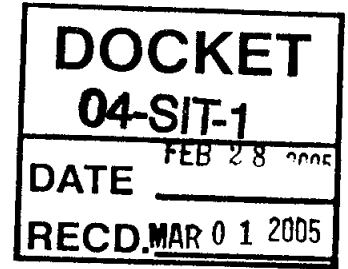


February 28, 2005



**VIA EMAIL AND U.S.MAIL**

Siting Committee  
California Energy Commission  
1516 Ninth Street, MS-12  
Sacramento, CA 95814-5512

C/o California Energy Commission Docket Office  
Attn: Docket 04-Sit-1  
1516 Ninth Street, MS-4  
Sacramento, CA 95814-5512  
Email: DOCKET@energy.state.ca.us

RE: CBE Comments on Causes of Petroleum Infrastructure Development Constraints.

Dear Siting Committee:

The written comments are submitted on behalf of Communities for a Better Environment (CBE) and our thousands of members who live and breathe in California. On behalf of CBE, Greg Karras and Wanna Wright provided oral comments on substantive issues, and I raised a process issue, during the February 14, 2005 workshop. These written comments, including the attached document regarding substantive issues, are in addition to those comments.

These workshops related to the "Causes of Petroleum Infrastructure Development Constraints" have had the effect of pushing the agenda of the oil industry. Even the title of the workshop presupposes a particular agenda.

The Commission and the oil industry in the form of its lobbyists, the Western State Petroleum Association, are pushing for the Energy Commission to take over petroleum infrastructure permitting from local jurisdictions. CBE believes that this proposal will result in more pollution, less accountability, less legal protection for local communities and the environment, more environmental injustice and more petroleum dependence. Moreover, the proposal cannot achieve the advertised objective of preventing gasoline price hikes. CBE's position on these substantive issues is outlined in the enclosed one page fact sheet entitled "Stop the CEC's Petroleum Infrastructure Permitting Proposal."

In addition, CBE has an ongoing concern regarding Commissioner Boyd's participation in the petroleum infrastructure hearings. Commissioner Boyd is on the

committee responsible for the Integrated Energy Policy Report (IEPR) and is actively participating in developing the section related to petroleum infrastructure. As part of the report, the committee is considering whether to recommend so called one-stop permitting for petroleum infrastructure projects. These very issues are currently being promoted by Western States Petroleum Association (WSPA), an industry lobbying firm where, according to the *L.A. Weekly*, Commissioner Boyd's wife serves as chief of staff.<sup>1</sup> Thus, through his relation to WSPA and through his involvement in these workshops and decision making, Commissioner Boyd acts in the appearance of conflict. Last year in a letter dated July 9, 2004, CBE requested that the CEC determine whether an actual conflict exists. There has been no response to this request.

Commissioner Boyd's conflict of interest should prohibit him from participating on the proposed plan. While in a newspaper article, Boyd claimed that he had "basically" "firewall[ed]" himself from the decision-making process,<sup>2</sup> his subsequent involvements indicates otherwise. Commissioner Boyd actively participates in the development of the report and committee workshops supporting the so-called one-stop proposal.

Meanwhile, his wife, Catherine Reheis-Boyd, has been involved in promoting the proposal. She has emailed Commission staff regarding the plan. (The emails were described in CBE's July 9, 2004, letter to the Commission.) While she does not testify at CEC meetings on this topic, her supervisor, Joe Sparano, does.<sup>3</sup>

Commissioners of the CEC are governed by conflict of interest codes<sup>4</sup> which incorporate the Fair Political Practices Commission's conflict of interest codes under the Political Reform Act.<sup>5</sup> Under the Political Reform Act, an official may not take part in a governmental decision in which he has a disqualifying conflict of interest.<sup>6</sup> Such a conflict regarding a particular governmental decision exists if it is reasonably foreseeable that the decision will have a material financial effect on the official's economic interests including spousal income.<sup>7</sup>

In light of a disqualifying conflict, the Political Reform Act requires an official to publicly announce the specific financial interest that is the source of the conflict.<sup>8</sup> He must then recuse himself from any discussion or deliberations on the matter in question and must not participate in the decision or be counted for purposes of a quorum.<sup>9</sup>

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<sup>1</sup> "The Well-Oiled Deal: Taking away local control of refineries is a family matter," by William J. Kelly, *L.A. Weekly*, March 31, 2004.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Cal. Code Regs., tit. 20, § 2401.

