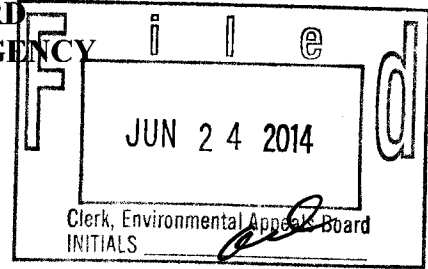


**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**



)
)
In re: Energy Answers, LLC)
(Arecibo Puerto Rico Renewable Energy)
Project))
)
_____)

PSD Appeal No. 14-04

ORDER DENYING MOTION TO RECONSIDER

Leonardo Ramos-Hernandez petitioned the Environmental Appeals Board (“Board”) for review of a Clean Air Act Prevention of Significant Deterioration permit that U.S. Environmental Protection Agency Region 2 (“Region”) issued to Energy Answers Arecibo Puerto Rico Renewable Energy Project on April 10, 2014, following a remand by the Board. On May 30, 2014, the Board dismissed that petition for lack of jurisdiction. Order Dismissing Appeal at 1-2 (May 30, 2014) (citing 40 C.F.R. 124.19(l)). Mr. Ramos has now filed a Motion to Reconsider the Board’s dismissal order.

As the Board explained in its order dismissing the appeal, the Board did not retain jurisdiction of the final permit decision following remand and, thus, the permit decision issued in this matter was final, for the purposes of judicial review under 124.19(l), when it was issued by the Region on April 10, 2014. As a result, the Board dismissed the appeal from that permit decision for lack of jurisdiction because final agency action had already occurred. The Board is not persuaded by Mr. Ramos’ arguments to reconsider its decision.

First, Mr. Ramos asserts that the Board misreads 40 C.F.R. § 124.19(l). The Board disagrees with Mr. Ramos' interpretation of both the Board's order and the regulatory provision regarding final agency action. This provision makes it clear that final agency action occurs under 124.19 when, following remand, the Regional Administrator issues a subsequent final permit decision, unless the Board specifically retains jurisdiction – which the Board did not do in this case. *See id.*; 78 Fed. Reg. 5,281, 5,284 (Jan. 25, 2013).

Mr. Ramos' reliance on *Quackenbush v. Allstate*, 517 U.S. 706 (1996) is misplaced. The Supreme Court in *Quackenbush* was addressing a federal court's decision to abstain from exercising its jurisdiction where the relief sought was not discretionary. *Id.* at 718 (recognizing that federal courts do have authority to abstain from exercising jurisdiction where the court has the discretion to grant or deny relief). In contrast, this Board is an *administrative* adjudicative body that *does have discretion* in determining whether to retain jurisdiction over a permit decision following remand, *see* 40 C.F.R. § 124.19(l)(2)(iii), as well as the discretion to grant or deny review of a PSD permit. *See In re Avenal Power Center*, PSD Appeal Nos. 11-02 to 11-05, slip op. at (EAB Aug. 18, 2011), 15 E.A.D. at _____. Mr. Ramos' reliance on 40 C.F.R. § 71.7 is similarly misplaced for multiple reasons, not the least of which is that this permit was not issued under part 71.

In sum, none of the arguments raised by Mr. Ramos establish any error by the Board in dismissing the petition. Accordingly, the Board denies Mr. Ramos' Motion to Reconsider PSD Appeal No. 14-04. Mr. Ramos has no further administrative remedies under the regulations governing permit appeals.

So ordered.¹

Dated:

June 24, 2014

ENVIRONMENTAL APPEALS BOARD

By:

Kathie A. Stein

Kathie A. Stein

Environmental Appeals Judge

¹ The three-member panel deciding this matter is composed of Environmental Appeals Judges Leslye M. Fraser, Catherine R. McCabe, and Kathie A. Stein.

CERTIFICATE OF SERVICE

I certify that copies of the foregoing *Order Denying Motion to Reconsider* in the matter of Energy Answers, LLC, PSD Appeal No. 14-04, were sent to the following persons in the manner indicated:

By U.S. First Class Mail

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Dated: JUN 24 2014



Annette Duncan
Secretary