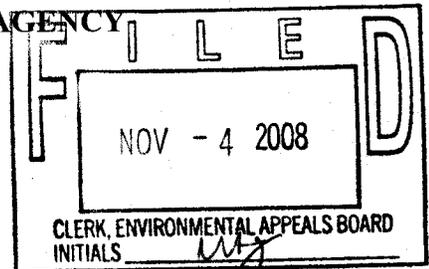


**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**



_____))
In re:))
Mora Mutual Domestic Water Consumers))
and Sewage Works Association))
Permit No. NM0024996))
_____))

NPDES Appeal No. 08-20

ORDER DENYING REQUEST TO EXTEND APPEAL DEADLINE

I. *BACKGROUND*

On October 16, 2008, the Environmental Appeals Board (“Board”) received a letter from Souder, Miller & Associates (“SMA”), on behalf of the Mora Mutual Domestic Water Consumer and Sewage Works Association (“Mora”), requesting that the Board extend the deadline for the filing of an appeal in the above-captioned matter until November 3, 2008. As the basis for the request, SMA explains that it “did not receive a copy of the permit for review * * * until September 24, 2008” because the permit was sent to Mora, and “the earliest * * * [SMA was] able to schedule a meeting with * * * [Mora] to discuss the appeal process, due to scheduling conflicts, was October 15, 2008.” Letter from SMA Regarding Request for Two-Week Extension of NPDES Permit No. NM0024996 Appeal Period, to Environmental Appeals Board (filed Oct. 16 2008). Since the request letter did not indicate whether the permitting authority, U.S. Environmental Protection Agency Region 6 (“Region”), agreed to or opposed the request, or whether the Region had been served with the October 16 letter, the Board issued an order, on

October 27, 2008, soliciting the Region's position with respect to the request. *See* Order Allowing Region 6 to Respond to Request for Extension of Appeal Deadline (Oct. 27, 2008). We noted in the order that since the deadline for filing had passed, the Region's response would be considered in the context of whether to allow a late-filed appeal.¹ The Region promptly responded to our order stating that it had no objection to the granting of Mora's request. On October 30, 2008, SMA filed a second request letter asking the Board to further extend the appeal deadline to November 10, 2008.

For the reasons stated below both requests for extension of time are denied.

II. *DISCUSSION*

Under the regulations governing this permit appeal, a petition for review of a permit decision must be filed with the Board within 30 days of service of notice of the final permit decision by the permitting authority. 40 C.F.R. § 124.19(a) ("Within 30 days after a[n] * * * NPDES * * * final permit decision * * * has been issued * * *, any person who filed comments on the draft permit or participated in the public hearing may petition the Environmental Appeals Board to review any condition of the permit decision."). Where, as here, a final permit decision is served by mail, a petitioner has three additional days in which to file a petition for review. *Id.* § 124.20(d). Failure to ensure that the Board receives a petition for review by the filing deadline

¹ Notably, despite not having heard from the Board on the October 16 request, neither Mora nor SMA attempted to file a petition on or before the filing deadline.

will generally lead to dismissal of the petition on timeliness grounds as the Board strictly construes threshold procedural requirements, like the filing of a timely petition. *See In re Puna Geothermal Venture*, 9 E.A.D. 243, 273 (EAB 2000); *In re AES Puerto Rico L.P.*, 8 E.A.D. 324, 328 (EAB 1999). *Cf. In re Knauf Fiber Glass, GmbH*, 9 E.A.D. 1, 5 (EAB 2000) (denying review of several petitions on timeliness and standing grounds and noting Board's expectations of petitions for review); *In re Knauf Fiber Glass, GmbH*, 8 E.A.D. 121, 127 (EAB 1999) (noting strictness of standard of review and Board's expectation of petitions); *In re Envotech, L.P.*, 6 E.A.D. 260, 266 (EAB 1996) (dismissing as untimely permit appeals received after the filing deadline). The Board rarely grants extensions of appeal deadlines and does so only in extraordinary circumstances.² *See, e.g., AES Puerto Rico*, 8 E.A.D. at 329 ("The Board will relax a filing deadline only where special circumstances exist"). Special circumstances have been found, *inter alia*, in cases where mistakes by the permitting authority have caused the delay or when the permitting authority has provided misleading information. *See, e.g., In re Kawaihae Cogeneration Project*, 7 E.A.D. 107, 123-124 (EAB 1997) (delay attributable to permitting authority as it mistakenly instructed petitioners to file appeals with EPA's Headquarters' Hearing Clerk). Delays stemming from extraordinary events, such as natural disasters and response to terrorist threats, or from causes not attributable to the petitioner, such as problems with the delivery service, have also led the Board to relax the filing deadline. *See, e.g., In re Avon*

