

<b>DOCKET</b>	
<b>07-AFC-3</b>	
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**STATE OF CALIFORNIA  
ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION**

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Application for Certification for the	)	
<b>CPV SENTINEL ENERGY PROJECT</b>	)	
By CPV Sentinel, L.L.C.	)	<b>Docket No. 07-AFC-03</b>
	)	California Communities Against Toxics'
	)	<i>Prehearing Conference Statement</i>
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California Communities Against Toxics (hereinafter "CCAT") hereby submits the following *Prehearing Conference Statement* as ordered by the Committee's April 29, 2010, Notice of Prehearing Conference and Evidentiary Hearing on the Limited Issue of Air Quality.

**Opening Statement**

California Communities Against Toxics offers the following opening statement regarding the issues of the date of the Evidentiary Hearing and the timing of this Pre Hearing Conference Statement:

**a. CCAT objects to the June 1<sup>st</sup> Evidentiary Hearing date**

As an initial matter, counsel for CCAT has been very, very clear—notifying the Committee and the Parties within hours of receiving the Committee's April 29<sup>th</sup> Notice rescheduling the July 19<sup>th</sup> Evidentiary Hearing date--that the June 1, 2010 date, chosen suddenly without any consultation with the Parties (at least no consultation with CCAT), conflicts with a prior obligation.

On May 5<sup>th</sup>, the Committee ordered " the parties to confer and stipulate among themselves to choose one of the available dates (below) for the evidentiary hearing on Air Quality for the CPV Sentinel project." The order identified as possible dates: July 1, 15, 16, or 26, August 9, 10, 12, 13, 16, 17, 23, 24, 26 or 27 September 7, 9, 20, 21, or 23. Parties and staff meet by telephone on May 6<sup>th</sup>. The Applicant's counsel was very clear that he was unwilling to discuss any date other than July 1<sup>st</sup> for the Evidentiary Hearing. In a subsequent e-mail, Applicant's counsel stated July 15<sup>th</sup> and 16<sup>th</sup> would be acceptable. Staff indicated that they would be unavailable for a hearing on July 26<sup>th</sup> as well as all of the August and September dates. Staff further indicated they would be unavailable on *any* date in August and were unwilling to discuss dates for September.

In contrast to the position taken by the Applicant and staff, CCAT informed the Committee on May 6<sup>th</sup> that we would be available "July 26<sup>th</sup> ... and ...on any of the following dates: August 10, 12, 17, 23, 24th

or September 9 or 20. If, as suggested by staff during the call, the hearing could be in the afternoon in Los Angeles, I would be able to add August 9 and 16th to my available dates. If we did the morning in Sacramento it is likely I would be able to add the August 26<sup>th</sup>.”

CCAT objects in the most strenuous manner to the Committee’s May 10<sup>th</sup> decision to exclude CCAT from the June 1<sup>st</sup> Evidentiary Hearing by its arbitrary date change.

**b. This Pre Hearing Conference is premature**

As documents necessary to the development of CCAT’s testimony, rebuttal, and determinations necessary for the Pre Hearing Conference statement were just received from AQMD at the end of the day on May 12, 2010, CCAT has been unable to review that critically necessary information for completeness or content. Therefore, this Pre Hearing Conference statement is premature and the Committee’s instance that it be submitted is inefficient since it is impossible for CCAT to provide the type of detail that would be useful for advancing this project’s proceedings. Nonetheless, CCAT provides the following:

**Mandatory Topics**

This prehearing conference statement addresses the eight mandatory topics articulated in the Commission’s April 29, 2010 order as follows:

**1. The Air Quality issues that are complete and ready to proceed to evidentiary hearing.**

**2. The Air Quality issues that are not complete and not yet ready to proceed to evidentiary hearing, and the reasons therefor.**

The vital question of whether the Sentinel facility has adequately mitigated its significant air quality impacts is not yet ready to proceed to evidentiary hearing since the Commission has not determined whether the emissions credits being offered by the AQMD to the Commission are lawful, valid emission offsets.

Assembly Bill 1318 (AB 1318) imposes three distinct requirements on the Commission. First, it must determine whether the credits offered by AQMD to the Commission pursuant to AB 1318 satisfy all applicable legal requirements. Next, the Commission must determine whether the emission credits themselves are “creditable” under all applicable laws.

These two initial tasks are separate requirements from the siting decision at issue in 07-AFC-03. The legislature specifically distinguished the determination of legality from the Commission’s “exercise of its regulatory responsibilities under its power facility and site certification authority.” The third responsibility imposed on the Commission by AB 1318 is to refrain from certifying Sentinel if it concludes that the transfer or crediting of emission credits fails to comply with any applicable law.

