



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

MAY 14 2010

ENVIRONMENTAL APPEALS BOARD

Mr. Douglas P. Scott, Director  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 63794-9276

Re: Vulcan Construction Materials, LP  
Permit Number: 918806AAB  
Appeal Number: PSD 10-11

Dear Mr. Scott:

Enclosed is a petition dated May 9, 2010, received by the Environmental Appeals Board (the "Board") on May 9, 2010, filed by David C. Bender, Attorney, McGillivray Westerberg & Bender LLC, on behalf of Sierra Club, asking the Board to review a PSD determination by the Illinois Environmental Protection Agency.

A copy of the petition and exhibits can be found on the Board's website at [http://yosemite.epa.gov/oa/EAB\\_Web\\_Docket.nsf/f22b4b245fab46c6852570e6004df1bd/e57eb98b8584553e8525772000608214!OpenDocument](http://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/f22b4b245fab46c6852570e6004df1bd/e57eb98b8584553e8525772000608214!OpenDocument). If you have any difficulty accessing this document, please let me know.

Response Seeking Summary Disposition. If you believe that the petition in its entirety may be appropriate for summary disposition, either because the Board does not have jurisdiction to consider the petition, the appeal is untimely, Petitioner lack standing to file an appeal, or none of the issues raised in the petition were preserved for review, file a response to that effect by no later than May 27, 2010. Include relevant portions of the administrative record with your response.

Filing may be accomplished electronically pursuant to the Board's Order of January 28, 2010.<sup>1</sup> Alternatively, filing may be accomplished by filing a paper original (signed in blue ink)

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<sup>1</sup> The Board has issued an Order authorizing the electronic filing of documents in cases involving permit appeals. See Order Authorizing Electronic Filing in Proceedings Before the Environmental Appeals Board Not Governed by 40 C.F.R. Part 22 (Jan. 28, 2010), available at <http://www.epa.gov/eab> (click "Standing Orders" on sidebar). Instructions on registration and document filing are available by

with the Board (at the address shown below) by the date specified above. A copy must be sent to Petitioner, and a certificate of service showing the date and method of service should be included with the filing. Petitioner shall have 10 days from the date of service of a response seeking summary disposition to file a reply with the Board, unless the Board determines otherwise.

If the Board determines that summary disposition is appropriate, the Board will issue an order to that effect. If the Board determines that summary disposition is not appropriate, or that the issue of summary disposition should be reserved until after a response to the merits of the petition is filed, the Board will issue an order directing that a response to the merits of the petition be filed within 15 days of the Board's order.

**Response not Seeking Summary Disposition.** If you do not file a response seeking summary disposition, file a response to the merits of the petition by no later than June 12, 2010. Include with your response relevant portions of the administrative record, together with a certified index of the entire administrative record.

Filing may be accomplished electronically pursuant to the Board's Order of January 28, 2010<sup>2</sup> or by filing an original (signed in blue ink) with the Board. In addition, a copy of the filing must be sent to petitioner, and a certificate of service showing the date and method of service should be included with the filing.

**All documents that are sent through the U.S. Postal Service, Express Mail, hand-delivered, via courier must include the name of the organization, address, facsimile number, telephone number, and an email address, if available.<sup>3</sup>**

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using the "Electronic Filing" link on the Board's website. Documents containing confidential business information should not be filed electronically as the Board considers business confidentiality claims waived when a document is electronically filed. *Id.* at 5-6. Please note that if a party, or its attorney or other representative, electronically files any document, such as a notice of appeal, brief, or motion, that exceeds fifty (50) pages in length, inclusive of the certificate of service, table of contents, and table of authorities, but exclusive of exhibits or attachments, it must also send one paper copy of that document to the Board by U.S. Mail, hand, courier, or commercial delivery service within one business day of the date of the electronic filing. *See id.* at 4-5. Such paper copy must be accompanied by a signed certification stating that it is identical to the electronically filed document. *Id.* at 5. If the combined page length of all of the exhibits or attachments submitted in support of a brief or motion exceeds fifty (50) pages, the requirement to submit a paper copy, and its timing, applies to the entire set of exhibits or attachments. *Id.* Anyone electronically filing exhibits or attachments in support of a brief, motion, or other document should submit them separately from the associated brief or motion. *Id.* at 3.

<sup>2</sup> See *supra* note 1 regarding procedures for electronically filing documents with the Board.

<sup>3</sup> Mail sent to the Environmental Protection Agency via the U.S. Postal Service may be delayed by a random sterilization procedure applied to mail delivered to the federal government. Parties are encouraged to utilize the Board's e-filing system or non-U.S. Postal Service carriers and the Board's hand-delivery address when filing pleadings with the Board. Additional information regarding mail delivery to the Board is available on the Environmental Appeals Board website ([www.epa.gov/eab](http://www.epa.gov/eab)) at the Clerk of the Board or Frequently Asked Questions links.

Documents that are sent through the U.S. Postal Service (except by Express Mail) **MUST** be addressed to the Environmental Appeals Board's mailing address which is:

U.S. Environmental Protection Agency  
Clerk of the Board  
Environmental Appeals Board 1103B  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460-0001

Documents that are sent to the Environmental Appeals Board's hand-delivery address (below) through the U.S. Postal Service (except by Express Mail) will be returned to the sender and shall not be considered as filed.

**Hand Delivery Address**

Documents that are **hand-carried** in person, delivered via courier, mailed by Express Mail, or delivered by a non-U.S. Postal Service carrier (e.g., Federal Express or UPS) **MUST** be delivered to:

U.S. Environmental Protection Agency  
Clerk of the Board  
Environmental Appeals Board  
1341 G Street NW, Suite 600  
Washington, D.C. 20005

Documents that are hand-carried may be delivered to the Clerk of the Board from 8:30 a.m. to 12:00 p.m. and from 1:00 p.m. to 4:30 p.m., Monday through Friday (excluding federal holidays). Documents filed electronically may be filed at any time up to 11:59 p.m. Eastern Time on the day the document is required to be filed with the Board.

**Filing Requirements**

**IMPORTANT:** All documents, including the materials due May 27, 2010 and June 12, 2010 must reference the appeal number. In addition, any envelope or other packaging containing documents sent to the address, as prescribed above, must bear a complete and accurate return address in the upper left hand corner. The envelope or packaging must also clearly state the case name and case identifier in the lower left hand corner.

No further briefing will be allowed except by order of the Board.

A copy of this letter is being sent to the petitioners as notification of these filing requirements.

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Thank you for your attention to this matter.

Sincerely,



Eurika Durr  
Clerk of the Board

cc: David C. Bender  
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