

May 25, 2004

Jack Broadbent, Air Pollution Control Officer
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109

Comments of Greenaction For Health & Environmental Justice on PG&E's Application for a Title V Clean Air Act Permit for the Hunters Point Power Plant

Dear Mr. Broadbent:

The BAAQMD must deny PG&E's application for a Title V Clean Air Act permit for the Hunters Point Power Plant on the following grounds:

- 1) Renewal of the permit would violate the civil rights of residents of Bayview Hunters Point as it would have a discriminatory and disproportionate impact on the low-income, predominantly people of color residents of Bayview Hunters Point, San Francisco, in violation of Title VI of the United States Civil Rights Act of 1964 and of BAAQMD's own "environmental justice" policies;

COMMENT 1

- 2) The Title V permit process conducted by BAAQMD was defective, biased in favor of PG&E, and flawed;

COMMENT 2

- 3) PG&E and BAAQMD have failed to prove that PG&E can assure compliance with a new permit, as required by Title V of the Clean Air Act;

COMMENT 3

- 4) The PG&E Hunters Point Power Plant threatens public health.

COMMENT 4

I. Issuance of a Title V Clean Air Act Permit For Hunters Point Power Plant Would Violate the Civil Rights of Residents of Bayview Hunters Point

As a recipient of federal funds, the Bay Area Air Quality Management District is prohibited from taking actions that discriminate on the basis of race, color, and national origin in violation of Title VI of the Civil Rights Act of 1964. Furthermore, under implementing regulations, 40 C.F.R. § 7.35 (2004), recipients of EPA financial assistance are required to implement their programs and activities in a non-discriminatory manner. Issuing a new Major Facility Permit and Acid Rain Permit for the PG&E Hunters Point Power Plant (Air District Facility #A0024) will have a discriminatory impact, detrimentally and disproportionately impacting the health and

well-being of low income and people of color residents in San Francisco's Bayview Hunters Point neighborhood.

COMMENT 5: EJ

Bayview Hunters Point is a Low-income Community of Color:

According to U.S. census data, approximately 30,000 people live in Bayview Hunters Point. Of this total, approximately 62% are African American, 21% are Asian, 9% are Hispanic, and 8% Caucasian. Income levels are significantly lower, and unemployment rates significantly higher than those for San Francisco as a whole: Nearly 40% of Bayview Hunters Point residents have annual incomes below \$15,000, while only 20% of the City's population as a whole have incomes that low, and the unemployment rate is 13% in Bayview Hunters Point, more than twice as high as the City as a whole.

Most impacted by adverse environmental conditions are the 12,000 persons, or 4,400 households living on the east side of Third Street in close geographical proximity to the PG&E Hunters Point power plant, other heavy industry, toxic contaminated sites including the Hunters Point Shipyard, and large amounts of polluting diesel truck traffic. Of these households, approximately 70% are African American; 15% are Asian (primarily Chinese and Pacific Islanders) and the remainder Hispanic or Caucasian. The east side of Third Street is also the poorest section of Bayview Hunters Point: At least 40% of these residents live at subsistence income levels. Two-thirds of the approximately 1,110 households within a one-mile radius of the PG&E power plant live in low-income public housing.

Bayview Hunters Point is Disproportionately Impacted By Pollution:

Bayview Hunters Point is already overburdened with pollution from a variety of sources. The PG&E power plant is right next to homes. The Potrero power plant, just one mile away, also negatively impacts Bayview Hunters Point. According to the Environmental Defense Scorecard, the area has four times as many toxin releases as any other San Francisco neighborhood.¹ Even Bay Area Air Quality Management District data shows that Bayview Hunters Point has the highest concentration of pollutants they measure (20 of 39). In addition, this poor San Francisco community of color has 700 hazardous waste handlers, 350 underground petroleum storage tanks, a treatment plant that processes 86% of the City's waste water, a Superfund site, and more than half of the industrially zoned land in San Francisco.

