FINAL DRAFT

Minutes
Environmental Justice (EJ) Stakeholders Meeting

Tuesday, August 6, 2002
3:00 to 7:30 p.m.

Joseph P. Bort Metrocenter, Auditorium
101 8th Street
Oakland, California 94607

Attended by:

1 Bailey, Diane (NRDC)
2 Blaisdell, Bob (OEHHA)
3 Bloch, Adrienne (CBE)
4 Bolt, Dennis (WSPA)
5 Brieger, Tracey (CaPR)
6 Caldas, Diana (ARB)
7 Clark, Henry (WCTC)
8 Dotson, Whitney (NHNR)
9 Fletcher, Bob (ARB)
10 Garcia, Cynthia (ARB)
11 Garvey, Ellen (BAAQMD)
12 Grow, Richard (USEPA)
13 Guroff, Nick (NET)
14 Harvey, Dana (ESI)
15 Heath, Emily (CaPR)
16 Krebs, Patti (IEA)
17 Kyle, Amy (UCB)
18 Lee, Barbara (NSCAPCD)
19 Lyou, Joe (CLCV EF)
20 Martin, Jerry (ARB)
21 McKinnon, Matt (ARB)
22 Prasad, Shankar (ARB)
23 Quetin, Doug (MBUAPCD)
24 Schaufelberger, Christine (BAAQMD)
25 Shamasunder, Bhavna (UrHa)
26 Shimp, Dale (ARB)
27 Smith, Richard (SDCAPCD)
28 Stewart, Bruce (Cycle)
29 Suer, Carolyn (ARB)
30 Takemoto, Brent (ARB)
31 Terry, Lynn (ARB)
32 Tschogl, Kathleen (ARB)
33 Tuck, Cindy (CCEEB)
34 Waller, Darrell (BAAQMD)
35 Wallerstein, Barry (SCAQMD)
36 Walsh, Kathleen (ARB)
37 Waugh, Mike (ARB)
38 Williams, Jane (CCAT)
39 Wyman, Sue (ARB)

Due to the limited amount of parking, either on street or in the Metrocenter lot, the meeting convened at 3:20 p.m.

After introductions, Mr. McKinnon recognized the effort put forth by the air districts and ARB to revise the draft complaint resolution protocol. Mike Waugh noted that the version that was sent to the stakeholders by email was modified primarily in consideration of the suggestions made at the meeting in Richmond (on June 4, 2002). Specifically, three sections were added on community education and capacity building, investigation of on-going complaints, and air district outcomes and remedies. After Mr. Waugh's overview, the stakeholders were asked for suggestions or changes concerning the revised protocol.

On behalf of CAPCOA, a stakeholder asked for a clarification, then distributed a handout with the following text:

CAPCOA REQUESTED ADDITION TO END OF 2ND PARAGRAPH PAGE 1

"The intent of the Protocol is to ensure effective resolution of air pollution complaints and to inform the public of the process. This protocol specifically applies to the major urban air districts that encompass ___ percent of California's population. The level of need for analogous procedures, and the resources available for implementation, would vary considerably for the remaining air districts within California. Therefore, their individual efforts need to be more hand tailored to their respective communities."

In this case, the stakeholders were asked to consider of the differences between large, medium, and small air districts. While the requirements in the present draft protocol would be appropriate for the five largest air districts (i.e., South Coast, Bay Area, San Diego, Sacramento, and the San Joaquin Valley), the protocol would need to be tailored to meet the region-specific needs and responsibilities of small- and medium-size air districts, as appropriate. The following three items were raised as critical issues for small- and medium-size air districts:

- assistance for lab analyses;
- staffing a complaint line 24-hours a day, 7-days a week; and
- resource allocations for multi-lingual staff.

A stakeholder commented that language issues have been raised in the past with regard to EJ, and that in some small districts, minority communities have experienced problems due to stationary source emissions. For example, in Imperial County, the population is predominantly Hispanic (~80%) and is largely employed by the agriculture industry. These farm worker communities are often low-income areas, where high rates of childhood asthma have been observed. In this case, there is a specific need for one type of translation service (i.e., Spanish). In contrast, for San Diego or Contra Costa County, 20-30 different languages may be spoken in a given community, raising questions as to which languages should translations be provided in. In view of the differences noted above, the suggestion was made to look at the need for translation services on a case-by-case basis.

