



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

JUN 28 2011

ENVIRONMENTAL APPEALS BOARD

Richard Ossias, Associate General Counsel  
Air and Radiation Law Office  
U.S. EPA, Headquarters  
Ariel Rios Building  
1200 Pennsylvania Ave, N.W.  
2344A  
Washington, D.C. 20460

Nancy J. Marvel, Regional Counsel  
Office of Regional Counsel  
U.S. EPA, Region 9  
75 Hawthorne Street  
ORC-1  
San Francisco, CA 94105

Re: Avenal Energy Project  
Permit Number: SJ 08-01  
Appeal Number: PSD 11-03

Dear Counsels:

This is to advise you that, the Environmental Appeals Board (the "Board" or "EAB") received a petition on June 27, 2011, filed by George Torgun, Earthjustice, on behalf of Sierra Club and Center for Biological Diversity (collectively, "Sierra Club"), asking the Board to review a PSD permit decision issued by U.S. EPA.

A copy of the petition and exhibits can be found on the Board's website at [www.epa.gov/eab](http://www.epa.gov/eab). Click on "EAB Dockets" in the left-hand menu, then click on the "Active Dockets" link, and then click on the appropriate case name. If you have any difficulty accessing this document, please let me know.

To assist the Board in deciding whether the matters raised by Petitioner should be reviewed, please have your staff prepare a response that addresses Petitioner's contentions and whether Petitioner has satisfied the requirements for obtaining review under 40 C.F.R. section 124.19. In light of the U.S. District Court Order in Avenal Power Center, LLC v. U.S. Environmental Protection Agency, No.10 cv 383 (D.D.C. filed Mar. 9, 2010), your response to the petition must be received no later than **July 11, 2011**.

A copy of this letter is being sent to Avenal Power Center, LLC, as notification of this petition and these filing requirements. If the permittee chooses to file a response, it must be received by **July 11, 2011**, and comply with the filing instructions provided below. A copy of this letter is also being sent to the petitioner as notification of these filing requirements.

**Any response brief filed may not exceed 14,000 words.**<sup>1</sup> Include with your response relevant portions of the administrative record, together with a certified index of the entire administrative record. The permit issuer is encouraged to file the index to the record, preferably electronically, as soon as possible after receiving notification of this appeal. Early filing of the certified index enables the Board to begin prompt review of the record even before all of the briefs are filed.

Due to the time-sensitive nature of PSD permit appeals, the Board will apply a presumption against the filing of reply briefs and sur-replies. The Board will not hold oral argument in this case. The Board may use scheduling and status conferences to narrow the issues on appeal or otherwise facilitate the expeditious resolution of this case. For additional information relevant to PSD permit appeals, please refer to the Board's April 19, 2011 Order Governing Petitions for Review of Clean Air Act New Source Review Permits (enclosed), also available at <http://www.epa.gov/eab> (Click "Standing Orders" on sidebar).

### **Filing Requirements**

Filing may be accomplished electronically pursuant to the Board's Order of January 28, 2010.<sup>2</sup> Alternatively, filing may be accomplished by filing a paper original (signed in blue ink) and two copies of these materials with the Board (at the address shown below) by the date specified above. A copy must be sent to Petitioner, and a certificate of service showing the date and method of service should be included with the filing.

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<sup>1</sup> Filers may rely on the word-processing system used to determine the word count. In lieu of a word limitation, parties may comply with a 30-page limit. Headings, footnotes, and quotations count toward the word limitation. A table of contents, table of authorities, statement requesting oral argument, statement of compliance with the word limitation, exhibits, or any addendum does not count toward the word limitation.

<sup>2</sup> The Board has issued an Order authorizing the electronic filing of documents in cases involving permit appeals. See Order Authorizing Electronic Filing in Proceedings Before the Environmental Appeals Board Not Governed by 40 C.F.R. Part 22 (Jan. 28, 2010), *available at* <http://www.epa.gov/eab> (click "Standing Orders" on sidebar). Instructions on registration and document filing are available by using the "Electronic Filing" link on the Board's website. Documents containing confidential business information should not be filed electronically as the Board considers business confidentiality claims waived when a document is electronically filed. *Id.* at 5-6. Anyone electronically filing exhibits or attachments in support of a brief, motion, or other document should submit them separately from the associated brief or motion. *Id.* at 3.

**IMPORTANT:** All documents filed must reference the appeal number and the name, address, and telephone number of the filer. If available, the filer should also provide a fax number and an email address. **In addition, any envelope or other packaging containing documents sent through the U.S. Postal Service, Express Mail, hand-delivered or via Courier must bear a complete and accurate return address in the upper left hand corner. The envelope or packaging must also clearly state the case name and case identifier in the lower left hand corner.<sup>3</sup>**

Documents that are sent through the U.S. Postal Service (except by Express Mail) **MUST** be addressed to the Environmental Appeals Board's mailing address which is:

U.S. Environmental Protection Agency  
Clerk of the Board  
Environmental Appeals Board 1103B  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460-0001

Documents that are sent to the Environmental Appeals Board's hand-delivery address through the U.S. Postal Service (except by Express Mail) will be returned to the sender and shall not be considered as filed.

**Hand Delivery Address**

Documents that are **hand-carried**, delivered via Courier, mailed by Express Mail or delivered by a non-U.S. Postal Service carrier (e.g., Federal Express or UPS) **MUST** be delivered to:

U.S. Environmental Protection Agency  
Clerk of the Board  
Environmental Appeals Board  
Ronald Reagan Building, EPA Mail Room  
1300 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

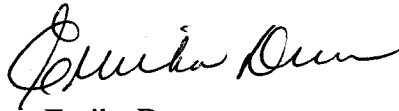
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<sup>3</sup> All mail sent to the Environmental Protection Agency may be delayed by a random sterilization procedure. Parties are encouraged to utilize the Board's e-filing system or hand or courier delivery when filing pleadings with the Board. Additional information regarding mail delivery to the Board is available on the Environmental Appeals Board website ([www.epa.gov/eab](http://www.epa.gov/eab)) at the Clerk of the Board or Frequently Asked Questions links.

Such documents may be delivered to the Ronald Reagan Building, EPA Mail Room, from 8:30 a.m. to 4:00 p.m., Monday through Friday (excluding federal holidays). Documents filed electronically may be filed at any time up to 11:59 p.m. Eastern Time on the day the document is required to be filed with the Board.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Eurika Durr", written in a cursive style.

Eurika Durr  
Clerk of the Board

cc: George Torgun  
Paul Cort  
Earthjustice  
426 17<sup>th</sup> Street, 5<sup>th</sup> Floor  
Oakland, CA 94612

Avenal Power Center, LLC  
500 Dallas Street, Level 31  
Houston, TX 77002