

**Appendix F**

**Responses from Legislative Members to Secretary Hickox's request for  
input related to this study**



ANTONIO R. VILLARAIGOSA  
SPEAKER *of the* ASSEMBLY

November 23, 1999

Winston H. Hickox  
Agency Secretary  
California Environmental Protection Agency  
555 Capitol Mall, Suite 525  
Sacramento, CA 95814

Dear Secretary Hickox:

Thank you for your correspondence requesting input on (1) the Governor's directive to review environmental program delivery and funding mechanisms, and (2) the budget control language that requires a report by January 10, 2000 regarding the Environmental Protection Agency's (EPA's) structure, ability to provide accountability and coordination among the departments and boards and efforts to address cross media contamination.

An over arching concern surrounding delivery, structure, funding, and enforcement is whether Cal EPA can accurately provide the public with information as to whether our air and water pose a health hazard to the public. The anecdotal data is not encouraging. Much of the Central Valley groundwater is tainted with pesticides or nitrates beyond safe levels for human consumption. The same could be said for much of the San Gabriel and Los Angeles County groundwater supplies. At the same time policy makers are looking to use groundwater basins for water storage. The clean up of these contaminated aquifers is woefully slow or nonexistent. New contamination threatens the use of other aquifers. The contaminated school sites in the Los Angeles Basin indicate that toxic contaminants at these construction sites were not mitigated and cleaned-up prior to project approval. Toxic air contaminants threaten the health of the most vulnerable urban populations.

Over 500 bays, lakes, streams and rivers in California are now on the federal list of impaired water bodies. One major problem we face in addressing these alarming trends is that consistent baseline information is not collected. Without this information, there is no early warning system. Moreover, the Governor, the Legislature and the public are not being provided with the baseline data they need to determine whether the job of protecting the environment and the public is being done.

As Cal EPA looks at its role of coordinating with the departments and agencies it oversees, it should also look for opportunities to receive and assess baseline information from other agencies. For example, the Department of Health Services' drinking water quality information needs to be used. The Department of Fish and Game monitoring programs also provide an early warning system. This information is necessary to determine if the air, waste and water pollution prevention programs are protecting public health and the environment.

The Legislative Analyst's Office and others have criticized Cal EPA for its absence of vision and purpose. One aspect of this vision and purpose could be providing an accurate assessment of the health of the environment — an assessment of both the ecological health and the level of exposure or risk for the public health. With the state's anticipated population growth, it is important that Cal EPA also provide an accurate forecast of the use of water supplies and other natural resources, along with an accurate assessment of safe yield.

### **Delivery of Environmental Programs**

In my correspondence and discussions with you, I have made it clear that the accountability mandate for Cal EPA includes oversight of enforcement. The agency and its departments have a legacy of failing to levy fines, litigate and otherwise enforce the law. Self-monitoring reports are routinely ignored. Facility permit violations routinely receive waivers, and waste discharge permits are woefully out of date. The one thing Cal EPA could do for the public and the Legislature is to provide an accurate assessment of enforcement activities by the appropriate departments and boards. Shedding this public spotlight on industries that continually violate the law or departments and boards that routinely allow polluters off with a slap on the wrist would help provide accountability. Lawmakers and the public are rightfully frustrated when pollution prevention laws are ignored, and polluters are not held accountable. Cal EPA is accountable for providing an accurate, reliable assessment of the enforcement and clean up efforts of the departments and boards.

### **Coordination of Environmental Programs**

The state's failure to hear and act on early warnings of MTBE contamination of water supplies indicates that Cal EPA needs a better system to evaluate the environmental impacts of the regulatory activities across departments and boards. Further, the cumulative effects of pollutants, such as pesticides or perchlorate, need to be better assessed so that sufficient public health protections can be adopted.

I agree with the recommendation to convene a regular action-oriented Environmental Policy Council as a structural mechanism and forum to begin to address cross medium pollutants and to identify enforcement problems and pollution concerns.