At this point, Mr. McKinnon noted that the issue was not a matter of need vs. resources – the need for translation services is fundamental to allowing for meaningful public participation, but on the other hand, resource limitations are a reality for government agencies. As such, would the group consider having the five largest air districts sign-on to the protocol agreement as written, then initiate efforts to tailor the protocol to the needs and responsibilities of small- and medium-size districts? A discussion of resource-related issues ensued, as for many air districts, monies earmarked for translation services (usually subvention funds) cannot, in some cases, be reallocated for other air district activities. For large air districts, one option may be to provide incentive pay for bilingual staff to maintain language proficiency and to provide translation services when needed.

For small districts, where the number of staff and operating budgets are limited, addressing local needs as they arise is a struggle. While there is a commitment to address EJ issues, small districts cannot guarantee "24/7" complaint line coverage or the availability of bilingual staff. To some extent, there is resource sharing among local agencies, but it is not feasible for small air districts to provide all the services that the large air districts are being asked to do. In response, a stakeholder recognized the need for modifications for small districts; however, the addition suggested by CAPCOA was "counter-productive." Mr. McKinnon then asked if the discussion could continue if the CAPCOA addition was not included in the protocol document. A stakeholder noted that the addition is important to CAPCOA, especially to small air districts, which want some assurance that their efforts will not be misinterpreted. Small air districts recognize the importance of EJ, but have concerns about being able to fulfill all the requirements in the protocol. A suggestion was made to delete the phrase "…the level of need for analytical procedures…" from the CAPCOA addition -- several stakeholders agreed that that would be an improvement.

The dialogue then returned to translation issues in Imperial County. A stakeholder mentioned that the air district did not have any Spanish-speaking staff despite having a predominantly Hispanic population. It was further noted that the Department of Toxic Substances Control charges the responsible party for document translation, and that project applicants should be made to cover those costs so that people can understand what problems they are facing. This would include oral translation at public hearings as well as translations of permits and other relevant documents. There is a clear need for CAPCOA and ARB need to look into the availability and need for translation services. For example, how many air districts need to provide translation services? If the large air districts provide translation services, is that enough?

As translation services are fundamental to meaningful public participation, government agencies need to be thinking about how to pay for those services. One stakeholder noted that "lack of resources" has been mentioned many times with regard to funding government actions to achieve EJ, and one option may be to raise the fines imposed on violators so that there would be money to support local EJ programs. Moreover, if the scope of small- and medium-size air district programs needs to be tailored to the needs of the area, air districts should disclose to the group what specific items they are concerned about. For example, with respect to translation services, do small- and medium-size air districts need help getting resources or is it something else? Mr. McKinnon noted that small districts are not saying that they will not provide translation services, but rather that the resource issues are an important consideration. Is there an avenue for sharing translation services among air districts? Clearly, a focused discussion is needed to examine the issue of translation services – which languages, verification of translations, and sources of funding.

At this point, Mr. McKinnon asked the group if there was interest in moving forward with the complaint resolution protocol on two-tracks – one for the protocol and a separate one for translation. A stakeholder supported efforts to move the protocol forward but also expressed a concern that if funds get tight, EJ efforts would likely be tabled in deference to legislative mandates. A participant from the public made the comment that she had "zero sympathy for agencies that don't have resources to carry out environmental justice." Lack of resources is an excuse for not doing the right thing, and was not in favor of moving the protocol forward on separate tracks. In closing, the participant asked if partnering with a non-profit organization on translation issues was an option. In response, Mr. McKinnon stated that relying on grant funding to investigate air quality problems was not a good long-term solution, as funding must not be an issue when it comes to protecting the public from air pollution.

As translation services are needed in a range of government activities, a discussion developed on what services need to be provided and what services are currently available. Air district stakeholders identified two important needs: (1) providing translation services to respond to local complaints over the phone, and (2) having bilingual inspectors that can be dispatched to investigate problems in the field. With respect to complaints received over the phone, it would be helpful if ARB could provide a number to call so that the complainant could be transferred to someone who could record their complaint directly (then notify the air district about the nature of the complaint). While this could work for logging complaints, there was no straightforward solution for providing translation services in the field. It was noted that annual surveys are conducted to catalogue the language skills of ARB staff; in addition, translators are certified by the Department of Social Services, and translators have been hired from the Department of General Services. Mr. McKinnon indicated a need to contact Cal/EPA and identify what resources are available agency-wide, prepare a list, and provide that information to the small- and medium-size air districts.

As many different languages are spoken throughout California, identifying what local needs for translation services are, and what services are available (at the county and state levels) is a critical first step. For example, a survey of the language needs in rural California would be a starting point for deciding what services need to be provided by small air districts. Recognizing the importance of providing materials in multiple languages, a translation subcommittee was formed by Mr. McKinnon, to look into the issue further. The subcommittee would be chaired by Shankar Prasad, and consist of Jane Williams, Romel Pascual, Bruce Stewart, Barbara Lee, Jerry Martin, Kathleen Tschogl, and a designee from ARB's Enforcement Division.

