

**Recommendations  
of the  
California Environmental Protection Agency  
(Cal/EPA)  
Advisory Committee  
on Environmental Justice  
to the**



**Cal/EPA Interagency Working Group  
on Environmental Justice**

**FINAL REPORT**

**September 30, 2003**

(Approved by the Committee September 30, 2003 Published October 7, 2003)

## **Advisory Committee Members**

- \* Committee Co-Chairs
- \*\* Drafting Subcommittee Co-Chairs

\*Detrich B. Allen, Environmental Affairs Department – Los Angeles, CA  
\*\*Henry Clark, West County Toxics Coalition – Richmond, CA  
Michael Dorsey, Department of Environmental Health – San Diego, CA  
Dorothy M. Hallock, Fort Mojave Indian Tribe – Needles, CA  
Robert Harris, Pacific Gas & Electric – San Francisco, CA  
William Jones, County of Los Angeles Fire Department – Commerce, CA  
James Kennedy, Contra Costa Redevelopment Agency – Martinez, CA  
\*\*Barbara Lee, Northern Sonoma County Air Pollution Control District – Healdsburg, CA  
Joseph K. Lyou, California Environmental Rights Alliance – El Segundo, CA  
Cynthia McClain-Hill, McClain-Hill Associates – Los Angeles, CA  
Donna Pittman, Pittman & Associates – San Francisco, CA  
Carlos Porras, Communities for Better Environment – Huntington Park, CA  
LeVonne Stone, Fort Ord Environmental Justice Network – Marina, CA  
\*Diane Takvorian, Environmental Health Coalition – San Diego, CA  
Cindy K. Tuck, California Council for Environmental & Economic Balance – Sacramento, CA  
Eva Vasquez-Camacho, United Farm Workers of America – Bakersfield, CA  
Barry R. Wallerstein, South Coast Air Quality Management District – Diamond Bar, CA

### **Designated State Official (DSO)**

Romel Pascual, Assistant Secretary for Environmental Justice, Cal/EPA

## **Advisory Committee Alternates**

Martha Dina Arguello, Physicians for Social Responsibility – Los Angeles, CA  
Jose Bravo, Communities for a Better Environment – San Diego, CA  
Larry Greene, Yolo-Solano Air Quality Management District – Davis, CA  
Martha Guzman, United Farm Workers of America – Sacramento, CA  
Richard Smith, San Diego Air Pollution Control District – San Diego, CA  
Victor Weisser, California Council for Environmental & Economic Balance – San Francisco, CA  
LaDonna Williams, People for Children’s Health – Vallejo, CA  
Holly Welles, Pacific Gas & Electric – San Francisco, CA

## **Disclaimer**

*This report and/or recommendations was written as a part of the activities of the California Environmental Protection Agency Advisory Committee on Environmental Justice (EJ ADVISORY COMMITTEE), a public advisory committee providing information, advice, and recommendations to the Secretary of Cal/EPA, the Interagency Working Group on Environmental Justice, and other officials of Cal/EPA. The Committee is structured to provide balanced, expert assessment on matters related to the Environmental Justice program. This report and/or recommendations have not been reviewed for approval by Cal/EPA and, hence, the contents of this report and recommendations do not necessarily represent the views and policies of Cal/EPA, nor of any branch of state government, nor does mention of trade names or commercial products constitute a recommendation for use.*

## TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	LEGISLATIVE MANDATE	3
III.	PURPOSE AND SUMMARY OF RECOMMENDATIONS	7
IV.	SUMMARY OF PUBLIC PARTICIPATION AND COMMENTS RECEIVED	10
V.	RECOMMENDATIONS OF THE CAL/EPA ADVISORY COMMITTEE ON ENVIRONMENTAL JUSTICE	13
	• <i>Goal 1: Ensure meaningful public participation and promote community capacity building to allow communities to be effective participants in environmental decision-making processes</i>	17
	○ Guidelines & Staff Training	18
	○ Availability of Information	18
	○ Capacity Building	19
	○ Relationship Building	19
	• <i>Goal 2: Integrate environmental justice into the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies</i>	20
	○ Program Development & Adoption	21
	○ Program Implementation	22
	• Land Use and Zoning	22
	• Facility or Project Siting and Permitting	23
	• Mobile Source Pollution Control	24
	• Risk Reduction and Pollution Prevention	25
	• Site Remediation	28
	○ Program Enforcement	29
	• <i>Goal 3: Improve research and data collection to promote and address environmental justice related to the health and environment of communities of color and low-income populations</i>	30
	○ Data Collection	31
	○ Data Availability	32
	○ Community-based Research	32
	• <i>Goal 4: Ensure effective cross-media coordination and accountability in addressing environmental justice issues</i>	33
	○ Cross-media Coordination	34
	○ Agency Accountability	34
VI.	IMPLEMENTATION OF RECOMMENDATIONS	35
VII.	RECOMMENDATIONS FOR FUTURE EVALUATION	35
VIII.	ALTERNATIVE OPINIONS (Minority Reports)	36
IX.	BACKGROUND MATERIALS & REFERENCES (Appendices)	54

## ACKNOWLEDGEMENTS

The process that led to the development of this report represents a model of collaboration and shared commitment to the spirit of environmental justice. While this report represents the collective experiences and perspectives of the 17- member Advisory Committee on Environmental Justice, the achieved process resulted from the Committee's commitment to an open and accessible process committed to achieving meaningful public involvement. We, the Advisory Committee on Environmental Justice, would like to extend our sincerest appreciation to the hundreds of public members throughout California who inspired us with real-life experiences and lessons learned, and most of all, for your invaluable contribution to the content of this report.

The Committee would also like to extend specific thanks to many individuals, including US Congresswoman (former State Senator) Hilda Solis and State Senator Martha Escutia, authors of landmark state environmental justice legislation, the Committee member alternates, and the Cal/EPA staff who have dedicated many hours of support and guidance in completing this process. The tireless effort and leadership of the Co-Chairs of Drafting Subcommittee, Barbara Lee and Dr. Henry Clark, were vital in the development of this Report. The work of the Committee would not have been possible without the support and vision of Agency Secretary, Winston H. Hickox and former Agency Deputy Secretary, Nancy Sutley. Instrumental in the development of this report was Cal/EPA's Environmental Justice Program staff:

- Romel Pascual, Assistant Secretary for Environmental Justice
- Carol Monahan, Assistant General Counsel
- Malinda Y. Hall, Special Assistant for Environmental Justice
- Jeanine Townsend, Executive Assistant
- Juan Aquino and Yovana Perez, former Executive Fellows
- Brent Takemoto, Staff Air Pollution Specialist, Air Resources Board
- Jessica Counts, former Program Assistant, US EPA Region 9
- Allen Korenstein, former Legal Intern

The Committee believes that this Report provides a road map for implementing environmental justice within Cal/EPA as well as other agencies in state government.

Recommendations of the  
Cal/EPA Advisory Committee on Environmental Justice  
to the  
Cal/EPA Interagency Working Group on Environmental Justice

**September 30, 2003**

**I. INTRODUCTION**

This report has been prepared by the California Environmental Protection Agency's Advisory Committee on Environmental Justice (also referred to in this document as the 'EJ Advisory Committee,' 'Advisory Committee,' or 'Committee'). The report covers specific areas in response to legislative mandate. More importantly, this report reflects the collective judgment of the Committee about the steps needed to make environmental justice a reality for all Californians.

The EJ Advisory Committee fully supports the goal of environmental justice, as defined in state law, for all Californians. The Committee recognizes that this goal has not yet been reached. There are still gaps in data, and tools that need to be developed, but the Committee believes that there are also steps that can be taken now. This report outlines many things that can and should be done to achieve the goal of environmental justice. The Committee fully endorses the use of good science, and robust and meaningful participation by the public in environmental decision-making; at the same time we do not want our recommendations for developing data and tools to result in delays in implementing those steps that can clearly be taken right away. To that end, the Committee's report also includes timelines and next steps, and above all, accountability for implementing these recommendations.

The Environmental Justice movement is deeply rooted in civil rights, and the struggles of people who have historically been marginalized. In their fight to be treated fairly and accorded equal protection under all of our nation's laws, they have demanded equal protection of their health and environment. In particular, the Environmental Justice movement has been championed by people of color, Native American tribes, farm workers, and low-income communities. The movement has been characterized by passionate debate, and many different views; although this report does not completely set out the scope of these views, we must acknowledge their importance in shaping public policy. As background, a general history of the movement is provided. A more detailed summary is appended to the report, as is a list of additional references (*see Appendix A*). What this report does show, however, is that environmental justice is of great importance to the people of California and has become a fundamental goal for the state's environmental programs.

Environmental justice first gained national prominence through a protest against the proposed siting of a landfill for polychlorinated biphenyls (PCBs) in a predominately African-American county in North Carolina. The phrase "environmental racism" was used to refer to policies and activities that, either intentionally or unintentionally, resulted in the disproportionate exposure of people of color to environmental hazards. A 1983 study published by the U.S. General

Accounting Office (GAO) found that in the southeastern United States, three of four commercial hazardous waste landfills were in communities with more African-Americans than whites. The United Church of Christ Commission for Racial Justice expanded the 1983 GAO study to the national level and found similar results. A total of 45 studies conducted by various investigators between 1967 and 1993 examined the role of race and income level in exposure to environmental hazards, and found disparate impacts in the great majority of cases studied (87 percent and 74 percent, respectively) (*see Appendices A and B*).

In October 1991, advocates attending the First National People of Color Environmental Leadership Summit drafted a statement called “Principles of Environmental Justice.” These principles articulated broad goals for communities and environmental justice. They asserted that all people have a fundamental right to clean air, water, land, and food. They called for policy based on mutual respect, free from discrimination or bias. They affirmed communities’ right to self-determination, and to participate as partners in every level of decision-making, including needs assessment, planning, implementation, enforcement, and evaluation. Finally, the principles expanded the concept of “environment” beyond ecological and natural systems, to include places where people live, work, play, and go to school.

In 1994, a newly inaugurated President Clinton issued Executive Order 12898: “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.” The executive order requires that all federal agencies incorporate environmental justice into their missions. Specifically, federal agencies are required to address situations where their programs, policies, or activities result in adverse health or environmental impacts that are disproportionately high and adverse in low income communities or communities of color (*see Appendix C*).

The order is binding on all federal agencies. The Order directed agencies to conduct their programs, policies and activities in a manner that did not subject persons to discrimination. Some of the specific steps agencies were directed to take include working to ensure that public documents, notices and hearings relating to human health or the environment are concise, understandable and readily accessible to the public. In a corresponding 1994 memorandum, the White House directed federal agencies to analyze the effects of specified federal actions on low income communities and communities of color. The memorandum also directed federal agencies to ensure that environmental programs or activities receiving federal assistance did not discriminate on the basis of race, color or natural origin in accordance with Title VI of the 1964 Civil Rights Act (*see Appendix C*).

There is an important aspect of environmental justice that has been more fully articulated, and more consistently implemented, at the federal level than in California. It involves environmental justice as it relates to Native American tribes. The federal government holds a “trust responsibility” with Tribes that “requires the federal government consider the best interests of the Tribes in its dealings with them and when taking actions that may affect them. The trust responsibility includes protection of the sovereignty of each Tribal government” (*see Appendix D*). The federal government also has a consistent policy of conducting its relationships with tribes on a government-to-government basis. This has not always been the case in relationships between Tribes and states, including the State of California. The central point of contention is

the limited (or complete lack of) applicability of state law on tribal lands. As a result, there are a number of issues that further complicate environmental justice for Native American tribes in California. These issues include, but are not limited to, the need for clearer definition of and limits on sovereignty, the impacts of the delegation of federal authority, cross-border impacts between Tribal and non-tribal lands, differences between Tribal, federal and state standards and environmental programs, and the handling of socioeconomic impacts.

California law defines “Environmental Justice” to mean: “The fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of all environmental laws, regulations, and policies (Government Code Section 65040.12).”

Environmental justice became part of California’s laws through legislation enacted between 1999 and 2001. The term “environmental justice” was formally defined when Governor Davis signed Senate Bill 115, authored by Senator Hilda Solis, in 1999. This bill designated the Governor’s Office of Planning and Research (OPR) as the agency charged with coordinating the state’s efforts for environmental justice programs. It also required the California Environmental Protection Agency (Cal/EPA) to take specific actions in designing its mission for programs, policies, and standards within the Agency. In 2000, Governor Davis included a specific appropriation to Cal/EPA for its environmental justice program, and signed Senate Bill 89, authored by Senator Martha Escutia. Senate Bill 89 established a procedural framework for pursuing environmental justice, and created the Interagency Working Group on Environmental Justice, which includes the heads of Cal/EPA’s Boards, Departments, and Office, and the Director of OPR. Senate Bill 89 also created the Advisory Committee on Environmental Justice, made up of external stakeholders, to assist the Working Group in developing a strategy to identify and address environmental justice gaps in Cal/EPA programs (additional details are provided in Section II, Legislative Mandate). Senate Bill 828 (Alarcon, 2001) established a deadline for the Cal/EPA Boards, Departments and Office to identify and address gaps in their programs that may impede the achievement of environmental justice. Finally, Assembly Bill 1553 (Keeley, 2001) required OPR to establish guidelines for incorporating environmental justice into the general plans adopted by cities and counties. Additional information about these bills and the agencies that they affect is discussed in the next section of this report.

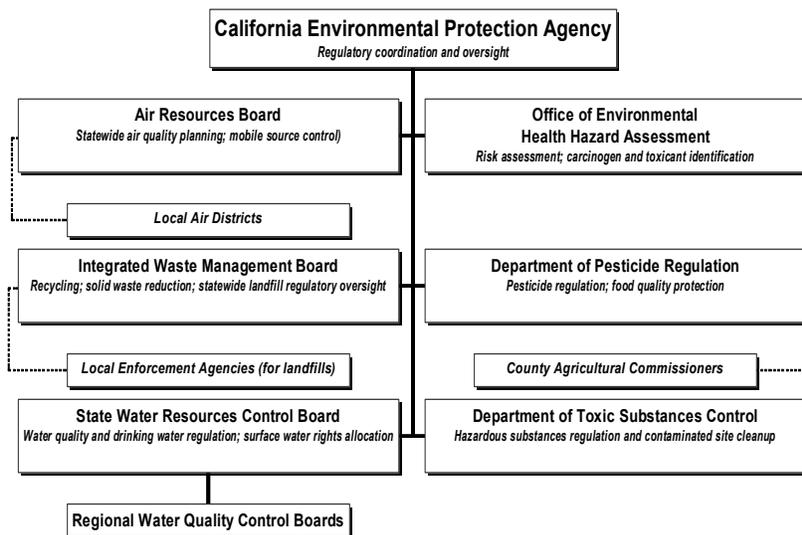
## **II. LEGISLATIVE MANDATE**

In California, legislation on environmental justice has mandates focused on four entities: Cal/EPA, OPR, the Cal/EPA Interagency Working Group on Environmental Justice, and the Cal/EPA Advisory Committee on Environmental Justice (EJ Advisory Committee). Cal/EPA is the umbrella agency that oversees all of the state’s environmental agencies, also known as its Boards, Departments, and Office. These agencies make environmental decisions for the state, and must ensure environmental justice in their decision-making. The agency that has the overarching responsibility for coordinating environmental justice programs for all state agencies, however, is the Governor’s Office of Planning and Research (OPR). The Director of OPR, the Secretary of Cal/EPA, and the heads of the Cal/EPA Boards, Departments, and Office, sit together on the Interagency Working Group on Environmental Justice. This working group must create a strategy to identify and address environmental justice gaps within their respective programs. In order to assure active and balanced participation by affected stakeholders outside

of these agencies, the Legislature also established the Cal/EPA Advisory Committee on Environmental Justice.

