



February 22, 2011

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**New Violations of Civil Rights by San Joaquin Valley Air Pollution Control District
Regarding Proposed Avenal Power Center Fossil Fuel Power Plant**

Supplemental Complaint Re: EPA File No. 11R-09-R9

On August 6, 2010, the U.S. Environmental Protection Agency Office of Civil Rights partially accepted our administrative complaint for investigation. Our complaint alleges that the California Energy Commission and the San Joaquin Valley Air Pollution Control District (APCD) violated Title VI of the Civil Rights Act of 1964, as amended, and EPA's nondiscrimination regulations implementing Title VI.

We are today supplementing our complaint against the APCD due to recent, intentional, severe and improper actions and decisions by the San Joaquin Valley Air Pollution Control District that violate Title VI due to the discriminatory nature and discriminatory impact of these actions and decisions on the low-income, Latino and Spanish-speaking residents of Kettleman City and Avenal, California.

On December 10, 2011, the APCD issued a new Final Determination of Compliance (FDOC) for the proposed Avenal Power Center LLC's fossil fuel power plant. The APCD issued this FDOC despite numerous flaws and inadequacies in the company's proposal, despite inadequate and discriminatory actions and decisions in the permitting process by APCD, and despite the discriminatory and disproportionate impact the proposed giant power plant would have in an area already overwhelmed with pollution.

The APCD violated Title VI once again regarding this project by refusing to hold a public hearing on the Preliminary Determination of Compliance or on the FDOC, failing to notify residents of Kettleman City, Avenal and Huron, failing to provide notice of the PDOC to Greenaction and others that APCD had promised to notify, failing to translate key documents into Spanish, and refusing requests from Greenaction and other members of the public to allow us to appeal the FDOC.

Failing to notify residents or their organizations, failing to hold a public hearing and failing to provide Spanish-speaking residents equal time to comment as English speakers is a violation of environmental justice and civil rights policies and laws. APCD only agreed to translate some permit information into Spanish following concerns being raised by Greenaction, and after the comment period already began. On August 20, 2010, we received an email from Dave Warner of the Air District that stated:

Bradley,

The San Joaquin Valley Air Pollution Control District will prepare a Spanish translation of a summary of the District's preliminary decision to issue a Determination of Compliance on the Avenal Power Center. This document should be available late on Monday, and we will post it on our Spanish-language link on our District website, at http://www.valleyair.org/General_info/SpanishHmong_Resources.htm

As this email was sent one week into the revised comment period, and as Spanish-speakers had not yet had the opportunity to read information in Spanish, Spanish speakers who comprise a large percentage of nearby residents were clearly given less time to comment than others. This proves that there has been an unequal opportunity to comment that is improper and discriminatory in violation of Title VI.

In addition, the Air District's notice was inadequate for all of the affected public. No resident or organization representing residents received notice. We only learned of the original comment period from US EPA after it already had begun. The Air District published a "Notice" in the Fresno Bee, but not in any Kings County or Spanish-language paper. Even after meeting with the Air District on August 30, 2010 to raise all these concerns, the Air District refused to hold a public hearing, provide proper notice or provide equal opportunities to the Spanish-speaking residents who comprise a major percentage of residents of Avenal, Kettleman City and Huron.

The FDOC was approved despite the fact that the company's claims of a huge reduction in proposed emissions compared to their first application lacked adequate documentation of what is different from the first facility proposal that predicted much higher emissions. We believe the claim of approximately 1/3 lower NOx emissions and 80% lower CO emissions is not verifiable, is questionable, and was likely made solely to try to avoid having to acquire a federal PSD permit.

The FDOC was approved while acknowledging it would still be a major source for NOx (188,840 lbs/year), VOCs (69,222), PM 10 (161,550), PM 2.5 (161,550), and would also emit CO and Sox. Despite this acknowledgement, at a meeting with community and environmental justice advocates on August 30, 2010, Seyed Sadredin and Dave Warner of APCD told Greenaction, local residents and other environmental health and justice advocates that there would be virtually no emissions at all – a clearly incorrect statement designed to convince the public to drop our appeal and challenges. Mr. Sadredin also stated at that meeting that he would only discuss the possibility of a public hearing if Greenaction dropped our civil rights complaint.

The FDOC's description of the project location mentions Avenal and Huron, but improperly omits any mention of Kettleman City, the farmworker community suffering from birth defects, infant deaths and multiple pollution sources that is located just a few miles south of the proposed power plant. The approval of the FDOC violates the commitment of the State and US EPA to reduce pollution in and near Kettleman City, yet the APCD, CEC and USEPA are all taking actions to approve this large polluting power plant.

The APCD is also violating environmental justice and civil rights in its FDOC by allowing the company to avoid having to submit a Title V application within 12 months of commencing operations even though the APCD admits the project would be subject to Title V. Allowing this giant power plant project that is admittedly subject to Title V to be built and operate for a year without even submitting the required Title V permit application makes a mockery of Title V and the Clean Air Act's mandate for public participation in such permit decisions.

Allowing a major power plant to operate for a year prior to even submitting the Title V application also sends a clear signal that the outcome of the Title V application is a foregone conclusion – a rubber stamp of a facility allowed to be built and start polluting without the proper federal Title V permit.

The Health Risk Analysis as part of the FDOC is defective due to the failure to conduct a true cumulative impact analysis that considers all pollution sources in the potential impact area and the health sensitivities of residents.

Please add these violations into our administrative civil rights complaint. Please rule on this complaint in a timely fashion. We are very concerned EPA will once again ignore violations of civil rights just as the EPA has done with the 1994 and 2010 civil rights complaints filed by the Kettleman City community group People for Clean Air and Water/El Pueblo Para El Aire y Agua Limpio regarding Kettleman City. EPA's inaction on El Pueblo's complaints only encourages more violations of civil rights.

We hope that EPA will finally do the right thing and stop agencies like the APCD from violating the civil rights of low-income and people of color residents of our nation.

For environmental justice,

A handwritten signature in black ink that reads "Bradley Angel". The signature is fluid and cursive, with the first name "Bradley" and the last name "Angel" clearly distinguishable.

Bradley Angel

Executive Director

Greenaction for Health and Environmental Justice

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