In addition, a more systematic communication process of receiving information from field inspectors and scientists needs to be adopted. Far too often public employees in the field have seen pollution problems coming, but their warnings have been ignored. The cost to the environment and the public has been enormous, and the clean-up tab is growing.

Finally, the departments and regions need access to better scientific resources. Hydro-geologists, geologists, toxicologists and other experts must be available to accurately assess pollution problems and enforcement remedies.

### **Funding Mechanisms for Environmental Programs**

California has a long tradition of requiring polluters to pay for their actions. I share the Governor's view that this tradition be continued. Clearly, we need to develop additional

partnerships and funding mechanisms if we are to provide the public with the pollution protection they demand and protect the health of some of our most vulnerable Californians.

I urge you to look at some creative fees to begin to address some of the more intractable pollution clean-up problems facing this state — abandoned polluting mines, abandoned industrial pollution sites and other pollution sites where there are no responsible parties. I urge you not to abdicate clean-up of our inner cities by adopting wholesale lesser cleanup standards.

I believe we can work with industry groups, such as the sanitation districts, storm water control districts and the business community to develop creative incentives and partnerships to prevent pollution and lower the costs of cleanup. For example, with over 12,000 abandoned polluting mines throughout the Sacramento-San Joaquin drainage, there is an opportunity to save taxpayer dollars in water treatment by developing a partnership with mining companies to clean-up mines that are dumping heavy metals and pollutants into our water supplies. Further, some additional fee structure is needed to provide incentives and cleanup monies for abandoned polluted industrial sites. I am also concerned that the tab for cleaning-up MTBE-contaminated drinking water supplies will be enormous. Some thought must be given to addressing this ubiquitous clean-up problem.

Thank you for the opportunity to express my views. I look forward to reviewing your final report on January 10 and working with you to resolve these very difficult problems.

Sincerely,

A handwritten signature in black ink, appearing to read 'ARV', written over a horizontal line.

ANTONIO R. VILLARAIGOSA  
Speaker of the Assembly

ARV:ps

# CALIFORNIA LEGISLATURE

STATE CAPITOL  
SACRAMENTO, CALIFORNIA  
95814

December 7, 1999

Winston Hickox, Secretary  
California Environmental Protection Agency  
555 Capitol Mall  
Sacramento, CA 95814

**RE: Request for Comments on 1999-2000 Budget Supplemental Report Language  
Relative to the Office of the Secretary for Environmental Protection**

Dear Mr. Secretary:

Thank you for your letter soliciting our views on the Supplemental Report Language requesting the Secretary of the California Environmental CAL-EPA to review the structure and funding of programs within the agency's jurisdiction.

We support the Governor's commitment to improve the efficiency, effectiveness, and accountability of CAL-EPA as he indicated in the 1999-2000 Budget Summary. We share his concerns about the agency and believe that its mission needs to be re-oriented so that it focuses its efforts on those activities which pose the greatest risk to public health and the environment, strengthens and improves enforcement of environmental laws, promotes better cross-media coordination of programs within the agency, and promotes greater scientific integrity and independence in its decision-making.

Legislative concerns, as well as those expressed by independent reviewers such as the Little Hoover Commission and the Legislative Analyst, are extensive and well documented. We will not review those concerns in detail here. However, we would note that they reinforce the notion that improvements are sorely needed at the agency in order to fulfill its basic mission.

There is a good deal of substantive detail which could be reviewed in any discussion about how to improve the agency. However, in our view, several basic principles should guide the agency and the Administration in complying with the Governor's and Legislature's direction in the budget.