The EJ Advisory Committee prepared this Report in response to a specific legislative mandate. It also includes recommendations that go beyond the specific mandate that the EJ Advisory Committee felt were important to bring forward. This section of the report provides a brief description of the four entities mentioned above, and their specific mandates on environmental justice. Please refer to *Appendix E* for more complete information about California State law on environmental justice.

The Cal/EPA Boards, Departments, and Office (BDOs): The California Environmental Protection Agency, or Cal/EPA coordinates the activities of six environmental Boards, Departments, and Office, including the Air Resources Board, the Department of Toxic Substance Control, the Integrated Waste Management Board, the Department of Pesticide Regulation, the Office of Environmental Health Hazard Assessment, and the Water Resources Control Board. The mission of Cal/EPA is “To improve environmental quality in order to protect public health, the welfare of our citizens, and California’s natural resources. Cal/EPA will achieve its mission in an equitable, efficient, and cost-effective manner.” The agency has historically focused on multi-media coordination. It is now responsible for taking specific actions to achieve environmental justice in California (*see Appendix F*).



Senate Bill 115 (Solis, 1999) requires the agency to conduct its programs and promote enforcement in a manner that “ensures fair treatment of people of all races, cultures, and income levels, including minority populations and low-income populations of the state,” and develop a model mission statement on environmental justice. It also directs Cal/EPA to ensure greater public participation in the development, adoption, and implementation of its environmental regulations and policies, promote enforcement, improve research, and identify differential patterns of consumption of natural resources between different socio-economic groups.

Senate Bill 89 (Escutia, 2000) charges the Secretary of Cal/EPA to convene a working group (see below) to assist the agency in developing “an agency-wide strategy for identifying and addressing gaps in existing programs, policies, or activities that may impede the achievement of environmental justices.” Senate Bill 89 also directs the Secretary to convene an advisory group of external stakeholders (see below) to assist the agency and the working group in developing the agency’s strategy.

Senate Bill 828 (Alarcon, 2001) requires each Cal/EPA BDO to review its programs, policies, and activities to identify and address gaps that may impede the achievement of environmental justice. The Bill also established statutory deadlines for the completion of specific actions under Senate Bill 89.

These bills have been incorporated into California law in Government Code, Section 65040.12 (Title 7, Division 1, Chapter 1.5, Article 4), and Public Resources Code, Sections 71110-71116 (Division 34, Part 3). Please refer to *Appendix E* for more complete information about California State law on environmental justice.

Cal/EPA’s six Boards, Departments, and Office, and their mission statements, are described below:

*The Air Resources Board (ARB)*: The ARB oversees activities of 35 local and regional air pollution control districts. Districts regulate industrial pollution sources, issue permits, and ensure industries adhere to air quality mandates. The ARB also has primary responsibility for regulating emissions from mobile sources in California, the largest emissions sector, as well as consumer products. Its mission statement is “To promote and protect public health, welfare and ecological resources through the effective and efficient reduction of air pollutants while recognizing and considering the effects on the economy of the state.”

*The Department of Toxic Substances Control (DTSC)*: DTSC regulates hazardous waste facilities. It also oversees the cleanup of hazardous waste sites and ensures that state and federal requirements for managing hazardous wastes are implemented. Its mission statement is “To restore, protect and enhance the environment, to ensure public health, environmental quality and economic vitality, by regulating hazardous waste, conducting and overseeing cleanups, and developing and promoting pollution prevention.”

*The Integrated Waste Management Board (IWMB)*: The IWMB promotes achievement of waste diversion mandates by local jurisdictions (cities and counties). It fosters markets for recovered recyclables, and enforces legal provisions to protect the environment and public’s health and safety. Its mission statement is “To reduce waste, promote the management of all materials to their highest and best use, and protect public health and safety and the environment, in partnership with all Californians.”

*The Department of Pesticide Regulation (DPR)*: DPR regulates pesticide sales and use, and fosters reduced-risk pest management. The Department also oversees product evaluation/registration, environmental monitoring, and residue testing of fresh produce. It also oversees local use enforcement through the county agricultural commissioners. Its

mission is “To protect human health and the environment by regulating pesticide sales and use and by fostering reduced-risk pest management.”

*The Office of Environmental Health Hazard Assessment (OEHHA)*: OEHHA is responsible for developing and providing risk managers in the state and local government agencies with toxicological and medical information relevant to decisions involving health. OEHHA also works with federal agencies, the scientific community, industry and the general public on issues of environmental as well as public health. Its mission statement is “To protect and enhance public health and the environment by objective scientific evaluation of risks posed by hazardous substances.”

*The State Water Resources Control Board (SWRCB)*: The Board allocates water rights and arbitrates water right disputes. It develops statewide water protection plans, establishes water quality standards, and guides the nine Regional Water Quality Control Boards. Its mission statement is “To preserve and enhance the quality of California’s water resources, and ensure their proper allocation and efficient use for the benefit of present and future generations.”

The heads of each of the Cal/EPA Boards, Departments, and Office are required to participate in the Cal/EPA Interagency Working Group on Environmental Justice (see below) under Senate Bill 89. They are also required by Senate Bill 828 to implement the strategy developed in consultation with the Interagency Working Group and the Cal/EPA Advisory Committee on Environmental Justice (see below).

*The Governor’s Office of Planning and Research (OPR)*: The Governor’s Office of Planning and Research (OPR) is established as the coordinating agency in state government for environmental justice programs, under Senate Bill 115, in Government Code § 65040.12(c). OPR holds one-day workshops to teach state agency personnel about environmental justice, its statutory underpinnings, and how to address environmental justice issues that may arise in their work. The Office may provide more detailed and specialized training at a later date for interested state personnel who have completed the basic training. Senate Bill 89 requires the Director of OPR to sit on the Interagency Working Group, along with the heads of the Cal/EPA Boards, Departments, and Office. It also requires the Director to consult with the Secretary of Cal/EPA, the Resources Agency, the Trade and Commerce Agency, the Business, Transportation and Housing Agency, and the Cal/EPA Interagency Working Group on Environmental Justice, and any other appropriate state agencies, and all other interested members of the public and private sectors of the state. The Director must coordinate the Office’s efforts and share information, and review and evaluate information from federal agencies relevant to environmental justice. Assembly Bill 1553 (Keeley, 2001) requires OPR to develop guidance for cities and counties to incorporate environmental justice into their General Plans.

*The Cal/EPA Interagency Working Group on Environmental Justice (“Working Group”)*: The Cal/EPA Interagency Working Group on Environmental Justice is made up of the Secretary of Cal//EPA, the heads of its Boards, Departments and Office, and the Director of OPR. Under Senate Bill 89, the Working Group is required to examine existing data and studies on environmental justice and coordinate with other governmental agencies, and community

groups. It is directed to recommend criteria to the Secretary of Cal/EPA for identifying and addressing any gaps in existing programs, policies, or activities that may impede achievement of environmental justice. It must recommend procedures and guidance to Cal/EPA for coordination and implementation of environmental justice, and for data collection, analysis, and coordination. It must also recommend procedures to ensure that public documents, notices, and hearings are concise, understandable, and readily accessible, and provide guidance for determining when it is appropriate for Cal/EPA to translate crucial documents, notices, and hearings for limited-English-speaking populations. The Working Group is also required to hold public meetings and take public comments on their proposed recommendations (*see Appendix G*).

The Cal/EPA Advisory Committee on Environmental Justice: The Cal/EPA Advisory Committee on Environmental Justice was established in December 2001, in response to Senate Bill 89 (Escutia, 2000). The membership and mission of the Committee is set out the Public Resources Code § 71114. The Committee was originally created with thirteen members from specific sectors of external stakeholders. These thirteen members include: two representatives of local or regional land use planning agencies; two representatives from air districts; two representatives from certified unified program agencies (CUPAs); two representatives from environmental organizations; three business representatives (two from large and one from small business); and two representatives from community organizations. One of the first actions taken by the Committee, in response to valid concerns from the public, was to vote to support legislation to expand the representation on the Committee. In particular, numerous public complaints were made that the Committee did not include representation from African American community groups and Native American tribes, nor did the community/environmental group membership reflect a good geographic representation of the state. The legislation (Senate Bill 1542, Escutia), which was supported by the Committee, was signed by Governor Davis in September, 2002. Under this bill, four members were added to the Committee, which now includes seventeen members. The four new members include two additional representatives from community groups (both of whom represent African-American communities), one representative of Native American tribes, and one additional representative of small businesses. The new members also bring greater geographic diversity to the Committee.

Under Senate Bill 89, the Committee is mandated to assist Cal/EPA and the Interagency Working Group “by providing recommendations and information to, and serving as a resource for” them as they carry out their environmental justice mandates (Public Resources Code § 71114(a)).

### **III. PURPOSE AND SUMMARY OF RECOMMENDATIONS**

The Committee’s recommendations are being made to the Secretary of Cal/EPA and the Interagency Working Group, in response to the specific mandate to the Committee under Senate Bill 89. In formulating these recommendations, the Committee sought and received extensive public input. As an outgrowth of the process, the Committee has identified ways to further the goal of environmental justice that go beyond those areas specifically outlined in Senate Bill 89. These recommendations are intended to assist Cal/EPA and Interagency Working Group as they

develop their strategy to achieve environmental justice in California. The Committee has also made recommendations that affect entities outside the Cal/EPA umbrella that the Committee feels have an important role in achieving environmental justice, especially if their actions will affect the success of Cal/EPA's strategy.

In making these recommendations, the Committee engaged in a robust discussion of precaution as a foundation for public policy. The Committee considered input from a broad range of stakeholders, including community groups and environmental justice organizations, business and labor, local governments, federal government agencies, representatives of Native American tribes, and scholars at academic institutions. The time and effort undertaken by the people who addressed the Committee was greatly appreciated, and Committee members gave careful consideration to the testimony presented. The introduction to the recommendations in Section V outlines some of the key issues considered by the Committee.

The Committee reviewed the charge to the Interagency Working Group in Senate Bill 89, as detailed in Section 71113 of the Public Resources Code. The Working Group is charged to do six essential things (described in Section II, above). The Committee's recommendations respond to this mandate as follows:

***Examine existing data and studies on environmental justice, and consult with other agencies and affected communities.*** In reviewing existing knowledge about environmental justice, the Committee has engaged in an extensive public process. Community members provide a wealth of knowledge about the effectiveness of agency efforts to ensure environmental justice. The Committee has undertaken only a limited review of existing data and studies. By virtue of its membership, however, and the public process it has undertaken, the Committee has also consulted with other agencies. Section IV of this report details the process undertaken and comments received, in order to help the Working Group accomplish this legislative charge.

***Recommend procedures to ensure that public documents, notices, and hearings are concise, understandable, and readily accessible to the public, and provide guidance on when it is appropriate to provide translation for limited-English speakers.*** The recommendations of Section V, Goal #1 are intended to help the Working Group accomplish this legislative charge. The Committee considered public participation in a broader context, believing it is a crucial part of achieving environmental justice, and listed criteria that identify successful and unsuccessful programs in public participation. Specific guidance is provided to enhance the availability of information and the effectiveness of efforts to increase public participation in agency decision-making processes. Guidance is also provided on other aspects of meaningful public participation, and largely responds to the input received from community members. Due to time constraints and the number of significant issues considered by the Committee, the Committee was not able to provide guidance on when it is appropriate to provide translation.

***Recommend criteria for identifying and addressing any environmental justice gaps in existing programs, policies, or activities.*** The recommendations under Section V, Goal #2 are intended to help the Working Group accomplish this legislative charge. The Committee

has not discussed criteria in any systematic way. Instead, the Committee has listed the general criteria that identify program elements that successfully incorporate environmental justice. The Committee has also provided recommendations to improve specific program areas, in response to the issues raised in the public comment process.

***Recommend procedures for data collection, analysis, and coordination, relative to environmental justice.*** The recommendations under Section V, Goal #3 are intended to help the Working Group accomplish this legislative charge. The Committee has provided recommendations in these areas, and has included additional areas based on public input. Community groups were anxious to play a broader role in studies that involve their communities. They are seeking opportunities and support for community-based research (discussed in more detail later), and the Committee has included recommendations addressing this issue. We note, however, that some commenters expressed hope that Cal/EPA would avoid using research and data gathering to delay acting on issues that require immediate attention.

***Recommend procedures and guidance for the coordination and implementation of intra-agency environmental justice strategies.*** The recommendations under Section V, Goal #4 are intended to help the Working Group accomplish this legislative charge. The Committee has provided recommendations for intra-agency coordination, but felt some additional areas were pertinent to this carrying out this charge. Specifically, the Committee has also included recommendations for better coordination with agencies outside of Cal/EPA, and also for making sure Cal/EPA and its Boards, Departments, and Office are accountable to the public for strategy they ultimately develop to address environmental justice.

In general, the recommendations of this Committee reflect its commitment to sound science and robust public participation. In fact, the theme of meaningful public participation is central throughout all of the recommendations. At the same time, the Committee believes that pursuit of data, tools, and better processes should not prevent an agency from taking steps in the near term to address known environmental justice problems. To this end, the Committee will identify actions that can be taken quickly, and intends to include recommended next steps and timelines to enhance accountability. This implementation guidance will be incorporated into Section VI of the report.

In Section VII, the Committee has identified key areas of government action outside of Cal/EPA or the Interagency Working Group that should be evaluated and, where appropriate, improved to ensure environmental justice for all Californians. Additional materials that will help the reader understand and use this report to further the goal of environmental justice are provided in Section IX, Background Materials and References.

#### IV. SUMMARY OF PUBLIC PARTICIPATION AND COMMENTS RECEIVED

##### Background

The EJ Advisory Committee completely supports the importance of full and meaningful public participation in environmental decision-making processes. In keeping with this belief, the Committee provided extensive opportunities for the public to engage the Committee in discussions about the development of these recommendations, and about environmental justice in general.

