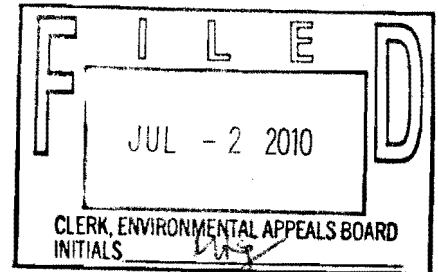


**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

In re:)
))
Flint Hills Resources, LP)
))
Permit No. O1445)
_____))

CAA Appeal No. 10-03



ORDER REQUIRING RESPONSE ON JURISDICTION

On June 24, 2010, Flint Hills Resources, LP (“FHR”) filed a Petition for Review with the Environmental Appeals Board (“Board”) pursuant to 40 C.F.R. § 71.11(l), seeking review from what it characterizes as a final permit decision issued by U.S. EPA Region 6 (“Region”) under Title V of the Clean Air Act (“CAA” or “Act”), 42 U.S.C. § 7661 et seq. (“Title V”). Petition for Review (June 24, 2010) (“Petition”).

On August 21, 2009, FHR applied to the Texas Commission on Environmental Quality (“TCEQ”) for a minor permit revision to an existing Title V permit. TCEQ approved the permit revision on October 13, 2009, and, as required by the Title V regulations, *see* 40 C.F.R. § 70.7 - .8, TCEQ notified the Region of the permit revision. By letter dated, December 4, 2009, the Region objected to the permit revision, *see* 40 C.F.R. § 70.8(c), and stated that the Region would “issue or deny the permit in accordance with 40 C.F.R. Part 71” if TCEQ failed to submit a revised permit responding to the Region’s objections within ninety days pursuant to 40 C.F.R. § 70.8(c)(4). Letter from Carl E. Edlund, P.E., Director, Multimedia Planning and Permitting Division, U.S. EPA Region 6, to Richard A. Hyde, P.E., Deputy Director, Office of Permitting

and Registration, TCEQ (Dec. 4, 2009). TCEQ did not formally respond to EPA's objections within this ninety-day period. By letter dated May 25, 2010, the Region stated, in part, as follows:

Since the [TCEQ] failed to revise and submit a proposed permit in response to the objections raised within 90 days after the date of the objection letter, EPA is required to issue or deny a Title V Operating Permit. EPA Region 6 is issuing this request under 40 C.F.R. Part 70.8(c)(4), 40 C.F.R. Part 71.4(e)(1), and 40 C.F.R. Part 71.5.

If you wish to continue operations, you must apply to EPA for your permit by September 15, 2010.

Letter from Carl E. Edlund, P.E., Director, Multimedia Planning and Permitting Division, U.S. EPA Region 6, to Richard Harris, Vice President and Manufacturing Manager, FHR (May 25, 2009). FHR then filed its petition with this Board challenging the Region's action.

According to the Petition, the Region's action constitutes a final permit decision subject to review by the Board pursuant to 40 C.F.R. § 71.11(i) and (l). In particular, FHR asserts that by requiring a new permit application in order to continue its operations, the Region has "effectively revok[ed]" FHR's existing permit "by fiat." Petition 11. FHR asserts that "[i]f FHR does not prepare and submit to EPA a complete application for an entirely new federal permit and additional information by September 15, FHR may have to shut down its * * * facility in order to avoid EPA from ordering it to do so and from seeking to impose potentially substantial civil (and/or criminal) penalties." *Id.* Under these circumstances, FHR asserts that the Region's May 25, 2010 letter constitutes a final permit decision subject to Board review.

The Board has determined that a response by the Region to FHR's jurisdictional arguments would be of assistance in resolving this matter. Accordingly, the Region is hereby ordered to file a response to the Petition no later than July 21, 2010, focused solely on the issue of whether the Board has jurisdiction to consider this matter, and in particular on FHR's assertion that the Region's May 25, 2010 letter constitutes a final permit decision subject to Board review under 40 C.F.R. § 71.11(l). Should the Board determine that a substantive response is appropriate, the Board will issue an order setting a deadline for submission of such a response at a later date.

So ordered.

Dated:

July 2, 2010

ENVIRONMENTAL APPEALS BOARD

By:



Edward E. Reich
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing Order Requiring Response on Jurisdiction in the matter of Flint Hills, LP, CAA Appeal No. 10-03, were sent to the following persons in the manner indicated:

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Dated: JUL - 2 2010



Annette Duncan
Secretary