These principles are as follows:

1. **“Clean House.”** Nearly a year into the new administration, the agency continues to employ holdovers in key policymaking, scientific, and fiscal positions from the prior administration. Moreover, while the Legislature and Governor approved legislation this year which significantly strengthened agency-wide environmental enforcement, the agency has yet to fill the position of deputy secretary of law enforcement and counsel which oversees that program. We are sympathetic to the difficulty of filling these positions and recruiting qualified replacements. Nevertheless, we believe that it is vital that persons who are committed to strong environmental protection policies be placed in key positions at the agency. (In this regard, we would express our strong objection to the use of legal legerdemain in order to avoid filling vacancies at key state agencies, such as re-defining by regulation what constitutes a quorum at a regional water board in clear violation of the law, as was recently done by the San Diego Regional Water Quality Control Board. These sorts of actions subvert the rule of law the agency is charged with implementing and are a disservice to the public.)
  
2. **Re-Focus Agency Efforts on Public Health and Environmental Protection.** Since its creation in 1991, the agency’s primary focus has been on so-called “soft path” programs such as the “streamlining” of permit processes, the institution of “total quality management” programs and “environmental management systems,” and the promotion of environmental technologies. The Legislature has been unable to measure the effectiveness of these programs in improving environmental protection, in part due to the agency’s ongoing resistance to the establishment of accountability mechanisms. More importantly, while “soft-path” programs can be beneficial in the broader context of a balanced strategy to protect the environment, they cannot, and should not, supplant the basic public health and environmental protection activities of the boards and departments within the agency, many of which have been neglected, or affirmatively undermined, by the agency in the past. In our view, the agency should institute a comprehensive effort to re-focus both policy and budgetary resources first and foremost on core public health and environmental protection laws and activities.
  
3. **Establish Stable and Reliable Funding to Ensure Environmental Protection Programs Are Properly Implemented.** Legislative reviews of programs implemented by the boards and departments under CAL-EPA have determined that many basic public health and environmental protection programs in the agency have been seriously under-funded over the past decade. Basic laws, such as the Air Toxics Hot-Spots and Safe Drinking Water Acts under the Office of Environmental Health Hazard Assessment, water quality and hazardous substance cleanup programs implemented by the State and regional water boards, and hazardous waste control laws implemented by the Department of Toxic Substances Control have all been consistently and chronically under-funded, and therefore implemented in fits and starts or not implemented at all. In a recent illustration of this problem, we were surprised and concerned to learn from the Legislative Analyst’s Office that the State and Regional water boards do not have basic information upon which to base water quality

regulatory decisions such as the status of permits and enforcement activities at the regional boards. In addition, the state Air Resources Board recently acknowledged that its inventory of sources of air pollution significantly underestimated the amount of pollution produced by vehicular sources. In our view, the agency should come forward with proposals to provide stable and reliable funding for programs implemented by its boards and departments. It should also ensure that sufficient funds are set aside each year for comprehensive and accurate environmental monitoring and data collection in order to ensure that regulatory decisions are based upon reliable information.

**4. Use Existing Statutes and Mechanisms to Foster Better Cross-Media Coordination.**

There has been a good deal of discussion about structural changes to the agency and its boards and departments. However, current law affords the agency wide latitude in instituting better coordination among the independent boards and departments within the current agency structure. The agency's past inability to anticipate and prevent problems such as MTBE contamination in ground and surface waters and the adverse cross-media effects of re-classifying and deregulating hazardous wastes highlight the need for better cross-media coordination among the boards and departments. In the absence of any immediate structural overhaul of the agency, we believe that the agency should use current law and administrative mechanisms to promote better cross-media coordination. For example, the Environmental Policy Council established pursuant to Public Resources Code Section 71017 should be convened in public to review cross-media issues on a regular basis and to anticipate problems before they arise. Several such issues (i.e. hazardous waste reclassification, landfill regulatory activities) are expressly referenced in the Supplemental Report Language and should be reviewed using the Council.

