

**IN RE CROWN/VISTA ENERGY PROJECT (CVEP)
WEST DEPTFORD, NEW JERSEY**

PSD Appeal Nos. 93-15, 93-16, 93-17, 93-18

ORDER DENYING REVIEW

Decided January 5, 1994

Syllabus

This action involves four petitions for review of a Prevention of Significant Deterioration (PSD) permit issued by the State of New Jersey under a delegation from U.S. EPA. The petitions relate to an application to construct a pulverized coal burning power plant in West Deptford, New Jersey. The permit was issued jointly to Crown Energy, L.P. and Vista Energy, L.P. (Crown/Vista).

Held: Review of all four petitions is denied. In one instance, the petitioner is not entitled to seek review because she neither provided written comments on the draft permit or participated in the public hearing. Two petitions are denied for lack of specificity in raising issues and explaining why the State's responses to the same comments on the draft permit were clearly erroneous or otherwise warrant review. The review of the fourth petition is denied because it raises only issues relative to the non-attainment regulations rather than PSD regulations.

***Before Environmental Appeals Judges Nancy B. Firestone,
Ronald L. McCallum, and Edward E. Reich.***

Opinion of the Board by Judge Reich:

I. BACKGROUND

Pending before the Board are four petitions for review of a Prevention of Significant Deterioration (PSD) permit issued by the State of New Jersey pursuant to a delegation of authority by the EPA Administrator. See 40 C.F.R. §52.21(u) (authorizing the Administrator to delegate responsibility for conducting review). The petitions relate to a permit issued jointly to Crown Energy L.P. and Vista Energy L.P. (Crown/Vista) for construction of a pulverized coal burning power plant in West Deptford Township, New Jersey. This facility is designed to produce 362 megawatts (net) of electrical power both for use in-house and for sale to nearby electric utilities. For the reasons discussed below, review of all four petitions is hereby denied.

The four petitions may be summarized as follows:

- (1) A "personal note" from Juanita Meredith indicating that she is still not satisfied with "the pollution control that is to be monitored" in the vicinity of the proposed Crown/Vista facility.
- (2) A letter from Peter W. Meyer which states that he petitions for review of the permit and that he provided verbal and written comments during the comment period. This letter indicates that the comments are enclosed but they were in fact omitted. Enclosed with the letter, without explanation, are a copy of New Jersey's Offset Rule, a Clean Air Act Interim Conformity Determination Report relative to transportation programs within New Castle County, Delaware, and a 1988 Interleaf MilSpec Update.
- (3) A letter from Dorothy Davie Erickson, Secretary, Citizens for Cumberland County, Inc. This letter states that the proposed facility "would be located in a county with existing air quality problems and [would be] the third recent cogeneration plant near the Delaware River. The Delaware Estuary became part of the National Estuary Program in 1988 and the impacts on that Estuary have not been adequately addressed." The letter encloses copies of Ms. Erickson's comments on the draft permit.
- (4) A letter from Timothy S. Haley, as counsel for Delaware Valley Concerned Citizens (DVCC), Diane Burke and Elizabeth Crane. This petition raises issues relating to the control of volatile organic compounds (VOCs) from the proposed Crown/Vista facility and the concomitant impact of VOC emissions on the severe ozone problem in the vicinity of the plant's proposed location.

II. DISCUSSION

Under the rules that govern this proceeding, a PSD permit ordinarily will not be reviewed unless it is based on a clearly erroneous finding of fact or conclusion of law, or involves an important matter of policy or exercise of discretion that warrants review. *See* 40 C.F.R. §124.19; 45 Fed. Reg. 33,412 (May 19, 1980). The preamble to the promulgation of these rules states that “this power of review should be only sparingly exercised,” and that “most permit conditions should be finally determined at the Regional [or State] level.” *Id.* The burden of demonstrating that review is warranted is on the petitioner. *In re Genesee Power Station Limited Partnership*, PSD Appeal Nos. 93-1 through 93-7, at 5-6 (EAB, Oct. 22, 1993); *In re Ogden Martin Systems of Onondaga, Inc., et al.*, PSD Appeal No. 92-7, at 2 (EAB, December 1, 1992).

Petition of Juanita Meredith: It is not clear whether Ms. Meredith’s “personal note” was intended as a petition for review under 40 C.F.R. §124.19. Even if it were so intended, review must be denied.

