

F I L E D

Aug 29 2019

Clerk, Environmental Appeals Board

INITIALS *ED*

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

_____)	
In re:)	
)	
Veolia ES Technical Solutions, LLC)	CAA Appeal No. 19-02
)	
Permit No. V-IL-1716300103-2014-10)	
)	
_____)	

ORDER DENYING PETITION FOR REVIEW

Ms. RoseMary Howard filed with the Environmental Appeals Board (“Board”) on July 17, 2019, a one-page petition (“Petition”) that appears to challenge a federal operating permit issued by Region 5 of the U.S. Environmental Protection Agency to Veolia ES Technical Solutions, LLC under subchapter V of the Clean Air Act, 42 U.S.C. §§ 7661-7661f, and part 71 of title 40 of the Code of Federal Regulations. In the Petition, Ms. Howard states that she has an asthmatic respiratory condition that has been aggravated by the “negligence” of “your company” and that she is considering taking “Legal Action against your company and all others involved in this matter” to seek compensation for her injuries. RoseMary Howard Petition (July 17, 2019).

The appeal of an operating permit issued under subchapter V of the Clean Air Act is governed by the regulations set forth at 40 C.F.R. § 71.11(*l*). Under those regulations, a petitioner may seek review of “any condition of the permit decision” and must show that the permit “condition in question” is based on a clearly erroneous finding of fact or conclusion of law or a decision by the permit issuer that otherwise warrants review. 40 C.F.R. § 71.11(*l*)(1). Generally, a petition may be filed only by a person or entity that filed comments on, or participated in a public hearing on, the draft permit. *Id.* Further, the petition must include “a

statement of the reasons supporting * * * review, including a demonstration that any issues raised were raised during the public comment period (including any public hearing) to the extent required by these regulations.”¹ *Id.*

On its face, Ms. Howard’s Petition does not appear to satisfy the requirements set forth in 40 C.F.R. § 71.11(*l*). Accordingly, on July 31, 2019, the Board ordered Ms. Howard to file a response by August 13, 2019, explaining why the Petition should not be dismissed for failure to comply with the requirements of 40 C.F.R. § 71.11(*l*). Order to Show Cause Why Petition Should Not Be Dismissed for Failure to Comply With 40 C.F.R. § 71.11(*l*) (July 31, 2019). Specifically, the Board ordered Ms. Howard to explain what permit condition her Petition challenges and to show both that she commented on the draft permit during the public comment period and that her “negligence” concern was raised during the public comment period. *Id.* at 2-3.

The August 13, 2019 deadline for responding to the Board’s order has passed and the Board has not received a response from Ms. Howard.


¹ Section 71.11(*g*) specifies that persons who believe any draft permit condition is inappropriate “must raise all reasonably ascertainable issues and submit all reasonably ascertainable arguments supporting their position by the close of the public comment period (including any public hearing).” 40 C.F.R. § 71.11(*g*). However, a petitioner may raise new issues that were not previously raised during the comment period upon a showing that it was “impracticable to raise such objections” previously or that “the grounds for such objection arose after such period.” *Id.* § 71.11(*l*)(1).

Because Ms. Howard has failed to identify any condition of the permit decision that her Petition challenges or that the “negligence” concern raised in her Petition was raised during the public comment period, the Board denies Ms. Howard’s Petition.

So ordered.²

ENVIRONMENTAL APPEALS BOARD

Dated: August 29, 2019

By: 

Aaron P. Avila
Environmental Appeals Judge

² The two-member panel deciding this matter consists of Environmental Appeals Judges Aaron P. Avila and Kathie A. Stein.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **ORDER DENYING PETITION FOR REVIEW** in the matter of Veolia ES Technical Solutions, LLC, CAA Appeal No. 19-02, were sent to the following persons in the manner indicated.

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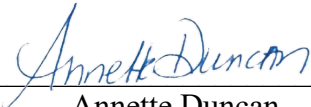
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Dated: **Aug 29 2019**



Annette Duncan
Administrative Assistant