

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

_____)	PSD Appeal No.09-02
In the matter of:)	
)	
Gateway Generating Station)	
)	
)	
PSD Permit Number UNKNOWN)	
_____)	

MOTION TO COMPEL AND REQUEST FOR SANCTIONS

Request is hereby made that the Board compel the District to produce the Administrative record including a permit number and certified index and to impose sanctions as the Board sees fit

Much of this complaint and previous complaints about the Air District are based upon the Air Districts refusal to provide opportunities for informed public participation. The District has already been remanded in Russell City Energy Center. After the Remand the District still failed to provide access to its administrative record when reissuing the Draft permit. The District continues to evade its obligation in this proceeding. Petitioner has requested for over a month in writing (Attachment 1) and verbally and in each pleading that the District provide access to the records.

Petitioner has also requested in writing records from EPA region 9 without response. (Attachment 2)

The Board requested in its letter to the District:

“... by no later than May 27, 2009. Please include relevant portions of the administrative record with your response”

and

“...by not later than June 11, 2009. Please include with your response relevant portions of the administrative record, together with a certified index of the entire administrative record.”

The District has not complied. The District is demonstrating contempt for the Board, and public by willfully and intentionally withholding the Administrative record to undermine these proceedings.

Petitioner is joining another action implicating the districts permitting actions in this facility filed by Golden Gate University Environmental Law and Justice Clinic on behalf of the Association of Community Organizations for Reform Now (ACORN) at the California Energy Commission. (Attachment 3)

Russell City Remand

Also, in *Rockgen*, we described a remand as necessary to validate a key statutory objective of the Clean Air Act's PSD program, namely to "assure that any decision to permit increased air pollution * * * is made only after consideration of all the consequences of such a decision and after adequate procedural opportunities for informed public participation in the decisionmaking process." *See Rockgen*, 8 E.A.D. at 557 (*quoting* CAA § 160(5), 42 U.S.C. § 7470(5)). In *Rockgen*, recognizing the CAA's stress on the central role of public participation in PSD permitting and the need for Board intervention to safeguard that role, we observed the following:

Furthermore, conferring standing in a restrictive manner would be at odds with clear Congressional direction for "informed public participation," *see* CAA § 160(5), 42 U.S.C. § 7470(5), and § 124.10's expansive provision of notice and participation rights to members of the public.

Respectfully Submitted By,

Rob Simpson
Petitioner
27126 Grandview Avenue
Hayward California 94542
Rob@redwoodrob.com
510-909-1800

ATTACHMENT 1

----- Original Message -----

Subject: RE: all Gateway records please

From: rob@redwoodrob.com

Date: Thu, May 21, 2009 5:30 pm

To: "Public Records" <PublicRecords@baaqmd.gov>

Hi,

I am ready whenever documents are available on any day between 11-1.

Rob Simpson

----- Original Message -----

Subject: RE: all Gateway records please

From: "Public Records" <PublicRecords@baaqmd.gov>

Date: Thu, May 21, 2009 3:03 pm

To: <rob@redwoodrob.com>

Hello to you Mr. Simpson,

We are gathering the documents you requested. This is a lot of material, and it will take a while to pull all of it together. We hope to have some of it ready for you next week. Please call me to schedule an appointment.

Thank you,

Public Records Staff

In house: Public Records

publicrecords@baaqmd.gov

Rochelle Henderson,

Public Records Coordinator

415-749-4784

From: rob@redwoodrob.com [<mailto:rob@redwoodrob.com>]

Sent: Wednesday, May 13, 2009 1:37 PM

To: Alexander Crockett; William Guy; Public Records

Subject: all Gateway records please

Good afternoon Ms Henderson,

I would like all available documents associated with the project including any public

notices issued and source tests. Since its been 2 weeks since my request I would also like to update my request to include any additional documents filed after my initial request until the time the information is provided. I wont require copies of documents that I filed with the EPA or District within the last week or so.

I pasted your last email to the appropriate location in this thread, I think that will make it clearer to review.

thank you

Rob Simpson

----- Original Message -----

Subject: Clarification needed

From: "Public Records" <PublicRecords@baaqmd.gov>

Date: Wed, May 13, 2009 12:37 pm

To: <rob@redwoodrob.com>

Cc: "Alexander Crockett" <ACrockett@baaqmd.gov>

Good day to you Mr. Simpson:

I need a clarification from you please in regards to your Public Record Request. On the form, you only checked source test reports but you also stated that you would like all files. Are you referring to all Source Test Report Files or all files in general in regards to Gateway?

