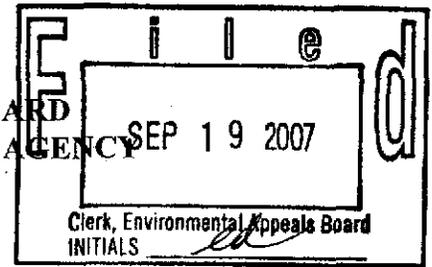


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



In re:)
)
)
Massachusetts Port Authority,) NPDES Appeal Nos. 07-16
Logan International Airport)
)
NPDES Permit No. MA0000787)
)

ORDER DENYING REVIEW

On July 31, 2007, Region I of the U.S. Environmental Protection Agency issued a National Pollution Discharge Elimination System ("NPDES") permit to the Massachusetts Port Authority and various co-permittees (collectively "Massport"), pursuant to Clean Water Act § 402, 33 U.S.C. § 1342. The permit authorizes storm water discharges from Logan International Airport in Boston, Massachusetts, into the waters of the United States, in accordance with a variety of terms and conditions intended to protect those waters. Under the NPDES permit, Massport will be responsible for ensuring compliance with new limitations on the amounts of oil, grease, and total suspended solids Logan Airport is allowed to discharge in its storm water. The permit also directs Massport to: (1) monitor the outfalls that drain the Airport's runways to determine the levels of various pollutants in the storm water; (2) develop a comprehensive Storm Water Pollution Prevention Plan to control pollutants; (3) and conduct a water quality study to assess the impacts on the waters of Boston Harbor resulting from aircraft and runway deicing activities. These requirements are not contained in the NPDES permit under which Massport is presently operating the Airport, and thus the new permit offers more rigorous protections for the aquatic environment than the current permit.

On August 14, 2007, Mr. Joseph J. Cappuccio filed a letter with the Environmental Appeals Board ("Board") opposing the issuance of the permit by Region I on the ground that the storm water discharges authorized by the permit will constitute an "assault" on the "very fragile ecosystem" of Boston Harbor. Mr. Cappuccio contends that "[t]he issuance of this permit shows a flawed process that allows polluted fluids and liquids to be discharged into Boston Harbor." He provides no further allegations or information in his letter regarding the permit or permitting process.

On September 5, 2007, Region I filed a response to Mr. Cappuccio's letter. The Region argues that the Board should deny Mr. Cappuccio's petition for review of the permit on procedural and substantive grounds. First, the Region claims that Mr. Cappuccio did not file comments on the draft NPDES permit during the public comment period, participate in the public hearing the Region held on the permit, or identify any changes made in the final permit that were not present in the draft permit, and, thus, under 40 C.F.R. §§ 124.13 and 124.19(a), he has no standing to appeal the permit. Second, the Region contends that Mr. Cappuccio failed to specifically identify any disputed permit conditions and demonstrate how those conditions are based on (a) findings of fact or conclusions of law that are clearly erroneous, or (b) exercises of discretion or important policy considerations that the Board should, in its discretion, review, and, thus, under 40 C.F.R. § 124.19(a), he has no substantive basis for appealing the permit. The Region urges the Board to deny review of the permit and seeks an expedited resolution of this purportedly "meritless" appeal so that Massport's permit can go into effect on September 29, 2007, as scheduled.

Upon examination of the documents filed with the Board, we agree with the Region that the pending appeal lacks merit. Mr. Cappuccio fails to indicate in his letter that he participated in the public review process by submitting written comments on the draft permit or presenting testimony at the public hearing, and the Region asserts that he in fact did not do so, despite receiving individual notice by mail of the pending permit action. Mr. Cappuccio also fails to identify in his letter any specific permit conditions or provisions to which he is objecting that allegedly changed between the draft and final versions of the permit. Finally, Mr. Cappuccio makes no attempt to demonstrate that any particular terms or conditions of the permit are based on findings of fact or conclusions of law that are clearly erroneous, an improper exercise of discretion, or an important policy consideration warranting Board review.

In these circumstances, Mr. Cappuccio lacks standing under 40 C.F.R. §§ 124.13 and 124.19(a) to file an appeal of Massport's NPDES permit to this Board. *See, e.g., In re Avon Custom Mixing Servs.*, 10 E.A.D. 700, 704-08 (EAB 2002) (finding petitioner's failure to comment on draft permit to be "fatal" to its appeal); *In re Knauf Fiber Glass, GmbH*, 8 E.A.D. 121, 173 (EAB 1999); *In re Village of Pender Waste Water Treatment Facility*, NPDES Appeal Nos. 07-05 to -07, at 3-4 (EAB Apr. 19, 2007) (Order Dismissing Petitions for Review). Moreover, the arguments in Mr. Cappuccio's letter are not specific enough to fulfill the requirements of 40 C.F.R. §§ 124.13 and 124.19(a) and thus do not warrant further consideration. *See, e.g., In re Phelps Dodge Corp.*, 10 E.A.D. 460, 495-96 (EAB 2002) (rejecting challenge to endangered species analysis for lack of sufficient specificity); *Knauf*, 8 E.A.D. at 127 (noting that petitions filed by persons unrepresented by legal counsel need not contain sophisticated arguments or precise terminology but nonetheless must provide sufficient specificity as to alert

the Board to the issues being raised); *In re Envotech, L.P.*, 6 E.A.D. 260, 267-69 (EAB 1996) (under 40 C.F.R. § 124.19(a), petition for review must contain clear identification of the permit conditions at issue and argument that the conditions warrant review); *In re Beckman Prod. Servs.*, 5 E.A.D. 10, 18-19 (EAB 1994) (same). For these reasons, we deny review of NPDES Permit No. MA0000787.

So ordered.

ENVIRONMENTAL APPEALS BOARD¹

Dated: September 19, 2007 By: Anna L. Wolgast
Anna L. Wolgast
Environmental Appeals Judge

¹The three-member panel deciding this matter is comprised of Environmental Appeals Judges Edward E. Reich, Kathie A. Stein, and Anna L. Wolgast. See 40 C.F.R. § 1.25(e)(1).

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **Order Denying Review** in the matter of *Massachusetts Port Authority, Logan International Airport*, NPDES Appeal No. 07-16, were sent to the following persons in the manner indicated:

By First Class U.S. Mail, Return Receipt Requested:

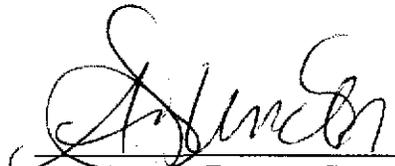
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Date: SEP 19 2007


Annette Duncan, Secretary