

Brian Lusher
 Bay Area Air Quality Management District,
 939 Ellis Street,
 San Francisco, CA 94109
 Email: blusher@baaqmd.gov

In behalf of CALifornians for Renewable Energy, Inc. (CARE) I respectfully file these comments on the Title V Permit for the Delta Energy Center. This also serves as 60-days Notice of Intent to file a citizens suit under the Clean Air Act (CAA) 42 USC § 7604

Page 26 of the Permit Evaluation and statement of Basis contains two compliance verifications which appear to be erroneous.¹ Page 26 states, “An office memorandum dated February 3, 2010 from the BAAQMD Director of Compliance and Enforcement, to the BAAQMD Director of Engineering, presents a review of the compliance record of this facility. As set forth in the memorandum, the District has determined that no violations of air quality rules and regulations have occurred since January of 2004. There is no evidence of on-going non-compliance and no recurring pattern of violations that would warrant consideration of a Title V permit compliance schedule. The memorandum is attached as an Appendix. The District has reviewed the history of compliance since February 3, 2010 for this facility and found no reason to change its conclusion.”

According to the EPA ECHO website the Delta Energy Center has been out of compliance for twelve quarters in a row with no schedule of compliance. Accordingly this Title V permit cannot be issued.

<http://www.epa-echo.gov/cgi-bin/get1cReport.cgi?tool=echo&IDNumber=06013B2095>

Violations shown in a given quarter do not necessarily span the entire 3 months. Information on the nature of [alleged violations](#) is available on the FAQ page, and information on the duration of non-compliance is available at the end of this report.

AIR Compliance Status												
Statute:Source ID	QTR1	QTR2	QTR3	QTR4	QTR5	QTR6	QTR7	QTR8	QTR9	QTR10	QTR11	QTR12
CAA: 06013B2095	Apr- Jun08	Jul- Sep08	Oct- Dec08	Jan- Mar09	Apr- Jun09	Jul- Sep09	Oct- Dec09	Jan- Mar10	Apr- Jun10	Jul- Sep10	Oct- Dec10	Jan- Mar11
HPV History												
Program/Pollutant in Current Violation												
TITLE V PERMITS	V-NO SCH	V-NO SCH	V-NO SCH	V-NO SCH	V-NO SCH	V-NO SCH	V-NO SCH	V-NO SCH	V-NO SCH	V-NO SCH	V-NO SCH	V-NO SCH
FACILITY-WIDE PERMIT REQUIREMENTS												V-NO SCH
SIP												

High Priority Violator (HPV) History section: "Unaddr" means the facility has not yet been addressed with a formal enforcement action.

¹ Permit Evaluation and statement of Basis Pages 44-48

"Addr" means the facility has been addressed with a formal enforcement action, but its violations have not been resolved. Lead Agency designated can be US EPA, State, Both, or No Lead Determined. If HPV History is blank, then the facility was not a High Priority Violator. C=Compliance; V=Violation; S=Compliance Schedule.

The Delta facility is sited in a predominantly minority community. Poor health and premature death are by no means randomly distributed in Contra Costa County. Low-income communities and communities of color suffer from substantially worse health outcomes and die earlier. Pittsburgh is home to many minority communities, especially around the facility,² and a significant percentage of the residents live below the federal poverty line.³ The community is disproportionately impacted by illnesses known to be related to exposure to industrial pollution. For instance, in Contra Costa County, the hospitalization rate due to asthma for African American children is almost five times that of Caucasian children.⁴ Childhood asthma rates in Contra Costa County are nearly twice the national average.⁵ There is also a significant disparity of disease rates between whites and people of color in Contra Costa County. For instance, African-Americans in Contra Costa County have a 59% higher death rate from all causes of death, including heart disease, cancer, and stroke, than the country average.⁶

Death rates from cardiovascular and respiratory diseases in Contra Costa County are also currently higher than statewide rates and are continue to rise.⁷ Further, Richmond, Pittsburgh, and Antioch have significantly higher hospital discharge rates for chronic diseases than other cities and the county overall.⁸ *Id.* Contra Costa County's cancer death rate is also higher than the state average.⁹

² See United States Census, 2005-2007 Community Survey Data; *see also* http://cchealth.org/groups/chronic_disease/framework.php (describing how West Contra Costa County is composed of significant percentage of minorities).