I await your email.

Thank you,
Public Records Staff
In house: Public Records
publicrecords@baaqmd.gov

Rochelle Henderson,
Public Records Coordinator
415-749-4784

----- Original Message -----

Subject: RE: 09-04-86_Simpson

From: rob@redwoodrob.com

Date: Wed, May 06, 2009 5:08 pm

To: "Public Records" <PublicRecords@baaqmd.gov>

Cc: "Alexander Crockett" <ACrockett@baaqmd.gov>, "William Guy" <wguy@baaqmd.gov>

I pasted your last email to the appropriate location in this thread, I think that will make it clearer to review. Can you tell me the cost and explain why the documents are not available to me electronically.

Having to make multiple trips to San Francisco and pay for copies of documents, that were obviously created digitally, creates a significant financial encumbrance and impediment to (my) public participation. Particularly since most of the documents should be on your website like other agencies do and duly noticed pursuant to the settlement agreement with Communities for a Better Environment and Our Childrens Earth Foundation No. 02-70191 Dated December 31, 2002 in the United States Ninth District Court of Appeals.

Thank you
Rob Simpson

----- Original Message -----

Subject: RE: public rrecords request Gateway
From: "Public Records" <PublicRecords@baaqmd.gov>
Date: Wed, May 06, 2009 3:00 pm
To: <rob@redwoodrob.com>
Cc: "Alexander Crockett" <ACrockett@baaqmd.gov>, "William Guy" <wguy@baaqmd.gov>

Good day to you Mr. Simpson,

On Monday, I sent you an email in regards to your request. To date you have not yet responded. I would like to offer you another option. If you like I can send the records to an outside service and you can have all of the records by next week. If you would like for me to move forward, please email me back. I will get a quote from the copying service and let you know asap.

I await your email.

Thank you,
Public Records Staff
In house: Public Records
publicrecords@baaqmd.gov

Rochelle Henderson,
Public Records Coordinator
415-749-4784

----- Original Message -----

Subject: 09-04-86_Simpson
From: "Public Records" <PublicRecords@baaqmd.gov>
Date: Mon, May 04, 2009 11:27 am
To: <rob@redwoodrob.com>
Cc: "Alexander Crockett" <ACrockett@baaqmd.gov>, "William Guy"

| <wguy@baaqmd.gov>

09-04-86_Simpson

Good morning to you Mr. Simpson,
Here is a list of all of the applications. You will need to schedule an appointment to view and make any copies you wish. Some of the files are quite thick. Please email or call me to schedule an appointment. We have been very busy with appointments so lets get a date that is best for the both of us. I await your call or email to let me know when you would like to come in a make copies. None of the records you requested are available electronically. They are all hard copy files.

Plant #: 18143

Company name: Gateway Generating Station

Location: 3225 Wilbur Avenue, Antioch, CA 94509

Application #: 15777

Project title: Title V Initial Acid Rain

Engineer: Brian K Lusher [1015]

Received: 02/20/07

Application #: 20242

Project title: 300 bhp Emergency Diesel Fire Pump Engineer

Engineer: Brian K Lusher [1015]

Received: 03/06/09

Application #: 20385

Project title: Determination of Exemption

Engineer: Brian K Lusher [1015]

Received: 03/23/09

Application #: 1000

Banking #: 795

Project title: New Source/Gas Turbine

Engineer: Brian K Lusher [1015]

Received: 03/06/00

Final disposition: A/C granted, 07/24/01

Application #: 14550

Project title: Oil Water Separator(PO of 8/25/06 changed to AC)

Engineer: Craig S Ullery [394]

Received: 04/27/06

Final disposition: A/C granted, 08/25/06

Application #: 16115

Project title: Renewal of Gateway Generating Station (A/N 1000)

Engineer: Brian K Lusher [1015]

Received: 05/04/07

Final disposition: Grant/Issue, 06/19/07

Application #: 17182

Project title: Modification/Combustion Turbine Generators

Engineer: Brian K Lusher [1015]

