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Michael D. Wang

Senior Advisor, Southern California, Legal Issues, Budget Planning and Analysis

August 5, 2008

Via Email

Dr. Elaine Chang
Ms. Susan Nakamura
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

RE: Clean Communities Plan

Dear Dr. Chang and Ms. Nakamura:

Thank you for the invitation to attend the 2008 Clean Communities Plan Working Group (CCPWG) meeting on July 16. As you know, the Western States Petroleum Association (WSPA) has been an active participant on working groups and projects such as these since the mid-1980's. We, along with the South Coast Air Quality Management District (SCAQMD), the California Air Resources Board (CARB), and the US Environmental Protection Agency (USEPA), have been involved in numerous legislative and regulatory projects to document exposure, reduce risk, and improve overall communication with the community.

Specifically, in addition to the 18 rules the District cited as part of their air toxics program, WSPA and agencies have worked on and actively participated in:

- AB377 (California Chemical Risk Management)
- AB2588 (Toxic Hot Spots)
- USEPA TRI requirements
- USEPA and OES release requirements
- SCAQMD and CARB Community outreach efforts
- CARB Gasoline and diesel reformulation
- CARB Barrio Logan Project
- CARB Harbor Communities Monitoring Project
- CARB CHAPIS (emissions mapping)
- RWQCB GIS mapping
- Certified Unified Program Agency (CUPA)

These activities have resulted in reduced emissions, reduced exposure, and documented reductions in risk. While we understand and accept the need to be vigilant in finding new ways to reduce our footprint on the environment, risks from petroleum facilities are well within regulatory criteria/limits.

Thus, we were pleased to be invited to attend the Clean Communities Plan Working Group because of the many efforts described above. We listened attentively to the discussion and the points made by Staff and the other participants. In response to your request, attached are our thoughts.

Programmatic Design

Perhaps our foremost concern is that the CCPWG efforts must take place within the current regulatory context. As indicated above, the State of California has a rigorous and robust program to regulate emissions to manage and control risks. Any effort proposed by CCPWG must take place within this regulatory framework.

Also, the SCAQMD should embark on this project with an understanding that the State of California has designed its regulatory strategy to reduce risks to residents. In other words, rather than concentrating on emissions – which may or may not have an impact on health risk to human receptors, the State has rightly concentrated on reducing risks associated with air pollutants. This approach has been successful and any program developed by the SCAQMD should be consistent with and incorporate risk-based elements.

Hazard Identification

Also we noted that in your presentation at the CCPWG, you mentioned possible activities with regard to hazards from accidental releases. It appeared you were contemplating material substitution programs for chlorine, ammonia and perhaps other materials. As was noted at the meeting, there are several programs already in place to deal with these possible hazards. Any proposed actions for material substitutions need to consider all impacts (e.g. energy and resource use) before recommendations are made on the most appropriate technology.

Fact-Based Objectives

We notes that the Objectives of the CCPWG were to reduce exposure, address cumulative exposure from multiple sources, increase agency communication, improve communication to the public and emphasize community-based solutions. These goals need to be accomplished within the current regulatory framework and under the aegis of good science and fact-based initiatives. Specifically, the CCPWG should concentrate on reducing exposure where such reductions result in reductions in risk. Absent that linkage, the benefit of any emission reduction would be undefined and un-definable. The need for fact-based objectives will also ensure that consensus reached by the group will result in real and quantifiable improvements in the environment.

Exposure Reduction Programs

As stated earlier, exposure reduction programs certainly would be beneficial if those reductions resulted in reduced risk. Potential Emission Reduction Programs should be viewed in light of current risk reduction requirements of the State and the SCAQMD. We recognize there may be unique opportunities that occur at facilities from time to time where a facility could voluntarily reduce emissions due to changes in equipment or processes. However, the unique situations where such reductions are possible should not be construed as the norm or as the basis for further regulation. Rather, any such examples should be recognized as the efforts of a company going beyond what is required, as a demonstration of their commitment to the environment.

We urge the SCAQMD to be very careful when defining specific compounds or facilities as needing special focus. While all need to be vigilant to ensure that facilities are indeed permitted and operating under the correct emission limits. WSPA would be concerned if the CCPWG somehow highlighted a specific facility or groups of facilities for focused review or enforcement. No area or facility or groups of facilities should be identified as needing enhanced regulatory attention without specific and fact-based criteria. Public sentiment is not a basis for enhanced regulatory action.

