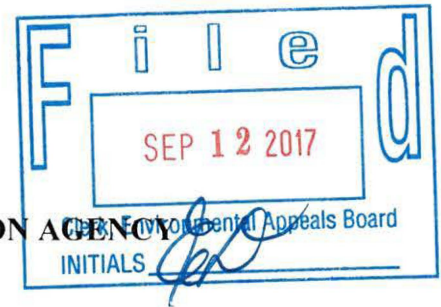


**ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**



In re:)
))
Missouri Permit No. MO-G49136) NPDES Appeal No. 17-04
))
Coastal Energy Corporation)
))
))

ORDER DISMISSING PETITION FOR LACK OF JURISDICTION

I. INTRODUCTION

On September 5, 2017, the Environmental Appeals Board (“Board”) received an appeal from Ms. Jill Bailey seeking review of permit number MO-G491369 pursuant to 40 C.F.R. § 124.19. The documents submitted by Ms. Bailey indicate that the Missouri Department of Natural Resources (“MDNR”) issued the permit, a State General Operating Permit, under the Federal Water Pollution Control Act (“FWPCA”) and that the permit authorizes Coastal Energy Corporation to, among other things, discharge stormwater at its facility located in Willow Springs, Missouri.¹ It further appears that Ms. Bailey participated during the state public comment period on the draft permit by submitting comments, and that beginning on at least August 24, 2017, Ms. Bailey contacted various state and federal agencies and departments inquiring about filing an appeal to challenge the permit. For the reasons set forth more fully below, the Board’s

¹ See Email Correspondence Between Jill Bailey and Clerk of the Board from 8/24/17 to 9/12/17 (dkt. #4).

authority to review permit decisions does not extend to this state permit and the Board dismisses the appeal for lack of jurisdiction.

II. DISCUSSION

Under the Federal Water Pollution Control Act, also known as the Clean Water Act (“CWA”), persons who discharge pollutants from point sources into water of the United States must have a permit for the discharge to be lawful. CWA § 301, 33 U.S.C. § 1311. The National Pollutant Discharge Elimination System (“NPDES”) program is one of the principal permit programs under the CWA and NPDES permits are issued under section 402 of the CWA. 33 U.S.C. § 1342. States may be authorized to administer the NPDES program (including issuing NPDES permits) and the State of Missouri received such authorization to administer and implement the CWA NPDES program (with a few exceptions not applicable here) in 1974.²

The Board is a tribunal of limited jurisdiction, however, and its authority to review permit decisions is “limited by the statutes, regulations, and delegations that authorize and provide standards for such review.” *In re State of Haw., Dep’t of Transp., Highways Div.*, NPDES Appeal No. 13-11, at 2 (EAB Nov. 6, 2013) (Order Dismissing

² See National Pollutant Discharge Elimination System Protocol Working Agreement Between the Regional Administrator, Region VII, U.S. Environmental Protection Agency, and the Executive Secretary of the Missouri Clean Water Commission (March 29, 1974); *see also* Permitting for Environmental Results (PER) NPDES Profile: Missouri, *available at* https://www3.epa.gov/npdes/pubs/missouri_final_profile.pdf. States like Missouri, with EPA approved programs, assume permitting authority.

Petition for Review). *See In re Mich. CAFO Gen. Permit*, NPDES Appeal No. 02-11, at 3 (Mar. 18, 2003) (Order Dismissing Petition for Review); *In re Carlton, Inc.*, 9 E.A.D. 690, 692 (EAB 2001); *see also* 57 Fed. Reg. 5320 (Feb. 13, 1992). The Board is authorized to hear appeals of individual permit decisions issued by EPA under the CWA at 40 C.F.R. part 124. This part provides “EPA procedures for issuing, modifying, revoking and reissuing, or terminating all * * * NPDES ‘permits.’” 40 C.F.R. § 124.1(a). Under part 124, the EPA Regional Administrator issues a final permit decision, 40 C.F.R. § 124.15(a), and such EPA-issued permits are in turn appealable to the Board under 40 C.F.R. § 124.19(a).

