

Gas-Fired Power Plant/PSD/Clean Air Act: U.S. Environmental Appeals Board Addresses Jurisdictional Issue



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The United States Environmental Protection Agency (“EPA”) Environmental Appeals Board (“EAB”) addressed in a June 20th decision whether it had jurisdiction to consider a petition challenging the amendment of a license for a combined cycle gas-fired power plant (“plant”). See PSD Appeal No. 17-01.

Petitioners Rob Simpson and Helping Hand Tools (collectively “Petitioners”) alleged that Delta Energy Center (“Delta”) obtained an amendment of a license in March 2017 that “effectively modified a Prevention of Significant Deterioration (“PSD”) permit issued to Delta under the Clean Air Act, 42 U.S.C. § 7475.”

The problem for Petitioners was EPA’s August 2016 authorization for the Bay Area Air Quality Management District (“BAAQMD”) authorization to administer the Clean Air Act PSD program. BAAQMD is stated to be one of the California air districts charged with regulating stationary sources of air pollution in the state, citing Cal. Health & Safety Codes §§ 40,000, 40,200. However, BAAQMD coordinates with the California Air Resources Board which is the designated air pollution control agency for all purposes set forth in federal law.

Petitioners alleged that Delta obtained an amendment of a license in March 2017 from BAAQMD. They argued that the amendment constituted a PSD modification. BAAQMD had issued Delta’s PSD permit in 1999 as a federal permit under delegated authority from EPA.

On August 31, 2016 EPA granted BAAQMD the authority to administer its own PSD program. As a result, the federal agency transferred to BAAQMD all relevant PSD permits. Such permits included the Delta PSD permit.

The Petitioners argued that the BAAQMD should exercise jurisdiction over the alleged modification of Delta’s PSD permit because it was “issued in violation of state and federal law” and could result in a “complete undermine of PSD permitting integrity in California [p]ower plants.”

EAB held that it lacked jurisdiction to consider the petition for review. It acknowledged that BAAQMD issued Delta’s PSD permit under a federally delegated program. However, subsequent to August 31, 2016, EAB stated that any actions on PSD permits (including Delta’s) are held to fall under BAAQMD’s jurisdiction.

EAB concluded that BAAQMD now administers an approved PSD program under its own authority. Therefore, Petitioners are stated to be required to utilize the available state law procedures for challenges of such actions.

[A copy of the decision can be downloaded here.](#)