**5. Consider Future, As Well As Past and Present, Environmental Challenges When Establishing Agency Priorities.**

The Department of Finance and other agencies within the Administration have noted that California faces unprecedented growth in population in the next few decades. This growth will, in turn, place new stresses on public health and the environment. CAL-EPA, and its boards and departments, do not appear to spend a significant amount of time planning ahead for the environmental challenges the state will face in the future. In addition, the agency appears to do precious little coordinating with its sister agencies, such as the Resources Agency and the Governor's Office Planning and Research on environmental challenges which touch upon more than one agency's jurisdiction, such as water quality, climate change, and Smart Growth. In our view, the agency should work with the Legislature to establish mechanisms both to anticipate and address future environmental challenges and to better coordinate state level responses to cross-jurisdictional environmental challenges.

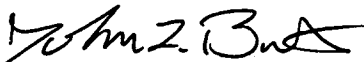
**6. Restore California's World Leadership In Public Health and Environmental**

**Protection.** In the past, California was viewed as a leader in its efforts to improve public health and environmental protection, and to ensure that it was accomplished efficiently and

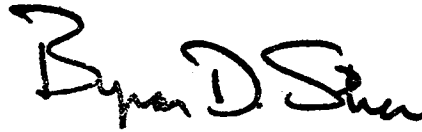
cost-effectively. However, over the past decade, the state has been relegated to a passive role in many of the leading environmental and public health debates taking place today. In some cases, local or regional agencies have surpassed California in their initiatives to protect the environment. In other cases, other states or countries have surpassed the state in their efforts to address the adverse environmental effects of growth. We firmly believe that California can, and should, regain its leadership role in environmental protection. We would urge the agency to work to restore California's leadership role in environmental protection as it proceeds to comply with the Governor's and the Legislature's direction in the budget.

In closing, we would encourage you to continue the dialogue you have begun with the Legislature over how to improve CAL-EPA. We sincerely hope that this Administration and the Legislature will work in partnership, and not in conflict, to ensure that California's public health environment is protected.

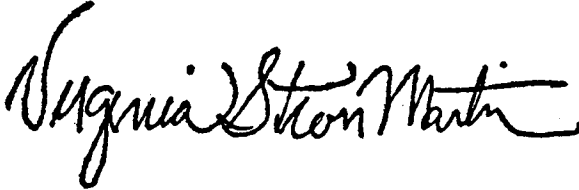
Sincerely,



John Burton, President pro Tem



Byron D. Sher, Chair  
Senate Environmental Quality Committee



Virginia Strom-Martin, Chair  
Assembly Budget Subcommittee No. 3



Hannah-Beth Jackson, Chair  
Assembly Environmental Safety and Toxic  
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**JIM BATTIN**

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December 3, 1999

Winston Hickox, Secretary  
California Environmental Protection Agency  
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Sacramento, California 95814

Dear Secretary **WILSON**

Thank you for seeking my input on issues relating to the structure and function of the California Environmental Protection Agency. I apologize for my delayed response, as I have been out of the Country until very recently.

As you know, this year I authored legislation that called for a legislative review of the Agency. I had opposed a similar effort last year; that was because I believed it was inappropriate in the final days of the Wilson administration to initiate such a review. Under the Wilson administration, I believe Cal/EPA operated in an appropriate manner to address environmental issues and to streamline and demystify the regulatory process so that it operated more efficiently—a benefit for both the regulated community and the environment. Initiating a review that, in the absence of “proof” from the new administration to the Legislature’s satisfaction, would have ended in a sunset of the agency was inappropriate. It would have put the Legislature in the position of dictating the terms of the Executive Branch’s structure.

I believed it was appropriate, however, to initiate a review at the beginning of the Davis administration, so that the Legislature could be informed about the new Governor’s vision for the Agency. In that spirit, I am happy to offer my perspective on issues related to Cal/EPA. There are three broad categories of “issues” related to “impediments” to the efficient operation of Cal/EPA: legislative, fiscal and administrative obstacles.

