

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 Response to Petitions for Review

Region 9 respectfully requests that the Environmental Appeals Board (“EAB” or “Board”) grant a one week extension of time for filing Region 9’s response to Petitions for Review, Appeal Nos. PSD 13-01, PSD 13-02, PSD 13-03, and PSD 13-04 (“Region 9’s Response”). Currently, the filing deadline for Region 9’s Response is April 17, 2013. For the following reasons, Region 9 requests that the Board extend the deadline for filing Region 9’s Response to April 24, 2013.

Today, April 12, 2013, the under-signed, as counsel for Region 9 in this matter, became aware for the first time of two petitions filed by Edward Coleman and Celeste Draisner on March 26, 2013 (“March 26, 2013 Petitions”). Counsel was preparing to file Region 9’s response brief

today, in advance of the April 17, 2013 deadline, because of travel plans from April 13 – 17 scheduled in February 2013 before the Board set the April 17 deadline. In the course of discussing the Board’s on-line docket with her client, counsel learned that Edward Coleman and Celeste Draisner had filed petitions on March 26, 2013, but that neither petition was posted on the Board’s on-line docket until this week, and Draisner’s in particular was not posted until today.¹ Counsel immediately called the Clerk for the Board, who acknowledged recent technical difficulties with posting documents on the Board’s website and stated that Region 9 could request an extension of time to file its Response to Appeal Nos. PSD 13-01 through PSD 13-04.²

The Board’s letter to Nancy Marvel, Region Counsel for Region 9, dated March 27, 2013, sets the April 17, 2013 deadline for Region 9’s Response (“Board’s March 27, 2013 Letter”). The Board’s March 27, 2013 Letter advises Region 9 that the Board had received four petitions: from Ed Coleman *on March 25, 2013*; Heidi Strand on March 25, 2103, Celeste Draisner *on March 22, 2013*, and Rob Simpson, on March 25, 2013. Therefore, the Board’s March 27, 2013 letter did not identify the March 26, 2013 Petitions filed by Coleman and Draisner. Although Petitioner Coleman’s March 26 filing appears similar to his earlier filing, Ms. Draisner’s March 26 filing is substantially different from her earlier filing (which was captioned as a “notice of appeal”) and contains substantive arguments that will require time to review, analyze and respond to.

¹ Since the week of March 25, 2013, Region 9 staff has diligently and repeatedly checked the Board’s on-line docket for this matter to determine whether new materials have been posted.

² Region 9 also notes that on April 4, 2013, while checking the Board’s on-line docket, it noticed out-of-sequence numbering of posted documents and contacted the Clerk for the Board regarding the problem. At that time as well, the Clerk acknowledged technical issues in posting documents and stated that the problems would be resolved when appropriate staff returned from vacation. Neither of the March 26, 2013 Petitions was posted at that time.

In addition, although the March 26, 2013 Petitions are subject to the Board's revised procedures for permit appeals, they do not conform to new requirements for service and proof of service. *See* 78 Fed. Reg. 5281, 5287 (Jan. 25, 2013). Specifically, the March 26, 2013 Petitions did not include certificates of service as required by 40 C.F.R. §124.19(i)(4), without which Petitioners cannot demonstrate that they complied with the requirement to serve their petitions on the Regional Administrator and the permit applicant, as required by 40 C.F.R. 124.19(i)(3).³ Region 9 acknowledges the *pro se* nature of Petitioners Coleman and Strand, and would not necessarily object to a technical procedural deficiency, particularly one that is so recent. (We note that the revised Part 124 requirements, including the service requirement, became effective on March 26, 2013, the same date as the petitions at issue in this motion.) In this case, however, the lack of service has resulted in a significant and substantial disadvantage to Region 9 and its ability to respond in a timely manner to the March 26, 2013 Petitions. As stated above, until learning of the newly posted March 26, 2013 Petitions, the under-signed counsel was prepared to file Region 9's Response today because she has (non-refundable) travel plans on April 13-17, 2013. Region 9 is unable to adequately respond to the new petitions without significant disruption and inconvenience.

Because of the last-minute nature of the reasons for the need for an extension, counsel has not been able to ascertain whether the other parties would concur or object to this request; therefore, Region 9 requests that the Board waive this requirement. *See* 40 C.F.R. §124.19(f)(2).

³ The requirements to serve the Regional Administrator and the permit applicant and to include a certificate of service when filing documents were among the several changes to procedural rules applicable in permit appeals before the Board. *See* 78 Fed. Reg. 5281, 5287 (Jan. 25, 2013). The final Federal Register notice regarding these changes stated that the new rules would become effective sixty days after the date of publication in the Federal Register. Therefore, these became effective on March 26, 2013.

For the foregoing reasons, Region 9 respectfully requests that the Board grant a one week extension of time for filing Region 9's response to Petitions for Review, Appeal Nos. PSD 13-01, PSD 13-02, PSD 13-03, and PSD 13-04 and set a new deadline of April 24, 2013.

Date: April 12, 2013

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 Response to Petitions for Review** 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: April 12, 2013

/s/ Kara Christenson


Kara Christenson

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