

Minutes
NAP Stakeholders Meeting

Monday, October 29, 2001
10:30 a.m. to 1:30 p.m.

Cal/EPA Headquarters Building, 1001 I Street, Sacramento, California
Conference Room 350, Third Floor

Attended by:

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| 1. Barham, Robert (ARB) | 17. Murchison, Linda (ARB) |
| 2. Bode, Richard (ARB) | 18. Pascual, Romel (Cal/EPA) |
| 3. Carmichael, Tim (CCA) | 19. Pipe, Michael (SOR) |
| 4. Fazeli, Barham (CBE) | 20. Prasad, Shankar (ARB) |
| 5. Fletcher, Bob (ARB) | 21. Reheis-Boyd, Cathy (WSPA) |
| 6. Forbis, Paula (EHC) | 22. Schaufelberger, Christine (BAAQMD) |
| 7. Garvey, Ellen (BAAQMD) | 23. Sommerville, Rich (SDCAPCD) |
| 8. Holmes-Gen, Bonnie (ALA) | 24. Suer, Carolyn (ARB) |
| 9. Hui, Steve (ARB) | 25. Takemoto, Brent (ARB) |
| 10. Krinsk, Leslie (ARB) | 26. Terry, Lynn (ARB) |
| 11. Lee, Barbara (CAPCOA) | 27. Tuck, Cindy (CCEEB) |
| 12. Lloyd, Alan (ARB) | 28. Wallerstein, Barry (SCAQMD) |
| 13. Lyou, Joe (CLCVEF) | 29. Waugh, Mike (ARB) |
| 14. Marsee, Sheila (ARB) | 30. White, Brian (CoC) |
| 15. Martin, Jerry (ARB) | 31. Witherspoon, Catherine (ARB) |
| 16. Marty, Melanie (OEHHA) | |

The meeting convened at 10:40 a.m. There was no formal agenda other than to discuss the changes made to the October 22nd draft of the EJ policy document. Introductions were bypassed in favor of getting the meeting started.

Shankar Prasad opened the meeting by commending the effort made on the policy document -- many of the comments made at the last meeting had been incorporated. Bob Fletcher then distributed a handout titled "Revised Policies for Environmental Justice," consisting of ten Power Point slides. Many changes were made in the present document, especially insofar as providing a context for the seven policies. Three major changes were summarized as follows:

- The phrase "in all communities, especially low-income and communities" was incorporated into selected policies in consideration of the language used in existing state statutes;
- The use of the phrase "risk reduction" was retained – it would refer to a combined effort to meet ambient air quality standards for criteria pollutants and to reduce risks from toxic air contaminants (TACs); and
- With regard to cumulative risk and land-use, a change was made from "encouraging" Districts to "looking" for ways to reduce risk, with a focus on working with land-use planners in the years ahead.

Before hearing from the stakeholders, it was noted that the action items following each of the policies were listed to provide details as to what would be done relative to implementing the policy. The participants agreed to first discuss general concerns, then if time permitted, discuss the document policy-by-policy.

The stakeholders complimented ARB staff on the effort made to revise the document. It showed that staff had listened to what they had said, and that the revision did a better job of identifying what needs to be done at the local-level. For the Districts, there is a greater comfort level insofar as understanding what ARB's expectations may be, and that the document is directionally "on track." For the environmental stakeholders, some additional items needed to be added. For Industry, there was encouragement insofar as adding the words "all communities," but they had other issues of concern. Recognizing that the policy document was going to the Board on December 13th, the stakeholders acknowledged that they would need to make time in the coming weeks to work with ARB staff to reach a consensus on the content of the policy document.

To this point, ARB staff noted that little outreach had been done with the general public on the policy document; only the individual policies have been discussed. Given the limited amount of public comment on the document, it is important to have a draft available for comment as soon as possible – the target is to have a document available in mid-November, 30-days before the Board hearing. It is doubtful that there would be a printed version in Spanish, or any other language besides English. As there hasn't been a need for translators at recent outreach efforts, arrangements had not been for translation services at the December Board hearing. It was suggested that arrangements for translators be made as it is difficult to know in advance if they would be needed.

