

assessing criteria pollutants under the Clean Air Act. In today's action we promulgate several additions and changes to the Guideline. We recommend a new dispersion model--AERMOD--for adoption in appendix A of the Guideline. AERMOD replaces the Industrial Source Complex (ISC3) model, applies to complex terrain, and incorporates a new downwash algorithm--PRIME. We remove an existing model--the Emissions Dispersion Modeling System (EDMS)--from appendix A. We also make various editorial changes to update and reorganize information.

DATES: This rule is effective December 9, 2005. As proposed, beginning November 9, 2006, the new model--AERMOD--should be used for appropriate application as replacement for ISC3.

The following study also reflects the conclusion that the ISC3 is the wrong model.



Assessment of Nitrogen Deposition: Modeling and Habitat Assessment

“In fact, ecosystem structure and diversity can be negatively affected by nitrogen concentrations as low as 3 to 8 kg/ha/yr.2”....”

“This study tested ISC3, AERMOD, CALPUFF, and CMAQ for modeling nitrogen deposition. The CALPUFF model is the best choice; however, none of the models tested were deemed adequate.”

The study also points out:

“Many rare, threatened, and endangered species—both plants and animals—are found in vernal pool”

“Given the well-documented responses of annual grasses to N-additions, and impacts in other California ecosystems, the intensity of annual grass invasions in vernal pools is likely increased by N-deposition and vernal pools can be considered a sensitive Ecosystem.”

This is important because,
Russell City Energy Center Staff Assessment Part 1 states:

“there is a vernal pool on the Eastshore Substation site that must be protected”
APRIL 2007 4.2-3 BIOLOGICAL RESOURCES

The Eastshore Final Staff Assessment addresses it as follows.

Comment: Wetlands at the bay shoreline and in the vicinity of the PG&E substation may be impacted by construction.

Staff received a comment about potential impacts of the project to wetlands along San Francisco Bay. The wetlands along the shoreline of San Francisco Bay will not be impacted by the project because of their distance from project construction activities. Comments were also received on potential impact of construction on seasonal wetlands occurring in the vicinity of the PG&E substation. Construction of the 115 kV tie line at the east side of PG&E's Eastshore Substation will not affect the seasonal wetland south of substation because it is approximately 500 feet from the construction activity. No impacts to this or any other wetland are anticipated as a result of the Eastshore project.

4.2-17

Significant Natural Areas Fish and Game Code Sections 1930 et seq. designate certain areas in California such as refuges, natural sloughs, riparian areas, and vernal pools as significant wildlife habitat.

In addition to the adjacent Vernal pool The distances to endangered resources are completely misstated in the Eastshore staff report.

“Sensitive Habitats

Hayward Regional Shoreline, part of the East Bay Regional Park District, consists of 1,697 acres of salt, fresh, and brackish water marshes, and seasonal wetlands. This protected area provides habitat for several special status species, including California clapper rail, western snowy plover, and the salt marsh harvest mouse. The Hayward Regional Shoreline is located approximately one mile west of the Eastshore site. Other regional parks that include remnants of the northern coastal marsh complex and other native plant communities that once characterized this area include the Martin Luther King Jr. Regional Shoreline (three miles northwest of the project site), Eden Landing Ecological Reserve (three miles south of the project site), the Don Edwards San Francisco Bay National Wildlife Refuge and Coyote Hills Regional Park (five miles south of the project site). Other biologically significant and sensitive lands within the project vicinity include Garin/Dry Creek Regional Park (five miles east of project site), and Lake Chabot Regional Park (five miles northeast of the project site). No direct project impacts are anticipated to sensitive habitats or species within these protected parklands because construction activities will take place at least one mile or more from these sensitive resources”

November 2007 4.2-3 BIOLOGICAL RESOURCES

**In Biological Resources Table 2
Cumulative Nitrogen Deposition Rates at Biologically Sensitive Areas Near the Eastshore Energy Center.**

Salt harvest mouse habitat is identified as 4 miles northwest of the project. It is in fact identified in the Application for Certification FIGURE 8.2-2 LOCATION OF SPECIAL

STATUS SPECIES RECORDS WITHIN THE PROJECT IMPACT AREA as 1/2 mile from the project. This misrepresents the distance by a factor of 8. It also demonstrates the site is less than 1 mile from Eden Landing Ecological Reserve not 3 miles as stated above.

