

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION ASSOCIATION AGENCY
WASHINGTON D.C.**

RECEIVED
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2007 JAN -4 AM 9:31
ENVR. APPEALS BOARD

Re: Bay Area Air Quality Management District

Russell City Energy Center

On November 1, 2007 the Bay Area Air Quality Management District

BAAQMD issued an authority to construct, PSD permit and Emission Reduction Credits ERC for the Russell City Energy Center. A 600MW fossil fuel fired facility adjacent to endangered species and protected habitats. Petitioner has another interest in the permit issuance in that I live at the location of the maximum CO impact. Petitioner brings this appeal to revoke the authority to construct PSD permit and ERC for the Russell City Energy Center

BAAQMD does not have the authority to issue federal actions in this case. The Authority issued by the EPA in the January 24, 2006 re-Delegation agreement was for another facility with the same name as "The new" Russell city Energy Center. The authority extends only to the previous facility, and "minor revisions." The prior authority included the requisite for a formal biological opinion from the USFWS.

The new Russell City Energy center (RCEC) has a different, non- contiguous location. It is a new permit. The equipment and associated emissions have changed. Many mitigations have been removed. The condition of a Formal Opinion from USFWS has been removed. The operation has changed from a baseload facility to a peaker plant as well as other changes. There is new ownership. It is clearly beyond "minor changes"

The BAAQMD did not follow its rules or those of the clean air act in approving RCEC. The one public notice prior to issuance of the permit was incomplete and ineffective. Petitioner also requests a copy of the amended PDOC which was never provided or noticed to the public and petitioner may have additional issues after review of the document.

1. Public Notice

The BAAQMD failed to notice the issuance and provide a public comment period for the amended PDOC for the RCEC as required by District Regulation 2-2-405. The amended PDOC is only reflected in the Energy Commission Docket Log.

(http://www.energy.ca.gov/dockets/docket_redesign.php?docketNo=01-AFC-7C.html) The amended PDOC is not even listed on the BAAQMD public noticing page nor was it noticed in any newspapers for public comment as required by district regulation 2-2-405.

2. BACT:

The projects PSD analysis indicates that the project will violate the new California NO₂ standard of 332 ugm³ when combined with background NO₂ levels (FDOC table 9). Best Available control Technology is available and achieved in practice which would limit large quantities of NO₂ emissions during start-up and prevent violations of the new standard. This technology, the fast start technology OpFlex from General Electric was recommended by the CEC but not required for the project in the FDOC by BAAQMD. . This technology has been demonstrated in practice at the Palomar Project in Escondido and is therefore required under regulation 2-2-206 of the districts rules and regulations as it has been demonstrated in practice and will prevent a significant impact to air quality in the BAAQMD. These emissions would also be considered a public nuisance under the BAAQMD Regulation 1, Section 301: **Public Nuisance** and the California Health and Safety Code.

3. ERC Deficit

The FDOC identified that the RCEc will surrender ERC's in the amounts of 103 TPY of NOx and 80 TPY of POC to offset new emissions of 134 TPY of NOx and 28.5 TPY of POC. The project has the potential to emit up to 2,213 lbs of NOx per day while the FDOC provides only 844 lbs per day from the issuance of the ERC's. The ERC's mitigate only 38 percent of the projects NOx emissions on any given day.

4. Emission Reduction Credit Exchange

The FDOC also changes the emission reduction package that was presented in the PDOC for the project which is a major alteration of the permit without appropriate opportunity for the public to comment on the projects offset package. The FDOC for the RCEC allows swapping ERC's with an already approved project the East Altamont Energy Center. The East Altamont energy Center's offset package was designed to mitigate significant impacts under CEQA in the Energy Commission siting process and public review and comment is required.

BAAQMD participated in the California Energy Commission (CEC) process and incorporated aspects of it into its decision. The public reasonably thought that concerns expressed to BAAQMD staff at the CEC Hearing would constitute "participation." BAAQMD subsequently opened and closed its public comment period with one notice in the English newspaper. Instructions were not offered in the notice about how to request a hearing, a telephone number, the amount of PSD increment consumed, or the amount of Emission Reduction Credits issued. Public Comments from the CEC hearing were not incorporated into its decision. Other Agencies were not informed including the affected county (Alameda) and city (Hayward) and the San Francisco Bay Conservation and Development Commission,

with jurisdiction over the adjacent shoreline. The California Department of fish and Game was not notified. East Bay Regional Park Department was not notified. No outreach to the majority, low income and non-English speaking community adjacent to the site occurred. The nearby hospitals were not notified. The current participants and the participants from the previous approval were not noticed.

