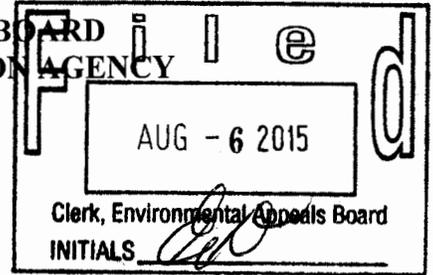


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



_____)
In re:)
)
Invensys Systems, Inc.)
)
NPDES Permit No. MA0004120)
_____)

NPDES Appeal No. 15-10

**ORDER GRANTING EXTENSION OF TIME
TO FILE PETITION FOR REVIEW**

On July 29, 2015, Invensys Systems, Inc. filed a motion for a fifteen-day extension of time to file a petition for review of National Pollutant Discharge Elimination System (“NPDES”) Permit No. MA0004120. Region 1 of the U.S. Environmental Protection Agency issued the permit on July 19, 2015, authorizing Invensys’s Foxboro, Massachusetts, facility to discharge treated wastewater into Gudgeon Brook/Neponset Reservoir and Robinson Brook. Invensys seeks the extension to fully evaluate the Region’s identification of Gudgeon Brook and Robinson Brook as receiving waters, and the Region’s alleged reliance on the *Clean Water Rule: Definition of “Waters of the United States,”* 80 Fed. Reg. 37,053 (June 29, 2015).

On August 3, 2015, the Region opposed Invensys’s motion. The Region states it first identified Gudgeon Brook and Robinson Brook as receiving waters when it issued Invensys’s draft permit in 2011 and contends that Invensys’s comments on the draft permit, along with the Region’s responses to those comments, “fully framed” the issues regarding the Brooks’ status as receiving waters. The Region further contends that mention of the Clean Water Rule in its Response to Comments is “very brief” and “essentially confirms that the new Rule * * * would not change the outcome of EPA’s analysis.” Finally, the Region argues that petition deadlines should be extended only in “compelling circumstances,” which it believes are absent here.

The Board has, for good cause, granted motions seeking additional time to file petitions for review. *See, e.g., In re Wesco Operating Inc.*, NPDES Appeal No. 15-02, at 3 (EAB Apr. 16, 2015) (Order Granting Extension of Time to File Petition for Review) (granting thirty-day extension to allow permittee to fully evaluate permit's impacts, consult with affected Tribes, and request review by other federal agencies); *see also* 40 C.F.R. § 124.19(n) (“[F]or good cause, the Board may relax or suspend the filing requirements prescribed by these rules or Board order.”).¹

Here, Invensys filed its motion for extension well in advance of the petition deadline. Further, Invensys seeks a modest additional amount of time to address the recently issued Clean Water Rule, and the Region does not identify any prejudice from granting Invensys's request. While the Board expresses no view at this time as to the Rule's significance to this permit, it is reasonable to allow Invensys the additional time requested to fully present its arguments.

Accordingly, for good cause shown, the Board **GRANTS** an extension of time to Invensys to file its petition for review of NPDES Permit No. MA0004120. The petition must be filed with the Clerk of the Environmental Appeals Board on or before **Friday, September 4, 2015**.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: 8 / 6 / 15

By: Mary Beth Ward
Mary Beth Ward
Environmental Appeals Judge

¹ Where a party files a petition *after* the 30-day deadline has passed, “good cause” requires a showing of “special circumstances” to justify missing the deadline, e.g., the permitting authority caused the delay by providing incorrect information or extraordinary events such as natural disasters or unanticipated problems with delivery delayed the filing. *In re Sierra Pac. Indus.*, PSD Appeal No. 13-01, at 4 n.5 (Mar. 21, 2013) (Order Denying Extension of Time to File Appeal Brief) (citing several orders issued by the Board on whether special circumstances excused the late filing).

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **Order Granting Extension of Time to File Petition for Review** in the matter of *Invensys Systems, Inc.*, NPDES Appeal No. 15-10, were sent to the following persons in the manner indicated:

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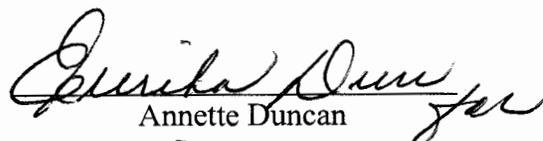
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Date:

August 6, 2015


Annette Duncan
Secretary