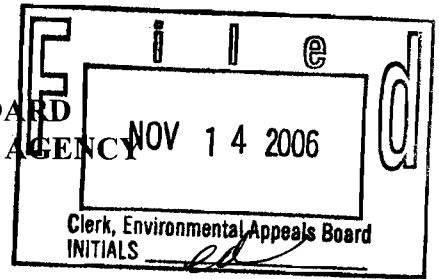


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



_____))
In re:))
Knauf Insulation, GmbH) PSD Appeal Nos. 06-01 through 06-06
PSD Permit No. NSR 4-4-4, SAC 03-01)
_____))

ORDER DENYING REVIEW

I. BACKGROUND

Before the Environmental Appeals Board (“Board”) are six petitions seeking review of a revised prevention of significant deterioration (“PSD”)¹ permit (“Revised Permit”) issued by U.S. Environmental Protection Agency, Region 9 (the “Region”) on May 11, 2006.² The

¹ Congress enacted the PSD provisions of the Clean Air Act (“CAA” or the “Act”) in 1977 for the purpose of, among other things, “insur[ing] that economic growth will occur in a manner consistent with the preservation of existing clean air resources.” CAA § 160(3), 42 U.S.C. § 7470(3). To that end, parties must obtain preconstruction approval (i.e., PSD permits) to build new major stationary sources, or to make major modifications to major existing sources, in areas of the country deemed to be in “attainment” or “unclassifiable” with respect to federal air quality standards called “national ambient air quality standards” (“NAAQS”). See CAA §§ 107, 160-169B, 42 U.S.C. §§ 7407, 7470-7492. NAAQS are established on a pollutant-by-pollutant basis and are currently in effect for six air contaminants: sulfur oxides (measured as sulfur dioxide (“SO₂”)), particulate matter (“PM”), carbon monoxide (“CO”), ozone (measured as volatile organic compounds (“VOCs”)), nitrogen dioxide (“NO₂”), and lead. 40 C.F.R. § 50.4-12.

² Although the Revised Permit is dated May 11, 2006, it was not served on the parties until Monday, May 15, 2006. Thus, Petitioners in the present case were allowed thirty days from May 15 to file a petition for review, and an additional three days because they were notified by mail rather than in person. Further, since the specified time period ended on a Saturday in this

(continued...)

Revised Permit was issued to Knauf Fiberglass Insulation, GmbH (“Knauf”) for the Knauf fiberglass plant in Shasta Lake, California, and revises Knauf’s previous PSD permit by increasing emission limitations to: (1) 16.5 pounds per hour (“lb/hr”) of nitrogen oxide (“NO_x”) at the manufacturing line main stack; and (2) 28.4 lb/hr of particulate matter less than 10 microns in diameter (“PM10”) at the manufacturing line main stack, and 0.67 lb/hr at the glass melting furnace stack. *See* Response to Public Comments at 14 (May 11, 2006). Petitions for review of the Revised Permit have been filed by the following six parties: (1) Henry Francis (PSD Appeal No. 06-01); (2) Colleen Leavitt, Mary Scott, and Celeste Draisner (PSD Appeal No. 06-02); (3) Patricia Jimenez (PSD Appeal No. 06-03); (4) Joy Louise Newcom (PSD Appeal No. 06-04); (5) Serafin Jimenez (PSD Appeal No. 06-05); and (6) Joanna L. Caul (PSD Appeal No. 06-06). This decision consolidates these six petitions. The Region filed a response to the Petitions on July 12, 2006, seeking summary disposition by the Board. *See* EPA Region 9’s Brief in Support of Summary Disposition (“Region’s Response”). For the reasons stated below, review is denied on all six petitions.

II. DISCUSSION

A. Standard of Review

In evaluating a petition for review of a PSD permit under 40 C.F.R. § 124.19(a), the Board will generally not grant review unless the petition for review establishes that the Permit

²(...continued)

instance, the deadline was the following business day, Monday, June 19. *See* 40 C.F.R. §§ 124.19(a) (stating that parties have thirty days from service of a final permit decision to file a petition for review with the Board), 124.20(d) (allowing for an additional three days where service is by mail), and 124.20(c) (stating that where the final day of any time period falls on a weekend or legal holiday, the time period is extended to the next working day).

condition in question is based on a clearly erroneous finding of fact or conclusion of law, or involves an exercise of discretion or an important policy consideration that the Board determines warrants review. 40 C.F.R. § 124.19(a); see *In re Amerada Hess Corp.*, PSD Appeal No. 04-03, slip op. at 11 (EAB Feb. 1, 2005), 12 E.A.D. ____; *In re Sutter Power Plant*, 8 E.A.D. 680, 686-87 (EAB 1999). The Board's analysis of PSD permits is guided by the preamble to the 40 C.F.R. part 124 permitting regulations, which states that the Board's power of review "should be only sparingly exercised" and that most permit conditions should be finally determined at the regional level. See *In re Knauf Fiber Glass, GmbH*, 8 E.A.D. 121, 127 (EAB 1999) (quoting 45 Fed. Reg. 33,290, 33,412 (May 19, 1980)). Accordingly, for each issue raised in a petition, the petitioner bears the burden of demonstrating that review is warranted. 40 C.F.R. § 124.19(a); *Amerada Hess*, slip op. at 11.