The CEC approved the project. The CEC physical measurements for notice and environmental Justice Issues were from the middle of the project. Under this logic a 2 mile wide facility would need to consider and notice no one. This act reduced the apparent population impact, probably by a factor of five and about 440 acres.

Appeals to the CEC decision are pending in the Supreme Court of California. Parties include the County of Alameda, Chabot College and other groups. Air Quality is the major concern followed by Failure to provide proper notice. BAAQMD issued its Final notice of action despite these actions without notifying any of the parties.

The Final notice of Action includes all of the above. Also, it does not have the address of the facility. The notice states that it is effective on November 1st. It is dated November 30th and Posted December 6th. It was not posted until after numerous comments from me. BAAQMD has resisted my attempts for clarification and participation. We feel at a distinct disadvantage receiving a notice after the fact.

The site is a non-attainment area. The conclusions of the determination of compliance do not include a determination of public benefit.

The EPA relied on incorrect information when it made its request for an informal opinion from USFWS. The impacts of air, noise, light and water pollution were not considered. The measurement for noise impacts was to the Cogswell footbridge at the opposite end of the end of the protected habitat.

The impact in the actual habitat could be 70db. The site is surrounded on at least 180 degrees by wetlands.

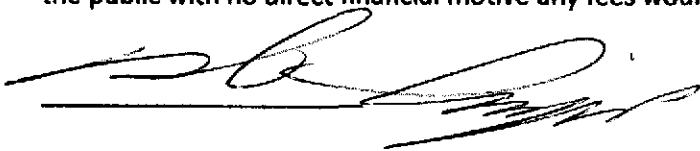
Better technology was recommended by the CEC but not supported by BAAQMD. Determinations were made based upon outdated information. No measure of greenhouse gas emissions was demonstrated.

The cumulative effects; of this project, the Nearby Eastshore Energy Center proposal, and the 2 freeways near both sites was not considered. The Greenhouse gas emissions dwarf the goals of the Districts \$3,000,000 greenhouse gas reduction grant program.

A virtual repeat of the above is now occurring with the Eastshore Energy Center licensing process. BAAQMD received over 1000 public comments and did not elect to have a hearing, consider their concerns or notify the commenter's of further action.

BAAQMD Toxic Air Contaminant (TAC) health risk screening does not including Acrolein, and, at least for Eastshore, their emission factors are much lower than the EPA's HAPs (Hazardous Air Pollutants).

I ask for reasonable fees for participation/intervention in BAAQMD actions including, legal and expert opinions. Should the board not summarily agree to my above requests I ask for time to secure legal counsel and expert testimony for an oral hearing. I also request a waiver of any fees. As a member of the public with no direct financial motive any fees would create a hardship.



Rob Simpson 510-909 1800

27126 Grandview Avenue Hayward California 94542

While my primary means of communication with relevant agencies has been verbal. The following is a record of relevant email communications.

Page 6-8 Emanuelle Rapicavoli/R9/USEPA/US@EPA

Pages 9-18 BAAQMD

Pages 9-23 USFWS

Page 24-25 argument for BACT

Hi Rob,

I did contact BAAQMD and they did verify that they published a public notice in the Oakland Tribune on April 12, 2007 announcing the proposed permit. They issued the permit on November 1st, 2007. The permit became effective one month later and was noticed at that time again in the Oakland Tribune on December 3rd, 2007.

Because we have delegated the issuance of this permit to the BAAQMD, they are responsible for the public notice requirements of this permit.
To view our delegation agreement to the BAAQMD, visit:

To appeal the PSD portion of the permit, you can send your written appeal to the Environmental Appeals Board. At this point, EPA region 9 can not opine on these appeals, it is up to the EAB to review your case.
Information on how to appeal can be found here:

NOTICE: All filings delivered to the Board by hand or courier, including Federal Express, UPS, and U.S. Postal Express Mail, **MUST** be delivered to the following address:

Colorado Building
1341 G Street, NW
Suite 600
Washington, D.C. 20005

All documents that are sent through the U.S. Postal Service (except by Express Mail) MUST be addressed to the EAB's mailing address, which is:

U.S. Environmental Protection Agency
Clerk of the Board, Environmental Appeals Board (MC 1103B)
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-0001

I hope that is helpful,
Emanuelle Rapicavoli/R9/USEPA/US@EPA 12/12/2007 03:46

Emanuelle,

Any luck finding out if there is a PSD permit and if the procedures are in compliance?

