

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

_____)	
In re:)	
)	
TRW/Ramsey Site)	RCRA Appeal No. 02-02
Sullivan, Missouri)	
)	
)	
_____)	

ORDER DISMISSING PETITION FOR REVIEW

On May 9, 2002, the City of Sullivan ("Petitioner"), the city in which the TRW/Ramsey Site is located, filed a petition for review with the Environmental Appeals Board (the "Board") objecting to the "Final Remedy Decision" for the Site. For the reasons set forth below, the Petition is dismissed for lack of jurisdiction.

I. BACKGROUND

On March 13, 2002, the U.S. EPA, Region VII (the "Region"), jointly with the Missouri Department of Natural Resources ("MDNR"), issued a Final Remedy Decision summarizing the final remedy for a Resource Conservation and Recovery Act ("RCRA")

corrective action at the TRW/Ramsey Site, along with their joint response to comments received on the Statement of Basis ("Final Remedy Decision").¹ In the Statement of Basis, the agencies proposed a remedy for the TRW/Ramsey Site. The Final Remedy Decision states that a draft State Corrective Action Abatement Order on Consent will be transmitted to TRW after the Final Remedy Decision's issuance. If signed, this Consent Order would establish the framework for both the final remedy implementation and the long-term remedy operation, maintenance and monitoring at the TRW/Ramsey Site. Final Remedy Decision at 1.

Petitioner asserts that the Final Remedy Decision is "arbitrary, capricious, an abuse of discretion, beyond EPA or MDNR authority, and clearly erroneous." Petition at 5.

Petitioner makes only a brief reference to any applicable regulatory or statutory authority granting the Board jurisdiction to hear its Petition, citing 40 C.F.R. § 124.19(a) as the basis for its Petition. However, it makes no argument as to how that provision should apply here.

¹From the copy the Board has of the Final Remedy Decision, the actual date of its issuance is unclear. It appears that the Final Remedy Decision was issued either on March 3 or February 3, 2002. See Final Remedy Decision at 12. However, for purposes of this order, clarification on this point is not necessary.

On May 30, 2002, the Board issued to Petitioner an Order to Show Cause Why Petition Should Not be Dismissed for Lack of Jurisdiction ("Order to Show Cause"). In the Order to Show Cause, the Board pointed out that its authority to hear appeals under 40 C.F.R. part 124 is limited. Order to Show Cause at 2. Part 124 pertains to "EPA procedures for issuing, modifying, revoking and reissuing, or terminating all RCRA, UIC, PSD and NPDES 'permits' * * *." 40 C.F.R. § 124.1(a). Specifically, under this authority the Board has jurisdiction to review certain types of "permits." 40 C.F.R. § 124.1(a). Because Petitioner has requested review of a Final Remedy Decision, not a permit, the Board preliminarily concluded that it lacked jurisdiction to review the TRW/Ramsey Site Final Remedy Decision under 40 C.F.R. § 124.19. See Order to Show Cause at 3.

Petitioner responded to the Order to Show Cause on June 21, 2002. See City of Sullivan's Response to Order to Show Cause Why Petition Should Not Be Dismissed for Lack of Jurisdiction ("Response"). Petitioner asserts,

EPA has made clear that the public participation requirements for corrective action decisions made pursuant to interim status orders (RCRA section 3008(h)) are to be the same as corrective action

decisions pursuant to permits (RCRA section 3004(u)).^[2]

That is the basis of this appeal.

Id. at 3. In support of its argument, Petitioner identifies several guidance documents, as well as a 1996 Advanced Notice of Proposed Rulemaking ("ANPR"), (61 Fed. Reg. 19,432 (May 1, 1996)), that EPA has issued. The ANPR states that "[a]s a matter of EPA policy, the substantive corrective action requirements and public participation requirements imposed under either [a permit or a RCRA 3008(h) order] are generally the same." 61 Fed. Reg. at 19,453. From this statement, Petitioner argues that since a RCRA permit requiring corrective action is subject to 40 C.F.R. part 124, specifically the appeal rights available under 40 C.F.R. § 124.19, a corrective action order under 3008(h) must also, as a matter of policy, be subject to 40 C.F.R. § 124.19. Response at 3-4.