³ Contra Costa Health Services, *available at* http://cchealth.org/health_data/hospital_council/pdf/poverty.pdf.

⁴ Contra Costa Health Services, Health Disparities in Contra Costa, *available at* http://cchealth.org/groups/rhdi/pdf/health_disparities_in_cc.pdf.

⁵ See Contra Costa Asthma Coalition, *available at* http://www.calendow.org/uploadedFiles/CAFA3_CCscreen.pdf (Contra Costa County asthma rate in children is 23.7%, whereas national rate is 14.2%).

⁶ Community Health Indicator for Contra Costa County, Community Health Assessment, Planning and Evaluation Group Executive Report (June 2007), *available at* http://cchealth.org/health_data/hospital_council_2007/.

⁷ See A Framework for Contra Costa County, *available at* http://cchealth.org/groups/chronic_disease/framework.php.

⁸ See Contra Costa Health Services, Health Disparities in Contra Costa, *available at* http://cchealth.org/groups/rhdi/pdf/health_disparities_in_cc.pdf.

⁹ See A Framework for Contra Costa County, *available at*

In addition, scientific links have been made between certain types of cancer – including lung, nasal cavity, and skin cancers – and pollutant emissions in Contra Costa County.¹⁰ All of these health impacts are especially problematic and severe for those without health insurance, 43% of low-income residents in Contra Costa County are un-insured.¹¹ They cannot afford expensive health plans. They cannot afford extended stays in the hospitals. They cannot afford preventative medicines. Public participation in these negotiations between the District and Calpine could have provided more funding and created pollution reduction programs in the affected minority community or even a Calpine funded asthma clinic. Instead the community ended up with a couple of children’s Smogzilla Plays and \$20,000 for a clean air plan, and who knows what happened to the other \$265,500.

Minority and low income residents are exposed to more indoor and outdoor pollutants than non minority affluent residents. They can’t afford air conditioning so they must leave their doors and windows open during hot days. Low income residents are more likely to utilize wood burning because they cannot afford the natural gas heating. There are many economic and cultural factors which lead to higher exposure to pollution for minority and low income populations.

Both federal and state laws require collection and reporting of air pollution violations and enforcement data, not only because the public has a right to information about contaminants in the air we breathe, but public disclosure helps hold corporations accountable to the community. Public disclosure of violation and enforcement data is not just a matter of bookkeeping. The ultimate goal is to make the air cleaner to protect the health and safety of all Californians. Detailed, facility-level information is not available from either the U.S. EPA or the State Air Resources Board, but is kept by 35 local air quality districts. To access this information the public must submit Public records requests and must have some indication that violations are occurring just to make the requests. This is not only challenging for the public, but it is also challenging for other State and Federal agencies that are responsible for enforcing State and Federal air quality regulations. In many cases these agencies may not be aware of significant and repeated violations of the CAA by power plants and other major stationary sources. The Los Medanos and Delta Projects are a particularly good example

http://cchealth.org/groups/chronic_disease/framework.php.

¹⁰ See Cancer Incidence and Community Exposure to Air Emissions from Petroleum and Chemical Plants in Contra Costa County, California: A Critical Epidemiological Assessment, Otto Wong, and William J. Bailey; Journal of Environmental Health, Vol. 56 1993, *available at*

<http://www.questia.com/googleScholar.qst;jsessionid=KngJLJhFRCYFhpTfY5K100wTX5dSI4BvRR1qZvvDwL7bKfCG921F!568259201!-950397748?docId=5002198605>.