Discussion of Page 1 -- Introduction

A mix of questions were raised, that included:

- Should environmental justice be defined on page 1?
- What is meant by local agencies?
- Would partnerships with local agencies only involve sharing information?
- How much authority do local air districts have on siting decisions?

Many stakeholders felt that it was appropriate to have the state's definition of EJ on page 1. The "local agencies" referred to in the second paragraph was intended to mean city and county land-use decision-makers and Districts. Efforts to partner with local agencies would not be limited strictly to information sharing, but would also include sharing of tools and methods for neighborhood-scale analyses, and developing consistency in terms of the criteria used to make local land-use and/or permit decisions. In addition, some information would be added

on ARB's efforts to control pollutant levels across the state, but some stakeholders advised that the information strike a balance, as air district cooperation is critical to accomplishing statewide air quality reductions.

A discussion then developed over the issue of whether local air districts have any indirect responsibilities concerning local siting decisions. It was noted that there is no explicit language defining the role of air districts in siting decisions, and that state law prohibits overstepping the authority of local land-use planners. This being the case, if they felt compelled to, were there any avenues for air districts to exert some influence in matters of this kind? It was argued that air districts have some authority in these matters, but choose not to exercise it. For example, they can adopt a rule to prevent the siting of a facility if "cumulative risk" is too high or incorporate "cumulative risk" in the CEQA review process. The legal implications of taking action in this manner are uncertain. However, discussing cumulative risk in the context of land-use decision-making is critical to addressing EJ issues across the state. It is clear that ARB and the air districts need to work with local land use agencies – guidance is needed with respect to the health risks of air pollution, and assurance that our goal is not to infringe upon their decision-making authority.

In closing the discussion of page 1, it was noted that EJ concerns are not exclusive to low-income and minority communities, but that most problems exist in them. To better identify which types of communities should be the focus of the Board's EJ efforts, it was suggested that ARB use the phrase "low-income and/or minority communities" rather than "low-income and minority communities."

Discussion of Page 2 – Introduction and Tables

A request was made to insert a statement (text provided at the meeting) into the first paragraph, to indicate that ARB will dedicate resources to address problems. The suggested language was developed in cooperation with legal staff, and some discussion followed over the wording of the suggestion (e.g., "narrowly"). A resource commitment is fundamental to acknowledging the fact that neighborhood-scale problems exist and remedies to those problems will need to be developed. It provides some assurance that ARB will take remedial steps. This could include actions to assure that penalty monies get spent in the communities where they occur.

A request was then made to change the phrase "air pollution exposures" to "air pollution risk" in the second paragraph. This led to a lengthy discussion of why it is important, at this point, to consider emissions, exposure, and (health) risk in evaluating neighborhood-scale issues. The point was made that, at present, there are uncertainties with respect to each measure individually (i.e., emissions, exposure, or risk). As such, selecting only one of measures as the basis for determining if a community is disproportionately impacted, would

preclude taking action in many cases due to scientific uncertainty. Moreover, because both criteria and toxic air pollutants are considered in cumulative risk, all three measures need to be considered (e.g., health risk from TACs is based on cancer, while cardiac and respiratory effects are the primary basis for criteria pollutants). By considering all three measures, information gaps or limitations in one measure can be filled by existing data on the others. The overarching concern is to avoid not taking action in a community with a clear problem, because there isn't technical certainty of a major health risk.

