

Petitioner Russ Wade – PRO SE

BEFORE THE ENVIRONMENTAL APPEALS BOARD

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

_____)	
In re: Sierra Pacific Industries, Anderson Div.)	
_____)	
PSD Permit Modification SAC 12-01)	Docket No. 14-03
PSD Permit 94-PO-18 (issued June 15, 1995))	
PSD Permit 94-VP-18b/d)	
_____)	

Respondents: EPA Region 9 ("Region"),
Shasta County Air Quality Management District ("Shasta AQMD")

PETITION OF RUSS WADE

I hereby certify that this petition submitted by this statement of compliance and the attached Certificate of Service contains an estimate of 3,400 words.

Exhibits Attached:

Exhibit A - April 29, 2014 Redding Record Searchlight article "Sierra Pacific, EPA issues new permit, plant to expand to 31 megawatts"

Exhibit B - April 2014 National Geographic article "Can Coal Ever Be Clean? Carbon Capture and Storage (CCS), Disposing of waste CO2s"

Proposed Cogeneration Plant in Anderson is Bad For Our Nation's Air

I, Russ Wade, am writing to urge the Environmental Appeals Board ("Board") to accept jurisdiction and review this Prevention of Significant Deterioration ("PSD") permitting process.

I am concerned that this flawed PSD process will be considered acceptable. I fear it could become a national model for constructing future toxic factories that degrade our nation's air and water quality.

I am a stakeholder in the permitting of SAC 12-01, the proposed 31 megawatt ("MW") Sierra Pacific Industries ("SPI") cogeneration power plant, set to be located in Anderson, CA.

I attended the December 10, 2013 public hearing held by Region for the proposed "modification" of SPI's 4 MW sawmill with my wife, Joy. The road conditions were dangerous throughout the county. Many people were unable to attend, such as my friend Heidi Strand. The roads were completely impassable at higher elevations.

The number of the PSD permit that Region hopes to modify was kept secret at the December 10, 2013 public meeting I attended.

Region revealed the PSD permit number they want to "modify" when they issued their latest 31 MW PSD permit on April 25, 2014. This number was only given after the December 10, 2013 public hearing and after the entire process was over.

According to Region, the number of the PSD permit that SAC 12-01 will be "modifying" is 94-PO-18. Region disclosed this at the end of the permitting process, a violation of the Clean Air Act and Region's own PSD permitting program, as defined under 40 CFR §51.166.

Region failed to obey your court's orders because they held the December 10, 2013 public hearing on SAC 12-01 two weeks before Christmas, following a record storm. It snowed in San Francisco during this time period.

Currently, the same permitting action is on the Board's active docket in two separate places: PSD permit 94-PO-18 (renumbered 94-VP-18b) and PSD modification of 94-PO-18 (renumbered PSD SAC 12-01).

It seems that Region and Shasta County AQMD have created a permitting process so confusing that no statutes exist to justify it. Further, no regulations exist to explain it.

HISTORY OF FLAWED "MODIFICATION" PERMIT SAC 12-01 - Why the SPI cogeneration plant process is bad for our air quality.

In 1995, Shasta County AQMD issued SPI a PSD permit to build a 4 MW sawmill in Anderson, California: (PSD permit 94-PO-18).

According to representatives from Shasta County AQMD, the "PO" stands for "permit to operate."

In 1998, Shasta County AQMD rolled the PSD and Title V permits together and kept the number the same (94-PO-18).

Most likely, Shasta County AQMD did this to save time. Having one permit serve in place of two permits cuts down on staffing hours.

In 2003, Region revoked and rescinded Shasta County AQMD's authority to issue or modify PSD permits.

It appears Region later declined to do the paperwork required of a PSD permitting agency. After rescinding Shasta County AQMD's authority in 2003, Region erred in failing to do the paperwork on their own permitting process.

On September 20, 2006, Shasta County AQMD erroneously modified and renewed SPI's 4 MW sawmill's combined PSD/Title V permit. Shasta County AQMD lacked authority to issue or modify federal PSD permits in 2006.

