

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

In re: ENERGY ANSWERS ARECIBO, LLC)	
ARECIBO PUERTO RICO)	
RENEWABLE ENERGY PROJECT)	PSD Appeal No. 13-05
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)	

**ENERGY ANSWERS ARECIBO, LLC'S REPLY TO EPA REGION 2'S RESPONSE TO
MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR REVIEW**

Energy Answers Arecibo, LLC ("Energy Answers") hereby replies to the response filed by EPA Region 2 to the motion filed by The Coalition of Organizations Against Incinerators (La Coalicion de Organizaciones Anti-Incineration ("the Coalition") for an extension of time to file a petition for review of the Prevention of Significant Deterioration Permit ("PSD Permit") issued to Energy Answers on June 11, 2013.

A. The Coalition's Sole Purported Basis for an Extension was its Request for an Order Requiring EPA Region 2 to Translate the PSD Permit into Spanish

The Environmental Appeals Board's (the "Board") regulations provide that "[a] motion must state with particularity the grounds for the motion" 40 CFR 124.19(f)(2). The only issue raised by the Coalition in its motion to support the request for a prolonged extension of time to file a petition for review was its demand that EPA Region 2 translate the PSD Permit into Spanish. The opposition filed by Energy Answers and the response by EPA Region 2 convincingly set forth the reasons why the Board should not issue an order overturning EPA Region 2's policy with respect to the translation of permits.

As noted in a recent decision cited by Region 2, "[t]he Board strictly construes threshold procedural requirements, such as the timely filing of a petition The Board's strict adherence to the appeal deadline prescribed by the regulations is particularly warranted in matters involving the review of PSD permits because, as the Board has previously explained, PSD permit appeals are time sensitive." *In re: Sierra Pacific Industries*, PSD Appeal No. 13-01, at 2-3 (EAB March 21, 2013). "Where no good cause has been shown to relax the deadline, however, the Board will adhere to the 30-day deadline for petitions for review." *Id.* at 4.

If the Board agrees with EPA Region 2 and Energy Answers that it has no basis to order EPA Region 2 to translate the PSD Permit, there is no good cause set forth with particularity in the Coalition's motion that justifies delaying a time sensitive permit appeal.

B. EPA Region 2 is Ignoring its Statutory Obligation to Ensure the Timely Processing of PSD Permit Applications

Notwithstanding Region 2's opposition to the Coalition's demand that the Board order Region 2 to translate the PSD Permit, the Region nonetheless does not oppose an extension in order to allow "the Coalition members and their counsel to navigate any language concerns presented by an English-only version of the final PSD permit . . ." EPA Region 2 Response at 5. EPA Region 2 generously offers this concession despite the efforts documented in the papers filed by Energy Answers and EPA Region 2 to ensure the ability of non-English speaking citizens to participate in Energy Answers' PSD permit application process. Neither Region 2 nor the Coalition has identified any particular facts or circumstances that would distinguish the current proceeding from any other permit appeal in which non-English speaking residents seek an extension of time to file an appeal. EPA Region 2 implicitly suggests that any time such a request is made, it should be routinely granted.

Not only is this contrary to the Board's recognition of the time-sensitive nature of PSD permit appeals, it wholly disregards the statutory mandate that EPA take final action (which includes the resolution of administrative appeals) within one year of receipt of a complete permit application. 45 U.S.C. §7475(c); *Avenal Power Center, LLC v. U.S. Environmental Protection Agency*, 787 F. Supp. 2d 1 (D.D.C). EPA's response reflects a lack of regard for the rights of PSD permit applicants and the fact that while there is a legal remedy to force EPA to take action on a PSD permit application, the legal process is not well-designed to force EPA to act in a timely fashion in accordance with the Clean Air Act.

Even though EPA failed to act in a timely manner on Energy Answers' permit application in accordance with Section 165(c) of the Clean Air Act, this is no reason to continue to ignore the underlying Congressional mandate that EPA act promptly to achieve final resolution with respect to PSD permit applications.

The Coalition has not identified a valid basis for an extension of time to file its petition for review. Given the lack of a valid basis for an extension, EPA Region 2's failure to oppose the Coalition's request is in disregard of Energy Answers' right to a timely and efficient resolution of an appeal of the PSD Permit and its statutory obligation to ensure that PSD permit applications are processed in a timely manner. For the foregoing reasons, Energy Answers again requests that the Coalition's motion for an extension of time to file a petition for review be denied.

Dated: July 10, 2013

Respectfully Submitted

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CERTIFICATE OF SERVICE

I hereby certify that on July 10, 2013, a true and correct copy of the foregoing Energy Answers Arecibo, LLC's Reply to EPA Region 2's Response to Motion for Extension of Time to File Petition For Review was served, by first class mail, on:

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