

CUMULATIVE IMPACTS:

Changing Regulatory Culture to Address
Environmental Injustice & Environmental Racism

CASE STUDIES AND RECOMMENDATIONS



CBE

Communities for a Better Environment

October 2009



Cumulative Impacts

Changing Regulatory Culture to Address Environmental Injustice & Environmental Racism

Case Studies and Recommendations

Author:

Bahram Fazeli, Research & Policy Analyst

With Contributions and Review From:

Jesus Torres, Julia May, Adrienne Bloch, Guillermo Jaimes, Juan Ramirez, Strela Cervas, and with special thanks to Shana Lazerow for her extensive comments.

Photography:

Yuki Kidokoro, Jennifer Ganata, Jesus Torres, Darryl Molina, Bertalina Chavac, Jesse Marquez, Rember Sosa

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5610 Pacific Blvd. Suite 203, Huntington Park, CA 90255

www.cbecal.org

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Introduction

The purpose of this report is to demonstrate to decision-makers the serious flaws in how our regulatory system approaches environmental justice issues, and to suggest steps they can take to address these flaws.

First, we describe the Los Angeles region as presenting a prime example of environmental injustice in the way environmental hazards are unequally distributed, giving rise to cumulative impacts of pollution in low-income communities of color. Then, we discuss three cases that show how shortcomings in our regulatory system create and accentuate the problems of environmental injustice and cumulative impacts in vulnerable communities throughout our region.

Three themes repeat themselves when confronting problems of environmental injustice:

1. There are structural gaps in almost all of our municipal and regulatory entities in addressing the issues of environmental justice (EJ) and cumulative impacts (CI).
2. There is inadequate enforcement of even the existing (and flawed) regulations in disproportionately impacted communities.
3. Community input in EJ communities is not sought proactively and often is not welcomed or even respected by many decision-makers.

We will explore these themes throughout the case studies and offer recommendations to remedy them.

Los Angeles: A Stark Example of Environmental Injustice and Cumulative Impacts

Extensive research has demonstrated that polluting facilities are disproportionately located in low-income communities of color in Los Angeles. For example, the US EPA designated Toxic Release Inventory (TRI) facilities are disproportionately located in areas with high (relative to mean) concentration of racial minorities.¹ In terms of siting of hazardous waste treatment, storage and disposal facilities (TSDF) in Los Angeles County and its disproportionate distribution in predominantly communities of color, it has been demonstrated that both income and race independently play a significant factor in siting decisions.² These patterns of disparity have remained the same over the past decade and current research indicates similar uneven distribution of environmental hazards across Los Angeles County.³ Below we will look at two areas of Southeast Los Angeles County and the community of Wilmington, where CBE has active organizing bases, to demonstrate the extent of the problem in EJ communities.

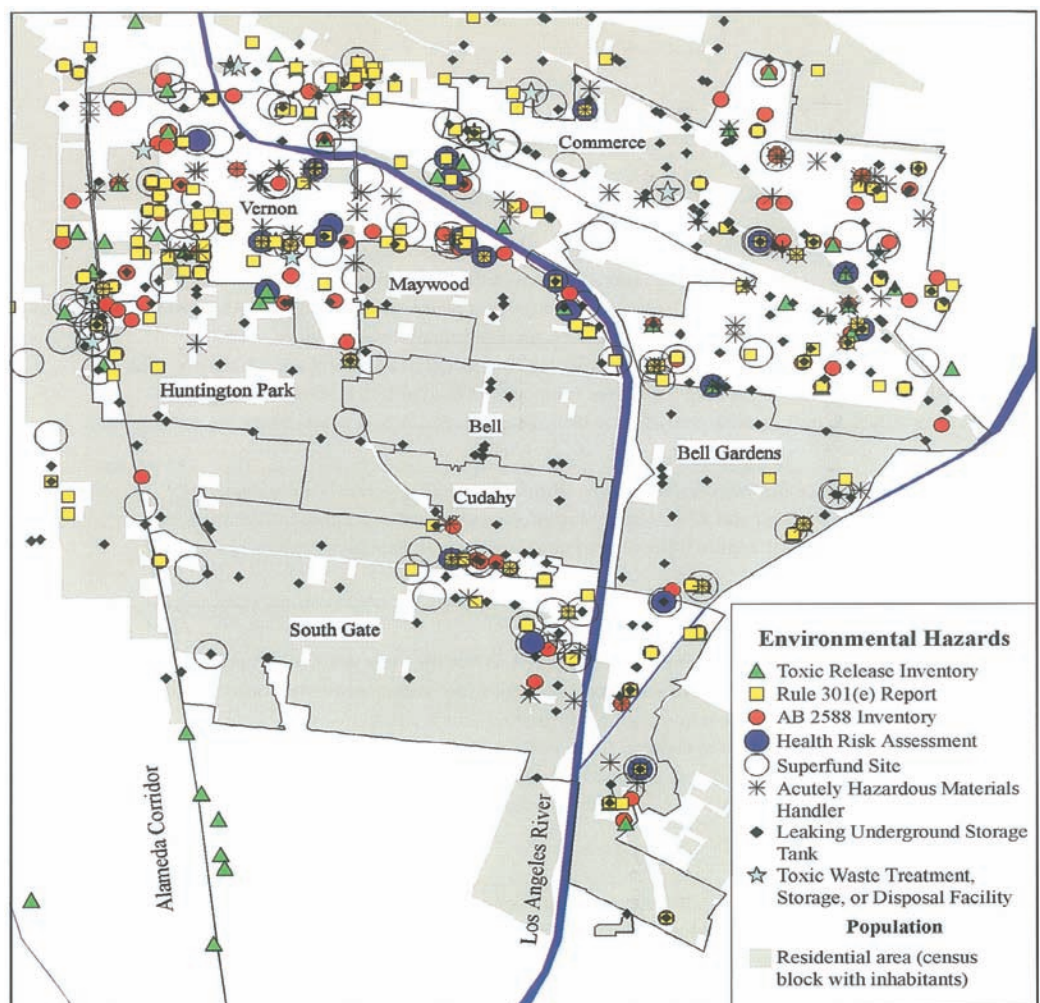
Southeast Los Angeles

One of the most heavily industrialized areas in Los Angeles is South East Los Angeles County (SELA), home to a low-income and overwhelmingly Latino/a population. Here a wide variety of polluting industries, such as chrome platers, hazardous waste treatment storage and disposal facilities, and other major toxic emitters combine with a high concentration of mobile sources of pollution to create a toxic hot-spot. Modeling studies by the South Coast Air Quality Management

District (AQMD) indicate that the communities of SELA have some of the highest levels of toxic air pollution in the four-county region of this air basin.⁴ The map below shows how a mix of large and small polluting facilities has given rise to the serious issue of cumulative impacts of pollution in SELA cities.