¹¹ See Community Health Indicator for Contra Costa County, Community Health Assessment, Planning and Evaluation Group Executive Report (June 2007), *available at* http://cchealth.org/health_data/hospital_council_2007/.

of how the BAAQMD compliance procedures inhibit compliance and enforcement policies promulgated to prevent harm to the unsuspecting public and minority communities. The District allowed the two projects to continue to emit excess emissions for over two years without informing even the California Energy Commission Compliance Division, who could have prevented the ongoing non compliance had they been informed in a timely manner. The CEC air quality compliance expert for the two projects stated under oath on June 3, 2003:

7 But the thing here is that this is what
8 happen. We have complying verification for two
9 Calpine project right now. I'm working on it
10 right now at the moment. And we have similar
11 problem, verifying compliance. We don't even know
12 whether they comply or not with the licensing
13 condition.
14 Number two, we contact the district, the
15 Los Medanos and Delta project in the last two year
16 alone receive 48 note of violation to the district
17 condition alone. And we didn't even know about
18 it. We don't even know. They don't tell us until
19 we call the district. And the district say, oh,
20 yeah, we have 48 note of violation. And they are
21 still operating in -- mode right now.¹²

Contra Costa County is an area already overburdened by pollution and hosts most of the Bay Area's power plants. According to the California Energy Commission's power plant database, 5,638 MW of the 10,008 MW of power plants in the Bay area are located in Contra Costa County. In addition, Contra Costa County is home to numerous other large, stationary sources of pollution, including several refineries and chemical manufacturing facilities.

The BAAQMD's lax enforcement policies and minuscule civil penalties continue to encourage non compliance with State and Federal Air Quality regulations and degrade air quality in the minority communities in Contra Costa to this day. Of the thirty nine facilities listed on the EPA Echo website in Contra Costa County sixteen have been in non compliance with the Clean Air Act for 12 quarters in a row.¹³ Ten of the thirty nine facilities have been in non compliance with the Clean Air Act for six to nine quarters in a row. Only 10 of the 39 facilities have been in compliance with the CAA for all of the last twelve quarters.¹⁴

¹² http://www.energy.ca.gov/sitingcases/eastaltamont/documents/2003-06-09_EAST-01-AFC-4.PDF page 217

¹³ <http://www.epa-echo.gov/cgi-bin/ideaotis.cgi>

¹⁴ <http://www.epa-echo.gov/cgi-bin/ideaotis.cgi>

The Los Medanos Facility according to the EPA ECHO website is a high priority violator and has been in non compliance with the Clean Air Act for 12 quarters in a row.¹⁵ Six of the energy facilities near the project are High Priority violators according to the ECHO website.¹⁶ Four of the five power plants in Pittsburg are high priority violators.¹⁷ The minority population is 67% according to the EPA ECHO website.

The Delta Energy Center has been in non compliance with the Clean air Act for 12 quarters in a row according to the EPA Echo website.¹⁸ It failed in its last Title V compliance test.¹⁹

Of particular concern is a new power plant in Antioch, next to Pittsburg, called the Gateway Generating Station. The project has been operating since January of 2009 without a PSD permit, an FDOC, or an ATC. The project is the subject of a FNOV issued by the EPA for not obtaining a PSD permit.²⁰ The BAAQMD is allowing the project to operate without a Permit to Operate or a PSD permit subject to a May 1, 2009 compliance agreement in spite of the issuance of a Federal Notice of Violation for no PSD Permit. No fine has been levied by the BAAQMD.

The State's lax enforcement of clean air laws has been well documented since a 1997 audit by the U.S. Environmental Protection Agency, which sharply criticized California's efforts as inadequate to deter repeat offenders. The EPA admonished regional air districts to increase the size and severity of penalties and said the state must provide better oversight of the districts' enforcement efforts.