<sup>5</sup> See Political Reform Act Gov. Code, § 87100 et seq., implemented in the FPPC's regulations at Cal. Code Regs., tit. 2, § 18730 and § 18700 et seq.

<sup>6</sup> *Id.*

<sup>7</sup> See the FPPC's implementing regulations: Cal. Code Regs., tit. 2, § 18702.1-18702.3 (participation in a governmental decision); § 18706 (reasonable foreseeability); §§ 18705-18705.5 (materiality); §§ 18703-18703.5 (economic interests).

<sup>8</sup> Political Reform Act Gov. Code, § 87105; Cal. Code Regs., tit. 2, § 18702.5(b)(1).

<sup>9</sup> Political Reform Act Gov. Code, § 87105; Cal. Code Regs., tit. 2, § 18702.5(b)(3).

Disqualified officials may not attend closed sessions or obtain any confidential information from the closed session.<sup>10</sup>

According to FPPC regulations detailed above, Commissioner Boyd must recuse himself from further participation and make a disclosure to the public detailing this conflict. CBE requests that Commissioner Boyd immediately recuse himself from all aspects of the petroleum infrastructure issues.

Sincerely

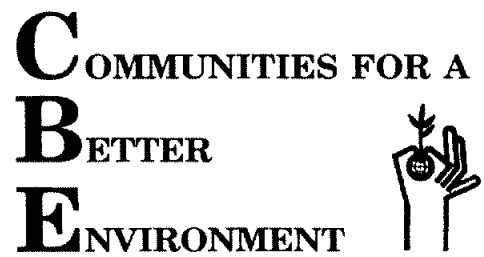
/signed  
William Rostov  
Staff Attorney

Attachment: Substantive comment on petroleum infrastructure permitting issues

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<sup>10</sup> Cal. Code Regs., tit. 2, § 18702.1(c).

# Stop the CEC's Petroleum Infrastructure Permitting Proposal



The California Energy Commission (CEC) and the oil companies propose to take permit authority for oil refinery and pipeline projects away from local governments and regional environmental agencies and give it to the CEC.

The CEC and industry say this will protect our environment, promote environmental justice, speed refinery expansions, stop gasoline price increases and provide for future energy needs.

They are dead wrong. Communities have too little protection from bad refinery projects that could increase already-severe pollution threats to our health *today*. Their Proposal will make this bad situation worse. At the same time, it will not stop gas prices from increasing, and in the long-term, it might make our energy crisis worse.

**More pollution:** Refineries are already the biggest industrial polluters in California. Statewide, refinery pollution could *increase* significantly if we rely on the refinery expansions that the Proposal seeks instead of conservation and alternative energy to meet the fuel needs projected by CEC staff. Individual refineries' pollution could *more than double* if the CEC permits projects that switch to cheaper, dirtier crude oil slates. Threats to the health of low-income families living near refineries could increase further. This will not protect our environmental health.

**Less accountability:** Now, permits for controversial refinery expansions are decided by *elected* officials on local city councils and boards of supervisors and regional air districts. The Proposal would instead let *unelected bureaucrats* in Sacramento make these permit decisions. This will take decision-making power even further away from impacted communities: it will make existing environmental injustice even worse.

**Less legal protection:** Now, communities and workers can appeal refinery expansion permit mistakes to superior courts in each county, and these courts can stop bad projects that break the law. The Proposal would only allow these permits to be reviewed by the California Supreme Court – which can deny appeals without reviewing the record. This would *weaken* communities' *already-inadequate* legal protection from refinery pollution.

**No price protection:** The Proposal can't stop gasoline prices from increasing. Gas prices *will* increase until we switch to alternatives because of increasing global demand for limited oil. Allowing more pollution and environmental injustice won't stop gas price hikes.

**More petroleum dependence:** Instead of providing for California's long-term energy needs, the Proposal could *worsen our energy crisis*. If we delay until the price of oil is too high for our economy to sustain investment in alternative energy infrastructure, it will be too late to avoid severe climate change *and* economic impacts. By helping to lock-in even more petroleum infrastructure instead of faster expansion of alternatives, the Proposal increases long-term risk.

**Anti-environmental propaganda:** The CEC and industry argue for taking away local permits by blaming these environmental protections for a lack of in-state refinery capacity. This anti-environmental attack ignores that *California exports fuels* to other states but *imports electricity* even though the CEC took over permitting authority for major power plants many years ago.

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