Program Priorities

At the meeting, the District noted that some regions or areas would be highlighted for additional study such as those conducted for Mira Loma. Bearing in mind the comments noted above, any highlighting of a region for study should be based on accurate and reliable indicators of risk. While we certainly appreciate recent efforts to document the current environment, for example the MATES3 study, we would reiterate the need for ground-truthing to establish a firm and consistent baseline that facilitates a reliable risk assessment and risk management. Areas for study in this Working Group should not be defined simply by anecdotal or one-off measurements. The Wilmington HCM study has been a good example of how difficult it is to consistently measure localized exposure, convert exposure to risk, and identify risk reduction measures. Even more difficult is deciding whether any specific receptor site might be actually affected by air pollutants or which source might have actually released the emission.

Once again, we look forward to participating on this project and to continuing dialogue.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael J. [unclear]", written over a horizontal line.

Cheryl Marshall

From: Adams, Greg [GAdams@lacsds.org]
Sent: Wednesday, August 06, 2008 12:44 PM
To: Susan Nakamura
Cc: Cheryl Marshall; Elaine Chang
Subject: Preliminary Comments on July 16, 2008 Clean Communities Plan Working Group Meeting

Dear Susan/Cheryl:

We appreciate your letting us submit these comments after your deadline.

1. We do not understand how a "new source review" approach to odors would work.

a) Establish an odor compound list: What would this accomplish? Any compound or collection of compounds, depending upon its concentration, can eventually become obnoxious to the perceiver. Potentially this would be a long list as every industry would have its own, possibly unique, inventory of compounds.

b) Rule 410-type OMPs and performance requirements don't seem compatible with NSR-type rules.

2. Accidental exposures has been a highly regulated area ever since Bhopal and Section 112 (r) of the 1990 federal CAA Amendments. For years we have had to comply with Cal OSHA PSM (Process Safety Management) requirements and RMPPs (Risk Management and Prevention Plans) and finally the Cal ARP (California Accidental Release Program). CalARP contains three different program levels with varying requirements depending upon past history of accidental releases, the type of industry or specific determinations made by the AA (Administrative Agency). Program 3 constitutes the most restrictive program. Additional requirements are being considered at the national level. This year Congressional committees have debated the merits of H.R. 5577 (principal issue is that Department of Homeland Security has jurisdiction over chemical plant security) versus H.R. 5533 (EPA has jurisdiction). It is our guess that one of these will probably work its way through the 111th Congress.

Potential federal legislation aside, our principal concern with switching from chlorine gas to sodium hypochlorite is the additional salt concentration that would result in the tertiary water we discharge and the impact of that salt on our groundwater recharge operations. The recharge basins are marginal in their ability to accept any more salts. Someone within LACSD much more erudite than me can explain this to you in much greater detail if you would like.

Please consider that the wastewater industry's safety record as a whole with gaseous chlorine has been outstanding. We also have a very great need for the \$\$\$ otherwise spent on switching for the sake of switching to improve other parts of our infrastructure (like crumbling sewers).

The efficacy of gaseous chlorine versus 12% hypochlorite solution would cause delivery truck traffic to increase between three and four times what it is now. Also, instead of truck deliveries from production facilities in Santa Fe Springs across the 605 Fwy from here, hypochlorite would have to come over from Sparks, Nevada.

Gregory M. Adams
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8/6/2008

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Cheryl Marshall

From: McGivney, Daniel
Sent: Thursday, August 07, 2008 2:43 PM
To: Susan Nakamura
Cc: Cheryl Marshall
Subject: RE: Clean Communities Plan Working Group

Susan/Cheryl,

Unfortunately, I did not know about the July 16 meeting where the 2008 Clean Communities Plan concepts were presented, but I have obtained a copy of the presentation (thank you Cheryl) and have the following comments:

