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

In re: Circle T Feedlot, Inc., Morgan Feedlot LLC, Sebade Feedyard, Stanek Brothers, Bruns Feedlot, LLC, LBBJ Inc., Ron Bruns Feed Yards, Homeplace, & Ron Bruns Feed Yards, Eastplace NPDES Permit Nos. NE0134481, NE0134767, NE0135712, NE0134775, NE0135399, NE0134961, NE0135704, & NE0106526	NPDES Appeal Nos. 09-02 & 09-03

ORDER GRANTING MOTION TO DISMISS PETITION FOR REVIEW OF FOUR DRAFT NPDES PERMITS

On February 2, 2009, pursuant to 40 C.F.R. § 124.19(a), Ms. Teri Lamplot filed[1] a petition for review with the Environmental Appeals Board ("Board") in which she contests four final National Pollutant Discharge Elimination System ("NPDES") permit decisions (the "Final Permits") issued by Region 7 ("Region") of the United States Environmental Protection Agency ("EPA"). *See generally* Teri Lamplot's EPA Appeal Comments to issue NPDES Permits in

[1] As the Board has consistently held, petitions are considered "filed" when they are *received* by the Board, not when they are mailed. *E.g., In re AES Puerto Rico L.P.*, 8 E.A.D. 325, 329 n.5 (EAB 1999), *aff'd, Sur Contra La Contaminacion v. EPA*, 202 F.3d 443 (1st Cir. 2000); *In re Kawaihae Cogeneration Project*, 7 E.A.D. 107, 124 n.23 (EAB 1997); *In re Beckman Prod. Servs.*, 5 E.A.D. 10, 15 n.8 (EAB 1994). Thus, although Ms. Lamplot's petition was postmarked January 16, 2009, her petition is considered filed on February 2, 2009, the date the Board received it.

Thurston County, Nebraska at 1 [hereinafter "T. Lamplot Petition"]. The Final Permits in question were issued by the Region on December 18, 2008, under the Clean Water Act ("CWA"), 33 U.S.C. §§ 1251-1387, to four concentrated animal feeding operations ("CAFOs"): Circle T Feedlot, Inc. (Permit No. NE0134481), Morgan Feedlot LLC (Permit No. NE0134767), Sebade Feedyard (Permit No. NE0135712), and Stanek Brothers (Permit No. NE0134775). *See* Region's Motion to Dismiss Petition for Review of Four Draft NPDES Permits ("Motion to Dismiss") at 2; *see also* Response to Petitions for Review, Ex. A (copies of Final Permits). In addition to seeking review of the four Final Permits, Ms. Lamplot requests review of "the decision of EPA to postpone issuance of NPDES permits on 4 yards located in Thurston County, Nebraska." T. Lamplot Petition at 1. The four additional feed yards to which she refers are Bruns Feedlot, LLC (Draft NPDES Permit No. NE0135399); LBBJ Inc. (Draft NPDES Permit No. NE0134961); Ron Bruns Feed Yards, Homeplace (Draft NPDES Permit No. NE0135704); and Ron Bruns Feed Yards, Eastplace (Draft NPDES Permit No. NE0106526). *Id.*

On March 30, 2009, the Region filed a motion requesting the Board dismiss those portions of Ms. Lamplot's petition requesting review of the four draft NPDES permits.[2] Motion to Dismiss at 1. The Region explains that, while initially it had solicited public comment on eight CAFOs, ultimately it issued final permits for only four of them: Circle T Feedlot, Inc., Morgan Feedlot LLC, Sebade Feedyard, and Stanek Brothers. *Id.* at 1-2. According to the Region, it is holding the other four draft permits to which Ms. Lamplot refers "in abeyance

[2] We note that Mr. Joel Lamplot has also filed a petition for review with the Board contesting conditions of the same four Final Permits, but he did not challenge the four permits still in draft form. Because his petition is not the subject of the Region's motion to dismiss, it is not discussed further in this Order.

pending resolution of issues regarding the western boundary of the Omaha Indian Reservation, which [is] currently the subject of ongoing litigation." Motion to Dismiss at 2 (referring to *Pender v. Parker*, No. 4:07-cv-03101 (D. Neb.) & No. 08-002 (Omaha Trib. Ct.)). The Region argues that the Agency's permitting regulations only allow review of final NPDES Permits, and thus, the portion of Ms. Lamplot's petition requesting review of the four draft permits is not "ripe for review." *Id.* We agree.

The Agency's part 124 regulations only authorize appeals of "final permit decisions." Specifically, the regulations state that any person who filed comments on a draft permit or who participated in the public hearing documents may petition the Board to review a condition of that permit "[w]ithin 30 days after a[n] * * * NPDES * * * *final* permit decision." 40 C.F.R. § 124.19(a) (emphasis added). Final permit decisions are defined as "a final decision to issue, deny, modify, revoke and reissue, or terminate a permit." *Id.* § 124.15(a). Thus, as the Board has previously explained, "an appeal is 'ripe' or fit for disposition by the Board if a final decision has been issued by the Region, and the petitioner is challenging the permit as it now reads." *In re Gen. Elec. Co.*, 4 E.A.D. 615, 623 (EAB 1993). Here, with respect to the four permits for which only draft NPDES permits have been prepared thus far, there has been no "final permit decision." The Region has not yet made a final decision to "issue, deny, modify, revoke and reissue, or terminate" the permits for Bruns Feedlot, LLC, LBBJ Inc., Ron Bruns Feed Yards, Homeplace, or Ron Bruns Feed Yards, Eastplace. Consequently, Ms. Lamplot may not challenge those draft NPDES CAFO permits at this time.

For the foregoing reasons, the Board GRANTS the Region's motion to dismiss the portions of Ms. Lamplot's petition that challenge four draft NPDES permits for which no final permit decisions have been issued.[3] The Board is not, at this time, addressing the portion of Ms. Lamplot's petition challenging the four Final Permits. Henceforth, references to the four draft NPDES permits will be stricken from the caption for this case.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Anna L. Wolgast
Environmental Appeals Judge

Date: June 17, 2009

[3] The Board notes that, at such time as those four draft permits are issued as final permit decisions, Ms. Lamplot may challenge them if she so desires.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Granting Motion to Dismiss Petition for Review of Four Draft NPDES Permits in the matter of Circle T Feedlot, Inc., et al., NPDES Appeal Nos. 09-02 & 09-03 were sent to the following persons in the manner indicated:

By First Class Mail:

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Dated: JUN 17 2009

Annette Duncan
Secretary