At this time, Shasta County AQMD renamed the combined permit for the 4 MW sawmill (94-VP-18b).

According to representatives from Shasta County AQMD, the "V" is for "title V permit to operate" and the "P" stands for "PSD permit."

On July 3, 2009, Shasta County AQMD declared itself the lead agency for the proposed SPI (then only 21 MW) cogeneration power plant and released a Notice of Preparation ("NOP") and an initial study.

On September 12, 2012, Region released a public notice proposing to modify an unnamed PSD permit to allow SPI to build and operate a 31 MW power plant in Anderson, CA.

From early 2009 until April 11th, 2013, Shasta County AQMD, under Region's supervision, was trying to permit a new (then 21 MW) power plant without a PSD permit. By April 11, 2013 it had become a 31 MW power plant. Where was Region, the oversight agency?

On February 21, 2013, Region issued a new PSD permit (SAC 12-01). Mysteriously, without public knowledge, a modification of SPI's 4 MW sawmill became a brand new permit (SAC 12-01).

On April 11, 2013, Shasta County AQMD held a public hearing.

At the hearing, SPI representative Dave Brown asked Shasta County Air Pollution Control Officer Rick Simon if the county was issuing the 4 MW or the 31 MW permit. Rick Simon refused to answer Dave Brown's question.

SPI, the project proponent, did not know (five years into the permitting process) which agency was issuing the PSD permit.

The public was told a permit (94-TV-18) would be sent to Region for a 45 day review.

On July 12, 2013, the District of Columbia Appeals Court ruled that EPA must consider CO2 emissions (*Center for Biological Diversity v Environmental Appeals Board*). Despite the ruling, and the Board's orders to conduct a CO2 emissions analysis, Region later re-issued the 31 MW PSD permit on April 25, 2014 with an incomplete review tacked on. Region admits they relied on SPI to write this CO2 emissions analysis for them. 90% of the proposed hazardous emissions analysis was ignored/deferred until *after the permit was issued*.

On September 27, 2013, Shasta County AQMD "renewed" the still combined PSD permit/Title V permit to operate (94-VP-18b). Shasta County AQMD renumbered the permit 94-VP-18d and pretended it was only a Title V permit to operate. No explanation of 94-TV-18 was given.

The public and interested parties were never notified of this final federal action. Petitioner Celeste Draisner appealed the lack of notice by Region and Shasta County AQMD to the Board when it was revealed by Region on February 13, 2014.

On November 8, 2012, Region issued a Public Notice announcing they would hold a public hearing on December 10, 2013 for the proposed 31 MW power plant (SAC 12-01). I attended this public hearing with my wife, Joy. I entered oral comments into the record.

Currently, the PSD permit "modification" of 94-PO-18 is also under appeal.

ARGUMENT

I, Petitioner Russ Wade, would like to show the Board the April 29, 2014 Redding Record Searchlight article which describes the SPI cogeneration plant as producing over 400,000 tons of carbon dioxide per year, over 460 tons of carbon monoxide per year and 270 tons of sulfur dioxide per year, respectfully submit as Exhibit A .

This sounds like a coal plant generating electricity.

Unlike coal power plants, biomass power plants appear to be exempt from Best Available Control Technology (“BACT”) analysis. Region had an obligation to review current technologies that could lessen the negative impacts from facilities that emit CO₂s.

I would like the Board to look at the April 2014 National Geographic article "Can Coal Ever Be Clean? Carbon Capture and Storage (CCS), Disposing of waste CO₂s," respectfully submitted as Exhibit B.

There is technology available to sequester these harmful gases. The technology would use 1/4 of the plant's energy to sequester the gases in the ground where they would have to be monitored.

In the National Geographic article, I learned that coal power plants are currently being built using BACT for carbon capture and storage.

