

Environmental Health Coalition

COALICION de SALUD AMBIENTAL

401 Mile of Cars Way, Suite 310 • National City, CA 91950 • (619) 474-0220 • FAX: (619) 474-1210
ehc@environmentalhealth.org • www.environmentalhealth.org

March 3, 2008

David Garcia
Chula Vista City Manager
276 Fourth Avenue
Chula Vista, CA 91910

DOCKET	
07-APC-4	
DATE	MAR 03 2008
RECD.	MAR 03 2008

Dear Mr. Garcia:

Environmental Health Coalition (EHC) feels compelled to correct some misconceptions and confusion surrounding General Plan Policy E6.4. The policy states that the City, "avoid siting new or re-powered energy facilities and other major toxic emitters within 1,000 ft. of a sensitive receptor." As EHC has stated several times before, a plain reading of the policy clearly illustrates its applicability to the current situation. The proposed plant will be located roughly 350 feet from the nearest residential community, a sensitive receptor. Furthermore, as the plant will be a new 100 MW facility, it thus falls into the "new or re-powered energy facilities" threshold.

In addition to the a plain meaning interpretation of the actual text, the history of the policy's drafting and passing provides illustrates that the legislative intent of those that created and voted for the policy is to prevent the same type of siting that the MMC proposal represents.

EHC began as early as December 2003 to make recommendations to members of the Environmental, Open Space and Sustainable Development Subcommittee. In a letter to Ed Batchelder and Paul Hellman of the City of Chula Vista, EHC requested that there should be a general plan policy that ensures that, "new or repowered energy generation in the City results in a reduction of environmental and human health impacts for residents living downwind of generation facilities." Furthermore, the letter suggests that the plan should ensure, "that sensitive receptors such as schools, day care, residential, and senior centers are not impacted by energy generation." Here, the foundations for what would eventually become E6.4 were being laid out.

By 2005, a proposed policy had now been drafted by city staff, with considerable input by members of the community and EHC. Staff's language for the draft version of E6.4 stated, "Avoid siting new or re-powered energy generation facilities and other major toxic air emitters within 1,000 feet of a sensitive receiver, or the placement of a sensitive receiver within 1,000 feet of a major toxic emitter, **unless a health risk assessment has been performed demonstrating that attendant health risks are within acceptable state and federal standards, as well as other relevant health hazard indices**" (emphasis added). This policy language is relevant as it adopts the general idea of the request EHC made in December 2003 covering new or re-powered power plants but went

further as it specifically gives a 1,000 foot prohibitive buffer rather than the less specific term of "residents living downwind."

In a letter dated July 20, 2005 to the Mayor and City Council regarding the 2005 staff recommendation for E6.4, EHC urged the health risk assessment language stricken from the proposed policy. As stated in the letter, "health risk assessments are a single tool to be as part of a full analysis of facts related to decision-making." EHC disagreed with making E6.4 a numbers game in which a health risk assessment that presented a particular piece of data, usually paid for and produced by the polluter, placing the project in a favorable light would be used to exempt a new energy generation facility from the policy. Also stated in the July 2005 letter was EHC's concern that "federal and state standards generally do not reflect cumulative toxic burdens in their standards, nor do health risk assessments." EHC opposed linking the policy to state and federal legislation arguing that such legislation does not adequately deal with local conditions and is simply "not protective."

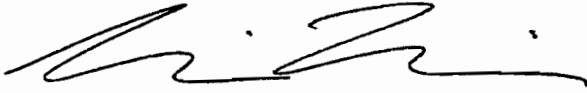
In the final adoption, the Council voted unanimously to strike the qualifying health risk assessment language in E6.4, the major qualifier for a 1,000 foot buffer between energy generation facilities and sensitive receptors. By striking this qualifying language, the Council made clear its intent that the policy creates an unconditional buffer barring energy generation facilities within 1,000 feet of a sensitive receptor and rejecting any numerical or other thresholds as was found in the staff recommended language. Thus, the policy bars all energy generation facilities regardless of whether or not that facility is, as MMC argues, cleaner and more efficient.

Furthermore, the new policy reflects Council's clear direction that the buffer and policy was not to be tied into federal or state standards. Thus it is incorrect for MMC to bring in a Federal Clean Air Act definition to define "major toxic emitters." MMC is also incorrect to bring in projected emissions data as proof that the policy does not apply, as by striking out the health risk assessment, the policy framers made it clear that there should not be a health risk threshold for a power plant or similar type of polluter to be covered under the policy.

In conclusion, the surviving record of the general plan update process illustrates the development of a policy that creates a clear and strong prohibition against new or re-powered energy generation without qualification or numerical thresholds. The policy, in clear terms, says that a power plant shall not be placed within 1,000 feet of homes and schools. Here, approval of the MMC proposal will violate this policy in both the letter of the law and the spirit in which it was intended.

We strongly urge the city of Chula Vista to uphold the integrity of its General Plan; in fact it is your responsibility to your citizenry. Please defend this policy and ensure its equal application through all of our communities.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'Leo Miras', with a long horizontal flourish extending to the right.

Leo Miras, Energy Policy Advocate
Environmental Health Coalition

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July 25, 2005

Mayor Stephen Padilla
City of Chula Vista
476 Fourth Avenue
Chula Vista, CA 91910

RE: EHC recommended policy amendments for the Final Chula Vista General Plan Update

Dear Mayor Padilla:

Environmental Health Coalition (EHC) representatives have participated in the GPU process since its inception as a member of the Environment, Open Space, and Sustainability Subcommittee. EHC has been primarily involved with the Environmental Element of the GPU. We wish to thank the staff for the significant improvements in the GPU text revisions issued this month. Many of our comments have been addressed and we thank the staff for their responsiveness to our comments.