- All Committee meetings are public meetings and include at least one public comment period.
- Many Committee meetings have included more than one opportunity for public comment, and the first few Committee meetings were almost entirely devoted to public comment.
- Committee meetings have been held in a number of different locations to allow broader public participation. Although more recent budget constraints have limited the Committee's ability to travel throughout the state, meetings are taped and conference call and online access to meetings have been provided.
- Meeting notices have been provided in multiple languages and interpreters have been made available at the meetings.
- Information about this process has been available on the Cal/EPA website, in writing, and by email.
- Comments on the draft recommendations, and environmental justice issues in general have been received through oral testimony and written correspondence (including electronic correspondence).

##### Draft EJ Strategy Framework

The process of preparing these recommendations began with a "white paper" document prepared by Cal/EPA staff. The document was framed as a draft strategy for achieving environmental justice goals; it included four key elements, each with more specific objectives and possible action items to implement the elements. The four elements were drafted as follows:

- **Element #1:** *Ensure environmental justice is integrated into the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.*
- **Element #2:** *Ensure meaningful public participation and promote community capacity building to allow communities to be effective participants in environmental decision-making processes.*
- **Element #3:** *Improve research and data collection to promote and address environmental justice related to the health and environment of communities of color and low-income populations.*
- **Element #4:** *Ensure effective cross-media coordination and accountability in addressing environmental justice issues.*

The EJ Advisory Committee reviewed the draft framework elements, and then Cal/EPA staff used the draft framework to guide public discussion at a series of five workshops held throughout the state. Workshops were held in Oakland, Monterey, Fresno, Los Angeles, and San Diego, during the month of September 2002. Cal/EPA staff conducted extensive community outreach in advance of each workshop, including mail-outs, email announcements, personal communications, and posting on the Cal/EPA website. Materials were available in English and Spanish. A combined total of roughly 200 people participated at the five locations, including participation by Committee Members.

At each of the workshops, Cal/EPA staff reviewed recent legislation on environmental justice in California, as well as the structure and role of Cal/EPA as an environmental agency, and specifically in regard to environmental justice. The draft Environmental Justice Strategy Framework was presented, including objectives and potential action items, and public input was sought. During the facilitated discussion, participants were encouraged to articulate concerns and perspectives and respond to the draft Environmental Justice Strategy Framework. Participants made comments to support, revise, or object to the Elements, recommended additional objectives or potential action items, and provided examples that illustrated problems or clarified interpretations of the Framework document. Each workshop was tape recorded and summarized, and subsequent written comments were encouraged.

Using the public input from the workshops, Cal/EPA staff revised and expanded the draft Environmental Justice Strategy Framework, incorporating additional objectives and actions, as well as observations and examples identified by the public.

### *Draft Recommendations Report*

The revised draft Environmental Justice Strategy Framework document was discussed by the Committee at a public meeting in November 2002, and formed the starting point for the Committee's deliberations and the recommendations in this report. At the November meeting, the Committee identified the basic structure and general content for this report, and established a subcommittee to undertake the actual drafting of the document. Over the subsequent six months, the Drafting Subcommittee prepared draft language in sections for the Committee to discuss and the public to comment on at Committee meetings, and then incorporated changes to the document based on those discussions and comment.

### *Summary of Public Comments*

During the roughly 18-month period that the Committee met to develop these recommendations, members of the public identified a wide range of issues. A very brief summary of some of the concerns most frequently heard includes the following:

- The individual authorities, roles, and responsibilities of the different environmental agencies at the federal, state, and local level are very difficult for members of the public to sort out, and at times appear to be unclear to the agencies themselves.
- Environmental agencies have a long history of failing to engage community members in a meaningful way in the decisions being made that affect the community.

- There is a gap in authority/accountability when environmental justice problems arise because of federal facilities, and this needs to be addressed.
- How much authority does Cal/EPA have to really address environmental justice problems, and is this just another paperwork exercise?
- The business community needs agencies to approach environmental regulation in a systematic way, with clear criteria for requiring action that are consistently and fairly applied.
- Careful land-use and zoning decisions are the foundation for ensuring environmental justice goals are achieved.
- Existing environmental programs (such as the California Environmental Quality Act) have failed to provide community members with the degree of environmental protection they desire.
- The legislative mandate for Cal/EPA to address environmental justice has very specific language, especially concerning criteria and gaps that should not be ignored.
- Community members want greater control over their communities, and decisions that affect them.
- Workers and organized labor groups do not want environmental protections to be implemented in a way that threatens jobs.
- Local governments need the flexibility to prioritize efforts in response to local needs, in order to maximize limited resources.
- Community members believe project proponents (i.e., industry) should have to prove that a proposed project is safe before the project could be approved.
- The business community wants environmental decisions to be based on sound science and careful cost-benefit analysis.
- Community members do not believe that environmental agencies provide adequate enforcement of existing laws, regulations, and requirements, or that they respond adequately to community complaints.
- Local governments have great concern about new mandates that do not have associated funding.
- Farm workers need better protection from pesticide exposure for themselves and their families, both in the field and in the communities surrounding the fields, and especially at schools.
- Agencies need to do a better job of assessing cumulative impacts on communities.
- Regardless of data needs and the lack of tools for sophisticated analyses, certain communities are obviously impacted and there are things that can and should be done now to help them.

The above is not in any way a complete list of the concerns that have been raised to the Committee, nor does it capture the strong emotions that accompanied much of the testimony. It is also not organized to reflect any priority or importance. It does, however, provide a general sense of the range of concerns that the Committee has had to consider in preparing its recommendations. A more detailed summary of public testimony and written comments is included in *Appendix H*.

The Committee also solicited specific public input on the use of precautionary approaches, possible definitions and interpretations of the Precautionary Principle, and approaches to assessing cumulative impacts. Presentations were made to the Committee at a meeting focused specifically on those issues, and substantial written and oral public comment was received. Materials considered by the Committee can be found in *Appendix I*.

## **V. RECOMMENDATIONS OF THE CAL/EPA ADVISORY COMMITTEE ON ENVIRONMENTAL JUSTICE**

The Committee recommends that each Cal/EPA Board, Department, and Office (BDOs) will develop its own policy document to more specifically guide its environmental justice program, consistent with, but not limited to this report. Some of the BDOs have already begun this process, and may even have completed a policy document on environmental justice. These BDOs should still review the recommendations in this report, however, to identify any areas or concepts that they have not addressed, and to support collaboration and ensure program integration across media and throughout the agency. The four environmental justice goals identified by the Committee should guide the creation of each BDO policy document. For each Goal, the Committee has established a general checklist of the criteria that distinguish successful programs in that area. A list of warning indicators is also provided, to alert the BDOs to programs that may not be achieving the Environmental Justice Goals. The BDOs should use these lists as they develop and implement policies and actions for environmental justice.

In considering its Recommendations, the Committee sought and received substantial public comment (see previous section). The Committee has given careful consideration to the comments made by the public, and is grateful for the input. The Committee has structured its Recommendations around four key goals. These goals are framed after the four draft strategy elements, and have been identified by the Committee as “Environmental Justice Goals.” Broadly, they reflect the mandates given to the Committee and the Interagency Working Group. The goals also reflect the Committee’s understanding of the broader issue of environmental justice, and therefore encompass more than the specific items the Committee was directed to address. The goals include: (1) providing for meaningful public participation, (2) integrating Environmental Justice in all environmental programs, (3) improving research and data collection with respect to environmental justice, and (4) ensuring coordination and accountability in addressing environmental justice. As mentioned previously, the Committee also engaged in a significant discussion of precautionary approaches to environmental regulation, and the analysis of cumulative impacts. Some very concrete recommendations came out of these discussions, and the public comment received on the issue. These recommendations appear throughout the four goals, although they are most heavily concentrated under Goal #2. In addition to the actual recommendations, the Committee reached some important conclusions on use of precaution, and the considerations that affected our ability to reach consensus on this issue.

The Committee reached broad consensus on the importance of using precautionary approaches to environmental and public health protection. Committee members believe that it is not necessary or appropriate to wait for actual, measurable harm to public health or the environment before evaluating alternatives that can prevent or minimize harm. The Committee also recognizes that many programs currently implemented by Cal/EPA and its Boards, Departments, and Office are

precautionary in nature. Based on the data available to the Committee, it also concludes that additional precaution may be needed in order to address or prevent environmental justice problems.

Consensus was more difficult on the question of where specifically greater precaution is warranted, and to what degree. Committee members struggled to balance a number of competing needs and concerns. The following is a brief list that is intended to characterize the types of needs and concerns the Committee worked to balance, but it is by no means complete.

- The need for programs and agencies to be more responsive to community concerns about potential threats to their health and/or environment, balanced with a concern that resources are limited and need to be expended to prevent or mitigate well-understood impacts on public health and the environment, and targeted at the most significant impacts first.
- The need for scientifically supported tools, processes, and decisions, balanced with a concern that lack of complete scientific data has been used in the past to delay or prevent reasonable actions to address pollution problems.
- The need of community members to be assured that their health and environment will not be placed at risk by environmental decisions, balanced with a concern that no action can ever be shown to be risk free.
- The need of agencies and businesses to minimize costs and maximize benefits of actions undertaken, balanced with a concern that current methods of evaluating costs and benefits do not adequately address the wider costs to society and benefits of environmental decisions, or the distribution of those costs and benefits.
- The need to reduce emissions/discharges and exposures to toxic contaminants within a disproportionately impacted community, and concerns about the potential for business closure and job loss.

There is a certain amount of tension between the desire for a clean and healthy environment, and the desire for a vital and productive economy that cannot be avoided. Committee discussions and the testimony received repeatedly highlighted this tension. For example, the Committee had extensive discussion about ways to ensure that less toxic alternatives are not only considered, but also actually used. A number of case studies were mentioned where less toxic materials have been successfully and cost-effectively substituted for a variety of purposes ranging from cleaning products to pest control to product manufacturing. Committee members also heard from the business community that it has very significant worries about the impacts of regulatory intervention in this area, believing that governmental agencies do not have the expertise to dictate the materials used in manufacturing processes.

The Committee recognizes that the goals of environmental and economic health are not mutually exclusive, and can even be mutually supporting. Examples of the latter case include experiences where innovation to meet environmental goals results in a new, successful product or sector for the economy, and where the implementation of pollution prevention measures reduce pollution burdens while generating economic savings for businesses by reducing or eliminating the cost of materials, environmental permit fees, and associated administrative and production expenses.

The Committee heard and considered carefully the concerns expressed by many that the welfare of a community depends on *both* its environment and the availability of jobs for community

members. Recognizing this, the Committee urges those who would take action to address environmental justice issues with a community to strive for solutions that do not have an adverse economic impact on the community or jobs, and to involve community members and other stakeholders in decisions that might impact jobs. In some cases, a primary impact on certain jobs may be unavoidable; Committee members acknowledged this but felt these cases would be the exception rather than the rule, and pointed to the use of job relocation, “just transition” and other efforts to create new, less environmentally damaging economic opportunities when job loss cannot be avoided.

The Committee also identified two objectives that should not be viewed as competing, and should be considered a fundamental part of successful, just, environmental programs.

- First, the Committee specifically recognizes the frustration of community members who feel they have faced unreasonable hurdles to demonstrate that their health and/or environment are in fact being harmed, or are at risk of substantial harm, and the Committee believes Cal/EPA should take steps to make its decision-making processes more available and responsive to community concerns.
- Second, the Committee also recognizes the importance of economic vitality in the state, and the business community’s need for fair and predictable processes, and requirements that are feasible both technically and on the basis of cost; the Committee believes that Cal/EPA should pursue solutions that meet these needs.

In seeking environmentally just solutions, Cal/EPA should give priority to these two objectives.

The Committee recognizes that different environmental problems pose different levels of risk to public health. Community members need to know what levels of pollutants to which they are exposed, and agencies must prioritize environmental problems to give priority to environmental problems that pose the greatest health risk.

A number of the Committee’s recommendations address the cumulative impacts on a community, including the need for better data and tools to evaluate cumulative impacts, as well as strategies to reduce those impacts. The term “cumulative impacts” does not have a single definition, however, and is used in a number of different ways in different environmental statutes, regulations, policies, and programs. The Committee has not offered a single definition of “cumulative impacts” but has instead directed Cal/EPA to use a meaningful public process to establish such a definition, beginning with the definition in the California Environmental Quality Act (CEQA), and making use of the work of other agencies and organizations currently working in this area.

Rather than debate definitions for broad concepts, the Committee focused its efforts on identifying practical applications of precaution and mitigation strategies. Consensus here was also difficult, but improved when certain factors were clearly present. The following list briefly characterizes select factors that helped bring Committee members closer to agreement.

- The potential harm is significant and commonly recognized.
- The actions or alternatives contemplated have been shown in practice to be feasible and low cost.

- Resources are available to provide technical and financial assistance.
- Processes are transparent, and structured to allow all affected parties to fully understand the actions under consideration, to participate meaningfully, and communicate their key interests.

Committee members also were careful to articulate outcomes that were not intended to result from these recommendations. The following list describes some of the outcomes that Committee members felt should be avoided.

- Recommendations to collect and consolidate data should not result in lengthy delays in the implementation of reasonable, feasible strategies to reduce known and significant impacts.
- Recommendations to establish policies and engage in more meaningful public processes should not supplant efforts to implement and enforce requirements for environmental and public health protection.
- Recommendations to enhance precaution should not be interpreted to mean a guarantee of zero risk, or a mandate to act without credible threat of harm.
- Recommendations should be implemented in a manner that provides regulatory certainty for communities and businesses.

In general, as Cal/EPA and its BDOs undertake these recommendations, they should strive to avoid extremes in their interpretations. Instead, the recommendations should be implemented in the spirit in which they were made: with a genuine desire to identify real environmental justice problems, including circumstances of disproportionate, cumulative impacts, and to make real and measurable improvements in those situations.

Improving public participation in environmental decision-making forms the foundation for successful implementation of the other goals. Wherever recommendations under the other goals call for the use of public participation or public process, the Committee explicitly means a public participation process as described under Goal #1.

**Goal #1: *Ensure meaningful public participation and promote community capacity building to allow communities to be effective participants in environmental decision-making processes.***

Meaningful public participation is critical to the success of any effort to address environmental justice issues. For that reason, it is the first goal identified by this Committee, and the successful implementation of the other goals rests on realizing this one. The criteria that distinguish successful programs for meaningful public participation include:

- ✓ Guidelines for meaningful public participation.
- ✓ The identification of an office or contact person who has authority and responsibility for coordinating effective public participation opportunities.
- ✓ Awareness of and sensitivity to community-specific communication issues (including media, venue, language, and other cultural issues).
- ✓ Relationship building prior to environmental decision points.
- ✓ Educational, technical, and other assistance (i.e., capacity building) to support meaningful participation in environmental decisions – subject to the specific limitations in state law regarding the use of government funds for lobbying and other activities.
- ✓ Early public involvement in environmental decisions.
- ✓ Availability and timeliness of materials and information.
- ✓ Feedback to participants and commenters.