These new technologies for disposing of waste CO₂s should have been considered in Region's CO₂ emissions analysis. The National Geographic article states, "One idea is to burn coal in pure oxygen instead of air. That produces a simpler flue gas from which it is easier to pull the CO₂. At the DOE's National Energy Technology Laboratory in Morgantown, West Virginia, researcher Geo Richards is working on an advanced version of this scheme." If the Federal Department of Energy sees this as a valid BACT technology, surely Region needed to consider it in their court ordered analysis.

The 31 MW power plant is being piggy-backed on a 4 MW sawmill that is already out of compliance.

Remember, the original environmental review was done by the wrong agency (Shasta County AQMD) to build a new 31 MW power plant that was not going to have a PSD permit. Shasta County AQMD, a state agency without PSD authority, conducted the hearings, notices and environmental reviews for the new 31 MW cogeneration project. Region stepped in at the last minute, using Shasta County AQMD's flawed analysis, and issued a new PSD permit

On August 6, 2010 Shasta County released a Public Notice for the SPI cogeneration power project.

Project description: The proposed project consists of the construction and operation of a new cogeneration power facility.

WHY THIS NOTICE? Shasta County, as lead agency, has completed a Draft Environmental Impact Report for this project.

On July 19, 2011, John Waldrop (representing Shasta County AQMD) wrote to SPI representative Shane Young regarding SPI's request to modify their existing 4 MW sawmill to allow construction of a 31 MW biomass power plant on the same property.

"The Shasta County Air Quality Management District received your renewal application for a Title V operating permit on June 23, 2011 and was deemed administratively complete on July 19, 2011.

Therefore the Title V operating Permit Application Shield is in effect. The application shield allows your facility to continue to operate under the current Title V Permit until the permit is renewed. Please note that all conditions contained in the current Title V Permit are still in force and you are not relieved of any requirements.

The County will begin processing the renewal application and may make modifications to the permit pending the processing of the Application for Authority to Construct of the 31 megawatt cogeneration plant."

Nowhere in the Clean Air Act is Region or Shasta County AQMD given authority to issue "application shields" that give a toxic polluter's application the same legal authority as a final permit. An application is not the same as a final permit. The Board must review this policy that Region is employing. When regulations and statutes conflict with the Clean Air Act, the Clean Air Act has final authority.

Shasta County AQMD was trying to permit the new SPI 31 MW biomass power plant without the required PSD permit from early 2009 until April 11th, 2013.

On September 12, 2012, Region released a public notice on their proposal to modify an unnamed PSD permit to allow SPI to build and operate a 31 MW cogeneration power plant in Anderson, CA.

On February 21, 2013, Region issued not a "modification," but a new PSD permit (SAC 12-01). Region ignored 90% of the proposed power plant's hazardous emissions (CO2s).

I have concerns about the integration of the PSD permitting analysis with reviews required under other laws. Region has been absent through most of the permitting of this "modification."

In February of 2010, ENVIRON International Corp. did an environmental assessment of the proposed biomass plant for Shasta County AQMD (page 1, Introduction.)

"Although the existing lumber manufacturing facility [4 MW sawmill] is a major stationary source of emissions, the proposed cogeneration unit [31 MW power plant] is considered a minor modification, and is therefore not subject to the requirements of the Prevention of Significant Deterioration (PSD)."

It states in Shasta County AQMD's May 2012 report (prepared by DeNovo Planning Group, Sacramento, CA) Final Environmental Impact Report– SPI Cogeneration Power Project for Shasta County, CA:

"EXECUTIVE SUMMARY

The new information regarding this project did not result in new significant and unavoidable impacts, nor did it result in an increase in the severity of a previously identified impact. The original Draft EIR concluded that the proposed project would result in a significant and unavoidable impact to greenhouse gases and global climate change. The County subsequently oversaw the preparation of a revised GHG and climate change analysis . . . provided by the project applicant. The revised GHG and climate change analysis resulted in a conclusion that impacts to greenhouse gases and global climate change associated with the proposed project would be less-than-significant."