The next issue for discussion was what information would the air districts and ARB provide to people who filed a complaint? A stakeholder suggested that complainants should be:

- sent a copy of complaint resolution protocol;

- apprised of their rights with respect to air pollution-related complaints;
- advised on how to contact their local air district; and
- informed that air districts have 15-days to respond to complaints.

A stakeholder noted that callers could be sent a pamphlet that explains the local complaint process and what their rights are, as well as a copy ARB's Public Participation Handbook. Moreover, air district inspectors would be advised to carry extra copies of the handbook for distribution in the field. Other suggestions were made as how to best distribute information of this kind, such as mailing out the Public Participation Handbook to local environmental groups.

After ARB staff agreed to add a section on ARB outcomes and remedies (to part II-B of the document), there was discussion about what could be done if the ARB and an air district didn't agree on how to respond to a local complaint (cf. page 7, part III-B-2). In this regard, a stakeholder suggested that it was important for people to know that ARB can assume an air district's authority, if warranted. In response, ARB staff noted that although it was a theoretical possibility, it was unlikely one. While there is precedence for ARB assuming an air district's authority, ARB would not take that course of action over differences concerning a local complaint. However, since the possibility exists, information on ARB's oversight authority will be included in the Public Participation Handbook. Concerns were also expressed as to whether information of this kind might raise community expectations relative to resolving local complaints, if ARB has statutory authority in all cases, and the apparent reluctance of ARB to ensure that local complaints would get resolved. If the ARB and an air district disagree on how to handle a local complaint, a potential outcome could be for ARB to undertake it's own enforcement action. Language to indicate this as a potential outcome may be appropriate for the complaint resolution protocol as opposed to listing other remote outcomes (e.g., pursuing changes to existing law or contacting USEPA). However, problems may still exist with respect to public nuisance complaints where the law is unclear on a number of issues.

A concern was raised about the language in section II-A-4 regarding air district outcomes and remedies. Changes would be made to the 4th and 5th bullets to reflect the group consensus – seek appropriate mitigation <u>or</u> pollution prevention actions, and seek penalties, within statutorily <u>and</u> district-approved levels, etc., respectively.

Before moving on to the Public Participation Handbook, the group returned to the issue of balancing resources and air district flexibility. At the center of the discussion was the use of the phrase "as resources allow." Did this mean that when resources were limited, EJ efforts would be omitted? It was noted that keeping the caveat is an important issue to CAPCOA. Other stakeholders asked for more specific information concerning where air districts place priorities in the face of budget cuts, as there shouldn't be compromises made with respect to quality-of-life and environmental protection. While air

districts are committed to EJ in the face of budget cuts, they must work with their governing boards to decide where resources are to be allocated. In this regard, it is important that they have discretionary authority to decide what's best for local public health so that adjustments can be made, as needed. As an example, it was noted that in one rural air district, local concerns were largely focused on the health effects of airplane plumes and odors from dairies. While these issues are not widespread across the state, considerable resources have been allocated in that air district to address local complaints. Another stakeholder pointed out the need for after-hours air monitoring in rural counties where facilities are known to operate at night to avoid inspections by the air district during normal work hours. To close this discussion, Mr. McKinnon acknowledged the impasse reached on translation services, and that the designated subcommittee would work toward reaching a solution. He also noted that the complaint resolution protocol needs to be balanced (i.e., should be comprehensive but not create unrealistic expectations), and needs to be distributed to the public and field-tested as soon as possible.

Public Participation Handbook

Dale Shimp distributed copies of the draft handbook to the stakeholders group, and then gave an overview of what the handbook contained. At this point, the target is to produce a 20-page document, and general comments with regard to what key elements are missing would be helpful. A stakeholder suggested including the addresses of web sites with information on proposed regulations and CEQA notices. Another stakeholder added that the handbook should include information on how to participate locally as well as at the state-level. As this was the first time that most of the attendees saw the draft document, some indicated that the categories in the current draft seemed appropriate, but that they needed to read the draft more thoroughly before providing other comments.

Before starting the public comment period, a stakeholder asked whether or not some air districts might be too small to meet the needs of the people? In other words, are our air districts "sized right" given the wide range of mandates and local needs that need to be addressed? Air district stakeholders indicated that the present system works, and in the case of rural air districts, if they were to be merged with a larger air district, their constituency might receive less attention than they presently receive (do due increased travel distances). While there are pros and cons to the present statewide air-district configuration, it is not clear as to what could be done improve upon it.