Extensive research has demonstrated that polluting facilities are disproportionately located in low-income communities of color in Los Angeles County.

FIGURE 1. Some SELA polluting facilities⁵



Wilmington

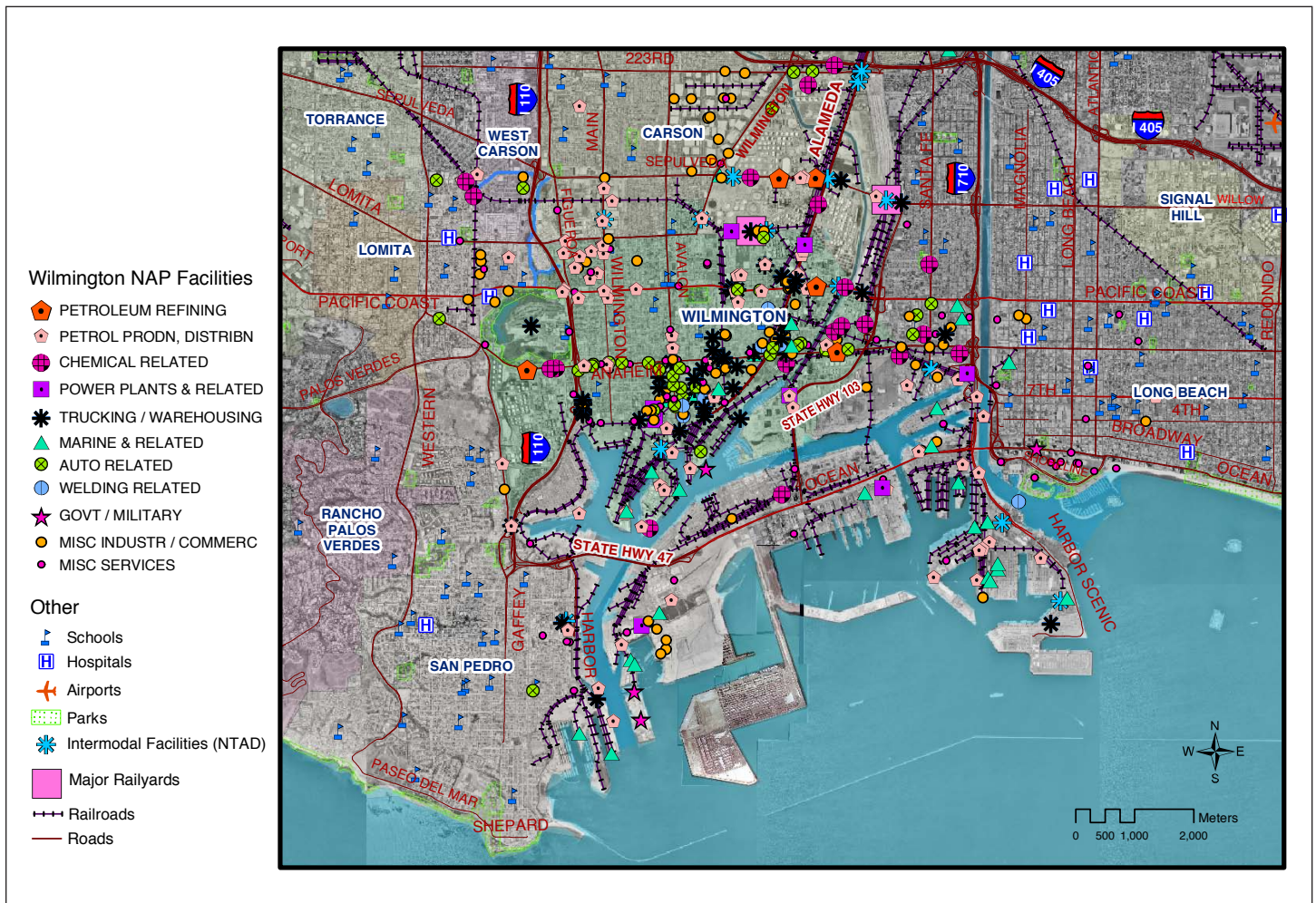
Another area that is highly impacted by pollution is the community of Wilmington. Wilmington, located in the southern tip of the odd-shaped City of Los Angeles, is home to an overwhelming working class, Latino/a population. This area has some of the highest levels of pollution in the region.

Wilmington hosts 13 major stationary polluting sources, categorized by US EPA as Toxic Release Inventory facilities, responsible for releasing 718,000 pounds of pollution and generating 18,000,000 pounds of waste in

Wilmington has some of the highest cumulative levels of pollution in the region.

2007.⁶ In addition, the Wilmington/Carson area is a place with the highest concentration of refineries in California with about 650,000 barrels of crude oil processed per day (which is about a third of the state's total).⁷ Wilmington is also near the San Pedro Bay Port Complex (ports of Los Angeles/Long Beach), which is the largest and most polluting port complex in the country.

FIGURE 2. Various polluting sources in Wilmington ⁸



Health Impacts & Vulnerability

Health impacts of exposure to pollution from sources discussed are well documented and include: asthma, cancer, reproductive disorders, birth defects reduced lung capacity, and cardiovascular diseases. In addition, people in EJ areas suffer from the nuisance impacts of these operations such as noise, foul odor and other irritants that significantly affect people's quality of life. Because EJ communities host disproportionate numbers of pollution sources, community members in areas such as SELA and Wilmington suffer disproportionately from health and nuisance impacts.

Another important aspect of cumulative and disproportionate impact from pollution is the issue of vulnerability. Members of communities such as SELA and Wilmington have a lowered ability to cope and recover from illnesses. In other words, low-income communities of color are not only suffering from greater exposure to pollution, but they are also more susceptible because of their higher vulnerability to impacts. Reduced access to health care, pre-existing injuries, and psychosocial stressors are some of the factors that influence the extent of impact from environment stressors such as air pollution.⁹

