

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

_____)
In re:)
)
Port Townsend Paper Corp.) PSD Appeal Nos. 97-13, 97-14
)
Permit No. PSD 96-01)
)
_____)

ORDER DISMISSING APPEALS

On September 22, 1997, the Board received two petitions asking that the Environmental Appeals Board review a PSD permit approved jointly by the State of Washington's Department of Ecology ("WDOE") and U.S. EPA Region X. One was filed by the permittee, Port Townsend Paper Company ("Townsend") (PSD Appeal No. 97-13), and the other was filed by Rebound (PSD Appeal No. 97-14), a group of citizens living and working in the vicinity of the permitted facility.

On December 8, 1997, Townsend filed a motion seeking dismissal of Rebound's petition for review on the ground that the petition was not timely filed. In addition, Townsend states that it is withdrawing its own petition for the same reason. See Port Townsend Paper Corporation's Withdrawal of PSD Appeal No. 97-13 and Motion to Dismiss PSD Appeal No. 97-14 for Failing to Comply with 40 CFR § 124.19 ("Withdrawal") and Port Townsend Paper Corporation's Memorandum Re Withdrawal of PSD Appeal No. 97-13

and in Support of Motion to Dismiss PSD Appeal No. 97-14 for Failing to Comply with 40 CFR § 124.19 ("Memorandum"). In particular, the memorandum states that the above-referenced PSD permit was issued on June 18, 1997, and served on June 23, 1997, and that neither Townsend's nor Rebound's petition for review was filed within the 30-day time period required by 40 C.F.R. § 124.19. Memorandum at 3. In addition, Townsend contends that because Rebound did not file comments on the draft PSD permit issued by WDOE, Rebound lacks standing to appeal pursuant to 40 C.F.R. § 124.19(a). Memorandum at 9.¹

After reviewing the record on appeal, we agree with Townsend that Rebound's failure to comment on the draft permit requires dismissal of Rebound's appeal. As the Board has previously stated, under the regulations governing permit appeals before the Board:²

[A] petitioner has "standing" to pursue an appeal of the conditions of a final permit that are identical to the conditions of the draft permit only if the petitioner filed timely comments on the draft permit or participated in the public hearing on the draft permit.

* * * A petitioner who failed to file comments on a draft permit or participate in the public hearing will only have standing to pursue an appeal to the extent that the conditions in the draft permit are changed in the final permit. * * * This requirement is imposed in order to "ensure that the Region has an opportunity to address potential problems with the draft permit before

¹Rebound has not filed a reply to Townsend's Withdrawal or its Memorandum.

²See 40 C.F.R. § 124.19(a).

the permit becomes final."

In re Commonwealth Chesapeake Corp., PSD Appeal Nos. 96-2 through 96-5, slip op. at 9 (EAB, Feb. 19, 1997), 6 E.A.D. ____ (quoting *In re Envotech, L.P.*, UIC Appeal No. 95-2 through 95-37, slip op. at 6, Feb. 15, 1996), 6 E.A.D. ____).

Rebound's petition does not claim or demonstrate that it filed comments on the draft permit or otherwise participated during the public comment period,³ nor does the petition purport to relate to changes from the draft to the final permit. Based on the record before the Board, it does not appear that Rebound has fulfilled the regulatory prerequisites to having standing to petition for review from WDOE's and Region X's permit decision. Accordingly, Rebound's petition must be dismissed for lack of standing.

Finally, based on Townsend's statement that it is

³Our review of the record before us verifies that Rebound did not participate in the proceedings below. See letter accompanying final permit to Marion L. Rideout, Port Townsend Paper Corp., from Richard B. Hibbard, WDOE (June 23, 1997) (stating that Port Townsend was the only non-WDOE commenter).

withdrawing its petition as untimely, Townsend's petition is hereby dismissed with prejudice.⁴

ENVIRONMENTAL APPEALS BOARD

Dated: 1/13/98

By: _____/s/_____
Ronald L. McCallum
Environmental Appeals Judge

⁴In dismissing Townsend's petition, we are relying solely on Townsend's statement that it is withdrawing its appeal. We do not reach, and express no opinion on, the merits of Townsend's assertion that both its and Rebound's petition were untimely.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Dismissing Appeals in the matter of Port Townsend Paper Corp., PSD Appeal Nos. 97-13 and 97-14 were sent to the following persons in the manner indicated:

First Class Mail,
Postage Prepaid:

Matthew Cohen
Heller, Ehrman, White,
& McAuliffe
610 Columbia Center
701 Fifth Ave.
Seattle, WA 98104-7098

Otto Herman
Rebound
2700 First Ave., Suite 103
Seattle, WA 98121

Mary Sue Wilson
Kurt B. Peterson
Assistant Attorneys General
State of Washington
Ecology Division
P.O. Box 40117
Olympia, WA 98504-0177

Chuck Clarke
Regional Administrator
U.S. EPA, Region X
1200 Sixth Ave.
Seattle, WA 98101

Anita Frankel, Director
Office of Air Quality
U.S. EPA, Region X
1200 Sixth Ave.
Seattle, WA 98101

Dated: 1/13/98

_____/s/
Mildred T. Johnson
Staff Assistant