1. Based upon my review of the first couple of slides that discuss the approach and principal objectives, it appears that the plan is focused on continuing the efforts of the past air toxics control plans in furthering reductions of toxics, reducing the public's exposure to toxics and also to introduce mitigation or strategies to address the cumulative risk from toxics exposure. In fact, the first two thirds of the presentation are focused on toxics, better intergovernmental coordination and a better community presence/coordination. Hence, I am a little perplexed as to why issues such as odors (e.g. public nuisance) have been brought into this plan. Especially since issues such as odors were not brought up in earlier meetings/discussions of the toxics working group that had been meeting in late 2007 and early 2008 (that has subsequently been subsumed by this new working group). First, you can never eliminate all complaints or perceived public nuisance issues. Second, the District already has programs in place to address public nuisance issues (Rule 402 & SCAQMD internal policies and practices, NSR for Toxics - Rules 1401, 1402). Maybe before we include strategies like developing an odor new source review program, we should evaluate SCAQMD internal program policies and practices to see if there are areas that might be improved or modified that could provide more benefit in reducing odor complaints and public nuisance cases that a new regulatory program. It also seems like the list of potential compounds could be endless. Also, what is an odor to one person could be an aroma to another and all odors are not harmful to a person's health. Anyway, it seems that there needs to be a lot more discussion of this issue.

2. Under the slide titled "Accidental Exposures" the concept of requiring the wastewater treatment industry to replace chlorine gas as a disinfectant with a "safer alternative" seems to be overreaching. Our industry is already heavily regulated by CAL-OHSA (e.g. safety), CAL-ARP and EPA regulations. And switching from chlorine gas to sodium hypochlorite would require an immense investment in capital infrastructure and costs, including higher O&M costs. Many sewage plants may not have the available space to store the equivalent amount of solution as can currently be stored in liquid chlorine storage vessels. As our industry has an incredible safety record regarding the use of chlorine gas, and since I have not heard of any public concerns regarding this use, I am again caught off-guard as to how this became an issue. Hazardous material regulations heavily regulate the transport of chlorine and other hazardous material regulations along with EPA/State of California RMP and PSM regulations regulate our use of the chlorine. This proposal (to replace with an alternative) would be adding more, unnecessary regulation upon what already exists.

Thank you for the opportunity to provide comment on this. I look forward to working with you on this plan.

Daniel McGivney
951-928-3777, ext. 6329
dmgivney@emwd.org

From: Cheryl Marshall [<mailto:CMarshall@aqmd.gov>]

8/15/2008

Sent: Wednesday, August 06, 2008 4:52 PM
To: McGivney, Daniel
Subject: Clean Communities Plan Working Group

Dan,
Here's the slides from our first meeting. Could you send me your mailing address, phone, and fax number? The next meeting is scheduled for Tuesday, August 26 in Conf. Room GB from 1-3 pm. Thanks,

Cheryl Marshall
Program Supervisor
South Coast Air Quality Management District
909-396-2567
cmarshall@aqmd.gov

Cheryl Marshall

From: jbell mwdh2o.com
Sent: Friday, August 08, 2008 2:23 PM
To: Cheryl Marshall; snakamua@aqmd.gov
Cc: Kaufman, Carol; Guillory, Dan
Subject: RE: Clean Communities Plan Working Group - Comments

Hello Cheryl and Susan,

First, thank you for the opportunity to comment and to participate in this working group. I would like to offer a few comments that reiterate some of the issues discussed at the first meeting on July 16th.

