

VIA HAND DELIVERY

October 15, 2013

Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
1201 Constitution Avenue, NW
WJC East Building, Room 3334
Washington, DC 20004

Re: *In re Stericycle Inc.*, Appeal No. CAA 13-01 (Envtl. App. Bd.)

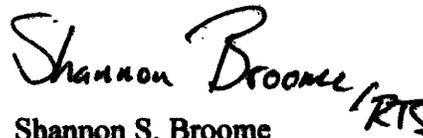
Dear Sir or Madam:

I represent Stericycle Inc., the facility whose permit is the subject of the above-referenced appeal. Please find enclosed an original and two copies of the following: (1) a Motion to Intervene or, in the Alternative, to Participate as *Amicus*; (2) a Motion to Dismiss the Appeal or, in the Alternative, for an Extension of Time; (3) a Notice of Appearance for Shannon Broome; (4) a Notice of Appearance for Charles Knauss; and (5) a Notice of Appearance for Robert T. Smith.

In addition, I have enclosed another set of these papers. I would appreciate it if you could please file stamp these papers and return them to my courier for my records.

Please do not hesitate to contact me if you should have any questions.

Very truly yours,


Shannon S. Broome

CC: Bradley Angel
Cindy King
Janet McCabe

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

In re:

Stericycle, Inc.

Permit: Utah Title V No. 1100055002

Appeal No. CAA 13-01

**MOTION TO INTERVENE OR, IN THE
ALTERNATIVE, TO PARTICIPATE AS AN *AMICUS* OF THE BOARD**

Petitioners, Greenaction for Health and Environmental Justice and the Concerned Salt Lake City Area Residents Against the Stericycle Incinerator, are attempting to “appeal” a “Title V Permit Issued by Utah Division of Air Quality to Stericycle Inc.” See Appeal of Greenaction for Health and Environmental Justice and Concerned Salt Lake City Area Residents Against Stericycle Incinerator (filed Aug. 15, 2013). Stericycle, the permittee, respectfully seeks to intervene in the appeal or, in the alternative, for leave to participate as an *amicus* of the Board.

BACKGROUND

Stericycle, Inc. operates a medical waste incinerator in North Salt Lake, Utah. That facility is subject to 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-authorized 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 validly authorized state program.

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.¹

ARGUMENT

As Stericycle explains in its separately filed Motion to Dismiss, no regulation authorizes the Environmental Appeals Board to hear this appeal. Ironically, though, because no provision authorizes this appeal, no provision sets forth Stericycle's right to intervene or otherwise participate in this appeal as an *amicus* to the Board. Regardless, basic notions of due process mandate that Stericycle be permitted to intervene or otherwise participate as an *amicus*.

Not surprisingly, where the Board is authorized to hear an appeal, it has allowed interested parties to intervene or otherwise participate as an *amicus* of the Board—particularly a

¹ 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.

permittees like Stericycle. For example, under the Consolidate Rules of Practice (CROP), which govern civil enforcement proceedings, “[a]ny person desiring to become a party to a proceeding may move for leave to intervene.” 40 C.F.R. § 22.11(a). Similarly, under Part 124, which governs PSD and other New Source Review permitting, the Board has exercised its discretion “to allow intervention and/or non-party briefing at early stages of an appeal, typically allowing permittees not already a party to the proceeding to participate as intervenors, and in certain circumstances granting non-parties leave to participate as amicus.” Environmental Appeals Board, *Practice Manual* 48 n.50 (Mar. 26, 2013); see also 40 C.F.R. § 124.19(e) (allowing non-party participation).

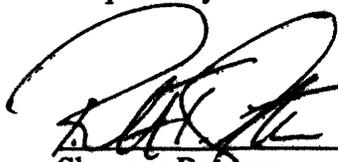
The Board should exercise similar discretion here. Stericycle is the permittee and should be allowed to be heard on Petitioners’ appeal, which questions the validity of Stericycle’s permit.

CONCLUSION

For the foregoing reasons, the Environmental Appeals Board should grant Stericycle’s Motion to Intervene or, in the Alternative, for Leave to Participate as an *Amicus*.

Dated: October 15, 2013

Respectfully submitted,



Shannon Broome
Charles Knauss
Robert T. Smith
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Counsel for Stericycle, Inc.

