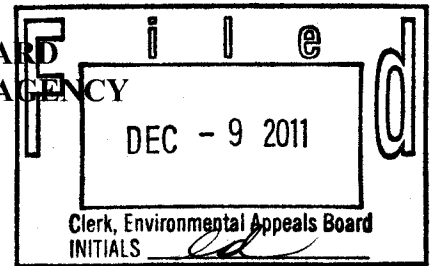


BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.



\_\_\_\_\_  
)  
)  
In re: Palmdale Hybrid Power Plant )  
)  
PSD Permit No. SJ 08-01 )  
)  
)  
\_\_\_\_\_

PSD Appeal No. 11-07

**ORDER GRANTING PERMITTEE LEAVE TO PARTICIPATE  
AND STAYING PROCEEDINGS TO ALLOW ALL PARTIES  
TO PARTICIPATE IN PILOT ADR PROGRAM**

On November 17, 2011, Rob Simpson (“Petitioner”) petitioned the Environmental Appeals Board (“Board”) for review of the Prevention of Significant Deterioration (“PSD”) permit issued by EPA Region 9 (“Region”) to the City of Palmdale (“Permittee”) to construct and operate the proposed Palmdale Hybrid Power Plant. The Board requested that Region 9 submit a response to the Petition by December 13, 2011. *See* Board’s letter to Nancy J. Marvel, U.S. EPA Region 9, Re: Palmdale Hybrid Power Plant, Permit No. SJ 08-01 (Nov. 22, 2011) (EAB Docket #6) (Requesting response to the petition for review). In that same request, the Board notified the Permittee that the Petition had been filed and that, if the Permittee wished to respond to the Petition, its response would also be due on December 13, 2011. *See id.*; *see also* *Order Governing Petitions for Review of Clean Air Act New Source Review Permits*, at 10 (EAB Apr. 19, 2011) (Standing Order Governing NSR appeals). By separate letter, the Board also invited the parties to participate in the EAB’s pilot Alternative Dispute Resolution (“ADR”) program. *See* Board’s Letter to Nancy J. Marvel, Region 9, and April Rose, on behalf of Rob Simpson, Re: Palmdale Hybrid Power Plant, Permit No. SJ 08-01 (Nov. 22, 2011) (EAB Docket

# 7) (Offering parties the option to participate in ADR Program). Subsequently, the Petitioner, the Region, and the Permittee have all requested participation in the Board's pilot ADR program. Additionally, the following motions have been filed and are pending before the Board: (1) the Permittee's Motion to Intervene (filed Dec. 5, 2011); and (2) an unopposed Motion for a 60-day Stay to allow the parties to pursue settlement through ADR (or, alternatively, an Extension of Time to File Response to Petition for Review) (filed Dec. 8, 2011).

The Board recognizes the Permittee's interest in this proceeding stemming from its direct interest in the permit being challenged. Therefore, in accordance with the Board's current practice, the Standing Order in NSR appeals, and the Board's letter requesting a response to the Petition in this case (which included a response deadline for the permittee), the Board grants the Permittee leave to participate in this PSD permit appeal.

Further, the Board also recognizes the many benefits associated with the use of alternative dispute resolution ("ADR") in settling contested matters. Therefore, in light of the parties' request to participate in the Environmental Appeals Board's ("Board's") pilot Alternative Dispute Resolution ("ADR") program, the Board finds it appropriate to stay the proceedings in the above-captioned matter for 60 days to allow the ADR process to proceed. Judge Anna Wolgast will act as Settlement Judge in this ADR process and will be contacting the parties to conduct a status conference and to set a date for an initial ADR meeting.

In granting this stay, the Board is cognizant that PSD appeals are time-sensitive appeals because new source construction cannot begin prior to receiving a final permit. CAA § 165(a),

42 U.S.C. § 7475(a); *see also Standing Order Governing NSR Appeals* at 1-2. All parties are reminded that the ADR process will be terminated and the matter returned to the EAB's active docket for resolution if at any point during the ADR process: (1) the Settlement Judge, in her discretion, determines that the ADR process has not made substantial progress; (2) the Settlement Judge, in her discretion, determines that ADR is no longer appropriate; or (3) any party determines that it no longer wishes to participate in ADR. *See Board's ADR Program Information Sheet*, available at [www.epa.gov/eab](http://www.epa.gov/eab) (ADR program link). In the event that the stay is lifted, all parties should expect that a very short, simultaneous deadline for the Region's and the Permittee's response to the petition will be established.

Based on the foregoing and for good cause shown, the Board GRANTS the permittee leave to participate in all proceedings in this matter. Further, proceedings in this matter are hereby stayed until **February 7, 2012**, to allow the parties time to pursue settlement through the Board's pilot ADR program.

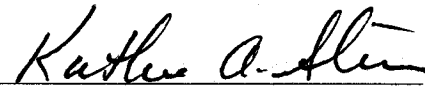
So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated:

*December 9, 2011*

By:



Kathie A. Stein

Environmental Appeals Judge

## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing *Order Granting Permittee Leave to Participate and Staying Proceedings to Allow All Parties to Participate in Pilot ADR Program* in the matter of *Palmdale Hybrid Power Plant*, PSD Appeal No. 11-07, were sent to the following persons in the manner indicated:

**BY U.S. First Class Mail & Facsimile:**

April Rose Sommer  
Attorney for Rob Simpson  
P.O. Box 6937  
Moraga, CA 94570  
(510) 423-0676  
(510) 590-3999 (fax)

Michael J. Carroll  
Mark T. Campopiano  
Latham & Watkins LLP  
650 Town Center Drive, Suite 2000  
Costa Mesa, CA 92626  
(714) 540-1235  
(714) 755-8290 (fax)

**By EPA Pouch Mail & Facsimile:**

Julie Walters  
Office of Regional Counsel  
EPA Region 9 (MC ORC-2)  
75 Hawthorne St.  
San Francisco, CA 94105  
(415) 972-3892  
(415) 947-3570 (fax)

**By Inter-Office Mail & Facsimile:**

Kristi Smith  
Air and Radiation Law Office  
Office of General Counsel  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave, N.W. (MC-2344A)  
Washington, DC 20460  
(202) 564-3068  
(202) 564-5603 (fax)

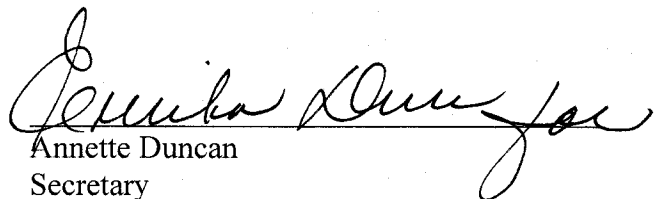
**By U.S. First Class Mail Only:**

Rob Simpson  
27136 Grandview Avenue  
Hayward, CA 94542

James C. Ledford, Jr.  
Mayor  
City of Palmdale  
38300 North Sierra Highway, Suite A  
Palmdale, CA 93550

Laurie Lile  
Assistant City Manager  
City of Palmdale  
38300 North Sierra Highway, Suite A  
Palmdale, CA 93550

Thomas M. Barnett  
Senior Vice President  
Inland Energy, Inc.  
3501 Jamboree Road  
South Tower, Suite 606  
Newport Beach, CA 92660

  
Annette Duncan  
Secretary

Date: 12/9/11