

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

In re:

Stericycle Inc.

Permit: Utah Title V No. 1100055002

Appeal No. CAA 13-01

**REPLY BRIEF IN SUPPORT OF STERICYCLE’S MOTION  
TO DISMISS THE APPEAL FOR LACK OF JURISDICTION**

As both the Environmental Protection Agency and Stericycle Inc. have explained, a Title V permit “issued by a state with an EPA-authorized state program may not be appealed to the EAB.” Environmental Appeals Board, *Practice Manual* 59 (Mar. 26, 2013). That is precisely the situation here. The Utah Division of Air Quality issued Stericycle’s Title V operating permit under an EPA-authorized state program. *See* 40 C.F.R. Part 70, App’x A (*available at* <http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=68021bff1914369aaf5ff7223822df06&n=40y16.0.1.1.7&r=PART&ty=HTML#40:16.0.1.1.7.0.1.13.15>). As a result, the Board does not have jurisdiction over this “appeal.”

In their response, Petitioners, the Concerned Salt Lake City Area Residents Against the Stericycle Incinerator and Greenaction for Health and Environmental Justice, largely avoid any discussion of the only issue presently before the Board—whether it has jurisdiction to consider this appeal. Only on the last page of their response do Petitioners speak to the issue of jurisdiction. That effort fails to establish jurisdiction.

Petitioners argue that the Board has previously found jurisdiction in a similar situation where a permit was issued by a state permitting authority. *See* Response at 4. But the case upon which they rely, *In re Indeck-Niles Energy Center*, involved a *different permitting program*—a

permit under the Prevention of Significant Deterioration (PSD) program. *See In re Indeck-Niles Energy Ctr.*, PSD Appeal No. 04-01 (Envtl. App. Bd. Sept. 20, 2004) (*available at* <http://www.epa.gov/eab/orders/indeck2004.pdf>). Under that permitting program, the Board has jurisdiction to review PSD permits issued by a state that acts as EPA's delegate under the PSD program. As a result, the state's PSD permits are "considered EPA-issued permits, and appeals of the permit are adjudicated by the Environmental Appeals Board ('Board') pursuant to 40 C.F.R. 124.19." *Id.* at 1.

Here, in contrast, the Utah Division of Air Quality issued a different permit, a Title V operating permit, under a *different* program—an EPA-authorized state program under 40 C.F.R. Part 70. As Stericycle noted, it is well settled that a Title V permit "issued by a state with an EPA-authorized state program may not be appealed to EAB." Environmental Appeals Board, *Practice Manual* 59 (Mar. 26, 2013).

In short, Greenaction's cited authority, *In re Indeck Niles Energy Center*, is plainly distinguishable and inapplicable as to the proposition for which it is cited; it involved a different permit, issued under a different permitting program, with a different provision governing appeals to the Board. Greenaction has pointed to no provision authorizing the Board to hear *this* appeal. And that is because no such provision exists. *See* 40 C.F.R. §§ 70.1 *et seq.* (providing no authority for a member of the public to appeal to the Board a Title V permit issued by an EPA-authorized state permitting authority).

## CONCLUSION

For the foregoing reasons, the Environmental Appeals Board should dismiss Greenaction's appeal. A Title V permit issued "by a state with an EPA-authorized state program," such as Utah, "may not be appealed to the EAB." EAB, *Practice Manual* 59 (Mar. 26, 2013). In the alternative, the Board should grant Stericycle an extension of time in which to respond to the merits of the Petitioners' appeal.

Dated: November 11, 2013

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Reply Brief in Support of Stericycle's Motion to Dismiss the Appeal for Lack of Jurisdiction, Appeal No. CAA 13-01, were served by United States First Class Mail on the following persons, this 11<sup>th</sup> day of November, 2013:

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