Received: 01/07/08

Final disposition: Canceled, 02/19/09

Thank you,
Public Records Staff
In house: Public Records
publicrecords@baaqmd.gov

Rochelle Henderson,
Public Records Coordinator
415-749-4784

From: rob@redwoodrob.com [<mailto:rob@redwoodrob.com>]

Sent: Thursday, April 30, 2009 1:44 PM

To: Public Records

Subject: public records request Gateway

Hi,
I attached my public records request for all available information about the Gateway power plant.
thank you
Rob Simpson
510-909-1800



BAY AREA AIR QUALITY MANAGEMENT DISTRICT
939 ELLIS STREET
SAN FRANCISCO, CA. 94109

ATTENTION: ADMINISTRATIVE SERVICES DIVISION
e-mail request to: publicrecords@baaqmd.gov

Office Use Only
P.R.R. NUMBER

Direct Dial: (415) 749-4761
FAX: (415) 749-5111

PUBLIC RECORDS REQUEST FORM

ATTENTION REQUESTOR: To expedite your request for District records, please fill out this form completely.
Specifically identify the type of records you are requesting from the list below. **NOTE:** There is a limit of one facility or one site address per request form.

REQUESTOR INFORMATION

NAME: Rob Simpson			DATE:
COMPANY:			
MAILING ADDRESS: 27126 Grandview avenue			
CITY: Hayward	STATE: ca	ZIP CODE: 94542	PHONE NUMBER: 510-909-1800

REQUESTED FACILITY INFORMATION

FACILITY NAME: Gateway		
FACILITY ADDRESS: 3223 Wilbur Avenue		
CITY: Antioch	STATE: CA	ZIP CODE:
TIME PERIOD OF DOCUMENTS REQUESTED:	From: 2000	To: PRESENT

REQUESTED RECORDS (Check no more than three applicable items)

Complaint Information <input type="checkbox"/> Complaint Printout <input type="checkbox"/> Specific Complaint #	Notice Of Violation Information <input type="checkbox"/> NOV Printout <input type="checkbox"/> Specific NOV #	OTHER: * * * <i>Please email all available electronic data. If there is any information that is not available electronically please inform me and copy it. I will pick it up. thank you</i>
Episode Information <input type="checkbox"/> Episode Printout <input type="checkbox"/> Specific Episode #	<input type="checkbox"/> AB2588 Inventory <input checked="" type="checkbox"/> Source Test Reports <input type="checkbox"/> Lab Report #	
Permit Application Information <input type="checkbox"/> Permit Application Printout <input type="checkbox"/> Specific Application # <input type="checkbox"/> Permit Conditions	<input type="checkbox"/> Review Permit Files * <input type="checkbox"/> Review Enforcement Files ** <input type="checkbox"/> Review Rule Development Files ** <input type="checkbox"/> Asbestos Notifications	

* Subject to facility review (i.e., trade secrets).

** You will be contacted to schedule an appointment date to review records.

*** If what you are seeking is not on this Form, you may attach a letter with additional information on the request.

Cost: **Copies: \$.10 per page; Diskette \$5.00; CD \$10.00; Audiotape \$5.00; Microfiche sheet \$8.00.**

Note: After a preliminary estimate, **advance payment may be required.**

☒ I hereby agree to reimburse the BAAQMD for the direct cost of duplicating the information requested in accordance with Gov't Code Section 6253(b).

OFFICE USE ONLY:

☐ Enclosed are the records you requested.

ATTACHMENT 2

----- Original Message -----

Subject: public records request Gateway
From: rob@redwoodrob.com
Date: Wed, May 13, 2009 2:05 pm
To: rob@redwoodrob.com
Cc: rios.gerardo@epa.gov

Mr. Rios,

Can I obtain any public records available regarding the Gateway Generating Station (preferably by email)?

Thank you,

Rob Simpson,

27126 Grandview Avenue
Hayward CA. 94542
510-909-1800

----- Original Message -----

Subject: EAB regarding Gateway
From: rob@redwoodrob.com
Date: Tue, May 05, 2009 11:38 am
To: rios.gerardo@epa.gov

Mr Rios,

Attached is the Appeal that I filed with the EAB regarding Gateway. I can send you the exhibits if you like or they should be online in a day or so. May I know your opinion?

Rob Simpson
510-909-1800