COMMENT 6: TECHNICAL IN REGARDS TO HIGHEST CONCENTRATION OF POLLUTANTS

ENGINEERING IN REGARDS TO TRUTH OF "700 hazardous waste handlers, 350 underground petroleum storage tanks, a treatment plant that processes 86% of the City's waste water, a Superfund site, and more than half of the industrially zoned land in San Francisco"

In addition, residents of Bayview Hunters Point suffer a disproportionate burden of harm from air pollution. In the early 90s, asthma hospitalizations for adult residents of Bayview Hunters Point were more than 4 times the state average. Hospitalizations for children were more than 3 times the state average,² and within San Francisco, morbidity rates for African-Americans were

¹ Case Study on Asthma in Bayview Hunters Point, <http://healthyamericans.org/reports/files/cacasestudy.pdf>

² University of California at San Francisco, San Francisco Department of Public Health, Bayview Hunters Point Health and Environmental Assessment Task Force.

more than twice those for whites.³ Cancer rates for men and women are extremely high in Bayview Hunters Point.

For many years, the health of low-income people of color in San Francisco's Bayview Hunters Point has been threatened by the outdated, polluting and unnecessary PG&E Hunters Point Power Plant. If the Bay Area Air Quality Management District issues the Major Facility Permit and Acid Rain Permit for the PG&E Hunters Point Power Plant and allows this plant to operate for five more years, it will have a discriminatory and disproportionate impact on low-income residents and people of color in Bayview Hunters Point based on race, color, or national origin, and violating Title VI of the United States Civil Rights Act of 1964 and implementing regulations, 40 C.F.R. § 7.35 (2004).

COMMENT 7: LEGAL

In addition, the issuance of a new Title V permit to PG&E for the Hunters Point power plant would be improperly based on a flawed, defective and biased analysis and "Permit Evaluation and Statement of Basis" for the proposed permit decision. If BAAQMD approves this proposed permit and ignores the flaws, defects, and bias that it is basing its decision on, this too will constitute a violation of civil rights. We will discuss these issues below.

COMMENT 8: LEGAL

These actions amount to environmental racism and violate the civil rights of residents who have suffered for decades from the disproportionate impacts of dirty fossil fuel plants located in, and next to, their community.

II. The Permit Process Was Defective, Biased, and Flawed:

Beginning with PG&E's submission of their Title V application, BAAQMD had conducted this permit process in a defective, biased and flawed manner:

- a) BAAQMD improperly waited more than one year from the time that PG&E submitted their permit application to hold the public hearing, effectively allowing PG&E's prior five year Title V permit to become at least a six year permit. PG&E submitted their current Title V permit application on March 11, 2003, over 14 months ago. The BAAQMD sat on the permit application and failed to notify the community about the application until challenged by Greenaction and other community organizations.
- b) PG&E's prior permit expired September 13, 2003, and it is now over eight months later and they are still being allowed to operate on an old permit that was issued with no public review or real opportunity for input into.
- c) BAAQMD should have held the public hearing many months earlier than they did, which would have allowed a decision on the permit application to be made in a timely manner. BAAQMD's failure to conduct a timely permit process only helped PG&E, allowing them to operate above and beyond public scrutiny while polluting an overburdened community.

³ California Department of Health Services: County Health Status Profiles 1997; California County Asthma Hospitalization Chart Book, August 1997; San Francisco Department of Health Services Kindergarten Retrospective Surveys; San Francisco Department of Public Health.

