

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

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In re: )  
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City of San Diego Urban Area ) NPDES Appeal No. 98-2  
Pretreatment Program )  
Docket No. CA0107409 )  
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ORDER DISMISSING APPEAL

On April 20, 1998, petitioner Vermatek Company, Inc. ("Vermatek") filed with the Board a petition seeking to reverse Region IX's March 16, 1998 approval of a pretreatment program that is alleged to have been a compliance schedule within the City of San Diego's (the "City's") 1995 NPDES permit. Appeal to the U.S. Environmental Protection Agency, Environmental Appeals Board to Reverse EPA Region IX Approval of the City of San Diego Urban Area Pretreatment Program at 1 ("Petition").<sup>1</sup> The Petition alleges that on March 5, 1998, Vermatek submitted to Region IX

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<sup>1</sup>The Petition alleges that it is brought under 40 C.F.R. § 124.5, which covers the procedures for modifying, revoking and reissuing, or terminating a permit based on the request of an "interested person" or upon the initiative of the director of the permitting program. Petition at 1. It is not clear from the Petition that Vermatek has a basis for appeal under § 124.5, since any such appeal must be based on a written denial of a written request, and it cannot be determined from the Petition whether any such request ever was made or denied. In any event, in light of the status of Vermatek's 40 C.F.R. § 124.74 evidentiary hearing request (discussed *infra*), the Board shall take no action on the "appeal" brought under § 124.5.

("the Region") a request for an evidentiary hearing under 40 C.F.R. § 124.74, and that despite that request, the Region nevertheless approved the pretreatment program. *Id.* at 8.

On May 8, 1998, the Region filed its Motion for Dismissal of Petitioner's Appeal ("Motion to Dismiss"), which seeks to either stay or dismiss the Petition on the grounds that it is premature. In particular, the Region states that Vermatek filed its evidentiary hearing request eleven days **before** the Region issued its permit decision approving the pretreatment program, and then filed its appeal before the Region issued a response to Vermatek's hearing request. Motion to Dismiss at 1-2. The Region represents that despite the premature nature of Vermatek's evidentiary hearing request, the Region is currently in the process of responding to that request. *Id.*

As the Region correctly points out, an interested party has thirty (30) days from the service of the Regional Administrator's permit decision to file an evidentiary hearing request. 40 C.F.R. § 124.74(a). The permitting authority then has thirty (30) days from the expiration of the time allowed under section 124.74(a) to issue a response to the evidentiary hearing request. *Id.* § 124.75 (a) (1). Finally, within thirty (30) days of service of a permitting authority's denial in whole or in part of an evidentiary hearing request, an interested party may file an appeal with this Board. *Id.* § 124.91(a) (1). Since it is clear from the facts alleged in the Petition and in the Motion to Dismiss that the Region has not yet issued any decision on

Vermatek's March 5, 1998 evidentiary hearing request, this matter is not yet ripe for review by the Board. The Board therefore lacks jurisdiction over the Petition, which is hereby dismissed with **prejudice**.<sup>2</sup> Once the Region issues its decision on Vermatek's evidentiary hearing request, Vermatek may then appeal that decision to the extent provided under 40 C.F.R. § 124.91(a).

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated:

*May 21, 1998*

By: \_\_\_\_\_

Kathie A. Stein  
Environmental Appeals Judge

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<sup>2</sup>The Board notes that on May 13, 1998, Vermatek filed with this Board a document entitled "Amendment to Vermatek Co. Inc.'s Appeal Brief Filed With the U.S. Environmental Protection Agency, Environmental Appeals Board of EPA Region IX Approval of the City of San Diego Urban Area Pretreatment Program (40 C.F.R. § 125.65, NPDES Permit **CA0107409**)" ("Amendment"), but did not seek leave of the Board to file this document. The Amendment appears to consist of additional briefing and exhibits related to the matters raised in the Petition. Since the Petition is hereby dismissed with prejudice, the Board need not rule on whether to permit the Amendment. For future reference, counsel is reminded that he must seek leave from the Board before filing any brief or other document in addition to the notice of appeal and petition for review which are necessary to perfect an appeal under 40 C.F.R. § 124.91(a). See The Environmental Appeals Board Practice Manual at 23 (Nov. 1994).

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing Order Dismissing Appeal in the matter of City of San Diego Urban Area Pretreatment Program, NPDES Appeal No. 98-2, were sent to the following persons in the manner indicated:

By Facsimile and by First Class Mail:

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Dated: MAY 21 1998

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Annette Duncan  
Secretary