

Sierra Club Petition

Exhibit 10



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

February 17, 2009

THE ADMINISTRATOR

Mr. David Bookbinder
Chief Climate Counsel
Sierra Club
408 C Street, NE
Washington, DC 20002

Dear Mr. Bookbinder:

This is in response to the amended petition for reconsideration dated January 6, 2009, filed on behalf of the Sierra Club and other parties (Petitioners). Petitioners seek reconsideration of former Environmental Protection Agency (EPA) Administrator Stephen Johnson's memorandum, dated December 18, 2008, interpreting an EPA regulation defining the pollutants subject to the federal Prevention of Significant Deterioration (PSD) program under the Clean Air Act. This memorandum followed a November 13, 2008, decision by EPA's Environmental Appeals Board (EAB), concluding that the statutory provision defining the scope of the PSD program was ambiguous and that EPA had not adequately explained why the program did not apply to carbon dioxide as a consequence of monitoring and reporting requirements imposed by current law. The EAB encouraged the Agency to address the interpretive question "in the context of an action of nationwide scope."

In addition to requesting reconsideration of the Johnson memorandum, Petitioners further request that EPA stay the effectiveness of the memorandum "during the pendency of this Petition for Reconsideration and during the pendency of any challenge to the Memo in the U.S. Court of Appeals for the District of Columbia Circuit."

Under the authority granted by section 553(e) of the Administrative Procedure Act, the EPA grants the petition for reconsideration in order to allow for public comment on the issues raised in the memorandum. EPA will also seek public comment on any issues raised in the opinion of the Environmental Appeals Board, to the extent they are not coextensive with the issues raised in the memorandum. However, the Agency declines to take action to stay the effectiveness of the memorandum at this time. To respond to the petition for reconsideration, the Agency plans to publish a notice of proposed rulemaking in the Federal Register in the near future.

In the meantime, the Agency emphasizes a point noted in the memorandum itself: the memorandum does not bind States issuing permits under their own State Implementation Plans. In addition, given the Agency's decision to grant reconsideration of the memorandum, other PSD permitting authorities should not assume that the memorandum is the final word on the appropriate interpretation of Clean Air Act requirements.

If you have any questions regarding the planned rulemaking or the related pending litigation concerning the Johnson memorandum, you may contact Brian Doster in the Office of General Counsel at (202) 564-1932.

Sincerely,



Lisa P. Jackson