

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

_____)
In the Matter of:)
)
Knauf Fiber Glass, GmbH) PSD Appeal Nos.
) 99-8 through 99-72
PSD Permit No. 97-PO-06)
_____)

ORDER DISMISSING CERTAIN APPEALS
ON TIMELINESS AND STANDING

On August 17, 1999, the Shasta County, California, Air Quality Management District ("AQMD") issued a revised permit decision to Knauf Fiber Glass, GmbH ("Knauf") under the federal Clean Air Act prevention of significant deterioration ("PSD") permit program. The revised permit decision was prepared in response to the Environmental Appeals Board's remand order on the original PSD permit for the proposed Knauf fiberglass manufacturing facility as issued by the AQMD. *In re Knauf Fiber Glass, GmbH*, PSD Appeal Nos. 98-3 through 98-20 (EAB, Feb. 4, 1999), 8 E.A.D. ____ (Order Denying Review in Part and Remanding in Part).

Pursuant to the remand order, any party who participated in the remand process was permitted to file a petition for review of the AQMD's revised permit decision. The Environmental Appeals Board received 65 petitions for review. The petitions were filed with the Board between September 3, 1999 and September 30, 1999. The AQMD was asked provide responses to the petitions for review by November 9,

1999. In its responses, AQMD challenged several petitions on the threshold regulatory requirements of timeliness and standing. By order of the Board, all petitioners were provided an opportunity to file a reply to AQMD's responses. Notice to All Petitioners and Order Granting Motions for Leave to File Reply Briefs (EAB, Nov. 16, 1999). Replies were received from some, but not all, of the petitioners whose petitions were challenged on timeliness or standing grounds.

We have reviewed AQMD's responses, petitioners' replies, and other materials in the record in order to determine whether these threshold regulatory requirements were satisfied by petitioners seeking review of AQMD's revised permit decision.¹ We find that 7 petitions for review were not timely filed, 2 supplements to petitions for review were not timely filed, 18 unnumbered form letter petitions for review were not timely filed, and 22 petitions for review have not satisfied the requirements for standing.

¹In addition to timeliness and standing, the Board has also held that petitions for review must meet a minimum standard of specificity as a threshold requirement under the Part 124 regulations. *In re Envotech, L.P.*, 6 E.A.D. 260, 267 (EAB 1996) (dismissing petitions for review based on lack of specificity). This order addresses only the threshold issues of standing and timeliness. AQMD has also challenged several petitions on the grounds of lack of specificity. The Board will address this issue either in its final decision or by separate order.

Timeliness

Under the regulations governing permit appeals, a petition for review of a permit decision must be filed with the Environmental Appeals Board within 30 days of service of notice of the final permit decision by the permit issuing authority. 40 C.F.R. § 124.19(a). When the final permit decision is served by mail, a petitioner has three additional days in which to file a petition for review. 40 C.F.R. § 124.20(d). In this case, the AQMD issued its final revised permit decision on August 17, 1999, and served the decision on August 18, 1999. Thus, the deadline for filing a petition for review with the Board was September 20, 1999, 30 + 3 days later.

Documents such as petitions for review are considered filed on the date they are *received* by the Board. *Outboard Marine Corp.*, 6 E.A.D. 194, 196 (EAB 1995); *In re Williams Pipe Line Co.*, CAA Appeal No. 97-3 at 3 (EAB, Feb 28, 1997) (Order Denying Motion for Reconsideration). Placing a document in the mail does not constitute filing. *In re Central Wayne Energy Recovery Limited Partnership*, PSD Appeal No. 98-1 (EAB, Feb. 28, 1998) (Order Dismissing Appeal). A failure to ensure that a petition for review is received by the Board, and therefore filed, by the filing deadline will generally lead to a dismissal of the petition for review on timeliness grounds. See *In re Envotech, L.P.*, 6 E.A.D. 260, 266 (EAB 1996) (permit appeals received after the filing deadline were dismissed as

untimely); *In re Central Wayne Energy Recovery Limited Partnership* at 5 (permit appeal that was mailed prior to the filing deadline but received after the deadline was dismissed as untimely).

