. ¶ 6. See also Letter from Dr. Dennis Brown, President of Lee College (Jan. 10, 2014) (Exhibit B to the Grimm Decl.).

b. Harms to local communities. In addition to the harms from delay in hiring workers described above, the communities in the area of the Baytown plant will also be harmed in a variety of ways. Construction of the project is expected to boost the local economy by bringing substantial additional revenue to local business, but that boost would be delayed with concomitant harm to the community as a result. DonCarlos Decl. ¶ 4. Furthermore, substantial tax revenue that would otherwise go to Harris County, the Goose Creek School District, the City of Baytown, and Lee College would be lost. Grimm Decl. ¶ 13. For example, a 4-12 month delay would cost those local tax revenue

beneficiaries approximately \$45-68 million. Id. Municipal planning based on the timely commencement of the project and related revenue has already started, and any delay will impact those plans. DonCarlos Decl. ¶¶ 7-11. Beyond purely monetary considerations, a delay would also harm the community psyche. Id. ¶ 12. See also Letter from Traci Wheeler, President/CEO of the Baytown Chamber of Commerce (Jan. 13, 2014) (Exhibit A to the Grimm Decl.).

c. Harms to the economy at large. Construction and operation of the EPU is expected to benefit substantially not only the local community, but also the national economy through contributions to the gross domestic product and total national sales. These benefits—which are estimated to be approximately \$1.41 billion in actual present value added to the gross domestic product together with approximately \$2.72 billion to aggregate total national sales during the three year construction phase—will be delayed if Exxon is unable to commence construction due to a delay in its final PSD permit. Grimm Decl. ¶ 12. Furthermore, any substantial delay may also delay the post-construction benefits: \$2.94 billion added to the gross domestic product along with \$6.78 billion in total national sales in actual present value. Id.

d. Harms to ExxonMobil. Finally, delay will also cause extraordinary harm to ExxonMobil. Project mobilization (including hiring the construction workers) was originally scheduled to commence December 11, 2013, immediately following the statutory deadline for issuance of the PSD permits. Grimm Decl. ¶ 6. For a project of this magnitude, mobilization takes approximately two months, and thus commencement of construction was originally planned for approximately February 11, 2014. Id. Given the needed lead time, that date can no longer be met, and construction will not be able to

commence until two months after ExxonMobil receives its final PSD permit. The company must pay its contractors delay costs for commencement of construction beyond February 11, 2014. Here, delay costs will include: inefficiency costs; higher labor costs; equipment availability costs; and similar type costs. Id. ¶ 7. These delay costs are difficult to ascertain with precision in advance, but its contractors believe that the first three months of delay will cost approximately \$6 million per month. Delay costs are likely to increase over time. Id. Every day of delay thus causes ExxonMobil significant and irreparable harm.

5. The Board has “exercised broad discretion to manage its permit appeal docket by ruling on motions presented to it for various purposes....” In re Peabody Western Coal Co., CAA Appeal No. 10-01, Slip Op. at 7 (E.A.B. Aug. 13, 2010). This includes the ability to prioritize appeals to avoid irreparable injury and where a statutory deadline is implicated. See, e.g., Revised Order Governing Petitions for Review of Clean Air Act New Source Review Permits (Mar. 27, 2013) at 2; Order, In re ConocoPhillips Co., PSD Appeal No. 07-02, Dkt. No. 80 at 1-2 (E.A.B. Oct. 1, 2007) (same). Here, regardless of the Clean Air Act’s statutory deadline, expedition is fully justified on the facts recited above alone.

6. ExxonMobil notes, finally, the Baytown Olefins Plant also requires an air quality permit from the Texas Commission on Environmental Quality (“TCEQ”) for non-greenhouse gas pollutants. The Executive Director of TCEQ issued a Final Draft Permit to ExxonMobil on June 28, 2013. That Final Draft Permit was subsequently challenged before the State Office of Administrative Hearing. The hearing officers unanimously rejected the protestants’ claims and recommended that the TCEQ Commissioners approve issuance of the Final Draft Permit. See Proposal for Decision, Application of ExxonMobil For Issuance of Air Quality Permit No.

102892, SOAH Docket No. 582-13-4611; TCEQ Docket No. 2013-0657-AIR (Dec. 18, 2013). ExxonMobil has requested the TCEQ Commissioners to decide on approval and issuance of that permit during their regularly-scheduled meeting on February 12, 2014. See Letter from Derek Seal to TCEQ (Jan. 15, 2014) (Exhibit 3). ExxonMobil does not anticipate issuance of the state permit will be an impediment to commencing construction of the project.

7. In accordance with 40 C.F.R. § 124.19(f)(2), counsel for ExxonMobil conferred with EPA and Petitioner Sierra Club to confirm their positions on this motion. EPA takes no position on the motion, and Sierra Club takes no position but reserves its right to respond to the motion.

WHEREFORE, in accordance with the Board's broad discretion to manage its docket and its recognition of both the time-sensitive nature of PSD permit reviews and the specific harms identified by ExxonMobil herein, ExxonMobil respectfully asks that the Board consider the unique and extraordinary circumstances above and prioritize the Sierra Club's petition for review. Such expedited review would include the denial, or strict limitation, of any additional motions for an extension of time, and the denial of a motion to file a reply brief or to hold oral argument unless absolutely necessary to resolve issues critical to deciding the petition for review.

DATED: January 16, 2014

Rebecca Rentz  
WINSTEAD  
1100 JPMorgan Chase Tower  
600 Travis Street  
Houston, Texas 77002  
Phone: (713) 650-8400  
Facsimile: (713) 650-2400

Respectfully submitted,

/s/ Roger R. Martella, Jr.  
Roger R. Martella, Jr.  
Timothy K. Webster  
James R. Wedeking  
SIDLEY AUSTIN, LLP  
1501 K Street, N.W.  
Washington, D.C. 20005  
Phone: (202) 736-8000  
Facsimile: (202) 736-8711

*Counsel for ExxonMobil Chemical Company*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 16th day of January 2014, copies of the foregoing Motion for Expedited Review were served by First Class mail to the following:

Travis Ritchie  
Staff Attorney  
Sierra Club Env. Law Program  
85 Second Street, 2<sup>nd</sup> Floor  
San Francisco, CA 94105

Brian L. Doster  
Air and Radiation Law Office  
Office of General Counsel (MC 2344-A)  
Environmental Protection Agency  
1200 Pennsylvania Ave. N.W.  
Washington, DC 20460

Ron Curry  
Regional Administrator  
Attn: Brian Tomasovic  
And Joshua Olszewski  
EPA Region 6  
1445 Ross Avenue  
Dallas, TX 75202

/s/ James R. Wedeking