I attempted to make this clear in the following public comment.

MONDAY, JANUARY 14, 2008 EVIDENTIARY HEARING

On the southern tip of this you see Eden Landing Ecological Preserve. Page 4.2-8 of the staff assessment shows Eden Landing Ecological Preserve being three miles south of the project but your map shows it within a mile. I don't think that this project should be built without a formal opinion from Fish and Wildlife. I think consistency with the Coastal Zone Management Act is required and that the project doesn't meet the Clean Air Act.
Page 308

Subsequently the Commission acknowledged concerns with the measurement of distances Feb. 4 2008. Extensive reinterpretation of distances ensued. But relevant distances to protected area's and species was never reconsidered.

Had The United States Fish and Wildlife Service(USFWS) Biological opinion been completed consistent with the scheduling order. This information may have been discovered and addressed. But given the lack of accurate information USFWS could not have been expected to form a correct opinion. Licensing this project is a violation of the following scheduling order and the Endangered Species Act.

February 2, 2007, at Sacramento, California

COMMITTEE SCHEDULING ORDER

30-May-07	Local, state, & federal agency final determinations due (including Final Determination of Compliance from BAAQMD)
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Public Resources code

25527. Prohibited areas as sites for facilities; exceptions

The following areas of the state shall not be approved as a site for a facility, unless the commission finds that such use is not inconsistent with the primary uses of such lands and that there will be no substantial adverse environmental effects and the approval of any public agency having

ownership or control of such lands is obtained:

(a) State, regional, county and city parks; wilderness, scenic or natural reserves; areas for wildlife protection, recreation, historic preservation; or natural preservation areas in existence on the effective date of this division.

(b) Estuaries in an essentially natural and undeveloped state.

In considering applications for certification, the commission shall give the greatest consideration to the need for protecting areas of critical environmental concern, including, but not limited to, unique and irreplaceable scientific, scenic, and educational wildlife habitats; unique historical, archaeological, and cultural sites; lands of hazardous concern; and areas under consideration by the state or the United States for wilderness, or wildlife and game reserves

The impacts of this project can clearly affect areas within the jurisdiction of Bay Conservation and Development Commission (BCDC)

§ 1714. Distribution of Copies to Public Agencies; Request for Comments.

(c) The executive director shall also transmit a copy of the notice or application to the Coastal Commission for any site located in the coastal zone, to the Bay Conservation and Development Commission (BCDC) for any site located in the Suisun Marsh or the jurisdiction of the BCDC, to the California Department of Fish and Game, to the Air pollution Control District in which the project is located, to the Water Resources Control Board in which the project is located, to all federal, state, regional, and local agencies which have jurisdiction over the proposed site and related facility, or which would have such jurisdiction but for the commission's exclusive authority to certify sites and related facilities pursuant to Chapter 6 (commencing with # 25500) of Division 15 of the Public Resources Code, and to any other federal, state, regional, or local agency which has been identified as having a potential interest in the proposed site and related facility, and shall request analyses, comments, and recommendations thereon.

The attached letter from the Audubon Society supports these positions.

It would appear that staff erred in its following belief:

Supplemental Testimony of Energy Commission Staff.

“The California Air Resources Board (CARB) recommended amending the NO₂ ambient standards in 2007. On February 19, 2008, after the record for this proceeding was closed, the Office of Administrative Law approved the amendments to the regulations, reducing the State 1-hour-average standard from 0.25 ppm (470 µg/m³) to 0.18 ppm (339 µg/m³), not to be exceeded, and establishing a new annual-average standard of 0.030 ppm (57 µg/m³), not to be exceeded. The new standards became effective on March 20, 2008. Staff believes that the appropriate standards are those that were in effect at the time the application was determined to be complete, consistent with BAAQMD rules.”

AIR QUALITY Brewster Birdsall, June 30, 2008

First it should be clarified that the CEC is the lead agency. No permit has been issued by BAAQMD. The record for this proceeding is not closed and BAAQMD record should not be closed prior to the CEC conclusion. The staff must have been able to anticipate the new regulations. This project should not be licensed without compliance with the present laws.