² It is a well-settled principle that "it is always within the discretion of an administrative agency to relax or modify its procedural rules adopted for the orderly transaction of business before it when in a given case the ends of justice require it." *See Am. Farm Lines v. Black Ball Freight Serv.*, 397 U.S. 532, 539 (1970).

Custom Mixing Servs., Inc., 10 E.A.D. 700, 703 n.6 (EAB 2002) (delay in reaching the Board attributable to EPA's response to anthrax contamination concerns); *AES Puerto Rico*, 8 E.A.D. at 328 (extraordinary circumstances created by hurricane and its aftermath warranted relaxation of deadline); *id.* at 329 (EAB 1999) (delay attributable to aircraft problems experienced by FedEx).

In this case, the Region issued and served the final permit decision on September 17, 2008. Thus, the deadline for filing a petition for review with the Board was October 20, 2008. In its request, SMA does not claim that Mora (the permittee and interested party) did not receive notice of the permit decision, or that there was any misrepresentation of the filing deadline or defects in the service of the final permit. Indeed, Mora was served with the permit decision and, by SMA's own account, SMA received a copy of the permit on September 24, 2008. Thus, SMA (Mora's representative) received a copy of the permit 26 days before the filing deadline. SMA's assertion that, due to scheduling conflicts, SMA was not able to meet with Mora to discuss the appeal process until October 15, does not constitute the type of special circumstances that have led the Board, on other occasions, to relax the 30-day rule. There is nothing unusual about these circumstances. It is well within the range of circumstances that petitioners can confront when preparing timely petitions. Absent the type of special circumstance that would justify the filing of an untimely appeal, the Board will not deviate from its general practice of adhering to the 30-day period for the filing of an appeal, only to accommodate a petitioner whose untimeliness in filing likely could have been avoided by making a timely appeal a higher priority.

III. *CONCLUSION*

In light of all the above, the Board denies both requests by SMA to file, on behalf of Mora, for an extension of time to file a petition for review of the final NPDES permit No. NM0024996.

So ordered.³

ENVIRONMENTAL APPEALS BOARD

By: 

Edward E. Reich
Environmental Appeals Judge

Dated: November 4, 2008

³ The three-member panel deciding this matter is comprised of Environmental Appeals Judges Edward E. Reich, Charles J. Sheehan, and Anna L. Wolgast. *See* 40 C.F.R. § 1.25(e)(1)(2005).

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Denying Request to Extend Appeal Deadline in the matter of Mora Mutual Domestic Water Consumer and Sewage Works Association, NPDES Appeal No. 08-20, were sent to the following persons in the manner indicated:

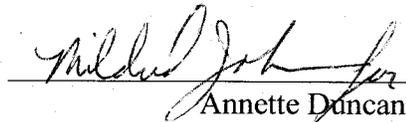
**By Pouch Mail
and via fax:**

Renea Ryland
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**By First Class Mail Postage Prepaid:
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Kari J. Edenfield, P.E.
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Fax: 505-471-6675

Dated: NOV - 4 2008


Annette Duncan
Secretary