Legislative obstacles stem mostly from the fact that the Legislature has tended to respond to environmental issues because of perceived crises, and has done so in a piecemeal fashion—the Porter-Cologne Act, the California Clean Air Act, the State Superfund law and AB 939 for solid waste are just a few examples. Making wholesale changes to these “pillars” of environmental protection would be extremely difficult, as the efforts by the California Law Revision Commission to draft a single environmental statute demonstrated. Changes must occur incrementally.

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Fiscal roadblocks are inherent in the structure of how we fund environmental programs. The “polluter pays” principal may have philosophical appeal, but it also has three specific consequences: 1. It makes the last ounce of pollution extremely expensive to clean up; 2. It requires the use of a fee-based system, which raises issues of equity and service delivery to the fee payers; 3. It creates a fund source that is not fungible (the chief concern here).

Finally, there are administrative inhibitors that are interwoven with the first two stumbling blocks, which may be used as an “excuse” (legitimate or not) for not achieving greater efficiencies. The best way to sum up these inhibitors in a single phrase might be “bureaucratic culture.” Notwithstanding the extent to which the “culture” of each agency is different, in part because of distinct missions, statutory directives and funding constraints, those obstacles can be overcome, but only if the individual organizations recognize the benefits and the realities in “sharing turf” (as opposed to surrendering jurisdiction).

What follows are what I believe are some reasonable steps that can be taken to achieve greater efficiency, better coordination, improved accountability and, ultimately, enhanced environmental protection through better governance.

Legislatively: (1). Seek to eliminate the legislative appointments to the Integrated Waste Management Board. This situation creates an executive branch body that is “ beholden ” to the Legislature, and undermines its accountability to the Governor, and thus to the voters. Board members already serve “ term appointments , ” which, for all intents and purposes, causes them to respond more readily to legislative directive. That’s because, once appointed, confirmation by the Senate “ guarantees ” them a four-year tenure. The annual budget process also serves as a continual mechanism for legislative accountability. Those “ tools ” are adequate. Creating legislative appointments to an executive branch body—especially when those legislative appointments are not subject to the Senate confirmation process, as the administrative appointments are—only undermines the board’s accountability to the administration.

(2). Streamline environmental clean-up laws related to toxic contamination. Right now, cleanup of a contaminated site can be accomplished under the auspices of a Regional Water Quality Control Board or the Department of Toxic Substances Control. But these entities use different processes and different statutes to achieve the same ends. This creates the appearance of “ different cleanup standards . ” The goal would be to create a single, streamlined process and a single, clear standard. At that point, a restructuring effort might be undertaken to bring this function under the control of a single department. Understanding the process both for undertaking a cleanup, and the process for arriving at a cleanup standard (if a numeric value is not possible in all cases) would help to demystify the process and encourage cleanups. An alternative to this approach would be to ensure that a “ lead agency , ” chosen by Cal/EPA by petition under current law, is truly in charge of any cleanup project. This would provide certainty for the responsible party, or parties, who should not have to navigate the intricacies of two (or more) agencies’ bureaucracies, and argue with each regulator on that regulator’s terms. In this case and as a general principal, the agencies should have to talk to each other, instead of making (sometimes conflicting) demands on the permit-seeker, and find equitable and effective solutions to their own “ differences . ”

(3). Add a cross-media evaluation element to the regulatory process. This can be done administratively, however, and will be discussed later.

Fiscally: (1). With the completion of the Cal/EPA office building, there should be an opportunity, over time, to achieve some streamlining of administrative, legal, permitting, and enforcement functions. The easiest way to accomplish these efficiencies may be through attrition, initially. But even that gradual, incremental change will require a long-range plan that needs to be developed now. Streamlining legal, permitting and enforcement will require "cross-training," but there has been some success in this arena with respect to "cross-media" enforcement training.

(2). As a general rule, Cal/EPA should exercise its leadership to work with its boards and departments in setting budget priorities. In order to establish priorities, however, Cal/EPA will need to seek the flexibility and fungibility of General Fund appropriations, rather than relying on fee increases, or new fees.

