



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

APR 12 2016

Mr. Seyed Sadredin, Air Pollution Control Officer
San Joaquin Valley Unified Air Pollution Control District
1990 E. Gettysburg Avenue
Fresno, California 93726-0244

Re: District Assumption of Responsibility for PSD Permitting for the Avenal Energy Project

Dear Mr. Sadredin:

On November 26, 2012, the effective date of the approval of San Joaquin Valley Unified Air Pollution Control District (District) Rule 2410 into the California State Implementation Plan, the District became the Clean Air Act (CAA) Prevention of Significant Deterioration (PSD) permitting authority for sources located within the District (see 77 FR 65305, Oct. 26, 2012). Historically, the U.S. Environmental Protection Agency (EPA), through the Federal Implementation Plan at 40 CFR 52.21, administered the PSD permit program within the District, because the State of California did not have its own SIP-approved PSD program for the District. The transfer of PSD permitting authority from EPA to the District included the authority to issue preconstruction PSD permits for new or modified facilities as well as the authority to conduct general administration of existing PSD permits issued by EPA for sources within the District, authority to process and issue any and all subsequent permit actions relating to such permits, and authority to enforce such permits.

Our program approval provided, however, that EPA would retain PSD permit implementation authority for those specific sources within the District that had submitted PSD permit applications to EPA and for which EPA had issued a proposed PSD permit decision, but for which final agency action and/or the exhaustion of administrative or judicial appeal processes (including any associated remand actions) had not yet been concluded or completed upon the effective date of EPA's final SIP approval action for Rule 2410. The District would assume full responsibility for the administration and implementation of PSD permits for such sources immediately upon notification from EPA that all administrative and judicial appeals processes and any associated remand actions had been completed or concluded for any such permit application. See 40 CFR 52.270(b)(5)(i).

At the time of EPA's SIP approval of the District's PSD program, the only source within the District for which EPA retained PSD permitting authority pursuant to this retention of authority provision was the Avenal Energy Project (AEP). EPA retained PSD permitting authority for this facility given the petition for the review of the PSD permit issued by EPA for this facility that was pending before the Ninth Circuit Court of Appeals at the time of EPA's approval of the District's PSD program.

By this letter, we are notifying you that all administrative and judicial appeals processes, including any associated remand actions, have been concluded and completed for the PSD permit application for the AEP. On August 12, 2014, the 9th Circuit Court of Appeals vacated EPA's 2011 PSD permit decision for the facility and remanded it back to EPA for further proceedings consistent with the Court's decision. *Sierra Club et al. v. USEPA*, 762 F.3d 971. Following the issuance of the Court's decision, the

applicant for the PSD permit for AEP, Avenal Power Center, LLC, did not provide EPA with any of the additional information necessary to process APC's remanded PSD permit application for the facility. In a letter dated February 2, 2016 (enclosed), we notified APC that EPA would consider APC's PSD permit application administratively withdrawn unless APC contacted EPA within 30 days to discuss the status of the application and to confirm APC's intent to proceed with the PSD permit application. APC did not respond to EPA's request, thus the AEP PSD permit application is now considered withdrawn and no longer pending before EPA, concluding the administrative and judicial appeals processes, including any associated remand actions, on the PSD permit application for the AEP. Now that all such proceedings are complete, and this notification has been provided to the District pursuant to 40 CFR 52.270(b)(5)(i), the District will be the PSD permitting authority for the AEP or any related project in the event that a PSD permit is needed for such a project in the future.

If you have additional questions or need additional assistance, please feel free to contact Lisa Beckham of my staff at beckham.lisa@epa.gov or (415) 972-3811.

Sincerely,



Deborah Jordan
Director, Air Division

Enclosure

cc: Jim Rexroad, Avenal Power Center, LLC (via email)
Jane Luckhardt, Esq. (via email)
Wes Ingram, California Air Resources Board (via email)
Gerry Bemis, California Energy Commission (via email)