Rob

-----Original Message-----

From: Rapicavoli.Emmanuelle@epamail.epa.gov
[mailto:Rapicavoli.Emmanuelle@epamail.epa.gov]
Sent: Monday, December 10, 2007 6:31 PM
To: Grandview Realty
Subject: Re: FW: Russell City Energy Center

Hi Rob,

I am still looking into this with the BAAQMD. I'll try to get you a response by Wed. Thanks for your patience,

Emmanuelle 12/07/2007 10:04 FW: Russell City Energy Center

Hi Emmanuelle,

Have you had any luck obtaining public notices from BAAQMD that comply with 124.10. Can you tell me the date of issuance of the PSD permit.

The other section that I questioned is also from 124.10. oops I said 124.11 below I think that it is all in 124.10
(vii) For PSD permits only, affected State and local air pollution control agencies, the chief executives of the city and county where the major stationary source or major modification would be located, any comprehensive regional land use planning agency and any State, Federal Land Manager, or Indian Governing Body whose lands may be affected by emissions from the regulated activity;

From: Grandview Realty [mailto:GrandviewRealty@comcast.net]

Sent: Wednesday, December 05, 2007 12:54 PM
To: 'rapicavoli.emmanuelle@epa.gov'
Subject: Russell City Energy Center

Hi Emmanuelle,

I did find one of the sections I referenced. Sorry I'll try to be more organized.
Can you tell me if this section applies?
Thank You

Rob Simpson
Hayward Area Planning Association
510-909-1800

124.11 page 280-281

(d) Contents (applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA))—

(1) All public notices. All public notices issued under this part shall contain the following minimum information:

(i) Name and address of the office processing the permit action for which notice is being given;

(ii) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit, except in the case of NPDES and 404 draft general permits under §§ 122.28 and 233.37;

(iii) A brief description of the business conducted at the facility or activity described in the permit application or the draft permit, for NPDES or 404 general permits when there is no application.

(iv) Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit, as the case may be, statement of basis or fact sheet, and the application; and

(v) A brief description of the comment procedures required by §§ 124.11 and 124.12 and the time and place of

any hearing that will be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision.

No virus found in this outgoing message.

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Version: 7.5.503 / Virus Database: 269.16.14/1172 - Release Date:

[Faint, mostly illegible text, possibly a forwarded message or a very light scan of a document.]

-----Original Message-----

From: Grandview Realty [mailto:GrandviewRealty@comcast.net]
Sent: Thursday, December 06, 2007 5:29 PM
To: Brian Bateman
Subject: FW: russell city energy center

From: Grandview Realty [mailto:GrandviewRealty@comcast.net]
Sent: Thursday, December 06, 2007 10:34 AM
To: 'Weyman Lee'
Subject: FW: russell city energy center

2-4-405 Publication, Public Comment and Inspection: Before approving the banking of any emission reduction in excess of 40 tons per year of any pollutant or before declaring a moratorium on further banking of emission reductions, the APCO shall cause to be published in at least one newspaper of general circulation within the District, and be sent to any individual submitting a written request to the APCO for notification, **a notice stating the preliminary decision of the APCO to approve the banking of emission reductions** or to declare a moratorium on further banking of emission reductions and inviting written public comment. The APCO shall make available for public inspection at District headquarters the information submitted by

2-2-405 Publication and Public Comment: If the application is for a new major facility or a major modification of an existing major facility, or requires a PSD analysis, or is subject to the MACT requirement, the APCO shall within 10 days of the notification of the applicant, cause to have published in at least one newspaper of general circulation within the District, a prominent notice stating the preliminary decision of the APCO, the location of the information available pursuant to Section 2-2-406, and inviting written public comment for a 30 day period following the date of publication. Written notice of the preliminary decision shall be sent to the ARB, the regional office of the EPA and adjacent districts. A copy of this notice shall be provided to any

person who requests such specific notification in writing. During this period, which may be extended by the APCO, the APCO may elect to hold a public meeting to receive verbal comment from the public. **The written notice shall contain the degree of PSD increment consumed.**

2-3-404 Public Notice, Comment and Public Inspection: The preliminary decision made pursuant to Section 2-3-403 shall be subject to the public notice, public comment and public inspection requirements contained in Section 2-2-406 and 407 of Rule 2.