Alvin J. Greenberg does not appear qualified to understand the relevance of the **DIESEL PARTICULATE MATTER HEALTH RISK ASSESSMENT FOR THE WEST OAKLAND COMMUNITY** his following testimony is inconsistent with the regional nature, and the key findings of the assessment.

The March 19, 2008 ARB study entitled "Draft Diesel Particulate Matter Heath Risk Assessment for the West Oakland Community, Preliminary Summary of Results" is not relevant to the proposed Eastshore project nor is it information that is needed in order to comply with proposed Condition of Certification **PUBLIC HEALTH-1**. The study addresses the impacts on the West Oakland Community due to diesel particulate emissions from trains and diesel trucks in the West Oakland area and from ships in the Port of Oakland and traversing San Francisco Bay. It does not specifically address the impact of those emissions on distant communities such as those in the City of Hayward, which is 15 miles from the port, nor does it characterize the ambient air quality in Hayward.

Greenberg supplemental testimony

Key Findings

"The impacts from diesel PM emissions on the West Oakland community as well as on the broader regional San Francisco Bay Area were evaluated."

"• On a regional basis, diesel PM emissions from Port operations impact a very large area, about 550,000 acres. More than 3 million people live in this area and as a result of the diesel PM emissions from the Port, have potential elevated cancer risks of more than 10 chances in a million. Overall, the Port emissions result in a regional population-weighted potential cancer risk of about 27 in a million"

"• On a regional basis, diesel PM emissions also result in non-cancer health impacts. Due to diesel PM from Port operations, there are an estimated 18 premature deaths per year, 8 hospital admissions for respiratory and cardiovascular problems, about 290 cases of asthma-related and other lower respiratory symptoms, and 15,000 minor restricted activity days."