But the Board’s authority to review CWA NPDES permit decisions under 40 C.F.R. § 124.19(a) does not extend to state-issued permits as the Board’s jurisdiction is circumscribed by its governing regulations. *See* 40 C.F.R. § 1.25(e)(2); *see also Simpson Paper Co.*, 4 E.A.D. 766, 770 (EAB 1993) (noting that Board’s jurisdiction to review NPDES permit decisions under the CWA depends on the existence of an EPA-issued permit); *see also In re Town of Seabrook*, 4 E.A.D. 806, 817 (EAB 1993) (denying petition for review of evidentiary hearing request denial for state-issued NPDES permit because it was not subject to Board permit review), *aff’d sub nom. Adams v. U.S. EPA*, 38 F.3d 43 (1st Cir. 1994).

And because the permit at issue here is a state permit issued by MDNR, the Board lacks jurisdiction to review the permit decision under 40 C.F.R. § 124.19. Although the MDNR permit program is federally approved, the permit at issue here is nonetheless a state permit issued under state law. Nothing in the Clean Water Act or 40 C.F.R. part 124 gives the Board jurisdiction to consider this appeal.

Nor does the Board attain jurisdiction to hear an appeal over a state-issued permit simply because a petitioner may seek to challenge compliance with a federal law. Ms. Bailey states in her email communications with the Clerk of the Board that the “laws [she] cited were violated with this permit were federal laws on NPDES permitting appeal,” and “that large part of [her] appeal has to do with a federally protected river, and [the Federal Wild and Scenic Rivers Act,] a federal law that protects it,” suggesting that the right forum for her appeal lies at “the federal level” with the Board. Email from Jill Bailey to Clerk of the Board (Sept. 6, 2017, 5:18pm EDT); Email from Jill Bailey to Clerk of the Board (Sept. 6, 2017, 5:43pm EDT).³ Regardless of Ms. Bailey’s assertions, it does not alter the fact that the Board is a tribunal of limited jurisdiction and its review authority is prescribed by applicable “statutes, regulations, and delegations that authorize and provide standards for such review.” *Carlton*, 9 E.A.D. at 692; *see generally* 57 Fed. Reg. 5320 (Feb. 13, 1992).

And even if the general permit at issue here were an EPA-issued permit, which it is not, section 124.19(o) explicitly bars anyone from appealing general permits to the Board. *Mich. CAFO Gen. Permit*, slip op. at 4. Section 124.19(o) provides in relevant part: “Persons affected by an NPDES general permit may not file a petition under this section or otherwise challenge the conditions of a general permit in further [EPA] proceedings.” 40 C.F.R. § 124.19(o)(1).

³ Available in the EAB Docket for NPDES Appeal No. 17-04, Email Correspondence Between Jill Bailey and Clerk of the Board from 8/24/17 to 9/12/17 (dkt. #4).

III. *CONCLUSION*

For the foregoing reasons, the Board dismisses the petition for lack of jurisdiction.

So ordered.⁴

ENVIRONMENTAL APPEALS BOARD

Dated: September 12, 2017

By: Mary Kay Lynch
May Kay Lynch
Environmental Appeals Judge

⁴ The three-member panel deciding this matter is composed of Environmental Appeals Judges Aaron P. Avila, Mary Kay Lynch, and Mary Beth Ward.

CERTIFICATE OF SERVICE

I certify that copies of the forgoing *Order Dismissing Petition for Lack of Jurisdiction* in the matter of Coastal Energy Corporation, NPDES Appeal Nos. 17-04, were sent to the following persons in the manner indicated:

By First Class Mail/Return Receipt Requested:

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Dated:

September 13, 2017



Eurika Durr
Clerk of the Board