



Appeals Board received a petition seeking review of the permit. The Board denied review in part and remanded the permit for further consideration in part. See *In re Campo Landfill Project*, 6 E.A.D. 505 (EAB 1996).<sup>3</sup>

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<sup>3</sup> The Region states that the permit became final after completion of proceedings on remand. See Response to the Petition for Review of Region 9's Extension of a New Source Review/Prevention of Significant Deterioration Permit for the Campo Solid Waste Landfill Project at 2.

As the Board explained in *In re Campo Landfill Project*, 6 E.A.D. 505, 507 n.4 (EAB 1996):

Although most NSR permits are issued by states in accordance with State Implementation Plans (SIPs) approved by EPA pursuant to the Clean Air Act, the State of California does not have jurisdiction over tribal lands, and EPA has not yet finalized regulations governing the approval of [Tribal Implementation Plans] which would allow a tribe to assume the role of a State in issuing NSR permits. Therefore, Region IX issued this permit. Pursuant to 40 C.F.R. § 124.19, permit conditions based on the federal PSD regulations are reviewable by the Board, but the regulations do not expressly confer upon the Board the authority to review [non attainment area ("NAA")] permit conditions. The regulations do, however, provide that cases not expressly delegated to the Board by regulation can be assigned to the Board by special delegation from the Administrator. See 40 C.F.R. § 1.25(e)(2). Because the Region determined that the NAA Permit conditions were an appropriate subject for such a delegation, it advised commenters that any administrative appeal of the permit should be directed to the Board, with the understanding that the Board would request a delegation of authority to decide such an appeal. Upon receipt of this appeal, the Board requested a special delegation of authority from the Administrator to serve as the Agency's final decision maker with respect to the issues raised in the petition.

By special delegation approved on December 11, 1995, the Administrator authorized the Environmental Appeals Board:

On April 30, 1999, Mid-American, with the Region's consent, transferred the permit to Muht-Hei, Inc. ("MHI"). See Response to the Petition for Review of Region 9's Extension of a New Source Review/Prevention of Significant Deterioration Permit for the Campo Solid Waste Landfill Project ("Region's Response") at 2. Thereafter, in May of 1999, the Region granted MHI's request for an 18-month extension of the permit.<sup>4</sup>

On November 30, 2000, MHI requested an additional 18-month extension. See Letter from Taylor O. Miller, Counsel for MHI, to Gerrardo Rios, Chief, Permits Office, Air Division, Region IX

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To serve as the final decision maker in any appeals arising from the issuance to Mid-American Waste Systems, Inc., pursuant to the provisions of Clean Air Act title I, parts C and D, of a permit (dated as of August 15, 1995) approving the proposed construction of a solid waste landfill on the Tribal Landfill on the tribal lands of the Campo Band of Mission Indians.

Although this delegation was approved in response to the petition for review filed in 1995, it is broad enough to cover the present petition as well, which concerns an extension of the 1995 permit, since this proceeding is part of the construction approval process.

<sup>4</sup> Under the PSD regulations, once a final permit is issued, the permittee must begin construction within 18 months of receiving approval to construct and must complete construction within a reasonable time. See 40 C.F.R. § 52.21(r)(2). The regulations allow this 18-month time period to be extended if justified. *Id.* If the permittee does not commence construction within the 18-month time period or within the time period allowed by an extension, the permit becomes invalid. *Id.*

(Nov. 30, 2000) (Exhibit ("Ex.") 2 to Region's Response).<sup>5</sup> On April 2, 2002, the Region proposed to grant the extension and sought public comment. Mrs. Rimoldi, as well as other interested parties, submitted comments during the comment period. The Region approved the extension request on August 26, 2002, and responded to public comments. See Letter from Region IX to Brian Connolly, President of MHT (August 26, 2002) (Ex. 4 to Region's Response); U.S. EPA Response to Public Comments, Extension of Authority to Construct Permit, Campo Landfill Project ("Response to Comments") (Ex. 4 to Region's Response). The petition for review from Mrs. Rimoldi followed.

## II. DISCUSSION

### A. Scope of Board Review

The Board's review of permit decisions, such as the one at issue in this case, is discretionary. See 40 C.F.R. § 124.19. Under the governing regulations, a permit decision will ordinarily not be reviewed unless the decision is based on either a clearly erroneous finding of fact or conclusion of law, or

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<sup>5</sup> MHI also submitted data based on which the Region determined that the 1996 best available control technology determination and modeling analysis remain correct. See Application for Extension of Expiration Date, Ex. 2 to Region's Response; Letter from Region IX to Brian Connolly, President of MHT (August 26, 2002) (Ex. 4 to Region's Response); U.S. EPA Response to Public Comments, Extension of Authority to Construct Permit, Campo Landfill Project (Ex. 4 to Region's Response).

