

**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. 00-3 & 00-4
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 August 29, 2000, filed by Walter Froncek (PSD Appeal No. 00-3) and August 22, 2000, filed by Elissa Miller (PSD Appeal No. 00-4).<sup>1</sup>

On September 25, 2000, the Michigan Department of Environmental Quality ("MDEQ") filed a motion seeking summary dismissal of the two petitions for review ("Motion for Summary

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<sup>1</sup>The Board also received petitions for review of the Final Permit on September 6, 2000, filed by T.T. (Tex) Collins (Appeal No. 00-5), on September 7, 2000, filed by Ronald C. Bauman (Appeal No. 00-6), on September 14, 2000, filed by Dana Schindler (Appeal No. 00-7), and on September 28, filed by James Espvik (Appeal No. 00-8). The Board has requested that the MDEQ file responses to these additional petitions, and will consider these petitions after receipt of the MDEQ's responses, which the Board now awaits. Thus the Board is considering these additional petitions for review separately from the two petitions for review (Appeal Nos. 00-3 & 00-4) that are the subject of today's Order.

Disposition"). MDEQ argues that neither of the two petitioners satisfies the requirements for obtaining review 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.

As indicated by MDEQ, however, neither petitioner meets either of these two criteria. In its motion, MDEQ asserts that neither petitioner participated in the July 5, 2000 public hearing nor submitted comments on the draft permit as shown by MDEQ's records.<sup>2</sup> Neither petitioner has challenged MDEQ's contention that they lack standing on these bases.<sup>3</sup> MDEQ also

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<sup>2</sup>In an "Interoffice Communication" filed with the Board on September 28, 2000, an MDEQ employee, describing herself as the "custodian of the records involving the Tondu Energy Company (TES Filer City) public comment period," certified that neither petitioner submitted comments during the public comment period nor participated in the July 5, 2000 public hearing. Interoffice Communication from Mary Ann Dolehanty, Air Quality Division, MDEQ, to Alan F. Hoffman, Assistant Attorney General, Natural Resources and Environmental Quality Division, MDEQ (Sept. 25, 2000).

<sup>3</sup>Petitioner Miller filed a response to MDEQ's motion dated September 23, 2000, in which she confirms that she was not at the

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 neither party addressed this issue in its petition for review.

Finding that petitioners have failed to demonstrate the requisite standing to challenge the Final Permit, we grant MDEQ's Motion for Summary Disposition and deny review of both petitions.

So ordered.

ENVIRONMENTAL APPEALS BOARD

By: \_\_\_\_\_/s/\_\_\_\_\_  
Edward E. Reich  
Environmental Appeals Judge

Dated: 10/10/00

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hearing, explaining that she was with her father, who was about to undergo surgery. She does not address the failure to file written comments, which would have provided an alternative basis for standing to appeal. Petitioner Froncek did not file a response to MDEQ's Motion.

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing Order Denying Review in the Matter of Tondu Energy Company, PSD Appeal Nos. 00-3 & 00-4, were sent to the following persons in the matter indicated:

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\_\_\_\_\_/s/  
Annette Duncan  
Secretary