We do, however, still have three areas that we hope the Council will strengthen to better protect residents' health and to seek consistency with the recommendations in the Regional Comprehensive Plan (RCP) and the Regional Energy Strategy (RES) on the issues of Air Quality, Energy Sustainability, and Environmental Justice.

ENVIRONMENTAL JUSTICE

In 2003, direction to incorporate Environmental Justice (EJ) was specifically added to the State Guidance on General Plans.¹ It is clear that the staff consulted this guidance in developing the EJ language in the Environmental Element and we sincerely appreciate their efforts and fully support the addition of a specific objective and policies to address environmental justice.

However, our major concern is Policy EE 23.3 that merely seeks to "*avoid over-concentrating*" dangerous facilities near schools or residential units. Facilities that pose a significant hazard to human health should not be located in proximity to these types of facilities at all.

EHC requests that policy EE 23.3 be amended to read:

EE 23.3 *Avoid siting industrial facilities and uses that pose a significant hazard to human health and safety in a manner that seeks to avoid over-concentrating these uses in proximity to schools or residential dwellings.*

¹ http://www.opr.ca.gov/planning/PDFs/General_Plan_Guidelines_2003.pdf

This position is supported by the State Guidance on Environmental Justice which states in a section on New Residential Uses and Schools that "...*Cities and counties should provide for the location of new schools and residential dwellings in a manner that seeks to avoid locating these uses in proximity to industrial facilities and uses that will contain or produce materials that, because of their quantity, concentration, or physical or chemical characteristics, pose a significant hazard to human health and safety.*"²

PROMOTING CLEAN AIR

Another important amendment for the health of Chula Vista residents is the requirement that major toxic air emitter be, at a minimum, **no closer** than 1,000 feet to sensitive receptors. We strongly urge the Commission to strike the health risk assessment language from policy recommendation EE.6.4 as noted below. It is well established that Health Risk assessments are merely a model, easily manipulated, representing assumptions that may or may not be accurate, and should **never** be the single factor in allowing major toxic air emitters to impact human populations. Further, the federal and state standards generally do not reflect cumulative toxic burdens in their standards, nor do health risk assessments. Bottom-line, the current language is not protective.

EHC recommends policy EE 6.4 be amended to read:

EE 6.4 Avoid siting new or re-powered energy generation facilities and other major toxic air emitters within 1,000 feet of a sensitive receiver, or the placement of a sensitive receiver within 1,000 feet of a major toxic emitter. ~~unless a health risk assessment has been performed demonstrating that attendant health risks are within acceptable state and federal standards, as well as other relevant health hazard indices.~~

CREATING A SUSTAINABLE ENERGY FUTURE

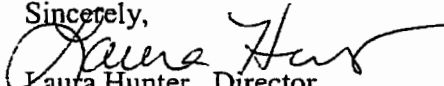
We also strongly support the additional policies for the inclusion of LEED, tree planting, and renewable energy. We hope the Council will take an even more assertive step and adopt the Regional Energy Strategy goal of satisfying 40% of the region's energy needs with renewable energy by 2030.

We recommend the policy EE 7.5 be amended to read:

EE 7.5 Pursue ~~Encourage~~ 40% city-wide electricity supply from clean renewable sources by 2017.

Thank you for the opportunity to comment on this important document. Please contact me with any questions on these amendments.

Sincerely,


Laura Hunter, Director
EHC Clean Bay Campaign

² State Guideline, page 27

STATE OF CALIFORNIA

ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:
The Application for Certification
for the CHULA VISTA ENERGY
UPGRADE PROJECT

Docket No. 07-AFC-4

PROOF OF SERVICE

I, Lilia Escalante, declare that on March 3, 2008, I deposited copies of the attached Data Request in the United States mail at National City, California, with first class postage thereon fully prepaid and addressed to the following:

CALIFORNIA ENERGY COMMISSION

Attn: Docket No. 07-SPPE-1
1516 Ninth Street, MS-14
Sacramento, CA 95814-5512

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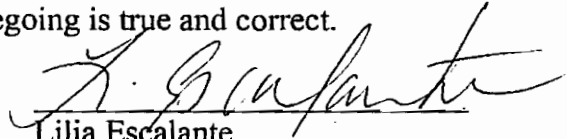
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cdawson@mckennalong.com
jpfannen@energy.state.ca.us
jboyd@energy.state.ca.us
rrenaud@energy.state.ca.us
cmeyer@energy.state.ca.us
kwbell@energy.state.ca.us

Energy Commission Docket Unit
Harry Scarborough, MMC Energy Inc
Jane Luckhardt, Applicant's Attorney
Douglas Davy, CH2M HILL
Steven Blue, Worley Parsons
Larry Tobias, Ca. ISO
Electricity Oversight Board
Marc Joseph, Adams Broadwell
Gloria Smith, Adams Broadwell
Suma Peesapati, Adams Broadwell
Charles Pomeroy, McKenna Long
Caren Dawson, McKenna Long
Commissioner Jackalyne Pfannenstiel
Commissioner James Boyd
Raoul Renaud, Hearing Officer
Chris Meyer, Project Manager
Kevin W. Bell, Staff Counsel

pao@energy.state.ca.us

Public Adviser's Office

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



Lilia Escalante