

May 21, 2004

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

Re: **Comments of Communities for a Better Environment (CBE) on the Air District proposal to renew the Major Facility Permit and Acid Rain Permit for the PG&E Hunters Point Power Plant (Air District Facility # A0024)**

Dear Mr. Broadbent and Ms. Cabral:

The Air District must deny the renewal of the Hunters Point Power Plant (“HPPP”) Title V permit. This is a watershed moment for the Air District. The Air District has the unique opportunity to stop on-going environmental injustice. A denial of this permit renewal will send a strong message that the Air District is serious about environmental justice. On the other hand, a permit renewal will reinforce and etch in memories for years to come the historical perception of the Air District as being hostile to environmental justice concerns and public participation. The Air District has begun to make some positive movement on public participation and environmental justice issues, but permit renewal will seriously delegitimize those efforts.

The HPPP presents a unique set of facts that justify denial of this permit renewal. The Hunters Point power plant is a ticking time bomb. Its aging units 1 and 4 will continue to break, pollute and harm local residents and violate requirements to protect public health and prevent nuisance until the decrepit plant is shut down – or blows up. These violations can only be resolved by shutting down the plant. Repeated attempts to repair the plant have uniformly resulted in continued breakdowns. The repeated shut down and start up of the HPPP causes the facility to belch unregulated pollution into the community. Since exemptions for start up and shut down allow this air pollution to continue unmonitored and undocumented, a renewed permit would not stop the violations.

There is universal recognition that the Hunters Point community suffered and continues to suffer a disproportionate share of environmental injustice. As discussed below, the evidence of disproportionate health effects is well documented. The continued operation of this highly unreliable facility causes serious disproportionate impacts on a low-income community of color and perpetuates environmental racism. The HPPP has an unparalleled history of breakdowns, shut down, and start up compared to any other operating facility in the Air District.

On July 9, 1998, the City and County of San Francisco and PG&E agreed to close the Hunters Point Power Plant. On September 14, 1998, the Air District issued a five-year Title V permit to the HPPP. Now almost six years after the historic agreement to shut down the HPPP, the Air District proposes to renew the HPPP Title V permit for another five years. In a packed room at the public hearing in Hunters Point, every member of the public demanded the denial of the permit because of the on-going pollution, i.e. nuisance, created by the operation and repeated startup and shut down of the facility.

The Hunters Point Power Plant license to pollute must be revoked. Communities for a Better Environment urges the Air District to finally end this environmental injustice.¹

Well-Known Evidence Shows Severe Health Problems Exist in the Hunters Point Community

Hunters Point is an already overburdened community and highly sensitive population. The attached document "Bayview Hunters Point Community Health and Environment Check Up,"² (Attachment B) showed increased deaths, asthma rates, hospital visits, etc., in Hunters Point compared to the rest of San Francisco. This is a community of color with 61% African American (compared to 11% for San Francisco), with a higher population under the age of 15 (25% compared to 14% for SF). It is also a lower income community, with a household income average of \$31,900 (compared to \$45,700 for SF), 25% below poverty levels (compared to 13% in SF), and an unemployment rate of 13% (compared 6% in SF).

This community has a high density of industrial waste sites and pollution sources. It is of great concern that the existing industrial siting status of this community has made it vulnerable to additional heavy industry siting. During the California Energy Commission workshop on Alternatives to the Potrero Power Plant proposal, the CEC consultant stated that there were not many places to site power plants, and that sites that were already zoned industrial were the main criteria used for siting new facilities.

¹ Denial of the Title V permit, would relieve PG&E of its obligation to comply with its RMR contract. (See Order Granting Emergency Motion for Clarification by the Federal Energy Regulatory Commission, dated July 25, 2001, attachment A). FERC has held that an energy company is not obligated to comply with an RMR contract or orders from the ISO that would cause violations of federal clean air law. (*Id.*) Without the Title V permit, PG&E cannot operate legally, and ISO cannot require PG&E to operate without a Title V permit.

² Tomas Aragon, MD, MPH, SF Dept of Public Health, and Kevin Grumbach, MD, Medical Effectiveness Research Center for Diverse Populations, UCSF, Bayview Hunters Point Health and Environmental Assessment Task Force, May 17, 1997.

