

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

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In re: Energy Answers Arecibo, LLC ) PSD Appeal Nos. 13-05 to 13-09  
(Arecibo Puerto Rico Renewable Energy )  
Project) )  
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**ORDER DENYING MOTION FOR RECUSAL OF PANEL  
AND DENYING REFERRAL TO ADMINISTRATOR FOR REHEARING**

Before the Board is a Motion of Recusal of the Full Panel and Requesting Rehearing by the EPA Administrator (“Motion for Recusal and Referral”). This motion was submitted to the Clerk of the Board by Mr. Lenoardo Ramos-Hernandez via email on May 13, 2014, along with a motion requesting leave to file via email.<sup>1</sup> For the reasons explained below, the Board accepts Mr. Ramos’ motion as filed and denies that motion.

*BACKGROUND*

On March 25, 2014, the Board issued a 98-page decision on five consolidated petitions for review of a prevention of significant deterioration (PSD) permit decision. After thorough consideration of the issues presented, the Board upheld the permit on nearly all grounds, but granted the Region’s motion for a limited remand to revise the permit to regulate biogenic greenhouse gas emissions. The Board considered, but did not require, the Region to reopen the

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<sup>1</sup> Mr. Ramos’ motion requesting leave to file via email was entitled “Motion for Reconsideration of Warning Regarding Filing via Email and Leave,” and is discussed further below.

permit for public comment on the proposed revisions. Following remand, the Region re-issued the permit on April 10, 2014.<sup>2</sup>

Since the Board's March 25, 2014, decision in this matter, Mr. Ramos has submitted six motions in an attempt to challenge the substance of the Board's decision.<sup>3</sup> The latest seeks recusal of the entire panel and referral to the Administrator for reconsideration of the Board orders denying Mr. Ramos' prior motion to intervene and his motion for an extension of time to file for reconsideration. *See* Order Denying Motion Requesting Extension of Time to File for Reconsideration, at 5 (Apr. 11, 2014), and Order Denying Motion to Intervene (April 11, 2014) (collectively, "the April 11th Orders"). The Board denied Mr. Ramos' motion to intervene, as untimely, and denied the motion requesting an extension of time to file for reconsideration after summarily concluding that an extension of time to file for reconsideration was not warranted.

#### *DISCUSSION*

As a preliminary matter, the Board accepts Mr. Ramos' emailed submissions as filed.

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<sup>2</sup> In a separate email to the Clerk of the Board, Mr. Ramos attached a "Notice of Appeal" which the Board construes as a petition for review of the re-issued April 10, 2014 permit, and addresses in a separate Board order.

<sup>3</sup> The six motions Mr. Ramos has filed since the Board issued its decision in this matter are: (1) Motion Requesting Leave to Intervene (Apr. 11, 2014); (2) Motion Requesting Extension of Time to File for Reconsideration (Apr. 11, 2014); (3) Motion Requesting Rehearing (Apr. 24, 2014); (4) Motion of Recusal of Judge K. A. Stein; (5) Motion for Leave to File Via Email (May 12, 2014); and (6) Motion for Recusal of Panel and Rehearing by the EPA Administrator (May 12, 2014).

Every submission by Mr. Ramos has been emailed directly to the Clerk of the Board, even though Mr. Ramos has been repeatedly warned that his “failure to follow the proper procedures for filing may result in [his] filing being rejected by the Board.” *See* 40 C.F.R. § 124.19(i)(2) (setting forth the methods of filing).<sup>4</sup> *See, e.g.*, Order Denying Motion to Intervene at 1, n.1 (April 11, 2014) (emphasis omitted).<sup>5</sup> Nevertheless, in the interest of preserving Board resources and bringing this matter to a close, the Board will not require Mr. Ramos to properly submit his filing at this time. Rather, the Board accepts Mr. Ramos’ motion as filed.

The panel assigned to the *Energy Answers Arecibo* matter consists of Judges Leslye M. Fraser, Catherine R. McCabe, and Kathie A. Stein. *See, e.g.*, 40 C.F.R. § 1.25(e)(1) (providing that the Board will “in its sole discretion \* \* \* establish panels to consider matters before it,” and

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<sup>4</sup> Submitting a filing directly to the Clerk of the Board via email is not a proper filing method. As noted in the Board’s prior order, available methods of filing include filing by mail (return receipt is recommended), by hand delivery, and by electronically filing using the Board’s eFiling system. *See* 40 C.F.R. § 124.19(i); *see* Order Denying Motions for Recusal and Rehearing (Apr. 29, 2014). Additionally, motions and responses to motions may be filed by facsimile (with the original later submitted either electronically, by mail or by hand delivery). *See id.* § 124.19(i)(2). Instructions for how to file, including all methods available, may be found in the rule (40 C.F.R. § 124.19), in A Citizens’ Guide to EPA’s Environmental Appeals Board, and in the Environmental Appeals Board Practice Manual, all of which are available on the Board’s website ([www.epa.gov/eab](http://www.epa.gov/eab)). Once registered on the eFiling system, any party with access (i.e., a valid, unexpired, user ID and password) who is having difficulty navigating the eFiling system may contact the Clerk of the Board for guidance on how to use the system.

