

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

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ENVIR. APPEALS BOARD

In re:

Stericycle Inc.

Permit: Utah Title V No. 1100055002

Appeal No. CAA 13-01

**MOTION TO DISMISS THE APPEAL FOR LACK OF  
JURISDICTION OR, IN THE ALTERNATIVE, FOR AN EXTENSION OF TIME**

The above-captioned appeal should be dismissed for lack of jurisdiction. Petitioners, the Concerned Salt Lake City Area Residents Against the Stericycle Incinerator and Greenaction for Health and Environmental Justice, objected to a Title V operating permit issued to Stericycle Inc. by the Utah Division of Air Quality. Although the Administrator of the Environmental Protection Agency has not yet acted upon the Petitioners' objection, it is well settled that "a permit issued by a state with an EPA-authorized state program may not be appealed to the EAB." Environmental Appeals Board, *Practice Manual* 59 (Mar. 26, 2013). That is precisely the situation here. The Utah Division of Air Quality issued Stericycle's Title V operating permit under an EPA-authorized state program. See 40 C.F.R. § 70, App'x A (*available at* <http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=68021bff1914369aaf5ff7223822df06&n=40y16.0.1.1.7&r=PART&ty=HTML#40:16.0.1.1.7.0.1.13.15>). As a result, the Environmental Appeals Board should dismiss the appeal for lack of jurisdiction.

If, for whatever reason, the Board concludes that it does have jurisdiction, then Stericycle respectfully moves for an extension of time in which to respond to the merits of the Petitioners' appeal. Petitioners did not serve Stericycle with a copy of their notice of appeal. As a result, Stericycle did not learn of the appeal until it received a copy of the underlying notice from the

Board. In addition, it would be a waste of party and administrative resources to require briefing on the merits where the appeal plainly fails on jurisdictional grounds.

### **BACKGROUND**

Stericycle Inc. operates a medical waste incinerator in North Salt Lake, Utah. That facility is subject to the requirements of Title V of the Clean Air Act—that is, Stericycle is required to obtain a Title V operating permitting.

On February 19, 2009, the Utah Department of Environmental Quality, Division of Air Quality, renewed Stericycle’s Title V operating permit, Permit Number 1100055002. The Utah Division of Air Quality did so under an EPA-approved permitting program established under 40 C.F.R. part 70. *See* 40 C.F.R. § 70, App’x A (“Utah Department of Environmental Quality—Division of Air Quality: submitted on April 14, 1994; effective on July 10, 1995.”). Thus, Stericycle’s operating permit was not issued by the EPA under a federal permitting program established under 40 C.F.R. part 71; it was issued by a state permitting authority.

In March 2009, the Petitioners apparently filed with the Administrator of EPA a petition to object to the Title V permit that had been issued by the Utah Division of Air Quality. Such a petition, if timely filed, would have been authorized by 40 C.F.R. § 70.8(d).

According to Petitioners, the EPA Administrator has not acted upon their petition for objection. Dissatisfied, Petitioners have now filed with the EAB an “appeal” of the “Title V Permit Issued by the Utah Division of Air Quality.” *See* Appeal of Greenaction for Health and Environmental Justice and Concerned Salt Lake City Area Residents Against Stericycle Incinerator (filed Aug. 15, 2013). The appeal asks the Board to “expedite consideration” of the “petition for review” filed with the EPA Administrator back in March 2009. *See id.* Petitioners

did not serve Stericycle with a copy of their notice of appeal, and they have not pursued any other remedy in state or federal court.<sup>1</sup>

### ARGUMENT

Petitioners' appeal should be dismissed. As the Board recognizes in its *Practice Manual*, "a permit issued by a state with an EPA-authorized state program may not be appealed to the EAB." EAB, *Practice Manual* 59 (Mar. 26, 2013). But that is precisely what Petitioners are attempting to do here. They have filed an "appeal" of the "Title V Permit Issued by Utah Division of Air Quality," and that state agency unquestionably administers an EPA-authorized permitting program under 40 C.F.R. part 70. See 40 C.F.R. § 70, App'x A. As a result, the Board does not have jurisdiction over Petitioners' appeal.

Indeed, nothing in Part 70 authorizes a member of the public to appeal to the Board a permit issued by an EPA-authorized state permitting authority. See 40 C.F.R. §§ 70.01 *et seq.* In contrast, in states where EPA is responsible for administering a Title V permitting program, Part 71 expressly provides the Board with jurisdiction over an appeal of a federal Title V operating permit decision. See 40 C.F.R. § 71.11(*I*)(1) (authorizing an appeal to the Board of a permitting decision made by EPA). The lack of similar authority under Part 70 is therefore dispositive. The Board lacks jurisdiction here. See EAB, *Practice Manual* 59 (Mar. 26, 2013).

If, however, the Board somehow concludes that it has jurisdiction to act on Petitioners' appeal, then Stericycle moves the Board for an extension of time in which to file a substantive response to Petitioners' appeal. Petitioners did not serve Stericycle with a copy of their notice of

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<sup>1</sup> Counsel for Stericycle attempted to contact Greenaction for Health and Environmental Justice to obtain the Petitioners' views on the underlying motion; counsel could not find contact information for Concerned Salt Lake City Area Residents Against Stericycle Incinerator. Counsel did not receive a response from Greenaction before Stericycle was required to file this motion but anticipate that Petitioners will oppose this motion.

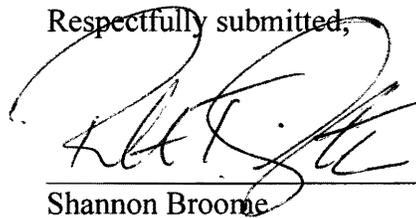
appeal; Stericycle only learned about the appeal when it received correspondence from the Board in September 2013. In addition, it would be a waste of party and administrative resources to require briefing on the merits where the appeal is so plainly foreclosed on jurisdictional grounds.

### CONCLUSION

For the foregoing reasons, the Environmental Appeals Board should dismiss the appeal of Greenaction for Health and Environmental Justice and Concerned Salt Lake City Area Residents Against Stericycle Incinerator. “[A] permit issued by a state with an EPA-authorized state program,” such as Utah, “may not be appealed to the EAB.” EAB, *Practice Manual* 59 (Mar. 26, 2013). In the alternative, the Board should grant Stericycle an extension of time in which to respond to the merits of the Petitioners’ appeal.

Dated: October 15, 2013

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing Motion to Dismiss the Appeal for Lack of Jurisdiction or, in the Alternative, for an Extension of Time, Appeal No. CAA 13-01, were served by United States First Class Mail on the following persons, this 15<sup>th</sup> day of October, 2013:

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