

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

IN THE MATTER OF:)	
MISSISSIPPI LIME)	Appeal No. PSD 11-01
COMPANY)	Illinois PSD Permit No. 157863AAC
)	
)	

NOTICE WITHDRAWING REQUEST FOR ORAL
ARGUMENT AND PETITIONER’S INTENT REGARDING
REPLY

Petitioner Sierra Club provides this Notice to the Board and the Parties withdrawing its request for oral argument and regarding its intent not to seek leave to file a reply. Petitioner states as follows:

1. Petitioner initiated this case pursuant to 40 C.F.R. § 124.19 by filing a Petition for Review and Request for Oral Argument on January 26, 2011, seeking review of a Prevention of Significant Deterioration permit issued for the Mississippi Lime Company lime kiln in Illinois. (See Docket Entry No. 1.)¹
2. Petitioner initially sought oral argument in its Petition. (Doc. 1 at 5.)
3. The Board notified the Illinois Environmental Protection Agency (“IEPA”) of the Petition and of IEPA’s opportunity to respond through a letter dated January 28, 2011. (Doc. 2.)

¹ Docket entries in this case will hereinafter be referenced as “Doc. No.” Docket entry numbers correspond to those in the online docket posted on the Board’s website.

4. IEPA sought an extension of the deadline for filing the administrative record, which the Board granted on February 15, 2011. (Doc. 3.02, 4.)

5. The permittee, Mississippi Lime Company, sought party status, which was granted on March 1, 2011. (Doc. 6, 8.)

6. The Board held a status conference on March 31, 2011, in which Petitioner, IEPA and Mississippi Lime participated. (*See* Doc. 16.) The Board requested that IEPA review the record for the permit at issue in this case, in light of its recent order in *In re Vulcan Construction Materials*, PSD Appeal No. 10-11 (EAB March 2, 2011). (*Id.*) Following that conference, the Board issued a revised schedule requiring a status report from IEPA regarding its review of the record and establishing a revised briefing schedule. (*Id.*)

7. Pursuant to the Board's order establishing a revised briefing schedule, IEPA and Mississippi Lime filed responses on April 29, 2011, and May 6, 2011, respectively.

8. On April 19, 2011, the Board issued an order titled "Order Governing Petitions for Review of Clean Air Act New Source Review Permits." (hereinafter "2011 NSR Order"). The Order appears to apply to all cases, including case such as this one, which were pending when the Order issued. In the 2011 NSR Order, the Board adopted procedures that included "a presumption against the filing of reply briefs and sur-replies in NSR appeals" and "a presumption against holding oral argument in NSR cases." (2011 NSR Order at 3.)

9. Petitioner strongly disagrees with arguments made in the responsive briefs in this case, including the documents IEPA attaches to its response and IEPA's characterization of them. However, in light of the 2011 NSR Order, Petitioner hereby respectfully withdraws its

request for oral argument in this case and, further, notifies the Board and parties that it does not intend to seek leave to file a reply.

10. This notice simply recognizes the 2011 NSR Order and the Board's desire to resolve cases like this promptly. It is not an acquiescence to any arguments made by IEPA or Mississippi Lime, nor a waiver of any arguments by Petitioner.

Respectfully submitted this 18th day of May, 2011.

/s/ David C. Bender
David C. Bender
MCGILLIVRAY WESTERBERG & BENDER LLC
305 S. Paterson Street
Madison, WI 53703
608.310.3560
608.310.3561 (fax)

James Gignac
Sierra Club
70 E. Lake Street, Suite 1500
Chicago, IL 60601
312.251.1680
312.251.1780 (fax)

Counsel for Sierra Club

CERTIFICATE OF SERVICE

I hereby certified that on May 18, 2011, I caused a copy of the foregoing to be served on the following counsel of record by U.S. Mail:

Gerald T. Karr
Office of the Attorney General
Environmental Bureau
69 West Washington Street, Suite 1800
Chicago, IL 60602

John F. Cowling
Armstrong Teasdale LLP
770 Forsyth, Suite 1500
St. Louis, MO 63105

Robert A. Kaplan
U.S. Environmental Protection Agency
Office of Regional Counsel
77 West Jackson Blvd.
Chicago, IL 60604-3507

/s/ David C. Bender