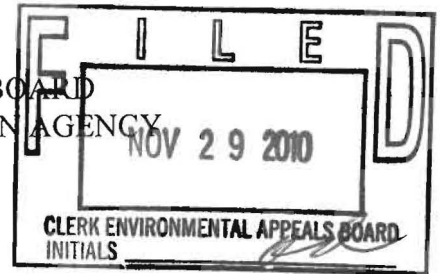


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



In re:)
)
)

Sunrise Powerlink)
)
_____)

PSD Appeal No. 10-14

ORDER DISMISSING APPEAL

On November 15, 2010, Cindy Buxton filed a request with the Environmental Appeals Board (“Board”) for “appeal and review” of the Sunrise Powerlink project. This project apparently involves a proposal by the San Diego Gas & Electric Company to construct a high-voltage power transmission line in the area of San Diego, California.¹ Ms. Buxton’s request raises various concerns that she has with the project and the process that it has undergone thus far. Ms. Buxton has not, however, identified any permitting decision, or other decision, made by the United States Environmental Protection Agency (“EPA”). Thus, as further explained below, the Board dismisses Ms. Buxton’s appeal because the Board has no authority to review the project.

The Environmental Appeals Board is the final decision maker for the EPA in administrative appeals under all major environmental statutes that the EPA administers. *See* 40 C.F.R. § 1.25(e)(1); *see also* 40 C.F.R. part 124. Generally, this means that the EAB has the

¹ The project is listed on the website of the California Public Utilities Commission (“PUC”) as under the jurisdiction of the PUC, the United States Department of Interior’s Bureau of Land Management (“BLM”), and the United States Forest Service (“USFS”). *See* California Public Utilities Commission website (describing the various aspects of the project and the agencies with “jurisdiction” over those aspects) available at <http://www.cpuc.ca.gov/info/aspen/sunrise/sunrise.htm>.

authority to review permitting decisions made by the EPA in accordance with regulations delegating this authority from the EPA Administrator. *See, e.g.*, 40 C.F.R. § 124.19. The Board's permitting docket includes appeals from EPA permits issued under various environmental statutes, such as Prevention of Significant Deterioration ("PSD") permits issued under the Clean Air Act, 42 U.S.C. § 7475, National Pollutant Discharge Elimination System ("NPDES") permits issued under the Clean Water Act, 33 U.S.C. § 1342, and Resource Conservation and Recovery Act ("RCRA") permits issued under 42 U.S.C. §§ 6901-6992k. *See generally* 124.19 (authorizing review of PSD, NPDES and RCRA permits, among others); *see also* EAB Docket available at http://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/EAB+Dockets?OpenPage. The Board does not have jurisdiction over appeals from permitting decisions that are issued by other federal agencies. *See In re Environmental Disposal Systems, Inc.*, 12 E.A.D. 254, 294 (EAB 2005) (explaining that the Board is "not at liberty to resolve every claim brought before [it] in a permit appeal but must restrict [its] review to conform to [its] regulatory mandate").

Procedural regulations governing appeals from permitting decisions over which the Board does have jurisdiction are found in Title 40 of the Code of Regulations (C.F.R.), part 124. Section 124.19 identifies the requirements for filing an appeal from an EPA-issued permit. The Board has interpreted these regulations to require, as a threshold matter, that in any appeal from a permit identified in part 124, the petitioner bears the burden of identifying the basis for appeal, as well as providing the basis for the Board's jurisdiction to review the permit. *See, e.g., In re Gateway Generating Station*, PSD Appeal No. 09-02 at 7 (EAB Sept. 15, 2009) (Order

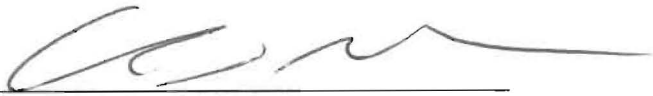
Dismissing Petition for Review). Additionally, it is the Board's obligation to ensure its own authority over the matter before it proceeds with review.

In this case, even construing Ms. Buxton's "request for appeal and review" liberally,² there is no EPA permit identifiable over which the Board may assert jurisdiction under part 124 or any other regulatory provision. Neither does Ms. Buxton cite to any applicable regulatory provision as the basis for seeking review. As stated above, the Board can only decide appeals over which it has been granted regulatory authority. Because Ms. Buxton has not shown that the Board has jurisdiction to review any of the concerns she raises in her appeal, the Board dismisses the appeal.³

So ordered.

Dated: 11/29/10

ENVIRONMENTAL APPEALS BOARD


Edward E. Reich
Environmental Appeals Judge

² The Board notes that Ms. Buxton has acknowledged that she is not an attorney and the Board generally attempts to construe pleadings submitted by non-attorneys liberally. *See In re Beckman Prod. Servs.*, 5 E.A.D. 10, 19 (EAB 1994) (explaining that "[t]he Board generally tries to construe petitions filed by persons unrepresented by counsel in a light most favorable to the petitioners").

³ This matter was decided by the following three-member panel of Environmental Appeals Board Judges: Edward E. Reich, Charles J. Sheehan, and Kathie A. Stein. *See* 40 C.F.R. § 1.25(e)(1).

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Order Dismissing Appeal in *In re Sunrise Powerlink*, PSD Appeal No. 10-14, was sent to the following person in the manner indicated:

By Certified Mail Return Receipt Requested:

Cindy Buxton
541 Spruce Street
Imperial Beach, CA 91932

Additionally, courtesy copies of the foregoing Order Dismissing Appeal in *In re Sunrise Powerlink*, PSD Appeal No. 10-14, were sent to the following persons in the manner indicated:

By First Class U.S. Mail,:

State of California Public Utilities
Commission
Billie Blanchard, CPUC Project Manager
505 Van Ness Avenue
San Fransisco, CA 94102

San Diego Gas & Electric
Sunrise Powerlink
8330 Century Park Ct., CP31D
San Diego, CA 92123

USDA Forest Service
Pacific Southwest Region (R5)
Regional Forester, Randy Moore
1323 Club Drive
Vallejo, CA 94592

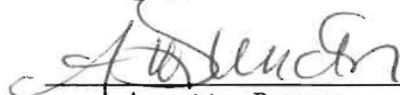
By Interoffice Mail:

U.S. EPA
OECA/Office of Civil Enforcement
Adam Kushner
Pam Mazakas
Ariel Rios Building
1200 Pennsylvania Ave. NW
Mail Code: 2241A
Washington, DC 20460

U.S. EPA
OECA/Office of Environmental Justice
Charles Lee
Heather Case
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U.S. EPA
OECA/Office of Federal Activities
Susan Bromm
Kimberley DePaul
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Washington, DC 20460

Date: NOV 29 2010



Annette Duncan
Secretary