



1997.<sup>1</sup> The deadline for filing a petition for review with the Board was therefore December 29, 1997 (30 days + 3 days).

In order to be considered timely filed a petition for review must be *received* by the filing deadline. See *In re Envotech, L.P.*, UIC Appeal Nos. 95-2 through 95-37, slip op. at 7 (EAB, Feb. 15, 1996), 6 E.A.D. \_\_\_; *In re Heritage Environmental Services, Inc.*, RCRA Appeal No. 93-8 at 4 (EAB, Aug. 3, 1994) (Order Dismissing Appeal); *In re Robbins Resource Recovery Company*, 3 E.A.D. 648, 651 (Adm'r 1991). Thus, simply placing a document in the mail does not constitute filing. Although a document can be "served" on opposing parties by placing it in the mail, it is not "filed" until it is received by the Board. Because it did not appear as if the petition in the present case was received by the December 29, 1997 filing deadline, the Board ordered petitioner (Sandra Yerman) to show cause why her petition should not be dismissed as untimely. See Order to Show Cause Why Petition Should Not Be Dismissed As Untimely ("Show Cause Order") (Jan. 16, 1998).

In her reply to the Show Cause Order dated February 19, 1998,<sup>2</sup> petitioner does not dispute that the filing deadline for a

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<sup>1</sup>See Response of the Michigan Department of Environmental Quality Regarding the Timeliness of Ms. Sandra Yerman's Appeal Petition, PSD Appeal No. 98-1 (Feb. 20, 1988); letter accompanying final permit from Dennis M. Drake, Air Quality Division, MDEQ, to "Interested Party" (Nov. 24, 1997).

<sup>2</sup>See Show Cause Why Petition for Review Should not be Dismissed as Untimely ("Petitioner's Response to Show Cause

petition for review in this case was December 29, 1997, or that the petition was not received by EPA until January 2, 1998. Rather, petitioner states that her petition should be considered timely because despite conversations with individuals from MDEQ and U.S. EPA Region V, the petitioner was never told that a petition for review had to be *received* by the filing deadline. Further, petitioner states that although the letter accompanying the final permit referenced the appeal provisions of 40 C.F.R. § 124.19, the letter made no reference to the provisions of 40 C.F.R. § 124.20 ("Computation of time") and was therefore misleading. After reviewing the record before us, we conclude that the petition was indeed untimely and must therefore be dismissed with prejudice.

The letter accompanying the final permit stated, in part, that the permit would become effective on December 29, 1997, and that "[a]nyone who submitted a comment during the comment period may appeal this decision according to the procedures contained in 40 CFR 124.19 \* \* \*." Pursuant to 40 C.F.R. § 124.19(a), a petition for review must be filed within 30 days after service of a final permit decision. Absent the additional three days for service by mail (40 C.F.R. § 124.20(d)), this time period would have expired on December 26, 1997. As previously stated,

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Order"). Both MDEQ and the permittee, Central Wayne Energy Recovery Limited Partnership, have also filed replies to the Board's Show Cause Order in which they state that the petition should be dismissed as untimely.

however, this time period was extended to December 29 pursuant to 40 C.F.R. § 120.20(d). Although petitioner is correct that the November 24 letter did not expressly reference the computation of time provisions in 40 C.F.R. § 124.20, because the letter (along with the revised permit) was served by mail petitioner was nonetheless provided with the additional time required by that section.<sup>3</sup> In other words, the failure of MDEQ to mention 40 C.F.R. § 124.20 in no way prejudiced petitioner because MDEQ gave her more time to file than the 30 days referenced in 40 C.F.R. § 124.19. We therefore find no support for petitioner's assertion that she was misled in any way regarding the time period for filing her petition for review.

Similarly, we find no support for petitioner's assertion that she was misled in a conversation with a Region V employee (Keary Cragan). Petitioner states:

I called the EPA in Chicago, on December 23, 1997,  
\* \* \* and talked to Keary Cragan. MS. CRAGAN ALSO DID  
NOT TELL ME THAT MY APPEAL HAD TO BE RECEIVED BY THE  
BOARD BY DECEMBER 29, 1997; AND ALSO DID NOT TELL ME  
ABOUT THE MAILING INFORMATION CONTAINED IN 40 C.F.R.  
124.20! In addition, Ms. Cragan gave me the name of an  
attorney that could possibly help me, \* \* \* but said,  
because of the holidays, I probably could not get in  
contact with her, until Monday, December 29, 1997!  
AGAIN, GIVING ME THE FALSE IMPRESSION, THAT I HAD UNTIL

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<sup>3</sup>We note that the letter accompanying the original permit, which petitioner has acknowledged receiving, did make reference to 40 C.F.R. § 124.20. In particular, that letter stated that "[t]he final permit decision shall become effective on December 3, 1997, as required by 40 CFR 124.15 and 124.20." Letter from Dennis M. Drake, Air Quality Division, MDEQ, to "Interested Party" (October 30, 1997).

## THE 29TH!

Petitioner's Response to Show Cause Order at 2 (emphasis in original). We find nothing that can be characterized as misleading in this communication. In any event, a petition received on the 29th would have been timely; however, a petition received on January 2, 1998, is not.

The Board generally tries to construe petitions filed by persons unrepresented by counsel in a light most favorable to the petitioner, and does not expect that such petitions will conform to exacting and technical pleading requirements. *In re SEI Birchwood*, 5 E.A.D. 25, 27 (EAB 1994). Nevertheless, a petitioner "who elects to appear *pro se* takes upon himself or herself the responsibility for complying with the procedural rules and may suffer adverse consequences in the event of noncompliance." *In re Rybond, Inc.*, RCRA (3008) Appeal No. 95-3, slip op. at 20 (EAB, Nov. 8, 1996), 6 E.A.D. \_\_\_\_\_. If a petitioner has any doubts regarding the applicable filing requirements, he or she should either employ their own legal counsel to resolve these doubts or err on the side of caution by filing early.

Because the petition for review in this case was not received by the Board by the December 29, 1997 filing deadline, the petition is hereby dismissed with prejudice as untimely. *See, e.g., In re Williams Pipe Line Company and L&C Services, Inc.*, CAA Appeal No. 97-3 (EAB, Feb. 27, 1997) (Order Dismissing

Appeal) (dismissing with prejudice as untimely an appeal filed by U.S. EPA Region VII because the appeal was not received by the Board by the filing deadline); *In re Outboard Marine Corp.*, CERCLA Penalty Appeal No. 95-1 (EAB, October 11, 1995), 6 E.A.D. \_\_\_ (dismissing as untimely an appeal filed by U.S. EPA Region V because the appeal was received by the Board one day after the filing deadline).

So ordered.

Dated: 2/26/98

ENVIRONMENTAL APPEALS BOARD

By: \_\_\_\_\_/s/\_\_\_\_\_  
Kathie A. Stein  
Environmental Appeals Judge

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing Order Dismissing Appeal in the matter of Central Wayne Energy Recovery Limited Partnership, Dearborn Heights, Michigan, PSD Appeal No. 98-1, were sent to the following persons in the manner indicated:

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Dated: 2/26/98

\_\_\_\_\_/s/  
Annette Duncan  
Secretary