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Installation of Reciprocal Internal Combustion Engines/Tucson, Arizona, Generating Station: U.S. EPA Environmental Appeals Board Addresses Challenge to PSD Permit

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The United States Environmental Protection Agency ("EPA") Environmental Appeals Board ("EAB") addressed in a December 3rd decision a Petition for Review ("Petition") the Sierra Club filed challenging a Clean Air Act Prevention of Significant Deterioration ("PSD") permit that was issued to the Tucson Electric Power Irvington/HP Wilson Sundt Generating Station ("Station").

The Pima County Department of Environmental Quality ("PDEQ") had issued a PSD permit for 10 reciprocating internal combustion engine ("RICE") units to be constructed at the Station located in Tucson, Arizona.

The Sierra Club's Petition had described the PSD permit as enabling:

. . . the construction and operation of ten natural gas-burning reciprocating internal combustion engine ("RICE") units, each with a generating capacity of 19 MW. In conjunction with the required shutdown of two steam-turbine cycle electric generating units, the RICE project would increase the combined normal net generating capacity of Irvington Generating Station from 470 MW to 498 MW.

The Sierra Club argued that PDEQ premised issuance of the PSD permit upon clearly erroneous interpretations of statutory PSD requirements and implementing regulations as well as upon clearly erroneous findings of fact. The organization contended that the PSD permit failed to require adequate monitoring of NOx emissions. As a result, it was argued that the permit was not practicably enforceable as required by the Clean Air Act.

The EAB denies the Sierra Club's Petition. It held that the organization did not carry its burden of showing that PDEQ clearly erred or abused its discretion in determining that the NOx emissions cap was practicably enforceable.

The Sierra Club argument that the NOx emission cap is not practicably enforceable because of its reliance on biennial stack tests is deemed to lack merit. The reason for this conclusion is EAB's view that monitoring of the Station's pollution control devices is also an integral part of the PSD permit's compliance monitoring requirements.

Other arguments were deemed not preserved for review because they were not raised during the public comment period.

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