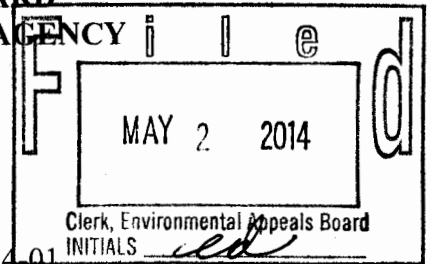


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



In re:)

Sierra Pacific Industries, Anderson)
Division)

Permit No. 94-VP-18d)
_____)

PSD Appeal No. 14-01

**ORDER DENYING MOTION FOR RECONSIDERATION AND MOTION FOR
EXTENSION OF TIME TO AMEND MOTION FOR RECONSIDERATION**

On April 10, 2014, the Environmental Appeals Board (“Board”) issued a decision in the above-captioned matter dismissing the appeal for lack of jurisdiction (“Final Decision”). On April 21, 2014, Celeste Draisner filed a timely motion for reconsideration in this case.¹ *See generally* Motion to Reconsider. Contemporaneously, Ms. Draisner filed a “Motion for Extension of Time,” in which she states that she has submitted a Freedom of Information Act request to the U.S. Environmental Protection Agency (“EPA”) Region 9 (“Region”) and would like a two-week extension of time from the date the Region provides her with “critical information” that would “clarify the Board’s responsibility in this case.” Motion for Ext. of Time at 1. Based on this explanation, the Board interprets this latter motion to be a request for an extension of time in which to amend her pending motion for reconsideration.

The Board denies both the motion for reconsideration and the motion for an extension of time for the reasons that follow.

¹ The deadline for a motion for reconsideration in this case was April 23, 2014. *See* 40 C.F.R. §§ 124.19(m), .20(d).

ANALYSIS

A. Motion to Reconsider

Although motions for reconsideration are authorized pursuant to 40 C.F.R. § 124.19(m) to correct manifest errors in a Board decision, reconsideration of a decision is not granted as a matter of course. Instead, reconsideration is generally reserved for cases in which the Board has made a demonstrable error, such as a mistake of law or fact. *In re Knauf Fiber Glass, GmbH*, PSD Appeal Nos. 98-3 through 98-20, at 2 (EAB Feb. 4, 1999) (Order on Motions for Reconsideration); *see also Publishers Res., Inc. v. Walker-Davis Publ'ns, Inc.*, 762 F.2d 557, 561 (7th Cir. 1985) (“Motions for reconsideration serve a limited function: to correct manifest errors of law or fact or to present newly discovered evidence. Such motions cannot in any case be employed as a vehicle to introduce new evidence that could have been adduced during the pendency of the [original] motion.”) (citation omitted).

In the Final Decision, the Board determined that, although Petitioner Celeste Draisner purported to be appealing a Clean Air Act Prevention of Significant Deterioration (“PSD”) permit Shasta County Air Quality Management District (“Shasta County AQMD”) had issued to Sierra Pacific Industries, Anderson Division (“Sierra Pacific”), the challenged permit, Permit Number 94-VP-18d, was actually a Title V renewal operating permit for Sierra Pacific’s 4-megawatt wood-fired boiler cogeneration unit and associated equipment. Final Decision at 2, 5-6 (referring to Shasta Cnty. Dep’t of Res. Mgmt. Air Quality Mgmt. Dist., Title V Operating Permit for Sierra Pacific Industries, Anderson Division, at 1 (Sept. 27, 2013) [hereinafter 2013 Title V Permit]). The Board pointed out that the challenged permit, on its face, indicated that it is a Title V operating permit, and a review of the permit also demonstrated that it is a Title V

operating permit. *Id.* at 8. The Board acknowledged that the challenged permit had incorporated some of the requirements from the 1995 PSD permit for the wood-fired boiler unit, as is the general requirement and practice for Title V permits. *Id.* Because Ms. Draisner appeared to be confused about the difference between the two types of permits, the Board explained the differences between the PSD and Title V permitting programs. *Id.* at 3-5. The Board also explained that Shasta County AQMD had been granted approval to administer the Title V program in Shasta County by EPA pursuant to 40 C.F.R. part 70 and that Shasta County AQMD had issued the challenged permit under that authority. *Id.* at 5, 8. The Board concluded that, because it does not have authority to review Title V permits that are issued by states or local authorities under 40 C.F.R. part 70, the appeal related to Permit Number 94-VP-18d must be dismissed.

