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

IN THE MATTER OF: )

MGP INGREDIENTS OF ILLINOIS, INC. )  
PERMIT NUMBER 07030058 )

ENVIRONMENTAL APPEALS BOARD  
PSD APPEAL NO. 09-03

**NOTICE OF FILING**

TO: Eurika Durr, Clerk  
U.S. Environmental Protection Agency  
Environmental Appeals Board  
Colorado Building  
1341 G Street N.W. Suite 600  
Washington, D.C. 20005

David C. Bender  
McGillivray, Westerberg & Bender LLC  
305 S. Paterson Street  
Madison, Wisconsin 53703

Robert Kaplan, Regional Counsel  
Office of the Regional Counsel  
U.S. Environmental Protection Agency  
Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3507

James Gignac  
Sierra Club  
70 E. Lake Street, Suite 1500  
Chicago, Illinois 60601

Bruce Nilles  
Sierra Club  
408 C St., N.E.  
Washington, D.C. 20002

PLEASE TAKE NOTICE that I have today sent for filing with the Clerk of the Environmental Appeals Board **MOTION FOR VOLUNTARY REMAND**, a copy of which is herewith served upon you.

Respectfully submitted,

LISA MADIGAN  
Illinois Attorney General

By: Gerald G. Karr  
Gerald Karr  
Senior Assistant Attorney General  
Environmental Bureau  
69 West Washington Street  
Suite 1800  
Chicago, Illinois 60602  
(312) 814-3369

DATED: January 20, 2010

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

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In re: )  
 )  
MGP Ingredients of Illinois, Inc. ) PSD APPEAL No. 09-03  
 )  
Permit No. 07030058 )

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**MOTION FOR VOLUNTARY REMAND**

The State of Illinois, by and through Illinois Attorney General Lisa Madigan, moves for voluntary remand of the Final Prevention of Significant Deterioration ("PSD") Permit issued to MGP Ingredients of Illinois, Inc. ("MGP") and the associated administrative record. The MGP PSD permit is before the Environmental Appeals Board ("Board" or "EAB") on a petition for review filed by the Sierra Club ("Petitioner") on July 21, 2009. This motion is submitted in lieu of a response to the petition for review.

Remand is requested to provide the Illinois Environmental Protection Agency ("IEPA") with an opportunity to reconsider several issues that are before the Board in this docket. More specifically, remand will allow IEPA to reconsider the steps used to assess the cost-effectiveness of natural gas and low-sulfur coal during the permit review process. Reconsideration is necessary to ensure compliance with US EPA guidance on the top-down method for determining Best Available Control Technology ("BACT"). *New Source Review Workshop Manual*, US EPA Office of Air Quality Planning and Standards (Draft, Oct. 1990).

“The Board has broad discretion to grant a voluntary remand.” *In re Desert Rock Energy Company, LLC*, PSD Appeal Nos. 08-03, 08-04, 08-05 & 08-06, at 13 (EAB September 24, 2009). “A voluntary remand is generally available where the permitting authority . . . wishes to reconsider some element of the permit decision before reissuing the permit.” *Id.*, citing *In re Indeck-Elwood, LLC*, PSD Appeal No. 03-04, at 6 (EAB May 20, 2004)(Order Denying Respondent’s Motion for Voluntary Partial Remand and Petitioners’ Cross Motion for Complete Remand, and Staying the Board’s Decision on the Petition for Review.) The Board has exercised its discretion to grant motions for voluntary remand in a number of cases, in addition to the *Desert Rock* case cited above. See, e.g., *In re NE Hub Partners, L.P.*, 7 E.A.D. 561, 563 n.14 (EAB 1998); *In re GMC Delco Remy*, 7 E.A.D. 136, 138, 169, 170 (EAB 1997); *In re City of Hollywood*, 5 E.A.D. 157, 170, 176-77 (EAB 1994).

Granting this motion for voluntary remand would serve the interests of administrative and judicial efficiency. We would like to emphasize that we acknowledge the Board’s concerns about the delays that have occurred in this docket and, mindful of those concerns, seek remand because we believe it is the most expeditious path to finalize a PSD permit for MGP. Remand will allow IEPA to immediately begin reconsideration of the clean fuels cost-effectiveness analysis needed to determine BACT for the MPG facility. The Office of the Attorney General has discussed this motion with Petitioner’s counsel and is authorized to state that the Petitioner does not object.

For the foregoing reasons, the Illinois Attorney General respectfully requests that the Board grant this motion for voluntary remand of the Final PSD Permit issued to MGP and the associated administrative record to allow IEPA to reconsider several issues associated with the permit.

Respectfully Submitted,

LISA MADIGAN  
Attorney General of the State of Illinois

By: 

Matthew J. Dunn, Chief  
Environmental Enforcement Division

Susan Hedman  
Environment & Energy Counsel

Office of the Illinois Attorney General  
69 West Washington Street, 18<sup>th</sup> Floor  
Chicago, Illinois 60602

Dated: January 20, 2010

**CERTIFICATE OF SERVICE**

I, hereby certify that on the 20<sup>th</sup> of January, 2010, I did send, by express mail for next-day delivery, the following instrument, **MOTION FOR VOLUNTARY REMAND** to:

Eurika Durr, Clerk  
Environmental Appeals Board  
U.S. Environmental Appeals Board  
1341 G Street N.W. Suite 600  
Washington, D.C. 20005

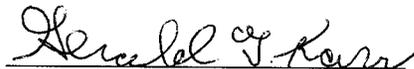
and a true and correct copy of the same foregoing instruments, by First Class Mail with postage thereon and fully paid and deposited into the possession of the United States Postal Service to:

Robert Kaplan, Regional Counsel  
Office of the Regional Counsel  
U.S. Environmental Protection Agency  
Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3507

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GERALD T. KARR