Administratively: Ultimately, there may be opportunities to develop some "cross-media" regulatory approaches (for instance, the Air Resources Board's regulation of airborne emissions from personal watercraft that should lead to the use of direct-injection or four-stroke technology and result in less water pollution). But those opportunities will occur on a more ad hoc basis at this point. (Although Cal/EPA must do everything it can to facilitate partnerships when those opportunities present themselves.) The larger concern for the immediate future is ensuring that regulation in one environmental arena does not create "unintended consequences" in another environmental medium, as we witnessed with the approval by U.S. EPA of the use of MTBE as a gasoline additive. Although a legislative "fix" here might be suggested, this can also be accomplished administratively. The solution is not more structure or a different structure, however. The solution is "process."

Cal/EPA's boards and departments publish their regulatory agenda at the beginning of each year. The agenda for each of the boards and departments should be reviewed by the Agency and by each board or department. Each year, the Secretary should convene a meeting of the department directors, board chairs and their respective executive officers to see whether any regulatory item is "of interest" or would materially impact the mission, the operation or the function of any of the Agency departments. Informal communications, or formal comments, should ensue between the boards and departments, with the Secretary's Office serving as the facilitator. You could take this process a step further and formalize it by requiring each regulatory package to include an assessment of cross-media implications. That element of the regulatory package would be required to contain a formal response by the appropriate State agency before it can be filed with the Office of Administrative Law. To ensure that cross-media element is contained in the regulatory package, the Office of the Secretary should review each regulatory package before its submission to OAL.

These few suggestions are reasonable and can be reasonably achieved. But I would also like to comment on those things that I believe this administration should continue to pursue.

*Regulatory Streamlining*—Permit Assistance Centers and the concept of a one-stop shop for all governmental permitting needs (and the goal of providing this service "on-line") should continue

and be expanded. Although it has been criticized as too business friendly by some, the Centers serve to demystify the regulatory process and force government regulators to communicate with each other. Ultimately, I believe this is the real strength of Cal/EPA. The regulated community when it seeks to comply with the law can encounter a morass of local, state and federal agencies. Regulators should be forced to work together to find solutions to the duplicative, cross-media regulations that our current framework creates, but can ultimately result in a lack of accountability. It is this “forced cooperative” environment inherent in efforts like the PACs and “Facility Compliance Plans” (a single, comprehensive environmental permit) that will ultimately lead to better cross-media efforts.

*Cooperative efforts with the regulated community*—I firmly believe that we can achieve more from forming partnerships with the regulated community than in pursuing a “command and control” approach. In that spirit, I believe Cal/EPA should develop guidelines on environmental audits, that can be used cooperatively for the purpose of assessing compliance efforts. Notwithstanding the tendency of the regulated community to object to regulation, it is vital for the regulatory efforts to assess and for regulations to address the needs of the regulated community. In the end, it serves to create a more workable and efficient regulation, and one that will foster a higher rate of compliance.

*Using sound science to dictate decision-making*—Current law contains provisions requiring the use of peer-review for the scientific basis of a regulation. However, the peer-review process may leave something to be desired. Cal/EPA should establish some protocols for peer-review and write those protocols into the contract with State universities. Fact checking and critical analysis should be a part of the process; peer-review experts should be required to inform state regulators and policy-makers of the limitations on the science, formally in writing. Furthermore, critical comments about the scientific results or methodology employed by state scientists from representatives of the regulated (or soon-to-be regulated) community should be a part of the materials considered in the peer-review process. At the very least, the regulated community should have access to the materials to be peer-reviewed, and they should be afforded the opportunity to submit written comments to the peer-review expert through Cal/EPA for consideration.

Thank you for this opportunity to respond. I hope you find these comments helpful.

