

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

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| In the Matter of: |) | |
| |) | |
| Tondu Energy Company |) | PSD Appeal Nos. 00-6 & 00-8 |
| T.E.S. Filer City Station |) | |
| |) | |
| _____ |) | |

ORDER DENYING REVIEW

On August 11, 2000, the Michigan Department of Environmental Quality ("MDEQ") issued a Prevention of Significant Deterioration (PSD) permit ("Final Permit") allowing Tondu Energy Company to burn tire-derived fuel as an additional fuel source at its T.E.S. Filer City (MI) Station utility plant. The Board received petitions opposing the Final Permit on September 11, 2000, filed by Ronald C. Bauman (PSD Appeal No. 00-6) and September 28, 2000, filed by James Espvik (PSD Appeal No. 00-8).

On October 19, 2000, MDEQ filed a motion seeking summary dismissal of the two petitions for review ("Motion"). MDEQ argues that neither of the two petitioners satisfies the requirements for obtaining review of a final PSD permit under 40 C.F.R. § 124.19. We agree and grant MDEQ's motion, as explained below.

Under the applicable regulations governing appeals of PSD permits, a person may petition for review of a final PSD permit by either (1) submitting comments on a draft permit or

participating in public hearings on a draft permit or (2) failing this, by challenging the final permit "only to the extent of the changes from the draft to the final permit decision." 40 C.F.R. § 124.19(a). Meeting either of these two conditions invests a person with standing to challenge a final PSD permit. Also, a person who meets standing requirements must file his petition with the Board within thirty days of service of notice of the final PSD permit decision; otherwise his petition will be dismissed as untimely. *See id.*

As indicated by MDEQ, however, petitioners Bauman and Espvik failed to meet either standing or timeliness requirements for appealing a final PSD permit. In its Motion, MDEQ asserts that Petitioner Bauman did not participate in the July 5, 2000 public hearing or submit comments on the draft permit as shown by MDEQ's records.¹ MDEQ also notes that the only change from the draft permit to the Final Permit was a change in the effective date of the Final Permit, and that Mr. Bauman failed to address this issue in his petition for review. Moreover, MDEQ, while acknowledging that Petitioner Espvik satisfied standing

¹In a signed statement included in MDEQ's motion, Mary Ann Dolehanty, an MDEQ employee describing herself as the "custodian of the records involving the Tondu Energy Company (TES Filer City) public comment period," certifies that Petitioner Bauman neither submitted comments during the public comment period nor participated in the July 5, 2000 public hearing.

requirements for review of the Final Permit,² contends that MDEQ failed to timely petition for review of the Final Permit. MDEQ states that it served notice to Mr. Espvik of the Final Permit decision via a letter mailed to him on August 11, 2000, and correctly notes that Mr. Espvik filed his petition with the Board on September 28, 2000, which is well past the applicable thirty-day time limit for appealing the Final Permit.³ Neither petitioner has responded to MDEQ's contention that they have failed to satisfy regulatory requirements for challenging the Final Permit.

Finding that petitioners have failed to demonstrate that they have met requirements for challenging the Final Permit under 40 C.F.R. § 124.19, we grant MDEQ's Motion and deny review of both petitions.

²In her statement, Ms. Dolehanty indicates that Petitioner Espvik met standing requirements by submitting comments during the public comment period and participating in the July 5th public hearing.

³In a document filed with the Board subsequent to its Motion, MDEQ indicates that some copies of the notification letter may have been sent to public commenters and public hearing attendees on August 14, 2000, rather than August 11, 2000. See Letter from John Ford Leone, Assistant Attorney General, to Eurika Durr, Clerk of the Board (Oct. 27, 2000). Apparently, MDEQ does not know whether Mr. Espvik is one of those persons who received notification of the Final Permit decision on August 14. Nevertheless, even if Mr. Espvik had been served such notification on August 14, his petition for review would still be untimely.

So ordered.

ENVIRONMENTAL APPEALS BOARD

By: _____/s/_____
Edward E. Reich
Environmental Appeals Judge

Dated: 11/3/00

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Denying Review in the Matter of Tondu Energy Company, PSD Appeal Nos. 00-6 & 00-8, were sent to the following persons in the matter indicated:

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_____/s/
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Secretary