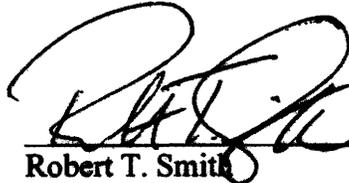
CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Stericycle's Motion to Intervene or, in the Alternative, for Leave to Participate as an *Amicus*, Appeal No. CAA 13-01, were served by United States First Class Mail on the following persons, this 15th day of October, 2013:

Bradley Angel
Greenaction for Health and Environmental Justice
703 Market street, Suite 501
San Francisco, CA 94103

Cindy King
Concerned Salt Lake City Area Residents Against Stericycle Incinerator
2963 South 2300 East
Salt Lake City, UT 84109

Janet McCabe
Acting Administrator
U.S. Environmental Protection Agency
Office of Air and Radiation
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Counsel for Stericycle, Inc.

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

In re:

Stericycle Inc.

Permit: Utah Title V No. 1100055002

Appeal No. CAA 13-01

MOTION FOR AN ORDER DEEMING STERICYCLE'S PAPERS TIMELY FILED

The Environmental Appeals Board ordered the Environmental Protection Agency to file a response to the above-referenced appeal by October 15, 2013. As the permittee, Stericycle Inc. desires to be heard on the appeal and has prepared a Motion to Dismiss the Appeal and a Motion to Intervene or, in the Alternative, to Participate as an *Amicus*.

Stericycle attempted to file these documents with the Board by hand on October 15, 2013. Due to the government shutdown, however, no one was there to accept and file Stericycle's papers. Stericycle is now sending these papers to the Board by overnight courier. It respectfully moves for order from the Board accepting these papers, which were sent on October 15, 2013, as timely filed with the Board.

BACKGROUND

Stericycle Inc. operates a medical waste incinerator in North Salt Lake, Utah. That facility is subject to 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-authorized 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 validly authorized state program.

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.

On October 1, 2013, the federal government shut down. Congress failed to pass appropriations to keep important aspects of the government running, including the Environmental Protection Agency and the Environmental Appeals Board.

As a result of this funding lapse, when Stericycle attempted to file certain documents in response to Petitioners’ appeal, no one was available at the Board to accept and file those documents. Thereafter, Stericycle drafted this motion and sent it, along with Stericycle’s underlying motions, to the Board by overnight courier on October 15, 2013.¹

¹ 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.

ARGUMENT

As Stericycle explains in its separately filed Motion to Dismiss, no regulation authorizes the Environmental Appeals Board to hear this appeal. As the permittee, Stericycle should be allowed to be heard on Petitioners' appeal, which questions the validity of Stericycle's permit. But due to the government shutdown, no one was available to accept and file Stericycle's papers when it attempted hand delivery of those papers to the Board on October 15, 2013. As a result, Stericycle respectfully requests that the Board issue an order deeming Stericycle's underlying papers to be timely filed or otherwise accept those papers out of time.

No prejudice would result to Petitioners if the Board deems Stericycle's papers timely filed. But for the government shutdown, Stericycle's papers would have been received and accepted by the Board on October 15, 2013, and the Petitioners would have been, and still are being, served on that date. As a result, the Board should accept Stericycle's papers as if they had been hand-delivered on October 15, 2013.

Counsel did not receive a response from Greenaction before Stericycle was required to file this motion but anticipate that Petitioners will oppose this motion.

CONCLUSION

For the foregoing reasons, the Environmental Appeals Board should grant Stericycle's motion and accept its underlying papers as timely filed.

Dated: October 15, 2013

Respectfully submitted,



Shannon Broome

Charles Knauss

Robert T. Smith

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202-625-3715

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Counsel for Stericycle, Inc.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Stericycle's Motion for an Order Accepting Its Papers as Timely Filed, Appeal No. CAA 13-01, were served by United States First Class Mail on the following persons, this 15th day of October, 2013:

Bradley Angel
Greenaction for Health and Environmental Justice
703 Market street, Suite 501
San Francisco, CA 94103

Cindy King
Concerned Salt Lake City Area Residents Against Stericycle Incinerator
2963 South 2300 East
Salt Lake City, Utah 84109

Janet McCabe
Acting Administrator
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Counsel for Stericycle, Inc.

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

In re:

Stericycle Inc.