The following petitions for review in this matter were received by the Board after September 20, 1999, and must be dismissed as untimely:

Petition No. 99-25 (Radley Davis)

Petition No. 99-26 (Judy Sills)

Petition No. 99-27 (James Sills)

Petition No. 99-28 (April Frank)

Petition No. 99-31 (Dwight Bailey)

Petition No. 99-56 (Carolyn Singelmann)

Petition No. 99-70 (Laurie O'Connell and Ed Barger).

The Board also received late-filed supplements to Petition No. 99-17 (Arnold Erickson) and Petition No. 99-38 (Heidi Silva). While the original petitions for review from these two petitioners were timely filed, their supplemental letters were received after September 20, 1999, and will not be considered.

In addition to the above mentioned petition numbers, the AQMD challenged the timeliness of Petition No. 99-68 (Hans Ortlieb) and Petition No. 99-70 (Joy Newcom). The Board's records show that Petition No. 99-70 was received on September 20, 1999, and was therefore timely filed. Petition No. 99-68 was received on

September 27, 1999, beyond the filing deadline, but the petitioner supplied materials in reply to AQMD's timeliness challenge showing that he sent his petition for review to the Board via Federal Express on September 17, 1999. Normally, the person sending a document to the Board must assume the consequences of a late delivery. See *Williams Pipe Line Co.*, CAA Appeal No. 97-3 at 3 (EAB, Feb. 27, 1997) (Order Dismissing Appeal) (appeal filed by U.S. EPA Region VII dismissed due to late delivery). However, in this case, AQMD provided petitioners with incomplete information regarding where petitions for review should be sent. In its notice of the final revised permit decision, AQMD directed potential petitioners to send petitions for review to EPA's 401 M Street, S.W. address. This address is correct for documents being sent through the U.S. Postal Service, but it is not the proper address for documents being sent via commercial delivery services such as Federal Express. Consequently, receipt of Mr. Ortlieb's petition for review was delayed. In light of these circumstances, and because we received a timely reply explaining the particulars of this situation, we will treat Petition No. 99-68 as timely.

Finally, the Board also received a series of form-letter "petitions for review" on November 29 and 30, 1999. Because these petitions were filed so far past the filing deadline, the Board did not assign individual petition numbers to the form letters, nor did

it request the AQMD to prepare responses to the letters. The Board hereby dismisses the following form-letter petitions received from:²

Angie Adams, Redding, California

Monte Adams, Redding, California

LaDora L. Burnett, Redding, California

Dara Caraway, Shasta, California

Justin Caraway, Shasta, California

Vicki C. Caraway, Shasta, California

William Roy Caraway, Shasta, California

Doreen Hastings, Redding, California

Earl Hastings, Redding, California

Dave T. Jones, Redding, California

Ryan Keeran, Palo Cedro, California

Gracious A. Palmer, Shasta Lake City, California

Breezy Romero, Redding, California

Gilbert Romero, Redding, California

Kathy Romero, Redding, California

Marlene Romero, Redding, California

Jim Sills, Redding, California

Judy Sills, Redding, California

²Several of the late-filed form-letter petitions were received from petitioners who had previously filed petitions for review and received an assigned petition number. The dismissal on timeliness grounds applies only to the unnumbered petitions for review that were received in late November 1999.

Standing

As we explained in our decision on the previous permit appeals in this matter, "[t]he regulations that govern appeals of permit decisions require that petitioners have standing to appeal. In order to achieve standing to appeal, a petitioner must have participated in the public review process either by filing written comments or participating in a public hearing. 40 C.F.R. § 124.19(a). If a petitioner did not participate in the public review process, he or she may only appeal issues pertaining to changes from the draft to the final permit. *Id.*" *In re Knauf Fiber Glass, GmbH*, PSD Appeal Nos. 98-3 through 98-20, slip op. at 68 (EAB, Feb. 4, 1999), 8 E.A.D. ---.

