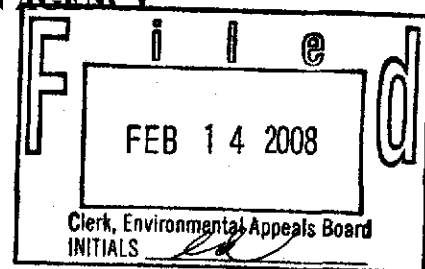


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

In re:

Russell City Energy Center

PSD Appeal No. 08-01



ORDER REQUIRING RESPONSE

On November 1, 2007, the Bay Area Air Quality Management District ("District") issued a federal prevention of significant deterioration ("PSD") permit, pursuant to Clean Air Act § 165, 42 U.S.C. § 7475, to Russell City Energy Center for the construction of 600-megawatt natural gas-fired power plant in Hayward, California. The Bay Area District is authorized to make PSD permitting decisions for new and modified stationary sources of air pollution in the San Francisco Bay area of California pursuant to a delegation agreement with Region 9 of the U.S. Environmental Protection Agency. Because the Bay Area District acts as EPA's delegate under the PSD program, the District's PSD permits are considered EPA-issued permits, and appeals of the permit decisions are heard by the Environmental Appeals Board ("Board") pursuant to 40 C.F.R. § 124.19.

In a petition filed with the Board on January 3, 2008, Mr. Rob Simpson ("Petitioner") seeks Board review of the PSD permit. On January 18, 2008, the District filed a response seeking summary dismissal of the petition on the grounds that the Petitioner lacks standing, the issues raised were not preserved for review, and the Petition is untimely. Response to Petition for Review Requesting Summary Dismissal (Jan. 18, 2008) ("District's Response") at 1. In addition, the District argues that many of the issues raised in the petition are outside the scope of the PSD program and, therefore, outside the scope of the Board's jurisdiction. *Id.* By submission filed on February 11, 2008, Petitioner opposes the District's motion for summary disposition. Opposition to Request for


Summary Disposition (Feb. 11, 2008) ("Opposition"). In his Opposition, Petitioner asserts, among other things, that the District failed to provide adequate notice regarding issuance of the draft final permit and that, as a result, the Board should remand the permit and require that the District comply with all applicable notice requirements.

The District is hereby ordered to file a response to the Petitioner's Opposition. The District's response may address any of the issues raised in Petitioner's Opposition but, at a minimum, must address the following three issues: (1) Whether the Petitioner in this matter was entitled to notice of the District's permitting action under 40 C.F.R. § 124.10; (2) Whether the notice required by 40 C.F.R. § 124.10 was in fact mailed by the California Energy Commission docket section to all parties entitled to receive such notice under the applicable PSD regulations; and (3) Whether the content of the notice complied with all applicable requirements of 40 C.F.R. § 124.10(d). The District shall file its response with the Board no later than March 7, 2008.¹

So ordered.

Dated: 2/14/08

ENVIRONMENTAL APPEALS BOARD

By: 

Edward Reich
Environmental Appeals Judge

¹ Documents are "filed" with the Board on the date they are *received* by the Clerk of the Board.

CERTIFICATE OF SERVICE

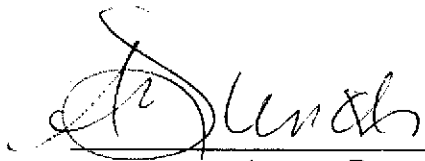
I hereby certify that copies of the forgoing Order Requiring Response in the matter of Russell City Energy Center, PSD Appeal No. 08-01, were sent to the following persons in the manner indicated:

First Class Mail:

Alexander G. Crockett
Assistant General Counsel
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109

Rob Simpson
27126 Grandview Ave.
Hayward, CA 94542

Dated: FEB 14 2008



Annette Duncan
Secretary