

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
U.S. ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON D.C.**

In re:)	
)	
NPDES Draft Permits:)	
Bruns Feedlot, LLC – No. NE0135399)	
LBBJ, Inc. – No. NE0134961)	Appeal No. NPDES 09-03
Ron Bruns Feed Yards, Homeplace –)	
No. NE0135704)	
Ron Bruns Feed Yards, Eastplace –)	
No. NE0106526)	
)	
)	
)	

**MOTION TO DISMISS PETITION FOR REVIEW
OF FOUR DRAFT NPDES PERMITS**

The United States Environmental Protection Agency (“EPA”), Region 7 requests that the Environmental Appeals Board (“EAB”) dismiss all portions of the petition filed by Teri Lamplot (Appeal No. NPDES 09-03) requesting review of the above referenced four Draft NPDES Permits.

The Board should dismiss those portions of the Teri Lamplot Petition for failure to meet the threshold procedural requirements specified in the EPA regulations at 40 C.F.R. Section 124.19(a), which allow review of final NPDES permits only. The Board should dismiss because the Petitioner seeks review of draft NPDES permits.

I. FACTUAL BACKGROUND

On July 19, 2007, the U.S. Environmental Protection Agency (“EPA”), Region 7 placed on public notice draft National Pollutant Discharge Elimination System

("NPDES") permits for eight Concentrated Animal Feedlot Operations ("CAFOs") in Nebraska:

Circle T Feedlot, Inc., Permit No. NE0134481
Morgan Feedlot LLC, Permit. No. NE0134767
Sebade Feedyard, Permit No. NE0135712
Stanek Brothers, Permit No. NE034775
Bruns Feedlot, L.L.C., Permit No. NE0135399
LBBJ, Inc., Permit No. NE0134961
Ron Bruns Feed Yards, Homeplace, Permit No. NE0135704
Ron Bruns Feed Yards, Eastplace, Permit No. NE0106526

Pursuant to 40 C.F.R. § 124.11, EPA received timely comments and a request for a public hearing with respect to these draft NPDES permits. The public hearing was held December 13, 2007. On December 18, 2008, EPA issued final NPDES permits for four of the abovementioned CAFO facilities located within the Omaha and Winnebago Reservation boundaries: Circle T Feedlot, Inc., Morgan Feedlot LLC, Sebade Feedyard, and Stanek Brothers.¹

EPA has not issued a final permit decision with respect to the other four abovementioned CAFO facilities: Bruns Feedlot, L.L.C., LBBJ, Inc., Ron Bruns Feed Yards, Homeplace, and Ron Bruns Feed Yards, Eastplace (Exhibit A). These permits are being held in abeyance pending resolution of issues regarding the western boundary of the Omaha Indian Reservation, which are currently the subject of ongoing litigation.²

Two petitions have been filed with the EAB requesting review of EPA's final permit decisions. This Motion to Dismiss relates to the petition for review filed on

¹ EPA is concurrently submitting a separate Response to Petitions for Review with respect to the final permit decisions made for these four CAFO facilities.

² *Pender v. Parker* (D. Neb. Case No. 4:07-cv-03101, Omaha Tribal Court Case No. 08-002). EPA is not a party to this litigation.

February 2, 2009 by Teri Lamplot. In her petition, Ms. Lamplot requests that the EAB review EPA's NPDES permit decisions concerning all eight CAFO facilities.

II. ARGUMENT

40 C.F.R. § 124.19 limits appeals of NPDES permits to final permit decisions by EPA. Because EPA has not made a final decision with respect to the Bruns Feedlot, L.L.C., LBBJ, Inc., Ron Bruns Feed Yards, Homeplace, and Ron Bruns Feed Yards, Eastplace facilities, these draft permits are not subject to appeal pursuant to 40 C.F.R. § 124.19. Thus, Ms. Lamplot's Petition with respect to draft NPDES permits is not ripe for review.

III. REQUEST FOR RELIEF

For the foregoing reasons, EPA respectfully requests that the EAB dismiss Teri Lamplot's petition for review with respect to these four CAFO facilities.

Dated: March 26, 2009

Respectfully submitted,



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List of Exhibits:

- A2. Draft NPDES permits: Bruns Feedlot, L.L.C., Permit No. NE0135399; LBBJ, Inc., Permit No. NE0134961; Ron Bruns Feed Yards, Homeplace, Permit No. NE0135704; Ron Bruns Feed Yards, Eastplace, Permit No. NE0106526