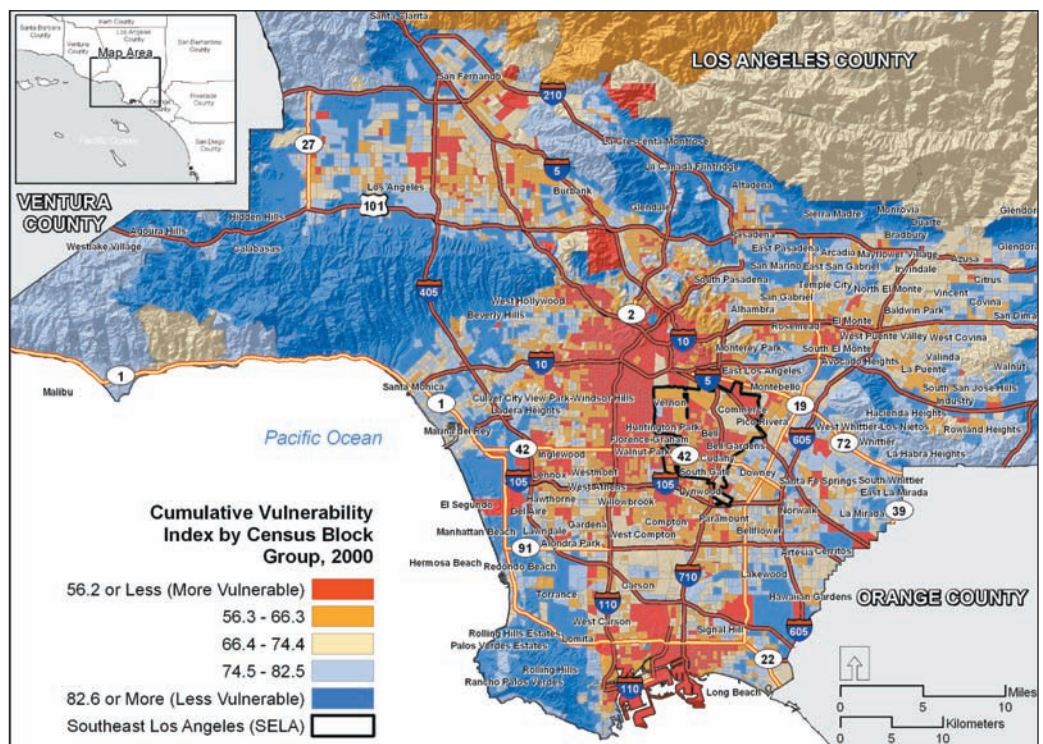
Researchers have used a range of social and economic information to develop measures, or indices, of social vulnerability. In a general sense, vulnerability includes concepts such as: socioeconomic status, gender, ethnicity, age, proximity to commercial and industrial development, employment status, housing tenure, occupation, family structure, education, access to medical services, and special needs populations. We have divided these indicators into four broad categories of vulnerability: (1) household; (2) race/ethnicity; (3) economic; and (4) mobility. Based on these indicators, we estimate and identify communi-

ties that are most vulnerable to impact as the map below shows (with orange and red areas showing communities which are most vulnerable).¹⁰

Most recently, a team of researchers from Occidental College, University of Southern California and UC Berkeley have developed a more comprehensive and detailed Cumulative Impacts scoring system. This system shows that communities of SELA, Wilmington, Boyle Heights, and other similar communities score very high in Cumulative Impacts and are in need of the most attention in addressing environmental justice issues.¹¹

Low-income communities of color are not only suffering from greater exposure to pollution, but they are also more susceptible to impacts because of their higher vulnerability.

FIGURE 3. An Estimate of Cumulative Vulnerability Index by Census Block



CASE STUDIES

Warren E & P

Warren E & P drilling operation is located in the community of Wilmington. Warren E & P is an East Coast-based resource extraction company, which proposed performing expanded lateral drilling in Wilmington in 2005. In early 2007, after Warren had begun its new and expanded oil drilling operations in the middle of a neighborhood of small family homes and apartment buildings, a number of community members contacted CBE. Community members were extremely irritated and concerned about the terrible smell, loud noises at day and night, aggravating dust and many other problems resulting from this operation. The main permits for this operation were issued by the City of Los Angeles and the South Coast Air Quality Management District (AQMD).

Imagine living in a neighborhood already heavily impacted by pollution from the ports, refineries, and many other sources. Then, somebody starts a massive noisy and polluting oil drilling operation in your neighborhood 24 hours a day, seven days a week. For anybody living in this neighborhood or visiting the area, there was no doubt that this was a blatant example of environmental injustice afflicting this already vulnerable community. So, how could the City of Los Angeles and AQMD fail to protect residents? The answer lies in understanding the regulatory gaps within the City and regulatory agencies as well as poor enforcement and monitoring of existing regulations by responsible entities. Understanding the shortcomings of the AQMD and the City of Los Angeles to protect the residents in the case of Warren E & P will demonstrate the need for addressing the issue of environmental justice in a systemic way and the necessity of ratcheting up enforcement.



Warren E & P burning field gases continuously in the residential neighborhood

As mentioned earlier, the two agencies with primary regulatory control over such an operation are the City of Los Angeles, which regulates its land use and the impacts that result from these uses such as traffic, noise, dust and odors; and the AQMD, which regulates specific equipment that could impact local and regional air quality. The ten-acre lot where Warren operates is zoned both as a residential area and as a special oil drilling area, and the property had housed oil

drilling before. However, the previous operator had nine active wells. Warren planned to drill 24 hours a day, seven days a week, and to increase the number of wells to 540. It also intended to continue to use the previous operator's ancient air quality equipment continuously even though it had previously been permitted for emergency-use only.

On July 20, 2006, the City of Los Angeles issued a special use permit to Warren E & P, allowing drilling. The city did not require the company to perform a full Environmental Impact Report, but instead decided that a mitigated negative declaration would satisfy the California Environmental Quality Act requirements in this case. From there on, the Zoning Administrator of the City of Los Angeles issued a special use permit based on limited environmental review and limited public input and allowed the facility to start operations. AQMD, for its part, did not originally impose any significant restrictions on the operation of the facility, allowing it to burn its field gases in the existing ancient flare that did not protect the surrounding community. In other words, Warren's quest to begin perpetual unfettered operations pretty much sailed through regulatory and permitting process—definitely a success story from the point of view of the applicant.

Of course the perspective of the community was quite different. On the ground, the impacts were very real and very serious. People in the neighborhood were experiencing a wide range of health symptoms associated with the operation of this facility. Polluting diesel trucks were either hauling dirt or oil out of the facility or idling in front of homes. A vacant lot in a residential neighborhood was turned into a dumping ground for dirt which would blow dust over people's homes. People complained that since this operation started, they had to spend a big part of the day

dusting inside their home. People with existing respiratory problems were finding it more difficult to breathe. People were also constantly irritated by foul smells after the operation started. Most residents in this area did not have air conditioning, but they had to keep their windows closed even during hot days.

