

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

	)	
In re:	)	
	)	
Nate Pulley, d/b/a Yellow Creek Stone	)	NPDES Appeal No. 21-02
	)	
NPDES Permit No. TN0070661	)	
	)	

**ORDER DISMISSING PETITION
FOR LACK OF JURISDICTION**

On August 13, 2021, the Environmental Appeals Board (“Board”) received a document styled as a “Third-Party Appeal” from Ms. Cindy Adkins of Cumberland City, Tennessee, seeking review of NPDES Permit No. TN0070661. Ms. Adkins attached a supporting document indicating that, on July 13, 2021, the Tennessee Department of Environment and Conservation (“TDEC”) issued a final permit to Mr. Nate Pulley, doing business as Yellow Creek Stone, under the Tennessee Water Quality Control Act of 1977. *See* Appeal attach. 1 (TDEC, *Notice of Determination for NPDES Permit No. TN0070661* (July 13, 2021) (“*Notice of Determination*”). The final permit authorizes a new limestone mining and processing facility called the “Yellow Creek Stone Quarry” to discharge treated mine wastewater and storm water to an unnamed tributary of Yellow Creek in Houston County, Tennessee. *See id.* at 1.

Under the Clean Water Act (“CWA”), persons who discharge pollutants from point sources into waters of the United States must have a permit for the discharge to be lawful. CWA § 301, 33 U.S.C. § 1311. The National Pollutant Discharge Elimination System (“NPDES”) program is one of the principal permitting programs under the CWA, and NPDES permits are issued under section 402 of the CWA, 33 U.S.C. § 1342. The U.S. Environmental Protection

Agency (“EPA” or “Agency”) administers the CWA and may authorize states to manage their own permitting programs and to issue NPDES permits for discharges into navigable waters within their boundaries. *See* CWA § 402(b), 33 U.S.C. § 1342(b). Such states must develop NPDES programs in accordance with Agency requirements and obtain EPA’s approval of their programs before they may exercise this authority. EPA approved the State of Tennessee’s program to implement the NPDES program in 1977. *See* Approval of Revised NPDES Memorandum of Agreement with Tennessee, 46 Fed. Reg. 51,644, 51,644 (Oct. 21, 1981). A copy of the applicable NPDES Memorandum of Agreement may be accessed at <https://www.epa.gov/sites/default/files/2013-09/documents/tn-moa-npdes.pdf>.

The Board is a tribunal of limited jurisdiction, and its authority to review permit decisions is “limited by the statutes, regulations, and delegations that authorize and provide standards for such review.” *In re Carlton, Inc.*, 9 E.A.D. 690, 692 (EAB 2001); *accord In re Coastal Energy Corp.*, NPDES Appeal No. 17-04, at 2-3 (EAB Sept. 12, 2017) (Order Dismissing Petition for Lack of Jurisdiction); *see also* 57 Fed. Reg. 5320 (Feb. 13, 1992). The Board is authorized to hear appeals of individual permit decisions issued by EPA under the CWA at 40 C.F.R. part 124. This part provides “EPA procedures for issuing, modifying, revoking and reissuing, or terminating all * * * NPDES ‘permits.’” 40 C.F.R. § 124.1(a). The EPA Regional Administrators issue final permit decisions, *see* 40 C.F.R. § 124.15(a), and such EPA-issued permits are in turn appealable to the Board under 40 C.F.R. § 124.9(a).

The Board acknowledges Ms. Adkins’ concern for the environment. But the Board’s jurisdiction is circumscribed by its governing regulations and the Board’s authority to review

CWA NPDES permit decisions under 40 C.F.R. § 124.19(a) does not extend to state-issued permits. *See* 40 C.F.R. § 1.25(e)(2); *see also In re Simpson Paper Co.*, 4 E.A.D. 766, 770 (EAB 1993) (noting that Board’s jurisdiction to review NPDES permit decisions under CWA depends on existence of EPA-issued permit); *Coastal Energy*, NPDES Appeal No. 17-04, at 3.

And because the permit at issue here is a state permit issued by TDEC, the Board lacks jurisdiction to review the permit decision under 40 C.F.R. § 124.19. Although the TDEC permit program is federally approved, the permit at issue here is nonetheless a state permit issued under state law. Nothing in the Clean Water Act or 40 C.F.R. part 124 gives the Board jurisdiction to consider this appeal.

Notably, in TDEC’s *Notice of Determination* regarding NPDES Permit No. TN0070661, which Ms. Adkins included with her submission to the Board, TDEC stated the following:

The Permit may be appealed to the Board of Water Quality, Oil and Gas pursuant to Tenn. Code Ann. § 69-3-105(i) and Rules of TDEC 0400-40-05-.12.

Notice of Determination at 9. Moreover, in a cover letter accompanying the final permit, TDEC stated the following:

Please be advised that a petition for permit appeal may be filed pursuant to T.C.A. § 69-3-105(i) by the permit applicant or by any aggrieved person who participated in the public comment period or gave testimony at a formal public hearing whose appeal is based upon any of the issues that were provided to the commissioner in writing during the public comment period or in testimony at a formal public hearing on the permit application.

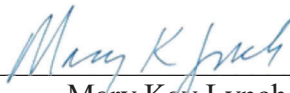
The cover letter sets forth further information regarding the appeal deadline, the state employees to whom to send a petition for permit appeal or copies thereof, the availability of electronic filing, and the like. This cover letter, along with NPDES Permit No. TN0070661 itself (to which the cover letter is attached), can be found on TDEC's Division of Water Resources website at the following address: https://dataviewers.tdec.tn.gov/pls/enf_reports/f?p=9034:34051:::34051:P34051_PERMIT_NUMBER:TN0070661.

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

So ordered.¹

ENVIRONMENTAL APPEALS BOARD

Dated: Aug 18, 2021

By: 
Mary Kay Lynch
Environmental Appeals Judge

¹ The three-member panel deciding this matter is composed of Environmental Appeals Judges Aaron P. Avila, Mary Kay Lynch, and Kathie A. Stein.

CERTIFICATE OF SERVICE

I certify that copies of the **Order Dismissing Petition for Lack of Jurisdiction** in the matter of *Nate Pulley, d/b/a Yellow Creek Stone*, NPDES Appeal No. 21-02, were sent to the following persons in the manner indicated:

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Dated: Aug 18, 2021



Emilio Cortes
Clerk of the Board