

Californians for Renewable Energy, Inc. (CARE)

821 Lakeknoll Dr.
Sunnyvale, CA 94089
(408) 325-4690

STATE OF CALIFORNIA

Energy Resources Conservation
and Development Commission

In the Matter of:

) Docket No. 99-AFC-3

Application for Certification for the
Metcalf Energy Center [Calpine
Corporation and Bechtel Enterprises, Inc.]

) **Motion of Necessity for Environmental Justice**

) **Analysis on the Impacts of the MEC on**

) **Low-income and Minority Populations**

) **including school children & CPR Request**

Motion of Necessity for Environmental Justice Analysis on the Impacts of the Metcalf Energy Center on Low-income and Minority Populations including school children

The U. S Environmental Protection Agency (EPA) defines environmental justice as:

“The fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair treatment means no group of people, including racial, ethnic, or economic group should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies. (EPA, Final Guidance for Incorporating Environmental Justice Concerns in EPA’s Compliance Analyses, April 1998.)

In 1994, president Clinton issued Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations), which directed the U. S. Environmental Protection Agency (EPA) and all other federal agencies to develop environmental justice strategies that identify and address disproportionately high and adverse human health or environmental effects of [their] programs, policies, and activities on minority populations and low income populations. 165 (Executive Order 12898, February 11, 1994.)

Age Discrimination Act of 1975 (42 U.S.C. Sections 6101&6102)

Section 6101. Statement of purpose

It is the purpose of this chapter to prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance.

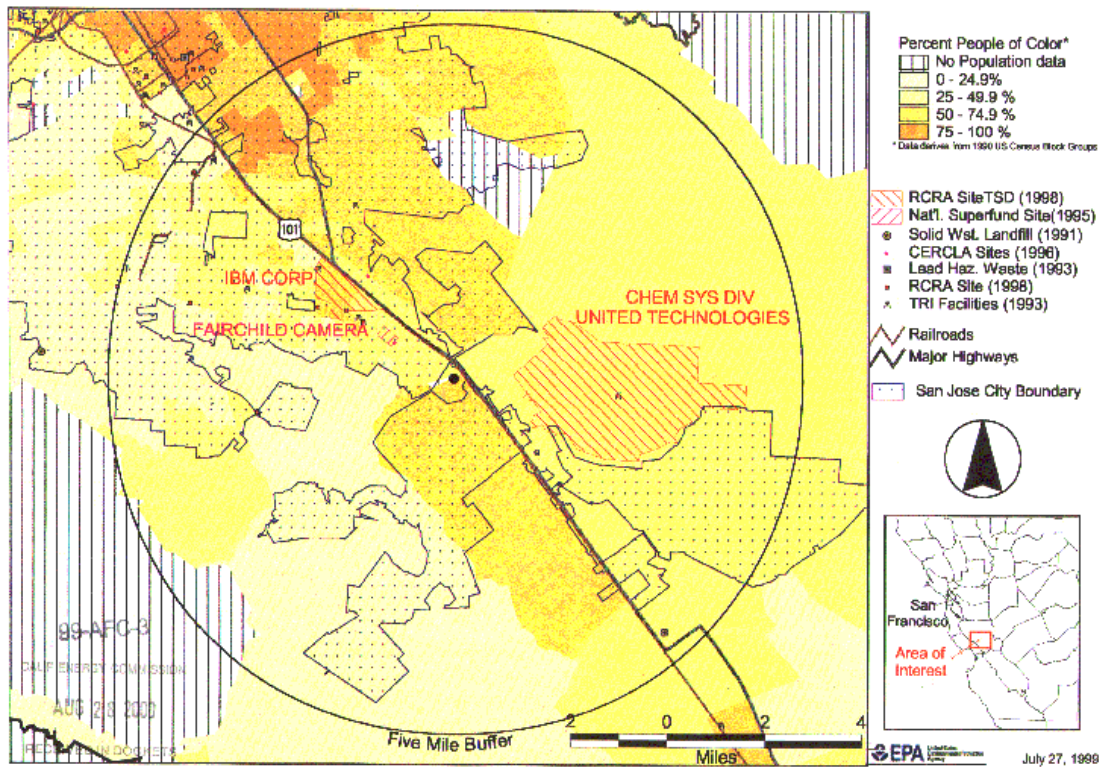
Section 6102. Prohibition of discrimination

Pursuant to regulations prescribed under section 6103 of this title, and except as provided by section 6103(b) of this title and section 6103(c) of this title, no

person in the United States shall, on the basis of age, be excluded from participation, in be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance. “