Then there was the noise, extremely irritating during the day and unbearable at night. For months, community members could not get a restful sleep at night. Many of the

In a survey of 66 residents living within two blocks of the Warren E & P facility, community members expressed a great deal of frustration with the project:

- Two-thirds of the participants said that noise from Warren operations keeps them awake most nights or at least once a week.
- More than 90% of respondents stated that they were not informed that Warren operations would increase truck traffic or noise in their neighborhood.
- When asked to characterize in their own words how Warren's operations have affected their neighborhood, an overwhelming majority of survey participants expressed concern over air pollution, noise, contamination, sleep deprivation, traffic, and many other issues. Here are some direct quotes from the community members from the survey as they described living next to this operation:
 - *A Living Hell*
 - *Smell, noise, illness. Extreme breathing difficulties, Dr. visits*
 - *Evening noise—more dust, smells, extensive lung illness, constant coughing--less sleep*
 - *Lots of dust. Every morning lots of black film all over the cars*
 - *A lot of allergies, breathing problem, headaches, chronic problems, lack of sleep*
 - *Problems breathing. More dust in my home, headache*
 - *Affected my health by asthma, community is dirt*
 - *Headache, nausea, and difficulty breathing*
 - *Noise, dust, and they don't let us sleep*
 - *We used to have a nice quiet, clean street*
 - *A mess*
 - *It's been a living hell. We want them out*
 - *Our health has gotten worst. Our allergies are stronger. The dust has damaged our furniture, my kids' throats. Everything has gone bad*
 - *It's not a normal place to live*
 - *Horrible*
 - *Smoke in the air*
 - *Neighborhood is not the same. Dirt, noise, bad odor, traffic*
 - *Changed evening tranquility and affects air quality*
 - *Lots of dirt on pavement*
 - *My wife had to be taken to the hospital from the fumes*
 - *Have to stay indoors*

questions to various city departments went unanswered.

While this operation in any residential neighborhood should be unacceptable, we generally find these scenarios in low-income communities of color, which host incompatible land uses. There are two significant problems that one must pay attention to. First, the bad land use arrangements in EJ areas must prompt regulators and issuers of permits to pay special attention to conditions of the permits. Second, when an area is polluted by a disproportionately high level of pollution, regulators need to take into account the cumulative impacts in their decision-making process.

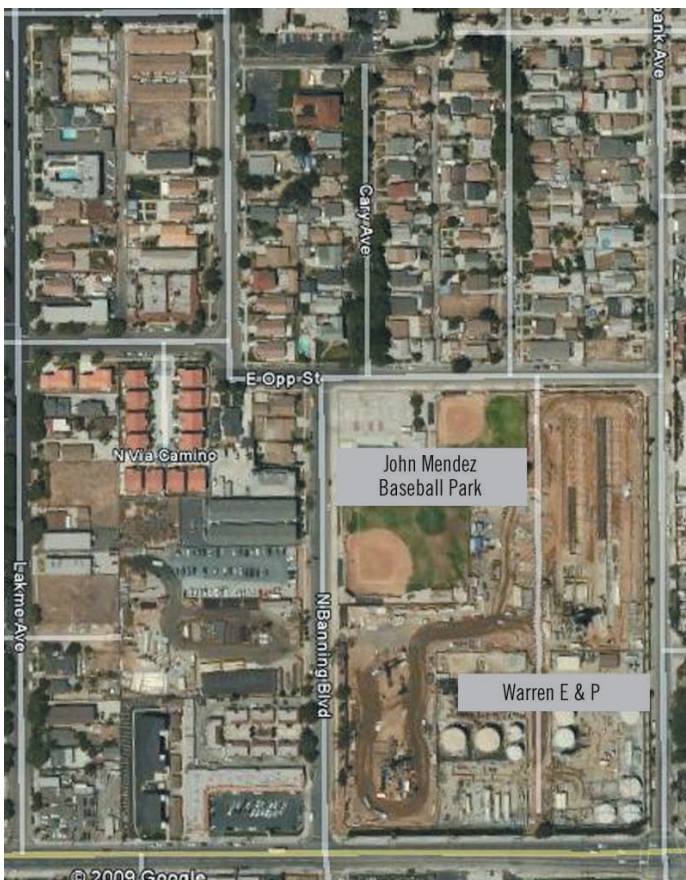
CBE worked with the community to secure new evidentiary hearings in front of the City of Los Angeles and the AQMD, neither of which was adequate, in form or substance, to address the flagrant environmental justice violations the case presented.

First, the bad land use arrangements in EJ areas must prompt regulators and issuers of permits to pay special attention to conditions of the permits. Second, when an area is polluted by a disproportionately high level of pollution, regulators need to take into account the cumulative impacts in their decision-making process.

First, CBE brought the matter to its representative on the City Council, who worked with us to secure a zoning hearing challenging Warren's compliance with its operating conditions and the adequacy of those conditions. When the zoning administrator finally held the hearing in this predominantly Latino community, it provided inadequate translation services, so many members were not able to follow the proceeding properly, and the decision-makers were not able to understand their testimonies accurately.

Second, CBE and the community sought better regulation of air pollution from Warren's operations. Initially, CBE noticed that the AQMD intended to issue a new permit for a new flare with no CEQA review that would let Warren vastly expand the amount of waste gas it burns. In the course of researching the permit, our technical staff noticed that the record showed Warren was in serious violation of its existing flare permit. We brought it to AQMD's attention, and the agency issued a Notice of Violation (NOV), and terminated the permitting process for the new flare.

While we attempted to engage our membership with AQMD's NOV adjudication (which resembles a court hearing held by the AQMD's Hearing Board), Warren and the AQMD prosecutor negotiated a deal over the course of several months and presented it to the Hearing Board as a solution to the violations. Our members, researchers and lawyers collected and submitted substantial evidence that showed the violations were very serious, and the proposed penalty was inadequate. We attempted to participate in the entire trial, but the Hearing Board was unreceptive to the community input and perspective. CBE offered video evidence of the flare violations, taken at a member's home, which the Hearing Board refused to even consider. This experience showed the total lack of respect by the Hearing Board for the community that was being impacted.



Aerial photo showing Warren E & P operation next to a community baseball field and people's homes



CBE staff and community members meeting with Councilmember Janice Hahn to discuss problems with Warren



Frequent truck traffic related to the Warren operation in neighboring residential streets

Here are some of the main problems with the process and decisions made in this case by the City of LA and AQMD:

