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

In Re:
Stericycle, Inc
Utah Title V Permit No. 110005002 Appeal No. CAA. 13-01

GREENACTION FOR HEALTH AND ENVIRONMENTAL JUSTICE AND CONCERNED SALT LAKE CITY RESIDENTS AGAINST STERICYCLE INCINERATOR, RESPONSE TO MOTION TO DISMISS OUR APPEAL

Greenaction for Health and Environmental Justice and Concerned Salt Lake Residents Against Stericycle Incinerator (Petitioners) request the that Environmental Appeals Board (Board) deny the Environmental Protections Agency, Office of Air and Radiation ("OAR") and Stericycle's Motions to Dismiss for lack of jurisdiction, for the following reasons:

(1) OAR's Motion to Dismiss the Appeal is without merit and seeks to further delay and potentially prevent EPA from ever responding to the appeal filed by Petitioners over four years ago. The Petitioners have been in contact with the US EPA including OAR for over four years, requesting OAR respond to our appeal dated March16, 2009. OAR has not acted in good faith. As a matter of fact, counsel for EPA OAR implied that normal operation is to not respond to similar appeals in a timely manner despite a statutory responsibility to respond in a timely fashion. [1]

(2) Stericycle's rationale for Motion to Dismiss the Appeal is that the State of Utah is the administrator of an EPA-authorized permitting program under 40 C.F.R. part 70. Nowhere in 40 C.F.R part 70 does it states that EPA has given up its oversight authority to the EPA-authorized states.

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[1] OAR counsel made phone calls to both Petitioners on October 25, 2013.

Factual Background

On February 19, 2009 the Utah Department of Environmental Quality, Division of Air Quality (UDAQ) issued a Title V renewal permit (Number 1100055002) to the Stericycle, Inc. hospital/medical/infectious waste incinerator, North Lake Salt facility. On March 16, 2009, Petitioners sent to Carol Rushin, Acting Regional Administrator, EPA Region 8, a timely and factually-based "Appeal of Title V permit Issued by the Utah Division of Air Quality to Stericycle Inc.," requesting that EPA assume oversight and deny the Title V permit to Stericycle. Inc.

Our appeal set forth the grounds for US EPA to overrule the Utah Division of Air Quality's permit issuance, including the facts that the (a) content of the permit do not meet the requirements of the Clean Air Act; (b) UDAQ conducted a biased and tainted permit process; (c) UDAQ did not adequately respond to comments; and (4) changes in the law regarding emissions during startup, shutdown and malfunction not being considered and evaluated as emissions.

OAR admits that EPA has not made a determination regarding the underlying Petition filed over four years ago; *See footnote 1 of OAR Motion to Dismiss for Lack of Jurisdiction without prejudice.*[2] OAR also admits in their Motion to Dismiss that EPA is required to respond to such petition within 60 days. However, OAR improperly omitted from its Motion to Dismiss the clear and undisputed fact that EPA OAR failed to respond to our appeal despite over four years transpiring- and in fact never responded to the merits of the appeal at all.

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[2] This has been a similar type of statement given by OAR to Petitioners since July 1, 2009.

During the more than four years since our appeal was filed, we repeatedly communicated with EPA via written correspondence and phone calls asking for the status of the review of our appeal and asking for a response. We are still waiting for a response on the merits that EPA OAR was required to provide over four years ago but never provided.

EPA OAR's knowing and intentional failure to respond to our original appeal on its merits is particularly unacceptable due to the fact that they were aware of the legal requirement to respond in a timely fashion, and due to the fact they were made aware that infants and children live immediately next to the incinerator, with homes located literally feet from the facility and other homes, schools and day care centers located immediately adjacent as well. EPA is also well aware that the Utah Division of Air Quality has taken unprecedented enforcement action against Stericycle for numerous alleged serious violations including exceedences of emissions limits, including for highly toxic dioxin, as well as for allegedly submitting false reports on their test burns and conducting the tests burns in other than normal operating conditions. Residents including children continue to be exposed to the routine toxic emissions as well as toxic emissions from increasingly frequent and serious emergency bypass incidents where black toxic smoke and flames come out of the stack next to homes.

Therefore, EAB should not dismiss our Petition due to EPA OAR's malfeasance in failing to respond to our legitimate appeal.

The EPA OAR suggests that we have other remedies to force EPA to respond to our appeal, but EPA knows very well that a court action will not bring immediate relief to residents suffering from this pollution arising from an improperly issued Title V permit. Instead of using EPA resources and legal staff to make jurisdictional challenges, EPA should respond to the appeal itself and make a decision that is more than four years overdue and is legally required.

The Board does have jurisdiction in reviewing Petitioners appeal as demonstrated in Indeck-Niles Energy Center, PSD Appeal No. 04-01PSD Permit No. 364-00A. As noted, footnote one states in part:

> Because MDEQ acts as EPA's delegate in implementing the federal PSD program within the State of Michigan, the Permit is considered an EPA-issued permit for purposes of federal law, and is subject to review by the Board pursuant to 40 C.F.R. § 124.19. *See In re Kawaihae Cogeneration Project,* 7 E.A.D. 107, 109 n.1 (EAB 1997); *In re Commonwealth Chesapeake Corp.*, 6 E.A.D. 764, 765 n.1 (EAB 1997); *In re West Suburban Recycling and Energy Ctr., L.P.*, 6 E.A.D. 692, 695 n.4 (EAB 1996).

In the Decision, Judge Ronald McCallam, of the Environmental Appeal Board, stated: "... *to provide a plan, subject to public scrutiny, where detail is presented on how emissions will be minimized during ..startup/shutdown. ...The EPA has clearly mandated that developing this plan after the permit is issued where the public has no input is not to be tolerated." Id 12.* The issues regarding Startup, Shutdown and malfunction were codified in *Sierra Club vs Environmental Protection Agency, United States Court of Appeal for the District of Columbia, Decided December 19, 2008 No. 02-1135.*

Respectfully submitted on behalf of the Petitioners,

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CERTIFICATE OF SERVICE

I hereby certify that these copies of the foregoing motion were served via e-mail:

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