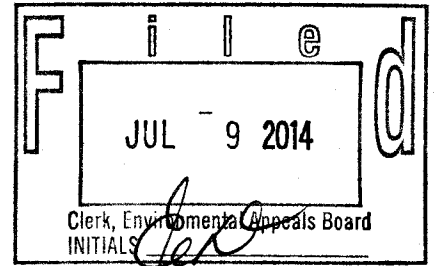


**BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, DC**



\_\_\_\_\_)  
In re: \_\_\_\_\_)  
Sierra Pacific Industries \_\_\_\_\_)  
PSD Permit No. SAC 12-01 \_\_\_\_\_)  
\_\_\_\_\_)

PSD Appeal No. 14-05

**ORDER DENYING MOTION SEEKING RECONSIDERATION**

On May 12, 2014, the Environmental Appeals Board (“Board”) dismissed petitions filed by Marily Woodhouse, Russ Wade, and the Center for Biological Diversity challenging a Clean Air Act prevention of significant deterioration (“PSD”) permit, PSD Permit No. SAC 12-01, issued by Region 9 of the U.S. Environmental Protection Agency (“Region 9”). *In re Sierra Pacific Indus.*, PSD Appeal Nos. 14-03, 14-05, & 14-06 (EAB May 12, 2014) (Order Dismissing Appeals for Lack of Jurisdiction). The Board held it lacked jurisdiction over the petitions because, in remanding an earlier version of the challenged permit to the Region, the Board had directed that “[o]nce the Region issues a final permit decision following the public hearing required by this remand, that final permit decision and the Board’s decision in this case become final agency action subject to judicial review.” *In re Sierra Pacific Indus.*, PSD Appeal Nos. 13-01 through 13-04, slip op. at 67 (EAB July 18, 2013), 15 E.A.D. \_\_ (Order Remanding in Part and Denying Review in Part); *see* 40 C.F.R. § 124.19(*l*). Petitioner Russ Wade, in a filing styled “Amended Motion for Clarification,” has asked the Board to reconsider its decision.

Reconsideration is only appropriate upon a showing of “demonstrable error, such as a mistake of law or fact.” *In re Bear Lake Properties, LLC*, UIC Appeal No. 11-03, at 2-3 (EAB July 26, 2012) (Order Denying Motion for Partial Reconsideration) (citing cases); *see* 40 C.F.R. § 124.19(m). Petitioner argues that the Board should accept jurisdiction of his appeal because otherwise the Board’s order remanding the permit to the Region is unenforceable. Petitioner further argues that failure to provide for an appeal before the Board will impair his right to due process.

Both of Petitioner’s arguments stem from the misconception that Petitioner lacks any further appeal rights to challenge the Region’s compliance with the Board’s remand order on the permit. The Board is the delegated EPA decisionmaker on appeals from a PSD final permit issued under section 124.15 of title 40 of the Code of Federal Regulations, and the Board’s decision on a permit is binding on the permit issuer. 40 C.F.R. § 124.19(a). Should a party believe that a permit issuer has not complied with a remand order from the Board, the party may seek review of the permit issuer’s decision from the Board (if, but only if, the Board has required a further appeal to exhaust administrative remedies), *id.* § 124.19(l)(2)(iii), and/or from a federal court. For PSD permits, the availability of federal court review is addressed in section 307(b) of the Clean Air Act, 42 U.S.C. § 7607(b). While Petitioner may thus have a further appeal available to him, that appeal is not before the Board.

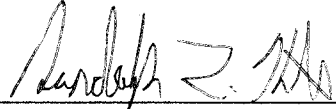
Because Petitioner has identified no demonstrable error in the Board's dismissal of his  
Petition, Petitioner's motion is denied.

So ordered.<sup>1</sup>

Dated:

JUL - 9 2014

**ENVIRONMENTAL APPEALS BOARD**

By: 

Randolph L. Hill  
Environmental Appeals Judge

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<sup>1</sup> The three-member panel deciding this matter is composed of Environmental Appeals Judges Leslye M. Fraser, Randolph L. Hill, and Kathie A. Stein. *See* 40 C.F.R. § 1.25(e)(1).

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing *Order Denying Motion Seeking Reconsideration* in the matter of Sierra Pacific Industries, PSD Appeal No. 14-05, were sent to the following persons in the manner indicated:

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

Russ Wade  
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**By EPA Pouch Mail:**

Kara Christenson  
Office of Regional Counsel,  
U.S. EPA Region 9 (ORC-2)  
75 Hawthorne Street  
San Francisco, CA 94105

**Courtesy Copy By U.S. First Class Mail:**

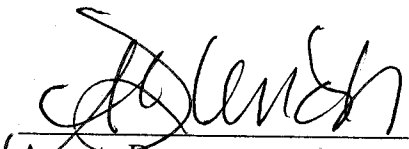
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\_\_\_\_\_  
Annette Duncan  
Secretary

Date: JUL - 9 2014