

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

_____)	
In re:)	
)	
Sierra Pacific Industries, Anderson)	
)	Appeal No. PSD 14-01
)	
_____)	

EPA REGION 9'S RESPONSE TO PETITION AND
NOTICE OF INTENT TO APPEAL

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- Attachment 5: Shasta County Air Quality Management District letter to SPI dated July 19, 2011

Statement of Compliance with Word Count Limitation

I hereby certify that this Response to Petition and Notice of Intent to Appeal submitted by EPA Region 9, exclusive of the Table of Contents, Table of Authorities, Table of Attachments, this Statement of Compliance, and the attached Certificate of Service, contains 1793 words, as calculated using Microsoft Word software.

INTRODUCTION

The EPA Environmental Appeals Board (“EAB” or “Board”) should deny review of the “Notice of Intent to Appeal” filed by Celeste Draisner (“Petitioner”) on February 25, 2014 (“Petition”). The Board lacks jurisdiction to review the Petition because it does not concern a matter within the scope of 40 C.F.R. § 124.19. The Petition, which was supplemented by exhibits filed with the Board on March 12, 2014, concerns Permit No. 94-VP-18b. Permit No. 94-VP-18b was issued pursuant to title V of the Clean Air Act (“CAA” or “Act”) by Shasta County Air Quality Management District (“Shasta County AQMD”), which has a title V operating permit program approved by EPA. 40 C.F.R. Part 70, App. A. Because the Board lacks jurisdiction to review a title V operating permit issued pursuant to an EPA-approved title V operating permit program, the Board must deny review of the Petition, consistent with its decision in *In re Stericycle*, CAA Appeal No. 13-01, slip op. (Nov. 14, 2013), and need not reach the merits of Petitioner’s allegations regarding the procedures used by Shasta County AQMD, which in any case are wrong legally and factually.

RELATED CASE

The instant Petition concerns the same facility as a previous proceeding before the Board, *In re Sierra Pacific Industries*, CAA Appeal Nos. 13-01 through 13-04, slip op. (July 18, 2013). That matter concerned a Prevention of Significant Deterioration (“PSD”) permit that EPA had issued in February 2013. The Board remanded the permit in part to EPA, and instructed EPA to hold a public hearing on the permit on the ground that there was a “significant degree of public interest,” in the permit within the meaning of 40 C.F.R. §124.12(a)(1). The Board denied review on all other procedural and substantive grounds raised by the petitioners.

BACKGROUND

From July 1985 until March 2003, Shasta County AQMD was EPA's delegatee for implementing and enforcing the Prevention of Significant Deterioration ("PSD") permit program. In March 2003, EPA revoked and rescinded SCAQMD's authority to issue and modify federal PSD permits for new and modified major sources of attainment pollutants in Shasta County. EPA is currently the PSD permitting authority for Shasta County.

In July 1995, EPA granted interim approval of Shasta County AQMD's title V operating permit program. 60 Fed. Reg. 36065 (July 13, 1995). EPA subsequently granted full approval of Shasta County AQMD's title V program, effective November 30, 2001. 66 Fed. Reg. 63503 (Dec. 7, 2001). Shasta County AQMD is currently the title V permitting authority for Shasta County. 40 C.F.R. Part 70, App. A.

Sierra Pacific Industries ("SPI") operates a lumber mill in Anderson, California. SPI's facility is a major source of criteria air pollutants regulated by the Clean Air Act. As such, it is subject to both the PSD preconstruction and the title V operating permit programs. In 1995, SPI received a PSD permit from Shasta County AQMD to construct and operate a 4 megawatt ("MW") wood-fired stoker boiler cogeneration unit. Shasta County AQMD issued SPI's initial title V operating permit in July 2000, and renewed the title V operating permit in September 2006.

