BEFORE THE ADMINISTRATOR
U.S. ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

In the Matter of:	
Hadson Power 12 -- Altavista	PSD Appeal Nos. 90-2, 90-3, 90-4, & 90-5
Applicant	
DAPC Registration No. 30859	

ORDER DENYING REVIEW

Larry Hendricks (Appeal No. 90-2), Herbert Bolin (Appeal No. 90-3), Lena C. Frazier (Appeal No. 90-4), and Roy E. St. John, Jr. (Appeal No. 90-5) filed separate requests for review of a Prevention of Significant Deterioration (PSD) permit that authorizes construction of a steam electricity cogenerating facility at Altavista, Virginia. The Virginia Department of Air Pollution Control (DAPC) issued the permit to the applicant, Hadson Power 12, on February 21, 1990, pursuant to a delegation of authority from EPA Region III, Philadelphia, Pennsylvania. Because of the delegation, DAPC's permit determination is subject to the review provisions of 40 CFR Section 124.19, and any permit it issues will be an EPA-issued permit for purposes of federal law. 40 CFR Section 124.41; 45 Fed. Reg. 33,413 (May 19, 1980).

DAPC responded to the petitions on May 25, 1990, arguing in each instance that the grounds for review alleged in the petitions did not meet the threshold for review established by the rules governing this proceeding. DAPC also noted that in

numerous instances the issues raised by two of the petitioners (Bolin and St. John) had not been raised at the public hearing or during the public comment period and, therefore, were not eligible for consideration on appeal. DAPC is correct on both counts:

First, a petition must contain a statement demonstrating "that any issues being raised were raised during the public comment period (including any public hearing) to the extent required by these regulations * * *." 40 CFR Section 124.19(a). The latter, in turn, require participants in the permit proceedings to "raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by the close of the public comment period * * *." 40 CFR Section 124.13. Collectively, the purpose of these regulations is to ensure that all matters are first raised with the permit issuer. In this manner, the permit issuer can make timely and appropriate adjustments to the permit determination, or, if no adjustments are made, the permit issuer can include an explanation of why none are necessary. As explained in the preamble to the regulations, "[t]he later stages [of the permit proceedings] are appellate in nature and new issues should not be raised on appeal." 45 Fed. Reg. 33411 (discussing Section 124.13). None of the petitions contains the requisite statement under 40 CFR Section 124.19(a), and many of the issues raised by two of the petitioners, as DAPC correctly alleges, had not in fact been raised with the permit issuer in a timely manner. Those issues

(identified in DAPC's response to the petitions) are therefore ineligible for review on appeal.

Second, as to the few issues that satisfy the foregoing requirements, DAPC is correct in asserting that they do not meet the threshold for review. Under the rules, there is no appeal as of right from the permit determination. Ordinarily, a petition for review of a PSD permit determination is not granted unless it is based on a clearly erroneous finding of fact or conclusion of law, or involves an important matter of policy or exercise of discretion that warrants review. The preamble to the regulations states that "this power of review should be only sparingly exercised," and "most permit conditions should be finally determined at the Regional [state] level * * *." 45 Fed. Reg. 33,412 (May 19, 1980). The burden of demonstrating that the permit conditions should be reviewed is therefore on the petitioner. Upon consideration of the petitions, and for the reasons stated in DAPC's response, I conclude that none of the petitioners has met his or her burden, respectively, of showing that the permit should be reviewed.

Accordingly, for the reasons stated above, review of DAPC's permit determination is denied.

So ordered.

Dated: JUL 30 19

_____
William K. Reilly
Administrator

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Denying Review, PSD Appeal Nos. 90-2, 90-3, 90-4, and 90-5, were mailed to the following in the manner indicated.

First Class Mail
Postage Prepaid:

Wallace N. Davis
Executive Director
Virginia Department of
Air Pollution Control
Ninth Street Office Building
200-2003 N. North Street
Richmond, VA 23219

Marcia Mulkey
Regional Counsel
U.S. EPA - Region III
841 Chestnut Street
Philadelphia, PA 19107

Herbert J. Bolin
1614 Avondale Dr
Altavista, VA 24517

Larry Hendricks
1114, 8th St.
Altavista, VA 24517

Lena C. Frazier
1117 7th St.
Altavista, VA 24517

Roy E. St. John, Jr.
Rt. 3 Box 400
Hurt, Va 24563

Douglas G. White
Assistant Regional Counsel
U.S. EPA - Region III

841 Chestnut Building
Philadelphia, PA 19107

Dated: JUL 31 1990

[Charise E. Page]
_____
[for] Brenda H. Selden, Secretary
to the Chief Judicial Officer