Moreover, in order to preserve an issue for appeal, the regulations require any petitioner who believes that a permit condition is inappropriate to have first raised "all reasonably ascertainable issues and * * * all reasonably available arguments supporting [petitioner's] position" during the public comment period on the draft permit. 40 C.F.R. §§ 124.13, .19(a); *In re BP Cherry Point*, PSD Appeal No. 05-01, slip op. at 11 (EAB June 21, 2005), 12 E.A.D. ____; *In re Encogen Cogeneration Facility*, 8 E.A.D. 244, 249 (EAB 1999). The purpose of such a provision is to "ensure that the Region has an opportunity to address potential problems with the draft permit before the permit becomes final, thereby promoting the longstanding policy that most permit decisions should be decided at the regional level, and to provide predictability and finality to the permitting process." *In re New England Plating Co.*, 9 E.A.D. 726, 732 (EAB

2001); *Sutter Power Plant*, 8 E.A.D. at 687 (“The intent of these rules is to ensure that the permitting authority * * * has the first opportunity to address any objections to the permit, and the permit process will have some finality.”). The burden of demonstrating that an issue has been raised during the comment period rests with the petitioner – “It is not incumbent upon the Board to scour the record to determine whether an issue was properly raised below.” *Encogen*, 8 E.A.D. at 250 n.10. The Board has also frequently emphasized that petitioners must raise issues with a reasonable degree of specificity and clarity during the comment period in order for the issue to be preserved for review. *In re Carlota Copper Co.*, NPDES Appeal No. 00-23 & 02-06, slip op. at 46 (EAB Sept. 30, 2004), 12 E.A.D. ____; *New England Plating*, 9 E.A.D. at 732; *In re Steel Dynamics, Inc.*, 9 E.A.D. 165, 230-31 (EAB 2000); *In re Maui Elec. Co.*, 8 E.A.D. 1, 9 (EAB 1998). On this basis, the Board has often denied review of issues raised on appeal that were not raised with the requisite specificity during the public comment period. *See, e.g., New England Plating*, 9 E.A.D. at 732-35; *Maui*, 8 E.A.D. at 9-12; *In re Fla. Pulp & Paper Ass’n*, 6 E.A.D. 49, 54-55 (EAB 1995).

Further, where the Region responds to comments when it issues a final permit, it is not sufficient for a petitioner to rely solely on previous statements of its objections, such as comments on the draft permit. Rather, a petitioner must demonstrate with specificity in the petition why the Region’s prior response to those objections is clearly erroneous or otherwise merits review. *In re Newmont Nev. Energy Inv., L.L.C.*, PSD Appeal No. 05-04, slip op. at 58 (EAB Dec. 21, 2005), 12 E.A.D. ____ (“Newmont”); *Steel Dynamics*, 9 E.A.D. at 744; *In re LCP Chems.*, 4 E.A.D. 661, 664 (EAB 1993).

B. Petitions for Review

1. Henry Francis

On June 12, 2006, Mr. Francis filed a one-page letter objecting to issuance of the revised permit. *See* Letter from Henry Francis to Clerk of the Environmental Appeals Board (June 12, 2006) (“Francis Appeal”).³ Mr. Francis raises concerns regarding the health effects of emissions from the Knauf facility.

In responding to such public health concerns raised during the comment period, the Region stated, in part:

Under the authority of the CAA, EPA has established NAAQS and PSD increment levels to protect the public health and welfare. The purpose of the PSD permitting program is to ensure that air emissions from stationary sources do not cause or contribute to a violation of the NAAQS. The purpose of the PSD increments is to ensure that air quality in areas that have cleaner air than the NAAQS, such as the City of Shasta Lake, does not deteriorate beyond established levels.

* * * *

The proposed revised PSD permit contains control requirements to ensure that Knauf will not cause or contribute to a violation of the NAAQS and will not exceed the PSD increments.

* * * *

Although there will be some increases in air emissions, primarily NO_x emissions, from the facility, EPA has determined that these emissions will be manageably controlled, and will not adversely affect the public health and welfare because the emissions are substantially below the NAAQS and PSD increment.

³ The Francis Appeal is dated June 6, 2006, but was not received by the Clerk of the Board until June 12. Documents are considered “filed” with the Board on the date they are received.

Response to Public Comments at 37.