DIESEL PARTICULATE MATTER HEALTH RISK ASSESSMENT FOR THE WEST OAKLAND COMMUNITY Page 2

Figure 6: Overwater-based Emissions Domain for Parts I and III

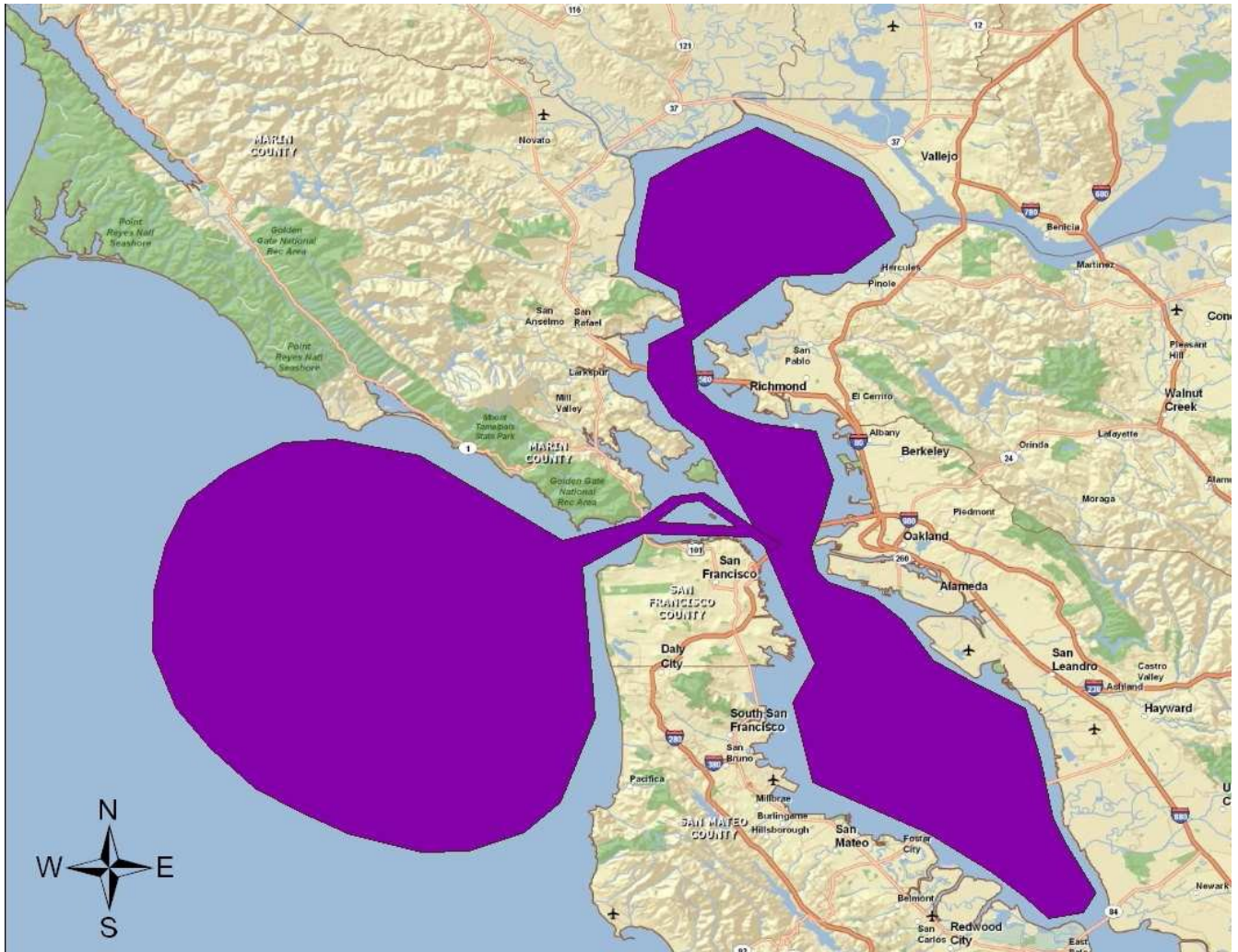
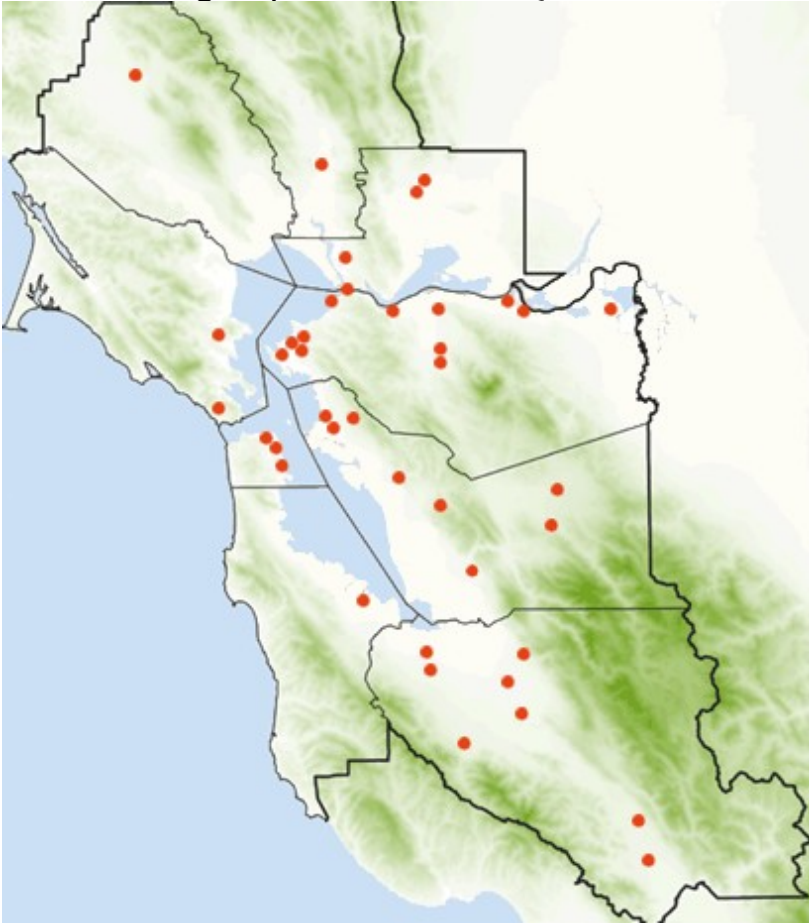


Figure 14: Estimated Potential Cancer Risk in the Regional Domain from Port (Part I) Diesel PM Emissions Sources

The following map indicates BAAQMD air monitoring sites.



http://www.baaqmd.gov/tec/maps/dam_sites.htm#

Monitoring stations are considered “near” not “distant” by CEC staff although one is more distant than the Oakland and San Francisco Hunters point monitor stations and the port of Oakland.