- When a new, polluting operation is proposed in the middle of a residential area that is disproportionately impacted by many other sources of pollution, it should never be allowed to secure land use permits without a full public participation process and a complete EIR process.
- The substantive conditions imposed by the City of LA were far from adequate to protect the residents living at the fence-line of this polluting operation.
- There was hardly any enforcement of the operating conditions. In fact, community members had to take the matter into their own hands and work with CBE to push for tougher monitoring of existing permit conditions as well as reconsideration of the permit conditions.
- Even when the City finally held a hearing in Wilmington, as a result of vigorous community demands, the City was not able to create an adequate space for meaningful public participation for the residents. The City did not provide adequate translation equipment, was not able to provide professional simultaneous translation services, and did not provide the meeting at a time that was feasible for community members to attend. This indicated that the city is at its learning stages in recognizing issues of environmental justice and creating meaningful access to decision-making and public participation.
- The City of Los Angeles does not have any explicit provisions that would allow its permitting staff to protect its most polluted neighborhoods from becoming more polluted. For example, the code that provides for oil drilling zones does not account for changes over time to the land use surrounding drilling operations. Even where staff discretion is implicit, the city staff has not had adequate training, guidance or experience around EJ issues to accommodate people's ability to effectively voice their opinion, let alone impact the decision.
- As far as enforcement, the City does not allocate sufficient resources to make permit conditions meaningful, and polluting facilities do not take the City enforcement very seriously. In addition, the communication among City enforcement staff and the City Attorney is not effective to prevent and discourage violations of permit conditions.
- AQMD permitting processes also fail to take into account the need for increased community participation and environmental analysis when permitting operations in already overburdened communities. Despite intense

AQMD permitting processes fail to take into account the need for increased community participation and environmental analysis when permitting operations in already overburdened communities.

The City of Los Angeles does not have any explicit provisions that would allow its permitting staff to protect its most polluted neighborhoods from becoming more polluted.

community involvement in the Hearing Board process and CBE's participation in the permitting attempt, the District decided not to produce a full environmental impact report for the latest Warren permits. AQMD's negative declaration did little to mitigate the air impacts the community identified.

- The AQMD enforcement process did not consider the full impact of the project. AQMD and the polluter negotiated a deal for the Hearing Board to rubber stamp their proposal without offering all the available health protective mitigation measures that the community deserved and asked for. Although community pressure did result in AQMD incorporating some of the community demands, the result was far from adequate.
- The AQMD Hearing Board did not act in an independent and professional manner. As is often the case during the history of its operation, the Hearing Board ruled for industry and against the community. That the Hearing Board is biased in favor of industry is a matter of concern. Of even greater concern, however, is the attitude shown by the Chair and some members of the Hearing Board, who showed very little respect for the community input, and at times treated community members and leaders with hostility and disrespect. At the conclusion of the proceeding, the community was even accused of having wasted the



Shana Lazerow, CBE staff attorney, challenging Warren's compliance with and adequacy of the permit conditions at the zoning administrator hearing

Hearing Board's time with its attempts to participate in the trial.

- AQMD failed to protect the community by not upholding its own EJ principles, and it failed to offer monitoring and technical assistance to this community in need, which could have gone a long way in securing better operating conditions from the project operators, the City, and the AQMD.

Unfortunately, the Warren oil drilling scenario is not an isolated case. In fact, it is representative of how different municipal and regulatory agencies fail to account for cumulative impacts in the way they issue permits, write their regulations, enforce their permits and allocate resources to protect low-income communities of color. Years of advocacy and recognition of environmental justice issues has moved agencies to acknowledge that CI and EJ are real issues, but we are yet to see significant attempts to address these issues in a systematic manner.

South Coast Air Quality Management District. AQMD adopted its environmental justice principles in October of 1997 due to increasing community awareness about environmental justice problems in the South Coast Air Basin. In September of 2002, and as a result of growing pressure from the environmental justice community, AQMD's Governing Board adopted 23 environmental justice enhancement measures. The Board asked the staff to evaluate a feasibility plan to reduce cumulative impacts from toxic emitting sources. Under its Cumulative Impact workplan and white paper, AQMD committed to a number of measures in assessing and reducing health impacts in disproportionately impacted communities but failed to approach cumulative impacts from the framework suggested by the environmental justice community.¹² AQMD needs to pursue the task of pollution prevention and reduction in EJ communities under a comprehensive CI framework.

California Air Resources Board (CARB) has Jurisdiction over the AQMD. In December 13th of 2001 the agency's Board unanimously approved Environmental Justice Policies and Actions, which were created through an extensive period of stakeholder negotiations.¹³ This process produced a number of important documents including the *Complaint Resolution Protocol*, *Public Participation Manual* and the *Air Quality and Land Use Handbook*. However, CARB still has not fulfilled its promise of providing a cumulative impact framework (document) to guide rulemaking, permitting and enforcement for the day-to-day operation of air districts. It is important to note that creating this cumulative impact framework by CARB is both required by CARB's EJ Policies and based on recommendations of the California Environmental Justice Advisory Committee.

United States Environmental Protection Agency has jurisdiction over all state entities enforcing the federal environmental laws such as the Clean Air Act. EPA charged the National Environmental Justice Advisory Committee (NEJAC) with the task of proposing solutions to addressing EJ and CI from a regulatory perspective. NEJAC created the Cumulative Risks / Impacts Work Group, which produced a comprehensive report on this topic.¹⁴ EPA should implement the recommendations of this working group and fully utilize its existing statutory authority to reduce cumulative exposure in disproportionately impacted communities. According to the NEJAC report and a comprehensive report by the Environmental Law Review, the Clean Air Act provides several opportunities for EPA and air agencies, which enforce the Clean Air Act, to promulgate cumulative impact regulations.¹⁵

