

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

_____)	
In re:)	
)	
Sierra Pacific Industries, Anderson)	
)	Appeal Nos. PSD 13-01, PSD 13-02, PSD
)	13-03, and PSD 13-04
PSD Permit No. Sac 12-01)	
_____)	

Motion for Extension of Time to File Supplemental Brief in Response to Board's Order

Region 9 respectfully requests that the Environmental Appeals Board (“EAB” or “Board”) grant a two week extension of time for filing Region 9’s supplemental brief in response to the Board’s Order Directing Supplemental Briefing, dated May 16, 2013 (“May 16, 2013 Order”). Currently, the filing deadline for Region 9’s supplemental brief is May 31, 2013. Although the Board’s May 16, 2013 Order states that it would not grant an extension of time to this deadline absent a showing of extraordinary circumstances, Region 9 believes the situation presented meets this high standard. Accordingly, for the following reasons, Region 9 respectfully requests that the Board extend the deadline for filing Region 9’s supplemental brief to June 14, 2013.

The Board’s Order directs Region 9 to obtain consensus (over two shortened work weeks) among the Region and three separate EPA headquarters office on two questions posed by the Board that relate to Region 9’s denial of requests for a public hearing in connection with Region 9’s issuance of a Prevention of Significant Deterioration (“PSD”) permit to Sierra Pacific Industries, (“SPI”). Specifically, the Board has requested that Region 9, within nine working days, prepare, submit and file a supplemental brief that addresses: (1) the interpretation of the standard set forth in 40 C.F.R. §124.12(a)(1) in light of section 165 of the Clean Air Act; and (2) the fact that the requests for public hearing appear to express a desire for “clarification” of various issues in light of Clean Air Act sections 160(5) and 165(a)(2) and EPA regulations . The Board’s May 16, 2013 Order also contains the following direction to Region 9: “In addressing the questions listed above, the Region is directed to consult with the Agency’s Office of General Counsel, Office of Air and Radiation, and Office of Environmental Justice to ensure that those offices review and concur in the contents of the supplemental brief.” As explained below, the

questions raised by the Board, as well as the Board's direction that Region 9 obtain concurrence from three headquarters offices within the Agency over a period that includes a four-day weekend and mandatory furlough days presents extraordinary circumstances and supports the Region 9's request for a two week extension.

First, additional time is needed to fully brief and obtain concurrence from decision makers in the relevant offices at EPA. Upon obtaining the Board's Order, counsel for Region 9 immediately contacted the Office of General Counsel ("OGC") to initiate discussions regarding the issues raised by the Board. OGC has subsequently contacted the Office of Air and Radiation ("OAR") and the Office of Environmental Justice ("OEJ") to commence discussions within those specific offices as well. Nevertheless, it has quickly become apparent that in order to fulfill the Board's direction that OGC, OAR and OEJ review and concur with Region 9's supplemental brief, appropriate decision makers must be allowed more time to carefully consider the issues raised by the Board. Although Region 9 sought and obtained input from staff and lower-level management in OGC on various aspects of its Brief in Response to Petitions for Review prior to filing that brief on April 23, 2013, additional coordination and briefing of appropriate decision makers in OGC and other headquarters offices will be required before Region 9 can file a brief that fulfills the Board's May 16, 2013 Order. In addition, Region 9 has been advised by OGC that it would be prudent to also consult with the Office of Water ("OW") and the Office of Solid Waste and Emergency Response ("OSWER") because their work also involves the interpretation and application of 40 C.F.R. §124.12. Thus, the Board's deadline of May 31, 2013 does not allow for sufficient time to accomplish the coordination and briefing of appropriate decision-makers and the drafting of a brief on which all offices will concur.

Second, the ability of Region 9 and other offices to address the Board's order in a timely manner is materially handicapped by EPA staff absences scheduled to occur prior to June 15, 2013. Even during a normal operating period, obtaining the concurrences the Board has required from all offices would be challenging. However, the period in which Region 9 and the other offices have to consider these issues and draft a brief on which all parties concur includes Memorial Day, May 27, as well as an unprecedented Agency-wide closure and mandatory furlough day on May 24, a result of the budget sequestration impacting the federal government. Moreover, agency personnel in these offices have also scheduled additional leave in connection with the holiday weekend. In addition to the Agency wide furlough day on May 24, all Agency personnel must take three additional furlough days before June 15, 2013, and many EPA staff who are needed to prepare the supplemental brief have not yet taken their full allotment of furloughs. These additional staff absences will further complicate interoffice discussion of these issues and drafting of a brief. Thus, at best, the Board's current deadline of May 31, 2013 allows for only nine business days; in reality, EPA offices will likely have even fewer.

In short, the current deadline of May 31, 2013 is not adequate to achieve consensus among the relevant offices and accomplish the briefing, coordination and drafting that must occur to satisfy the Board's order.

In compliance with 40 C.F.R. §124.19(f)(2), Region 9 contacted the other parties in this matter to ascertain whether they concur or object to a two-week extension. Petitioners Celeste Draisner, Heidi Strand, Ed Coleman, and Robert Simpson stated that they do not object to the request for a two week extension. Counsel for Sierra Pacific Industries, William Sloan stated that SPI would respectfully oppose the request for a two-week extension but would not oppose a

one-week extension upon certain conditions that SPI will likely communicate to the Board in a responsive filing.

For the foregoing reasons showing extraordinary circumstances, Region 9 respectfully requests that the Board grant a two week extension of time for filing Region 9's supplemental brief in response to the Board's May 16, 2013 Order and set a new deadline of June 14, 2013.

Date:

Respectfully Submitted,

/s/ Kara Christenson

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CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of Region 9's **Motion for Extension of Time to File Supplemental Brief in Response to Board's Order** in the matter of Sierra Pacific Industries, Inc. EAB Appeal Nos. PSD 13-01, PSD 13-02, PSD 13-03, and PSD 13-04 to be served upon the persons listed below by the means so indicated.

Dated: May xx, 2013

/s/ Kara Christenson

Kara Christenson

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