Fremont Chapel Way 11.23 miles

Livermore - Rincon Ave. 18.93 miles

In comparison

San Francisco Bayview/Hunter's Pt. 13.99 miles

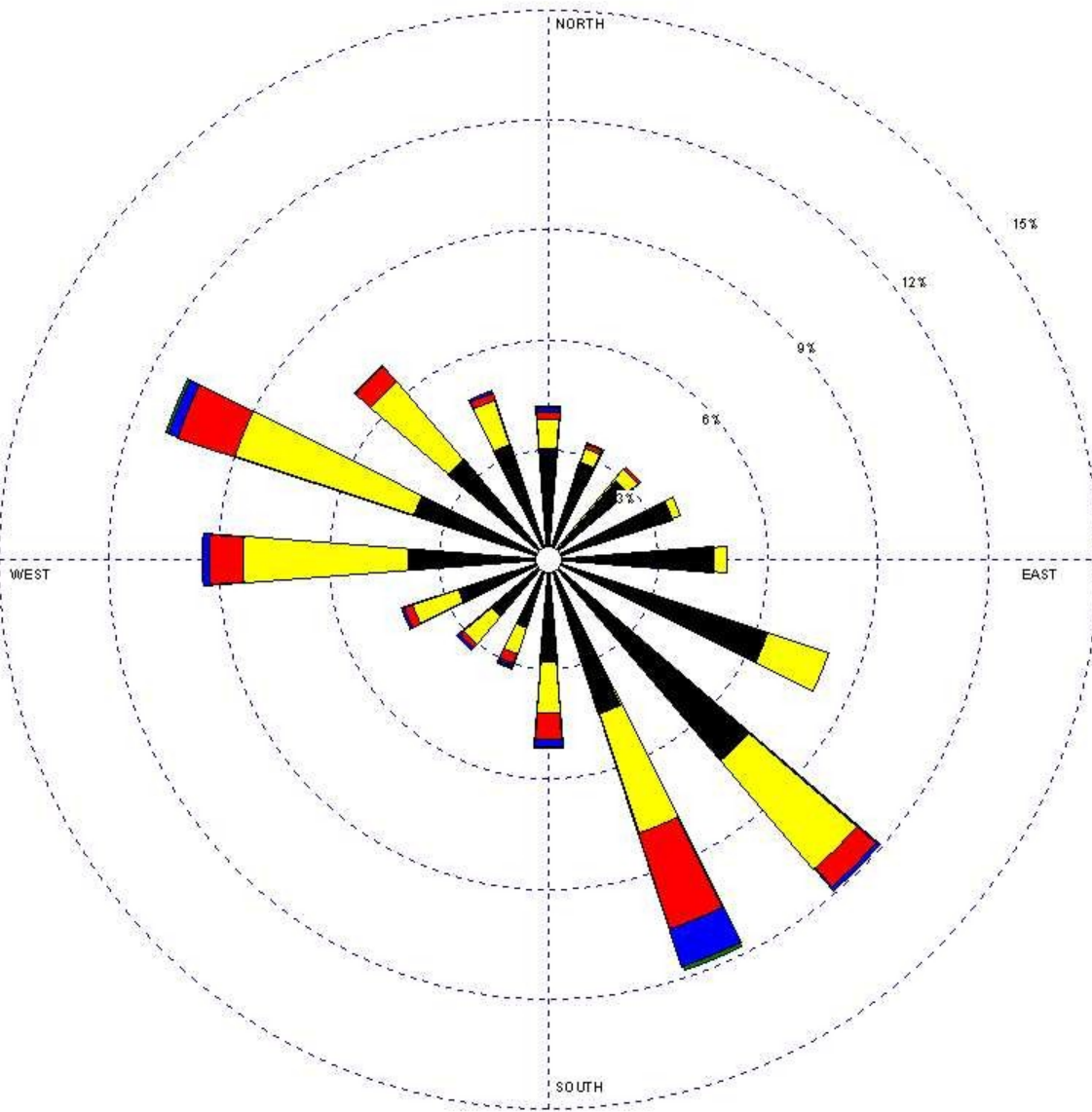
Oakland-Alice St 13.75 miles

(Measured on google Earth)

The following wind rose demonstrates prevailing winds from the direction of the latter two stations and the San Mateo Bridge. Had the Air District utilized the closer more relevant and upwind monitor sites the conclusions would have been significantly different. This project should not proceed without required local (Hayward) air monitoring.