40cfr51q) *Public participation.* The plan shall provide that—

(1) The reviewing authority shall notify all applicants within a specified time period as to the completeness of the application or any deficiency in the application or information submitted. In the event of such a deficiency, the date of receipt of the application shall be the date on which the reviewing authority received all required information.

(2) Within one year after receipt of a complete application, the reviewing authority shall:

(i) Make a preliminary determination whether construction should be approved, approved with conditions, or disapproved.

(ii) Make available in at least one location in each region in which the proposed source would be constructed a copy of all materials the applicant submitted, a copy of the preliminary determination, and a copy or summary of other materials, if any, considered in making the preliminary determination.

(iii) Notify the public, by advertisement in a newspaper of general circulation in each region in which the proposed source would be constructed, of the application, the preliminary determination, **the degree of increment consumption that is expected from the source or modification, and of the opportunity for comment at a public hearing** as well as written public comment.

(iv) **Send a copy of the notice of public comment to the applicant, the Administrator and to officials and agencies having cognizance over the location where the proposed construction would occur as follows: Any other State or local air pollution control agencies, the chief executives of the city and county where the source would be located; any comprehensive regional land use planning agency, and any State, Federal Land Manager, or Indian Governing body whose lands may be affected by emissions from the source or modification.**

(v) **Provide opportunity for a public hearing** for interested persons to appear and submit written or oral comments on the air quality impact of the source, alternatives to it, the control technology required, and other appropriate considerations.

(vi) Consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing(s) in making a final decision on the approvability of the application. The reviewing authority shall make all comments available for public inspection in the same locations where the reviewing authority made available preconstruction information relating to the proposed source or modification.

(vii) Make a final determination whether construction should be approved, approved with conditions, or disapproved

(vii) **For PSD permits** only, affected State and local air pollution control agencies, the **chief executives of the city and county** where the major stationary source or major modification would be located, any **comprehensive regional land use planning agency** and any **State, Federal Land Manager**, or Indian Governing Body whose lands may be affected by emissions from the regulated activity;

(d) *Contents (applicable to State programs, see §§123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA))* —(1) *All public notices.* All public notices issued under this part shall contain the following minimum information:

(i) Name and address of the office processing the permit action for which notice is being given;

(ii) Name and **address** of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit, except in the case of NPDES and 404 draft general permits under §§122.28 and 233.37;

(iii) A brief description of the business conducted at the facility or activity described in the permit application or the draft permit, for NPDES or 404 general permits when there is no application.

(iv) Name, address and **telephone number** of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit, as the case may be, statement of basis or fact sheet, and the application; and

(v) A brief description of the comment procedures required by §§124.11 and 124.12 and the time and place of any hearing that will be held, **including a statement of procedures to request a hearing** (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision.

No virus found in this outgoing message.

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Version: 7.5.503 / Virus Database: 269.16.13/1170 - Release Date: 12/4/2007 10:52 AM

From: Alexander Crockett [mailto:ACrockett@baaqmd.gov]

Sent: Tuesday, December 04, 2007 1:34 PM

To: Grandview Realty
Subject: RE: Russell City

I gave you my answer when we talked before. The District can demonstrate that it complied with the applicable state and federal requirements with respect to this project. I know you may disagree with that, but I think you are incorrect. As I also stated, anywhere where the District did not properly follow a requirement, we will fix any deficiencies. We already did so by publishing a notice of the permit issuance in the newspaper. I do not see any other deficiencies. I also note that many of the regulatory provisions that you've cited do not even apply to PSD permits or District authority to construct permits. I'm really not interested in spending any more time trying to go through each one with you to explain why it does or does not apply.

Sandy Crockett

From: Grandview Realty [mailto:GrandviewRealty@comcast.net]
Sent: Tuesday, December 04, 2007 1:17 PM
To: Alexander Crockett
Subject: RE: Russell City

[Faint, mostly illegible text body]

From: Alexander Crockett [mailto:ACrockett@baaqmd.gov]
Sent: Tuesday, December 04, 2007 12:56 PM
To: Grandview Realty
Subject: RE: Russell City

I find it ironic that you criticized me for having a "vocation to argue".