The April 29, 2014 Record Searchlight article (Exhibit A) states, "Mark Pawlicki, a spokesman for SPI, said the permit, issued Friday, was good news for the community. 'It should have been up and running by now. There were delays and appeals, but we persisted,' Pawlicki said. 'It is a very big deal. We think it's good for us, good for the community and good for renewable power.' "

The Sierra Pacific Industries spokesperson said it is good for the community. That is true unless you breathe.

When Region received the request from Shasta County AQMD to review this project (following the April 11, 2013 public hearing), Region should have denied it on several grounds:

- A) The Region had rescinded and revoked Shasta County AQMD's authority to modify PSD permits in 2003. Shasta County AQMD had no authority to be lead agency.
- B) Shasta County AQMD was attempting to permit the construction of a new major stationary source of emissions (675% larger than the original plant) without a PSD permit. Shasta County AQMD's intention was to modify the existing sawmill's Title V permit to operate to include the new power plant.
- C) Shasta County AQMD was attempting to modify a flawed PSD/Title V permit.
- D) Shasta County AQMD tried to license the proposed 31 MW power plant as a minor modification of an existing 4 MW sawmill. Nowhere in the Clean Air Act is this allowed.
- E) Shasta County AQMD conducted a federal action (renewing the flawed PSD/Title V permit 94-VP-18b/d) without notifying the interested parties.
- F) Shasta County AQMD held a permitting process, including 2 public notices and a sign in sheet at the April 11, 2013 public hearing for a proposed permit (94-TV-18). This is significant because it appears to be removing the PSD portion of the permit without due process. The permit that was issued by Shasta County AQMD on September 27, 2013 was 94-VP-18d and *not* 94-TV-18. The public did not receive notice of this renewal of a federal PSD permit (94-VP-18d).

Instead of Region stopping the project when it received the paperwork for a 45 day review, Region issued this:

“PUBLIC INFORMATION SHEET
~OVERVIEW~

SPI-ANDERSON PROPOSED CLEAN AIR ACT PSD PERMIT MODIFICATION
(page 1) September 2012

What laws and regulations apply to EPA's Proposed PSD permit?

We have prepared this proposed permit based on our PSD regulations issued under the clean air act at 40 CFR 52.21. We believe that the proposed modification will comply with PSD requirements for the pollutants regulated under the permit. We have made this determination based on the information supplied by the applicant, our review of the analysis contained in the permit application, and other relevant information contained in the administrative record for this proposed action."

As lead agency of the project, Region used information generated by the project proponent (SPI) and a separate non-permitting agency. On June 26, 2007, SPI settled with the CA Attorney General's office for \$13 Million for violations including: “failure to report emissions above allowable limits“ and “falsification of emission reports as a result of operator tampering with monitoring equipment.”

Region stepped in three years after the process began, used the above information and rushed through a “modification,” of a PSD permit they never identified until the end of the process.

In a letter dated Jan 22, 2004 from Walter Mugdan, EPA Region 2 Director of Planning and protection to Ms. Kathleen Antoine, Environmental Director for HOVENSA, L.L.C an oil company in the Virgin Islands, it reads:

"Re: Prevention of Significant Deterioration of Air Quality (PSD) Gas Turbine No.10 Modification

Dear Ms. Antoine:

On April 7,2003, the U.S. Environmental Protection Agency(EPA),Region II, received an application for the modification of the existing GT No.10 PSD permit...

The EPA concludes that this final permit modification meets all applicable requirements of the PSD regulations codified at 40CFR §52.21, and the Clean Air Act (the Act). Accordingly, I hereby approve HOVENSA's modified PSD permit for the GT No. 10 Project.

This letter and its attachments represent EPA's final permit decision,and is effective immediately.

A project description is provided in Attachment I [attachment I reads 'HOVENSA, L.L.C. GT No.10'], and the permit conditions are delineated in Attachment II.[attachment II reads 'HOVENSA, L.L.C. GT No.10']"

It looks like EPA's standard procedure for modifications is to use the existing permit's number and note the date and changes approved for the modification.