Discussion of emissions centered on whether action should be taken to reduce them (and exposure) if health risk is unknown. On the one hand, unless emissions pose a health risk, should they be controlled just for the sake of controlling them? Are we going to start reducing emissions arbitrarily, without consideration of health? It was noted that a change in policy of this kind should be made by the Legislature; however, the point was also made that the measures ARB adopts do not reverse the requirements of existing state laws. There is precedence for the adoption of additional rules by air districts to meet their needs at the local level. Clearly, health risk will always be the principal consideration, but on the other hand, one should not have to wait for absolute certainty of a health problem either. Some stakeholders felt that not enough was being done about pollutants that we already know are harmful and consideration needs to be given to preventing potential health risks – it took a long time to take action on diesel emissions, even though the data were solid. We need to find a way to bring issues to the table sooner should protecting public health be a priority.

It is not clear-cut as to how ARB will deal with reducing neighborhood-scale emissions and what measures would need to be implemented. While there may be no negative public health impacts from reducing emissions in general, efforts should focus on where emissions are causing local-scale problems, and then make the measures applicable statewide. Reducing emissions is one of several options that can be used to address community concerns, a safety net in some cases, but not necessarily the option that is exercised for every pollutant.

Questions about exposure were also raised. Some stakeholders asked for a definition so that they could explain what it meant to their constituents. Does it mean ambient pollutant concentrations? It was suggested that exposure is a measure of what people breathe – the amount of pollution that people absorb or ingest that can cause a harmful effect. In this regard, action may need to be taken if communities are disproportionately exposed to a particular pollutant (e.g., if 5% of the population receives 70% of the exposure).

Although there are important knowledge gaps with respect to emissions and exposure, scientific uncertainties may be even greater with respect to health risk. Thus, if health risk alone is used as the basis for evaluating EJ concerns, we would continue to place the burden of proof on communities to demonstrate the existence of a health problem before action can be taken. Currently, TAC

levels are high in many places in the state -- 100-in-a-million risk levels are common. On top of this, there are pollutants for which health risk is unknown, but we know that they are present throughout the state. For some of those pollutants, OEHHA can be asked to investigate their potency, but resource limitations will not allow for investigating every community concern. There was general agreement that focusing efforts on the reducing the risks posed by the most harmful TACs should come first, especially when there's a clear need and reductions can be readily achieved. But how do you proceed after that, when there are so many compounds of lower potency (e.g., toluene)?

Given the uncertainties we presently have with respect to emissions, exposure, and health risk, it is important to keep looking for ways to reduce all three, and to keep an eye out for other pollutants that could pose problems in the future. Without question, ARB is most concerned about health risk, and will continue to focus its efforts where the greatest benefits can be achieved. A more thorough analysis is needed in several areas, such as the effects of multiple pollutants (some work is being done under SB 25), and the contributions made by area and indoor sources. This EJ policy document lays a foundation for the future – business is concerned with more stringent emission controls and environmental groups fear the redlining of communities. The ARB needs to be prepared to justify the action it plans to take after considering options.

To close this discussion, a number of specific concerns were raised about the wording of the second paragraph. These included using the phrase “all stakeholders, including community members” instead of “community members,” replacing the phrase “best possible information” with “accurate information,” deleting the word “exposures” in the fourth line, and shortening the last sentence to indicate that efforts will be made to “empower” low-income and minority communities. A suggestion was made to move lead from the box on public exposure to the box on TACs. It was noted that by doing that, the reduction would no longer be 95%, as a different baseline was used to calculate the reductions in TAC exposure.

Discussion of General Concepts

To begin this discussion, the stakeholders from environmental groups offered several major concepts for consideration. The first was the establishment of a complaint resolution process, in which ARB would allocate staff and resources to investigate and address issues not resolved by air districts. It was argued that to actuate a change from status quo, the absence of a formal complaint resolution process presently poses a barrier to rectify years of neglect and past inequities. It will take some time to develop the process, legal or otherwise, but its establishment is critical for community groups. In response, ARB staff stated that they had been cautious on this issue because they did not want to list an action item that they could not follow-through on. Whether it

should be a policy was up for discussion, but many stakeholders felt strongly that establishing a process needs to be at the least, a specific action item. It could be listed as an action item under a number of different policies (e.g., 1 or 4).