In her present motion, Ms. Draisner asserts that the Board should reconsider its decision based on “new evidence” recently obtained from Shasta County AQMD indicating that the Board does have jurisdiction over this matter. Motion to Reconsider at 1. The underlying premise of her motion appears to be that the Board erred in its decision because the challenged permit is in reality a PSD permit despite its title and contents. The “new evidence” she submits in support of this argument consists of copies of the following two permits: (1) a “Permit to Construct” that Shasta County AQMD issued on June 15, 1995, as Permit Number 94-PO-18, for a wood-fired boiler, and (2) a “Permit to Operate” that Shasta County AQMD issued on January 29, 1998, with the same permit number, for the same wood-fired boiler.² *See id.* Exs. A & B. The 1995 “Permit

² These two permits are not “newly discovered evidence” as that term is typically used in connection with a motion for reconsideration. These documents date back to the 1990s and thus could
(continued...)

to Construct” is the PSD permit Shasta County AQMD issued, as EPA’s delegatee, to Sierra Pacific for construction of the 4-megawatt wood-fired boiler. *See* Final Decision at 4-5 (explaining that Shasta County AQMD had acted as EPA’s delegatee for PSD permits from 1985 until 2003 and had issued a PSD permit for the boiler in 1995). The 1998 “Permit to Operate” appears to be the original Title V operating permit Shasta County AQMD issued for Sierra Pacific’s wood-fired boiler pursuant to its part 70 authority. *See id.* at 5-6;³ compare Shasta Cnty. Dep’t of Res. Mgmt. Air Quality Mgmt. Dist., Permit to Operate for Sierra Pacific Industries, Anderson Division, at 1 (Jan. 29, 1998) with 2013 Title V Permit at 1-2.

Ms. Draisner claims that after issuing these 1995 and 1998 permits, Shasta County AQMD “incorporated the Title V Permit into the existing PSD Permit and renumbered it Permit Number 94-VP-18b.” *Id.* at 1. In support of this contention, Ms. Draisner quotes Shasta County AQMD’s Draft Evaluation Report, which the District issued in connection with its proposed 2012 renewal of Sierra Pacific’s Title V operating permit. The report states:

Prevention of Significant Deterioration (PSD) Permitting

This regulation sets the procedure for the review of new sources or modifications to existing major stationary emissions sources. Since the Wellons Wood-fired

²(...continued)

reasonably been discovered and submitted with the original appeal. The Board, in fact, generally referenced these documents in the Final Decision. *See* Final Decision at 5-6. Ms. Draisner’s motion, therefore, could be dismissed on the grounds that this is not “new evidence” that meets the standard for reconsideration. Nonetheless, in an attempt to explain the permitting process to Ms. Draisner, who continues to demonstrate confusion over the process, and because Shasta County AQMD’s permit numbering system may have led to some of this confusion, the Board provides a further analysis of the “new evidence.”

³ The Board, based on the record and information it had at the time of the Final Decision, stated in the decision that the “initial” Title V permit had been issued in 2000. Final Decision at 6. This date appears to be incorrect based on Ms. Draisner’s second exhibit, which shows a 1998 date. Thus, the 2000 Title V permit was apparently a renewal of the 1998 permit. The Board will revise the date in the Final Decision when the slip opinion is published.

boiler was issued a PSD permit as the Authority to Construct for the facility, *the conditions of the Authority to Construct [i.e., PSD permit] are incorporated in the proposed Title V permit unless a specific condition was revised (or added) in subsequent permits to operate.*

Id. at 2 (quoting Shasta County AQMD, Draft Evaluation Report Regarding Proposed Issuance of a Renewed Title V Operating Permit to Sierra Pacific Industries at 7-8 (Dec. 12, 2012)) (emphasis added).

Ms. Draisner's arguments for reconsideration must be rejected because they do not show that the Board made a manifest error of fact or law. In fact, the exhibits upon which Ms. Draisner relies and the documents from which she quotes, rather than supporting her contentions, confirm the Board's determination that the challenged permit is a state-issued Title V Operating Permit. Final Decision at 8. As the Board explained in the Final Decision, Title V operating permits "*incorporate and ensure compliance with the substantive emission limitations established under other provisions of the Act, such as the PSD provisions, or under applicable state and local laws and regulations.*" *Id.* at 4 (emphasis added). That is, the terms and conditions of the Title V permit include terms and conditions copied directly from the PSD permit. A review of the two permits Ms. Draisner submitted with her motion shows that the 1998 "Permit to Operate" (i.e., the Title V permit) does indeed incorporate the same "operating conditions" as the 1995 "Permit to Construct" (i.e., the PSD permit), as would be expected of the later-issued Title V operating permit. Furthermore, the 2013 Title V Permit that Ms. Draisner challenged in her appeal (Permit Number 94-VP-18d) also contains many, if not all, of the 1998 permit's operating conditions, as well as incorporating other current regulatory requirements. See 2013 Title V Permit at 7-11 (citing the original operating conditions from Permit Number 94-PO-18a), 25-28 (citing 40 C.F.R. part 63 requirements for hazardous air pollutants).

