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BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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ENVIR. APPEALS BOARD

IN THE MATTER OF:)
)
Zaclon, Incorporated;)
Zaclon, LLC;)
Independence Land)
Development Company;)
2981 Independence Road)
Cleveland, Ohio 44115)
EPA ID No. OHD 004 184 768)
)
Respondents)
)
DOCKET No. RCRA-05-2004-0019)
_____)

RCRA Appeal No. - 07 - (03)

MOTION FOR EXTENSION OF TIME

Pursuant to 40 C.F.R. §§ 22.16 and 22.30(a) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits* ("Consolidated Rules"), the Complainant in the case captioned above, the Chief of the Enforcement and Compliance Assurance Branch of the Waste, Pesticides and Toxics Division, U.S. Environmental Protection Agency, Region 5, hereby files this Motion requesting an extension of time for the filing of a notice of appeal and brief in support thereof. This extension is necessary to allow the Agency to continue to consider whether to appeal the Initial Decision of the Chief Administrative Law Judge, in the above-captioned matter. By this Motion, the Complainant requests 60 days from the current filing deadline to complete the consultation process between numerous headquarters and regional offices prior to deciding whether to appeal this matter. Respondent's counsel was unable to reach his client, who is on vacation, and so

could not say whether or not his client might object to Complainant's motion; however, Complainant does not believe Respondent would be prejudiced by the extension requested herein.

By Order of July 3, 2007, the Environmental Appeals Board set an appeal deadline of 30 days from the date of service of the Confidential Business Information (CBI)-redacted version of the Initial Decision. This version was served on the Complainant on July 24, 2007, making the current appeal date August 24, 2007.

This redacted decision has been circulated to the Office of Solid Waste, the Office of Enforcement and Compliance Assurance and the Office of General Counsel as well as to multiple offices in Regions 5 and 1. It has become apparent that in order to fully understand the complexity of the case, the rationale for the Initial Decision and the potential impact of the decision, it will be necessary to have CBI-approved personnel in each of these offices review the unredacted decision and perhaps some of the supporting record which has also been claimed as confidential by the rather far-reaching CBI claim.

U.S. EPA is burdened by being unable to circulate and discuss freely the underlying facts (claimed as confidential in almost all details) upon which the Judge based her Initial Decision. These restrictions on exchange of information imposed by the CBI regulations continue to constrain all conversations.

Region 5 has sent Respondents a letter, dated July 25, 2007, requesting that Respondents substantiate their claims of confidentiality with regard to all the information in the record of this proceeding for which Respondents have made a claim of confidentiality under 40 C.F.R. Part 2.

As noted previously, this matter affects other Regions, deals with a complex area of the RCRA regulations regarding the definition of solid waste, and requires thorough consultation between multiple offices in the Regions and in Headquarters. Furthermore, a number of key personnel in Headquarters and the Regions, including Region 5's lead counsel in this matter, will be absent from the office for extended periods over the next several weeks.

All these factors require the Complainant in this matter to respectfully request that the Board grant an extension of time during which the relevant offices can consult and consider whether or not to file a notice of appeal and supporting appeal brief in this matter. Therefore, Complainant respectfully requests that the Board grant an extension of time until October 24, 2007, for such potential filing.

RESPECTFULLY SUBMITTED this 15th day of August, 2007.



Thomas C. Nash
Associate Regional Counsel
U.S. EPA Region 5

CERTIFICATE OF SERVICE

I hereby certify that I caused the original and one copy of the foregoing Motion for Extension in *In Re Zaclon*, RCRA (3008) Appeal No. 07 - (03), to be hand delivered to the Clerk of the Environmental Appeals Board and caused copies to be sent by Federal Express overnight delivery service to the Honorable Susan L. Biro and to Mr. Martin Lewis, Esq., and by regular mail to the Region 5 Hearing Clerk at the addresses listed below.

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Colorado Building, Suite 600
1341 G Street, NW
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(202)233-0121

Honorable Susan L. Biro
Offices of the Administrative Law Judges
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8/15/07
Date


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