- d) BAAQMD staff member Steve Hill told community representatives that the permit would be issued, and claimed that “the air in Bayview Hunters Point next to the power plant is the same as in Marin County.” These comments demonstrated bias in favor of PG&E, and could have discouraged public participation in a process many see as rigged in favor of PG&E.
- e) BAAQMD’s “Permit Evaluation and Statement of Basis” for the proposed renewal failed to include an environmental justice analysis to identify how a proposed permit could possibly comply with environmental justice laws and policies.
- f) The “Permit Evaluation and Statement of Basis” failed to include a cumulative impact analysis, essential to any legitimate evaluation of risks or changed circumstances: for example, no mention whatsoever was made of the three fossil fuel combustion turbines being sited by the City in Southeast San Francisco, despite the clear fact that these new power plants would increase air pollution in the already overburdened Bayview Hunters Point neighborhood.
- g) The “Permit Evaluation and Statement of Basis” failed to mention anything about the universally acknowledged high asthma and cancer rates in Bayview Hunters Point that many health and government experts believe is at least in part caused by environmental pollution.
- h) The “Permit Evaluation and Statement of Basis” claims on page 12 that “The BAAQMD Compliance and Enforcement Division has conducted a review of compliance over the past year and has no records of compliance problems at this facility during the past year.” However, this claim is contradicted by testimony from residents who affirmed they indeed have complained about compliance problems at the plant. In fact, complaints were stated directly to the BAAQMD APCO, other senior agency staff and BAAQMD Board members during a tour of Bayview Hunters Point on January 7, 2004. BAAQMD’s claim that there were no complaints that can be considered since none allegedly were called in to the 800-334-odor complaint line is without merit as BAAQMD had never informed residents of the existence of that number. It is unreasonable and improper for BAAQMD to base their claim there have been no complaints solely on the lack of calls to a phone number no residents knew about.
- i) BAAQMD’s incorrect claim of no compliance problems – and BAAQMD’s extreme bias in favor of PG&E – is documented in the BAAQMD “Compliance and Enforcement Division Office Memorandum” dated March 8, 2004 and included in the “Permit Evaluation and Statement of Basis.” This document, written by Kelly Wee, Director of Enforcement, states that the District “did not issue any Notices of Violation during this review period.” However, the memorandum does admit that “*During this review period PG&E requested breakdown relief associated with two indicated NOX excesses and three inoperative monitors.*” Despite the emissions excesses and monitor breakdowns, BAAQMD again demonstrated its bias in favor of the polluter by deciding not to declare these violations.
- j) At the April 6, 2004 public informational meeting on the proposed Title V permit, BAAQMD staff responded to community concerns about the monitor breakdowns by claiming, without a factual basis, that these breakdowns were very short in duration. However, further review has documented that the BAAQMD claim was false: in fact, the BAAQMD later admitted monitors were down for over 229 hours – about 10 days! – during the review period (BAAQMD Review of Compliance Record, April 27, 2004).

Adding insult to injury, at the April 6th meeting BAAQMD staff told the audience that the facility was probably in compliance when the monitors were not operating even though there is no evidence to document that claim. The incorrect and undocumented statements made by BAAQMD staff at the April 6th meeting may have convinced community members the inoperative monitors really were only down for a few hours and therefore may have resulted in community members not participating in the official comment period. These incorrect statements, and the failure to include them in the “Permit Evaluation and Statement of Basis,” again document the bias, defects and flaws in the permit process.

- k) The “Facility Summary” in BAAQMD’s April 27, 2004 “Review of Compliance” document has further incorrect statements in it, again with the serious potential to bias the permit process in many ways. The BAAQMD document claims that “The primary function of this facility is to supply electrical power to the City and County of San Francisco.” That is a false statement. In fact, the California Independent System Operator has confirmed that the primary function of this facility is to provide “reliability” for the Greater Bay Area, not San Francisco. Claiming in writing that the purpose of the PG&E plant is to provide energy for San Francisco clearly could dissuade people from opposing the permit application even if they had concerns about the pollution from the plant. On the other hand, if BAAQMD had stated the truth, that the plant is to allegedly provide reliability for the Greater Bay Area, more people might have joined the many who spoke out against the permit. Again, BAAQMD’s use of incorrect information has resulted in a biased, defective and flawed permit process.
- l) These many acts of bias and incorrect statements potentially had a detrimental impact on public participation in the permit process. If people believed the BAAQMD comments referenced above, they may have decided not to participate in the public comment and permit process, violating the Clean Air Act’s mandate for public participation and violating environmental justice mandates as well.