Moreover, the language Ms. Draisner quotes from Shasta County's Draft Evaluation makes this same point, indicating that the conditions in Sierra Pacific's 1995 PSD permit would be incorporated into the proposed Title V renewal permit unless one of the original PSD permit conditions had been revised by one of the more recent Title V operating permit renewals.⁴

Nothing in these two permits or in Ms. Draisner's Motion refutes the Board's determination that, when Shasta County AQMD issued the 2013 Title V Permit for Sierra Pacific's 4-megawatt wood-fired boiler and associated equipment (Permit Number 94-VP-18d), it was issuing a state permit under 40 C.F.R. part 70.

In sum, Ms. Draisner fails to show that the Board made an error in fact or law in concluding that it lacked jurisdiction over the Title V permit Shasta County AQMD issued under part 70. Consequently, she has not demonstrated that the Board's Final Decision warrants reconsideration.

B. Motion for Extension of Time

Ms. Draisner requests an extension of time to amend her motion for reconsideration so that she can obtain documents from the Region that would "prove" two things: (1) that the

⁴ It is clear from Ms. Draisner's arguments that she is still confused about the PSD and Title V permitting processes, as she herself admits in her Motion to Reconsider. In particular, Ms. Draisner has the order of the two permit processes reversed: the Title V operating permit incorporates the PSD preconstruction permit provisions, not the other way around. In addition, Title V operating permits are renewed, in general, every five years, *see* 40 C.F.R. § 70.4(b)(iii), but PSD permits typically are never renewed because, once the source or modification is constructed, there is no need to renew the PSD *preconstruction* permit. Instead, a Title V *operating* permit is issued that captures the provisions in the PSD preconstruction permit. *See* Final Decision at 4. These permitting processes could be confusing to the layperson, especially here where Shasta County initially used the same permit numbers for the two permits. Shasta County's use of the same permit number for its Title V operating permit does not, however, convert the Title V operating permit into a PSD permit.

Region “is tied to all permitting actions relating to Permits 94-PO-18 and 94-VP-18d” and (2) that the Region “is currently attempting to modify a federal PSD permit.” Motion for Ext. of Time at 1.

The Board has already analyzed the Region’s connection to Permits 94-PO-18 and 94-VP-18d and copies of further documents related to these permits will not change the fact that, as is clear from the information already provided to the Board, the 1995 PSD permit was issued by Shasta County AQMD acting as EPA’s delegatee and *all* the other permits at issue in *this* case – the 94-PO-18 Title V permit and all other permits numbered 94-VP-18a through 18d – were issued by Shasta County AQMD under 40 C.F.R. part 70, not by EPA. The Board has no authority to consider challenges to the Title V permits. Consequently, an extension of time in order to obtain additional evidence is not warranted.

Furthermore, the Board is aware that the Region is currently processing a PSD application from Sierra Pacific (Permit Number SAC 12-01). *See* Final Decision at 5 (referencing *In re Sierra Pacific Indus.*, PSD Appeal Nos. 13-01 through 13-04, slip op. at 7 (EAB July 18, 2013), 15 E.A.D. ____ (Order Remanding in Part and Denying Review in Part)). That permit is for a new and completely different generation unit⁵ at Sierra Pacific’s facility and thus is irrelevant to this appeal, which solely relates to permits for the 4-megawatt wood-fired boiler at the facility. An extension of time in order to obtain additional evidence about that other unrelated PSD process also is not warranted.

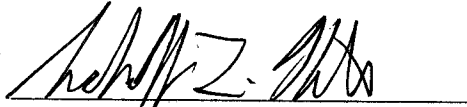
⁵ It is for a new 31-megawatt biomass and natural gas boiler cogeneration unit. *Sierra Pacific*, slip op. at 7.

CONCLUSION AND ORDER

Ms. Draisner's Motion to Reconsider and Motion for Extension of Time are denied for the reasons stated above.

So ordered.⁶

ENVIRONMENTAL APPEALS BOARD



Randolph L. Hill
Environmental Appeals Judge

Dated: May 2, 2014

⁶The three-member panel deciding this matter is composed of Environmental Appeals Judges Leslye M. Fraser, Randolph L. Hill, and Kathie A. Stein.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing *Order Denying Motion for Reconsideration and Motion for Extension of Time to Amend Motion for Reconsideration* in the matter of Sierra Pacific Industries, PSD Appeal No. 14-01, were sent to the following persons in the manner indicated:

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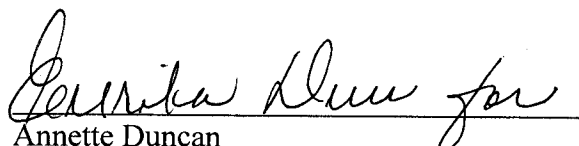
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Secretary

Date: *May 2, 2014*