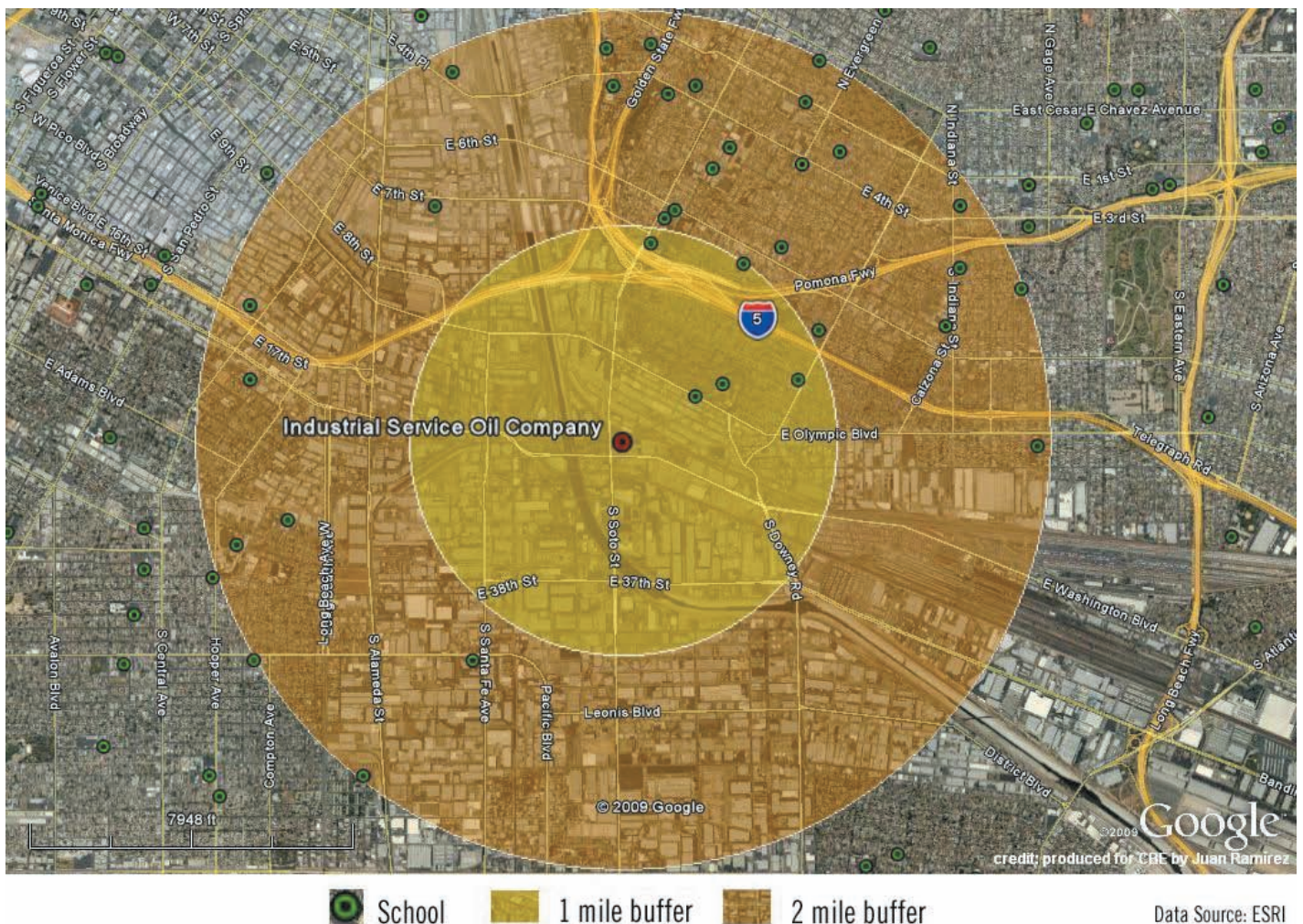
CASE STUDIES

Industrial Services Oil Company, Inc.

Industrial Services Oil Company, Inc. (ISOCI) presents another example of how the agencies in charge have failed to protect the residents most impacted by pollution. ISOCI is a hazardous waste facility located in a working class Latino neighborhood of Los Angeles, called Boyle Heights. The Cal/EPA Department of Toxic Substances Control (DTSC) issued a hazardous waste facility permit that authorizes ISOCI to radically expand its operations to accept hundreds of additional ignitable, carcinogenic, and extremely toxic wastes. These chemicals include

hydrofluoric acid, which can kill on contact, and phosphine, which is highly toxic and deadly even at low concentrations. The permit also allows ISOCI to store an unprecedented 250,000 gallons of hazardous waste in rail cars (for up to a year at a time) without adequately evaluating the risks and impacts associated with a catastrophic release of hazardous waste during an earthquake or accident. In addition to this greatly increased risk in times of crisis, the proposed expansion of this operation would subject the Boyle Heights community to other significant health impacts.

FIGURE 4. Some of the schools within 1 and 2 miles of Industrial Service Oil Company



DTSC issued the permit without following the Tanner Act hazardous waste permitting process. Among other things, the Tanner Act of 1981 requires the establishment of a committee composed of community stakeholders to offer guidance concerning any proposal to permit a hazardous waste facility and provides an expert to answer that committee's questions. The Tanner Act was specifically designed to require a coordinated process in permitting hazardous waste facilities and to provide a more strenuous and involved public participation process than that offered by other statutes, such as the California Environmental Quality Act. DTSC ignored this process and allowed ISOCI to circumvent it altogether.

On behalf of the CBE members in the impacted community, CBE challenged DTSC's decision through its administrative process, but the agency refused to take corrective health protective measures, provide an adequate environmental document, respond to expert comments, or coordinate permitting for this facility. CBE then filed a case to the superior court, where a decision is pending. Regardless of the outcome, one thing is clear: DTSC failed to protect this EJ community by refusing to offer them adequate access to the decision-making process. Clearly the decision-making process at DTSC did not take into account that this facility is near an EJ community that

DTSC failed to protect this EJ community by refusing to offer them adequate access to the decision-making process.

deserves to be given every opportunity to participate in an important permitting decision. Not only was DTSC not proactive in affording maximum access and protection, it exercised poor judgment and violated a well established law based on a very questionable interpretation of what the agency is required to do.

In ISOCI we see the same patterns we saw in the case of Warren and many other regulatory decisions that affect the lives of our community members. First, the structural gaps and deficiencies within our regulatory agencies allow expansion of polluting operations in neighborhoods already suffering disproportionately from exposure to pollution. Second, when a facility is in clear violation of even existing codes, entities in charge are not aggressive in enforcing existing mandates. In this case, the regulatory agency in charge was violating the law itself and failed to take corrective action (even when reminded of this wrongdoing) without any regard for policy guidelines at the state level that have highlighted the significance of EJ issues.

California Environmental Protection Agency is the umbrella agency for DTSC and other state regulatory agencies. In California, there have been a number of significant environmental justice legislation, which have been the result of a growing movement and awareness about environmental justice issues in the state.¹⁶ Among these, SB 89 (Escutia) required the Secretary of Cal-EPA to establish the California Environmental Justice Advisory Committee (CEJAC). CEJAC has provided recommendations to the agency about steps that Boards, Department and Offices need to take to operationalize environmental justice and specifically cumulative impacts into their program.¹⁷

CASE STUDIES

I-710 Expansion

Another important and developing case is the proposed expansion of the Long Beach Freeway (I-710), which would expand an 18-mile stretch of the I-710 from the ports to the Pomona Freeway. This expansion plans to accommodate more truck traffic from a projected doubling of cargo through the Los Angeles and the Long Beach port complex by 2030. Diesel trucks make up 20% of vehicles on the I-710 as compared to 6-13% on other freeways in LA County. There is a high concentration of hazardous diesel emissions in this transportation corridor. I-710 freeway averages about 1,100 diesel trucks per hour with peaks as high as 2,600 heavy-duty diesel trucks per hour.¹⁸

From an environmental justice and a public health standpoint, there is a strong need to reduce the already high levels of pollution along the I-710 corridor, and any plan that will increase the pollution burden of the corridor residents needs to be stopped.

