

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

_____)	
In re:)	
)	
ExxonMobil Chemical Company)	Appeal No. PSD 13-11
Baytown Olefins Plant)	
)	
PSD Permit No. PSD-TX-102982-GHG)	
_____)	

MOTION FOR EXTENSION OF TIME

EPA Region 6 moves the Environmental Appeals Board to extend until January 23, 2014 the deadline for responses to the Petition for Review and submission of relevant portions of the administrative record. This extension is requested because of the unavailability of EPA attorneys during several days in the response period. No party opposes this motion, which does not apply to the certified index to the record. Region 6 intends to file the certified index to the record on or before January 16, 2014.

The Petition for Review in this matter was filed on December 26, 2013 and served on the Regional Administrator and ExxonMobil Chemical Company by commercial courier via next-day delivery, arriving in EPA Region 6 on December 27, 2013. EPA regulations state that a response to a petition is due 21 days after filing and that service of a petition must be by first class mail or any reliable commercial delivery service. 40 C.F.R. § 124.19(b)(1), (i)(3). While the latter implies the equivalency of first class mail and a commercial delivery service, the computation of time provision in section 124.20(d) does not address whether additional time is afforded where a petition is served by a method other than first class mail in accordance with the directions of section 124.19(i)(3). Since commercial delivery services such as FedEx and UPS

are not instantaneous (offering one-day and multi-day delivery options), it seems consistent with the intent of 124.20(d) to afford respondents some additional time to respond to documents served in this manner after the express incorporation of service by commercial delivery service in 124.19(i)(3). Thus, there is some uncertainty as the exact date in the period from January 16 to January 21 on which Region 6's response to the Petition is due. Notwithstanding this uncertainty, Region 6 requests an extension until January 23 for the reasons discussed below.

In light of absences of EPA attorneys from the office from December 26, 2013 to January 17, 2014, Region 6 faces significant difficulties with preparing its response to the Petition for Review and compiling relevant portions of the administrative record by the date required under EPA rules. Extending Region 6's response deadline to January 23, 2014 will promote the quality, accuracy, and completeness of the response and accompanying exhibits submitted by Region 6.

The attorney in EPA Region 6's Office of Regional Counsel who is most familiar with the record in this matter, Brian Tomasovic, was absent from the office from December 26 to December 29 due to a previously scheduled vacation, and he was only able to cancel previously scheduled leave on December 30 and 31 to address this matter. In addition, Mr. Tomasovic is a Captain in the United States Army Reserve, and the U.S. Army Human Resources Command ordered him to active duty for training for a period of 13 days plus allowable travel time, beginning on January 5, 2014. His military duties will not be complete until January 17, 2014, and he will not return to duty at EPA until January 21, 2014 because of the intervening weekend and federal holiday.

In light of Mr. Tomasovic's absence for military service, the Office of Region Counsel in Region 6 has appointed Joshua Olszewski to assist with this matter. Mr. Olszewski was not

previously familiar with the record in this matter, and he requires additional time to gain such familiarity in order to effectively draft portions of a response to the Petition for Review and compile relevant portions of the record. Furthermore, Mr. Olszewski is out of the office on January 10 and January 14.

In addition, the undersigned headquarters attorney in the Office of General Counsel, Brian Doster, is providing assistance to the Region 6 attorneys. Mr. Doster was also absent from the office on a scheduled vacation from December 26 to 31 and was only able to cancel previously scheduled leave on January 2 and 3. Mr Doster is unable to fully compensate for the unavailability of attorneys in Region 6. In his role as group leader for Prevention of Significant Deterioration permitting in the Air and Radiation Law Office, Mr. Doster must also dedicate significant attention in the relevant time period to other matters, two of which are substantial and time-sensitive due to court and settlement agreement deadlines of January 21 and January 31.

All of the aforementioned EPA attorneys were unavailable because of the federal holiday on January 1, 2014. January 20, 2014 is also a federal government holiday.

In light of the unavailability of EPA attorneys to address this matter for a significant number of days during the period in which Region has to respond to the Petition for Review, Region 6 requests an extension until January 23, 2013 in order to effectively prepare a response to the Petition for Review and compile the relevant portions of the administrative record. An extension of this duration will also foster the accuracy and completeness of Region 6's response by providing Mr. Tomasovic with an opportunity to return to the office and review those portions of EPA's response and exhibits prepared by others in his absence before filing with the Board.

Counsel for EPA have conferred with counsel for the Petitioner and the permit applicant regarding this motion. Sierra Club does not oppose extending the deadline for response briefs

until January 23. Under the circumstances presented by EPA, ExxonMobil does not oppose an extension until January 23 of the due date for the responses to the Petition for Review. However, for reasons that will be articulated in a forthcoming motion requesting expedited disposition of this matter, ExxonMobil is opposed to any additional extensions or delay to the resolution of this appeal by the EAB.

WHEREFORE, Region 6 requests leave of the Board for the parties to file responses to the Petition for Review in this matter on January 23, 2014.

Date: January 10, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I served by electronic mail a copy of the attached Motion for Extension of Time in PSD Appeal No. 13-11 upon the persons listed below. Pursuant to 40 C.F.R. 124.19(i)(3), after the filing of the Petition for Review, the parties reached an agreement to accept service by electronic means.

Dated: January 10, 2014

/s/ Brian L. Doster

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