To date, the Commission has not opened a process to determine whether the emission reduction credits offered to the Commission by AQMD meet all legal requirements. CCAT therefore assumes that although the Commission is acting simultaneously to evaluate the legality of the transfer and credit of

emission credits and to certify the facility, there will be a separate proceeding and decision offered by the Commission regarding the credits offered by the AQMD.

### **3. The Air Quality issues that remain disputed and require adjudication, and the precise nature of the dispute for each topic**

The issue of whether the offsets offered by AQMD to the Commission comply with all applicable laws remains in dispute and requires adjudication. CCAT notes for the Committee that, assuming *arguendo* the adoption of AB 1318 is lawful, the statute requires this determination to be made separate from, and prior to, the certification at issue in 07-AFC-03.

The issue of whether the offsets offered by AQMD to the Commission were transferred in compliance with all applicable laws remains in dispute and requires adjudication. CCAT notes for the Committee that, assuming *arguendo* the adoption of AB 1318 is lawful, the statute requires this determination to be made separate from, and prior to, the certification at issue in 07-AFC-03.

The issue of whether Sentinel is adequately offsetting all of its emissions remains in dispute and requires adjudication.

The issue of whether the Commission should certify the Sentinel facility in reliance on emission offsets identified by the AQMD for credit and transfer to Sentinel remains in dispute and requires adjudication.

### **4. The identity of each witness sponsored by each party (note: witnesses must have professional expertise in the discipline of their testimony); the topic area(s) which each witness will present; a brief summary of the testimony to be offered by each witness; qualifications of each witness; and the time required to present direct testimony by each witness**

The identity of CCATs witnesses have not yet been established given that we have been unable to review the documentation submitted by the AQMD regarding the credits it is offering to the Commission under the challenged AB 1318.

Nonetheless, for purposes of this statement CCAT expects to offer one or more witnesses to address the question of whether the Commission should certify the Sentinel facility in reliance on emission offsets identified by the AQMD for credit and transfer to Sentinel.

### **5. Air Quality issues upon which a party desires to cross-examine witnesses, a summary of the scope of each such cross-examination, and the time desired for each such cross-examination**

To the extent that the Commission intends to hold its evidentiary hearing concerning the legality of the transfer and credit of the emission reduction credits simultaneously with (and not prior to) the evidentiary hearing for on 07-AFC-03, CCAT intends to cross-examine all witness offered by any party regarding this issue.

### **6. A list identifying exhibits and declarations that each party intends to offer into evidence (see following section on formats)**

Because CCAT has not had sufficient time to review the documents provided by the AQMD regarding the validity of the credits it has identified for the Commission to verify, CCAT is unable to identify exhibits and declarations that will be offered into evidence.

**7. Proposals for briefing deadlines, impact of vacation schedules, and other scheduling matters**

See opening statement, above. Counsel for CCAT will be on vacation July 5 to 16.

**8. Any proposed modifications to the proposed Conditions of Certification listed in the Final Staff Analysis (FSA) Air Quality section based upon enforceability, ease of comprehension, and consistency with the evidence.**

CCAT is unable to answer this question at this time.

Dated May 13, 2010

Submitted by,

Original signed by

Angela Johnson Meszaros  
Counsel for  
California Communities Against Toxics



**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
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**APPLICATION FOR CERTIFICATION FOR THE  
CPV SENTINEL ENERGY PROJECT  
BY THE CPV SENTINEL, L.L.C**

**DOCKET No. 07-AFC-3**

**PROOF OF SERVICE  
(Revised 3/24/2010)**

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**DECLARATION OF SERVICE**

I, Angela Johnson Meszaros, declare that on, May 13, 2010, I served and filed a copy of the attached Pre Hearing Conference Statement. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at: [<http://www.energy.ca.gov/sitingcases/sentinel/index.html>]

The document has been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission’s Docket Unit, in the following manner:

***(Check all that Apply)***

**For service to all other parties:**

  x   sent electronically to all email addresses on the Proof of Service list;

       by personal delivery or by depositing in the United States mail at with first-class postage thereon fully prepaid and addressed as provided on the Proof of Service list above to those addresses **NOT** marked “email preferred.”

**AND**

**For filing with the Energy Commission:**

  x   sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (preferred method);

**OR**

       depositing in the mail an original and 12 paper copies, as follows:

**CALIFORNIA ENERGY COMMISSION**

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I declare under penalty of perjury that the foregoing is true and correct.

       original signed by \_\_\_\_\_

Angela Johnson Meszaros