1. **Nuisance Program** – It is unclear why this element would be included in the Clean Communities Plan, which is mostly geared towards air toxics. I understand that SCAQMD already implements various internal policies and procedures that address public nuisance odors. I am not aware of gaps in these existing programs that would need to be addressed with a new program. In trying to make the plan more comprehensive to include odors, the air toxics focus of the plan may be somewhat diluted. Additionally, the science of investigating odors is quite different from air toxics; e.g. people have different odor perceptions and although some odor thresholds may be low, it doesn't necessarily mean that a chemical may be present at levels hazardous to health. As somewhat of a coincidence, on July 24th, I attended an Odor Awareness Workshop (presented by GEI Consultants) that our Water Quality group sponsored. The workshop included some discussion of this last point, as well as discussion of odors of importance, investigating odors, and odor intensity, among other topics.
2. **Accidental Exposures** – Another proposed element of the Clean Communities Plan looks to reduce and prevent exposures to toxics from accidental releases from such chemicals, as ammonia and chlorine. Employee safety, public safety, and accidental releases of these chemicals and many others are already heavily regulated under existing federal and state regulations, such as Cal-OSHA "Process Safety Management", Cal-ARP "Risk Management Plans and "Accidental Release Program", DOT for transportation, and EPA for water sector vulnerability assessments. There are also Federal legislative proposals pending that propose to capture water and wastewater chemicals under DHS chemical facility security regulations. It would be beneficial to review these existing and upcoming regulatory requirements before incorporating this element into the plan with potentially new (and overlapping) sets of regulations. The Process Hazard Analysis (PHA) component and other elements of these current regulations should already meet the objective of reducing and preventing accidental releases/exposures that is in the Clean Communities plan.
3. **Alignment with OEHHA Efforts** – As we discussed at the July meeting, OEHHA recently formed a cumulative impacts group which is slated to come up with recommendations (risk-based) in Summer 2009. It is important that the Clean Communities Plan is aligned with these OEHHA efforts and recommendations, so they can be integrated into the plan, as applicable. I understand that SCAQMD is represented on this OEHHA group.

Please call me if you have any questions. I look forward to the next meeting on August 26th.

Janet

8/15/2008

Janet Bell

EHS Program Manager

Metropolitan Water District of Southern California

(213) 217-5516

From: Cheryl Marshall [mailto:CMarshall@aqmd.gov]

Sent: Thursday, July 31, 2008 5:09 PM

To: GAdams@LACSD.org; arguello@psr.org; Bell,Janet J; luis@coalitionforcleanair.org; Michael.carroll@lw.com; colemanlaw@earthlink.net; bfazeli@yahoo.com; bfazeli@cbeal.org; miles.heller@bp.com; MaryEllen.Hogan@hro.com; angelajm@envirorights.org; Kaufman,Carol Y; Candice@coalitionforcleanair.org; vkogan@ocsd.com; BillLaMarr@msn.com; angelologan@yahoo.com; Rachel.l@ccaaj.org; amartinez@nrdc.org; mmarty@oehha.ca.gov; penny.n@ccaaj.org; peter.okurowski@pillsburylaw.com; BillQ@CCEEB.org; gnport@adelphia.net; sapersm1@bp.com; garysterra@earthlink.net; robinasuwol@earthlink.net; lwallace@semprautilities.com; mike@wspa.org; janetw@cceeb.org; jlester@envirocorp.com; tgarrett@pmsaship.com; cmueller@tsocorp.com; pemodog@sbcglobal.net; shabaka4ej@yahoo.com; rscofield@environcorp.com

Cc: Susan Nakamura; Eugene Kang

Subject: Clean Communities Plan Working Group

Clean Communities Plan Working Group members and interested parties:

This is a reminder to those of you who attended the first meeting of the Clean Communities Plan Working Group on July 16 that we requested comments within two weeks. If you have any comments, please email them to me (cmarshall@aqmd.gov) or to Eugene Kang (eking@aqmd.gov). The next meeting is scheduled for 1 p.m. on August 26.

*Cheryl Marshall
Program Supervisor
South Coast Air Quality Management District
909-396-2567
cmarshall@aqmd.gov*

8/15/2008

Cheryl Marshall

From: Susan Nakamura
Sent: Tuesday, August 12, 2008 9:01 AM
To: Cheryl Marshall
Subject: FW: Preliminary comments on 2008 Clean Communities Plan

FYI.

-----Original Message-----

From: Bahram Fazeli [mailto:bfazeli@yahoo.com]
Sent: Tuesday, August 12, 2008 12:23 AM
To: Elaine Chang
Cc: Susan Nakamura; Barry Wallerstein
Subject: Preliminary comments on 2008 Clean Communities Plan

Dear Elaine:

We are writing these comments in response to the staff presentation and discussion on July 16th during the stakeholder meeting for the *2008 Clean Communities Plan (CCP)*. We appreciate the opportunity to share with staff the expectation of our community members who are increasingly vulnerable to cumulative impact of pollution in their neighborhoods. We recognize that AQMD has come a long way in acknowledging the severity of the problems in disproportionately impacted communities throughout the Basin since we first started this dialogue about cumulative impact about 10 years ago. In July of 1998 Communities for a Better Environment published its report, *Holding Our Breath*, assessing the cumulative impact issues in the Southeast Los Angeles communities and making recommendations, many of which apply even to this day. We hope that the *2008 CCP* will offer effective regulatory solutions to addressing the issues that environmental justice groups have identified over the past decade.