Because the Francis Appeal fails to demonstrate why the Region's response was clearly erroneous or otherwise warrants review, review is denied on this issue. *See Newmont*, slip op. at 58, 12 E.A.D. ____ (petition may not simply repeat objections raised during the comment period). Further, to the extent that the Francis Appeal is challenging the adequacy of PSD permitting regulations regarding the protection of public health and welfare, this is not the appropriate forum for such a challenge. *See In re Tondu Energy Co.*, 9 E.A.D. 710, 715-16 (EAB 2001) (permit appeals are not appropriate fora for challenging regulations).⁴

2. *Colleen Leavitt, Mary Scott, and Celeste Draisner*

On June 14, 2006, Colleen Leavitt, Mary Scott, and Celeste Draisner (the "parties") filed two documents with the Board titled "Notice of Appeal" and "Request for Time Extension." The Notice of Appeal ("Notice") asks for permission to file an appeal with the Board. The Notice, however, does not raise any objections to the Revised Permit. Rather, it simply refers to the accompanying Request for Time Extension ("Extension Request"). For its part, the Extension Request states only that the parties are waiting to receive certain information from the Region

⁴ We recognize that Mr. Francis is not represented by legal counsel and, as in previous cases, we have therefore endeavored to construe the objections raised liberally so as to identify the substance of the arguments. *E.g.*, *BP Cherry Point*, PSD Appeal No. 05-01, slip op. at 12 n.21 (EAB June 21, 2005), 12 E.A.D. ____; *In re Sutter Power Plant*, 8 E.A.D. 680, 687 (EAB 1999) (citing cases). However, "[w]hile the Board does not expect or demand that [pro se] petitions will necessarily conform to exacting and technical pleading requirements, a petitioner must nevertheless comply with the minimal pleading standards and articulate some supportable reason why the [permit issuer] erred in its permit decision in order for the petitioner's concerns to be meaningfully addressed by the Board." *In re Beckman Prod. Servs.*, 5 E.A.D. 10, 19 (EAB 1994). Mr. Francis has failed in this respect.

pursuant to a Freedom of Information Act (“FOIA”) request, and that this information is “critical” to any appeal.⁵ Again, however, the parties do not articulate any objections to the revised permit nor do they indicate why the requested information is necessary to their appeal. Further, it appears that much of the requested information was part of the administrative record and available for inspection as of May 11, 2006. *See* Region’s Response at 10. Under these circumstances, the parties have failed to establish good cause for extending the time to file an appeal. Having failed to articulate any specific objections to any conditions⁶ of the Revised Permit, the parties’ request for Board review is denied.⁷

⁵ The information sought pursuant to the FOIA request consists of a transcript of a March 8, 2006 public meeting held by EPA, a complete copy of the public comments, and the modeling methodology and raw data used in the Ambient Air Quality Impact Report. Extension Request at 2.

⁶ *See* 40 C.F.R. § 124.19(a) (allowing parties to petition the Board to review any *condition* of a permit decision).

⁷ On September 5, 2006, Celeste Draisner filed an untitled document seeking a remand of the Revised Permit. However, because this submission was not filed within the thirty-day deadline for filing a petition for review with the Board, the submission is dismissed as untimely. *See supra* note 2. The concerns raised in the September 5, 2006 submission relate to the Revised Permit’s increase in the level of NO_x emissions, the alleged failure of the Region to properly enforce the original permit, the operating capacity conditions for emission testing, and the accuracy of modeling data. Upon examination of the record, however, it is clear that these concerns were addressed by the Region in its response to comments document. *See* Response to Public Comments at 28 (Response 3.6b), 29 (Response 4a), 31-32 (Response 5b), 23-24 (Response 3.3k). Ms. Draisner fails to demonstrate why the Region’s responses on these issues were clearly erroneous or otherwise warrant review. *See Newmont*, slip op. at 58, 12 E.A.D. ____ (stating that a petition may not simply repeat objections raised during the comment period). Thus, we would deny review even if the submission had been timely filed.

3. Patricia Jiminez

By letter received by the Board on June 14, 2006, Ms. Jiminez expresses various generalized concerns regarding the Knauf facility. Letter from Patricia Jiminez to Clerk of the Board (June 14, 2006) (“Jiminez Letter”). The only concerns that appear to address the Revised Permit,⁸ however, are the assertions that (1) the public’s concerns were “brushed off,” and (2) that “EPA’s authority to enforce compliance is real fuzzy and indefinite.” *Id.* at 2. For the following reasons, review is denied.

