

Petitioner Russ Wade – PRO SE

BEFORE THE ENVIRONMENTAL APPEALS BOARD

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, WASHINGTON, D.C.

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In re: Sierra Pacific Industries, Anderson Div.)
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PSD Permit Modification SAC 12-01) Docket NO. 14-03
)
PSD Permit 94-PO-18 (issued June 15, 1995))
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PSD Permit 94-VP-18b/d/e)
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Respondents: EPA Region 9 ("Region"), Shasta County Air Quality Management District ("Shasta AQMD")

MOTION FOR CLARIFICATION

I, Petitioner Russ Wade, attended the December 10, 2013 public hearing on PSD permit SAC 12-01.

At the hearing, representatives of Sierra Pacific Industries ("SPI") complained bitterly to Shaheerah Kelly, the Presiding Administrative Officer, because the Environmental Appeals Board ("Board") had ordered a public hearing.

SPI considered the Board's order pointless, claiming it was a waste of time and a burden on the finances of their company.

The Clean Air Act states that public hearings are supposed to occur at the beginning of the permitting process, not after the process has ended.

Why did the Board order a public hearing if Region was not required to obey the Board's order? The hearing by Region was held two weeks before Christmas and following a record storm where it snowed in San Francisco. The meeting was held at night, when many roads in Shasta County were either dangerous or completely impassable.

Why order a Best Available Control Technology ("BACT") analysis if Region could outsource the analysis to SPI and provide a BACT analysis that listed BACT at a higher limit than the full emission output of the power plant itself?

It appears SPI was correct. Was it not a waste of everyone's time, including the project proponent, to issue orders that could never be enforced? Free Enterprise has suffered an injury in fact. Citizens in Shasta County have lost faith in EPA's ability to protect public health and provide authentic permitting processes.

A person who has been denied the appellate threshold imposed by section 124.19(a) entitling that person to standing before the Board has been denied due process.

The Board has issued orders that can not be appealed, and therefore, can not be enforced. This act has denied due process to citizens in an Environmental Justice Community.

Since the Board has decided they lack jurisdiction over their own orders, it seems SPI was correct in accusing EPA of holding a meeting that served no purpose. Region could have held the public hearing at the bottom of the ocean or on the moon.

The right to petition is guaranteed by the First Amendment to the United States Constitution, which specifically prohibits Congress from abridging "the right of the people...to petition the Government for a redress of grievances."

The right to petition is fundamental in a Republic, such as the United States, as a means of protecting public participation in government.

In 1776, the Declaration of Independence cited King George's perceived failure to redress the grievances listed in colonial petitions, such as the Olive Branch Petition of 1775, as a justification to declare independence:

"In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people."
- *Declaration of Independence*

The right to petition government for redress of grievances is the right to make a complaint to, or seek the assistance of, one's government, without fear of punishment or reprisals. This right can be traced back to the *Petition of Right* (1628) and the *Magna Carta* (1215). Without the right to petition government, citizens are denied due process.

Due process is the legal requirement that the state must respect all of the legal rights that are owed to a person. Generally, "Due process" means:

- 1) **Notice:** Notice should provide sufficient detail to fully inform the individual of the decision or activity that will have an effect on his/her rights or property or person;
- 2) **Right to Grieve:** the right to complain or to disagree with the governmental/entity that has decision making authority, and;
- 3) **Right to Appeal:** if not satisfied with the outcome of the grievance procedure. Due process balances the power of the law of the land and protects the individual person from it.

When a government harms a person without following the exact course of the law, this constitutes a due-process violation, which offends against the rule of law.

I, Petitioner Russ Wade, am not only a stakeholder in this process, I also own land near the proposed SPI 31 Megawatt power plant.

I was denied all of the above rights and have suffered an injury in fact. I did not receive notice of this project until after the process was almost completed. I was denied the right to grieve, since your order could never be enforced and no authentic public hearing was held. I could not even learn the permit number of the PSD permit Region was modifying.

Can the Board explain why I could not appeal the failure of Region's BACT analysis and public hearing?

The 14th Amendment has vastly expanded civil rights protections and is cited in more litigation than any other amendment to the U.S. Constitution. The Fifth and Fourteenth Amendments to the United States Constitution each contain a Due Process Clause.

The Due Process Clause acts as a safeguard from arbitrary denial of life, liberty, or property by the Government outside the sanction of law. The Courts have viewed the Due Process Clause, and sometimes other clauses of the Constitution, as embracing those fundamental rights that are implicit in the concept of ordered liberty.

Today, the Supreme Court focuses on three types of rights under substantive due process in the Fourteenth Amendment, which originated in *United States v. Carolene Products Co.*, 304 U.S. 144 (1938),

Those three types of rights are:

- 1) the rights enumerated in and derived from the first eight amendments in the Bill of Rights;
- 2) the right to participate in the political process; and
- 3) the rights of “discrete and insular minorities.”

I, Petitioner Russ Wade, have been denied the right of due process as guaranteed under the Bill of Rights. I have been denied the right to participate in the political process as guaranteed under the Clean Air Act. I am a member of an Environmental Justice Community and am therefore part of a discrete and insular minority.

The Board should clarify whether my fundamental rights are being violated. The right to petition our government for redress of grievances is deeply rooted in American history and traditions.

How has the public benefited by the issuance of an order that could never be enforced?

How could Region's December 10, 2013 public hearing be a valid hearing? How could the public honestly participate in this permitting process? First, the project was a modification of one permit and later it was issued as a new, separate permit at the end of the process.

Region's BACT analysis and the public hearing occurred at the end of the process, without accountability. How can the public retain faith in EPA's integrity?

I urge the Board to clarify their position and reconsider this case on the merits.

Respectfully submitted on June 16, 2014.

Russ Wade, citizen petitioner
1991 Heller Lane,
Redding, CA 96001
Phone (530) 244-5250