The following summarizes the findings of the Bayview Hunters Point Community Health study, which found that the community had the worst health conditions, compared to nine other San Francisco neighborhoods, for the following problems:

- The highest rate of Children's Asthma Hospitalizations ('91-92): (approx. 88 per 10,000)
- The highest rate of Adult (19-64) Asthma Hospitalizations ('91-92): (approx. 45 per 10,000)
- The highest rate of Elderly Asthma Hospitalizations ('91-92): (approx. 57 per 10,000)
- The highest rate of Adult (19-64) Heart Failure Hospitalizations ('91-92): (approx. 34 per 10,000)
- The highest rate of Elderly Heart Failure Hospitalizations ('91-92): (approx. 340 per 10,000)
- The highest rate of Adult (19-64) Diabetes Hospitalizations ('91-92): (approx. 26 per 10,000)
- The highest rate of Elderly Diabetes Hospitalizations ('91-92): (approx. 76 per 10,000)
- The highest rate of Adult (19-64) Hypertension Hospitalizations ('91-92): (approx. 22 per 10,000)
- The highest rate of Elderly Hypertension Hospitalizations ('91-92): (approx. 72 per 10,000)

In most cases, the Bayview Hunters Point rates were far above the other communities (see attachment B). This and other available studies also document increased invasive breast cancer and cervical cancer in African American women in Bayview-Hunters compared to African American women in other parts of San Francisco, and increased mortality rates in African American men.

Issuing the Permit Would Result in Illegal Environmental Injustice

The Air District is prohibited from issuing a Title V permit to PG&E's Hunters Point power plant if that permit issuance will result in discriminatory effects. Title VI prohibits all programs and activities that receive federal funds from discriminating based on race, color or national origin. 42 U.S.C. § 2000d. Under U.S. EPA's regulations implementing Title VI, recipients of EPA financial assistance, such as the Air District's, are required to implement their programs and activities in a non-discriminatory manner. 40 C.F.R. § 7.35 (2004). In addition, recipients of EPA financial assistance are prohibited from administering their programs in a manner that will result in discriminatory effects. *Id.* Since the Air District receives federal funds for its air program, its decisions cannot result in discriminatory effects.

EPA's Title VI implementing regulations apply to this permitting decision. The Air District cannot dispute the fact that Hunters Point is a community of color subject to

the protections of Title VI. Nor can the Air District dispute that the Hunters Point community is suffering from a significantly disproportionate amount of adverse environmental impacts as a result of the continued operation of the power plant. In fact, given the history of the facility, the Air District has an obligation to demonstrate its compliance with these regulations. An alternative that avoids these impacts is feasible, as shown by the City and County of San Francisco's Electricity Resource Plan and the fact that the HPPP's long outages caused no interruption of power service. The Air District's renewal of the Title V permit would continue the discriminatory effects of air permitting in the Bay Area.

The Nuisance Created by HPPP Justifies Denial of the Permit

Operation and resulting repeated breakdown and startup of the plant causes ongoing violations of requirements to protect public health and prevent nuisance. Air District Rule 2-6-313 allows the Air Pollution Control Officer (APCO) to deny a major facility review permit if the facility, or any source therein, is in violation of any applicable requirement and the facility cannot obtain a compliance schedule in accordance with the Health and Safety Code. In addition, Health and Safety Code (H&S Code) § 40752 requires the APCO to take all action necessary to enforce air pollution control laws, including H&S Code § 41700. H&S Code § 41700 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."

Air pollution from the HPPP has caused a public health nuisance and annoyance to a considerable number of persons in the Hunters Point community. Numerous residents living near the power plant presented overwhelming evidence that frequent breakdowns and re-powering of the plant cause air pollution associated with coughing, asthma attacks and odors during the May 4, 2004, public hearing on this matter. The Air District states that the HPPP is in compliance with its permit, but the Air District has acknowledged a remarkable unawareness of the numerous nuisance complaints that exist in the community. In addition, the Air District does not monitor nor does it generally consider air pollution problems resulting from startups and shutdowns, because those are exempt from district rules. Total Unit 4 power losses alone resulted in at least 30 startups and shutdowns at the plant since July 13, 2001. *See Attachment D.* The district has simply ignored the nuisance created by the plant.

When it operates, the plant is the largest stationary source of criteria air pollutants in the Bayview/Hunters Point community.³ It is located in a topographic amphitheater, at the base of a hill populated by nearby residents at stack-level, where emissions concentrate and settle during weather conditions which occur often between wet season storms and year-round in evenings, nights and mornings.

³ *2003 Emission Inventory*, California Air Resources Board (www.arb.ca.gov).