From: Grandview Realty [mailto:GrandviewRealty@comcast.net]
Sent: Tuesday, December 04, 2007 12:48 PM
To: Alexander Crockett
Subject: RE: Russell City

From: Alexander Crockett [mailto:ACrockett@baaqmd.gov]
Sent: Tuesday, December 04, 2007 12:39 PM
To: Grandview Realty
Subject: RE: Russell City

As we have discussed, we each have our respective positions on the propriety of the notice that was given for these proceedings, and there would be little use in spending more time going around and around debating them further.

Sandy Crockett

From: Grandview Realty [mailto:GrandviewRealty@comcast.net]
Sent: Tuesday, December 04, 2007 12:32 PM
To: Alexander Crockett
Subject: RE: Russell City

From: Alexander Crockett [mailto:ACrockett@baaqmd.gov]
Sent: Tuesday, December 04, 2007 12:23 PM
To: Grandview Realty
Subject: Russell City

Mr. Simpson:

I got your voice mail message regarding the Russell City project. Yes, I received your emails. Thanks for your input.

Sandy Crockett_____

Alexander G. Crockett, Esq.

Assistant Counsel

Bay Area Air Quality Management District

939 Ellis Street

San Francisco, CA 94109

Phone: (415) 749-4732

Fax: (415) 749-5103

I think we've already thoroughly discussed the issues of substance in our phone conversations last week. As you know, the District and the Energy Commission did consider the fast-start technology and determined that it was not appropriate for this proposed facility. The cumulative impacts of this and other projects were also evaluated in great detail. And the public and interested entities were given notice of the permitting action and an opportunity to comment. You have a right to your opinion on these points, but I don't think it would be a good use of our time for us to continue to restate our respective positions.

As for your personal insinuations, I do not intend to dignify them with a response.

Sandy Crockett

From: Grandview Realty [mailto:GrandviewRealty@comcast.net]
Sent: Monday, December 03, 2007 1:25 PM
To: Alexander Crockett
Cc: Public Records; Weyman Lee
Subject: RE: PSD Permit Appeals

Hi Sandy,

My wife and I are interested in reviewing the documents related to the Russell City project.

Thank you.

From: Alexander Crockett [mailto:ACrockett@baaqmd.gov]
Sent: Monday, December 03, 2007 1:16 PM
To: Grandview Realty
Cc: Public Records; Weyman Lee
Subject: RE: PSD Permit Appeals

To review documents related to the Russell City project, you will need to schedule a time with our public records coordinator. Please send her a public records request using the link on our homepage -- it's at the top in the middle of the page. Specify the category of documents you want to look at, and then you can set up a time with her to do so. I'm also cc'ing her on this email so she'll know to expect your request.

To have you included on a mailing list for information about the project, I am also forwarding your email to Weyman Lee, the permit engineer for the project.

Sandy Crockett

From: Grandview Realty [mailto:GrandviewRealty@comcast.net]
Sent: Monday, December 03, 2007 12:04 PM
To: Alexander Crockett
Subject: RE: PSD Permit Appeals

11/30/07

11/30/07 12:31 PM From: Alexander Crockett [mailto:ACrockett@baaqmd.gov]
Subject: PSD Permit Appeals

Here is another document you may be interested in. This is a layperson's
guide to appealing the issuance of federal permits at the Environmental Appeals Board in Washington,
DC. Page 5 discusses PSD permits and the EAB's authority as the appellate body for these permits.

Pages 23-24 discuss the requirement that someone participate in the PSD permitting process – by
submitting written comments on the proposed PSD permit – in order to be able to pursue an appeal.
Someone who did not participate by submitting comments has not right to appeal the permit.

From: Alexander Crockett [mailto:ACrockett@baaqmd.gov]
Sent: Friday, November 30, 2007 12:31 PM
To: Grandview Realty
Subject: PSD Permit Appeals

Here is another document you may be interested in. This is a layperson's
guide to appealing the issuance of federal permits at the Environmental Appeals Board in Washington,
DC. Page 5 discusses PSD permits and the EAB's authority as the appellate body for these permits.

Pages 23-24 discuss the requirement that someone participate in the PSD permitting process – by
submitting written comments on the proposed PSD permit – in order to be able to pursue an appeal.

Someone who did not participate by submitting comments has not right to appeal the permit.