The immediate impact zone of the I-710 project has a greater ratio of people of color and low-income residents than the Los Angeles County average. In



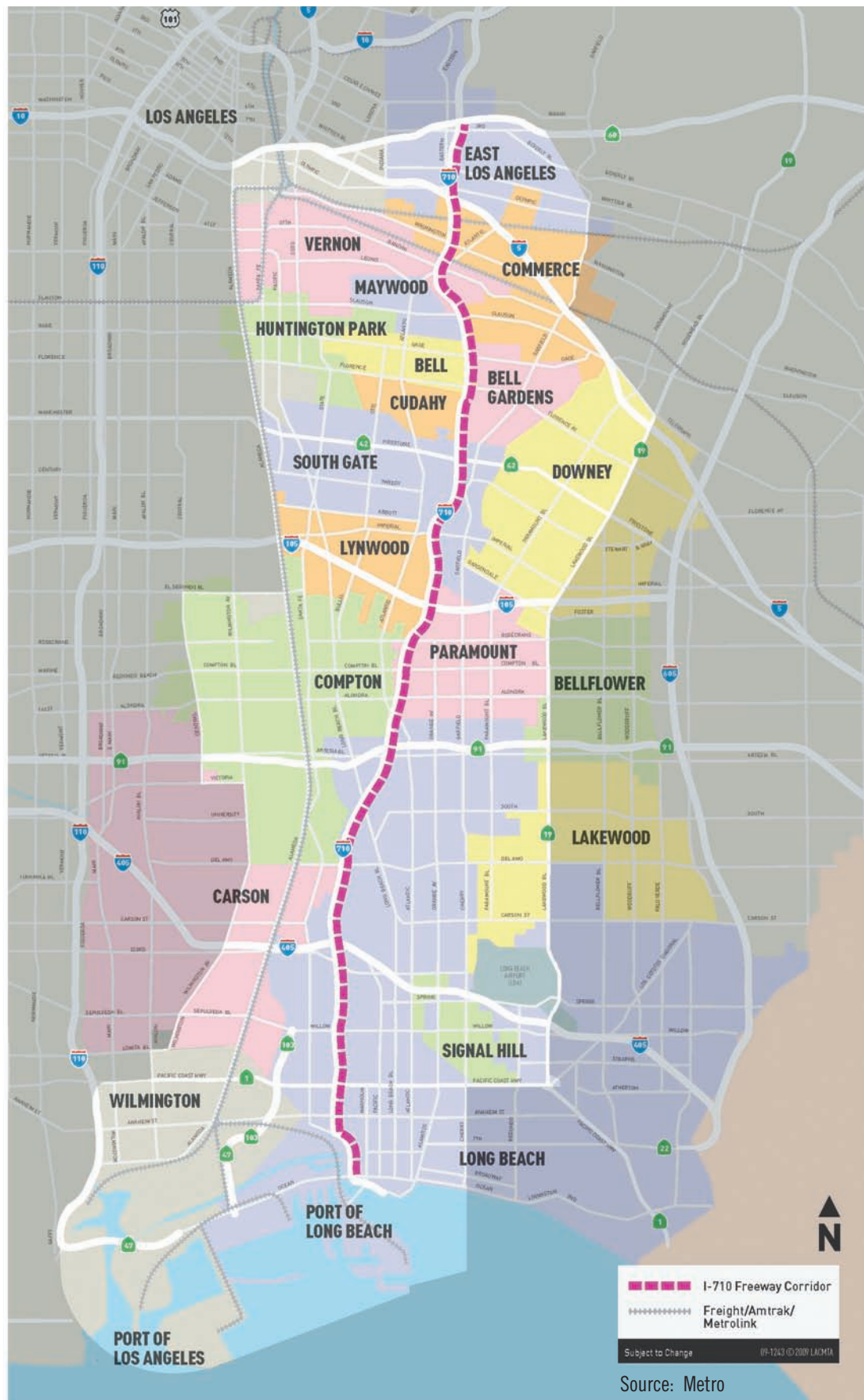
addition to the mobile sources, this area hosts many other sources of pollution creating an area where again cumulative sources of pollution are disproportionately impacting a vulnerable subpopulation. From an environmental justice and a public health standpoint, there is a strong need to reduce the already high levels of pollution along the I-710 corridor, and any plan that will increase the pollution burden of the corridor residents needs to be stopped.

In addition to the health of the people living along this corridor being at stake, the I-710 expansion project is one of the most significant transportation projects in the state. The final project will have a permanent impact on the landscape of Southern California. The project design, the manner in which it is constructed, and the proposed mitigation measures will have a significant impact on the local and regional residents of this air shed. If, for example, a clean rail alternative is chosen as a preferred element, among the alternatives being considered, instead of adding only multiple truck lanes, the future of logistics planning will permanently change in the region. The effects are not just in the area of emissions, but in all the ancillary aspects related to creating a cleaner project such as creating green jobs and promoting and establishing alternative technologies in the region.

In this case, the agency which exercises the most power over the outcome is the California Department of Transportation (Caltrans). While other funding partners of this project such as the Los Angeles County Metropolitan Transportation Authority (Metro), Port of Long Beach, Port of Los Angeles, and others have influence on the process and the project, Caltrans is the lead agency and has the resources to decide the methodology of impacts.



Action and march by community members before the I-710 project committee meeting

FIGURE 5. I-710 Corridor Project



Community testimony at an I-710 hearing

Interestingly enough, Metro has worked closely with the environmental justice community in the past few years to create an elaborate public participation framework, but not all the decision-makers, especially Caltrans are happy with the results.¹⁹ In fact, Caltrans has been resistant to taking into account many of the community recommendations including investigating the full health impacts of the proposed project alternatives. While the public health experts and the EJ community have joined forces to highlight the deficiencies in Caltrans' approach to performing this impact assessment, the agency's entrenched bureaucracy has been slow to respond to community and public health concerns. Caltrans, to a large extent, has been evasive and dismissive of suggestions to take into account even the most basic elements of public health analysis.²⁰



Mark Lopez, CBE youth organizer, testifying at the I-710 Project Committee hearing

While Caltrans acknowledges this project will have a disproportionate impact in EJ communities along the I-710 corridor, it is reluctant to take any meaningful steps in fully analyzing these impacts. This approach will ultimately influence the proposed mitigations and the analyses of alternatives. It appears that without more pressure from the community and responsible elected officials, Caltrans plans to push through a project that to a large extent will ignore the true cumulative impacts of this project's construction and operation. Caltrans has the legal and ethical responsibility to be responsive to community health demands and to perform thorough Cumulative Impacts and Health Impact Analyses.

