



March 3, 2010

Helena Wooden-Aguilar
Acting Assistant Director
External Compliance and Complaints Program
and
Anthony Napoli
Office of Civil Rights
United States Environmental Protection Agency
1200 Pennsylvania Ave N.W.
Washington, D.C. 20460-1000

RE: EPA File No. 11R-09-R9

Administrative Environmental Justice Complaint Against San Joaquin Valley Air
Pollution Control District, California Energy Commission, US Environmental Protection
Agency

Dear Ms. Wooden-Aguilar and Mr. Napoli,

We appreciate that the U.S. Environmental Protection Agency Office of Civil Rights is investigating our administrative complaint filed in October 2009 against the US EPA, California Energy Commission and San Joaquin Valley Air Pollution Control District for violations of Title VI of the Civil Rights Act of 1964, as amended.

We filed this complaint on behalf of our members and constituents in Kettleman City and Avenal, California, who are low-income and people of color disproportionately impacted by the facts raised in this complaint and by the many other pollution sources in their area.

Our complaint alleges that US EPA, the Energy Commission and Valley Air District took actions and engaged in activities to approve the proposed Avenal Power Center LLC – Avenal Energy Project power plant that have a discriminatory and disproportionate negative impact on the low-income people of color residents of Avenal and Kettleman City, California.

Specifically, our complaint sets forth numerous violations of civil rights and environmental justice by these agencies, including improper decisions, practices, procedures, and the lack of meaningful public involvement opportunities for the affected communities.

1. Valley Air District violations of Title VI

The Air District completely failed to notify or involve the affected communities in their decision-making process. The Air District issued their corrected Notice of Final Determination of Compliance for the proposed power plant on November 4, 2008. We did not learn of this action until June, 2009. On June 12, 2009, the Air District emailed Greenaction in response to our inquiry informing us of where we could find their decision on the web.

The Air District failed to provide notice, conduct a thorough environmental review, did not hold a public hearing or have a public comment period. The Air District was well aware of the major environmental and health issues and intense community concerns in the Avenal and Kettleman City area yet failed to notify or involve the public in this decision at all.

The Air District also ignored facts including the massive PM 2.5 pollution that would be emitted from the proposed power plant, and this PM 2.5 pollution will have a negative and discriminatory effect not just on Avenal and Kettleman City residents but also on similar residents throughout this region.

The Air District ignored the cumulative impacts from the proposed plant in combination with the existing terrible air quality problems, the huge diesel pollution, pesticides, the pollution from the Avenal Regional Landfill and from the dumping of hazardous wastes, PCBs and garbage nearby in Kettleman City at the Chemical Waste Management hazardous waste landfill. The Air District, like the Energy Commission and EPA, also ignored the terrible birth defect and infant death situation in Kettleman City, just a few miles from the proposed plant.

These discriminatory actions harmed the affected low-income and communities of color by depriving residents of their lawful right to be informed about and participate in decisions that affect their lives, and also harmed them by approving the addition of a massive pollution source in an area already heavily impacted by multiple pollution sources and a horrifying outburst of birth defects and infant deaths.

2. California Energy Commission

The Energy Commission approved the proposed power plant Application for Certification on December 16, 2009. The Energy Commission process was defective in that it failed to provide meaningful opportunities for public comment, failed to provide adequate notice to residents, failed to translate documents into Spanish despite the fact that many residents are monolingual Spanish-speakers, failed to conduct a thorough environmental review that considered the cumulative impacts and terrible health situation in nearby Kettleman City, failed to consider the poor air quality especially relating to PM 2.5, and used defective information such as the flawed and incorrect US EPA Draft Environmental Justice Assessment that EPA itself admitted was not designed for such use. The Energy Commission's approval of the proposed plant thus discriminated by depriving residents of their lawful right to meaningful participation in a permit process that affects their health and lives, but also by approving more pollution in what is already a heavily polluted and unhealthy environment.

3. U.S. Environmental Protection Agency

U.S. EPA issued a Proposed Prevention of Significant Deterioration (PSD) Permit for this proposed power plant on or about June 16, 2009. The proposed permit was issued despite the fact that the air pollution from this huge plant would be massive and have a disproportionate and discriminatory impact on residents of Kettleman City, Avenal and the southern San Joaquin Valley that already suffer from extensive PM 2.5 pollution and poor air quality as well as multiple cumulative impacts. Residents also suffer from high rates of asthma. EPA's decision also failed to consider the fact that Kettleman City residents are suffering from an outbreak of birth defects and infant deaths. EPA is well aware of the enormous air pollution that would come from this proposed facility, and never should have issued the proposed permit.

EPA also violated environmental justice by failing to inform the Energy Commission that the EPA's Draft Environmental Justice Assessment was being incorrectly cited in the Energy Commission proceedings. EPA also violated environmental justice by failing to rescind the defective, flawed and inaccurate EJ assessment that violated the EPA's own toolkit for conducting such assessments (i.e. EPA never spoke to any residents in the research for this assessment).

We are however encouraged that US EPA has not proceeded at this time with issuing the permit and appears to be reconsidering whether or not a permit is appropriate.

We also would like EPA's Office of Civil Rights to be aware that the known number of birth defect cases in Kettleman City in the recent period has skyrocketed since the EPA began its permit process. We originally learned of 5 cases of cleft lip and plate starting in late 2007 (one in late 2007 and four in 2008) but now the number of known birth defects since late 2007 is at least 11, including six cases in 2008, at least three in 2009 and already one in 2010.

Thank you for investigating our Title VI civil rights administrative complaint. Please let me know if we can provide additional information.

Sincerely,

Bradley Angel
Executive Director
Greenaction for Health and Environmental Justice

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