involves an important matter of policy or exercise of discretion that warrants review. 40 C.F.R. § 124.19(a); *In re RockGen Energy Ctr.*, 8 E.A.D. 536, 540 (EAB 1999); *In re Knauf Fiber Glass, GmbH*, 8 E.A.D. 121, 126-27 (EAB 1999). In applying this regulation-based standard of review, the Board is guided by language in the preamble to section 124.19 that states the "power of review should be only sparingly exercised," and "most permit conditions should be finally determined at the Regional [State] level." 45 Fed. Reg. 33,290, 33,412 (May 19, 1980). The petitioner bears the burden of demonstrating that review is warranted. See *In re Sierra Pacific Industries*, PSD Appeal No. 02-13, slip op. at 11 (EAB, Jan. 7, 2003), 10 E.A.D. \_\_\_\_; *In re Three Mountain Power, LLC*, PSD Appeal No. 01-05, slip op. At 10 (EAB, May 30, 2001), 10 E.A.D. \_\_\_\_.

Further, in complying with the above requirements, a petitioner must include specific information supporting its allegations. *In re Zion Energy, L.L.C.*, PSD Appeal No. 01-01, slip op. at 7 (EAB, March 27, 2001), 9 E.A.D. \_\_\_\_; *In re Sutter Power Plant*, 8 E.A.D. 680, 687 (EAB 1999). As the Board has previously stated, it is not enough simply to repeat objections made during the comment period. Rather, in addition to stating its objections to the permit, a petitioner must explain why the permit issuing entity's response to those objections is clearly

erroneous or otherwise warrants review. *Knauf Fiber Glass*, 8 E.A.D. at 127 ("One way that the Board implements the standard of review in 40 C.F.R. § 124.19 is to require petitioners to state their objections to a permit and to explain why the permitting authority's response to those objections (for example, in a response to comments document) is clearly erroneous or otherwise warrants review."); *In re Hawaii Elec. Light Co.*, 8 E.A.D. 66, 71-72 (EAB 1998); *In re Kawaihae Cogeneration Project*, 7 E.A.D. 107, 114 (EAB 1997. Failure to do so, will result in a denial of review. See, e.g., *Zion Energy*, slip op. at 8.

#### **B. Petition**

In her two-page petition, Mrs. Rimoldi expresses several generalized concerns related to the proposed facility. These include: (1) the facility will compromise public health; (2) air quality will be altered from a source of PM<sub>10</sub> emissions; (3) high wind conditions will disperse dust and dirt; and (4) the facility will result in ground water pollution.

Upon review of the record before us, we conclude that Mrs. Rimoldi has failed to satisfy the requirements for obtaining review under 40 C.F.R. § 124.19. In particular, the Petition merely reiterates comments submitted by either Mrs. Rimoldi or

others during the comment period without indicating why the Region's responses to these comments were erroneous.

In particular, in response to comments regarding the effects of increased air pollution on public health, the Region stated:

Under the authority of the Clean Air Act (CAA) EPA has established National Ambient Air Quality Standards (NAAQS) to protect the public health and welfare. The purpose of the new source review (NSR) permitting program is to ensure that air emissions from stationary sources do not cause or contribute to a violation of the NAAQS. Thus EPA has determined that a source which is constructed in compliance with the NSR permitting program will not adversely affect people, animals, or wildlife, nor create unmanageable air pollution. The proposed Campo landfill is subject to and will be in compliance with the NSR permitting provisions found in Parts C and D of Title I of the [CAA].

After considering the comments received during the comment period, EPA is finalizing the extension of the NSR permit for [MHI] because public comment has not shown that the project fails to meet all the NSR and PSD requirements of the CAA. Although there will be some air emissions from the landfill project, EPA reaffirms its determination from the 1996 permit that these emissions will be manageably controlled and will not adversely affect the public health and welfare, because they will not cause or contribute to a violation of the NAAQS. Therefore, EPA disagrees with the commenter's allegations that the air quality cannot be reasonably controlled at this site.

Response to Comments at ¶ A1. Responding to concerns regarding high winds in the area dispersing pollutants, including PM<sub>10</sub> emissions, onto ranches in the area, the Region stated, in part:

This area does experience periods of high wind conditions which could cause suspended particulate and

other pollutants to be carried farther from the landfill site than on a typical day. However, these winds will also cause any emissions to dissipate more quickly, which will decrease concentrations of these pollutants. As a result, EPA believes it is unlikely that high wind conditions will produce concentrations of any pollutants higher than the NAAQS.

Some fugitive dust emissions will result from the construction and operation of the landfill. "Fugitive emissions" are defined in the PSD regulations as "emissions which could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening." (40 C.F.R. § 52.21(b)(20)). Before issuing the 1996 NSR permit, EPA required the applicant to quantify the fugitive PM<sub>10</sub> emissions from this project. The applicant determined that fugitive PM<sub>10</sub> emissions would exceed the significant threshold of 15 tons per year (tpy). Accordingly, EPA applied the PSD requirements, including the use of [best available control technology], to PM<sub>10</sub> emissions, including fugitive emissions. For example, this permit includes: emission limits for the flares, the requirement to pave all permanent roads at the site, and the use of water and/or dust suppressant to minimize emissions from unpaved roads. Thus, the proposed landfill will be a source of some PM<sub>10</sub> emissions, but these emissions will be minimized by the controls and operating conditions contained in the NSR permit.

