



**BAY AREA  
AIR QUALITY  
MANAGEMENT  
DISTRICT**

June 1, 2010

Mr. Gerardo C. Rios  
Chief, Permits Office  
United States EPA Region IX  
75 Hawthorne Street  
San Francisco, CA 94105-3901

Dear Mr. Rios:

**ALAMEDA COUNTY**

Tom Bates  
(Vice-Chairperson)  
Scott Haggerty  
Jennifer Hosterman  
Nate Miley

**CONTRA COSTA COUNTY**

John Gioia  
(Secretary)  
David Hudson  
Mark Ross  
Gayle B. Uilkema

**MARIN COUNTY**

Harold C. Brown, Jr.

**NAPA COUNTY**

Brad Wagenknecht  
(Chairperson)

**SAN FRANCISCO  
COUNTY**

Chris Daly  
Eric Mar  
Gavin Newsom

**SAN MATEO COUNTY**

Carol Klatt  
Carole Groom

**SANTA CLARA COUNTY**

Susan Garner  
Ash Kalra  
Liz Kniss  
Ken Yeager

**SOLANO COUNTY**

James Spering

**SONOMA COUNTY**

Shirlee Zane  
Pamela Torliatt

Jack P. Broadbent  
**EXECUTIVE  
OFFICER/APCO**

As you know, the District has been evaluating a permit application for the Marsh Landing Generating Station, a proposed natural gas fired simple-cycle power plant that would be located near Antioch, CA. On November 3, 2009, the project applicant sent a letter to both of our agencies proposing that this facility should be evaluated as a new facility separate from the existing Contra Costa Power Plant, which is adjacent to where the new Marsh Landing facility would be located. The letter stated that the Marsh Landing facility (which would be owned by Mirant Marsh Landing LLC) should be treated as separate from the existing Contra Costa plant (which is owned by Mirant Delta LLC) for purposes of applying EPA's Prevention of Significant Deterioration (PSD) regulations. The letter stated that the two facilities should be considered separate for purposes of PSD applicability because, although the companies that own them (Mirant Marsh Landing LLC and Mirant Delta LLC) share the same ultimate corporate parents (Mirant Americas, Inc. and Mirant Corporation), the two plants will be operated independently, with separate control rooms, independent connections to the PG&E natural gas pipeline system, separate water supplies, their own connections to the electric transmission system, separate wastewater discharge connections, separate contracts regarding the sale of power, separate financing arrangements, etc. You responded on behalf of EPA in a letter dated January 8, 2010, and stated that based on the description Mirant had submitted in its November 2, 2009, letter, it would be reasonable for the two facilities to be treated as separate for purposes of PSD permitting.

Based in part on the guidance EPA provided in your January 8, 2010, letter, the District has not proposed to issue a PSD permit for this facility. The District issued a Preliminary Determination of Compliance (PDOC) on March 29, 2010, as required under District Regulation 2, Rules 2 and 3, but did not at that time include a Draft PSD permit as part of the PDOC. The District discussed the applicability of the federal PSD permitting requirements in the PDOC, and explained that the Marsh Landing facility will not have emissions of any PSD-regulated pollutant over the 250 ton/year PSD applicability threshold for this facility. The District also explained that in evaluating the facility, it was treating this facility as a new facility and not as a modification to the existing Contra Costa plant based on the analysis outlined above.

During the public comment period on the PDOC, the District received three comment letters that presented comments on the District's discussion of PSD applicability. These comments objected to treating the Marsh Landing facility as a new source and not as a modification to the existing Contra Costa plant. These comments noted that both Mirant Marsh Landing LLC and Mirant Delta LLC are under the control of the same ultimate parent corporation, and also stated that (i) some officer(s)/employee(s) of both companies are the same; (ii) the companies have taken the same positions in certain regulatory proceedings; (iii) the two facilities will share a common emergency firepump; (iv) the two facilities will use the same stormwater control system; and (v) the Marsh Landing facility will use some of the Contra Costa Power Plant site for construction staging and laydown; among other points. The comments stated that the Marsh Landing facility should be treated as a modification to the existing Contra Costa plant because of these reasons, and stated that as a modification to an existing facility it would require a PSD permit because the emissions from the Marsh Landing facility would have to be treated as increases at an existing major facility above the thresholds for a PSD "major modification". Copies of the comment letters are enclosed for your reference.

In light of the additional factual assertions raised in these comments regarding these two facilities, please confirm that EPA still believes that it would be reasonable for the District to treat the proposed Marsh Landing Generating Station as a separate facility from the Contra Costa Power Plant for purposes of the federal PSD regulations. This request for guidance is being made pursuant to Section VII.1 of our PSD Delegation Agreement.

We understand that, as a matter of policy, EPA may not be able to provide an assurance that the proposed project would not be subject to enforcement action if it were to be build without a PSD Permit. The District does request, however, that EPA provide the District with any information that EPA is aware of at this time that could lead to enforcement action.

The District respectfully requests a response to this letter at EPA's earliest convenience. The project applicant has stated that it is on an expedited permitting schedule, and the District needs EPA's guidance on these federal PSD issues so that it can determine how it should proceed at this point. Please contact me if you would like to discuss any of these issues in more detail.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Bateman", with a stylized flourish at the end.

Brian Bateman  
Director of Engineering

Attachments (3)