

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

In re:	)	
Shintech, Inc.	)	PSD Appeal No. 97-11
Permit No. PSD-LA-604	)	

**ORDER DISMISSING APPEAL**

On June 30, 1997, the Environmental Appeals Board ("Board") received a Petition for Review filed jointly by fourteen organizations (collectively "Petitioners").' Petitioners requested the Board to review, pursuant to the Board's authority under 40 C.F.R. § 124.19, a Prevention of Significant Deterioration ("PSD") permit decision issued by the Louisiana Department of Environmental Quality ("LDEQ") to Shintech, Inc. for the construction and operation of a polyvinyl chloride production complex in Convent, St. James Parish, Louisiana.

On July 3, 1997, the Board issued an order directing the Petitioners to submit a brief clarifying the basis for their assertion that the Board has jurisdiction to review this permit under 40 C.F.R. § 124.19. In its order, the Board noted that 40 C.F.R. § 124.1(e) provides that "Part 124 does not apply to PSD

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'Petitioners are the St. James Citizens for Jobs and the Environment, Louisiana Environmental Action Network, Neighbors Assisting Neighbors, Sierra Club, St. John Citizens for Environmental Justice, St. Charles Environmental Coalition, Gulf Coast Tenants Organization, Louisiana Citizen Action, Concerned Citizens of Iberville Parish, Action Against Waste and to Restore the Environment, Ascension Parish Residents Against Toxic Pollution, Save Our Selves, Delta Greens and River Area Planning Group.

permits issued by an approved State," and that Louisiana, as reflected in 40 C.F.R. § 52.986, is an "approved State" for purposes of PSD permitting.

On August 6, 1997, the Board received Petitioners' brief addressing the issue of jurisdiction. Having considered Petitioners' contentions regarding jurisdiction, the Board concludes that it lacks the authority to review this permit, and the Board therefore dismisses Petitioners' appeal for lack of jurisdiction.

In their brief, Petitioners urge the Board to disregard the "approved" status of Louisiana's PSD program based on various alleged defects connected with an EPA final rule, effective November 13, 1995, whereby St. James Parish, Louisiana was redesignated from nonattainment to attainment with respect to the ozone National Ambient Air Quality Standard. See 60 Fed. Reg. 47,280 (1995). The Board, however, has no authority to reexamine the validity of the rule whereby EPA redesignated St. James Parish to attainment for ozone. The Board's authority in the review of PSD permits is clearly defined by, and limited by, 40 C.F.R. Part 124. What Petitioners seek is for the Board to decide that it has the authority to review challenges to certain PSD permits issued by an approved State despite the express limitation of 40 C.F.R. § 124.1(e) to the contrary. This we cannot do.

The Board's permit review authority is defined and limited by the terms of the applicable regulations, and the permit

decision that Petitioners seek to appeal lies clearly outside the bounds of that authority.<sup>2</sup> PSD Appeal No. 97-11 is therefore dismissed for lack of jurisdiction.<sup>3</sup>

So ordered.

ENVIRONMENTAL APPEALS BOARD

By: \_\_\_\_\_  
Edward E. Reich  
Environmental Appeals Judge

Dated: *AUG I 2 1997*

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<sup>2</sup>In so holding, we express no view concerning the merits of the arguments presented by Petitioners in their Petition for Review, or concerning the merits of any arguments that Petitioners may have raised elsewhere within the Agency under other review provisions in connection with the facility described in this PSD permit.

<sup>3</sup>Petitioners also intimate in their brief that the Board has jurisdiction to review this permit based on Clean Air Act section 167 ("Enforcement"), which authorizes the EPA Administrator to take measures ("including issuance of an order, or seeking injunctive relief") to prevent construction of a major emitting facility that does not comply with PSD requirements. See Petitioners' Brief at 6-7. The Administrator's enforcement authority under section 167 has not, however, been delegated to this Board.

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing Order Dismissing Appeal in the matter of Shintech, Inc., PSD Appeal No. 97-11, were sent to the following persons in the manner indicated:

By first-class mail:

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Mildred T. Johnson  
Secretary

Dated: *AUG 12 1997*