Alexander Crockett

11/30/07

11/30/07 12:31 PM

From: Alexander Crockett [mailto:ACrockett@baaqmd.gov]

Sent: Friday, November 30, 2007 12:31 PM**To:** Grandview Realty

Subject: PSD Permit Appeals
Here is another document you may be interested in. This is a layperson's
guide to appealing the issuance of federal permits at the Environmental Appeals Board in Washington,
DC. Page 5 discusses PSD permits and the EAB's authority as the appellate body for these permits.
Pages 23-24 discuss the requirement that someone participate in the PSD permitting process – by
submitting written comments on the proposed PSD permit – in order to be able to pursue an appeal.
Someone who did not participate by submitting comments has not right to appeal the permit.

Sandy Crockett

Alexander G. Crockett, Esq.

Assistant Counsel

Bay Area Air Quality Management District

939 Ellis Street

San Francisco, CA 94109

Phone: (415) 749-4732

I'm not sure that you have the correct regulatory requirement here, but the substance is correct -- our agency is required to give adequate public notice and an opportunity to comment before taking permit actions like issuing a PSD permit. We did that here -- we gave notice of the proposed issuance of a PSD permit for this facility to the public and to EPA and other agencies, and we invited comment on the proposed permit. We satisfied all applicable procedural requirements for issuance of this permit.

Sandy Crockett _____

Alexander G. Crockett, Esq.

Assistant Counsel

Bay Area Air Quality Management District

939 Ellis Street

San Francisco, CA 94109

Phone: (415) 749-4732

Fax: (415) 749-5103

From: Grandview Realty [mailto:GrandviewRealty@comcast.net]

Sent: Friday, November 30, 2007 11:04 AM **To:** Alexander Crockett

Subject: notice required

This section only speaks to public notice, notice to affected agencies is also a concern.

Rob

(h) *Public participation.* Except for modifications qualifying for minor permit modification procedures, all permit proceedings, including initial permit issuance, significant modifications, and renewals, shall provide adequate procedures for public notice including offering an opportunity for public comment and a hearing on the

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Environmental Protection Agency § 70.8

draft permit. These procedures shall include the following:

(1) Notice shall be given: by publication in a newspaper of general circulation in the area where the source is located or in a State publication designed to give general public notice; to persons on a mailing list developed by the permitting authority, including those who request in writing to be on the list; and by other means if necessary to assure adequate notice to the affected public;

<<40cfr124.15.url>> Mr. Simpson:

I found the EPA regulatory requirement for notice of the final issuance of a federal permit (which the PSD permit is). It is in 40 C.F.R. section 124.15(a), a PDF copy of which can be found at the link below. As you will see, notice of the final issuance needs to be sent to the applicant and anyone who submitted comments on the proposed permit. There is no requirement for general public notice such as publication in a newspaper, on a website, or to the CEC's service list.

.gov/cfr_

2007/julqtr/pdf/40cfr124.15.pdf

Sandy Crockett

Alexander G. Crockett, Esq.
Assistant Counsel
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109
Phone: (415) 749-4732
Fax: (415) 749-5103

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Version: 7.5.503 / Virus Database: 269.16.11/1161 - Release Date: 11/30/2007

12:12 PM

---Original Message-----

From: Weyman Lee [mailto:Weyman@baaqmd.gov]

Sent: Thursday, December 06, 2007 9:46 AM

To: grandviewrealty@comcast.net

Cc: Bob Nishimura

Subject: RE: Russell City

The analyses were submitted by Calpine in their Application for Certification (AFC). You should also read the evaluation of the issues by the CEC in the staff assessment (PSA and FSA). These documents are available at the CEC website.

Weyman

-----Original Message-----

From: Bob Nishimura

Sent: Wednesday, December 05, 2007 2:11 PM

To: Weyman Lee

Subject: FW: Russell City

Weyman,

Do you want to answer Mr. Simpson statement?

Bob

-----Original Message-----

From: Grandview Realty [mailto:GrandviewRealty@comcast.net]

Sent: Wednesday, December 05, 2007 1:23 PM

To: Bob Nishimura

Subject: Russell City

Can you also direct me to the following analysis

2-2-401 Application: In addition to the requirements of Regulation
2-1-402, applications for

authorities to construct facilities subject to Rule 2 shall include all
of the following:

401.1 For new facilities, which will emit, and for a modification which
will increase

emissions more than 100 tons per year of carbon monoxide or 40 tons per
year of either precursor organic compounds or nitrogen oxides, an
analysis

of alternative sites, sizes, production processes, and environmental
control

techniques for such proposed source which demonstrate that benefits of the

proposed source significantly outweigh the environmental and social costs

imposed as a result of its location, construction or modification.