First, Ms. Jiminez fails to provide any support for the assertion that the Region did not consider public concerns, nor do we find any support for such an assertion in the record before us. Indeed, the record indicates that the Region adequately considered and responded to all public comments. Second, in its response to public comments, the Region addressed concerns regarding the Region’s ability to enforce the Revised Permit. In particular, the Region stated, in part:

Section 113 of the CAA established EPA’s authority to enforce compliance with PSD emissions limits. The CAA provides that EPA may issue an order requiring compliance, may issue an administrative penalty order for non-compliance, or may file a judicial action in federal court. (See Section 113(a) of the CAA). Section 113(e) of the CAA sets forth parameters for establishing appropriate penalties for violating PSD emissions limits, such as the size of the business, prior compliance history, good faith efforts to comply, the economic benefit of non-compliance and the seriousness of the violation.

⁸ Ms. Jiminez also suggests that EPA or local officials erred in previous permitting decisions. However, because prior permitting decisions are beyond the scope of this proceeding, review is denied on these issues.

Response to Comments at 31. Ms. Jiminez has not demonstrated why the Region's response was clearly erroneous or otherwise warrants review. Under these circumstances, the petition filed by Ms. Jiminez is denied.⁹

4. *Joy Louise Newcom*

By letter received on June 19, 2006, Ms. Newcom requests that the Knauf facility be shut down. In addition to health-related concerns, Ms. Newcom asserts that the Shasta County Supervisors violated the CAA in their original permitting decision allowing the facility to be built.

As stated above, the Region responded to public comments regarding the effects of the Revised Permit on public health, and Ms. Newcom fails to demonstrate that the Region's responses in this regard were clearly erroneous or otherwise warrant Board review. Further, Ms. Newcom's assertion that issuance of the original permit violated the CAA does not relate to any condition of the Revised Permit currently before us and is therefore beyond the scope of this proceeding. Accordingly, Ms. Newcom's petition for review is denied.

⁹ The remainder of Ms. Jiminez's letter raises generalized concerns regarding emissions from the Knauf facility and does not contain the degree of specificity necessary to support a petition for review. *See Newmont*, slip op at 36 n.8 (petition must contain sufficient specificity to inform Board of alleged error or other reason to fault permit issuer's analysis) (citing *In re P.R. Elec. Power Auth.*, 6 E.A.D. 253, 255-59 (EAB 1995)).

5. *Serafin Jiminez*

By letter filed with the Board on June 19, 2006, Serafin Jiminez contends that the Region failed to adequately consider public health concerns during the permitting process for the Revised Permit. As discussed above, however, the Region adequately responded to public health concerns raised during the public comment period. *See supra* Part II.B.1. Because Mr. Jiminez fails to demonstrate why the Region's response to comments on this issue was clearly erroneous or otherwise warrants review, review is denied.¹⁰ *See Newmont*, slip op. at 58, 12 E.A.D. ____.

6. *Joanna L. Caul*

By letter filed with the Board on June 20, 2006, Joanna L. Caul objects to the location of the Knauf facility and asks for reconsideration of the permitting decision. However, as Ms. Caul's letter was not received by the Board by the June 19 deadline for filing an appeal, *see supra* note 2, it was not filed in a timely manner. Moreover, it does not appear that Ms. Caul participated in the permitting process during the public comment period. *See* 40 C.F.R. § 124.19(a) ("Any person who failed to file comments or failed to participate in the public hearing on the draft permit may petition for administrative review only to the extent of the changes from the draft to the final permit decision."). Accordingly, Ms. Caul's petition is denied.

¹⁰ Mr. Jiminez also suggests that the original permit allowing Knauf to construct its facility should never have been issued. Because this assertion does not pertain to the Revised Permit at issue in this matter, however, it is outside the scope of the Board's jurisdiction.

III. CONCLUSION

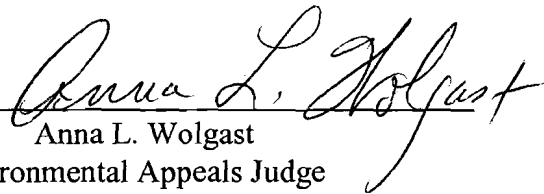
For the foregoing reasons, the petitions for review in the above-captioned matters are denied in all respects.

So ordered.¹¹

Dated: NOV 14 2006

ENVIRONMENTAL APPEALS BOARD

By:



Anna L. Wolgast

Environmental Appeals Judge

¹¹ The panel deciding this matter is comprised of Environmental Appeals Judges Edward E. Reich, Kathie A. Stein, and Anna L. Wolgast.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Denying Review in the matter of Knauf Insulation, GmbH, PSD Appeal Nos. 06-01 through 06-06, were sent to the following persons in the manner indicated:

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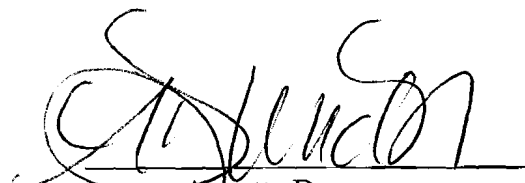
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