

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

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In re:)	
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Limetree Bay Terminals, L.L.C., and)	CAA Appeal No. 20-02M
Limetree Bay Refining, L.L.C.)	
)	
PAL Permit No. EPA-PAL-VI-001/2019)	
)	

**ORDER DENYING MOTION TO RECONSIDER AND
 DIRECTING SERVICE ON ALL PARTIES**

On December 21, 2020, the St. Croix Environmental Association, Center for Biological Diversity, Sierra Club, and Elizabeth Leigh Neville (collectively, “Petitioners”), filed a motion for a thirty-day extension of time to file a petition for review of a Plantwide Applicability Limit (“PAL”) permit decision of the U.S. Environmental Protection Agency (“EPA”) for seven air pollutants. EPA issued the PAL permit to Limetree Bay Terminals, L.L.C., and Limetree Bay Refining, L.L.C. (collectively, “Limetree”) for refinery and related terminal operations in St. Croix, U.S. Virgin Islands. The petition would ordinarily be due on January 4, 2021. In their motion, Petitioners represented that on December 21, 2020, they contacted EPA Region 2 (“Region”) to inquire whether the Region would support or oppose the motion and that the Region’s counsel could not confirm whether EPA would support or oppose the motion without conferring with colleagues at EPA Headquarters in Washington, D.C. On December 22, 2020, the Environmental Appeals Board (“Board”) granted the motion, providing that any petition for review of this PAL permit decision must be filed with the Board on or before February 3, 2021.

After the Board filed and served the Order Granting Extension of Time to File Petition for Review in this matter, the Region filed an “Opposition to Motion for Extension of Time and

Motion to Reconsider” (“Reconsideration Motion”). The Region did so “after consultation with the Office of General Counsel and the Office of Air and Radiation.” Reconsideration Motion at 1. The Certificate of Service attached to the Region’s Reconsideration Motion does not reflect that the Reconsideration Motion was served on any other party as required by 40 C.F.R. § 124.19(i)(3)(ii), only that it was electronically filed with the Board.

In its Reconsideration Motion, the Region argues that Petitioners failed to provide good cause for their extension request. *Id.* at 1-4. The Region therefore requests that the Board reconsider its Order Granting Extension of Time to File Petition for Review and deny Petitioners’ motion for extension of time. *Id.* at 4.

The Region’s Reconsideration Motion is not persuasive. It fails to acknowledge that part of the basis for the extension request was three intervening federal holidays (December 24 and 25, 2020 as well as January 1, 2021). Motion for Extension of Time at 2. The Region does not dispute that many of its own staff are on extended leave at this time, as documented in Petitioners’ motion. Instead, the Region disputes that access to staff is material to Petitioners’ ability to file a petition. In large part, the Region’s Reconsideration Motion focuses on disputing that the impacts of COVID-19 are a valid basis for granting Petitioners an extension, including Petitioners’ representations about the impact on childcare and related matters. The Board, however, has no reason to question Petitioners’ representations that delays and uncertainties caused by COVID-19 have impacted Petitioners’ ability to file a petition within the thirty-day period, particularly given the recent upward trends of COVID-19 and revisions made by governments, communities, and the private sector in their operating status. We also note that there have been operational impacts from COVID-19 in other matters, including a relatively recent one involving Region 2. *See generally In re Novartis Pharms. Corp.*, Order Directing

Clarification of Service or New Service and Directing Response to Petition, RCRA Appeal No. 20-01 (EAB Sept. 17, 2020). In addition, the Region represents that “the PAL application was deemed complete nearly two years ago on December 31, 2018” and that “Limetree Bay can operate as is” without the PAL. Among other things, that distinguishes this case from most other New Source Review cases, where a permittee cannot construct before an appeal is resolved. *See* Revised Order Governing Petitions for Review of Clean Air Act New Source Review Permits at 2 (EAB Sept. 21, 2020).

In sum, absent from the Region’s Reconsideration Motion is anything that outweighs the public’s meaningful access to administrative remedies that a short thirty day extension to file a petition for review (for a permit application that was deemed complete by the Region almost two years ago) provides in these circumstances. The motion for reconsideration is **DENIED**. 40 C.F.R. § 124.19(n). Petitioners established good cause for their requested extension of time.

The Board further **ORDERS** that the Region serve its Opposition to Motion for Extension of Time and Motion to Reconsider (and any other pleadings in this matter) on all parties and file proof of service with the Board.

So ordered.

Dated: December 23, 2020

ENVIRONMENTAL APPEALS BOARD

By: 

Aaron P. Avila
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I certify that copies of the foregoing **Order Denying Motion to Reconsider and Directing Service on All Parties** in the matter of *Limetree Bay Terminals, L.L.C., & Limetree Bay Refinery, L.L.C.*, CAA Appeal No. 20-02M, were sent to the following persons in the manner indicated:

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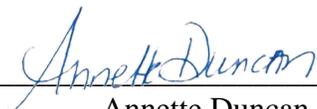
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Dated: December 23, 2020



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