CARE is concerned for the health and welfare of children as sensitive receptors to the effects of air pollution. Children, and low-income and minority children in particular, in the community of South San Jose and Morgan Hill California already experience disparate impacts from criteria air pollutants in comparison to surrounding counties. These Metcalf Energy Center will further inflict disparate impacts from criteria pollutants in the form of particulate matter, NOx, and Toxic Air Contaminants (TACs). Santa Clara County low income and minority populations already suffer elevated levels of occurrences of asthma, and breast cancer, along with increased human mortality attributable to particulate matter exposure. Children, and low-income and minority children in particular, experience these effects disparately in comparison to non-minority non-low income populations within Santa Clara County and in the surrounding counties. CARE sites the EPA Region XI GIS map titled, Race and Pollutant Sources Near the Proposed Metcalf Energy Center, for demographic evidence of target minority populations (50-75% & 75-100% minority) within 5 miles of the MEC (See the website http://www.energy.ca.gov/sitingcases/metcalf/documents/map_race_and_pollution.html).

Race and Pollutant Sources Near Proposed Metcalf Energy Center



PROOF OF SERVICE (REVISED _____) FILED WITH ORIGINAL MAILED FROM SACRAMENTO ON 07/27/99

In the Commission’s proposed FAST TRACK EMERGENCY REGULATIONS Title 20, California Code of Regulations, Division 2-State Energy Resources Conservation and Development Commission, Chapter 5 – Sit Certification, Article 7 (new) – Additional Provisions for Considering Expedited Applications Under Public Resources Code Section 25550, Section 2021, Applicability of Regulations, page 4 (at the California Energy Commission’s web site http://www.energy.ca.gov/sitingcases/proceedings/2000-09-28_FAST_TRACK_REGS.PDF), it lists information required for completion of Environmental Justice Analysis as,

“a discussion of the potential for disproportionate impacts from the project on minority or low-income people; such discussion shall include, but not be limited to, all of the following:

(A) the most recent estimates or projections of demographic information by census tract showing the number and percentage of minority populations and people living below the poverty level within six miles of the proposed site and identified alternative sites(s);

(B) one or more maps at a scale of 1:24,000 showing the distribution of minority populations and low-income populations and significant pollution sources within six miles of the proposed site, such as those permitted by the U.S. Environmental Protection Agency (Toxic Release Inventory sites), the local air quality management district, or the California Department of Toxic Substances Control; and

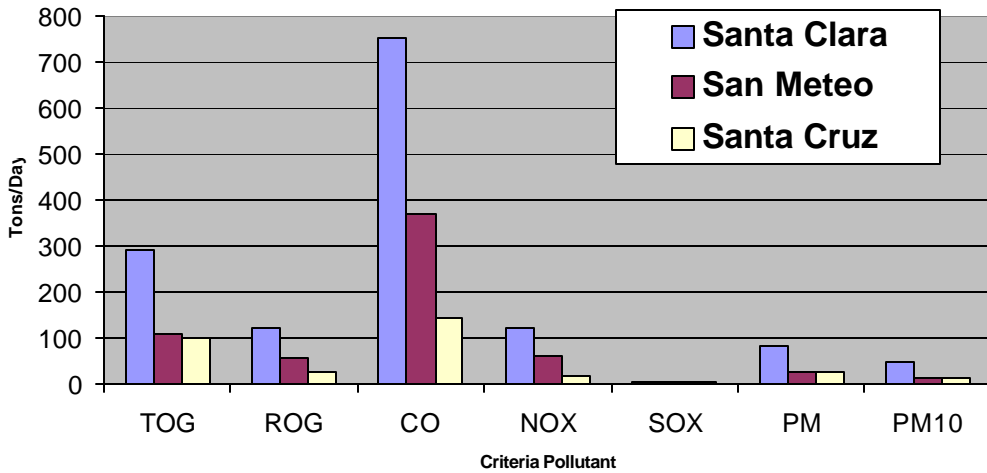
(C) identification of available health studies concerning the potentially affected population(s) within a six-mile radius of the proposed power plant site”.

The Metcalf Energy Center EJ analysis requires an more extensive EIR study of the existing, potential or foreseeable pollution that affects the EJ communities. This includes the effects of lack of medical access, lead pipes and paint, disease patterns, planned new roads and industries. Whether there are subsistence farmers or gatherers of natural food supplies that might be affected by project. Do they depend on fishing to supplement their diet? Do they use ground water that might be contaminated by the project? The results are compared to a larger non-minority, non low-income community. In this case the designated community should be San Meteo and Santa Cruz County, which have lower concentrations of minority and low-income communities. At this point a determination can be made. If the study finds that the environmental quality within the EJ community is worse than the designated comparable community then the applicant cannot build unless they can show there is no other alternative (cost is not a factor) or that they will completely mitigate the effects on the EJ community.

