

# **Greenaction for Health and Environmental Justice**

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US Environmental Protection Agency

Region IX

## **SUPPLEMENTAL COMMENTS IN OPPOSITION TO PROPOSED PERMIT FOR AVENAL ENERGY POWER PLANT**

In addition to written comments we are submitting with Center on Race, Poverty and the Environment and El Pueblo Para El Aire y Agua Limpio, Greenaction submits these additional comments in opposition to the proposed permit issuance on behalf of our organization and our constituents in Avenal, Kettleman City and Hanford.

### **1. US EPA's permit process violates the Executive Order on Environmental Justice:**

Despite US EPA's repeated insistence that the Executive Order does not apply to their permitting decisions, we disagree. The Executive Order requires EPA to promote environmental justice in its actions. The hearings scheduled for October 1st and 15<sup>th</sup> were improperly scheduled and violated environmental justice for two reasons:

- (1) US EPA never extended Kettleman City residents and their organizations the courtesy of a response to the request for a moratorium on permitting due to the birth defect and infant mortality cluster afflicting the town; and
- (2) US EPA was well aware that the scheduling of the October 1 and 15<sup>th</sup> hearings was right in the middle of an extraordinary level of permit activities regarding the county, state and federal agency permit processes for the proposed expansion of the Chem Waste hazardous waste dump and other agency's processes on the proposed power plant. Also, these hearings in October interfere with the community's attempt to get agencies to conduct an investigation of the birth defect and infant mortality cluster. Thus, the scheduling had the effect of preventing the fullest possible outreach and level of public involvement in this hearing process.

As USEPA is required to promote the maximum level of involvement from communities affected by their processes and decisions, these hearings violate US EPA's environmental justice responsibility.

### **2. US EPA Should Extend the Public Comment Period:**

In light of the above, we request US EPA to extend the public comment period for at least 60 days.

### **3. US EPA Should Hold a Public Hearing in Kettleman City:**

In addition to the Avenal hearings, a hearing should be held in Kettleman City due to its proximity to the proposed giant power plant and the negative air quality impacts the plant would have on Kettleman City's air quality if built. Kettleman City is only 8 miles from the proposed

site, is suffering from a real health emergency that may be related to environmental pollution, and there is strong public interest and concern about this proposed power plant.

**4. USEPA Should Not Issue Permits for Pollution Unless and Until Environmental Pollution Is Ruled Out as a Factor in the Kettleman City Birth Defect and Infant Mortality:**

It would be irresponsible for US EPA to issue a permit for what would be the second largest air pollution source in the southern San Joaquin Valley so close to a town suffering from birth defects, infant deaths and stillborns. The entire premise of US EPA regarding Kettleman City has been that the health of the community is fine, but that is clearly not the case. US EPA must redo its health analysis and evaluate the possible causes of birth defects and infant deaths.

**5. US EPA Should Enforce Title VI of the United States Civil Rights Act regarding Air District and CEC Violations of Environmental Justice:**

This is a formal complaint to US EPA demanding that your agency enforce Title VI against violations of environmental justice and discriminatory permit processes conducted by the San Joaquin Valley Air Pollution Control District and the California Energy Commission for the proposed power plant. As both these agencies receive federal funds, they are subject to Title VI of the US Civil Rights Act of 1964.

The Air District issued a Determination of Compliance without notifying the Avenal and Kettleman City communities and without a public hearing and without any information being published in Spanish, the language spoken and read by many residents. In addition, the Air District issued its approval based on air pollution credits that we believe do not exist. The credits would also potentially come from areas far from Avenal and Kettleman, thus having a clear and indisputable discriminatory impact on the low-income people of color residents in violation of Title VI.

The California Energy Commission's process was in English-only, lacked real public notice or involvement opportunities, and was clearly intended to rubber-stamp the approval of the project.

Submitted by email October 15, 2009

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