COMMENT 8: LEGAL

III. PG&E and BAAQMD have failed to prove that PG&E can assure compliance with a new permit, as required by Title V of the Clean Air Act:

COMMENT 9: ENFORCEMENT

General claims of compliance, contradicted by public testimony and almost 10 days of inoperative monitors, cannot be used to certify that PG&E can assure compliance with a new Title V permit. For example, residents testified about dark and red smoke coming out of the plant on numerous occasions, yet BAAQMD claims the monitors never registered such incidents.

It is clear from the contradiction between BAAQMD claims and the reality being experienced by residents living next to the PG&E plant that there are problems with compliance, inspections and the monitoring system that were not addressed in the proposed permit or permit evaluation.

Based on the many compliance problems documented by residents living adjacent to the PG&E plant, and based on the long periods of the plant operating with inoperative monitors, PG&E cannot assure compliance and therefore cannot receive a Title V Clean Air Act Permit.

IV. The PG&E Hunters Point Power Plant Threatens Public Health:

PG&E's Hunters Point power plant is the largest stationary source of criteria air pollutants in the Bayview Hunters Point community⁴, and one of the largest stationary sources of ozone precursors in the San Francisco Bay Area. Since asthma is exacerbated by ozone according to the Bay Area Air Quality Management District, EPA, and numerous other sources, operation of the plant has a direct and deleterious effect on residents of Bayview Hunters Point--a community where asthma hospitalizations for adult residents were found to be more than 4 times the state average, and hospitalizations for children more than 3 times the state average.⁵ In addition, the plant emits significant amounts of PM10 and PM2.5—both of which are found, according to the California Environmental Protection Agency (Cal EPA), to cause health effects that “are significant and include premature death and cardiorespiratory disease.” The Cal EPA states that vulnerable groups include “children, asthmatics, and those with pre-existing heart and lung disease.”⁶

COMMENT 10: TRUTH OF LARGEST STATIONARY SOURCE--ENGINEERING

At the public hearing resident after resident testified about their asthma problems. Kids, teenagers and adults all spoke about suffering from asthma when they are in close proximity to the PG&E plant. Many residents spoke of other ill health effects they believe are also linked to air pollution from PG&E. This testimony confirmed what has been documented in government health studies: Bayview Hunters Point residents suffer extremely high rates of asthma. Residents testified about how the power plant emissions impact their health and are a nuisance to their community.

Since Health and Safety Code § 40752 requires the Air Pollution Control Officer (APCO) to take all action necessary to enforce air pollution control laws, including H&S Code § 41700 which requires the APCO to prohibit any person from discharging “from any source whatsoever such quantities of air contaminants or other material which cause injury, detriment, nuisance or annoyance to any considerable number of persons or the public”, BAAQMD must deny a Title V Clean Air Act Permit to PG&E's Hunters Point Power Plant in order to protect the public health.

COMMENT 11: ENFORCEMENT: APPLICABILITY OF NUISANCE REGULATION

Conclusion:

Renewal of a Major Facility Permit and Acid Rain Permit for the PG&E Hunters Point Power Plant will subject long-suffering residents of Bayview Hunters Point to years more of fossil fuel pollution. Since residents are already hospitalized for asthma, cognitive heart failure,

⁴ 2003 Emission Inventory, California Air Resources Board

⁵ University of California at San Francisco, San Francisco Department of Public Health, Bayview Hunters Point Health and Environmental Assessment Task Force. Presented at “The Landscape of Our Dreams Environmental Health Symposium,” October 9, 1999.

⁶ Review of the California Ambient Air Quality Standards for Particulate Matter and Sulfates, June 2002 Public Workshops, found online at <http://www.arb.ca.gov/research/aaqs/std-rs/pmfinal-ws/June02workshopsFinal.pdf>

hypertension, diabetes, and emphysema at three times the statewide average⁷, any delay in denying the permit will result in incalculable harm for the community. We urge the BAAQMD to deny the permit and affirm the Air Districts stated commitment to environmental justice and the protection of public health.

Sincerely,

Bradley Angel
Executive Director
Greenaction for Health and Environmental Justice

⁷ Golden Gate University School of Law's Environmental Law and Justice Clinic in *Comments on Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits and Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs*.