There are also indicators that a public participation program is not successful. If one or more of these indicators are present, the underlying cause(s) should be examined because there are other reasons that these circumstances might occur even if the program itself is sound. Gaps in programs that result in less meaningful public participation may be indicated by the following warning indicators:

- Complaints from the public (including lack of opportunity to comment, inadequate notice of events, inconvenient meeting times/locations, unavailable materials, lack of responsiveness from agency, etc.)
- Poor attendance at public meetings and low response to notices, requests for comment, etc.
- Lack of participation by a particular community or segment of a community, especially if English is not the primary language.
- General belief within the community that their input does not influence the outcomes of agency decisions.

The Committee recommends specific actions to ensure meaningful public participation in environmental decision-making. The recommendations are organized into four categories. These categories are: (a) Guidelines & Staff Training, (b) Availability of Information, (c) Capacity Building, and (d) Relationship Building.

## **Guidelines & Staff Training**

These are recommendations for internal activities to support meaningful public participation.

- Develop guidelines for agency staff on meaningful public participation and community relations that emphasize collaboration with community members on environmental issues and building and sustaining productive working relationships with communities.
- Enhance staff training to increase awareness of environmental justice, including but not limited to, public participation, meaningful community outreach, and public accessibility of information, and ensure that staff training is an integral component of all of these elements.
- Collaborate with other agencies or governmental offices (including federal, state, local, and tribal governments, and the Mexican government on cross-border issues) to leverage resources, avoid duplication of effort, and enhance effectiveness of public participation opportunities.
- Extend staff training opportunities to stakeholders, especially local governments/elected officials, who interact with the communities on similar or related issues.
- Add public participation responsibilities to appropriate job descriptions and include public participation criteria in employee performance reviews.

## **Availability of Information**

These recommendations are designed to increase public access to information necessary for meaningful participation in environmental decision-making.

- Initiate outreach efforts as early as possible in the decision making process, before significant resources have been invested in a particular outcome.
- Design outreach efforts to appropriately address the culture of the community (e.g., urban, rural, migrant, etc.) to improve community participation.
- Distribute notices and materials widely throughout the community. If all materials cannot be widely distributed, provide quick, easy access for community members to obtain them.
- Use multiple ways of notifying the community of upcoming meetings, workshops, hearings, and proposed action dates (e.g., electronic posting on websites, announcements through local media, fliers at libraries, schools, community centers, etc.).
- Encourage communication in non-traditional ways; for example, use “universal” pictures to convey complex ideas instead of (or to supplement) technical written materials and blueprints.
- Ensure materials are distributed far enough in advance of meetings, workshops, hearings, or proposed action dates to allow community members sufficient time for review and comment.
- When environmental decisions directly affect a specific community (for example, siting decisions), hold meetings and workshops, at times and locations that are convenient for community members to attend.
- Provide adequate translation or interpretation services for documents and public meetings.
- Complete the “plain, straightforward language” description of how to navigate California’s complex regulatory process (mandated by January 2002 legislation renewing Polanco Act of 1990).

## **Capacity Building**

These recommendations are made in response to community comments about their need for resources to increase their understanding of the technical and procedural aspects of environmental decision-making, in order to participate in a meaningful way.

- Develop and widely distribute a handbook for the public that identifies and explains public participation rights and opportunities.
- Identify opportunities to provide grants and technical assistance to communities and local government/elected officials, to enhance their knowledge and understanding of environmental issues and governmental processes.
- Implement and support the Cal/EPA Environmental Justice Small Grants Program (Assembly Bill 2312, Statutes of 2002) to enhance stakeholder participation in environmental decision-making processes.
- Explore ways to assist stakeholders in reviewing technical documents related to environmental decisions affecting their communities (such as providing access to technical experts through local colleges or universities).
- Provide and/or support educational and training opportunities for community members such as seminars on specific media, programs, etc. For example, a lecture by agency staff or through a local college could build community understanding of brownfield redevelopment.
- Where possible, collaborate with existing community adult-education programs.

## **Relationship Building**

These recommendations reflect public comments underscoring the need for a respectful relationship if meaningful communication is to occur.

- Initiate communication with communities before environmental decisions/concerns arise, and continue regular opportunities for ongoing communication.
- Explore opportunities to establish community affairs offices and to recruit community residents for positions in these offices.
- Establish community liaisons, advisory groups, and task forces.
- Capitalize on existing community resources by building positive and effective working relationships with community-based and non-governmental organizations.
- Ask community members to identify issues, questions, and/or concerns, separate from the agency's agenda.
- Identify what the agency can and will do, and establish timelines and accountability.
- Provide feedback to people or groups who make comments, suggestions, complaints, requests, etc. Acknowledge ideas and efforts that shape agency actions (give credit where credit is due).
- Create and maintain an atmosphere of openness and mutual respect.

**Goal #2: *Integrate environmental justice into the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.***

*Establishing Criteria to Identify Environmental Justice Gaps:* Where environmental justice impacts have already been documented, or environmental justice concerns are clearly understood to exist, discussions about criteria should not prevent agencies from using available data and tools, and taking action to respond to those concerns. The Committee also recognizes that there are also circumstances where the existing data and tools do not allow a quick determination of either the problem or the appropriate response. Development of these data and tools should be a high priority, as should fair criteria for their use. In developing the data, tools, and criteria for their use, agencies should ensure meaningful public participation (see Goal #1).

Programs that have successfully integrated this environmental justice goal will meet the following criteria:

- ✓ Consider environmental justice issues in developing and revising programs and program elements, including explicit analysis of environmental justice in the staff report for significant actions, or other supporting documentation.
- ✓ Ensure that program development and adoption processes do not create new, or worsen existing, environmental justice problems.
- ✓ Ensure meaningful public participation in environmental decision-making processes.
- ✓ Establish guidelines, procedures, and performance measures to ensure equitable implementation and enforcement of programs.
- ✓ Include data, tools and procedures to identify existing environmental justice problems.
- ✓ Give high priority to actions (e.g., funding criteria) that will address existing environmental justice problems.
- ✓ Dedicate resources and identify staff members responsible for assuring that the agency properly considers and addresses existing and potential environmental justice problems.
- ✓ Assess the relationship between socio-economic indicators (i.e., race, income, etc.) and the distribution of pollution sources and any associated health impacts.

There are also indicators that a program is not successful. If one or more of these indicators are present, the underlying cause(s) should be examined because there are other reasons that these circumstances might occur even if the program itself is sound. Programs that have less successfully integrated environmental justice may be identified by the presence of one or more of the following warning indicators:

- Data indicate that low-income populations and/or communities of color are disproportionately impacted by pollution.
- Public complaints are made regarding inadequate or unfair enforcement of agency rules and regulations.

- Agency resources are disproportionately deployed (i.e., fewer resources are devoted to low income communities or communities of color than are devoted to wealthier, predominantly Caucasian communities).
- Penalties for environmental violations with similar fact patterns are lower for violations in low income communities or communities of color.

*Addressing Environmental Justice Gaps:* The following recommendations are intended to prevent the creation of new Environmental Justice problems, and to help address existing gaps identified by the Committee. In order to facilitate review and discussion of the Committee's recommendations to address Goal #2, the Committee has grouped the recommendations into three broad categories. The categories are: (a) Program Development & Adoption, (b) Program Implementation, and (c) Program Enforcement.

### **Program Development & Adoption**

*(Note: Also refer to Section VIII for an Alternative Opinion related to this section)*

Program development and adoption varies somewhat between the Cal/EPA Boards, Departments, and Office, because their authorities, mandates, and administrative procedures are different. In general, however, these are activities undertaken to establish new program elements through a public process with all stakeholders.

- Include an analysis of environmental justice when developing and revising programs and program elements, including explicit analysis of environmental justice in the staff report or other supporting documentation.
- Consult with communities and other stakeholders, and consider their priorities and concerns prior to developing or revising program elements, rules, or policies.
- Give high priority to known environmental justice problems when establishing program development agendas.
- Use a public process to identify opportunities to advance environmental justice goals within the current statutory and regulatory structures, as well as any necessary changes or clarifications.
- Officially recognize the importance of precaution, and that it is not necessary or appropriate to wait for actual, measurable harm to public health or the environment before evaluating alternatives that can prevent or minimize harm.
- Identify, for each BDO, significant decision points or processes within existing and developing programs where a precautionary approach is currently used, or could be used, and evaluate whether additional precaution is needed to address or prevent environmental justice problems.
- Identify, through a public process, a set of criteria or indicators that can be used as a preliminary assessment to locate and prioritize potential environmental justice problems, and how the prioritized information will be used.
- Identify, through a public process, a set of reasonable, cost-effective, achieved-in-practice approaches that could be used to prevent or minimize adverse environmental impacts, and develop a process for consideration and use of these approaches.

## **Program Implementation**

As noted already, the programs of the different Boards, Departments and Office vary considerably. Public comments were received about specific programs, or aspects of those programs. The Committee has developed recommendations following the issues raised by the public, and has grouped them along common themes. The areas considered are: Land Use and Zoning, Facility or Project Siting and Permitting, Mobile Source Pollution Control, Risk Reduction and Pollution Prevention, and Site Remediation.

### **Land Use and Zoning**

*(Note: Also refer to Section VIII for an Alternative Opinion related to this section)*

Understanding that local government has the primary responsibility and authority for making zoning and land use decisions under existing law, Cal/EPA and OPR should take the following actions to address environmental justice issues.

- Clarify and describe Cal/EPA's and OPR's role in local and regional land use and zoning decisions.
- Collaborate with local governments/elected officials, environmental justice and community groups, and other stakeholders to help them identify and address environmental justice issues, particularly as they relate to community planning, and locally undesirable land uses.
- Develop a list of obvious, high-impact project scenarios that should be avoided, and make this list available through outreach and training to local land-use planners, communities and other stakeholders.
- Collaborate with OPR to identify actions that local governments and the federal government should consider to reduce impacts of pollution in communities identified as disproportionately impacted, such as:
  - ✓ *Creation of buffer zones around significant sources of risk;*
  - ✓ *Relocation of small sources away from residential areas or sites of sensitive receptors;*
  - ✓ *Develop tools for communities and local governments to use for evaluating the siting of facilities that significantly increase pollution in disproportionately impacted communities, including the authority for denial of permits, and increase the weight of community involvement in those decisions;*
  - ✓ *Engage community and environmental justice groups in community planning activities that address the potential conflicts between jobs, economic development, and environmental health; and*
  - ✓ *Adoption of stricter control and/or pollution prevention measures to reduce pollution and health risks.*

In implementing these actions, Cal/EPA should not place an unfunded mandate on local government and/or local programs. Cal/EPA should also actively seek and support mechanisms for funding actions or projects that support environmental justice, including new funding opportunities specifically for environmental justice projects, and changes to criteria for existing or emerging funding programs to ensure these sources are consistent with and supportive of the goals of environmental justice.

- Collaborate with OPR, and community groups, local governments/elected officials, and other stakeholders, on the development of land use and zoning guidance for local government, including:
  - Requirements for local government to demonstrate integration of environmental justice principles into general plans at their next General Plan update.
  - Requirements for local government to adopt new land use and zoning laws which use a buffer zone, objective siting criteria, or other measure to prevent the location of residences, schools, or other sensitive populations near significant sources of pollution.
  - Pursue amendments to the California Environmental Quality Act (CEQA) to require more meaningful alternatives assessment that addresses all reasonably viable alternative processes, methods and locations for new projects.
  - Require cumulative impact analysis for new applications.
  - Significantly increase the role and influence of community residents and the weight of their recommendations via community planning groups or other entities that have a significant role in the permit decision-making process, consistent with Permit Streamlining Act requirements.

#### Facility or Project Siting and Permitting:

*(Note: Also refer to Section VIII for an Alternative Opinion related to this section)*

- Identify the appropriate roles of Cal/EPA and its Boards, Departments, and Office in promoting environmental justice in permitting and siting decisions.
- Where Cal/EPA or a BDO has direct authority or decision-making responsibility in permitting actions, the agency should establish, through a public process and hearing, a programmatic framework (e.g., regulations, policies, or other means) for permitting decisions that includes:
  - Specific criteria to identify environmental justice problems when evaluating a permit application; and
  - Fair and effective mechanisms to address identified environmental justice problems as part of the permit action.
- Where Cal/EPA advises or oversees local governments that have primary jurisdiction in permitting and siting decisions, the agency should work with those impacted communities and local governments (before permit applications have been submitted to them) to help them establish appropriate programmatic mechanisms to identify and address environmental justice gaps in permitting and siting decisions.

- Collaborate with OPR (in its capacity as the state's coordinating office for environmental justice) to establish general guidelines for other state agencies to help them create appropriate, programmatic approaches for their permitting and siting decisions to identify and address environmental justice issues.
- Develop and make available to other state and local agencies, communities and other stakeholders, tools and information to support environmental justice considerations in permitting and siting decisions.
- Establish and provide to local government health-based permitting requirements that would prevent the issuance of permits for certain types of activities near sensitive receptors.
- Establish permit action thresholds and control requirements commensurate with an area's media specific cumulative pollution burden.
- In areas that have been identified as having a disproportionately high cumulative impact, require applications for new or modified facilities to include a pollution prevention analysis that addresses materials that are significant (because of volume, potential risk, hazard, etc.), and includes the following opportunities for material substitutions (as identified by the Office of Pollution Prevention, please refer to page 27):
  - Top-down selection of alternative materials (i.e., non-toxic is considered first and then the next least toxic material, and so on);
  - Clear justification for any proposal to use a material other than the least toxic available (including, for example, availability of data or materials, feasibility of substitution, product performance/safety issues, etc.) and;
  - Other alternatives analyses (i.e., process changes, fuels substitutions, movement of raw materials/product, other energy considerations), with justification for the alternative selected.

### Mobile Source Pollution Control

- Identify expanded roles for Cal/EPA and its Boards, Departments, and Office in promoting environmental justice through reducing pollution from on- and off-road mobile sources.
- Where Cal/EPA or a BDO has direct authority or decision-making responsibility, the agency should establish through a public process a comprehensive series of initiatives to promote and/or require the use of less-polluting engines and/or fuels, or add-on control devices, in response to environmental justice needs.
- Cal/EPA should work with federal government agencies to help it establish enhanced programmatic mechanisms to identify and address environmental justice impacts substantially related to on-and off-road mobile source pollutant emissions under its sole jurisdiction (e.g. trains, ships, aircraft, off-road engines including farm equipment, and federal facilities).
- Where Cal/EPA advises or oversees local governments/agencies that have primary jurisdiction in permitting, siting, and/or procurement decisions, the agency should work with those local governments/agencies to help them establish programmatic mechanisms to identify and address environmental justice impacts substantially related to on- and off-road mobile source pollutant emissions

- Collaborate with OPR and California Energy Commission (CEC) (in their capacity as responsible agencies for CEQA and energy/fuels policy, respectively) to establish policies and guidelines to address environmental justice impacts substantially related to on- and off-road mobile source pollutant emissions.
- Develop and make available to other state and local agencies, communities and other stakeholders, tools, information, and funding to support environmental justice considerations related to on- and off-road engine and vehicle operation.
- In areas that have been identified as having a disproportionately high cumulative impact, consider the establishment of special requirements that would fully or partially mitigate the contribution from on- and off-road engine and vehicle operation.

