

IN RE AJAX MATERIALS CORPORATION

CAA Appeal No. 21-04

***ORDER DISMISSING PETITION FOR REVIEW FOR LACK OF
JURISDICTION***

Decided January 10, 2022

Syllabus

Mr. Melvin Jones Jr. filed a petition for review with the Environmental Appeals Board (“Board”), followed by a number of other submissions, challenging the Michigan Department of Environment, Great Lakes, and Energy, Air Quality Division’s approval of a “Permit to Install” issued to Ajax Materials Corporation (“Ajax”), which authorizes Ajax to install and operate emission units at its facility located in Flint, Michigan. The permit states that it was issued in accordance with and subject to provisions of Michigan law. This Permit to Install is a type of New Source Review permit for a minor source, and the U.S. Environmental Protection Agency has approved Michigan’s Permit to Install regulations as part of Michigan’s Clean Air Act State Implementation Plan.

Held: The Board dismisses the petition for review for lack of jurisdiction. The Board’s authority to review permitting decisions is circumscribed by its governing regulations. Mr. Jones has failed to identify, and the Board has not identified, any regulation providing the Board authority to review the Michigan permitting decision that Mr. Jones challenges.

***Before Environmental Appeals Judges Aaron P. Avila, Mary Kay Lynch,
and Kathie A. Stein.***

Opinion of the Board by Judge Avila:

Mr. Melvin Jones Jr. filed a petition for review with the Environmental Appeals Board (“Board”) on December 21, 2021, followed by a number of other submissions, challenging a permit issued by the Michigan Department of

Environment, Great Lakes, and Energy (“Michigan Department of Environment”).¹ More specifically, on November 15, 2021 the Michigan Department of Environment, Air Quality Division approved a “Permit to Install” (No. 90-21) to Ajax Materials Corporation (“Ajax”). Mich. Dep’t of Env’t, Great Lakes, & Energy, *Permit to Install No. 90-21* (Nov. 15, 2021). The permit authorizes Ajax to install and operate emission units at its facility located in Flint, Michigan. The permit states that it was “issued in accordance with and subject to Section 5505(1) of Article II, Chapter I, Part 55, Air Pollution Control, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended.” *Id.* at cover page. This Permit to Install is a type of New Source Review (“NSR”) permit for a minor source. See Mich. Dep’t of Env’t, Great Lakes, & Energy, Response to Comments Document, Ajax Materials Corp., Permit Application No. APP-2021-0019, at 58 (Nov. 15, 2021), available at https://content.govdelivery.com/attachments/MIDEQ/2021/11/15/file_attachments/1995972/90-21RTC.pdf. The U.S. Environmental Protection Agency (“EPA”) has approved Michigan’s Permit to Install regulations as part of Michigan’s Clean Air Act State Implementation Plan. See generally Air Plan Approval; Michigan; Minor New Source Review, 83 Fed. Reg. 44,485 (Aug. 31, 2018); Air Plan Approval; Michigan; Permit to Install Public Hearing Provisions, 84 Fed. Reg. 25,180 (May 31, 2019).

The Board acknowledges the concerns expressed by Mr. Jones about the environment and environmental justice in his submissions to the Board. The Board’s authority to review permitting decisions is, however, circumscribed by its governing regulations. Mr. Jones’s petition for review and other submissions do not identify authority for the Board to review the Michigan Department of Environment’s decision to issue this Permit to Install to Ajax. And the Board has identified no regulation providing any authority for the Board to review the permitting decision challenged by Mr. Jones. See *In re DPL Energy Montpelier Elec. Generating Station*, 9 E.A.D. 695, 699 (EAB 2001) (reviewing sources of Board’s authority to review permit decisions and concluding that “[n]one * * * confers jurisdiction on the Board for the sole purpose of reviewing permits issued under an approved minor source NSR program of any State.”). To the contrary, the regulations providing for Board review in the context of minor sources are directed to review of permit decisions issued under the Federal Minor New Source Review

¹ Mr. Jones’s submissions to the Board contained self-identifying medical information and they have not been posted to the public docket in this matter.

Program in Indian Country. *See* 40 C.F.R. §§ 49.151-.161. We also note that Michigan's Natural Resources and Environmental Protection Act provides:

Any person may appeal the issuance or denial by the department of a permit to install * * * for a new source in accordance with section 631 of the revised judicature act of 1961, 1961 PA 236, MCL 600.631. Petitions for review shall be the exclusive means to obtain judicial review of such a permit and shall be filed within 90 days after the final permit action * * *.

Mich. Comp. Laws Ann. § 342.5505(8) (West 2021).

Accordingly, the Board dismisses the petition for review for lack of jurisdiction.²

So ordered.

² To the extent Mr. Jones raises complaints or has documents related to Title VI of the Civil Rights Act of 1964, those complaints and documents should be directed to EPA's External Civil Rights Compliance Office, not the Board.