On September 27, 2013, Shasta County AQMD again renewed SPI Anderson's title V permit. This permit is attached to EPA Region 9's Response as Attachment 1, and the accompanying engineering evaluation is attached to EPA's Response as Attachment 2. The permit renewal followed notification to the public of the opportunity to comment on a draft

permit and the ability to request a public hearing, which was published in the *Record Searchlight*, a newspaper of general circulation in the area where the SPI Anderson facility is located, on January 9, 2013. Attachment 3. Shasta County AQMD held a public hearing regarding the permit renewal on April 11, 2013. According to a sign-in sheet for the public hearing, it appears that Petitioner was in attendance at the hearing regarding the renewal of SPI's title V permit. Attachment 4.

As stated above, SPI has also submitted an application to EPA seeking a PSD permit to authorize the construction and operation of a new biomass boiler and turbine cogeneration unit capable of generated 31 MW of energy at the Anderson facility. EPA issued a PSD permit for the project in February 2013; however, following a challenge to the permit brought by various parties, the Board remanded the permit in part to EPA, and instructed EPA to hold a public hearing on the ground that there was a “significant degree of public interest” in the permit within the meaning of 40 C.F.R. §124.12(a)(1). *In re Sierra Pacific Industries*, CAA Appeal Nos. 13-01 through 13-04, slip op. (July 18, 2013). The Board denied review on all other procedural and substantive grounds raised by the petitioners. *Id.* On November 8, 2013, EPA re-proposed the permit and on December 10, 2013, held a public hearing in Anderson, California. EPA accepted public comments on the re-proposed permit through January 10, 2014, and is currently in the process of reviewing verbal and written comments prior to making its final decision.

ARGUMENT

The Board must dismiss the Petition because it lacks jurisdiction to review it. The Board has jurisdiction to review certain PSD preconstruction permits under 40 C.F.R. §124.19 and certain title V operating permits under 40 C.F.R. §71.11(l)(1). As can be immediately ascertained from the cover page of Petitioner's Exhibit 1, the allegations in the Petition concern a

part 70 permit issued by Shasta County AQMD. Shasta County AQMD has an EPA-approved title V operating permit program. Therefore, the Board lacks jurisdiction to review the Petition and therefore must deny review. *In re Stericycle*, CAA Appeal No. 13-01, slip op. (Nov. 14, 2013).

1. The Board Lacks Jurisdiction because the Permit Referenced in the Petition is a Title V Permit Issued Pursuant to a State Program Authorized under 40 C.F.R. Part 70

Petitioner refers to Permit No. 94-VP-18b as a PSD permit. *See* Notice of Intent to Appeal, at 1. Permit No. 94-VP-18d, however, is not a PSD permit. The cover page of Petitioner's Exhibit 1 shows that Permit No. 94-VP-18d is a title V operating permit issued by Shasta County AQMD. *See* Petitioner's Exhibit 1. Shasta County AQMD has been the title V operating permitting authority since 1995, when EPA granted interim approval of its program. 60 Fed. Reg. 36065 (July 13, 1995); *see also*, 66 Fed. Reg. 63503 (Dec. 7, 2001) (granting full approval to Shasta County AQMD's program) and 40 C.F.R. Part 70, App. A.

As the Board recently held in *In re Stericycle*, "Importantly . . . nothing in the CAA or in part 70 grants the Board jurisdiction to review Title V permits issued by states pursuant to part 70. . . . The Board, therefore, has no authority to consider appeals of Title V permits issued under part 70 . . ." *In re Stericycle*, CAA Appeal No. 13-01, slip op. at 5 (Nov. 14, 2013) (citations omitted).

Although the Board has authority under 40 C.F.R. § 71.11(l)(1) to review title V operating permits issued by EPA or a delegate, Petitioner does not assert this authority as a basis for the Board's jurisdiction. Any such assertion would be without merit since the permit that is the target of Petitioner's allegations, Permit No. 94-VP-18b, was not issued by the EPA under a federal permitting program established under 40 C.F.R. Part 71 or by EPA's delegatee; it was

issued by Shasta County AQMD pursuant to its EPA-approved part 70 program. *See* Petitioner's Exhibit 1. *See also*, 40 C.F.R. Part 70, App. A.