### Risk Reduction and Pollution Prevention

*(Note: Also refer to Section VIII for an Alternative Opinion related to this section)*

- Conduct a public process to establish a common definition of ‘cumulative impacts’. Development of such definition should consider total pollutant emissions and discharges in a geographic area, the definition in the CEQA, and definition of other agencies working on cumulative impacts. Cal/EPA should finalize the definition of cumulative impacts within six (6) months of submittal of this report and actions to address cumulative impacts should not await definitive calculation of risk or health consequences. In the interim, the default definition is: “the total burden of all emissions and discharges in a geographical area.”
- Develop, through a public process, peer-reviewed tools to assess cumulative impacts, and equitable, scientifically based criteria for using these tools, especially as they may be used to further the goals of environmental justice.
- Develop criteria and protocols, through a public process, for identifying and addressing environmental justice gaps in standard risk-assessments, taking into account potentially impacted and affected sensitive populations and the state of the science in modeling health and environmental risk-assessments.
- Develop criteria and protocols to enhance current approaches to cost-benefit analysis (where such analysis is needed and required) that support a more comprehensive evaluation of external costs and benefits, such as health, environment, innovation, economic development, and other important societal values when devising strategies to reduce pollution and health risks.
- Reduce environmental risks to children through pollution prevention and other mechanisms by using a public process to:
  - Identify the pollutants and pollution sources (including industrial, municipal, transportation, and others) which present the highest risk to children, based on toxicity, proximity, persistence, or other factors;
  - Prioritize these pollutants and processes for further action, and conducting research into non-toxic and/or less toxic alternatives;
  - Require adoption of non/less toxic alternatives through a comprehensive alternatives assessment process that includes evaluation of technical feasibility and cost, and allows a reasonable transition period; and

- Provide information and resources to businesses, municipalities, and other entities to encourage the use of non/less toxic alternatives.

In order to implement the above, Cal/EPA should identify and exercise its authority to the fullest extent, where needed seek additional environmental protection authority through legislation, or promote action by other agencies that have authority, as appropriate. Cal/EPA should also seek funding to assist schools and municipalities to implement pollution prevention programs. In implementing these actions, Cal/EPA should not create an unfunded mandate for local governments. Select examples of risk reduction actions could include:

- ✓ *Requiring schools and municipalities to implement Pollution Prevention or precautionary approaches to reduce and eliminate the use of toxic pesticides, cleaners, paints, inks, etc., based on a comprehensive assessment of alternatives;*
  - ✓ *Requiring municipalities to redesign traffic flow to limit or eliminate diesel vehicle traffic through residential communities;*
  - ✓ *Requiring welding operations to utilize low-fume/low heavy metal welding rods and low-fume processes; and*
  - ✓ *Instituting a phase-out of toxic boat bottom paints, specifically copper leaching and copper abrasive bottom paints.*
- Reduce existing and potential environmental health problems in impacted communities by taking the following actions. In implementing these actions, Cal/EPA should not place an unfunded mandate on local government and/or local programs.
    - ✓ Identifying all facilities and operations based on existing data that may pose a threat to human health and the environment because of their storage, use, disposal, or emission/discharge of hazardous substances, including pesticides. To implement this item, Cal/EPA should make use of currently available data under California's right to know laws and federal facilities information, including Superfund and the National Priorities List (NPL), and shall at a minimum rely on the thresholds for reporting under those laws.
    - ✓ Using a public process, assess cumulative pollution burden for disproportionately impacted communities based on the degree of threatened harm to human health and the environment that communities experience.
    - ✓ Using a public process and data from the previous two steps, identify and prioritize disproportionately impacted communities.
    - ✓ Using a public process, establish goals and performance measures to reduce the threat of harm to human health and the environment in these disproportionately impacted communities, using enhanced pollution controls and pollution prevention.
    - ✓ Create effective mechanisms with the community for public participation, and support state and local agencies, to enhance the role played by residents in disproportionately impacted communities in decisions about how to reduce pollution and risks in their community.

- Work with the Department of Health Services (DHS) to establish goals to reduce health and environmental risks, such as:
  - ✓ *Identifying contaminants in breast milk and/or children's blood, the key sources of those contaminants and routes of exposure, and setting goals and timelines to eliminate the contamination;*
  - ✓ *Setting goals and timelines for eliminating lead poisoning in children; and*
  - ✓ *Setting goals and timelines for reducing the incidence of asthma, environmental-related cancer, and other environmental-related illnesses.*
  
- Establish a California Office of Pollution Prevention (or some other formalized, centralized multi-media group) to:
  - ✓ Serve as a clearinghouse for information on less and non-toxic products and processes;
  - ✓ Evaluate products and processes under consideration by municipalities and industries;
  - ✓ Conduct research into new processes and products that could provide less toxic, or non-toxic alternatives for municipalities and industries; and
  - ✓ Provide support to municipalities, industries, and other entities seeking to implement the recommendations for “Risk Reduction and Pollution Prevention”, and other related recommendations in Goal #2.
  
- Identify and address environmental justice gaps related to preventative approaches to risk reduction.
- Within Cal/EPA, all risk assessment analyses of material toxicity, hazard, or potential for harm to human health or the environment should be conducted by a single office and that office should not also have risk management responsibilities.
- Where a Cal/EPA BDO has, or has had, responsibility for both risk assessment (as described above) and risk management, the office which will have sole risk assessment responsibility for Cal/EPA should review, and where appropriate, revise prior risk assessment decisions by the other BDOs to ensure they use sufficient precaution to protect public health and the environment. The review should consider advances in the current state of scientific knowledge and data, and should specifically address disproportionate health and environmental impacts on low-income communities and communities of color.
- Where a Cal/EPA BDO has direct responsibility for risk management programs, the BDO should review, and where appropriate revise such programs to ensure they use sufficient precaution to protect public health and the environment. The review should consider advances in the current state of scientific knowledge and data (including routes of exposure, indoor exposure, and area source exposure, such as exposure to herbicides, pesticides, transported wastes, and consumer products), and should specifically address disproportionate health and environmental impacts on low-income communities and communities of color.
- Explore opportunities for demonstration for new technologies that will reduce pollution and health risks.

## Site Remediation

- Develop criteria and protocols for identifying and addressing environmental justice gaps in clean-up related activities (e.g., standard setting, risk assessments, etc.).
- Recognizing that sites posing the greatest health risk receive top priority, give high priority to remediation projects in situations of known environmental justice problems, especially where the contaminated site contributes a substantial portion of cumulative impacts to the community.
- To promote the reuse of known or suspected contaminated (i.e., brownfield) sites, and to increase the supply of affordable housing Cal /EPA should:
  - Establish a statewide database of contaminated sites that, after clean-up, have potential for redevelopment, especially mixed-use and/or affordable housing, and publish this information online. In compiling this database, existing databases such as the state's Cortese List (California Government Code § 65962.5) and lists of federal facilities with housing potential (i.e., base closures, etc.) should be consulted;
  - Establish guidelines for clean-up that are based on the intended use of the site (not currently codified). Guidelines should give priority to community needs, environmental and public health concerns, and provide regulatory certainty and protection from litigation when environmental mitigation and other conditions have been met;
  - Establish a timely approval process related to brownfield remediation;
  - Provide financial and technical assistance to local jurisdictions and private/non-profit developers for site assessment and inventory development;
  - Improve implementation of requirements to eliminate duplication in oversight authority for brownfield between the Department of Toxic Substances Control (DTSC) and the State Water Resources Control Board (SWRCB ). Improve the process for determining a lead agency in order to eliminate inefficiencies that result from fragmentation;
  - Clarify the roles of state and local agencies in brownfield redevelopment, and assure that agencies have (or retain) the appropriate technical expertise, including access to toxicologists and public participation specialists when overseeing brownfield remediation;
  - Provide fiscal and regulatory incentives to communities, local governments, and developers to clean-up contaminated sites. Incentives should not lead to less protective clean-up standards, but could consider flexibility in restrictions on end land use; and
  - Ensure compliance with current disclosure requirements for brownfield sites.

## **Program Enforcement**

In this context, Program Enforcement refers to the activities undertaken to ensure that regulated facilities, sites, entities, and/or users comply with the requirements that apply to them, including agency response to complaints from members of the public.

- Develop criteria for identifying and addressing EJ gaps in equal application of environmental enforcement efforts.
- Identify opportunities to use enforcement as a means to deliver the benefits of environmental protections to all communities.
- Review the frequency of routine inspections to ensure that inspections are timely and equitable.
- Ensure adequate and fair deployment of enforcement resources
- Track, evaluate, and when necessary, remedy potential race-related or income-related discrepancies in the enforcement of environmental programs.
- Adopt progressively more punitive measures against permit holders who repeatedly violate environmental laws or regulations.
- Provide periodic reports on inspections completed.
- Establish a complaint resolution protocol for each Cal/EPA BDO, including accessibility of complaint lines, language barriers, timeliness of response, investigation procedures, and feedback to the complainant.
- Provide periodic reports on complaints received and outcomes.
- Establish an auditing process to ensure the complaint response process is effective.

**Goal #3: *Improve research and data collection to promote and address environmental justice related to the health and environment of communities of color and low-income populations.***

The Committee heard significant comment from the public about the lack of available information regarding a wide range of issues of concern. In general, Cal/EPA is mandated to improve research and data collection for all of its programs, in order to ensure environmental protection for all Californians. The knowledge gained through this effort will support environmental justice efforts. The Committee recognizes, however, that more information is needed that specifically addresses the health and environment of communities of color and low-income populations if the goal of environmental justice is to be ensured. In addition, community members need to have greater involvement in the research process if the data are to be meaningful and useful.

The criteria that distinguish programs for research and data collection that have successfully integrated environmental justice objectives include:

- ✓ Systematic identification of data needs inside and outside of the agency, and prioritizing research objectives, including specifically articulated data objectives related to community-specific health, environmental and socio-economic indicators.
- ✓ Regular consideration of the outcomes of previous and ongoing projects that assess(ed) community-specific health, environmental, and socio-economic factors, in order to identify data limitations (such as lack, availability, quality, and/or format of data) that materially hindered the success of the project.
- ✓ Regular consultation with community groups and other interested parties to identify their data needs, interest in participation in data collection efforts, and concerns about data use, availability, and privacy.
- ✓ Consistent efforts to optimize and leverage research funding and other resources, including evaluation of single media or other focused research efforts to determine if a small addition of resources will allow the data gathered meet multiple objectives.
- ✓ Consideration of a wide range of data sources, and efforts to further develop/enhance these sources, with specific consideration of research efforts designed and implemented within the community.
- ✓ Periodic evaluation of program objectives, project grants, and data outcomes to ensure fair and equitable research, and that the needs, concerns, or specific factors affecting low-income populations and communities of color are not overlooked.
- ✓ Systematic process for compiling, indexing, and sharing existing data, within the agency and with outside stakeholders.
- ✓ Clear descriptions and explanations of research and data caveats, assumptions, and limitations.

There are also indicators that a research and data collection program is not successful. If one or more of these indicators are present, the underlying cause(s) should be examined because there are other reasons that these circumstances might occur even if the program itself is sound. The following may indicate research programs that have less successfully addressed environmental justice concerns:

- Reliance solely upon self-reported pollution emissions/discharges and permit compliance data.
- Lack of data on pollution sources, exposures, and contaminant-related disease outcomes.
- Reductions or limitations in funding for data gathering and the dissemination of data and research results.
- Lack of coherent, integrated research and data collection plan.
- Lack of data specific to low-income communities and communities of color, and the absence of data objectives in these areas.
- Complaints from communities and other stakeholders regarding bias in research funding, objectives, or project design, data collection or reporting, or in conclusions based on research undertaken.
- Complaints from communities and other stakeholders regarding access to data.

In order to facilitate review and discussion of the Committee's recommendations to address Goal #3, the Committee has grouped the recommendations into three broad categories. The categories are: (a) Data Collection, (b) Data Availability, and (c) Community-based Research.

### **Data Collection**

These recommendations focus on ways to augment existing data, in order to better address environmental justice issues.

- In order to identify and address gaps in research and data collection, Cal/EPA should prepare a research plan for the entire agency. This plan should highlight projects that benefit multiple media and/or programs, and support leveraging and prioritizing of limited resources. Projects related to environmental justice should be given high priority. The plan should be updated annually.
- Cal/EPA should collect and validate data identifying sources, types, and quantities of pollution in California.
- Cal/EPA should also establish a clearinghouse, available on the web, for information associated with environmental justice.
- Develop, promote and support efforts to collect community and environmental data (including data on and surrounding federal facilities) that will improve understanding of environmental justice problems, and lead to solutions and prevention of further problems.
- Consult with and provide greater involvement to community members and other stakeholders prior to designing studies of the community.
- Collect and analyze data on the public health and ecological impacts of all environmental contaminants, including a complete and accurate list of toxic air contaminants.
- Support research into new or alternative means to reduce pollution and protect the environment.
- Support research into cumulative impacts from multiple sources of pollution, and through multiple media.
- Support research that includes bio-monitoring to help assess individual body-burdens for environmental contaminants.

- Support research that enhances data on the impacts of environmental contaminants on children, the elderly, and other vulnerable populations, including parameters to assess variables such as income and race.
- Collect data to support GIS-based, multi-media analysis of pollution sources, the places where people live and work, and the demographics of the people in those locations.
- Assess cultural impacts, and the development of more complete databases on affected cultural issues (such as sacred sites, subsistence fishing, language barriers, etc.).
- Enhance systems for consistent environmental data collection and application to ensure applicability of data to environmental justice issues.

### **Data Availability**

The Committee heard many complaints that when research had been done, or data was thought to exist, it was not available to those who had need of it. These recommendations are meant to enhance the availability of data, and to recognize and respect the needs of community members who agree to participate in research efforts.

- Make data collected by the agency about communities available promptly to the communities it was collected from, and other stakeholders, without violating basic privacy rights (for example by releasing an individual's medical data to others).
- Make data availability to the participating community members and other stakeholders a condition of funding external research projects, where possible, but ensure individual privacy is respected especially with data relating to the individual health of a community member.
- Establish mechanisms to prevent abuse of data collected from communities.
- Promote collaborative efforts between federal, state, and local agencies towards sharing of data and information relevant to environmental justice.

