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

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

ORDER CONCERNING BOARD PROCEDURES

In this matter, Petitioners appeal from a Prevention of Significant Deterioration ("PSD") permit that U.S. EPA Region 9 ("Region") issued to Sierra Pacific Industries ("Sierra Pacific") on February 20, 2013. The deadline for filing a petition for review of the Sierra Pacific Industries permit was March 26, 2013.[1] Since that date, two of the four petitioners in this matter have filed additional documents for the Board's consideration. This Order reminds parties of Board procedures that are applicable to all filings in these appeals.

On March 30, 2013, Ed W. Coleman filed a "2ndAmended Petition" (Docket No. 17),[2] which was not accompanied by a motion, did not identify the changes made from the previous

[1] The Region issued notice of the final permit decision on February 21, 2013. Taking into account the provision regarding computation of time at 40 C.F.R. § 124.20(d), petitions for review of the Sierra Pacific Industries permit at issue were due Tuesday, March 26, 2013. A document is considered filed on the date that it is received by the Board. *See* 40 C.F.R. 124.19(a)(3)(2013). The EAB recently revised its regulation governing permit appeals before the Board, 40 C.F.R. § 124.19, and the provisions of the revised rule took effect on March 26, 2013, and are applicable to any document filed with the Board on or after that date. The Board also revised its Practice Manual to summarize and further explain the provisions of the revised rule. The Practice Manual is available on the Board's website at www.epa.gov/eab.

[2] Mr. Coleman filed his original petition on March 25, 2013, and subsequently filed an Amended Petition on March 26, 2013.

two petitions, and did not provide any justification for the Board's acceptance of this amended petition after the deadline had passed. Additionally, Petitioner Heidi Strand filed a document entitled "Motion to Provide Supplemental Documentation" on April 3, 2013 (Docket No. 18). Notwithstanding the title, the content of the purported motion states simply:

> Included are two documents that are vital to the petitions by Citizens for Clean Air. I am waiting to receive the complete comment documents requested from Region 9, EPA by my Freedom of Information act.

Ms. Strand does not seek permission from the Board to file the documents, does not explain the relevance of the documents, or justify why they are being submitted beyond the petition deadline. Ms. Strand also seems to indicate that she plans to submit additional documents at some undetermined point in the future.

The regulation governing PSD permit appeals, such as the ones at issue here, is 40 C.F.R. § 124.19. The EPA recently revised this rule to codify and clarify procedural practices to make more efficient the review process, particularly in PSD appeals, such as this one. *See Revisions to Procedural Rules to Clarify Practices and Procedures Applicable to Permit Appeals Pending Before the EAB*, 78 Fed. Reg. 5,281, 5283 (Jan. 25, 2013) (describing the incorporation into the rule of deadlines, briefing limitations, and other measures as a means of providing clarity and efficiency to the review process, particularly in the context of PSD appeals). The revised rule applies to all filings with the Board on or after March 26, 2013. Both the prior and revised rule authorize the filing of a petition "[w]ithin 30 days" after the permitting authority issues the final permit decision. *Id.;* 40 C.F.R. 124.19(a) (2013). The rule does not authorize the filing of a revised petition *after* the 30-day deadline has passed. *Id.* Nor does the rule authorize the

submission of additional documents for the Board to consider after the petition deadline. The revised rule, however, does authorize requests for an order *or other relief* by written motion. 40 C.F.R. § 124.19(f)(1) (2013). Parties wishing to submit filings that are not expressly authorized by the rule (amended petitions, for example, or other documents intended for Board consideration that are not expressly authorized) must accompany those submissions with a motion requesting leave to file the document. *Id.*

The Board recognizes that all four petitioners in this matter are unrepresented by counsel, or *pro se*. Although the Board endeavors to construe *pro se* petitions broadly, such petitions nonetheless remain subject to the applicable regulations. *See In re Knauf Fiber Glass GmbH*, 8 E.A.D. 121, 127 (EAB 1999). As such, the Board reminds all parties to accompany every filing that is not otherwise authorized by rule with a proper motion seeking leave of the Board to file such document. *See generally* 40 C.F.R. § 124.19(f). Such motion should state the request and provide support for why the Board should exercise its authority to grant the request in accordance with 40 C.F.R. § 124.19(f)(2)(2013).

So Ordered.

Dated:
April 9, 2013

ENVIRONMENTAL APPEALS BOARD

By: Leslye M. Fraser

Leslye M. Fraser
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Concerning Board Procedures in the matter of Sierra Pacific Industries, PSD Appeal No. 13-01 through 13-04, were sent to the following persons in the manner indicated:

By First Class Mail:

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Courtesy Copy to:
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1855 Placer Street, Suite 101
Redding, CA 96001

Dated: APR - 9 2013

Annette Duncan
Secretary