2. Petitioner's Allegations Regarding Procedural and Substantive Errors Lack Merit

Although the Petition must be dismissed on the ground that the Board lacks jurisdiction to review it, EPA is also addressing Petitioner's allegations of procedural and substantive errors. Petitioner alleges that the District failed to provide any opportunity for public participation. In fact, Shasta County AQMD notified the public of the opportunity to comment on a draft permit and the ability to request a public hearing, which was published in the *Record Searchlight*, a newspaper of general circulation in the area where the SPI Anderson facility is located, on January 9, 2013. Exhibit 3. In addition, Shasta County AQMD held a public hearing regarding the permit renewal on April 11, 2013. According to a sign-in sheet for the public hearing, it appears that Petitioner was in attendance at the hearing regarding the renewal of SPI's title V permit. Exhibit 4.

The Petitioner also alleges that the District failed to provide public notice when the final permit was issued. Other than a citation to 40 C.F.R. § 124.19, which does not apply to this title V operating permit issued by Shasta County AQMD, Petitioner provides no legal authority or reasoning to support for her assertion that such an obligation exists, or that the Shasta County AQMD did not meet the public participation requirements set forth in 40 C.F.R. §70.7(h) To the extent that the Petitioner believes the District was legally obligated to provide her with such notice, she cannot obtain a remedy from the Board, which lacks jurisdiction to review a title V operating permit issued pursuant to a program approved under 40 C.F.R. Part 70.

Petitioner also suggests that the Shasta County AQMD and EPA improperly allowed the SPI Anderson facility to operate with an expired title V permit. This statement is not correct. As

EPA's regulations state: "Permit expiration terminates the source's right to operate *unless* a timely and complete renewal application has been submitted." 40 C.F.R. §70.7(c)(ii) (emphasis added). On July 19, 2011, Shasta County AQMD notified SPI that it had received SPI's application to renew the Anderson facility's title V permit on June 23, 2011, and that an application shield was in effect. Shasta County's letter states, "The application shield allows your facility to continue to operate under the current Title V permit until the permit is renewed. Please note than (*sic*) all conditions contained in the current Title V permit are still in force and you are not relieved of any requirements." Attachment 5.

CONCLUSION

The Board must deny review of the Petition because its allegations concern Permit No. 94-VP-18d, which is a title V permit issued by Shasta County AQMD under the authority of its title V operating permit program, which EPA approved in 1995 pursuant to 40 C.F.R. part 70. As such, the Board lacks jurisdiction to review Permit No. 94-VP-18d. *In re Stericycle*, CAA Appeal No. 13-01, slip op. (Nov. 14, 2013). Furthermore, although the Board lacks jurisdiction to review the merits of Petitioner's allegations regarding Permit No. 94-VP-18d, Petitioner has failed to demonstrate that there are procedural or substantive errors associated with the permit.

For the reasons stated above, the Board must deny review of the Petition for lack of jurisdiction and reject Petitioner's claims.

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of **EPA Region 9's Response to Petition and Notice of Intent to Appeal** in the matter of Sierra Pacific Industries, Inc. EAB Appeal No. PSD 14-01 to be served upon the persons listed below by the means so indicated.

Dated: March 18, 2014

/s/ Kara Christenson

Kara Christenson

By Electronic Mail:

Celeste Draisner
1000 Shepard Court
Redding, CA 96002
(530) 223-0197
mysecretfires@gmail.com

Heidi Strand
P.O. Box 1544
Shasta Lake City, CA 96019
(530) 275-4626
hswriter@frontiernet.net

Tony Jaegel
Sierra Pacific Industries
19794 Riverside Avenue
Redding, CA 96049-6028
(530) 378-8179
tjaegel@spi-ind.com

William M. Sloan, Esq.
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105
415-268-7209
wsloan@mofocom