STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the matter of:
DOCKET NO.: 01-AFC-7C
Amendment to the Application) PETITION FOR RECONSIDERATION
for Certification of the Russell)
City Energy Center Project)

To the extent that the CEC wishes to reject "Standing" for reconsideration the following excerpts from the EPA Remand order are offered:

"inherent in Mr. Simpson's argument
is the proposition that the District's notice and outreach under § 124.10
were so defective that these defects "rippled through" the permitting
process, handicapping the participation necessary for standing and, by
consequence, precluding satisfaction of the other procedural thresholds for Board review, such as
preserving issues for review and the timely
filing of a petition for review. *See* 40 C.F.R. § 124.19(a).
In theory, it is not difficult for the Board to accept the pivotal
role of initial notice depicted by Mr. Simpson and examine this issue as
the starting point for our analysis. Initial outreach and notice activities
under § 124.10 are clearly intended to generate the public participation
upon which standing to challenge permit decisions is predicated. *See In
re MCN Oil & Gas Co.,* UIC Appeal No. 02-03, at 11 (EAB Sept. 4,
2002) (Order Denying Review) ("Standing to appeal a final permit
determination is limited under [40 C.F.R. §] 124.19 to those persons who
participated in the permit process leading up to the permit decision
* * *.") (emphasis added). Obviously, a person who does not receive
notice of a draft permit (and is otherwise unaware of its issuance) will
not be able to participate to the extent of filing comments on the draft
permit, and thereby satisfy the procedural threshold imposed by section
124.19(a), entitling that person to standing before the Board. If a person
is entitled to such notice, failure to receive it is clearly prejudicial. For
that reason, part 124 contains very specific requirements in section
124.10 as to whom notice must be given and as to the contents of the
Notice."
21-22

"The failure of [the permitting authority] to comply fully
with the public participation requirements of the [PSD]
regulations implementing this statutory requirement,
combined with a reasonable perception from the record
that [the permitting authority] may not in fact have
given consideration to the public's comments"

"Indeed, it would
be incongruous for the Board to categorically deny standing, and

possibility of redress, to a petitioner who presents facts purporting to show that EPA (or one of its delegates) has violated § 124.10 and thereby prejudiced the petitioner's participation rights. Denying standing outright in such cases would deny parties the opportunity to vindicate before the Board potentially meritorious claims of notice violations under part 124 and would be at odds with the Board's obligation to "decide each matter before it in accordance with applicable statutes and regulations." *See* 40 C.F.R. § 1.25(e)(1). Furthermore, conferring standing in a restrictive manner would be at odds with clear Congressional direction for "informed public participation," *see* CAA § 160(5), 42 U.S.C. § 7470(5), and § 124.10's expansive provision of notice and participation rights to members of the public. This is illustrated by the requirement for permitting agencies to implement general outreach by compiling mailing lists of persons interested in permitting actions, *see* 40 C.F.R. § 124.10(c)(1)(ix)(A)-(C), and the statement elsewhere in part 124 that "*any* interested person may submit written comments on the draft permit." *Id.* § 124.11 (emphasis added)."

"As applied to the notice violation, the allegation of error is considered to be
the Permit in its entirety. *See In re Chem. Waste Mgmt. of Ind.,* 6 E.A.D. 66, 76 (EAB 1995) (holding that the Board, in accordance with its review powers under 40 C.F.R. § 124.19, is "authorize[d] * * * to review any condition of a permit decision (or as here, the permit decision in its entirety.)."
26

The remand order demonstrated that the CEC erred in its finding that the proposed facility conforms with Federal law. It is a error in fact and in law to rely on a draft permit or FDOC that has been remanded and thereby prevent public participation.

The applicant has not shown good cause for an extension.

The timely June 30 application for intervention and comment was a petition to intervene in a compliance proceeding not a siting case. The CEC rules allow "petition to intervene in any proceeding." Service to the applicant is only required in a "siting case"

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