

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

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In re:)	
)	
Delta Energy Center)	Appeal No. PSD 17-01
)	
)	

**RESPONSE BY EPA REGION 9
TO BOARD’S ORDER DATED APRIL 18, 2017**

On April 18, 2017, the Environmental Protection Agency’s (“EPA”) Environmental Appeals Board (“Board”) issued an order entitled “Order Requesting Response to Petition for Review Addressing Board’s Jurisdiction” in the above-referenced matter (“the Order”). The Order noted the EPA’s August 2016 approval of the Bay Area Air Quality Management District’s (“BAAQMD”) Prevention of Significant Deterioration (“PSD”) program into the California State Implementation Plan (“SIP”) under the Clean Air Act, 81 Fed. Reg. 50,339 (August 1, 2016), effective August 31, 2016, and stated, in relevant part:

As of August 31, 2016, it appears that BAAQMD has been empowered to administer the PSD permit program under its own authority . . . As such, it appears that any PSD permit, or permit modification, would not be reviewable by the Board but instead reviewable under the available State procedures for challenging such action.

Order at 3.

The Order requested that the BAAQMD provide a response to the Board’s Order, no later than May 5, 2017, limited to the question of whether the Board has jurisdiction to review the petition in this matter. The Order further stated that the permittee, and EPA Region 9 and EPA’s Office of General Counsel (“OGC”), may provide responses to the Order limited to the question

of the Board's jurisdiction, with any response from the permittee due by May 5, 2017 and any response by EPA Region 9 and OGC due by May 12, 2017.

The permittee filed a response to the Order on May 4, 2017 and the BAAQMD filed a response on May 5, 2017, both of which agreed with the Board's assessment that the Board lacks jurisdiction to consider the petition for review in this matter. EPA Region 9 concurs with this conclusion for the reasons supplied by the permittee and the BAAQMD in their responses to the Board's order.

We are also providing, for the Board's information, a copy of a letter from EPA Region 9 to the BAAQMD dated August 30, 2016 with an attached table. Consistent with other information cited by the permittee and the BAAQMD, this letter confirms that the PSD permit for the Delta Energy Center was transferred from EPA Region 9 to the BAAQMD for the BAAQMD's administration under the BAAQMD's SIP-approved PSD program as of August 31, 2016.

Date: May 12, 2017

Respectfully submitted,

/s/ Julie Walters

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STATEMENT OF COMPLIANCE WITH WORD COUNT LIMITATION

I hereby certify that this **RESPONSE BY EPA REGION 9 TO BOARD'S ORDER DATED APRIL 18, 2017**, exclusive of this Statement of Compliance with Word Limitation, the attached Certificate of Service and Exhibit, contains 488 words, as calculated using Microsoft Word word-processing software.

/s/ Julie Walters

Julie Walters

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the **RESPONSE BY EPA REGION 9 TO BOARD'S ORDER DATED APRIL 18, 2017, including the attached Exhibit**, in the matter of Delta Energy Center, EAB Appeal No. PSD 17-01, to be served by U.S. Mail upon the persons listed below.

Dated: May 12, 2017

/s/ Julie Walters

Julie Walters

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