CARE presents results from the California Air Resources Board comparing seven criteria air pollutants from adjacent counties in 1996 to demonstrate the disproportionate impacts to Santa Clara County.

County Total	TOG	ROG	CO	NOX	SOX	PM	PM10
Santa Clara	290	120	750	120	3	82	46
San Meteo	110	54	370	61	1	25	14
Santa Cruz	99	24	140	17	1	23	13

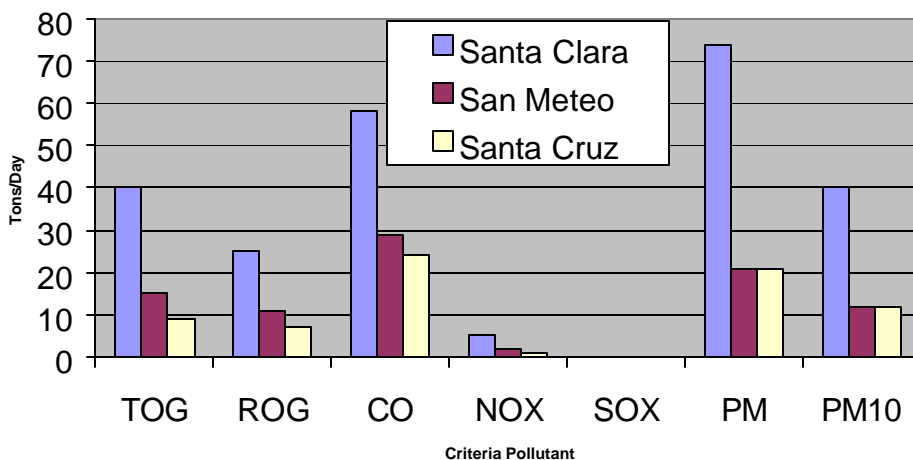
Total Emissions of Criteria Pollutants by County



“Emissions of seven criteria air pollutants are compiled in this report. The pollutants are total organic gases (TOG), reactive organic gases (ROG), carbon monoxide (CO), oxides of nitrogen (NO_x), oxides of sulfur (SO_x), particulate matter (PM), and particulate matter with an aerodynamic diameter of 10 micrometers or smaller (PM₁₀). Some of these pollutants are precursors to other pollutants. For example, oxides of nitrogen and reactive organic gases are precursors to the formation in the atmosphere of oxidants such as ozone. Some of the oxides of nitrogen and oxides of sulfur emitted in the gaseous state are converted to nitrate and sulfate particulates, respectively.”¹

County Stationary	TOG	ROG	CO	NOX	SOX	PM	PM10
Santa Clara	40	25	58	5	0	74	40
San Mateo	15	11	29	2	0	21	12
Santa Cruz	9	7	24	1	0	21	12

Total Emissions of Criteria Pollutants from Stationary Sources by County



¹ CARB California Emissions Inventory Data <http://www.arb.ca.gov/EMISINV/maps/statemap/cntyemap.htm>

No mitigation for impacts from the Metcalf Energy Center will be received by School Districts to mitigate the affects that school children, predominantly low income and minority, will experience as a result of the Metcalf Energy Center. CARE has filed a complaint with the EPA Office of Civil Rights and Office of Environmental Justice challenging the approval by the California Energy Commission, Bay Area Air Quality Management District, and CARB for the approval of two other Calpine/Bechtel power projects in Pittsburg California. The complaint may be reviewed at the web site <http://www.calfree.com/OCRDelta.html> The remedy we seek is to prohibit the development of these project without local mitigation and local emission offsets for disparate impacts on children, and low-income and minority children in particular. Please incorporate this document and four amendments by reference.

CPR Request

Pursuant to the California Public Records Act (Government Code section 6250 et seq.), and particularly sections 6256 and 6257 of the Government Code, we hereby request that we be allowed to inspect and make copies of all writings containing information in any manner relating communications between the CEC, EPA Region XI, BAAQMD, CARB, and the applicant on environmental justice. This includes any GIS maps not yet made available to the public.

Thank you for your assistance in this matter.

A handwritten signature in black ink that reads "Michael E. Boyd". The signature is written in a cursive style with a large initial 'M' and 'B'.

Michael. E. Boyd – President, CARE