WIND ROSE PLOT

Union City Wind Rose (1990-1994): Winter Quarter



<p>Wind Speed (m/s)</p> <ul style="list-style-type: none"> > 10.00 8.00 - 10.00 6.00 - 8.00 4.00 - 6.00 2.00 - 4.00 0.50 - 2.00 	<p>PROJECT Russell City Energy Center</p>	<p>DATE 10/18/01</p>	<p>PREPARED BY California Energy Commission</p>	
	<p>DISPLAY Wind Speed</p>	<p>UNIT m/s</p>	<p>COMMENTS</p>	
	<p>AVG. WIND SPEED 2.20 m/s</p>	<p>CALM WINDS 0.58%</p>		
	<p>ORIENTATION Direction (blowing from)</p>	<p>PLOT YEAR-DATE-TIME 1990 1991 1992 1993 1994 Check Date Range Report Midnight - 11 PM</p>	<p>PROJECT/PLOT NO.</p>	

WRPLOT View 3.5 by Lakes Environment & Software - www.lakes-environmental.com

Environmental Injustice

The following argument is repeated in different forms throughout the Environmental Justice analysis:

“However, the issues of aviation safety and land use compatibility affect all people, regardless of ethnicity or economic status. Therefore, the construction and operation of the Eastshore project, although identified as having a significant environmental impact, is not considered to have a disproportional impact on an environmental justice population.”

Pmpd 451

This logic is basically saying that there is no such thing as Environmental Justice because “any” affect can be realized by all people. This logic seems akin to the “separate but equal” argument for segregation. Because an Environmental justice issue will never be discovered with this logic the CEC should either forgo the veil of analysis that precedes the determination or perform an Environmental Justice analysis that has a possibility of another conclusion.

The notice provided BAAQMD did not meet the minimum threshold requirement for a public notice.

40cfr 51.161 requires that the notice include “the local agency’s analysis of the effect on air quality” because the notice does not contain this information the public was not informed of this vital decision making information and thus could not comment on the project exceeding the limiting standard for at least four pollutant categories. This information is found only after the public comment period was closed in the California Energy Commission Staff Assessment. Had this information been available it during the public comment period for the District it would certainly have caused comment that could have affected the determination.

The districts public comment period was closed prior to the lead agencies assessment of the project.

The California Energy Commission (CEC) was the lead agency in this process. They completed an air Quality assessment of the project. Conducted public hearings and received extensive evidence from the County of Alameda, The City of Hayward, The Alameda County public Health Department, The public and multiple interveners in opposition to the project. The district made its determination without the benefit of this extensive volume of information that was necessary to properly assess the effects of the project.

The California Energy Commission procedures clearly require the Districts public comment period to be concurrent with or after its own assessment.

This precedent is clear, logical and necessary. It is well defined in Calpine's Russell City Energy Center proceeding Docket 01-afc-7c-Applicants Status Report #1 The Districts violation of this process was arbitrary and capricious and has undermined the California Energy Commissions power plant siting process and deprived the public and other governmental agencies ability to provide necessary comment to the District and the CEC

The District received over 600 public comments but did not choose to have a public hearing or even respond until 5 months after the public comment period was closed.

The Districts response is significantly different than the conclusions of the Alameda County Public Health department submitted to the CEC record.

The District has no appeal process for the determination of compliance.

The District Appeals Board rules only address appeals of permits. The District does not issue the permit until after the CEC makes its decision. The District then claims that it has no jurisdiction over its own permit. In order to comply with the Clean Air Act the Bay Area Air Quality Management District should provide legally required notice, reopen its public comment period and have a public Hearing regarding Eastshore Energy Center.

