

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

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| _____ |) | |
| In re: |) | |
| |) | |
| Lynwood Utility |) | NPDES Appeal No. 99-3 |
| Corporation (STP) |) | |
| |) | |
| _____ |) | |

ORDER DISMISSING APPEAL

By submission dated April 6, 1999, the Lumsden Bend Community Group ("Lumsden") seeks review of a decision by U.S. EPA Region IV (the "Region") not to object to a modified NPDES permit issued by the Tennessee Department of Environment and Conservation.¹ The permit modification was issued to the Lynwood Utility Corporation sewage treatment plant ("Lynwood"), and, according to Lumsden, would allow Lynwood to increase the capacity of its existing plant. Notice of Appeal at 3-4.

Petitioner states that the Board has authority to review the Region's decision not to object to the State-issued NPDES permit under the informal appeal procedures of 40 C.F.R. § 124.5(b). Notice of Appeal at 1. That section, however,

¹Where, as here, EPA has authorized a State to create and administer its own NPDES permit system, the Agency retains an oversight role. 33 U.S.C. 1342(d). Before a State may issue a permit, it must submit the proposed permit to the Region, which then has ninety days to review the draft permit and raise objections. 33 U.S.C. § 1342(d)(2).

provides for an informal appeal to the Environmental Appeals Board only where the Region has denied a request that an existing permit be modified, revoked and reissued, or terminated. Specifically, § 124.5(b) states, in part:

If the [Region] decides the request [for permit modification, revocation and reissuance, or termination] is not justified, [the Region] shall send the requester a brief written response giving a reason for the decision. *Denials of requests for modification, revocation and reissuance, or termination * * ** may be informally appealed to the Environmental Appeals Board by a letter briefly setting forth the relevant facts. The Environmental Appeals Board may direct the [Region] to begin modification, revocation and reissuance, or termination proceedings under paragraph (c) of this section.

(Emphasis added). As the present appeal is not from the denial of any of the above-mentioned requests (modification, revocation and reissuance, or termination), § 124.5(b) is inapplicable in this case. Nothing in § 124.5(b) authorizes the Board to review a Regional decision not to object to a State-issued permit, nor are we aware of any other provision providing the Board with such authority. Accordingly, the appeal must be, and hereby is, dismissed.

So ordered.

Dated: April 15, 1999

ENVIRONMENTAL APPEALS BOARD

By: _____ /s/
Edward E. Reich
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Dismissing Appeal in the matter of Lynnwood Utility Corporation (STP), NPDES Appeal No. 99-3, were sent to the following persons in the manner indicated:

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Dated: April 15, 1999

_____/s/_____
Annette Duncan
Secretary