

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

ENVIR. APPEALS BOARD

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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,



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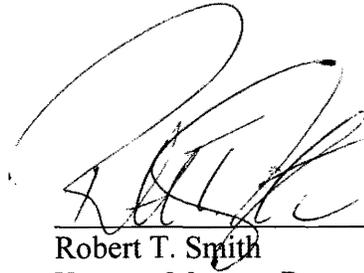
CERTIFICATE OF SERVICE

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:

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