The Electricity Greenhouse Gas Emission Standards Act (SB 1368)

"The Electricity Greenhouse Gas Emission Standards Act (SB 1368)³² also enacted in 2006, makes electricity generation and power supply contracts subject to the GHG Environmental Performance Standard (EPS). In 2007, the California Public Utilities Commission (CPUC) adopted an EPS for any baseload generation undertaken by load-serving entities that will emit 1,100 pounds (or 0.5 metric tons) of CO₂ per megawatt-hour (MWh) of electricity.³³ The Energy Commission adopted a similar EPS for local publicly-owned electric utilities.³⁴ This standard applies to baseload power from new power plants, new investments in existing power plants, and new or renewed contracts with terms of five years or longer, including contracts with power plants located outside of California. As a peaking project, the EEC is not subject to the EPS; however, it will emit approximately 1,000 pounds of CO₂ per MWh and is subject to the GHG reporting requirements established under AB 32. (Ex. 200, p. 4.1-33.)"

Pmpd 127

With the potential operating hours and the number of engines, the facility could certainly run continuously, as a baseload plant. The staff approximation of 1000 pounds of CO₂ per Mwh is insufficient to satisfy SB1368. Staff has repeatedly erred on the side of the applicant. Approximately 1000 pounds could certainly mean over 1100 pounds. CO₂ emission levels should be disclosed as any other pollutant. CO₂ emissions are likely to exceed the threshold for a PSD permit. The commission should at least measure and require BACT for CO₂.

Given the above information the commission could not make the findings required by 1752.3

§ 1752.3. Presiding Member's Proposed Decision; Air Quality Findings.

(a) The presiding member's proposed decision shall include findings and conclusions on conformity with all applicable air quality laws, including required conditions, based upon the determination of compliance submitted by the local air pollution control district.

PUBLIC PARTICIPATION

“Members of the Hayward community expressed vigorous opposition to the EEC. Scores of individuals, community representatives, and elected officials participated at our public hearings. All public comments at the hearings were included in the official Reporter’s Transcripts of this proceeding. In addition, the Energy Commission’s Docket Unit received more than 1,500 written comments on the EEC.”

PMPD 4

If public participation is truly to occur The CEC should provide notice of activities to the above identified interested persons including the 1,500+ written commenters and the 600+ BAAQMD commenters. Many individuals have encountered difficulty participating in the process. The email notice system has failed. It is requested that the CEC provide an analysis of the number of people who attempted to be added to the list compared to the number who actually succeeded in being added and the ones who were dropped from the list. People are being precluded from participating by the CEC not responding to commenters as interested persons.

§ 1742.5. Environmental Review; Staff Responsibilities.

(e) The staff shall distribute a notice of availability of the staff report to all interested persons.

The project requires the use of recycled water

“While we believe the estimated added costs of building a pipeline, on-site treatment, and future operation and maintenance of the treatment system are not unreasonable, the circumstances of this case (there is no cooling tower, potable water consumption is minimal, and water is needed primarily for domestic rather than industrial purposes) do not require use of recycled water under Water Code Section 13551.”

PMPD 272

Water Code 13551 provides no exclusion for “no cooling tower” or minimal consumption. And 13550 requires contrary determinations to be made by the State water resources Board.

It is inconsistent with the Energy Commission’s policy on cooling water as established in the 2003 Integrated Energy Policy Report

The CEC conclusion is also inconsistent with EXECUTIVE ORDER S-06-08 The Governor's drought declaration.

The myopic conclusion also ignores the greater public benefit of beginning to create the infrastructure for recycled water use in the area.

California Water Code Section 13550

Requires the use of recycled water for industrial purposes subject to recycled water availability and upon a number of criteria including provisions that the quality and quantity of recycled water be suitable for the use, the cost is reasonable, the use is not detrimental to public health, and the use will not impact down stream users or biological resources.

California Constitution, Article X, Section 2

This section requires the water resources of the state be put to beneficial use to the fullest extent possible and states that the waste, unreasonable use, or unreasonable method of use of water is prohibited.

State Water Resources Control Board (SWRCB) Resolution 77-1

Encourages and promotes recycled water use for non-potable purposes

There is no need for this facility

This is addressed by the attached letter from Rory Cox, California Program Director Pacific Environment

Comments respectfully submitted by on July 18 2008 by

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