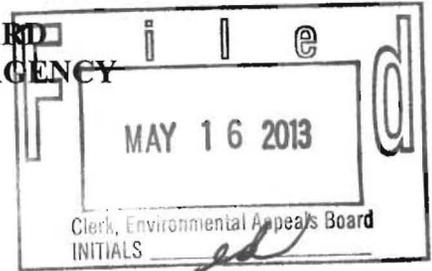


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC



_____)
In re:)
)
Sierra Pacific Industries)
)
PSD Permit No. SAC 12-01)
)
_____)

PSD Appeal Nos. 13-01, 13-02, 13.03, and 13-04

ORDER DIRECTING SUPPLEMENTAL BRIEFING

Ed Coleman, Heidi Strand, Celeste Draisner, and Rob Simpson (“Petitioners”) have petitioned for review of the Prevention of Significant Deterioration (“PSD”) permit issued pursuant to section 165 of the Clean Air Act (“CAA”) by Region 9 of the Environmental Protection Agency (“Region”) to Sierra Pacific Industries, Inc. (“Sierra Pacific”). Both Sierra Pacific and the Region have filed responses to the petitions. Upon examination of the petitions and responses and a prior order from the Environmental Appeals Board (“Board”) in response to a petition related to this same permit,¹ the Board has determined that supplemental briefing would be helpful to its decision-making process.

Accordingly, the Board hereby directs the Region to submit a supplemental brief that addresses the following specific questions:²

¹ *In re Sierra Pacific Industries*, PSD Appeal No. 12-03 (Dec. 21, 2012) (Order Dismissing Petition for Review without Prejudice as Prematurely Filed).

² The Board’s identification of these issues should not be interpreted as suggesting that the Board has made any determinations on the merits regarding any of the facts, issues, or legal matters relating to the Petitioners’ appeals.

(1) Section 124.12(a)(1) of Title 40 of the Code of Federal Regulations pertaining to public hearings in permit proceedings states, “[t]he Director shall hold a public hearing whenever he or she finds, on the basis of requests, a significant degree of public interest in a draft permit(s).” How should the “significant degree of public interest” standard in section 124.12(a)(1) be interpreted in light of the statutory language regarding public hearings in section 165 of the CAA, 42 U.S.C. § 7475?

(2) The persons who requested that the Region hold a public hearing related to the draft permit indicated that they had requested a hearing, in part, to obtain clarification of various issues from the Region. What weight should this fact carry in the Region’s determination on whether to hold a hearing under either 40 C.F.R. section 124.12(a)(1) or section 124.12(a)(2) in light of the public participation policy enunciated in section 160(5) of the CAA, 42 U.S.C. § 7470(5), and the description of a PSD public hearing in section 165(a)(2) of the CAA, 42 U.S.C. § 7475(a)(2), as presenting the “opportunity for interested persons including representatives of the Administrator to appear and submit written or oral presentations” on considerations relevant to the permit?

The Region must file its supplemental brief on or before Friday, May 31, 2013.

Petitioners and Sierra Pacific may file a reply to the Region’s supplemental brief, if they so desire, on or before Friday, June 14, 2013. In preparing these briefs, the parties need not repeat arguments already presented to the Board; however, they should respond as completely as possible to the specific questions listed above. Given the need for expeditious disposition of PSD permit appeals,³ the Board will grant no extensions of time to these deadlines absent a

³ See Order Governing Petitions for Review of Clean Air Act New Source Review Permits (EAB Apr. 19, 2011) *available at* www.epa.gov/eab.

showing of extraordinary circumstances.

In addressing the questions listed above, the Region is directed to consult with the Agency's Office of General Counsel, Office of Air and Radiation, and Office of Environmental Justice to ensure that those offices review and concur in the contents of the supplemental brief.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: May 16, 2013

By: Leslye M. Fraser

Leslye M. Fraser
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Directing Supplemental Briefing in the matter of *Sierra Pacific Industries*, PSD Appeal Nos. 13-01, 13-02, 13-03, and 13-04, were sent to the following persons in the manner indicated:

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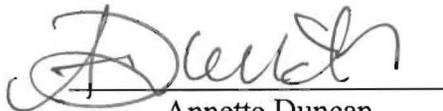
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Dated: MAY 16 2013


Annette Duncan
Secretary