<sup>5</sup> Mr. Ramos submitted a motion for leave to file via email with his Motion for Recusal and Referral. Although Mr. Ramos describes general difficulties he has encountered with eFiling, he does not appropriately document or describe those difficulties, for example, by providing details identifying when Mr. Ramos attempted to access the system, what document he was attempting to file, and any error messages he received or other difficulty he encountered in navigating the system.

that “[t]he Board’s decisions regarding panel size and composition shall not be reviewable”). None of these panel members has identified any basis to recuse themselves from deciding this matter. *See* 40 C.F.R. § 1.25(e)(3).

Mr. Ramos asserts that recusal is warranted for reasons which may be summarized as follows: 1) the Board erred when it omitted a footnote identifying the panel that decided the April 11th orders;<sup>6</sup> 2) the Board ignored Mr. Ramos’ claims of conspiracy; 3) the Board summarily denied Mr. Ramos’ motions without adequate explanation; and 4) the Board’s bias is evidenced by its refusal to consider new information relevant to the permit. None of these constitutes grounds for recusal.

First, the Board’s omission in the April 11th Orders of a footnote identifying the panel members was neither required by statute or regulation, nor evidence of incompetence. The Board, at its own discretion, includes the footnote in unpublished orders of significance. As the Board has explained, the assigned panel considered and decided to deny Mr. Ramos’ motions in the April 11th Orders.

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<sup>6</sup> The Board’s omission of a footnote identifying the members of the panel serves as the basis for several of Mr. Ramos’ assertions including that the Board is “in violation of the competency requirement of the International Covenant of Civil and Political Rights” and that the “panel members actions cause the impression of illegality and/or impropriety.” *See* Motion for Recusal of Panel at 2-3.

Second, Mr. Ramos' asserted violation of the Ku Klux Klan Act (without citation or support), based on the Board's decision not to directly address Mr. Ramos' assertions of conspiracy, does not constitute grounds for recusal. Mr. Ramos' bald and inflammatory allegations must fail for a number of reasons, not the least of which is that Mr. Ramos asserts absolutely no connection between the alleged existence of a criminal and corrupt organization in Puerto Rico and his belated attempt to intervene in the *Energy Answers Arecibo* permit appeal process for the permitting decision made by EPA Region 2.

Third, Mr. Ramos appears to be troubled by the Board's summary dismissal of his grievances. The Board, in exercising its duties and responsibilities, "may do all acts and take all measures necessary for the efficient, fair, and impartial adjudication of issues arising" in a permit appeal. *See* 40 C.F.R. § 124.19(n) (2013). Summarily disposing of unpersuasive, untimely, and unsupported claims and arguments is both efficient and authorized. Mr. Ramos' assertion without citation or support that the Board's summary dismissal of his claims is grounds for recusal is entirely without merit.

In a final attempt to inject new information into an already final decision, Mr. Ramos pairs his plea to consider new wind data with Board bias. As the Board previously stated, Mr. Ramos' request to intervene was untimely in the extreme. *See* Order Denying Motion to Intervene at 3 (April 11, 2014). Any arguments regarding wind data that were timely raised were considered and decided. *See In Re Energy Answers Arecibo, LLC*, PSD Appeal Nos. 13-05

through 13-09, slip op. at 83-88 (EAB Mar. 25, 2014), 16 E.A.D. at \_\_\_\_\_. The Board's decision not to reopen the appeal has nothing to do with bias, and everything to do with timely, fair and efficient administration of permit appeals.

For the same reasons that Mr. Ramos' asserted grounds do not justify recusal, they also do not warrant referral to the Administrator. At base, Mr. Ramos is dissatisfied with the outcome of the final decision in *Energy Answers Arecibo* and with the denial of his belated attempt to participate in the appeal of the Region's permit. Mr. Ramos's dissatisfaction, however, does not provide a basis for referral. *See* 40 C.F.R. § 124.2(a) (delegating the authority to issue final decisions in PSD appeals filed under part 124 to the Board and providing for referral where the Board deems it appropriate). The Board, in its discretion, declines to refer this matter to the Administrator.

#### CONCLUSION

As explained above, the Board denies Mr. Ramos' Motion of Recusal of the Full Panel and Requesting Rehearing by the EPA Administrator. Further, for the sake of clarity, the Board concludes that Mr. Ramos has no further remedies under the Board's rules governing permit appeals. Any further pleadings or requests for reconsideration in this matter will be summarily denied.

So ordered.<sup>7</sup>

ENVIRONMENTAL APPEALS BOARD

Dated: MAY 30 2014

By: Kathie A. Stein  
Kathie A. Stein  
Environmental Appeals Judge

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<sup>7</sup> The three-member panel deciding this matter is composed of Environmental Appeals Judges Leslye M. Fraser, Catherine R. McCabe, and Kathie A. Stein.

## CERTIFICATE OF SERVICE

I certify that copies of the foregoing *Order Denying Motion for Recusal of Panel and Denying Referral to Administrator for Rehearing* in the matter of Energy Answers Arecibo, LLC, PSD Appeal Nos. 13-05 through 13-09, were sent to the following persons in the manner indicated:

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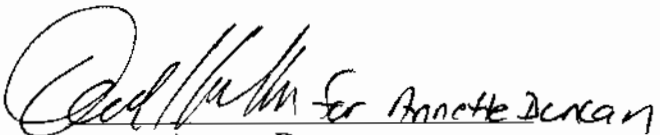
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