

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

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ENVIRONMENTAL APPEALS BOARD

ENVIR. APPEALS BOARD

IN THE MATTER OF:)
)
KNAUF INSULATION GmbH)
240 ELIZABETH STREET)
SHELBYVILLE, INDIANA) Appeal Number PSD 06-02
PERMIT NO. NSR 4-4-4, SAC 03-01)
)
RESPONDENT)

**KNAUF INSULATION GmbH'S MOTION IN OPPOSITION TO MOTION
FOR EXTENSION OF TIME TO FILE PETITION**

Comes now Knauf Insulation GmbH ("Knauf"), by counsel, and hereby submits this Motion opposing the motion for extension of time filed by petitioners Celeste Draisner, Colleen Leavitt, and Mary Scott (the "Petitioners"), and in support thereof states the following:

1. On May 11, 2006, EPA Region 9 issued Permit No. NSR 4-4-4, SAC 03-01 (the "Permit Modification") to Knauf. The Permit Modification includes certain modifications to the original permit, which was issued by Shasta County Air Quality Management District on March 14, 2000. Knauf submitted its application for the Permit Modification on May 21, 2003.
2. The Permit Modification was issued for public comment on January 20, 2006. A public hearing was held soliciting additional comments on March 8, 2006.
3. On June 14, 2006, the Petitioners filed a notice of appeal with the Environmental Appeals Board (the "Board") seeking permission to file a petition for review (the "Petition") of the Permit Modification and attaching a motion seeking a time extension to file a petition for review of the Permit (the "Motion for Extension"). (The Petitioners' Motion for Extension was actually filed separately with the Board on June 19, 2006.)

4. The sole basis of Petitioners' Motion for Extension is that Petitioners are awaiting the receipt of information requested from EPA Region 9 by Petitioners on an unspecified date under the Freedom of Information Act ("FOIA"). This information includes:

- a. "The complete transcript of the Wednesday March 8, 2006 Knauf Insulation PSD Permit Public Meeting held by EPA in Shasta Lake, CA;" and
- b. "The complete public comments submitted by citizens as part of the latest Knauf Fiber Glass¹ PSD Permit Process;" and
- c. "The modeling methodology and raw data used by Knauf Fiber Glass in the Ambient Air Quality Impact Report."

5. Knauf has concurrently filed with this Motion a motion for summary disposition and motion to dismiss the Petition -- and other petitions -- on the basis that that Petitioners failed to meet the Board requirements to "include specific information supporting their allegations" and to "demonstrate why the permitting authority's response to [] objections [made during the comment period] warrants review." *In re Knauf Fiber Glass, GmbH*, 9 E.A.D 1, 5 (EAB 2000); *see also* EPA, THE ENVIRONMENTAL APPEALS BOARD PRACTICE MANUAL 33 (June 2004); *In re: Zion Energy, L.L.C.*, 9 E.A.D. 701, 707 (EAB 2001) (holding that petitioner did not satisfy the requirements for obtaining review because, among other things, the petition failed to indicate "why IEPA's responses to [public] comments were erroneous"). In fact, the Petition does not identify a single objection or reason why Petitioners believe the permitting authority's responses were improper or invalid. Since the Petition makes no objections, it is unclear why Petitioners

¹ The correct name of the permittee is Knauf Insulation GmbH.

need the information listed in their FOIA request, and therefore, there is no basis upon which the Board may grant Petitioners additional time.

6. More basically, Petitioners' Motion for Extension should not be granted because the Board's rules and regulations do not allow for such extensions. The only situation which has merited an extension of time in reported Board decisions resulted from the occurrence of a hurricane. *Id.*; *c.f.*, *In re Puna Geothermal Venture*, 2000 EPA App. LEXIS 19, at *73 (EAB June 27, 2000) (denying a motion for extension based on petitioner's claims of "fatigue" and a "breakdown"). Further, as the Board has recognized, to provide a petitioner with an unwarranted expansion of time to make its arguments, would significantly prejudice the "permittee's interest in a timely resolution of the permitting process." *In re Zion Energy, L.L.C.*, 9 E.A.D. 701, 707 (EAB 2001). The Petitioners' FOIA request did not result from an act of God or natural disaster and does not otherwise warrant the harm to Knauf that would result from the further delay that Petitioners seek by their motion.

7. In addition, no extension should be granted in any event because all of the information requested by Petitioners under FOIA has been available to Petitioners for several months, and therefore, Petitioners do not need additional time to submit their petition for review. The complete transcript of the public meeting requested by Petitioners has been available from EPA since shortly after the meeting was held on March 8, 2006. Petitioners have had more than enough time — at least three months prior to filing their Motion for Extension — to obtain and review this information. Petitioners' decision to instead file a last-minute FOIA request for this information is not a valid basis upon which to grant Petitioners additional time to submit a petition for review.

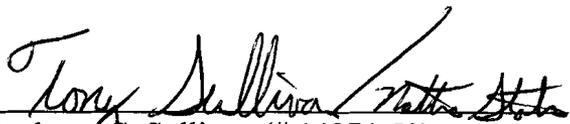
8. Public comments and EPA's responses thereto have been available since May 11, 2006. This information may be obtained from the EPA's website and the Administrative Record, which is available at the EPA Region 9 office. The EPA's published version of these comments and responses provide Petitioners with all the information they need to file a petition which complies with all applicable requirements. Petitioners' request for all public comments "in their original text" is suspect in light of the fact that Petitioners have not even addressed their own comments. Petitioner's request for this information is not a valid basis upon which to grant Petitioners' additional time to submit a petition for review.

9. Petitioners have had access to modeling methodology and data no later than February 3, 2006, when the EPA issued a Fact Sheet providing a website link to an online version of the Ambient Air Quality Impact Report ("AAQIR" or the "Report"). Petitioners are incorrect when they contend that modeling methodology and data are "not in" the AAQIR. The AAQIR clearly identifies the modeling methodology used when it states that "[i]mpacts on ambient air quality from Knauf were assessed using the Industrial Sources Complex Plume Rise Model Enhancements (ISC PRIME) air dispersion model." Report, at 29. Further, the Report states that the meteorological data for the modeling "was based on five years of hourly surface data from the Redding airport, from 1987 to 1991." *Id.* at 30. The data supporting this modeling was submitted by Knauf to the EPA on June 30, 2003. Petitioners do not explain why they now require access to this raw data. Nevertheless, Petitioners were certainly on notice by no later than February 3, 2006, when the AAQIR became available, that this data was available. Petitioners' decision to instead file a last-minute FOIA request for this information is not a valid basis upon which to grant Petitioners additional time to submit a petition for review.

10. Knauf is currently experiencing great harm by the delay caused by Petitioners' Motion for Extension, including because Knauf loses production capacity equaling tens of thousands of dollars in revenue for each day that the Permit Modification is not in effect. Knauf would be harmed by the further delay which would result if the Board grants Petitioners' Motion for Extension.

Wherefore, Knauf Insulation GmbH respectfully requests that the Board grant this Motion and deny Petitioners' request for additional time to submit a petition.

Respectfully submitted,


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Certificate of Service

The undersigned hereby certifies that a copy of "Motion for Leave to File a Response Seeking Summary Disposition" has been served this 14th day of July 2006, by depositing a copy of the same in the United States mail, first class postage prepaid and properly addressed to the following:

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