### **Community-based Research**

Community-based research is used here to describe research efforts where the community (rather than government) plays a lead role in designing, implementing, and analyzing the results of the study.

- Establish greater respect for the knowledge base within the community.
- Explore mechanisms to address concerns about data integrity, chain of custody, bias, etc., to enhance general acceptance of community-based research.
- Establish mechanisms to support community-based research projects (e.g., grants, loans, technical assistance, or collaboration), consistent with Assembly Bill 2312.

**Goal #4: *Ensure effective cross-media coordination and accountability in addressing environmental justice issues.***

Programs that have successfully integrated environmental justice goals across environmental media, and embody a sufficient degree of accountability are distinguished by the following criteria:

- ✓ Development, implementation, and regular evaluation of environmental justice policies, goals, and objectives.
- ✓ Use of environmental justice work plans with specific, measurable, and time-bound action items.
- ✓ Clearly articulated objectives and mechanisms to ensure that media-specific policies, goals, objectives, and action items relate logically to those for other media, including coordinated development and implementation, resource leveraging, and mutual accountability.
- ✓ Commitment of funding and other resources needed to implement environmental justice policies, goals, objectives, and action items.
- ✓ Periodic progress reports to agency management and external stakeholders, including communities, on program implementation.
- ✓ Active solicitation of program evaluation (successes and failures) by external stakeholders, including equal participation of communities, and establish mechanisms to adjust programs based on input received.

There are also indicators that a cross media coordination and accountability program is not successful. If one or more of these indicators are present, the underlying cause(s) should be examined because there are other reasons that these circumstances might occur even if the program itself is sound. The following warning signs may indicate programs that have less successfully integrated environmental justice goals across environmental media, or lack mechanisms for accountability:

- Redundant or conflicting program elements.
- Lack of awareness of related activities within separate media programs.
- Expenditure of resources duplicating efforts of other agencies or entities.
- Complaints from external stakeholders, including communities, that agency efforts are biased, fail to address environmental justice issues, or repeat past failures in spite of stakeholder input.

In order to facilitate review and discussion of the Committee's recommendations to address Goal #4, the Committee has grouped the recommendations into two broad categories. The categories are: (a) Cross-Media Coordination, and (b) Agency Accountability.

### **Cross-media Coordination**

Coordination between media (such as air, water, waste, etc.) is an important aspect of Cal/EPA's overall function as an agency. These recommendations are intended to improve cross-media coordination and better support environmental justice efforts.

- Develop protocols for effective coordination within Cal/EPA, its Boards, Departments, and Office, including regional offices, on environmental justice issues.
- Examine mechanisms to ensure greater coordination with federal state and local agencies.
- Explore opportunities to develop environmental justice projects that can function as models for collaborative approaches on environmental justice issues (similar to projects supported by U.S. EPA in their National Environmental Justice Action Agenda).

### **Agency Accountability**

Accountability is a critical part of effective implementation of any strategy. It was also identified by many members of the public that this is an area where improvements could be made.

- Fully consider these Advisory Committee recommendations and provide semi-annual reports from the Secretary of Cal/EPA to external stakeholders on the actions taken in response to these recommendations.
- Identify and allocate appropriate resources to carry out activities by Cal/EPA Boards, Departments and Office (BDOs) to address environmental justice issues.
- Develop performance measures to determine the success of environmental justice programs with review and input from external stakeholders.
- Promote periodic performance reports from Cal/EPA Boards, Departments, and Office (BDOs), including regional offices, to external stakeholders.
- Ensure ongoing communication between Cal/EPA and external stakeholders.
- Clarify roles and responsibilities of federal, state, local, and (where applicable) tribal or Mexican governments/agencies with regard to environmental justice issues within the community.
- Ensure compliance with federal (Title VI of the Civil Rights Act of 1964) and state (California Government Code Section 11135) civil rights laws in making environmental decisions.

## **VI. IMPLEMENTATION OF RECOMMENDATIONS**

The Committee believes it is very important to provide direction to Cal/EPA's Secretary and its Boards, Departments and Office concerning the implementation of the recommendations contained in this report. Following the publication of this Report and its presentation to the Agency Secretary and the EJ Interagency Working Group, the Committee will propose implementation goals, objectives, and timelines for implementation of the recommendations in this report. The Committee intends to continue working with the Agency Secretary and the EJ Interagency Working Group as they begin working towards implementation.

## **VII. RECOMMENDATIONS FOR FUTURE EVALUATION**

The EJ Advisory Committee identified areas of government action that are not, either directly or indirectly, under the purview of Cal/EPA or the Interagency Working Group, but have significant impact on the ultimate realization of environmental justice in California. In particular, these include decision-making about transportation infrastructure, health services, federal actions, and decisions affecting Native American tribes. Each of these areas, as well as others not listed here, deserves careful consideration and recommendations for implementing programs to achieve the goal of environmental justice.

## VIII. ALTERNATIVE OPINION(S) (“Minority Reports” From Committee Member(s))

*ALTERNATIVE OPINION (“Minority Report”)  
to the Recommendations of the  
Cal/EPA Advisory Committee on Environmental Justice  
to the  
Cal/EPA Interagency Working Group on Environmental Justice  
(September 30, 2003 Version)*

*Prepared by  
Committee Member Cindy Tuck, General Counsel  
California Council for Environmental and Economic Balance  
October 6, 2003*

### 1. Background regarding CCEEB and this Alternative Opinion (Minority Report)

This Alternative Opinion presents the views of the California Council for Environmental and Economic Balance (“CCEEB”), which I represent as a Member of Cal/EPA’s Advisory Committee on Environmental Justice (the “Committee”). CCEEB is a nonprofit, nonpartisan coalition of business, labor and public leaders that works to advance policies that protect public health and the environment while also allowing for continued economic growth. As shown by our past actions, CCEEB has a long-term commitment to the creation of effective and equitable environmental justice policies. For example, CCEEB supported the legislation that created and expanded the Committee.

The Committee presents its recommendations in Section V of the report. The Committee has structured those recommendations around four key goals. To the credit of all of the Committee’s Members, the Committee reached consensus on the recommendations under the following three goals:

- Goal 1 – Ensuring meaningful public participation and promoting community capacity building
- Goal 3 – Improving research and data collection to address environmental justice
- Goal 4 – Ensuring effective cross-media coordination and agency accountability

Goal 2 under Section V addresses integrating environmental justice into the development, adoption, implementation, and enforcement of environmental laws, regulations and policies. CCEEB agrees with that stated goal and many of the recommendations under that goal. However, CCEEB has significant concerns with the recommendations under Goal 2 which relate to:

- 1) government-mandated chemical/product/process substitution;

- 2) the definition of “cumulative impacts” and the regulation of cumulative impacts/cumulative pollution burden before adequate science-based tools and policies are available – including regulation via measures recommended in the report such as:
  - A) buffer zones for existing facilities;
  - B) small source relocation;
  - C) denial of permits and the role of the community in land use planning;
  - D) permit conditions commensurate with an area’s media-specific cumulative pollution burden;
- 3) the precautionary principle and precautionary approaches; and
- 4) the prevention of the issuance of permits for activities near sensitive receptors.

These are the recommendations on which the Committee did not reach consensus. Following are CCEEB’s concerns regarding the recommendations in these areas.

## **2. Issue Areas Where CCEEB has Significant Concerns regarding the Committee’s Recommendations**

### **A. Recommendations regarding Government-Mandated Chemical/Product/Process Substitution (Pages 21, 23, 24, 25, 26 and 27)**

CCEEB recognizes the need in many areas of the State to reduce environmental exposures and risks – such as the risk posed by toxic air pollutants. This result should be achieved through the setting of appropriate exposure or risk limits. CCEEB recognizes the importance of pollution prevention programs in reducing exposure and risk. During the Committee’s process, CCEEB supported the recommendation on Page 27 for research into new less toxic alternatives. CCEEB supported the recommendation on Page 27 for the development of a clearinghouse for information on less-toxic and non-toxic products and processes. CCEEB suggested that the information be provided to municipalities, industries and other entities for pollution prevention programs. CCEEB also suggested the inclusion of a recommendation regarding risk reduction strategies where the agency in question identifies the required level of risk reduction and the business determines internally how to meet that required level of risk reduction by evaluating various options such as pollution controls and pollution prevention.

However, CCEEB opposed the inclusion of the multiple recommendations under Goal 2 that recommend that pollution prevention should be implemented via **agency-mandated** pollution prevention measures such as mandated chemical/product/process substitution. The recommendations occur in the following places under Goal 2 in Section V:

Program Development and Adoption - 8 <sup>th</sup> Recommendation	(Page 21)
Land Use and Zoning - 5 <sup>th</sup> Recommendation (CEQA)	(Page 23)
Permitting - 8 <sup>th</sup> Recommendation	(Page 24)
Risk Reduction and Pollution Prevention - 5 <sup>th</sup> Recommendation	(Pages 25/26)
- 8 <sup>th</sup> Recommendation	(Page 27)

As an example, the eighth recommendation under Facility or Project Siting and Permitting under Goal 2 (at Page 24) recommends that businesses applying for a permit for a new or modified source would have to perform an extensive alternatives assessment and provide a clear justification for the use of a material other than the least toxic material available. As another example, in the Risk Reduction and Pollution Prevention section under Goal 2, part of the fifth recommendation (at Page 25) is to “require adoption of non/less toxic alternatives through a comprehensive alternatives assessment process that includes evaluation of technical feasibility and cost, and allows a reasonable transition period.”

CCEEB opposed the inclusion of the recommendations for mandated chemical/product/process substitution because environmental regulators should set and enforce the limits on emissions, discharges or risk from a facility as opposed to mandating which chemicals, products or processes the company may use to meet the limits. The environmental regulators, including Cal/EPA’s Boards, Departments and Office, set emission/discharge-related environmental standards – and they have the qualifications and expertise to develop those standards. Environmental regulators are not trained in product/process design or manufacturing. Environmental regulators are not responsible for product performance, product safety, product warranties or product liability. They should not make the decision as to which chemicals, products or processes a business uses. They should, as noted above, set and enforce the environmental protection requirements.

The specific language changes that CCEEB has suggested to the Committee for the recommendations listed above are shown in the attached mock-up.

**B. Recommendations regarding the Regulation of Cumulative Impacts or Cumulative Pollution Burden Before Science-Based Tools and the Criteria for Use of those Tools are Available (Pages 22, 23, 24, 25 and 26) and Recommendation regarding the Definition of “Cumulative Impacts” (Page 25)**

CCEEB agrees with the Committee that cumulative impacts is an important environmental justice issue. CCEEB supports the second recommendation in the Risk Reduction and Pollution Prevention section under Goal 2 that recommends that Cal/EPA:

“Develop, through a public process, peer-reviewed tools to assess cumulative impacts, and equitable, scientifically-based criteria for using these tools – especially as they may be used to further the goals of environmental justice.”

The text of Goal 2 includes several recommendations related to disproportionately impacted communities, cumulative impacts and cumulative pollution burden. CCEEB’s concern is that

these recommendations suggest that Cal/EPA and other agencies should move forward with rather severe measures before valid tools to assess cumulative risk, valid thresholds to determine where there is cumulative risk problem, and data to use in the analyses are available. Examples of some of the suggested measures include buffer zones for existing sources, small source relocation and permit denials.

The recommendations appear in the following places under Goal 2 of Section V:

Land Use and Zoning - 4 <sup>th</sup> Recommendation	(Page 22)
- 5th Recommendation	(Page 23)
Permitting - 7th Recommendation	(Page 24)
- 8th Recommendation	(Page 24)
Risk Reduction and Pollution Prevention - 1st Recommendation	(Page 25)
- 6th Recommendation	(Page 26)

Without science-based tools and criteria for the use of these tools, such measures could be imposed arbitrarily and could result in the loss of jobs and a failure to address the true environmental risks. This is not a sound basis for environmental regulation. The agencies need to have valid tools to evaluate cumulative exposures and risk and an understanding of the causes and contributors to the cumulative exposures and risk before moving forward with measures to regulate cumulative exposures and risk.

As another example, the sixth recommendation in the Risk Reduction and Pollution Prevention section under Goal 2 recommends that an assessment of (and subsequent regulation of) “cumulative pollution burden” (in which air quality, water quality, hazardous materials storage and other environmental issues would somehow be combined) be based simply on existing right-to-know information. CCEEB believes that regulation of cumulative risk or exposure needs to be based on science-based tools and equitable and science-based implementation criteria. Moving ahead with a combined cumulative impacts or cumulative pollution burden assessments is premature when key tools are not yet developed for individual media (for example, the Air Resources Board is currently developing tools for assessing cumulative risk due to toxic air pollutants).

The specific language changes that CCEEB has suggested for the recommendations listed above are shown in the attached mock-up. Following are more specific concerns in the area of “cumulative impacts.”

### **1. Recommendation regarding the Definition of “Cumulative Impacts”**

CCEEB had supported a draft recommendation in the July 2003 draft version of the report that would have recommended (at Page 25):

“Conduct a public process to establish a common definition of ‘cumulative impact’ starting with the definition in the California Environmental Quality Act (CEQA) and consulting with other agencies working on cumulative impacts.”

However, the morning that the Committee approved the Report, the Committee modified this recommendation to read as follows:

“Conduct a public process to establish a common definition of ‘cumulative impacts’. Development of such definition should consider total pollutant emissions and discharges in a geographic area, the definition in the CEQA, and definition of other agencies working on cumulative impacts. Cal/EPA should finalize the definition of cumulative impacts within six (6) months of submittal of this report and actions to address cumulative impacts should not await definitive calculation of risk or health consequences. In the interim, the default definition is: “the total burden of all emissions and discharges in a geographical area.”

CCEEB is reviewing this brand new version of this recommendation. One initial comment is that in evaluating cumulative impacts for an individual environmental media, such as air quality, it is important to inventory all of the emissions (or discharges), but evaluating emissions (or discharges) alone will not allow a regulator to determine whether or not there is a problem or what the magnitude of the problem is. For example, an area that is in attainment of the State ozone standard will have “total NO<sub>x</sub> and VOC emissions,” but further regulatory action for ozone beyond maintenance efforts would be unnecessary for that area. The key question in that example is what is the concentration of ozone in the air (i.e., what level of ozone are people being exposed to and does that level exceed a health-based standard?). As another example, an area will have “total emissions” of toxic pollutants, but that number of emissions will not tell the agency if there is a problem or not. The regulator needs to look at which chemicals are involved, what the exposure is, what is the risk posed by the exposure (i.e., factors such as toxicity and distance to the nearest off-site receptor must be considered), and whether the risk exceeds acceptable limits or risk. As an Office of Environmental Health Hazard Assessment representative noted in a discussion at the August 26, 2003 meeting of the Air Resources Board’s (“ARB’s”) Environmental Justice Stakeholders Group regarding how ARB should define “cumulative air pollution impacts,” “emissions do not tell you what you need to know.” He indicated that toxicity is key, and you cannot ignore risk assessment.

