

Palmdale PSD Permit Appeal, PSD Appeal No. 11-07

Julie Walters

to:

aprilsommerlaw

02/01/2012 06:00 PM

Cc:

rob, Eurika Durr, jledford, Kristi Smith, llile, michael.carroll, tbarnett

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From: Julie Walters/R9/USEPA/US Sort List...

To: aprilsommerlaw@yahoo.com

Cc: rob@redwoodrob.com, Eurika Durr/DC/USEPA/US@EPA, jledford@cityofpalmdale.org, Kristi Smith/DC/USEPA/US@EPA, llile@cityofpalmdale.org, michael.carroll@lw.com, tbarnett@inlandenergy.com

Dear Ms. Sommer:

Within minutes of receiving the EPA Environmental Appeals Board's order setting a new briefing schedule in the Palmdale PSD permit appeal, we received an email from Mr. Simpson purporting to augment the amended petition for review that you filed with the Board on his behalf on November 24, 2011, well over two months ago.

While Mr. Simpson styles his email request as a clarification that the documents originally submitted to the Board on November 17, 2011 should be treated as his petition for review, Mr. Simpson's email clearly is an attempt to augment his petition. We believe that a formal motion must be filed with the Board if your client now seeks to amend or add material to his November 24, 2011 petition for review. The correspondence you filed with the Board accompanying Mr. Simpson's November 24, 2011 petition explicitly stated that all the documents filed on behalf of Mr. Simpson on November 17, 2011 should be replaced with the November 24, 2011 petition for review:

"Please accept the Petition for Review (Clerical Amendment) uploaded November 24, 2011 in lieu of the documents uploaded November 17, 2011. I attempted to file a petition for review of a PSD permit decision November 17, 2011. The CDX electronic filing system rejected my attempts to upload the document a number of times giving the message, 'An unexpected failure (Node Submission Error) has occurred while accessing the Ears date flow' (see screen on following page). I was finally able to upload the petition but, in an abundance of caution and unbeknownst to me, my client uploaded an early, unapproved draft shortly before I was able to finally upload the petition. This has undoubtedly caused some confusion which I hope can be cleared up by replacing all documents filed November 17, 2011 with the one document uploaded today."

As you are aware, the parties to this matter have proceeded in good faith reliance on the

correspondence you filed with the Board months ago making clear that the November 24, 2011 filing constituted Mr. Simpson's petition for review, and that therefore the issues and arguments included therein provided the sole basis for Mr. Simpson's arguments on appeal. Among other things, we have expended considerable time and resources associated with preparation for, and participation in, the Board's Alternative Dispute Resolution process based on the premise that this case involved only the specific issues and arguments included in Mr. Simpson's November 24, 2011 petition for review. We also note that the filings dated November 17, 2011 contain various deficiencies, including the fact that the combined filings exceed the Board's page limit requirements.

Under these circumstances, we believe that any effort to amend or augment Mr. Simpson's November 24, 2011 petition for review must be requested via a formal motion with the Board. To the extent that you and your client decide to file such a motion, we intend to object in light of the lateness of the request and our February 17, 2012 filing deadline.

Sincerely,

Julie Walters

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