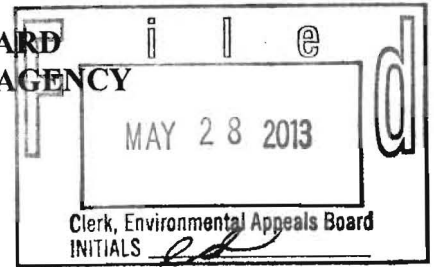


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC



_____))
In re:))
Sierra Pacific Industries) PSD Appeal Nos. 13-01, 13-02, 13-03, and 13-04
PSD Permit No. SAC 12-01))
_____))

ORDER GRANTING EXTENSION OF TIME FOR SUPPLEMENTAL BRIEFING

On May 16, 2013, the Environmental Appeals Board (“Board”) issued an Order requiring Region 9 of the Environmental Protection Agency (“Region”) to submit a supplemental brief in this appeal of a Prevention of Significant Deterioration (“PSD”) permit the Region issued to Sierra Pacific Industries, Inc. (“Sierra Pacific”) pursuant to section 165 of the Clean Air Act (“CAA”). *In re Sierra Pacific Industries*, PSD Appeal Nos. 13-01, 13-02, 13.03, and 13-04 (EAB May 16, 2013) (Order Directing Supplemental Briefing). The supplemental brief is to address two questions posed by the Board regarding the interpretation of the regulatory provision on public hearing requests, 40 C.F.R. § 124.12(a), in light of the statutory language regarding public hearings in CAA section 165, 42 U.S.C. § 7475. The Board ordered that the Region’s supplemental brief be submitted by May 31, 2013, and stated that the Petitioners and Sierra Pacific may file a reply to the Region’s brief, if any so desire, by June 14, 2013. The Order further stated that the Board would not grant an extension of time absent extraordinary circumstances given the time-sensitive nature of PSD permitting procedures.

On May 23, 2013, the Region filed a Motion requesting a two-week extension, citing as extraordinary circumstances the mandatory furloughs at EPA due to sequestration, the Memorial Day holiday, and the need to coordinate with other offices in EPA in preparing the supplemental brief within the nine working days the Order provided. *See* Motion for Extension of Time to File Supplemental Brief in Response to Board's Order at 3-4. The Petitioners (Ed Coleman, Heidi Strand, Celeste Draisner, and Rob Simpson) have expressed no opposition to the requested extension. However, on May 23, 2013, Sierra Pacific filed an Opposition to the Region's motion objecting to any extension longer than one week due to the time-sensitivity with regard to the project covered by this PSD permit. *See* Opposition to Request for Extension at 2.

The Board finds that the mandatory furlough days present extraordinary circumstances¹ and grants a one-week extension to the Region to file its brief on this basis. Given the time-sensitive nature of PSD permitting procedures and the facts and history in this particular permitting procedure,² the Board does not find the other grounds cited by the Region to be

¹The Budget Control Act of 2011, Pub. L. 112-25, 125 Stat. 240 (Aug. 2, 2011), resulted in an estimated five percent across-the-board spending cut for EPA that the Agency implemented, in part, through the imposition of up to 79 furlough hours for each EPA employee that must be taken between April 14, 2013, and September 30, 2013. EPA's implementation also requires all employees to take 32 furlough hours of the 79 furlough hours before June 15, 2013, including an Agency-wide mandatory furlough day on May 24, 2013 (the Friday before Memorial Day on May 27, 2013). As a result, a number of Agency employees scheduled some of their other furlough hours around May 24 and/or May 27.

²The Board's prior order disposing of an earlier petition filed for this same permit concerning the request for public hearing alerted the Region to the question of the interaction of 40 C.F.R. § 124.12(a) and section 165 of the CAA. *In re Sierra Pacific Industries*, PSD Appeal No. 12-03 (EAB Dec. 21, 2012) (Order Dismissing Petition for Review without Prejudice as Prematurely Filed). Specifically, in its December 21st Order, the Board instructed the Region that it "should provide a well-reasoned explanation of why it declined the citizen group's request for a public hearing in light of the statute and regulations * * *. *In particular, see CAA § 165(a)(2), 42 U.S.C. § 7475(a)(2).*" *Sierra Pacific* at 6 n.3 (emphasis added). Additionally, Petitioner

extraordinary circumstances. Accordingly, the Region's supplemental brief now is due on or before June 7, 2013. The due date for Petitioners' and Sierra Pacific's reply briefs, should they choose to reply, is correspondingly modified to June 21, 2013.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: May 28, 2013

By: Leslye M. Fraser

Leslye M. Fraser

Environmental Appeals Judge

Coleman cited to the requirement in section 165(a)(2) of the CAA pertaining to public hearings in his petition for review. The Region also cites the Board's requirement that it coordinate with other EPA offices prior to filing its supplemental brief as a basis for finding extraordinary circumstances. The Board expects, however, that this type of coordination typically should occur during the 21-day period that is provided before the Region must file its response to a petition for review of a PSD permit. *See* 40 C.F.R. § 124.19(b); *see also, Procedures for Coordination OE-OGC-Regions Environmental Appeals Board*, dated Jan. 25, 1993 ("It is important for the Regions to coordinate as early as possible with all Headquarters offices on the issues raised in permit appeals and requests for evidentiary hearings so that EPA will be advancing consistent positions. Some of this coordination needs to be initiated by the program offices and some by [the Office of Regional Counsel].") In the instant case, the Board expects that the Region can complete its consultations within the one-week extension granted and notes that the questions the Region is to address in its supplemental brief relate specifically to the interpretation to be given to EPA's implementing regulations for PSD permits in light of the Clean Air Act's language. As such, while the Region may choose to coordinate with additional offices other than those specified in the Board's Order, the Board does not find that a basis for finding extraordinary circumstances.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Granting Extension of Time for Supplemental Briefing in the matter of *Sierra Pacific Industries*, PSD Appeal Nos. 13-01, 13-02, 13-03, and 13-04, were sent to the following persons in the manner indicated:

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Dated: MAY 28 2013


Annette Duncan
Secretary