

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

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)	
)	PSD Appeal No. 09-04
In the Matter of Power Holdings of)	
Illinois, LLC)	Permit No. 081801AAF (Illinois)
)	
)	

NOTICE OF MOTION OF PETITIONER FOR LEAVE TO FILE REPLY

PLEASE TAKE NOTICE that I have filed with the Clerk of the Environmental Appeals Board a MOTION OF PETITIONER FOR LEAVE TO FILE A REPLY on behalf of Petitioner Sierra Club, a copy of which is here with served upon each of the representatives identified for the parties at issue in this case.

Respectfully submitted

MCGILLIVRAY WESTERBERG & BENDER LLC



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MOTION OF PETITIONER FOR LEAVE TO FILE REPLY

Petitioner, Sierra Club, respectfully moves for leave to file a reply to the Response of the Illinois Environmental Protection Agency, which was filed with the Board on March 4, 2010, and a copy of which was received by Petitioner via email on March 4, 2010 and to the Response of the Permittee, which was filed with the Board on February 26, 2010 and a copy of which was received by the Petitioner on March 1, 2010.

On November 25, 2009, Petitioner filed a Petition for Review in this docket. (Doc. 1.) The Petition seeks review of a Prevention of Significant Deterioration (“PSD”) permit proposed by the Illinois Environmental Protection Agency (“IEPA”) for a synthetic natural gas manufacturing facility to be located west of Waltonville, Illinois. (Id.)

On December 2, 2009, the Clerk to the Board sent a notification to IEPA providing deadlines to file a response to the Petition. (Doc. 17.)

On December 30, 2009, the permittee, Power Holdings of Illinois, LLC (PHIL), filed a notice of appearance and request to participate. (Doc. 20.) The Board granted the request to participate on January 5, 2010. (Doc. 22.)

On January 4, 2010, IEPA moved the Board for an extension of time to file a Response to the Merits of the Petition. (Doc. 21.) On January 5, 2010, the Board extended the time for filing a response by sixty (60) days, until March 4, 2010. (Doc. 23.)

On January 7, 2010, PHIL filed a document captioned “Permittee’s Objection, Motion for Reconsideration of Order Extending Time to File Response to Petition for Review, and Motion for Expedited Review.” (Doc. 24.) In this filing, the permittee sought to revisit the Board’s order extending the time for filing responses. (Id.) On January 13, 2010, the Board denied PHIL’s request to revisit the extension for filing responses. (Doc. 26.) On the same day, PHIL sought leave to withdraw its request (Doc. 27), which was later denied as moot. (Doc. 29.)

PHIL and IEPA filed their responses on February 26 and March 4, 2010, respectively. (Doc. 34, 34.1, 38.)

The responses raise arguments that Petitioner respectfully requests the opportunity to respond to. Specifically, the responses misapprehend or mischaracterize the basis for the petition, incorrectly argue the Sierra Club failed to preserve issues for review, and introduce new evidence regarding, inter alia, Administrator Jackson's recent statements regarding greenhouse gas regulation. Sierra Club believes that the Board would benefit from Sierra Club's further briefing on these issues. However, in the alternative, if the Board grants review and seeks further briefing, Sierra Club believes that process would also provide an opportunity to address the arguments raised in the responses. *See* 40 C.F.R. § 124.19(c) (providing that the Board may grant review and establish a briefing schedule).

Because there are two separate responses with different arguments, Petitioner requests 30 days from the later filing to file its reply. This will make Petitioner's reply due on or before Monday April 5, 2010. A 30 day period to reply is consistent with the Board's practice. *See e.g., In re Desert Rock Energy. Co. LLC*, PSD Appeal Nos. 08-03, 08-04, 08-05, 08-06, Order Granting Review, Staying the Carbon Dioxide BACT Issue, and Granting Motions to File Amicus/Nonparty Briefs and Motions to File Reply Briefs at 2-3, 7 (EAB Jan. 22, 2009) (establishing a reply brief deadline of February 13th for responses filed January 8th); *In re Sutter Power Plant*, 8 E.A.D. 680, 684-85 (EAB 1999) (explaining procedural history of case, including grant of leave to file a reply on October 3rd to a responses filed September 3rd and 9th).

Petitioner has conferred with counsel for Respondent IEPA and is informed and authorized to represent that counsel for IEPA has no objection to Petitioner's request to file a reply or to April 5, 2010 as the deadline for such reply. Sierra Club has also conferred with counsel for Permittee PHIL and is advised that Permittee opposes the filing of any reply.

WHEREFORE, Petitioner respectfully requests that the Board grant Petitioner leave to file a reply to MDEQ's response and that such reply should be filed on or before April 5, 2010.

Respectfully submitted this 10th day of March, 2010.

MC GILLIVRAY WESTERBERG & BENDER LLC

A handwritten signature in black ink, appearing to read "D.C.B.", with a stylized flourish extending to the right.

David C. Bender

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CERTIFICATE OF SERVICE OF PETITIONER'S NOTICE AND MOTION OF PETITIONER
FOR LEAVE TO FILE REPLY

On March 10, 2010, I caused to be delivered a copy of the foregoing Notice of Motion and Motion of Petitioner for Leave to File Reply to:

Ericka Durr (via CDX Electronic Filing)
Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
1341 G Street, N.W. Suite 600
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I declare that the foregoing is true to the best of my knowledge.



David C. Bender