Developing an appropriate definition of “cumulative impacts” will be a key part of Cal/EPA’s and the BDOs’ work on environmental justice. A valid definition that takes into account exposures and health risk will be key to: 1) making sure that decisions are reasonable regarding what constitutes the level of cumulative impacts that should be regulated beyond existing program requirements; and 2) making sure that measures to address unusually high levels of cumulative impacts are not arbitrary.

## **2. Buffer Zones for Existing Facilities (Page 22)**

In the Land Use and Zoning Section under Goal 2, the fourth recommendation suggests, as an action that local governments and the federal government should consider, the “creation of buffer zones around significant sources of risk” in communities identified as disproportionately impacted. First, any such recommendation should be limited to sources of significant risk from new facilities or operations. As an example, certainly it would not be realistic to suggest that existing freeways be closed because of their proximity to houses.

Further, buffer zones around new facilities or operations should not be arbitrary. Where it is determined that a buffer zone around a new facility or operation is appropriate (and policy and technical discussions are needed in this area), the distance should be risk-based to ensure that the distance is protective but not unnecessarily conservative. (In other words, the distance should be based on risk assessment methodology that takes into account exposure, toxicity, distance, dispersion, etc.) Further, buffer zone policies should be based on a uniform method so that there is certainty in the process (i.e., a programmatic approach).

CCEEB has suggested in the Committee's process that the recommendation be re-written as:

“Creation of risk-based buffer zones around new significant sources of risk;”

### 3. Small Source Relocation (Page 22)

In the Land Use and Zoning Section under Goal 2, the fourth recommendation also suggests, as an action that local governments and the federal government should consider, the “relocation of small sources away from residential areas or sites of sensitive receptors” in communities identified as disproportionately impacted. CCEEB recognizes that once the tools, policies and data are available to identify areas that are exposed to a greater health risk posed by air toxics (or other environmental exposures), the environmental agencies will need to access: 1) which sources are causing the problem; 2) is there a noncompliance problem; and 3) what is the most equitable way of addressing the problem in a programmatic manner. However, relocating a source is such an extreme measure that it should not be listed as an example under this recommendation. If Cal/EPA started recommending facility relocation as a policy, it would send a huge signal to businesses not to locate or expand in California. In the Committee's process, CCEEB suggested that this recommendation be deleted.

### 4. Denial of Permits and the Role of Communities in Land Use (Page 22)

In the Land Use and Zoning Section under Goal 2, the fourth recommendation also suggests, as an action that local governments and the federal government should consider, the development of:

tools for **communities** and local governments to use for evaluating the siting of facilities that significantly increase pollution in disproportionately impacted communities, **including the authority for denial of permits**, and increase the weight of community involvement in those decisions.

The Committee re-drafted this recommendation at the June 2003 meeting. Certainly it is appropriate for local governments to have tools to use in making land use planning decisions. Communities and other stakeholders need to be able to understand what those tools are and how they work. However, no interest group, including the communities, should have the authority for the denial of permits or to make the land use decision. **Only government should have the authority to approve or deny a permit or make the land use decision.** Communities and other stakeholders need to be able to participate in a meaningful way in the public process, but

communities and other stakeholders do **not** make the decisions. In the Committee process, CCEEB suggested the following re-write of this recommendation.

Develop tools for ~~communities and~~ local governments to use for evaluating the siting of facilities that significantly increase pollution in disproportionately impacted communities, ~~including the authority for denial of permits,~~ and improve the public participation process associated with land use planning ~~increase the weight of community involvement in those decisions;~~

#### **5. Stricter Controls (Page 22)**

In the Land Use and Zoning Section under Goal 2, the fourth recommendation also suggests, as an action that local governments and the federal government should consider, the “adoption of stricter control and/or pollution prevention measures to reduce pollution and health risk.” CCEEB recognizes that depending on the assessment of the problem and the contributors (sources and pollutants) to that problem, environmental agencies may need to adopt stricter controls to address an environmental problem. However, this should be conducted by the environmental agencies as opposed to the land use planning agencies. The environmental agencies, such as the air districts, have the technical expertise to assess environmental problems and develop effective regulatory programs to address the problems. Further, as noted above, government should not dictate the internal changes such as pollution prevention that a company uses to meet environmental restrictions on emissions, discharges or hazardous waste management. In the Committee’s process, CCEEB suggested the deletion of this specific suggestion in the Land Use and Zoning Section under Goal 2.

#### **6. Permit Thresholds related to Cumulative Pollution Burden (Page 24)**

The seventh recommendation under Facility or Project Siting and Permitting under Goal 2 recommends the establishment of “permit action thresholds and control requirements commensurate with an area’s media specific cumulative pollution burden.” CCEEB suggested the deletion of this recommendation to the Committee because it is highly problematic. Air quality programs are illustrative in this area. First, it is unclear what “cumulative pollution burden” means. It is unclear what “area” means. For example, for air quality, does the term “cumulative impacts” lump together criteria pollutants and toxic pollutants? Does the term “area” mean the community or the region? Second, the largest part of the media specific cumulative pollution burden may not be under permit (e.g., mobile source emissions). It would not solve the problem to continually ratchet down permitted stationary source emissions if mobile source emissions were the major contributor to the problem. Most large urban regions in California have relatively higher risk from toxic air contaminants primarily due to emissions from mobile sources. ARB’s mobile source, air toxics and consumer products programs and the air districts’ stationary source programs reduce cumulative risk for **all communities**. To avoid unnecessarily diverting limited resources from these broader programs, cumulative risk should generally be addressed on a statewide and regional/county basis. A blanket proposal to have area-specific thresholds is an inefficient way to reduce risk and exposure. Special air quality programs (or programs for other media) at the neighborhood level should only be considered

when the exposure or health risk in the neighborhood is unusually higher than the average exposure or health risk for the region in question.

### **C. Precaution (Pages 13 and 21)**

CCEEB recognizes that Cal/EPA's Boards, Departments and Office already exercise a precautionary approach in developing and implementing their regulatory programs. For example, California has more stringent air quality standards than the federal government has. California's risk assessment guidance is more stringent than EPA's risk assessment guidance. The risk assessment guidance includes conservative assumptions regarding exposure and other details to account for scientific uncertainties.

CCEEB has supported part of the Committee's recommendations in the area of precaution. CCEEB has supported the language that recommends that Cal/EPA should: 1) officially recognize the importance of precaution; and 2) identify, for each BDO, significant decision points or processes within existing and developing programs where a precautionary approach is currently used, or could be used to evaluate whether additional precaution is needed to address or prevent environmental justice problems. With regard to the latter recommendation, each BDO should conduct this review (as opposed to the Agency) because the BDOs are more familiar with their individual programs.

The part of the recommendations regarding precaution on which CCEEB has concerns is the statement that:

“it is not necessary or appropriate to wait for actual, or measurable harm to public health or the environment before evaluating alternatives that can prevent or minimize harm.”

CCEEB recognizes that environmental agencies must often regulate based on scientific information that will not include complete information such as epidemiological studies on humans. However, the language quoted above is too similar in drafting to the Precautionary Principle (i.e., the Wingspread version: “When an activity raises threats of harm to human health or the environment, precautionary measures should be taken even if some cause and effect relationships are not fully established scientifically (...).”). CCEEB views the precautionary principle as an extreme form of precaution. For example, one of CCEEB's concerns in this area is that in its application, the precautionary principle typically does not include either evidentiary standards or procedural criteria for what constitutes a “threat of harm.” What quantity and quality of evidence or information is required to “raise a threat of harm” is uncertain. This uncertainty can lead to regulation based on mere allegations of harm – which is not a sound basis for regulation. Another concern is that application of the precautionary principle typically does not include consideration of the benefits of the project or product. CCEEB believes that Cal/EPA should not incorporate the Committee's statement quoted above as part of its environmental justice strategy.

We note that the text of the Committee's report on Page 16 is helpful where the Committee writes:

Recommendations to enhance precaution should not be interpreted to mean a guarantee of zero risk, or a mandate to act without credible threat of harm.

Certainly the Committee's statement on Page 21 regarding precaution should be read together with this statement from Page 16. However, even when read together, CCEEB still has the concern expressed above. CCEEB is not saying that there has to be perfect science before an agency can take action. The key is that environmental programs need to be based in sound science – not on allegations of harm.

**D. Prevention of the Issuance of Permits for Activities Near Sensitive Receptors (Page 24)**

The sixth recommendation under Facility or Project Siting and Permitting under Goal 2 recommends that Cal/EPA:

Establish and provide to local government health-based permitting requirements that would **prevent the issuance of permits** for certain types of activities near sensitive receptors.

The prevention of the issuance of permits is obviously a severe measure. To avoid arbitrary limitations or permit denials (which would unnecessarily hurt jobs and businesses in California), permit requirements need to be based in sound science. CCEEB suggested to the Committee the following changes to this recommendation:

Establish and provide to local or regional permitting agencies ~~government~~ ~~health~~ ~~risk~~-based permitting requirements that would trigger further evaluation ~~relative to prevent the~~ issuance of permits for certain types of new activities ~~near~~ within a risk-based distance from sensitive receptors.

Please see the attached mock-up for all of CCEEB's suggested changes to the Facility or Project Siting and Permitting section of Goal 2.

**3. Language Changes related to the Issues Above that CCEEB Suggested to the Committee**

Consistent with the concerns presented above, the attached mock-up presents the changes that CCEEB suggested to the Committee regarding the text of Goal 2 of Section V. The mock-up is updated to reflect the final (September 30, 2003) version of the Committee's report.

**4. Closing**

In closing, CCEEB appreciates the time of Cal/EPA, the Interagency Working Group, the Committee, and the public in considering CCEEB's views. Again, it is to the credit of all Committee Members that the Committee reached consensus on the recommendations under Goals 1, 3 and 4.

**CCEEB'S SUGGESTED CHANGES TO THE  
RECOMMENDATIONS UNDER GOAL 2, SECTION V  
OCTOBER 6, 2003**

**Goal #2: *Integrate environmental justice into the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.***

*Establishing Criteria to Identify Environmental Justice Gaps:* Where environmental justice impacts have already been documented, or environmental justice concerns are clearly understood to exist, discussions about criteria should not prevent agencies from using available data and tools, and taking action to respond to those concerns. The Committee also recognizes that there are also circumstances where the existing data and tools do not allow a quick determination of either the problem or the appropriate response. Development of these data and tools should be a high priority, as should fair criteria for their use. In developing the data, tools, and criteria for their use, agencies should ensure meaningful public participation (see Goal #1).

Programs that have successfully integrated this environmental justice goal will meet the following criteria:

- ✓ Consider environmental justice issues in developing and revising programs and program elements, including explicit analysis of environmental justice in the staff report for significant actions, or other supporting documentation.
- ✓ Ensure that program development and adoption processes do not create new, or worsen existing, environmental justice problems.
- ✓ Ensure meaningful public participation in environmental decision-making processes.
- ✓ Establish guidelines, procedures, and performance measures to ensure equitable implementation and enforcement of programs.
- ✓ Include data, tools and procedures to identify existing environmental justice problems.
- ✓ Give high priority to actions (e.g., funding criteria) that will address existing environmental justice problems.
- ✓ Dedicate resources and identify staff members responsible for assuring that the agency properly considers and addresses existing and potential environmental justice problems.
- ✓ Assess the relationship between socio-economic indicators (i.e., race, income, etc.) and the distribution of pollution sources and any associated health impacts.

There are also indicators that a program is not successful. If one or more of these indicators are present, the underlying cause(s) should be examined because there are other reasons that these circumstances might occur even if the program itself is sound. Programs that have less successfully integrated environmental justice may be identified by the presence of one or more of the following warning indicators:

- Data indicate that low-income populations and/or communities of color are disproportionately impacted by pollution.

- Public complaints are made regarding inadequate or unfair enforcement of agency rules and regulations.
- Agency resources are disproportionately deployed (i.e., fewer resources are devoted to low income communities or communities of color than are devoted to wealthier, predominantly Caucasian communities).
- Penalties for environmental violations with similar fact patterns are lower for violations in low income communities or communities of color.

*Addressing Environmental Justice Gaps:* The following recommendations are intended to prevent the creation of new Environmental Justice problems, and to help address existing gaps identified by the Committee. In order to facilitate review and discussion of the Committee's recommendations to address Goal #2, the Committee has grouped the recommendations into three broad categories. The categories are: (a) Program Development & Adoption, (b) Program Implementation, and (c) Program Enforcement.

### **Program Development & Adoption**

*(Note: Also refer to Section VIII for an Alternative Opinion related to this section)*

Program development and adoption varies somewhat between the Cal/EPA Boards, Departments, and Office, because their authorities, mandates, and administrative procedures are different. In general, however, these are activities undertaken to establish new program elements through a public process with all stakeholders.

- Include an analysis of environmental justice when developing and revising programs and program elements, including explicit analysis of environmental justice in the staff report or other supporting documentation.
- Consult with communities and other stakeholders, and consider their priorities and concerns prior to developing or revising program elements, rules, or policies.
- Give high priority to known environmental justice problems when establishing program development agendas.
- Use a public process to identify opportunities to advance environmental justice goals within the current statutory and regulatory structures, as well as any necessary changes or clarifications.
- Officially recognize the importance of precaution ~~by having each BDO identify, and that it is not necessary or appropriate to wait for actual, measurable harm to public health or the environment before evaluating alternatives that can prevent or minimize harm.~~
- ~~Identify, for each BDO,~~ significant decision points or processes within existing and developing programs where a precautionary approach is currently used, or could be used, and evaluate whether additional precaution is needed to address or prevent environmental justice problems.
- Identify, through a public process, a set of criteria or indicators that can be used as a preliminary assessment to locate and prioritize potential environmental justice problems, and how the prioritized information will be used.
- Identify, through a public process, a set of reasonable, cost-effective, achieved-in-practice approaches that could be used to prevent or minimize adverse environmental impacts, and

develop a [clearinghouse that makes this information available to the public process for consideration and use of these approaches](#).

## **Program Implementation**

As noted already, the programs of the different Boards, Departments and Office vary considerably. Public comments were received about specific programs, or aspects of those programs. The Committee has developed recommendations following the issues raised by the public, and has grouped them along common themes. The areas considered are: Land Use and Zoning, Facility or Project Siting and Permitting, Mobile Source Pollution Control, Risk Reduction and Pollution Prevention, and Site Remediation.