An effort of this kind can be resource-intensive – ARB needs to wait and see how things develop in the upcoming budget hearings. No promises can be made at this point, but it is unlikely that there will be resources to establish a full-time unit. However, someone from the Chair's Office could be involved in the effort. There are also “sovereignty” issues – would ARB's involvement be interpreted as infringing upon the decision-making authority of local officials? ARB needs to work with the air districts on how to best approach the sovereignty issue, as a perceived loss of authority at the local-level will not be viewed favorably.

Several stakeholders felt that ARB needs to play a role in air pollution-related EJ issues, even though decisions would be made locally. As such, it would be an important first step to begin working with the air districts and CAPCOA on how to develop a process that would meet the needs of community groups, possibly involving the local hearing boards. Community members appreciate the visits made by ARB staff in recent months, but want to have a process that would allow them to address local issues. Air district stakeholders noted that they have been working with environmental groups to discuss issues of concern, and although the issues would be resolved at the local level, ARB participation would not be excluded.

The next concept identified by the environmental group stakeholders was accountability – there needs to be an annual report of what was accomplished and what will be done in the coming year. It was suggested that the annual report include a work plan (listing action items and resource needs (people and money)), how the action items would be accomplished, and an evaluation of what was done in the past year, why it was done, and if it accomplished ARB's objectives. In response, ARB staff indicated that they planned to brief the Board during the year, and that a work plan would be included in its annual report on EJ efforts. As lack of progress could be due to resource limitations in some cases, the report needs to be clear insofar as why progress is being made or not, and if course corrections are warranted. A comment was made that things tend to get done at ARB when resources are dedicated to a specific purpose; however, in these economic times, making specific commitments is tenuous. It was mentioned that a report is prepared every six-months for Cal/EPA by the BDOs. These reports are available from either Cal/EPA's or ARB's website, and updates on EJ efforts could be included there.

The issue of why there isn't a clear focus in the policy document on problems in low-income and minority was raised again. As a program nested within ARB's overall air quality program for all communities, why can't ARB's EJ policies focus on low-income and minority communities? How can this be an EJ

policy document if it doesn't emphasize addressing concerns in low-income and minority communities? Air district stakeholders noted that making specific mention of low-income and minority communities poses a problem for them because they are charged with protecting everyone – they would be more comfortable with language that calls for focusing their efforts where it is needed most. Moreover, at the local level, political factors, intentional or otherwise, may have contributed to patterns of land-use that resulted in discriminatory impacts to low-income and minority communities. Over the last few years, air district awareness of EJ issues has been raised, and they are ready to be proactive at the local level. At this point, one stakeholder asked the group if the policies needed to be rewritten if the problems in low-income and minority communities were not emphasized? In response, some stakeholders felt that there should at least be recognition that problems are worse in low-income and minority communities than in other communities, and that focusing on those communities does not mean that problems in other communities will be ignored.

The environmental stakeholders suggested a third concept, under Policy No. 5, to establish a quantitative goal for reducing statewide TAC emissions, by a defined target date. It was noted that there is federal precedence for goals of this kind, and that the diesel risk reduction plan serves as a good frame work for what could be done for TACs in general, as diesel isn't the only TAC issue of concern. Air district stakeholders indicated that targeting all TACs poses a problem in that large reductions in the levels of TACs with low potency could have very little benefit from a health perspective. If a priority list could be agreed upon and developed, possibly a top five or ten compounds to focus on (including lead and PAHs), real benefits could be achieved. While a clearer statement regarding TAC reduction goals is needed, assigning numerical targets is not feasible if all TACs need to be considered. Further discussion would be needed to reach agreement on the details, such as at what scale would the reductions be measured at – regional, neighborhood, or both? Moreover, some flexibility would need to be built in to the process allowing for periodic evaluation of what TACs are causing the most harm, as well as the role of criteria pollutants. One stakeholder asked if ARB's Clean Air Plan has an explicit toxics emission reduction target, and if not, could one be developed?

