



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

ENVIRONMENTAL APPEALS BOARD

DEC 31 2012

Nancy J. Marvel, Regional Counsel
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne Street, (AIR-1)
San Francisco, CA 94105

Re: Pio Pico Energy Center
Permit Number: SD 11-01
Appeal Number: PSD 12-04, PSD 12-05, and PSD 12-06

Dear Ms. Marvel:

This is to advise you that the Environmental Appeals Board (the "Board" or "EAB") received on December 19, 2012, three petitions dated December 19, 2012, one petition filed by Johannes Hubert Epke (PSD 12-04), Attorney, on behalf of Helping Hand Tools, one petition filed by Robert Simpson (PSD 12-05), and one petition filed by David C. Bender, Joanne Spaulding, and Travis Ritchie (PSD 12-06), on behalf of Sierra Club, asking the Board to review a PSD determination by U.S. Environmental Protection Agency, Region IX.

A copy of the petitions and exhibits can be found on the Board's website at www.epa.gov/eab. Click on "EAB Dockets" in the left-hand menu, and click on the "Active Dockets" link, and then click on the appropriate case name. If you have any difficulty accessing this document, please let me know.

To assist the Environmental Appeals Board in deciding whether the matters raised by petitioners should be reviewed, please have your staff prepare a response that addresses the petitioners' contentions and whether petitioners have satisfied the requirements for obtaining review under 40 C.F.R. § 124.19 and file such response no later than January 21, 2013.

A copy of this letter is being sent to Pio Pico Energy Center, LLC as notification of the petitions and these filing requirements. If the permittee chooses to file a response, it must be received by **January 21, 2013**, and comply with the filing instructions provided below. A copy of this letter is also being sent to the petitioners as notification of these filing requirements.

Any response brief filed may not exceed 14,000 words.¹ See October 26, 2011 Order. Include with your response relevant portions of the administrative record, together with a certified index of the entire administrative record. The permit issuer is encouraged to file the index to the record, preferably electronically, as soon as possible after receiving notification of this appeal. Early filing of the certified index enables the Board to begin prompt review of the record even before all of the briefs are filed.

Due to the time-sensitive nature of PSD permit appeals, the Board will apply a presumption against the filing of reply briefs and sur-replies and against holding oral argument. The Board may use scheduling and status conferences to narrow the issues on appeal or otherwise facilitate the expeditious resolution of this case. For additional information relevant to PSD permit appeals, please refer to the Board's April 19, 2011 Order Governing Petitions for Review of Clean Air Act New Source Review Permits, available at <http://www.epa.gov/eab> (Click "Standing Orders" on sidebar).

Filing Requirements

Filing may be accomplished electronically pursuant to the Board's Order of January 28, 2010.² Alternatively, filing may be accomplished by filing a paper original (signed in blue ink) and two copies of these materials with the Board (at the address shown below) by the date specified above. A copy must be sent to Petitioner, and a certificate of service showing the date and method of service should be included with the filing.

¹ Filers may rely on the word-processing system used to determine the word count. In lieu of a word limitation, parties may comply with a 30-page limit. Headings, footnotes, and quotations count toward the word limitation. A table of contents, table of authorities, statement requesting oral argument, statement of compliance with the word limitation, exhibits, or any addendum does not count toward the word limitation.

² The Board has issued an Order authorizing the electronic filing of documents in cases involving permit appeals. See Order Authorizing Electronic Filing in Proceedings Before the Environmental Appeals Board Not Governed by 40 C.F.R. Part 22 (Jan. 28, 2010), available at <http://www.epa.gov/eab> (click "Standing Orders" on sidebar). Instructions on registration and document filing are available by using the "Electronic Filing" link on the Board's website. Documents containing confidential business information should not be filed electronically as the Board considers business confidentiality claims waived when a document is electronically filed. *Id.* at 5-6. Anyone electronically filing exhibits or attachments in support of a brief, motion, or other document should submit them separately from the associated brief or motion. *Id.* at 3.

IMPORTANT: All documents filed must reference the appeal number and the name, address, and telephone number of the filer. If available, the filer should also provide a fax number and an email address. **In addition, any envelope or other packaging containing documents sent through the U.S. Postal Service, Express Mail, hand-delivered or via Courier must bear a complete and accurate return address in the upper left hand corner. The envelope or packaging must also clearly state the case name and case identifier in the lower left hand corner.**³

Documents that are sent through the U.S. Postal Service (except by Express Mail) **MUST** be addressed to the Environmental Appeals Board's mailing address which is:

U.S. Environmental Protection Agency
Clerk of the Board
Environmental Appeals Board (MC-1103M)
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-0001

Documents that are sent to the Environmental Appeals Board's hand-delivery address through the U.S. Postal Service (except by Express Mail) will be returned to the sender and shall not be considered as filed.

Hand Delivery Address

Documents that are **hand-carried**, delivered via Courier, mailed by Express Mail or delivered by a non-U.S. Postal Service carrier (e.g., Federal Express or UPS) **MUST** be delivered to:

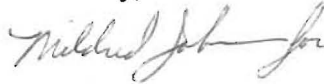
U.S. Environmental Protection Agency
Clerk of the Board
Environmental Appeals Board
1201 Constitution Ave., NW
U.S. EPA East Building, Room 3332
Washington, D.C. 20004

Such documents may be delivered to the Board, from 8:30 a.m. to 4:00 p.m., Monday through Friday (excluding federal holidays), and must include the Board's phone number, 202-233-0122. Documents filed electronically may be filed at any time up to 11:59 p.m. Eastern Time on the day the document is required to be filed with the Board.

³ All mail sent to the Environmental Protection Agency may be delayed by a random sterilization procedure. Parties are encouraged to utilize the Board's e-filing system or hand or courier delivery when filing pleadings with the Board. Additional information regarding mail delivery to the Board is available on the Environmental Appeals Board website (www.epa.gov/eab) at the Clerk of the Board or Frequently Asked Questions links.

Thank you for your attention to this matter.

Sincerely,



Eurika Durr
Clerk of the Board

cc: Pio Pico Energy Center, LLC
P.O. Box 95592
2542 Singletree Lane
South Jordan, UT 84095

James R. Wedeking
Sidley Austin LLP
1501 K Strert, NW
Washington, DC 20005

Deborah Jordan, Director
Air Division
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105

David C. Bender
McGillivray Westerberg & Bender LLC
211 S. Paterson St., Suite 320
Madison, WI 53703

Joanne Spaulding
Travis Ritchie
Sierra Club
85 Second Street
San Francisco, CA 94105

Johannes Hubert Epke
Attorney for Helping Hand Tools
1108 Fifth Ave., Suite 202
San Rafael, CA 94901

Robert Simpson
27126 Grandview Avenue
Hayward, CA 94542