No virus found in this outgoing message.

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Version: 7.5.503 / Virus Database: 269.16.14/1172 - Release Date: 12/5/2007 8:41 AM

Dear Mr. Olah,

I have read with great concern the letter from the EPA to you regarding the Russell City Energy Center in the City of Hayward.

The letter incorrectly identifies the project. It states that "the nearest tidal marshes are 1400 feet to the south and separated from the project by distribution warehouses. In its new location Russell City would avoid impacts to seasonal wetlands and the protected species mentioned above."

The CEC staff report more correctly identifies the location as follows;

(see LAND USE Figure 1). It is immediately adjacent to salt ponds and levees, designated as Baylands in the City of Hayward General Plan, and the City of Hayward flood control channel. All areas to the north, east, and south of the project area are utilized for mixed industrial and commercial purposes. Baylands west of the project site have been set aside by the City of Hayward as Open Space and are included in the wetlands, marsh, and protected upland areas being restored under direction of the Hayward Area Shoreline Planning Agency (HASPA).

JUNE 2007 4.5-7 LAND USE

The attachment to the letter to you includes excerpts from Calpine's application. The area map incorrectly identifies the Eden Landing Preserve as "salt ponds"

The Calpine application identifies the elimination of mitigation Bio-10 but does not address the big issues identified in the final decision, elimination of the condition requiring consultation and a biological opinion from you, the Army Corp. of Engineers, and the San Francisco Bay Water Control board. They have also omitted Fish and Game SFBCDC and anyone else who may be contrary to licensing a

thermal power plant adjacent to sensitive wetlands. They have also eliminated many of the air quality mitigations.

This project will have direct negative unmitigated effects upon endangered wildlife

This decision of the CEC is being appealed by multiple parties including the county of Alameda, California pilots association, Chabot College and numerous environmental groups.

The Hearing is tomorrow at 10 AM at the CEC. Please attend to reopen the evidentiary hearing.

The following sections have been deleted from the final decision apparently without notice or regard for you.

BIO-6 through BIO-10, Deleted.

USFWS BIOLOGICAL OPINION

BIO-6 Formal consultation between the USFWS and USEPA shall be completed, and the project owner shall implement all terms and conditions of the resulting Biological Opinion.

Verification: No less than 30 days prior to the start of any site mobilization activities, the project owner must provide the Energy Commission CPM with a copy of the USFWS Biological Opinion. All terms and conditions of the Biological
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Opinion will be incorporated into the Biological Resources Mitigation Implementation and Monitoring Plan.

U. S. ARMY CORPS OF ENGINEERS SECTION 404 PERMIT

BIO-7 The project owner shall acquire and implement the terms and conditions of the USACE Section 404 permit.

Verification: No less than 30 days prior to the start of any site mobilization activities, the project owner shall submit to the CPM a copy of the permit required to fill on-site wetlands. Permit terms and conditions will be incorporated into the Biological Resources Mitigation Implementation and Monitoring Plan.

SAN FRANCISCO BAY REGIONAL WATER QUALITY CONTROL BOARD CERTIFICATION

BIO-8 The project owner will acquire and implement the terms and conditions of a San Francisco Bay Regional Water Quality Control Board Section 401 State Clean Water Act certification.

Verification: No less than 30 days prior to the start of any site mobilization activities, the project owner will provide the CPM with a copy of the final Regional Water Quality Control Board certification. The terms and conditions of the certification will be incorporated into the project's Biological Resources Mitigation Implementation and Monitoring Plan.

STORM WATER MANAGEMENT PLAN

BIO-9 The project owner shall develop a RCEC Storm Water Management Plan in consultation with the U.S. Fish and Wildlife Service, East Bay Regional Parks District, Hayward Area Parks and Recreation District, San Francisco Bay Regional Water Quality Control Board, City of Hayward Public Works Department, Alameda County Flood Control District and Staff.

Verification: The project owner will submit to the CPM a Storm Water Management Plan at least 60 (sixty) days prior to the start of any site mobilization activities (See Soil and Water Resources, Condition of Certification Soil & Water-3). The final approved plan will also be contained in the RCEC Biological Resources Mitigation Implementation and Monitoring Plan.