Public Forum for Community Air Quality Issues

At 7:00 p.m., Mr. McKinnon opened the meeting for public comment. Two comments (i.e., that one of the stakeholders had a family emergency and

apologized for not attending the meeting, and that comments on an on-going project could not be disclosed at this time) were made prior to taking a short break. Mr. McKinnon noted that another request for public comments would be made after the break.

After resuming the meeting, a number of questions were asked and discussed:

- Why isn't there more local participation?

Several stakeholders from the Bay Area indicated that people are quite busy and simply don't have time to attend every meeting they get invited to (e.g., a series of meetings on Title V issues had recently been completed). Various attendees noted that they contacted a number of local community groups, and weren't sure why they had not come to the meeting.

- What can be done about emissions trading?

A stakeholder mentioned an article in the Contra Costa Times about pollution trading. Trading is a major concern for community groups as it is not consistent with the principles of EJ, and has not helped communities in Contra Costa County where pollution levels are already high, and more facilities continue to be built.

- Can the BAAQMD be made more accountable to communities?

A participant shared her experience with the BAAQMD on trying to organize and secure funding for toxic tours. In her view, the air district was not honoring its commitments, and their reluctance to provide funding for the tours hindered efforts to engage in meaningful public participation. Without air district participation and support, it would be difficult to educate communities about the air quality issues that they face on a day-to-day basis. In response, air district staff noted that they have met with many different people concerning the toxic tours, and progress has been slow. In their view, they had not reneged on any commitments, and planned to discuss the issue at a meeting with the environmental group on August 8, 2002. Air district staff also asked about making a video of a toxic tour so that more people could see the sites of concern. In closing, it was noted that environmental groups need to identify what their major issues of concern are, and to work with the BAAQMD to develop long-term solutions.

- What role do air districts play in local zoning issues?

Local air districts have no land-use authority, but act as a "responsible agency" under CEQA, that can comment on environmental documents. In previous stakeholder meetings, land-use has been identified as an EJ issue. In

this regard, there is an educational element that ARB can address (relative to land-use planners), and efforts are underway to compile information on air pollution concerns due to selected sources of pollution. Information on air quality needs to be provided to local planners and county officials so that they can coordinate decision-making efforts and prevent local problems from developing. It was suggested that environmental groups make appointments to speak with their local planning commissioners and to voice their concerns about local projects. In addition, ARB staff should consider making a presentation at the statewide convention of planning commissioners to emphasize the importance of air pollution-related health impacts.

Mention was also made that the Governor's Office of Planning and Research (OPR) is developing a guidance document for incorporating EJ as an optional element in city and county general plans. A stakeholder pointed out that there were no city or county planners at the workshop held by OPR in San Francisco earlier in the year, and that more effort is needed to solicit their input. Another stakeholder offered to contact OPR to find out when the draft guidance document would be released for public comment, noting that it would first need to be reviewed by the Cal/EPA Internal Working Group as well as the Cal/EPA External Advisory Group in October 2002.

- Why hasn't there been any discussion of cumulative risk?

A stakeholder expressed a concern that there needed to be on-going discussions about cumulative risk, as this is the fundamental issue with respect to achieving EJ, and whatever is known should be shared with community groups. In response, it was noted that cumulative risk issues are being worked on, and that ARB is working with CAPCOA on CHAPIS (Community Health Air Pollution Information System) – a web-based tool for assessing cumulative emissions, exposures, and health risks. The tentative plan is to launch CHAPIS by the end of the year, and a demonstration for the stakeholders group could be conducted at the next meeting. The Community Health Modeling Work Group, charged with overseeing model development, is next scheduled to meet on September 12, 2002.

- Various Bay Area Issues

A stakeholder mentioned an EJ issue developing in north Richmond. The City issued negative declarations in response to an application by Chevron to build storage facilities for ethanol and LPG. It was discovered that the City, despite having adopted EJ principles, did not perform EJ analyses of the Chevron projects. Upon contacting the City, the stakeholder learned that City officials were not aware that they had adopted EJ principles in a 1999 resolution.

At the previous EJ stakeholder meeting, problems with the Red Star Yeast facility were brought to the group's attention. Air district staff have contacted the

facility operator and reported that the company is cooperating with the district, and no complaints have been filed in the last two-weeks. The BAAQMD also noted that they granted extensions of 90-days and 60-days for Title V comment periods relative to refineries and Red Star Yeast, respectively.

- Next Meeting

The date for the next EJ stakeholders meeting was set for October 3rd (Thursday), but no site was selected. ARB staff agreed to explore avenues for video conferencing as a means to expand public participation.

The meeting adjourned at 7:05 p.m.