### Land Use and Zoning

*(Note: Also refer to Section VIII for an Alternative Opinion related to this section)*

Understanding that local government has the primary responsibility and authority for making zoning and land use decisions under existing law, Cal/EPA and OPR should take the following actions to address environmental justice issues.

- Clarify and describe Cal/EPA's and OPR's role in local and regional land use and zoning decisions.
- Collaborate with local governments/elected officials, environmental justice and community groups, and other stakeholders to help them identify and address environmental justice issues, particularly as they relate to community planning, and locally undesirable land uses.
- Develop a list of obvious, high-impact project scenarios that should be avoided, and make this list available through outreach and training to local land-use planners, communities and other stakeholders.
- Collaborate with OPR to identify actions that local governments and the federal government should consider to reduce impacts of pollution in communities identified as disproportionately impacted, such as:
  - ✓ *Creation of [risk-based](#) buffer zones around [new](#) significant sources of risk;*
  - ✗ *~~[Relocation of small sources away from residential areas or sites of sensitive receptors;](#)~~*
  - ✓ *Develop tools for ~~communities and~~ local governments to use for evaluating the siting of facilities that significantly increase pollution in disproportionately impacted communities, ~~including the authority for denial of permits~~, and [improve the public participation process associated with land use planning](#) ~~increase the weight of community involvement in those decisions~~;*
  - ✓ *Engage community and environmental justice groups [and other stakeholders](#) in community planning activities that address the potential conflicts between jobs, economic development, and environmental health; and*

- ✓ *Adoption of stricter control and/or pollution prevention measures to reduce pollution and health risks.*

In implementing these actions, Cal/EPA should not place an unfunded mandate on local government and/or local programs. Cal/EPA should also actively seek and support mechanisms for funding actions or projects that support environmental justice, including new funding opportunities specifically for environmental justice projects, and changes to criteria for existing or emerging funding programs to ensure these sources are consistent with and supportive of the goals of environmental justice.

- Collaborate with OPR, and community groups, local governments/elected officials, and other stakeholders, on the development of land use and zoning guidance for local government, including:
  - Requirements for local government to demonstrate integration of environmental justice principles into general plans at their next General Plan update.
  - Requirements for local government to adopt new land use and zoning laws which use a risk-based buffer zone, objective siting criteria, or other measure to prevent the location of residences, schools, or other sensitive populations near significant sources of pollution.
  - ~~Pursue amendments to the California Environmental Quality Act (CEQA) to require more meaningful alternatives assessment that addresses all reasonably viable alternative processes, methods and locations for new projects.~~
  - ~~Require cumulative impact analysis for new applications.~~
  - Significantly increase the role and influence of community residents and the weight of their recommendations via community planning groups or other entities that have a significant role in the permit decision-making process, consistent with Permit Streamlining Act requirements.

#### Facility or Project Siting and Permitting:

*(Note: Also refer to Section VIII for an Alternative Opinion related to this section)*

- Identify the appropriate roles of Cal/EPA and its Boards, Departments, and Office in promoting environmental justice in permitting and siting decisions.
- Where Cal/EPA or a BDO has direct authority or decision-making responsibility in permitting actions, the agency should establish, through a public process and hearing, a programmatic framework (e.g., regulations, policies, or other means) for permitting decisions that includes:
  - Specific criteria to identify environmental justice problems when evaluating a permit application; and
  - Fair and effective mechanisms to address identified environmental justice problems ~~as part of the permit action.~~
- Where Cal/EPA advises or oversees local governments that have primary jurisdiction in permitting and siting decisions, the agency should work with those impacted communities and local governments (before permit applications have been submitted to

them) to help them establish appropriate programmatic mechanisms to identify and address environmental justice gaps in permitting and siting decisions.

- Collaborate with OPR (in its capacity as the state's coordinating office for environmental justice) to establish general guidelines for other state agencies to help them create appropriate, programmatic approaches for their permitting and siting decisions to identify and address environmental justice issues.
- Develop and make available to other state and local agencies, communities and other stakeholders, tools and information to support environmental justice considerations in permitting and siting decisions.
- Establish and provide to local [and regional environmental permitting agencies](#) [government health-risk-based](#) permitting requirements that would [trigger further evaluation relative to the](#) ~~prevent the~~ issuance of permits for certain types of [new](#) activities [near within a risk-based distance from](#) sensitive receptors.
- ~~Establish permit action thresholds and control requirements commensurate with an area's media specific cumulative pollution burden.~~
- In areas that have been identified as having a disproportionately high cumulative impact [for air toxics risk](#), require [air agencies to](#):

[- identify and prioritize the sources categories \(mobile sources, stationary sources and area sources\) and subcategories within the major categories and the pollutants contributing significantly to the cumulative air toxics risk in the identified area;](#)

[-for each identified area, evaluate compliance with air quality requirements for all relevant source categories in the area. Bringing non-complying sources into compliance may address the problem.](#)

[-where noncompliance is not the problem, develop programmatic solutions targeting the sources contributing significantly to the air toxics problem. Such solutions could include, where appropriate, a regulation requiring the submittal of a risk reduction plans in which the permit applicant or permittee could evaluate various options to meet the required level of risk reduction.](#)

~~o applications for new or modified facilities to include a pollution prevention analysis that addresses materials that are significant (because of volume, potential risk, hazard, etc.); and includes the following opportunities for material substitutions (as identified by the Office of Pollution Prevention, please refer to page 27:~~

- ~~- [Top-down selection of alternative materials \(i.e., non-toxic is considered first and then the next least toxic material, and so on\);](#)~~
- ~~o [Clear justification for any proposal to use a material other than the least toxic available \(including, for example, availability of data or materials, feasibility of substitution, product performance/safety issues, etc.\) and;](#)~~
- ~~o [Other alternatives analyses \(i.e., process changes, fuels substitutions, movement of raw materials/product, other energy considerations\), with justification for the alternative selected.](#)~~

## Mobile Source Pollution Control

- Identify expanded roles for Cal/EPA and its Boards, Departments, and Office in promoting environmental justice through reducing pollution from on- and off-road mobile sources.
- Where Cal/EPA or a BDO has direct authority or decision-making responsibility, the agency should establish through a public process a comprehensive series of initiatives to promote and/or require the use of less-polluting engines and/or fuels, or add-on control devices, in response to environmental justice needs.
- Cal/EPA should work with federal government agencies to help it establish enhanced programmatic mechanisms to identify and address environmental justice impacts substantially related to on-and off-road mobile source pollutant emissions under its sole jurisdiction (e.g. trains, ships, aircraft, off-road engines including farm equipment, and federal facilities).
- Where Cal/EPA advises or oversees local governments/agencies that have primary jurisdiction in permitting, siting, and/or procurement decisions, the agency should work with those local governments/agencies to help them establish programmatic mechanisms to identify and address environmental justice impacts substantially related to on- and off-road mobile source pollutant emissions
- Collaborate with OPR and California Energy Commission (CEC) (in their capacity as responsible agencies for CEQA and energy/fuels policy, respectively) to establish policies and guidelines to address environmental justice impacts substantially related to on- and off-road mobile source pollutant emissions.
- Develop and make available to other state and local agencies, communities and other stakeholders, tools, information, and funding to support environmental justice considerations related to on- and off-road engine and vehicle operation.
- In areas that have been identified as having a disproportionately high cumulative impact, consider the establishment of special requirements that would fully or partially mitigate the contribution from on- and off-road engine and vehicle operation.

### Risk Reduction and Pollution Prevention

*(Note: Also refer to Section VIII for an Alternative Opinion related to this section)*

- ~~Conduct a public process to establish a common definition of ‘cumulative impacts’.~~ Development of such definition should consider total pollutant emissions and discharges in a geographic area, the definition in the CEQA, and definition of other agencies working on cumulative impacts. Cal/EPA should finalize the definition of cumulative impacts within six (6) months of submittal of this report and actions to address cumulative impacts should not await definitive calculation of risk or health consequences. In the interim, the default definition is: “the total burden of all emissions and discharges in a geographical area.”
- Conduct a public process to establish a common definition of ‘cumulative impacts’ starting with the definition in the California Environmental Quality Act (CEQA) and consulting with other agencies working on cumulative impacts.
- Develop, through a public process, peer-reviewed tools to assess cumulative impacts, and equitable, scientifically based criteria for using these tools, especially as they may be used to further the goals of environmental justice.

- Develop criteria and protocols, through a public process, for identifying and addressing environmental justice gaps in standard risk-assessments, taking into account potentially impacted and affected sensitive populations and the state of the science in modeling health and environmental risk-assessments.
- Develop criteria and protocols to enhance current approaches to cost-benefit analysis (where such analysis is needed and required) that support a more comprehensive evaluation of external costs and benefits, such as health, environment, innovation, economic development, and other important societal values when devising strategies to reduce pollution and health risks.
- Reduce environmental risks to children through pollution prevention and other mechanisms by using a public process to:
  - Identify the pollutants and pollution sources (including industrial, municipal, transportation, and others) which present the highest risk to children, based on toxicity, proximity, persistence, or other factors;
  - Prioritize these pollutants and processes for further action, and conducting research into non-toxic and/or less toxic alternatives;
  - ~~Require adoption of non/less toxic alternatives through a comprehensive alternatives assessment process that includes evaluation of technical feasibility and cost, and allows a reasonable transition period;~~ and
  - Provide information and resources to businesses, municipalities, and other entities to encourage the use of non/less toxic alternatives.

In order to implement the above, Cal/EPA should identify and exercise its authority to the fullest extent, where needed seek additional environmental protection authority through legislation, or promote action by other agencies that have authority, as appropriate. Cal/EPA should also seek funding to assist schools and municipalities to implement pollution prevention programs. In implementing these actions, Cal/EPA should not create an unfunded mandate for local governments. Select examples of risk reduction actions could include:

- ~~□ Requiring schools and municipalities to implement Pollution Prevention or precautionary approaches to reduce and eliminate the use of toxic pesticides, cleaners, paints, inks, etc., based on a comprehensive assessment of alternatives;~~
- ~~□ Requiring municipalities to redesign traffic flow to limit or eliminate diesel vehicle traffic through residential communities;~~
- ~~□ Requiring welding operations to utilize low fume/low heavy metal welding rods and low fume processes; and~~
- ~~□ Instituting a phase out of toxic boat bottom paints, specifically copper leaching and copper ablative bottom paints.~~
- ~~□ Reduce existing and potential environmental health problems in impacted communities by taking the following actions. In implementing these actions, Cal/EPA should not place an unfunded mandate on local government and/or local programs.
 
  - ~~□ Identifying all facilities and operations based on existing data that may pose a threat to human health and the environment because of their storage, use, disposal, or emission/discharge of hazardous substances, including pesticides. To implement this item, Cal/EPA should make use of currently available data under California's~~~~

~~right to know laws and federal facilities information, including Superfund and the National Priorities List (NPL), and shall at a minimum rely on the thresholds for reporting under those laws.~~

- ~~☐ Using a public process, assess cumulative pollution burden for disproportionately impacted communities based on the degree of threatened harm to human health and the environment that communities experience.~~
- ~~☐ Using a public process and data from the previous two steps, identify and prioritize disproportionately impacted communities.~~
- ~~☐ Using a public process, establish goals and performance measures to reduce the threat of harm to human health and the environment in these disproportionately impacted communities, using enhanced pollution controls and pollution prevention.~~

Create effective mechanisms with the community for public participation, and support state and local agencies, to enhance the role played by residents in disproportionately impacted communities in decisions about how to reduce pollution and risks in their community.

- Work with the Department of Health Services (DHS) to establish goals to reduce health and environmental risks, such as:
  - ✓ *Identifying contaminants in breast milk and/or children's blood, the key sources of those contaminants and routes of exposure, and setting goals and timelines to eliminate the contamination;*
  - ✓ *Setting goals and timelines for eliminating lead poisoning in children; and*
  - ✓ *Setting goals and timelines for reducing the incidence of asthma, environmental-related cancer, and other environmental-related illnesses.*
- Establish a California Office of Pollution Prevention (or some other formalized, centralized multi-media group) to:
  - ✓ Serve as a clearinghouse for information on less and non-toxic products and processes;
  - ~~☐ Evaluate products and processes under consideration by municipalities and industries;~~
  - ✓ Conduct research into new processes and products that could provide less toxic, or non-toxic alternatives for municipalities and industries; and
  - ✓ Provide support to municipalities, industries, and other entities seeking to implement risk reduction and pollution prevention actions ~~the recommendations for "Risk Reduction and Pollution Prevention", and other related recommendations in Goal #2.~~
- Identify and address environmental justice gaps related to preventative approaches to risk reduction.
- Within Cal/EPA, all risk assessment analyses of material toxicity, hazard, or potential for harm to human health or the environment should be conducted by a single office and that office should not also have risk management responsibilities.

- Where a Cal/EPA BDO has, or has had, responsibility for both risk assessment (as described above) and risk management, the office which will have sole risk assessment responsibility for Cal/EPA should review, and where appropriate, revise prior risk assessment decisions by the other BDOs to ensure they use sufficient precaution to protect public health and the environment. The review should consider advances in the current state of scientific knowledge and data, and should specifically address disproportionate health and environmental impacts on low-income communities and communities of color.
- Where a Cal/EPA BDO has direct responsibility for risk management programs, the BDO should review, and where appropriate revise such programs to ensure they use sufficient precaution to protect public health and the environment. The review should consider advances in the current state of scientific knowledge and data (including routes of exposure, indoor exposure, and area source exposure, such as exposure to herbicides, pesticides, transported wastes, and consumer products), and should specifically address disproportionate health and environmental impacts on low-income communities and communities of color.
- Explore opportunities for demonstration for new technologies that will reduce pollution and health risks.

## IX. BACKGROUND MATERIALS AND REFERENCES

The following materials in the appendices were prepared by Cal/EPA staff at the request of the EJ Advisory Committee. Appendices are available on the Cal/EPA Environmental Justice Website at: <http://www.calepa.ca.gov/EnvJustice>

- Appendix A:** Detailed History of Environmental Justice
- Appendix B:** White, Harvey L. 1998. "Race, Class, and Environmental Hazards" in Camacho, David E. (ed), *Environmental Injustices, Political Struggles: Race, Class, and the Environment*. pp. 61-81. Duke University Press: Durham
- Appendix C:** President Clinton's Executive Order 12898: "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" – February 1994
- Appendix D:** *Environmental Justice and Tribes* – Prepared by Committee Member Dorothy Hallock, Fort Mojave Indian Tribe
- Appendix E:** Overview of California State Law on Environmental Justice
- Appendix F:** Cal/EPA Boards, Departments, and Office (BDO) Organizational Chart
- Appendix G:** Cal/EPA Interagency Working Group on Environmental Justice
- Appendix H:** Summary of Public Participation & Comments Received in drafting the Committee's Recommendations
- Appendix I:** Precautionary Principle Background Materials