A petition may be filed under §124.19 only by those persons who filed comments on the draft permit or participated in the public hearing. Any person who failed to file comments or participate in the public hearing may petition “only to the extent of the changes from the draft to the final permit decision.” Ms. Meredith did not participate at the public hearing or submit written comments. *See* Appendices A and B of the Hearing Officer’s Report of October 1, 1993 (Exhibit 3 to the State’s Response to the Petitions). Ms. Meredith does not assert that she participated or that her concerns arise out of changes from the draft to the final permit decision. As such, she is not entitled to seek review. (We note, in addition, that Ms. Meredith’s concerns are not stated with enough specificity to satisfy the requirements of §124.19. *See Genesee, supra*, at 41.)

Petition of Peter Meyer. Mr. Meyer’s two-sentence petition consists of nothing more than statements that he seeks review and that he participated at the public hearing and submitted written comments. While the petition purports to transmit a copy of Mr. Meyer’s comments, it fails totally to address the State’s response to such comments, as reflected in the Hearing Officer’s Report at 77-80.

As the Board has recently stated, “[a] cover letter that does not raise any issues for review together with copies of parts of the record does not satisfy the requirements for filing petitions for review in Section 124.19(a). To satisfy those requirements, the letter accompanying the parts of the record must itself raise issues.” *Genesee, supra*, at

40. See *LCP Chemicals - New York (division of The Hanlin Group, Inc.)*, RCRA Appeal No. 92-25, at 4 (EAB, May 5, 1993) (To satisfy the requirements of 40 C.F.R. §124.19(a), "it is not enough for a petitioner to rely on previous statements of its objections, such as comments on a draft permit; a petition must demonstrate why the Region's response to those objections (the Region's basis for its decision) is clearly erroneous or otherwise warrants review."); *Adcom Wire, D/B/A Adcom Wire Company*, RCRA Appeal No. 92-2, at 10 (EAB, September 3, 1992) (same).

Because Mr. Meyer's petition merely transmits (or more accurately, purports to transmit) his previous comments without raising any issues or demonstrating why the State's response to those comments is clearly erroneous or otherwise warrants review, review must be denied.

Petition of Dorothy Davie Erickson: Ms. Erickson's petition is similarly flawed. To the extent that her letter transmits her comments on the draft permit without addressing the adequacy of the State's responses, it must fail for the reasons just discussed.¹ In her petition, Ms. Erickson raises a specific concern as follows:

[The facility] would be located in a County with existing air quality problems and the third recent cogeneration plant near the Delaware River. The Delaware Estuary became a part of the National Estuary Program in 1988 and the impacts upon that Estuary have not been adequately addressed.

Ms. Erickson makes no attempt to explain this concern or to link it to a particular deficiency in the permit. As such, it is not sufficiently specific to warrant review. Cf. *LCP Chemicals - New York (division of The Hanlin Group, Inc.)*, *supra*, at 5 ("It is not this Board's obligation to search through the permit for the specific permit conditions that fall into [the Petitioner's] general categories of objections."); *Genesee, supra*, at 42 (same). Review is accordingly denied.²

Petition of DVCC, Diane Burke and Elizabeth Crane (by Timothy Haley): This petition was submitted by Timothy Haley, as attorney for the DVCC, Diane Burke and Elizabeth Crane. Petitioners seek review

¹ Responses to Ms. Erickson's comments are found in the Hearing Officer's Report at 14-15, 17-18, 22-24, 33-34, 37-39, 45, 70-73, 77-80, 83-85, 94, and 98-99.

² We note that the Hearing Officer's Report addresses at length issues relating to the impact of the proposed CVEP facility on the Delaware River and its estuary. See, for example, pp. 109-116. Ms. Erickson does not attempt, in her petition, to dispute any of the statements made therein.

of the adequacy of certain requirements relative to VOC emissions. VOCs are a precursor to ozone pollution.

However, the VOC requirements were not included as part of the PSD provisions of the permit. The permit was intended to implement both the PSD requirements (as delegated by EPA) and the New Jersey Air Pollution Control Regulations codified at N.J.A. C. 7:27-1 *et seq.* The PSD requirements apply only to areas that are attainment or unclassifiable for a particular pollutant. *See* 40 C.F.R. §52.21(i)(3). In this instance, the facility is proposed to be located in Gloucester County, which has been designated as a non-attainment area for ozone. *See* 40 C.F.R. §81.332. Therefore, the issues raised in the petition relative to VOCs relate to compliance with non-attainment rather than PSD regulations.

As this Board has recently stated, “[i]t is well established * * * that non-attainment issues are generally not reviewable in the context of a PSD permit appeal.” *Genesee, supra*, at 33. Petitioner has not shown any reason why this principle should not be controlling here. Review must accordingly be denied.

III. CONCLUSION

For all the foregoing reasons, review of each of the petitions for review is hereby denied.

So ordered.