

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

In re: Sierra Pacific Industries

PSD Permit No. SAC 12-01

(Docket Number to be set)

Respondent: EPA Region 9

Separate Petition by Appellant Celeste Draisner to Review a Decision by EPA Region 9 Presiding Administrative Officer Omer Shalev to Deny Region Review of Best Available Control Technology (BACT) for the proposed Sierra Pacific Industries (SPI) Cogeneration/sawmill facility located in Anderson, CA

INTRODUCTION

Celeste Draisner, a member of Citizens For Clean Air (“CCA”), appeals a decision by Omer Shalev, the EPA Region 9 (“Region”) authorized Presiding Administrative Officer.

Appellant seeks standing under the PSD permitting process in the hope of obtaining Region review of Best Available Control Technology (“BACT”) before construction begins on this facility. Appellant seeks relief under the Clean Air Act (“CAA”) and Environmental Justice Guidelines.

On February 20, 2013, Presiding Administrative Officer Omer Shalev issued Sierra Pacific Industries (SPI) a Prevention of Significant Deterioration (PSD) permit modification for their proposed Anderson, CA facility.

42 USC § 7475 states under Preconstruction requirements “No major permitting facility on which construction is commenced after August 7, 1977, may be constructed in any area to which this part applies unless ... the proposed facility is subject to the best available control technology for each pollutant subject to regulation under this chapter permitted from, or which results from, such facility.”

Pursuant to 5 USCS § 702, a person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action, may seek redress of grievances.

The citizens of Shasta County have suffered an “injury in fact,” since we have been denied a public hearing, and therefore an opportunity to discuss BACT

For the reasons stated below, the Presiding Officer Omer Shalev erred when he

concluded that the citizens of Shasta County should be denied BACT.

ARGUMENT

Appellant alleges error in the following:

A. Appellant alleges Presiding Officer Omer Shalev erred by failing to include comments by Celeste Draisner as part of the public record. Her comments regarding BACT and whether Region, as lead agency, had considered cleaner alternatives were included *after* the final permit decision. (Please see attached email.)

Celeste Draisner correctly filed her comment with Omer Shalev, the Presiding Administrative Officer. Heidi Strand did the same. There is no reasonable explanation why her email was accepted and Celeste Draisner's was denied. Omer Shalev is the engineer in charge of the permitting process.

B. Appellant alleges Presiding Officer Omer Shalev erred in his determination that a discussion of BACT was not appropriate for Shasta County residents.

In Response to 13 of the "U.S. Environmental Protection Agency February 2013 Responses to Public Comments on the Proposed PSD Permit Major Modification for Sierra Pacific Industries- Anderson Division" the Region states "The Region has the discretion, but is not required, to conduct an independent analysis of the need for all possible power generated by SPI in the context of this PSD permit proceeding. In this case, EPA does not believe that it is appropriate to conduct the type of rigorous and robust analysis that would be required to definitively determine the need for the Project."

This, as well as other examples, clearly demonstrate the Region's failure to address BACT seriously.

Region's Response to Comment 14 states "While EPA recognizes that fuel mixtures affect the emissions of pollutants, it is unclear what mix the commenter is ultimately recommending and where this should be incorporated into the analysis. If the source changed its fuel mixture then numerous other considerations would need to be made, such as whether a boiler is an appropriate alternative and resulting control technologies. Moreover, alternative fuel mixes would change the profile of pollutants emitted in a myriad of ways where some pollutants would increase and others would decrease depending on the exact mixture."

Region's Response to Comment 15 states, "As stated in the application, 'the installation of the boiler will not increase emissions from any existing emission units at the Anderson mill. There have been no contemporaneous modifications at the Anderson mill.' See online docket #I.01: *SPI-Anderson PSD Permit Modification Application_25MAR10* at 3. As a result, the existing kilns are not expected to undergo a change in the method of operation that would result in an increase in emissions of NSR regulated pollutants. Therefore, the existing kilns were not subject to a BACT analysis."

Region's Response to Comment 33 states, "Therefore, our BACT analysis did not include a detailed review of possible ammonia emission reductions."

Region's Response to Comment 40 states, "Moreover, it is of little relevance that SPI may have negotiated a contract for the sale of electricity that does not require full steam production at all times – BACT does not require that the permit applicant enter into business contracts that will maximize the use of permitted emissions units. SPI's business purpose for selection of a stoker boiler is that it fulfills two purposes and SPI has provided a technical justification that a fluidized bed boiler cannot adequately fulfill both purposes."

C. Appellant alleges that since Shasta County has been denied PSD permit authority, that Region must conduct an independent Environmental Review, which has not occurred.

On February 20, 2013, Presiding Administrative Officer Omer Shalev issued Sierra Pacific Industries a Prevention of Significant Deterioration (PSD) permit modification for their proposed Anderson, CA facility.

A proper environmental review was never conducted by the Region, in the Region's capacity as lead agency. Furthermore, this permit hinges on another permit, for which local authority does not have adequate input.

Please see letter to Heidi Strand from Ross Bell dated March 8, 2013 (submitted by Heidi Strand), "The District does not have PSD permit authority. PSD permits are currently managed by EPA Region IX. Recent conversations with EPA Region IX staff do not indicate that SPI Anderson is in 'serious violation' with its PSD permit."

Why then, has the Region not conducted its own environmental analysis?

CONCLUSION

CCA asks that the Board direct Region to provide a well-reasoned explanation of why it declined the citizen request for a public hearing that would have given Region a chance to discuss BACT with Shasta County citizens. Region needs to explain how it took Environmental Justice Guidelines into account when determining BACT. See CAA § 165(a)(2), 42 U.S.C. § 7475(a)(2).

Region Representative Omer Shalev did not comply with the letter and intent of the Clean Air Act when he failed to review BACT.

Please grant Appellant a remand of Region's decision to deny BACT.

Respectfully submitted,

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