Best regards,



JIM BATTIN  
Assemblyman,  
80<sup>th</sup> District

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November 8, 1999

Mr. Winston H. Hickox  
Agency Secretary  
California Environmental Protection Agency  
555 Capitol Mall, Suite 525  
Sacramento, California 95814

Dear Mr. Hickox:

Thank you for your communication of October 19, 1999 relating to the report to the Legislature which you are asked to submit by January 10, 2000. Likewise thank you for the opportunity to comment on items affecting your Agency.

I will not comment regarding the Agency's structure but will remark on two issues:

1. MTBE Cleanup: While this hazard-to-health needs attention, it is foolish and irresponsible to fund, in the millions of dollars of tax-payer money, such clean-up while we continue to use the contaminant in our gasoline, the original and continuing source of the contamination.
2. Landfill regulatory activities: This is a continuing problem demanding attention, especially the dumping and storage of used tires. Limiting the amount of such accrual in any one place could assist in the control and elimination of hazards.

Very sincerely yours,

A handwritten signature in black ink, appearing to read "George House", written in a cursive style.

Assemblyman George House  
District 25

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November 15, 1999

Mr. Winston H. Hickox  
Secretary for Environmental Protection  
California Environmental Protection Agency  
555 Capitol Mall, Suite 525  
Sacramento, CA 95814

Dear Secretary Hickox:

This is in response to your October 19, 1999 letter regarding the review of the California Environmental Protection Agency (CALEPA) and related Departments as outlined in the 1999-2000 Budget.

I appreciate the opportunity to provide you with concerns I have with the current operation of the CALEPA and the Departments within the Agency.

Although there was some action taken during the prior administration to coordinate environmental programs and regulations between Departments within CALEPA, recent problems show the need for CALEPA to do more in this area. This is critical to the state's efforts to keep and attract employers to California.

Under the directive issued by the Governor, you must review the manner in which environmental programs are delivered. As the Secretary for the Agency that oversees multiple "environmental" Departments, you are not only responsible for the effectiveness of these programs, but also the "health" benefits to Californians supposedly derived from these programs as well as the cost these programs place on businesses.

## **1. Inter-departmental coordination of environmental programs and regulations under the Agency.**

The most pointed example of this was the approval of MTBE in gasoline manufactured for California. While this action was taken during a prior administration under pressure from the federal air quality requirements, the California Air Resources Board (CARB) did little to evaluate the potential health risks MTBE could have on Californians. Nor was there any regard for the significant costs associated with the retrofitting of refineries for MTBE.

Mr. Winston H. Hickox  
Secretary for Environmental Protection  
November 15, 1999  
Page 2

The CALEPA should have evaluated the proposed regulations, not only for environmental effectiveness, but most importantly the public health and private business costs associated with the MTBE mandate. Both the Legislature and the Governor recognized the lack of leadership from the Agency and Departments on this issue when SB 529 (Bowen) was signed into law this year. SB 529 prohibits CARB from adopting any regulation that establishes a specification for motor-fuel without an evaluation by affected agencies, coordinated by the state board and reviewed by the California Environmental Policy Council.

**2. State actions on a Low-Level Radioactive Waste Site.**

It is relatively clear that the development of a low-level radioactive waste depository in Ward Valley is unlikely. However, we are well beyond the debate over the need for such a site since this type of waste continues to be generated in California. The question is whether this waste should be stored on-site, where it poses a greater risk to Californians, or should a waste site be created to properly handle the storage of this waste? My concern is that there has been little if any action by the State to determine another suitable waste site. I recommend that you investigate what steps your Agency or responsible Department has taken to address this issue.

**3. State certification of new environmental technology.**

Another issue that must be included in your review of CALEPA and programs is the delay and costs associated with the development and certification of new environmental technology, especially when this technology can be used by businesses attempting to meet state environmental mandates. This issue is also a victim of the inter-departmental coordination problem stated above, but also demonstrates the lack of CALEPA's leadership in helping businesses and governmental agencies comply with environmental mandates imposed by state and federal regulations.

