

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

)	
In re:)	
)	PSD Appeal No. 18-02
Tucson Electric Power)	
)	
PSD Permit No. 1052)	
)	

ORDER

In this case, Petitioner Sierra Club filed a petition seeking review of a Clean Air Act Prevention of Significant Deterioration (“PSD”) permit issued by Pima County Department of Environmental Quality (“Pima County”)¹ to Tucson Electric Power. This case is now fully briefed by the parties, and the Board is issuing this Order to address procedural issues and to facilitate an expeditious resolution of the case.

First, in reviewing this case, the Board notes that there appear to be certain omissions from the Certified Index to the Administrative Record submitted by Pima County. For example, Sierra Club’s comments on the proposed permit and attachments (included as Exhibit 1 to Sierra Club’s Petition) do not appear to be included in the Certified Index or on the Pima County webpage for the Tucson Electric Power permit (the website on which the Certified Index

¹ Pima County, Arizona, administers the federal PSD permitting program under delegation from Region 9 of the U.S. Environmental Protection Agency. *See* Agreement for Delegation of Source Review under the Federal Prevention of Significant Deterioration (PSD) Program Set Forth in 40 CFR 52.21 by the United States Environmental Protection Agency, Region 9 to the Pima County Air Quality Control District (June 5, 2018), *available at* <https://www.epa.gov/caa-permitting/pima-county-department-environmental-quality-psd-delegation-agreement>.

indicates that record documents can be found). *See* Petition for Review of Prevention of Significant Deterioration Permit Issued by Pima County Department of Environmental Quality for Irvington/H. Wilson Sundt Generating Station, Ex. 1. Another apparent omission from the Certified Index is the proposed permit noticed for public comment (included as Exhibit 2 to Tucson Electric Power’s Response). *See* Response of Permittee Tucson Electric Power to Petition for Review of Prevention of Significant Deterioration Permit for the Irvington/H. Wilson Sundt Generating Station (“TEP Resp.”), Ex. 2. That document, however, does appear on the Pima County webpage for the Tucson Electric Power permit. *See* TEP Application for PSD Authorization, <http://webcms.pima.gov/cms/One.aspx?portalId=169&pageId=363558> (last visited Oct. 17, 2018). To ensure that the Board has a complete and accurate Certified Index, the Board directs Pima County to review the Certified Index, verify that it contains all record documents (including all record documents that may be listed on the Pima County webpage for this permit), and file an updated Certified Index with all necessary corrections on or before **October 29, 2018**. *See* 40 C.F.R. § 124.18 (specifying contents of administrative record).

An additional record issue identified in our review is that Tucson Electric Power’s Response cites an Operating Manual for a pollution control device (dated March 6, 2013) as information in the permitting record and attaches that Manual as Exhibit 3 to its Response. TEP Resp. at 22, Ex. 3. The Certified Index, however, does not list the Operating Manual as a separate document. And while the Pima County webpage for the Tucson Electric Power permit contains several documents concerning the pollution control device, none appear to be the Operating Manual that Tucson Electric Power attached to its Response. The Board directs Tucson Electric Power to file a supplement to its Response providing a record citation for the Operating Manual on or before **November 1, 2018**.

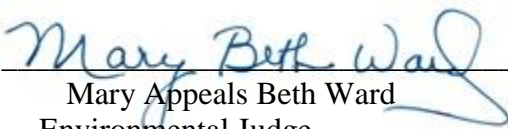
Second, Tucson Electric Power has filed a Motion to Expedite Review, arguing that prompt review of this PSD permit is necessary for it to ensure continued reliable electric power service. Given the time-sensitive nature of PSD matters, the Board prioritizes these cases as a matter of course in accordance with its 2013 Standing Order on new source and PSD permit appeals. *See* Revised Order Governing Petitions for Review of Clean Air Act New Source Review Permits (EAB Mar. 27, 2013); *see also* 40 C.F.R. § 124.19(b)(1), (c)(1), (h) (imposing tighter deadlines and a presumption against oral argument in PSD and other new source appeals). Consistent with its Standing Order, the Board will decide this matter expeditiously, while giving due consideration to the issues presented in this appeal.

Lastly, pursuant to 40 C.F.R. § 124.19(i)(3)(iii), the Board may use e-mail (sent from the address: *Clerk_EAB@epa.gov*) to serve orders and decisions in this matter at the addresses provided by the parties. Parties shall promptly file a notice in this matter informing the Board and the other parties if their e-mail address changes.

So ordered.

Dated: October 18, 2018

ENVIRONMENTAL APPEALS BOARD

By: 
Mary Appeals Beth Ward
Environmental Judge

CERTIFICATE OF SERVICE

I certify that copies of the forgoing **ORDER** in the matter of the Tucson Electric Power, PSD Appeal No. 18-02, were sent to the following persons in the manner indicated:

By First Class Mail:

Counsel for Sierra Club

Reed Zars
Attorney at Law
910 Kearney Street
Laramie, WY 82070
Email: reed@zarslaw.com

Marta Darby
Sierra Club
2101 Webster St., Suite 1300
Oakland, CA 94612
Email: marta.darby@sierraclub.org

*Counsel for Pima County Department of
Environmental Quality*

Michael LeBlanc
Lesley Lukach
Pima County Attorney's Office
32 N. Stone Avenue, Suite 2100
Tucson, AZ 85701
Email: michael.leblanc@pcao.pima.gov
lesley.lukach@pcao.pima.gov

Counsel for Tucson Electric Power

Makram B. Jabner
Andrew D. Knudsen
Hunton Andrews Kurth LLP
2200 Pennsylvania Avenue, NW
Washington, DC 20037
Email: mjaber@huntonAK.com
aknudsen@huntonAK.com

By EPA Pouch Mail:

Noah Smith
Julie Walters
Office of Regional Counsel (ORC-113)
EPA Region 9
75 Hawthorne Street
San Francisco, CA 94105
Email: smith.noah@epa.gov
walters.julie@epa.gov

Dated: October 18, 2018



Annette Duncan
Administrative Specialist