

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

)	
In re:)	
)	
Pro-Tec Coating Company)	PSD Appeal No. 98-25
)	
)	

ORDER DISMISSING APPEAL

By motion dated September 28, 1998, petitioner the Sierra Club seeks to withdraw the petition for review in the above-entitled matter pursuant to a settlement agreement executed by it and by the permittee, Pro-Tec Coating Company. In its motion, the Sierra Club specifically requests that the petition for review be dismissed "without prejudice to the Sierra Club's right to re-file its Petition for Review, in the event that Pro-Tec fails to meet the terms of the [settlement] agreement." In that agreement (a copy of which the Sierra Club has submitted to the Board), Pro-Tec undertakes to apply to the Ohio Environmental Protection Agency for modification of certain specified permit provisions within five days of the date of execution of the agreement. Settlement Agreement ¶ 2. Pro-Tec also undertakes to operate the permitted facility "only in accordance with" the modified permit provisions that Pro-Tec has agreed to request from the Ohio Environmental Protection Agency. *Id.* ¶ 3.

Petitioner's motion to withdraw the petition for review is granted, and the appeal is hereby dismissed. The dismissal is without prejudice to the Sierra Club's ability to reinstate its appeal on or before October 15, 1998, in the event of Pro-Tec's failure to comply with its obligations under paragraph 2 of the Settlement Agreement.¹ The dismissal is otherwise with prejudice.

So ordered.

ENVIRONMENTAL APPEALS BOARD

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

Dated: 9/30/98

¹In contrast, it appears that any noncompliance by Pro-Tec with its obligations under paragraph 3 of the Settlement Agreement -- in which Pro-Tec "agrees to operate the * * * sources only in accordance with the terms of the modifications proposed in Attachment A and the remaining terms of the [permit] that will not be affected by the proposed modifications" -- would give rise only to enforcement and/or contractual issues that would not be reviewable by the Environmental Appeals Board pursuant to 40 C.F.R. § 124.19. Accordingly, nothing in this order shall be construed to suggest that the Sierra Club may reinstate its appeal based on alleged noncompliance by Pro-Tec with its obligations under paragraph 3 of the Settlement Agreement.

CERTIFICATE OF SERVICE

I hereby certify that, on the date indicated below, copies of the foregoing Order Dismissing Appeal in the matter of Pro-Tec Coating Company, PSD Appeal No. 98-25, were sent to the following persons in the manner indicated:

By Facsimile and
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/s/

Annette Duncan
Secretary

Dated: 9/30/98