As you know, state law mandates that local governments reduce their waste stream to landfills by set dates. Also, federal and state laws and regulations require the reduction of air pollutants from businesses and impose strict guidelines for the disposal of "hazardous" waste.

All of these requirements impose costs on businesses, which are eventually passed on to consumers. However, there are new environmental technologies that will allow businesses, local governments and the U.S. Military to comply with these mandates at a lower cost. Unfortunately, Californians do not benefit from these new technologies because typically, the state imposes so many restrictions on the use of this technology that it no longer becomes cost effective.

Mr. Winston H. Hickox  
Secretary for Environmental Protection  
November 15, 1999  
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One example, outlined below, further demonstrates how California's bureaucratic process and a Department's unwillingness to look at the overall environmental benefits provided by this new technology kills businesses and jobs in California.

**e.g. Certification of Aerosol Can Recycler.**

The Katec Company manufactures an aerosol can recycling system, which captures any remaining product in the can and crushes it so the metal can be recycled. This equipment is used in every state but California. In California, used aerosol cans are treated as "hazardous" waste requiring businesses to obtain a costly hazardous-waste-treatment permit to dispose of them. In an effort to alleviate the need for a permit and speed the certification process of this aerosol recycling system, legislation was passed in 1995 (AB 483). Since then, the Department of Toxic and Substance Control (DTSC) has been working on "certifying" this equipment, and recently adopted regulations which will make the use of this equipment in California too expensive to operate.

In fact, I raised my concerns over this issue with DTSC Director Lowry during his confirmation hearing before the Senate Rules Committee. I asked him several questions concerning the long-running attempt to obtain reasonable certification of the aerosol can recycling unit manufactured by Katec. Understandably, Director Lowry noted that he had only been involved in the process a short time and needed additional time, but pledged to look at the issue. However, additional time has elapsed, I have received no response from Director Lowry, and the certification process, now final, has delivered disastrous results. If there was any doubt before that a business would not use the Katec equipment, the conditions imposed by the DTSC now make it physically and financially impossible for most small business to use the unit.

Also, I am surprised that comment letters written by the County of Mendocino, the Department of Defense, and the Industrial Environmental Association were not taken seriously. These letters are quite to the point on this issue. I would hope that your study of service delivery would take a hard, critical look at the full dimension of the issue of inter-departmental coordination in this certification process.

I do not believe that the DTSC considered the data collected from use of this equipment in other states or the tremendous cost savings to local governments and businesses when adopting these regulations. In addition, it seems as if there was total disregard to the overall environmental benefits derived from this recycling system. If this system were cost-effective to use in California, air quality would improve because there would be no need to ship the cans to an out-of-state processing site via diesel trucks and we would realize a reduction in the waste stream to municipal landfills.

Mr. Winston H. Hickox  
Secretary for Environmental Protection  
November 15, 1999  
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My disappointment, and reason for bringing this issue forward to you, is that despite repeated attempts to engage your agency in this issue, no engagement ever occurred. This despite the fact that the most significant environmental issues raised in certifying the aerosol can recycler involved solid waste and air emissions; which the DTSC has neither the expertise or purview. The aerosol can issue is a classic example which cuts across half your program areas. Yet, CALEPA would not get involved to ensure that policy concerns raised by the DTSC were balanced by those of the Integrated Waste Management Board and Air Resources Board. Despite passage of AB 483, it seems eminent that the Legislature will once again have to address this issue.

I have provided you only a few reasons why I believe it is critical for you, as the Agency Secretary, to look at the lack of coordination among your departments during your review, especially when it comes to implementing environmental programs and regulations in the State.

Please do not hesitate to contact me should you have any questions on the issues I raised in this letter.

Sincerely,



WM. J. FITE KNIGHT  
Senator, 17<sup>th</sup> District

WJK:zb