

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

In re:	)	
Smith Farm Enterprises, L.L.C.,	)	
Docket No. CWA-03-2001-0022	)	CWA Appeal No. 08-02

**MOTION TO RESCHEDULE ORAL ARGUMENT**

Complainants, through their counsel, hereby move to reschedule oral argument in this matter, currently scheduled for Thursday, May 20<sup>th</sup>, 2010. This motion is based upon scheduling conflicts for counsel for Complainants as further described below. In support of this motion, Complainants state:

1. The Initial Decision in this matter was served June 27, 2008.
2. Briefing before the Board was completed upon filing of Complainants' Sur-Reply Brief on July 20, 2009.
3. On April 9, 2010, the Board issued its Order Scheduling Oral Argument for May 20<sup>th</sup>, 2010.
4. Counsel for Complainants has responsibilities related to a public hearing associated with the U.S. Environmental Protection Agency's recent Section 404(c) action, a Proposed Determination to Prohibit, Restrict, or Deny Specification, or the Use for Specification (Including Withdrawal of Specification) of an Area as a Disposal Site; Spruce No. 1 Surface Mine, Logan County, West Virginia. *See* 75 Fed. Reg. 16788 (April 2, 2010). On April 27, 2010, EPA announced that hearing would be conducted on

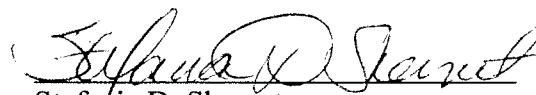
May 18<sup>th</sup>, 2010. Given these responsibilities, it would be difficult for Counsel to prepare adequately for oral argument on May 20, 2010.

5. Counsel for Complainants has conferred with Mr. Sims, who is one of two attorneys for Respondent. It is Complainants' understanding that Mr. Sims also may have a conflict on May 20, 2010. Counsel for Complainants has left a voice message and an email message for Ms. Wilcher, the other counsel for Respondent, but has not received a response from Ms. Wilcher. Since Counsel for Complainants has not been able to contact both of Respondent's attorneys, Complainants are unable to state whether Respondent will oppose this motion.

6. Counsel for Complainants' schedule is largely open May 24 – June 18, 2010. It is Counsel's understanding that Mr. Sims has some available dates during that timeframe.

Accordingly, and for good cause shown, Complainants respectfully request that oral argument in this matter be rescheduled.

Respectfully submitted,



Stefania D. Shamet  
Senior Assistant Regional Counsel  
Counsel for Complainants

Date: May 3, 2010

CERTIFICATE OF SERVICE

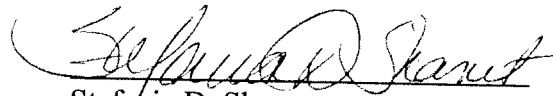
I hereby certify that on this date I caused the foregoing Complainants' Motion to Reschedule Oral Argument in *In re Smith Farm Enterprises, LLC*, CWA Appeal No. 08-02 to be served in the following manner:

BY Facsimile and Overnight Delivery:

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May 3, 2010  
Date

  
Stefania D. Shamet