Further the march to locate power plants in minority low income communities in Contra Costa is continuing. The current process for building a new power plant in Northern California involves receiving a power purchase agreement with PG&E and receiving approval of the power purchase agreement at the California Public Utilities Commission. Currently the CPUC has authorized PG&E to procure 1,112 MW to 1,512 MW of new generation for their service territory which spans a large portion of the state. Of the potential 1,512 MW authorized by the CPUC, PG&E has selected two new projects which consist of 1,305 MW located in minority communities in Contra Costa County.²¹

¹⁵ EPA ECHO website <http://www.epa-echo.gov/cgi-bin/get1cReport.cgi?tool=echo&IDNumber=06013B1866> 06013B1866

¹⁶ <http://www.epa-echo.gov/cgi-bin/ideaotis.cgi>

¹⁷ <http://www.epa-echo.gov/cgi-bin/ideaotis.cgi>

¹⁸ <http://www.epa-echo.gov/cgi-bin/get1cReport.cgi?tool=echo&IDNumber=06013B2095>

¹⁹ <http://www.epa-echo.gov/cgi-bin/get1cReport.cgi?tool=echo&IDNumber=06013B2095>

²⁰ United States vs. Pacific Gas and Electric Civil Case 09-4503

²¹ <http://docs.cpuc.ca.gov/efile/A/107933.pdf> page 2,3

The BAAQMD has approved both. With the history of lax enforcement at the BAAQMD and the preponderance of industrial facilities in low income and minority communities in Contra Cost County the climate would suggest that the EPA office of Civil Rights may want to exercise their authority in Contra Costa County.

Conclusion

US EPA's new regulations for greenhouse gases require that permits after January 1, 2011 address greenhouse gas as part of the title V program. The proposed permit fails to meet this requirement. BAAQMD, acting under the title V operating permit regulations in 40 CFR part 71, proposes to grant approval of a purported title V "renewal permit" to Site #B2095, Delta Energy Center, LLC, 1200 Arcy Lane, Pittsburg, CA, 94565. According to the purported statement of basis at page 4 it states "[t]his facility received its initial Title V permit on April 4, 2003. This application is for a permit renewal. Although *the current permit expired on March 31, 2008*, it continues in force until the District takes final action on the permit renewal."

But the existing permit states "Conditions to Implement Regulation 2, Rule 6, Major Facility Review

1. This Major Facility Review Permit was issued on April 4, 2003, and expires on March 31, 2008. The permit holder shall submit a complete application for renewal of this Major Facility Review Permit no later than September 30, 2007 and no earlier than March 31, 2007. *If a complete application for renewal has not been submitted in accordance with this deadline, the facility may not operate after March 31, 2008.* (Regulation 2-6-307, 404.2, & 409.6; MOP Volume II, Part 3, §4.2)"²²

No application for a new permit application or Application for permit renewal within the publicly noticed timeline for Conditions to Implement Regulation 2, Rule 6, Major Facility Review has been posted. CAA statutory authority cited criminal penalties "for any person who knowingly violates any SIP or permit requirement more than 30 days after the date of issuance of a FNOV, Section 113 (c) of the Act provides for criminal penalties, imprisonment, or both. 42 USC§ 7413 (c) (3)." Instead of signing off on the Title V Permit for the Delta Energy Center BAAQMD should have issued an FNOV on Delta Energy Center for operating without valid permits.

The Clean Air Act authorizes citizen suits against any person who has violated or is in violation of an "emissions standard or limitation." Section 304(a) (1) of the Act, 42 USC§ 7604(a) (1). The term "emission standard or limitation" is

²² See Title V Permit to Operate Permit at page 3
http://www.baaqmd.gov/~media/Files/Engineering/Title%20V%20Permits/B2095/B2095_2004-09_sigrev_02.ashx

broadly defined to include an emission limitation; emission standard; "any condition or requirement of a permit under part C of subchapter I of this chapter (relating to significant deterioration of air quality)" and any condition or requirement under an applicable implementation plan relating to . . . air quality maintenance plans;" or any other standard or limitation established under "any applicable State implementation plan;" and any requirement to obtain a permit as a condition of operations. See § 7604(f).

CARE intends to file a citizen suit pursuant to the Clean Air Act provisions.

Respectfully submitted,



Michael E. Boyd President (CARE)
CALifornians for Renewable Energy, Inc.
5439 Soquel Drive
Soquel, CA 95073
Phone: (408) 891-9677
E-mail: michaelboyd@sbcglobal.net

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CC.
US EPA Administrator Lisa Jackson