Permit: Utah Title V No. 1100055002

Appeal No. CAA 13-01

NOTICE OF APPEARANCE OF ROBERT T. SMITH

Please enter the appearance of Robert T. Smith as counsel to Stericycle, Inc. in the above-referenced appeal. Mr. Smith is a member of the Bar of the District of Columbia.

Dated: October 15, 2013

Respectfully submitted,



Robert T. Smith

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2900 K Street, NW – North Tower, Suite 200
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Robert.Smith1@kattenlaw.com

Counsel for Stericycle Inc.

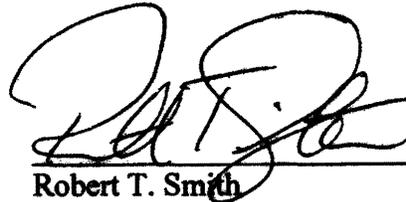
CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Notice of Appearance of Robert T. Smith, Appeal No. CAA 13-01, were served by United States First Class Mail on the following persons, this 15th day of October, 2013:

Bradley Angel
Greenaction for Health and Environmental Justice
703 Market street, Suite 501
San Francisco, CA 94103

Cindy King
Concerned Salt Lake City Area Residents Against Stericycle Incinerator
2963 South 2300 East
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Counsel for Stericycle Inc.

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

In re:

Stericycle Inc.

Permit: Utah Title V No. 1100055002

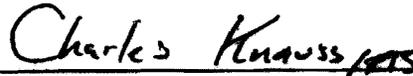
Appeal No. CAA 13-01

NOTICE OF APPEARANCE OF CHARLES KNAUSS

Please enter the appearance of Charles Knauss as counsel to Stericycle, Inc. in the above-referenced appeal. Mr. Knauss is a member of the Bar of the District of Columbia.

Dated: October 15, 2013

Respectfully submitted,



Charles Knauss

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202-625-3525
Chuck.Knauss@kattenlaw.com

Counsel for Stericycle Inc.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Notice of Appearance of Charles Knauss, Appeal No. CAA 13-01, were served by United States First Class Mail on the following persons, this 15th day of October, 2013:

Bradley Angel
Greenaction for Health and Environmental Justice
703 Market street, Suite 501
San Francisco, CA 94103

Cindy King
Concerned Salt Lake City Area Residents Against Stericycle Incinerator
2963 South 2300 East
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Robert.Smith1@kattenlaw.com

Counsel for Stericycle Inc.

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

In re:

Stericycle Inc.

Permit: Utah Title V No. 1100055002

Appeal No. CAA 13-01

NOTICE OF APPEARANCE OF SHANNON BROOME

Please enter the appearance of Shannon Broome as counsel to Stericycle, Inc. in the above-referenced appeal. Ms. Broome is a member of the Bar of the District of Columbia.

Dated: October 15, 2013

Respectfully submitted,


Shannon Broome
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202-625-3715
Shannon.Broome@kattenlaw.com

Counsel for Stericycle Inc.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Notice of Appearance of Shannon Broome, Appeal No. CAA 13-01, were served by United States First Class Mail on the following persons, this 15th day of October, 2013:

Bradley Angel
Greenaction for Health and Environmental Justice
703 Market street, Suite 501
San Francisco, CA 94103

Cindy King
Concerned Salt Lake City Area Residents Against Stericycle Incinerator
2963 South 2300 East
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Robert.Smith1@kattenlaw.com

Counsel for Stericycle Inc.

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

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.¹

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(l)(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

¹ 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.

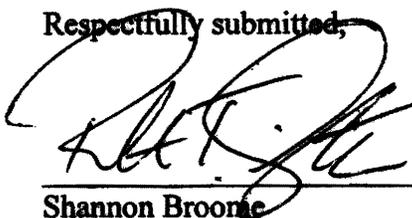
appeal; Stericycle only learned about the appeal when it received correspondence from the Board in September 2013. In addition, it would be a waste of party and administrative resources to require briefing on the merits where the appeal is so plainly foreclosed on jurisdictional grounds.

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,



Shannon Broome
Charles Knauss
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202-625-3715
Shannon.Broome@kattenlaw.com

Counsel for Stericycle, Inc.

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 15th day of October, 2013:

Bradley Angel
Greenaction for Health and Environmental Justice
703 Market street, Suite 501
San Francisco, CA 94103

Cindy King
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