



STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

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Carson City, Nevada 89701-4717

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ENVIR. APPEALS BOARD

CATHERINE CORTEZ MASTO  
*Attorney General*

KEITH G. MUNRO  
*Assistant Attorney General*

JIM SPENCER  
*Chief of Staff*

## MEMORANDUM

**DATE:** November 12, 2008  
**TO:** Clerk of the Board  
**FROM:** Rosiland Hooper, Legal Secretary II   
**SUBJECT:** *Bango Oil, LLC.*

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Please file the enclosed Response to Petition for Review Requesting Summary Disposition .

If you have any questions or require additional information, please call me at (775) 684-1239. Thank you.

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

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ENVIR. APPEALS BOARD

In the matter of

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PSD Appeal No. 08-10

BANGO OIL, LLC.

**RESPONSE TO PETITION FOR REVIEW REQUESTING  
SUMMARY DISPOSITION**

Pursuant to the letter from the Clerk of the Environmental Appeals Board (the Board), dated October 24, 2008, the Nevada Division of Environmental Protection ("NDEP") hereby submits this Response to the Petition for Review in the above-captioned matter, and respectfully requests that the petition be summarily dismissed. As explained herein, the Petition must be summarily dismissed because the Board does not have jurisdiction in that (1) NDEP has not issued a final permit; (2) the permit proceeding is for a minor source permit under the State's Class II permit program, not a PSD permit; and (3) all of the issues raised in the Petition for Review are outside the jurisdiction of the Board. The Petition should be dismissed in its entirety. As grounds for this motion, NDEP states as follows:

**NDEP HAS NOT ISSUED A FINAL PERMIT**

1. On July 30, 2008, Bango Oil, LLC. submitted an application to NDEP for a revision to its Class II Air Quality Operating Permit. Its total facility-wide emissions, including the requested revision, are less than 100 tpy of each regulated pollutant.

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**ORIGINAL**

2. On September 16, 2008, NDEP issued a draft Class II permit for public comment. The public comment period expired October 17, 2008. Attachment 1.

3. Petitioner submitted comments on the draft permit, in identical form and substance as the "Petition for Review," submitted to the Board. Attachment 2.

4. Petitioner's letter to the Board was dated October 8, 2008, nine (9) days before the close of the public comment period.

5. NDEP has not yet responded to the comments received on the draft permit. Attachment 3.

6. NDEP has not yet issued a final permit approving the requested revision to the Bango Oil facility. Attachment 3.

7. The Board has long required that any Petition for Review be of a final permit action, and that the Petition must do more than repeat the comments made at the public comment stage on the permit. *In Re Knauf Fiber Glass, GmbH*, 9 E.A.D. 1, 5 (EAB 2000); EAB Practice Manual at 33. The Petition for Review must explain why the permitting agency's response to comments warrants review. *Id.* Petitioner cannot do that here since a final permit has not been issued and NDEP has not yet responded to her comments. Indeed, since Petitioner filed her Petition for Review with the Board on the same date that she submitted her comments to NDEP, NDEP could not have possibly responded to her comments before the filing of her Petition for Review.

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**THE BANGO OIL FACILITY IS A MINOR SOURCE**

8. Under the air quality regulations of the Nevada Administrative Code, a Class II permit is a minor source permit. NAC 445B.037. Federal Prevention of Significant Deterioration (PSD) permits are issued pursuant to NDEP's Class I Permit Program. NAC 445B.036. Attachment 3; Attachment 4.

9. The Bango Oil facility is not a major stationary source for federal PSD purposes. Its emissions are less than 100 tpy of each regulated air pollutant. The Director's Review and Preliminary Determination of Permit Issuance limited emissions to: 5.24 tpy for PM10; 71.89 tpy for SO2; 32.30 tpy for NOx, 12.23 tpy for CO; and 5.17 tpy for VOCs. Attachment 1.

10. This Board has recognized that its jurisdiction is limited to review of PSD air permits, and that it does not have jurisdiction to review permits issued under an approved minor source program of any State. *In Re DPL Energy Montpelier Electric Generating Station*, 9 E.A.D 695, 699 (EAB 2001).

11. If and when NDEP issues a final permit to Bango Oil, Petitioner will have available to her appropriate remedies under Nevada state law that regulate issuance of the permit.

**NONE OF PETITIONER'S CLAIMS ARE WITHIN THE BOARD'S JURISDICTION**

12. Petitioner acknowledges that the Bango Oil facility's annual emissions are below the PSD threshold, "Bango Oil, LLC may be under the threshold for a major source designation on an annual basis, put [sic] they need to be looked at on a 24-hour average, 8-hour average, 3-hour average, and a

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1-hour average.” However, applicability of the federal PSD program is based on annual emissions from a facility, not shorter term averages.

13. Moreover, the Board has held that its jurisdiction “is limited to federal PSD permits that are actually issued,” and does not extend to allegations that a facility should have obtained a PSD permit. *In Re DPL Energy Montpelier Electric Generating Station, id.* (quoting *In re Carlton, Inc. North Shore Power Plant*, 9 E.A.D. 690, 692 (EAB 2001)). Other remedies are available to a Petitioner with a concern that a facility has failed to obtain a required PSD permit, but not pursuit of an appeal before the Board. *Id.*

14. All of Petitioner’s concerns with the Bango Oil facility in its “Petition for Review” address compliance with state odor regulations and other non-PSD issues, all of which are beyond the Board’s jurisdiction. *In Re Kawaihee Cogeneration Project*, 7 E.A.D. 107, 110 n.5 (EAB 1997); EAB Practice Manual at 28.

### **CONCLUSION**

For all of the foregoing reasons, the Board is without jurisdiction in this matter, and the Petition should be summarily DISMISSED.

Dated: November 12, 2008.

~~GATHERINE CORTEZ MASTO~~  
Nevada Attorney General

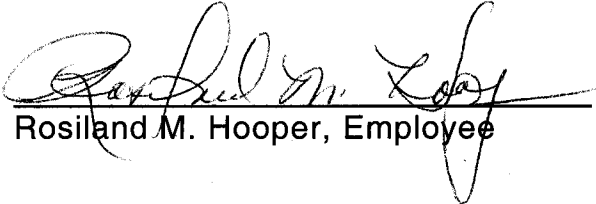
WILLIAM J. FREY  
Senior Deputy Attorney General  
State of Nevada  
100 North Carson Street  
Carson City, NV 89701  
Telephone: (775) 684-1229  
Facsimile: (775) 684-1103

## CERTIFICATE OF SERVICE

I, Rosiland M. Hooper, certify that I am an employee of the Office of the Nevada Attorney General, and on November 12th, 2008, I served a copy of the foregoing **RESPONSE TO PETITION FOR REVIEW REQUESTING SUMMARY DISPOSITION** in the Matter of Bango Oil, LLC, PSD Appeal No. 08-10 to the following by:

- U.S. Mail, postage prepaid
- Hand Delivery
- Fax
- Overnight mail

Sherry Wideman  
13393 Cadet Road  
Fallon, Nevada 89406

  
Rosiland M. Hooper, Employee