While reducing the levels all TACs is desirable, it was noted that there are existing uncertainties as to how ARB will achieve the reductions in the diesel risk reduction plan, and going after all TACs may not be the right direction to proceed in or feasible. From a resource perspective, efforts are already underway to coordinate the activities involved with the SB 25-related Children's Environmental Health Program and the diesel risk reduction plan, both of which require large resource allocations. Integrating a separate set of EJ-related action items could be overwhelming, although there may be some opportunities for reducing diesel emissions in low-income communities. It was suggested that ARB should develop an estimate of how much of a TAC reduction will occur as a result of the proposed and on-going mobile source emission reduction measures in the diesel

plan. Diesel is clearly the largest statewide contributor, and quantitative estimates of the reductions in mobile source emissions can be developed with some degree of certainty. It may then be possible to establish appropriate reduction goals for other TACs, from stationary sources. It was noted that for hexavalent chromium, levels below the detection limit are often measured which translates into a 30-in-a-million risk. If present ATCMs require chrome-platers to employ control systems that reduce emissions by 99%, what more can be done is a question that is difficult to address. Hence, the issue of siting becomes more critical.

Pollution prevention was discussed briefly. Some consumer product regulations have already been adopted, but more work is needed to develop lists of action items to promote pollution prevention, emission reduction goals, alternative compounds, and compounds that should be banned. There is a process in place for reviewing toxics, and local districts should be consulted with respect to where programs are most needed.

With regard to Policy No. 6, it was asked if “emissions and exposure” were intentionally left out. In this case, they were left out because the tools aren’t available for local districts to quantify emissions and exposure. At this point, the Districts can only assess health risks, but the inconsistency with Policy No. 5 needs to be corrected. Without emissions and exposure, communities have no other means of establishing the existence of a problem without well established health data.

Industry’s core concern was identified to be cumulative risk – what is it and how will it affect the permit process? If emissions, exposure, and health risk are involved, there needs to be guidance on what businesses will be required to do. The business community is concerned with the uncertainties of how EJ issues could affect permitting. For example, in the guidance being prepared for land-use planners, could the same factors become the basis for future permit decisions? Will the present permit process be revisited? Some degree of certainty is needed for the business community – would prefer to have a programmatic approach as opposed to project-by-project decisions on permitting and mitigation. While all concurred with the goal of establishing “certainty” in the process of addressing EJ, stakeholders appeared to disagree as to whether EJ should apply only to programmatic issues or to permit-by-permit and project-by-project determinations as well. Air district stakeholders noted that a programmatic approach would be a more efficient way to address local EJ issues than by CEQA.

How to reduce risks and distribute benefits in neighborhoods with high emissions, exposures, and health risks were discussed. The language in section 173 of the Clean Air Act Amendments was suggested as a way to place the burden of lowering emissions in the impact zone (e.g., CEC’s six-mile radius) on project proponents (offsets for TACs). This could mean no growth in some

locations or permit denials in others. As for benefits, it was noted that in some cases, local mitigation efforts do not always result in air quality benefits in the impact zone. As such, some flexibility is needed to allow districts to distribute benefits fairly, and not be limited to taking action only in the impact zone.

With regard to uniform penalties for refineries, state law requires many factors to be considered in designating the value of a fine, and cannot be ignored. The issue is still being debated, but penalty amounts could be made less disparate by efforts to uniformly interpret the criteria upon which penalties are assessed. Penalties should discourage violations, and monies should be spent in the impact zone to benefit local residents. Incentives also need to be looked into.

As the group felt that it was important to get public comment on the policy document, and comments from the stakeholders were needed soon, as early as the end of the week. The environmental group stakeholders indicated that they would try to provide their comments by November 2nd. The plan was to release a document for public comment on November 13th, coinciding with public workshops in Oakland on the 13th and in Carson on the 15th. A decision would be made at a later date as to how the comments received at the workshops would be addressed, relative to the December hearing.

The meeting was adjourned at 1:30 p.m.