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HABITAT COMPENSATION

BIO-10 The project owner shall provide 26.19 acres of habitat to compensate for the loss of upland, freshwater seasonal wetlands. To mitigate the permanent and temporary loss of habitat, the project owner shall:

1. Purchase 26.19 acres of habitat adjacent to the proposed RCEC site; 2. Donate the 26.19 acres of habitat to the East Bay Regional Park District ("EBRPD"); 3. Assist in arranging a long-term lease to the EBRPD for 30 acres of salt marsh habitat owned by the City of Hayward; 4. Provide a suitable endowment fund to the EBRPD to manage the proposed habitat compensation and the City of Hayward property in perpetuity; 5. Implement the terms of the Agreement between EBRPD and the Russell City Energy Center LLC, to the extent such terms are consistent with the terms and conditions of this decision; and 6. Record, with the deed to the 26.19 acres of habitat compensation, an appropriate instrument containing such covenants as will benefit EBRPD and restrict use of the land as an enhanced wetland consistent with the terms and conditions of this decision. Such restriction shall be for the duration of the enhancement and monitoring activities specified in Section 1.2 of the Agreement between EBRPD and the Russell City Energy Center LLC.

Verification:

1. No less than 30 days prior to any site mobilization activities, the project owner shall provide written verification to the CPM that the required habitat compensation has been purchased and the restricting covenants recorded.
2. No more than 90 days after completion of the enhancement actions specified in Section 1.2 of the Agreement between the Russell City Energy Center LLC and the EBRPD, and their approval by the regulatory agencies, the project owner must provide written verification to the CPM that the Applicant has provided to the EBRPD a fee simple deed to the 26.19 acre parcel.
3. No less than 30 days prior to the start of construction of permanent structures, the project owner shall provide written verification to the CPM that the Applicant has paid to the EBRPD the first payment of \$300,000. Thereafter, as each subsequent payment is made to the

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EBRPD in accordance with the terms of the Agreement between RCEC and EBRPD, the project owner shall provide written verification to the CPM within 30 days after each payment is made.

4. BIO-10 is independent of, and is not intended to change, the contractual rights and obligations of the Agreement between RCEC and EBRPD.

| Rob Simpson, Real Estate Broker

| Grandview Realty 11/2/2007 11:04 AM

Application Number 15487 Facility ID # B3161.

One basis for the appeal relates to violations of District rules and Regulations in the analysis and issuance of the Authority to Construct. Specifically the petitioner alleges that the District violated section 2-2-301 by failing to require Best Available Control Technology for the project. Outdated information was used in determination The EPA models SCREEN3 and ISCST3 were used in the air quality impacts analysis based upon 1990-1994 ozone and meteorological data. Reference is made to NO2 concentrations for the last five years, 1996-2000. The BACT determination stems from a 1999 report from Onsite Sycom for GE turbines not the approved Westinghouse turbines. It fails to provide proven present technology that would limit the facilities potential high NOx emissions that occur during the power plants startup and shutdown cycles. The hourly emissions during startup and shutdown are much greater than during normal operation since the plants SCR and ammonia injection system are not operating at optimal conditions. The resulting emissions could have a significant effect on ozone and air quality in the Bay Area air basin. The projects emissions combined with background NO2 levels also has the potential to violate the new ARB NO2 standard promulgated on February 23, 2007. If this project was needed it should have been required to utilize fast start technology which can lower the projects startup time from six hours to one hour and lessen the projects proposed cold start NOx emissions from 480 pounds to 22 pounds and the warm start emission from 240 to 28 pounds per event. This technology has been utilized in practice at the Palomer Power Project in Escondido and is approved for The El Segundo facility. The technology is cost effective and utilized in practice. The CEC staff recommended this technology. District Staff was informed on the merits of the fast start technology but failed to include it in the BACT analysis or require it for the project.

Petitioners also allege that the Health Risk assessment is inadequate since the assessment fails to analyze the impacts of some of the toxic air contaminants.

There is also significant opportunity for bio-sequestration of emissions in the area.

BEFORE THE HEARING BOARD
OF THE
BAY AREA AIR QUALITY MANAGEMENT DISTRICT
STATE OF CALIFORNIA

APPEAL

In the Matter of the Appeal of

DOCKET NO.

Russell City Energy Center

Authority to construct

Application Number 15487

Facility ID # B3161