California Department of Transportation (Caltrans) is the lead agency for highway projects throughout the state. Among other legal mandates, Caltrans must implement the California Environmental Quality Act (CEQA) when it approves a project. CEQA provides explicit language and opportunities for the lead agencies and the responsible agencies to incorporate cumulative impacts into their analysis of new projects. In CEQA, the impact of a project is considered significant if "the project has possible environmental effects which are individually limited but cumulatively considerable." Cumulatively considerable means "that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, ... other current projects, and ... probable future projects."²¹ This analysis has been put forward and affirmed by a number of legal experts and court cases.²² In *CBE v California Resources Agency*, California Court of Appeal upheld the already-established CEQA principle that an agency must consider and address impacts that may be cumulatively significant.²³ While CEQA's definition of cumulative impacts is far narrower than what would actually protect the community from added impacts, it is a floor below which Caltrans's cumulative impacts analysis should never sink.

Conclusion / Recommendations

The problems of environmental injustice and cumulative impacts are well documented and have serious consequences for many communities. Decision-making entities, such as Caltrans, Cal/EPA's DTSC, AQMD and the City of LA (which represent a wide spectrum of regulatory entities in California) have been slow to recognize the problems and in large part have failed to address the issues in any effective manner. While it took many years of advocacy, research, and community participation to highlight the issues of EJ and CI in California, we still have a long way to go to make the necessary changes to fix the problems. Municipalities and regulatory entities are growing increasingly familiar with the historical contexts, trends and main issues that EJ communities have raised. They now need to move to the next level, which is solving these environmental justice problems by making community central to the decision-making processes and pursuing aggressive health protective decisions.

ALLOW FOR MEANINGFUL PUBLIC PARTICIPATION

- Offer public hearings and workshops for the impacted community
- Provide adequate information to communities on the issues and decisions under consideration
- Offer technical resources to the community to enhance their capacity to participate in the decision-making process
- Offer workshops in venues and times that are most convenient to the impacted community
- Provide adequate and professional translation services during public workshops and hearings
- Partner with community-based organizations to engage members of the community more effectively
- Establish community-based monitoring programs
- Show respect and full consideration for the community members' point of view
- Educate staff and decision-makers on issues of environmental justice and cumulative impacts
- Create written guidelines and staff trainings for best practices in community engagement and public participation
- Require staff to attend tours of the impacted communities
- Assist communities with receiving data and information about the cumulative impacts of pollution in their neighborhood

REQUIRE POLLUTION PREVENTION AND REDUCTION

- Prevent additional pollution in EJ communities by promulgating regulations that take into account cumulative impacts and by revising source specific rules, umbrella rules, and permitting guidelines
- Mandate comprehensive Environmental Impact Reports and Health Impact Assessments for polluting projects in EJ communities
- Promulgate new ordinances and/or regulations that will operationalize CI analysis for new and expanding projects in EJ communities
- Require Best Available Control Technologies and Lowest Achievable Emissions Rate for existing operations in EJ communities
- Allocate more substantial resources into enforcing permit conditions in EJ areas by pursuing more aggressive monitoring, inspections, and prosecution of violators
- Establish and improve communication and coordination between municipalities and environmental regulatory agencies in regards to dealing with violations especially in cases of serious violations and frequent violators

PROVIDE INCENTIVES FOR MITIGATION, REDUCTION AND CLEAN GROWTH

- Provide financial incentives for clean operations to site in EJ communities
- Create permitting incentives for companies that plan to reduce their pollution or companies that plan to convert to cleanest technologies
- Prioritize funding for retrofitting polluting operations in disproportionately impacted areas
- Invest resources in investigating opportunities and attracting industrial and business infrastructures to EJ communities that have a smaller environmental footprint

IN ADDITION MUNICIPALITIES SHOULD

- Adopt an Environmental Justice element into their general plan
- Enact ordinances that address cumulative impacts of pollution in the EJ areas by preventing additional sources of pollution and reducing pollution from existing sources
- Allocate financial resources for revitalization of EJ areas to attract clean operating businesses and create sustainable neighborhoods
- Allow meaningful community input into creating community plans and implement the community vision layout in these plans

Endnotes

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- 6 <http://www.rtknet.org/db/tri> as viewed on September 21, 2009.
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- 8 California Air Resources Board produced this map as a part of its Neighborhood Assessment Program for Wilmington. http://www.arb.ca.gov/ch/Draft_WilmingtonNAP_ChERRP_11_05.pdf as viewed on October 27, 2009.
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- 10 In this methodology, the notion of household vulnerability combines rather traditional concepts of family (percentage married) and neighborhood stability (percentage single-family dwellings; percentage owner-occupied housing units; percentage occupied housing units), which may influence one's ability to respond appropriately to emergency events. Race/ethnic vulnerability combines variables that may relate to one's ability to access the political system (percentage native born; percentage not linguistically isolated; percentage White, non-Latino). The economic vulnerability index attempts to capture how people perform economically, which likely has profound social and political ramifications (percentage employed in professional or managerial occupations; percentage of households with incomes exceeding 1.5 times the poverty level; percentage of persons 25 years and older with a college degree. The final dimension, relating to mobility, expresses how households may be able to respond (e.g., evacuate) in case of an emergency (percentage of households with a vehicle available; percentage of workers who commute by auto/truck/van; percentage of workers with private vehicle; percentage of the population with no physical disability). The comprehensive or cumulative vulnerability index incorporates all four of the above dimensions such that neighborhoods with lower scores (represented in orange and red) are likely more vulnerable to pollution exposure and risk events than neighborhoods with higher performance scores.

This is based on the analysis of C. Scott Smith and Professor Raul Lejano (UC Irvine) for CBE in the *Regional Geographic Initiative: Community Air Toxics Project*. Final Grant Report to US EPA. Communities for a Better Environment. October 2006.
- 11 See Professor Pastor's presentation to AQMD at: http://www.aqmd.gov/pubinfo/events/communityhealthairqualityconf/PDF/Pastor_AQMDJuly2009.pdf Slide 36.

- 12 For more on this see: <http://www.aqmd.gov/rules/CIWG/index.html> as viewed on October 2, 2009.
- 13 For more on this see: <http://www.arb.ca.gov/ch/programs/ej/ej.htm> as viewed on October 2, 2006.
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- 18 See various studies documenting levels of emissions and exposure from I-710:

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- 19 For the flowchart of the public participation framework see: http://www.metro.net/projects_studies/I710/images/710_fact_sheet_cpf.pdf
- 20 See Environmental Subject Working Group meeting notes from June 4, 2009: http://www.metro.net/projects_studies/I710/community/images/Environment%20SWG%2006-04-09.pdf
- 21 Public Resources Code (PRC) section 21083
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- 23 103 Cal.App.4th 98 (2002).



Communities for a Better Environment

5610 Pacific Blvd., Suite 203

Huntington Park, CA 90255

Phone (323) 826-9771

Fax (323) 588-7079

www.cbecal.org

