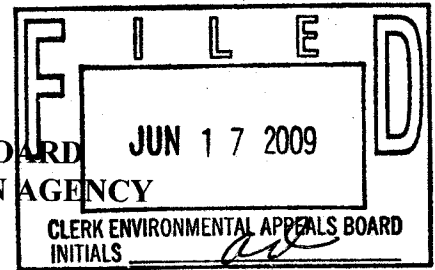


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



In re:

Circle T Feedlot, Inc.,
Morgan Feedlot LLC,
Sebade Feedyard, &
Stanek Brothers

NPDES Permit Nos. NE0134481, NE0134767,
NE0135712, & NE0134775

NPDES Appeal Nos.
09-02 & 09-03

ORDER GRANTING MOTION REQUESTING LEAVE TO FILE ADDENDUM

On January 30, 2009, pursuant to 40 C.F.R. § 124.19(a), Mr. Joel Lamplot filed¹ a petition for review with the Environmental Appeals Board ("Board") in which he contests four final National Pollutant Discharge Elimination System ("NPDES") permit decisions (the "Final Permits") issued by Region 7 ("Region") of the United States Environmental Protection Agency ("EPA"). Several days later, Ms. Teri Lamplot also filed² a petition for review of these same four Final Permits. The Final Permits in question were issued by the Region on December 18, 2008, under the Clean Water Act ("CWA"), 33 U.S.C. §§ 1251-1387, to four concentrated animal

¹ As the Board has consistently held, petitions are considered "filed" when they are *received* by the Board, not when they are mailed. *E.g.*, *In re AES Puerto Rico L.P.*, 8 E.A.D. 325, 329 n.5 (EAB 1999), *aff'd*, *Sur Contra La Contaminacion v. EPA*, 202 F.3d 443 (1st Cir. 2000); *In re Kawaihae Cogeneration Project*, 7 E.A.D. 107, 124 n.23 (EAB 1997); *In re Beckman Prod. Servs.*, 5 E.A.D. 10, 15 n.8 (EAB 1994). Thus, although Mr. Lamplot's petition was postmarked January 16, 2009, his petition is considered filed on January 30, 2009, the date the Board received it.

² Similarly, even though Ms. Lamplot's petition was postmarked January 16, 2009, her petition is considered filed on February 2, 2009.

feeding operations ("CAFOs"): Circle T Feedlot, Inc. (Permit No. NE0134481), Morgan Feedlot LLC (Permit No. NE0134767), Sebade Feedyard (Permit No. NE0135712), and Stanek Brothers (Permit No. NE0134775). *See* Response to Petitions for Review, Ex. A (copies of Final Permits). The Region filed a response to these two petitions on March 30, 2009.³

On April 20, 2009, Petitioners filed a motion requesting that they be allowed to submit an addendum to their petitions in light of a recent Supreme Court decision issued after they filed their petitions, *Hawaii v. Office of Hawaiian Affairs*, 129 S. Ct. 1436 (2009), which they believe "greatly support[s]" the arguments they have made in this appeal. Request for Addendum to Appeals Submitted by Joel Lamplot and Teri Lamplot in Light of Recent Supreme Court Decision Decided March 31, 2009 at 1.

Although the Board normally does not require further briefing from a petitioner following receipt of a permit issuer's response to a petition, the Board typically grants a petitioner leave to file a reply brief where petitioner has filed a motion requesting leave to file such brief and has provided an explanation why the reply brief is necessary. *See* EAB Practice Manual at 36 (June 2004); *see, e.g., In re US Gen New England, Inc., Brayton Point Station*, NPDES Appeal No. 03-12 at 9-10 (Feb. 19, 2004) (Order Granting Review) (authorizing petitioner to file reply briefs).

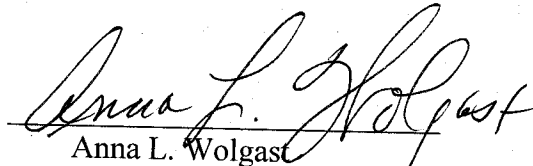
For good cause shown, the Board GRANTS Petitioners' request to file an addendum to their petitions discussing the applicability of the recent Supreme Court case to the present matter.

³ At the same time, the Region also submitted a motion requesting the Board dismiss those portions of Ms. Lamplot's petition requesting review of an additional four *draft* NPDES permits. *See* Region's Motion to Dismiss Petition for Review of Four Draft NPDES Permits. The Board granted the Region's motion in a separate order issued today.

Such addendum must be postmarked by June 29, 2009.⁴ The Board reminds Petitioners that they should submit a certificate of service with their filing that indicates that they have served the document on the Region.

So ordered.

ENVIRONMENTAL APPEALS BOARD


Anna L. Wolgast
Environmental Appeals Judge

Date: June 17th 2009

⁴ Because of mail delivery issues associated with this case, the Board has established a deadline based on the postmark date rather than relying on the Board's usual practice of setting deadlines based on the receipt date of documents.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Granting Motion Requesting Leave to File an Addendum in the matter of Circle T Feedlot, Inc., et al., NPDES Appeal Nos. 09-02 & 09-03 were sent to the following persons in the manner indicated:

By First Class Mail:

Joel Lamplot
President
Thurston County Farm Bureau
582 21st Road
Thurston, NE 68062

Teri Lamplot
582 21st Road
Thurston, NE 68062

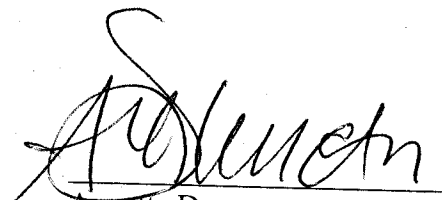
By Pouch Mail:

Chris Muehlberger
Assistant Regional Counsel
EPA Region 7
901 North Fifth Street
Kansas City, KS 66101

By Inter-Office Mail:

Tod Siegal
Office of General Counsel
Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, DC 20460

Dated: JUN 17 2009


Annette Duncan
Secretary