*Id.* ¶ A2. Finally, in response to concerns regarding the possibility of groundwater pollution, the Region stated, in part:

EPA is issuing this NSR permit because the applicant has met all of the technical and procedural requirements established in the [CAA]. EPA considers concerns not related to the control of air pollutants as part of our overall cost-benefit evaluation of the project under CAA § 173(a)(5) performed in 1996. Based on this evaluation, EPA concluded that the benefits of the project will significantly outweigh the social and environmental costs of the project. Because no changes have been made to the design of the landfill since 1996, EPA has concluded that a new cost benefit evaluation of the project under CAA § 172(a)(5) is not necessary. EPA's NSR permits represents a stand alone component of an overall environmental approval process,



and should be evaluated only on its own merits, as prescribed by the [CAA]. Thus, for example, while EPA's Air Division was fully cognizant of the Campo/Cottonwood Creek's designation as a sole source aquifer, such a designation did not justify the denial of the [MHI] air quality permit application. Issues of groundwater contamination will instead be addressed through the Resource Conservation and Recovery Act (RCRA) program approval process.

*Id.* ¶ B1.

As indicated above, the Board has repeatedly stated that in implementing the standard of review in 40 C.F.R. § 124.19, the Board requires, among other things, that a petition explain why a permit issuer's response to comments is clearly erroneous or otherwise warrants review. Because nothing in Mrs. Rimoldi's petition indicates why the Region's responses to her concerns are erroneous or otherwise warrant review, the petition for review is denied on these issues.

The Petition also expresses generalized, speculative concerns regarding who will monitor the emissions from the facility, and suggests that the Permit's limitations will be disregarded. However, as the Board has previously stated, speculative concerns regarding the general enforcement of a validly issued permit are outside the scope of the Board's review authority. See *In re EcoElectrica, L.P.*, 7 E.A.D. 56, 70 (EAB 1997) (Board's role is to examine specific permit conditions

claimed to be erroneous, "not to address generalized concerns directed toward the enforcement capabilities of this or any other agency");<sup>6</sup> *Genesee Power Station*, 4 E.A.D. 832, 865 (EAB, 1993) (the Board will not address a State's enforcement ability in the context of a PSD permit appeal); *In re Brine Disposal Well*, 4 E.A.D. 736, 746 (EAB 1993) (the Board has no oversight responsibility for the implementation of a validly issued permit).<sup>7</sup>

Finally, Mrs. Rimoldi expresses several other general concerns, none of which indicate why the Region's decision to grant the 18-month extension was erroneous. For example, Ms. Rimoldi asks whether surrounding residents are being told that their homes and health "are of no importance." Further, Ms. Rimoldi suggests that avoiding pollution is more efficient than closing the facility at a later date. Because, Mrs. Rimoldi's

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<sup>6</sup> As we noted in *EcoElectrica*:

"The Board has the authority to examine specific provisions of a permit that might tend to make subsequent enforcement of the permit more or less effective," *In re Federated Oil & Gas*, 6 E.A.D. 722, 730 (EAB 1997), but no such provisions have been challenged in this case.

<sup>7</sup> E.A.D. at 71. Likewise, no such permit conditions have been challenged here.

<sup>7</sup> That is not to say that we have any reason to believe that the Region will not enforce the permit as issued.

concerns in this regard do not contain the degree of specificity necessary to support Board review, review is denied. See *Zion, slip op.* at 13 n.7; *In re Puerto Rico Elec. Power Auth.*, 6 E.A.D. 253, 255 (EAB 1995) (absent sufficient specificity as to why the permit issuer's decision was erroneous, the Board has no basis on which to grant review).

### III. CONCLUSION

For the foregoing reasons, Mrs. Rimoldi's petition is hereby dismissed.<sup>8</sup>

So ordered.<sup>9</sup>

Dated: Jan. 14, 2003

ENVIRONMENTAL APPEALS BOARD

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/s/  
Edward E. Reich  
Environmental Appeals Judge

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<sup>8</sup> Although the Board endeavors to construe petitions broadly, particularly when filed by persons unrepresented by legal counsel, a litigant who elects to appear *pro se* is nevertheless responsible for complying with the procedural rules. See *Knauf*, 8 E.A.D. at 127; *In re Rybond, Inc.*, 6 E.A.D. 614, 627 (EAB 1996).

<sup>9</sup> The three-member panel deciding this matter is comprised of Environmental Appeals Judges Scott C. Fulton, Edward E. Reich, and Kathie A. Stein. See 40 C.F.R. § 1.25(e)(1) (2001).

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Dismissing Petition for Review in the Matter of Campo Landfill Project, NSR Appeal No. 02-01, were sent to the following persons in the manner indicated:

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Dated: Jan. 14, 2003

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/s/  
Annette Duncan  
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