II. DISCUSSION

After considering the Petition and Response in this matter, the Board concludes that it lacks jurisdiction to hear the

²Petitioner refers to 42 U.S.C. §§ 6928(h) and 6924(u), respectively.

Petition. The Board is a body of limited jurisdiction.³ 40 C.F.R. § 1.25; see *In re General Growth Properties*, CWA Appeal No. 02-01 (EAB, March 11, 2002). As we pointed out in our Order to Show Cause, the Board's jurisdiction under part 124 extends only to "RCRA, UIC, PSD and NPDES 'permits.'"⁴ Order to Show Cause at 2-3. Part 124 does not grant the Board authority to hear petitions for review other than those petitions to review the specific *permit* decisions enumerated in 40 C.F.R. § 124.1(a).

The documents Petitioner cites as supporting the Board's jurisdiction in this matter, particularly the ANPR, discuss public participation and EPA's commitment to "[e]nhance

³Section 1.25 of 40 C.F.R. provides that the Board's authority extends to that which is "expressly delegated to it in this title." 40 C.F.R. 1.25(e)(2). Additionally this section states that the Board "shall, at the Administrator's request, provide advice and consultation, make findings of fact and conclusions of law, prepare a recommended decision, or serve as the final decisionmaker, as the Administrator deems appropriate." *Id.* For the reasons noted in this decision, Petitioner makes no credible argument that the Board has authority to review this Petition either under an express delegation or at the request of the Administrator.

⁴Section 124.1(a) states in relevant part:

(a) This part contains EPA procedures for issuing, modifying, revoking and reissuing, or terminating all RCRA, UIC, PSD and NPDES "permits[.]" * * * RCRA interim status and UIC authorization by rule are not "permits" and are covered by specific provision in parts 144, subpart C, and 270. * * * * The procedures of this part also apply to denial of a permit for the active life of a RCRA hazardous waste management facility or unit under § 270.29.

opportunities for timely, meaningful public participation." 61 Fed. Reg. at 19,435. Significantly, nowhere in the provisions relied on by Petitioner does EPA discuss appeal rights. Rather, the documents are concerned with public notices and public meetings in the RCRA corrective action context. *Id.* at 19,462. Indeed, the ANPR states with regard to EPA's policy to have the same level of public participation for 3008(h) orders as for permits:

At a minimum, information regarding corrective action activities (e.g., RFI [RCRA Facility Investigation] and CMS [Corrective Measures Study] reports) should be available to the public and the public should be given the opportunity to review and comment on proposed corrective action remedies.^[5]

Id. at 19,454. This policy commitment, however, does not give Petitioner the right to challenge this decision under part 124. Only a revision of part 124 that broadens the scope of part 124 to include this type of decision or some equivalent action would give Petitioner such a right. Whatever the merits of the policy argument that Petitioner makes, it is not the role of the Board

⁵It appears from Petitioner's Response that this policy was indeed followed. See Response at 2.

to broaden the scope of the administrative appeal rights in the 3008(h) context. Accordingly, Petitioner has not persuaded us that the Board has authority to review this Final Remedy Decision.⁶

III. CONCLUSION

For the foregoing reasons, we dismiss the Petition with prejudice for lack of jurisdiction.

So ordered.⁷

Dated: 06/26/02

ENVIRONMENTAL APPEALS BOARD

By: _____ /s/
Kathie A. Stein
Environmental Appeals Judge

⁶Our decision today pertains only to the Board's jurisdiction to hear this Petition, and does not address whether there are appeal rights under State law or other provisions of federal law that might be applicable in this matter.

⁷The three-member panel deciding this matter is comprised of Environmental Appeals Judges Scott C. Fulton, Edward E. Reich, and Kathie A. Stein. See 40 C.F.R. § 1.25(e)(1).

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Dismissing Petition for Review in the Matter of TRW/Ramsey Site, RCRA Appeal No. 02-02, were sent to the following persons in the manner indicated:

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Dated: 06/27/02

_____/s/_____
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