Based on the staff presentation, it appears that the CCP process lacks a much needed focus on cumulative impact, and we believe that a specific cumulative impact sub-category needs to be added to the items forming the umbrella of CCP. We believe there are four broad areas to consider in addressing cumulative impact in environmental justice communities: Promoting meaningful public participation, engagement and access; significantly ratcheting up enforcement practices; improving the permitting process by including cumulative impact analysis in the criteria for the new and existing facilities; revising appropriate source specific rules and umbrella rules as well as designing new ones.

AQMD staff have correctly underlined the issue of public participation, community outreach, and enhanced community engagement as one of the central issues to addressing any environmental justice and cumulative impact problems. We strongly support the staff recommendation to increase AQMD's efforts in enhancing the capacity of communities to participate in air quality decisions that impact their quality of life. We believe investing in community dialogue based on respect for the community (experience), who has the first hand knowledge of impacts, will greatly benefit the residents, AQMD and the business community. We will provide staff with a list of best practices on this topic in our future comments. We also believe that AQMD can learn from evaluating its past experiences of interacting with

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community and draw important lessons when it has fallen short.

Another area that AQMD staff emphasized in its presentation is enforcement. We have seen many improvements in this area over the past years, and we appreciate the effort of AQMD enforcement staff in responding to community complaints and following up with appropriate disciplinary actions as warranted. However, AQMD has not been proactive in its enforcement, and we believe there are many additional measures that AQMD could adopt in enhancing its enforcement regime in disproportionately impacted communities. Allocation of necessary resources, enhanced monitoring, building the capacity of community to interact with enforcement staff, offering appropriate trainings to community members, increasing the understanding/sensitivity of enforcement staff of environmental justice issues, and a number of other measures would greatly benefit our communities. Again, we will provide AQMD with a list of necessary changes in this area in our future comments and discussions.

The next and one of the most significant policy areas that AQMD needs to reexamine pertains to its source specific rules, umbrella rules and permitting practices. Improving permitting practices for new facilities and affecting the behavior of existing facilities based on revising current rules are central to any serious attempts to address cumulative impact. As it currently stands, the regulatory model of AQMD regulates facilities without much consideration to other facilities in a neighborhood. If a new polluting facility applies for a new permit (or permit to expand), AQMD permitting staff look at the existing rules and the final permitting decision offers no consideration to the cumulative level of pollution in the neighborhood. Whether there are five other highly pollution sources in the neighborhood or none does not have any bearing on the District's decision to issue the permit. In other words, cumulative impact currently is not a consideration for issuing permits, and we strongly believe it should be.

This issue is closely related to the way source specific rules and umbrella rule such as 1401 and 1402 are designed. The rules currently fail to account for cumulative impact criteria. At the heart of addressing cumulative impact is fixing this great regulatory flaw. Source specific rules and umbrella rules should be revised to take into account the whole picture. The health protective approach requires placing the community at the center and looking at the impacts from the perspective of the impacted community.

We also would strongly support AQMD in expanding its effort to reach out to planners and educating them about the air quality impacts of their decisions. AQMD expertise can provide much needed guidance for cities in designing better plans, assessing impacts of different projects as well developing criteria to account for cumulative impact throughout the CEQA process. We also believe that AQMD, as a responsible agency, should assume a more aggressive posture in commenting on proposed projects in disproportionately impacted communities.

We understand that all this is a great undertaking, and it will influence many operational aspects of AQMD in rule-making, permitting, enforcement and other areas. However, we believe the negative health impacts borne by vulnerable communities throughout the years warrants commitment to action on this issue, and it is in fact long overdue. We are interested in engaging with AQMD staff and other interested stakeholders to suggest practical and effective approaches to arrive at a health protective regulatory structures with a focus on addressing cumulative impacts.

Sincerely,

8/15/2008

Bahram Fazeli
Research & Policy Analyst
Communities for a Better Environment

Angelo Logan
Executive Director
East Yard Communities for Environmental Justice