AQMD challenged the standing of 24 petitioners. Our review of the administrative record materials indicates that the following 22 petitioners did not submit written comments or provide oral comments at the public hearing. Furthermore, the petitions for review filed by this group of petitioners do not address changes from the draft permit to the final revised permit. Therefore, these petitions must be dismissed for a lack of standing:

Petition No. 99-12 (Debra Kaut et al.)

Petition No. 99-39 (Suzanne Auteni-Tony)

Petition No. 99-40 (Rhonda Posey)

Petition No. 99-41 (Gloria A. Zeller)

Petition No. 99-42 (Jim Price)

Petition No. 99-43 (Judy B. Hansen)

Petition No. 99-44 (Barbara Condon)

Petition No. 99-45 (Elizabeth A. Ballou)

Petition No. 99-46 (Joseph and Lillian Hernandez)

Petition No. 99-47 (Bonnie Rule)

Petition No. 99-48 (Cindy Christie)

Petition No. 99-49 (Aracelia Briggs)

Petition No. 99-50 (Rebecca Christie)

Petition No. 99-51 (Becky Wilson)

Petition No. 99-52 (Ron Pearsall)

Petition No. 99-55 (James Melby)

Petition No. 99-60 (Bryan H. Jones)

Petition No. 99-61 (Orville and Juanita Vanderzanden)

Petition No. 99-62 (Doreen A. Melby)

Petition No. 99-64 (Jeffrey Brian Lewellyn)

Petition No. 99-65 (Barbara Jo Garner)

Petition No. 99-67 (Justin Jones)

Petitioner Debra Kaut concedes in her petition for review (99-12) that she has no standing. Petition Nos. 99-39 through 99-52 are more form-letter petitions; none of the petitioners filed a reply contesting the standing issue. With the exception of Justin Jones, none of the remaining petitioners listed above contested AQMD's

standing challenge. Mr. Jones's reply to the standing challenge states that "attendance to the 'Public Comment Period' was not mandatory." Reply No. 99-67. To the contrary, as explained above, participation in the public comment phase of the permit process, either by submitting written comments or providing oral comment at the public hearing is mandatory if a person desires to file a petition for review of the final permit decision. As Mr. Jones's petition did not address changes between the draft and final permits, his failure to participate in the public comment period means that his petition for review must be dismissed on standing grounds.

The AQMD also challenged the standing for Petition No. 99-19 (Earl Hastings) and Petition No. 99-24 (Stuart M. Oliver and Jonathan McInteer). Although these petitioners did not contest AQMD's challenge to their standing, we found references to comments filed by all three petitioners in the AQMD's Response to Comments document (Earl Hastings, p. 76; Stuart Oliver, p. 37; Jonathan McInteer p. 16). Therefore, these petitioners have satisfied the requirements for standing, and their petitions for review are not dismissed.

Conclusion

As detailed above, the following petitions for review are hereby dismissed and will not be specifically addressed in the Board's final decision on the merits of this appeal. Petition

Nos. 99-12, 99-17 (supplemental letter only), 99-25 through 99-28, 99-31, 99-38 (supplemental letter only), 99-39 through 99-52, 99-55, 99-56, 99-60 through 99-62, 99-64, 99-65, 99-67, 99-70 and the 18 unnumbered form-letter petitions received by the Board on November 29 and 30, 1999. The names of petitioners affected by today's order will be retained on a distribution list and will receive a copy of the Board's final decision.

So ordered.

ENVIRONMENTAL APPEALS BOARD

By: _____ /s/ _____

Ronald L. McCallum

Environmental Appeals Judge

Dated: 1/3/2000

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order On Motions for Reconsideration in the Matter of Knauf Fiber Glass, GmbH, PSD Appeal Nos. 98-3 through 98-20, were sent to the following persons in the manner indicated:

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