Pollutants emitted by the plant – particulate matter, NO_x, SO_x and others – are associated with respiratory problems, asthma attacks, premature death from cardiopulmonary causes and cancer, among other health problems.⁴ These same health problems are occurring at elevated rates in this community.⁵ Moreover, particulate matter air pollution (PM₁₀ and PM_{2.5}) violates state air quality standards at the nearest District monitoring station.

The Plant is Unreliable and Beyond Repair

The plant is too old and decrepit to repair in a manner that will prevent the breakdowns causing these pollution violations. Hunters Point Unit 4 was commissioned in 1958. The expected operating life for a power plant of its type ended circa 1988. Review of the Independent System Operator (ISO) “Non-Operational Generating Units” reports attached in attachment D to these comments shows that the unit is beyond repairs that can prevent more breakdowns. Moreover, it makes no sense to invest in upgrading a plant that the community, the City, and the company all want shut down.

Based on the data in Attachment D, Unit 4 could not deliver its full rated capacity on 90 percent of all days in the nearly three years from July 13, 2001 through May 14, 2004. Unit 4 was unable to deliver even half its rated capacity during part or all of 440 days during this period, or 42% of the period. Unit 4 was unable to deliver any of its 163 MW rated capacity during part or all of 422 days or 41% of this period. Unit 4 was shut down completely for more than five months straight in the fall and winter of 2001/2002 and again for more than seven months spanning the summer of 2003.⁶ In the two-year period ending October 8, 2003 Unit 4 was completely shut down about 55% of the time.

Repeated attempts to repair the plant have failed to prevent more frequent breakdowns. PG&E attempted major repairs and upgrades of Unit 4 during the five-month and seven-month plant shutdowns discussed above. Nevertheless, review of the data in Attachment D shows that these attempts were utterly ineffective in preventing continued breakdowns. Frequent unplanned outages of Unit 4 and repeated major power losses followed each repair attempt closely. A plant outage profile created from the data in Attachment D illustrates this observation. *See* Figure 1. Indeed, despite the repair attempts plant outages are becoming more frequent as the plant ages further. *See* Table 1.

⁴ See e.g., Pope et al. Lung cancer, cardiopulmonary mortality, and long-term exposure to fine particulate air pollution. *JAMA*, 287(9): 1132-1141. March 6, 2002 (attachment C).

⁵ See e.g., attachment B.

⁶ This also provides evidence that the plant is not needed. CBE testified in the 5/4/04 hearing that no loss of electric service was attributed to loss of San Francisco generating capacity in all of this time, even though the plant was off line during the times of winter and summer peak power demand in San Francisco. This testimony was not rebutted. Further, ISO’s plan to use the decrepit plant as backup for the Potrero Unit 3 retrofit is misguided. Since at least July 2001, Unit 4 has never operated continuously for the length of time the Potrero retrofit will take. The better course for reliability would be to continue accelerated development of new electricity resources instead of relying on this unreliable plant to back up a Potrero plant retrofit.

In sum, the violations discussed above will continue if PG&E attempts to continue operating the plant because no reasonably anticipated repairs could correct its inefficient operation and near-constant breakdowns to prevent the pollution and odors that cause the violations. Therefore, the permit must be denied.

Conclusion.

While it is an encouraging sign to see the Air Pollution Control Officer, his deputy and the head of permitting all attend the public hearing for this permit, the Air District must do more than merely show up and take comment. The community has made itself clear that this plant must be shut down. The City and County of San Francisco and PG&E agreed almost six years ago to shut down this plant but it continues to operate. The Hunter Point Power Plant presents a unique set of facts that justify denial of the permit renewal. The plant's repeated unregulated breakdowns and startups create a widely felt nuisance in a community that has suffered and continues to suffer well-documented environmental injustice. The time for action is now and the choice is clear. Renewal of the Hunter Point Power Plant permit must be denied.

In Health,

Greg Karras
Senior Scientist

Will Rostov
Staff Attorney

Figures: Figure 1. Hunters Point Power Plant Unit 4 outage profile

Tables: Table 1. Summary of Hunters Point Power Plant Unit 4 outage data

Attachments: A. FERC Order Granting Emergency Motion for Clarification
B. Aragon and Grumbach, 1997. Community Health Checkup
C. Pope et al., 2002. *JAMA*, 287(9): 1132-1141.
D. ISO Non-Operational Generating Units reports

Copy: Interested organizations and individuals (without attachments)