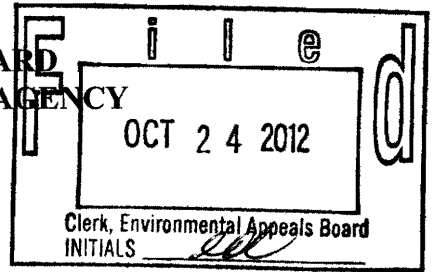


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



_____)
In re:)
)
Sierra Pacific Industries) PSD Appeal No. 12-03
)
)
PSD Permit No. SAC 12-01)
_____)

**ORDER TO SHOW CAUSE WHY PETITION SHOULD NOT BE DISMISSED
WITHOUT PREJUDICE AS PREMATURELY FILED**

On October 15, 2012, Citizens for Clean Air (“CCA”) filed a petition with the Environmental Appeals Board (“Board”) challenging United States Environmental Protection Agency Region 9’s (“Region’s”) denial of its request for a public hearing on the proposed Prevention of Significant Deterioration (“PSD”) permit for Sierra Pacific Industries’ cogeneration plant in Anderson, CA. *See* Notice of Appeal (“Petition”). On the same day, CCA also filed a motion with the Board requesting an extension of time in which to file an appeal brief addressing this issue. *See* Motion of Extension of Time to File Appeal Brief (“Motion”). According to CCA, the Region denied its request on October 1, 2012. Motion at 1; Petition at 1. CCA challenges the Region’s denial of its public hearing request under the “Environmental Justice Guidelines” and the Clean Air Act. Petition at 1.

Under the Agency’s permitting regulations, a person may file a petition for review with the Board “[w]ithin 30 days after a * * * PSD *final permit decision* * * * has been issued under § 124.15.” 40 C.F.R. § 124.19(a) (emphasis added). Under section 124.15, the Region issues a “final permit decision” at some point in time after the close of the comment period. *Id.*

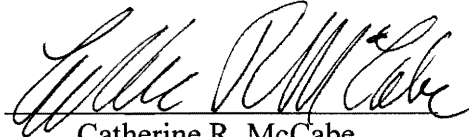
§ 124.15(a). When issuing the final permit decision, the Region must provide final notice of its decision and also must issue a response to comments. *Id.* §§ 124.15(a), 124.17(a).

According to CCA's motion, the comment period for the proposed permit ended last week on October 17, 2012. Motion at 1; *see also* U.S. EPA, Region 9, Public Notice Announcement of Proposed Permit Modification and Request for Public Comment on Proposed Clean Air Act PSD Permit Application No. SAC 12-01 at 2 (Sept. 12, 2012), *available at* <http://www.epa.gov/region9/air/permit/r9-permits-issued.html>. The Region's website does not indicate that a final permit has been issued. Based on this information, it appears that the Region has not yet issued a final permit decision and that Petitioner filed its petition during the comment period rather than within 30 days of the *final* permit decision. It therefore appears from the record and the permitting authority's website that CCA may have filed its petition prematurely in this case. *See In re MHA Nation Clean Fuels Refinery*, NPDES Appeal Nos. 11-02 through 11-04 & 12-03, slip op. at 17 (EAB June 28, 2012) ("A petition challenging the permit modification proceedings will only be ripe for Board review after the permit issuer issues a final permit decision."); *In re Ariz. Mun. Stormwater NPDES Permits*, 7 EAD 646, 651 (EAB 1998) (dismissing challenges to permit conditions that permit issuer had withdrawn and modified in response to petition as not yet ripe for Board review), *petition for review denied sub nom. Defenders of Wildlife v. Browner*, 191 F.3d 1159 (9th Cir. 1999); *cf. In re Env'tl. Disposal Sys., Inc.*, UIC Appeal No. 07-01, at 3-4 (EAB July 11, 2007) (Order) (dismissing petition brought under 40 C.F.R. § 124.5 as prematurely filed where the underlying permit process was not yet completed).

In light of the above, the Board directs petitioner to show cause why its petition should not be dismissed without prejudice as prematurely filed. In its response, CCA should provide an explanation of how or why the Board has jurisdiction to hear CCA's appeal at this time. Any such response to this order must be filed by November 20, 2012. The Region also may file a brief responding to this issue on that same date. While awaiting briefing on this timing/jurisdictional issue, the Board will stay its consideration of CCA's request for an extension of time to file a brief addressing the issues CCA raises in its Petition.

So ordered.

ENVIRONMENTAL APPEALS BOARD



Catherine R. McCabe

Environmental Appeals Judge

Date: 10/24/12

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order to Show Cause Why Petition Should Not Be Dismissed Without Prejudice as Prematurely Filed in the matter of the Sierra Pacific Industries, PSD Appeal No. 12-03, were sent to the following persons in the manner indicated:

By Pouch Mail:

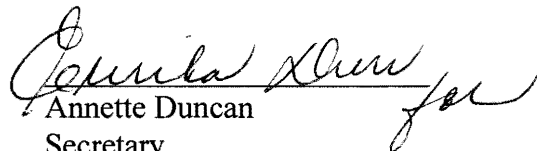
Nancy J. Marvel, Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 9
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San Francisco, CA 94105

By First Class Mail:

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P.O. Box 1544
Shasta Lake City, CA 96019

Sierra Pacific Industries
P.O. Box 496028
Redding, CA 96049-6028

Dated: 10/24/12


Annette Duncan
Secretary