Region notified the public they were modifying an unnamed permit, issued by Shasta County AQMD.

When Region issued the 31 MW PSD permit, Region gave it a new permit number (SAC 12-01). I believe Region changed the number in hopes of burying the fatal flaws in the permit they were modifying.

Region disregarded the Clean Air Act when it attempted to permit a new major stationary source of pollution as a "modification."

Region failed the public in their duty to consult with other agencies and conduct their own PSD permitting process.

For example, Region did not complete an ESA (Endangered Species Act) section 7(a)(2) consultation with the U.S. Fish and Wildlife Service on the SPI 31 MW power plant project. Since SPI will be using the Sacramento River to dump their toxic waste water, consultation with U.S. Fish and Wildlife could have helped prevent harm to endangered fish species, such as the salmon.

Region's issuance of PSD permit SAC 12-01 is a federal agency "action" that triggers section 7's consultation requirements. The implementing regulations for section 7 define "action" broadly to include "all activities or programs of any kind authorized, funded, or carried out, in whole or in part by Federal agencies in the United States or upon the high seas." This requirement that Region ignored, specifically includes "permits" as well as "actions directly or indirectly causing modifications to the land, water, or air." 50 C.F.R. § 402.02. Issuance of PSD permit 12-01 is a single federal action and Region is responsible for that federal action under the ESA.

In this case, Region's transfer of their duty to Shasta County AQMD was based on the incorrect and unlawful position that Region can transfer its duty. Region cannot claim that its duties will be met by another agency's consultation on Region's separate and distinct action.

Shasta County AQMD was originally attempting to modify PSD permit 94-VP-18b, not 94-PO-18. How can the permit numbers be so easily switched halfway through the process? Nowhere in the Clean Air Act is Region given authority to do this.

Region is attempting to piggy-back a new power plant onto a sawmill permit at the end of the PSD permitting process.

There is a grammar school within 3/4 of a mile of those stacks.

Region cannot avoid its mandatory duties under the law. Region is supposed to protect our community by providing a fair process. Region should be protecting the health of children.

Serious errors in the permit process include denied public participation to an Environmental Justice Community.

Failing to issue proper public notices caused citizens to lose their rights to seek redress of grievances, and caused an injury in fact. (14th amendment, U.S. Constitution) (140 CFR 124.19)

PSD Permit No.94-VP-18b/d was erroneously renewed on September 27, 2013, over 8 months after it expired, a violation of 42 U.S. Code § 7661.

Denying Board consideration of notice claims would deny citizens in an Environmental Justice Community the opportunity to appeal to the Board and would be contrary to the Clean Air Act's emphasis on the importance of public participation.

A person who does not receive a notice of a final decision has been denied the threshold imposed by section 124.19(a), entitling that person to standing before the Board (Remand).

I, Petitioner Russ Wade, contend that the Region committed numerous procedural and substantive errors in their supervision of the issuing, modifying and renewing processes of PSD permits Nos. 94-PO-18(1995), 94-PO-18(1998), 94-VP-18(b/d) and SAC 12-01.

PSD Permit No.94-VP-18b expired on January 19, 2013. Nowhere in the Clean Air Act is Shasta County AQMD or the Region, as the supervising agency, allowed to renew or order the renewal of expired permits.

An expired permit, is by definition, an out of compliance permit. PSD permit 94-VP-18b was the *original* permit Region and Shasta County AQMD "modified" in the permitting of PSD permit 12-01.

CONCLUSION

Region authorized Shasta County AQMD to conduct three Environmental Reviews for this 31 MW power plant modification.

Now, Region is claiming they issued Sac 12-01 as a separate, new permit. Where is Region's environmental review for this separate, new permit?

How could I or the public honestly participate in this permitting process? First, the project was a modification of one permit and later it was issued as a new, separate permit?

Please review this matter and ask Region to obey their own regulations.

Respectfully submitted on May 23, 2014.

Russ Wade, citizen petitioner

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