

**GARVEY McNEIL &  
McGILLIVRAY, S.C.**

ATTORNEYS AT LAW

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Edward R. Garvey  
Kathleen G. McNeil  
Pamela R. McGillivray  
Christa O. Westerberg  
David C. Bender  
Carlos A. Pabellon

Of Counsel:  
Peter E. McKeever

October 10, 2008

**VIA ELECTRONIC SUBMISSION, FEDERAL EXPRESS, and FACSIMILE**

United States Environmental Protection Agency  
Clerk of the Board, Environmental Appeals Board  
1341 G Street, N.W., Suite 600  
Washington, D.C. 20005  
Fax: (202) 233-0121

Re: Northern Michigan University  
PSD Appeal No. 08-02

Dear Clerk,

Enclosed for filing, please find Petitioner Sierra Club's NOTICE OF MOTION OF PETITIONER TO RECONSIDER AND FOR LEAVE TO EXTEND TIME TO FILE REPLY. If anything further is required, please advise.

Thank you.

GARVEY McNEIL & McGILLIVRAY, SC



David C. Bender

Counsel for Sierra Club

Enclosures

cc: Counsel of Record

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

IN THE MATTER OF:  
NORTHERN MICHIGAN  
UNIVERSITY

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APPEAL NUMBER: PSD 08-02  
  
PSD PERMIT NUMBER: 60-07

NOTICE OF MOTION OF PETITIONER TO RECONSIDER AND FOR LEAVE TO  
EXTEND TIME TO FILE REPLY

PLEASE TAKE NOTICE that I have sent, by overnight courier, to the Clerk of the Environmental Appeals Board a MOTION OF PETITIONER TO RECONSIDER AND FOR LEAVE TO EXTEND TIME TO FILE REPLY on behalf of Petitioner Sierra Club, a copy of which is here with served upon each of the representatives identified for the parties at issue in this case.

October 10, 2008.

Respectfully submitted  
GARVEY McNEIL & MCGILLIVRAY S.C.

  
David C. Bender

GARVEY McNEIL & MCGILLIVRAY, S.C.  
634 W. Main Street  
Madison, WI 53703  
608.256.1003  
608.256.0933 (fax)  
bender@gmmattorneys.com

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APPEAL NUMBER: PSD 08-02  
  
PSD PERMIT NUMBER: 60-07

MOTION OF PETITIONER TO RECONSIDER AND FOR LEAVE TO EXTEND TIME TO  
FILE REPLY

Petitioner, Sierra Club, respectfully moves the Environmental Appeals Board to reconsider its October 10, 2008 Order in this case and for leave to allow Petitioner's untimely reply to the Response of the Northern Michigan University.<sup>1</sup>

On September 8, 2008, the Board issued an Order allowing Northern Michigan University to intervene and allowing it to file a Response to the Petition by September 22, 2008. The Order also provided that Petitioner, Sierra Club, may file a reply to Northern Michigan on October 1, 2008. The undersigned counsel for Sierra Club misread the Order as establishing the deadline for reply as October 7<sup>th</sup> and calendared that date for a response.

Petitioner filed its reply on October 3<sup>rd</sup>, 2008, mistakenly believing it to be filed *ahead* of the Board's deadline. Today, October 10, 2008, the Board entered an Order correctly noting that Petitioner's reply to Northern Michigan University's brief was not accompanied by an explanation or acknowledgement of the reply's untimeliness, and with no timely efforts to seek modification of the filing date. Petitioner's reply filing contained no explanation or acknowledgement of untimeliness because counsel had not realized, at the time of its filing, that the reply was not timely. Receipt of today's Order was counsel's first indication of his mistake regarding the deadline to reply. This motion followed immediately.

The undersigned counsel apologizes for his mistake and Petitioner respectfully requests that the Board reconsider its Order and allow Petitioner to file its reply out of time. The basis for this motion seeking to file a reply out of time is counsel's inadvertence and mistake.

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<sup>1</sup> Northern Michigan University's response was filed with the Board on September 22, 2008, and refiled on September 23, 2008.

WHEREFORE, Petitioner respectfully requests that the Board reconsider its Order dated October 10, 2008 and allow Petitioner's Reply to Northern Michigan University that was filed on October 3, 2008.

Respectfully submitted this 10th day of October, 2008.

GARVEY MCNEIL & MCGILLIVRAY S.C.



David C. Bender

Counsel for Petitioner Sierra Club

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Madison, WI 53703  
608.256.1003  
608.256.0933 (fax)  
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IN THE MATTER OF:  
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APPEAL NUMBER: PSD 08-02  
  
PSD PERMIT NUMBER: 60-07

CERTIFICATE OF SERVICE OF PETITIONER'S NOTICE OF MOTION TO RECONSIDER  
AND FOR LEAVE TO EXTEND TIME TO FILE REPLY

On October 10, 2008, I caused to be served via Federal Express and Facsimile delivery a copy of the foregoing Notice of Motion and Motion of Petitioner for Leave to File Reply to:

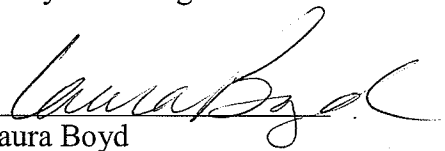
Ericka Durr  
Clerk of the Board  
U.S. Environmental Protection Agency  
Environmental Appeals Board  
1341 G Street, N.W. Suite 600  
Washington, D.C. 20005  
Fax: 202-233-0121

Neil D. Gordon, Esq.  
Department of the Attorney General  
Environment Natural Resources and  
Agriculture Division  
G. Mennen Williams Building, 7th Floor  
525 W. Ottawa St.  
Lansing, MI 48909  
Fax: 517-373-1610

Kevin J. Finto, Esq.  
Hunton & Williams LLP  
951 East Byrd Street  
Richmond, VA 23219-4074  
Fax: 804-788-8218

James W. Rubin, Esq.  
Hunton & Williams LLP  
1900 K Street, N.W.  
Washington, D.C. 20006  
Fax: 202-828-3735

I declare that the foregoing is true to the best of my knowledge.

  
Laura Boyd