

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



_____))
In re:))
Florence Copper, Inc.) UIC Appeal No. 17-04
UIC Permit No. R9UIC-AZ-FY11-1))
_____))

ORDER DISMISSING PETITION FOR REVIEW AS UNTIMELY

Before the Environmental Appeals Board is a petition for review filed by Ms. Karen J. Wall on February 7, 2017, requesting review of certain conditions of a Class III Underground Injection Control (“UIC”) permit by U.S. EPA Region 9 (“Region”). The permit authorizes Florence Copper, Inc. (“FCI”) to construct and operate an in-situ copper recovery facility known as the Production Test Facility on FCI property near the town of Florence, Arizona. For the following reasons the petition is dismissed as untimely.

Section 124.19 of title 40 of the Code of Federal Regulations governs Board review of a UIC permit. When considering any petition filed under 40 C.F.R. § 124.19(a), the Board first evaluates whether the petitioner has met threshold procedural requirements such as timeliness, standing, issue preservation, and specificity. *See* 40 C.F.R. § 124.19(a); *see also In re Beeland Grp., LLC*, 14 E.A.D. 189, 194-95 (EAB 2008). If the Board concludes that a petitioner satisfies all threshold pleading obligations, then the Board evaluates the merits of the petition for review. *See In re Indeck-Elwood, LLC*, 13 E.A.D. 126, 143 (EAB 2006). If, however, a petitioner fails to meet a threshold requirement, the Board typically denies or dismisses the petition for review.

See, e.g., In re Russell City Energy Ctr., LLC, PSD Appeal Nos. 10-12 & 10-13, at 4-7 (EAB June 9, 2010) (Order Dismissing Two Petitions for Review as Untimely).

Under the part 124 permitting regulations, petitions for review must be filed “[w]ithin 30 days after” the permit issuer serves notice that a final permit decision has been issued. *See* 40 C.F.R. § 124.19(a)(3). While the Board may “relax or suspend” filing deadlines for “good cause,” *id.* § 124.19(n), where a party files a petition after the deadline for filing a petition for review has passed, “good cause” requires a showing of “special circumstances” to justify missing the deadline. *See In re Invensys Sys., Inc.*, NPDES Appeal No. 15-10 (EAB Aug. 6, 2015) (Order Granting Extension of Time to File Petition for Review); *In re MHA Nation Clean Fuels Refinery*, 15 E.A.D. 648, 657-58 (EAB 2012). Here, the Region served notice of the final UIC permit decision on December 20, 2016. *See Notice of Final Permit Decision, Issuance of Class III In-Situ Production of Copper Permit No. R9UIC-AZ3-FY11-1 for the Florence Copper Production Test Facility (PTF)* (Dec. 20, 2016). Thirty-days later was January 19, 2017. After taking into account the rules for computation of time provided in 40 C.F.R. § 124.20(c) and (d) (extending a time period that ends on a weekend to the next working day and adding three days for service by mail), any petitions for review of the Region’s permit decision were due on January 23, 2017. Ms. Wall filed her petition with the Board on February 7, 2017.

By Motion filed with the Board on February 10, 2017, FCI sought dismissal of Ms. Wall’s petition as untimely filed. *See* Florence Copper, Inc.’s Motion for Denial of the Petition for Review Filed by Karen J. Wall for Being Untimely. By order dated March 3, 2017, the Board set a deadline of March 14, 2017, for any responses to FCI’s motion. To date, Ms. Wall has not filed a response.

Upon consideration, the Board concludes that the petition was not filed within the applicable time frame. Further, Ms. Wall has not claimed that any special circumstances justify relaxing the filing deadline. Thus, the Board dismisses Ms. Wall's petition for review as untimely. *See In re Windfall Oil & Gas, Inc.*, UIC Appeal Nos. 14-73 through 14-190, slip op. at 2-3 n.1 (June 12, 2015) (dismissing UIC petition for review as untimely), 16 E.A.D. at ____.

So ordered.¹

ENVIRONMENTAL APPEALS BOARD

Dated: 3/22/17

By: Kathie A. Stein
Kathie A. Stein
Environmental Appeals Judge

¹ The three-member panel deciding this matter is composed of Environmental Appeals Judges Aaron P. Avila, Kathie A. Stein, and Mary Beth Ward.

CERTIFICATE OF SERVICE

I certify that copies of the forgoing *Order Dismissing Petition for Review as Untimely* in the matter of Florence Copper, Inc, UIC Appeal No. 17-04, were sent to the following persons in the manner indicated:

By Certified Mail, Return Receipt Requested:

Karen J. Wall
3727 N. Monument Dr.
Florence, AZ 85132

George A. Tsiolis
Attorney at Law
351 Lydecker St.
Englewood, NJ 07631

Rita Maguire
Maguire, Pearce & Storey, PLLC
2999 North 44th St., Suite 650
Phoenix, AZ 85018

By EPA Pouch Mail:

Alexa Engelman
Office of Regional Counsel
U.S. EPA Region 9 (ORC-2)
75 Hawthorne St.
San Francisco, CA 94105

Dustin Minor
Office of Regional Counsel
U.S. EPA Region 9 (ORC-3)
75 Hawthorne St.
San Francisco, CA 94105

Dated: **MAR 22 2017**



Annette Duncan
Administrative Specialist