

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

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FILED
EPA REGION VIII
HEARING CLERK

In Re:) SDWA Appeal No. 13-01
))
Maralex Disposal, LLC))
))
Dkt. No. SDWA-8-2011-0079))

**MOTION TO ACCEPT NOTICE OF APPEAL AND APPELLANT'S
BRIEF FILED VIA EMAIL**

Appellant, Maralex Disposal, LLC ("Maralex"), by and through counsel, William E. Zimsky, hereby respectfully requests that the Board accept for filing as of August 15, 2013, its Notice of Appeal and its Appellant's Appeal Brief that were filed via email with the Clerk of the Board on August 15, 2013. In support whereof, the following is shown:

Maralex's notice of appeal and appeal brief were due on August 15, 2013. Undersigned counsel registered for electronic filing on the CDX system on August 2, 2013. On August 15, 2013, undersigned counsel logged onto the CDX system to file the Notice of Appeal and Appellant's Appeal Brief but was unable to file these documents electronically because the Board had switched to a new e-filing system. Counsel applied for a new password and user name on August 15, 2013, but the registration was not processed until today, August 16, 2013.

Counsel submitted the Notice of Appeal and Appellant's Brief to the Board by sending an email to Euika Durr, the Clerk of the Board, on August 15, 2013. A copy of that email is attached hereto as Exhibit 1. Counsel copied Amy Swanson, the Senior Enforcement Attorney for Region 8, who handled the enforcement action before the Presiding Judge who issued the Initial Decision from which Maralex is appealing, with a copy of the email and attachments, along with Tina Artemis, the Regional Hearing Clerk for Region 8. Counsel also mailed copies of the Notice of Appeal and Appellant's Brief to both Ms. Swanson and Ms. Artemis on August 15, 2013 via First Class U.S. Mail.

Maralex submits that good cause exists to accept the Notice of Appeal and Appellant's Appeal Brief that were filed with the Clerk of the Board on August 15, 2013 as being timely filed. First, the Notice of Appeal and Appellant's Appeal Brief were submitted to the Board and served on opposing counsel within the appeal period. Thus, there is no prejudice to the EPA if the Board grants this Motion. (Undersigned counsel emailed and telephoned Ms. Swanson this morning to determine whether her client will interpose an objection to this motion. The message on her voicemail indicates that she is on leave for the week, but will be checking her messages and emails. Counsel will advise the Board after he receives a response from Ms. Swanson regarding whether her client will interpose an objection to this motion.)

The appeal involves an enforcement action under the Safe Drinking Water Act centering on the legal issue of what constitutes failure to maintain the mechanical integrity of an underground injection well. It is submitted that resolution of this issue will be helpful to both the EPA enforcement efforts and operators of injection wells to ensure compliance with the SDWA and to protect underground sources of drinking water.

Maralex is filing the Notice of Appeal and Appellant's Appeal Brief with the EPA's new electronic filing system with this Motion.

WHEREFORE, premises submitted, Maralex respectfully requests that the Board issue an order accepting the Notice of Appeal and Appellant's Appeal Brief filed with the Clerk of the Board on August 15, 2013 as timely filed.

Dated: August 16, 2013

Respectfully submitted,



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Attorney for Appellant

CERTIFICATE OF SERVICE


I hereby certify that a true copy of this **MOTION TO ACCEPT NOTICE OF APPEAL AND APPELLANT'S BRIEF FILED VIA EMAIL** was sent on August 16, 2013, via First Class Mail, Postage Prepaid (and via email) to the following persons:

Amy Swanson
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By:



William E. Zimsky