COALITION FOR CLEAN AIR

September 23, 2010

Ms. Jocelyn Suero
Office of Environmental Health Hazard Assessment
1515 Clay Street, Suite 1600
Oakland, California 94612

Re: Comments on *Cumulative Impacts: Building a Scientific Foundation* – Public Review Draft (August 19, 2010)

Dear Ms. Suero:

I am grateful to have the opportunity to comment on the California Environmental Protection Agency's (Cal/EPA's) draft document, *Cumulative Impacts: Building a Scientific Foundation*. This report has been many years in the making. Cal/EPA, the Cal/EPA Office of Environmental Health Hazard Assessment (OEHHA), and all of the individuals who have worked on producing this report deserve our thanks, appreciation, and acknowledgement. Cal/EPA and OEHHA's leadership on this issue demonstrates a commitment to addressing one the most important and obvious gaps in the legal, administrative, and regulatory paradigm developed to protect our environment and improve public health. Taking the lead on this issue is not an easy role to assume and it has been a challenging process.

In 2001, then Senator Richard Alarcon succeeded in passing SB 828. Among other things, this new law required Cal/EPA to "address any gaps in its existing programs, policies or activities that may impede the achievement of environmental justice" by December 31, 2001 (Cal. Pub. Res. Code § 71114.1). The lack of policies to address cumulative environmental impact problems and how to make decisions in the absence of complete information (i.e., precautionary decision-making) stand out as the most important environmental justice gaps identified by a series of Cal/EPA undertakings during the past 10 years (i.e., the California Air Resources Board's Environmental Justice Stakeholder Group, the Cal/EPA Advisory Committee on Environmental Justice, the Cal/EPA Environmental Justice Inter-Agency Work Group, the Cal/EPA *Environmental Justice Strategy*, and the Cal/EPA *Environmental Justice Action Plan*). Cal/EPA has failed to comply with SB 828 but has demonstrated progress toward fulfilling that mandate through the publication of its draft report on cumulative impacts.

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It is unfortunate that the current report does not include any recommendations on the issue of precautionary approaches. As Cal/EPA and OEHHA have acknowledged on several occasions, there is an inextricable symbiotic relationship between cumulative impacts and precautionary decision-making. Leaving precautionary approaches out of this report does not bode well for our long-term policy objectives. This void leaves us with the sound of one hand clapping.

The success of Cal/EPA's efforts will be judged by whether the core communities in California with the most evident cumulative impact problems gain timely and meaningful relief from the multiple sources of pollution that impact their local environment, health, and quality of life. In short, places like Barrio Logan, Wilmington, Commerce, Maywood, Mira Loma, Bayview Hunters Point, West Oakland, and Richmond must witness the benefits from this report and Cal/EPA's overall cumulative impacts program before any of this can be considered successful.

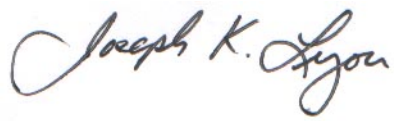
As a member of the Cal/EPA Cumulative Impacts and Precautionary Approaches Work Group, I have had the opportunity to meet and work with a wide variety of stakeholders. One of those stakeholders is Ms. Mitzi Shpak, a Cal-Tech research biologist and member of the advocacy group Action Now. During our work group process, Ms. Shpak shared with me an interesting article she came across among her mother's belongings. In April 1960, the publication *Food-Wise* wrote, "With hundreds of chemical additives going into hundreds of foods each year, there is unfortunately more than 'just a little bit of poison.' So-called harmless dosages are open to question. The amazing human body may show a tolerance for some chemical abuse, but one cannot be sure about its ability to take the cumulative and joint effects of many individual portions of chemical additives. . . . Today a groundswell of indignation is being felt throughout the land by individuals who wish to eat pure, natural foods without chemical additives." It is now 50 years later and we have yet to address the cumulative impact concerns of a past generation. I encourage Cal/EPA and OEHHA to move this process along as quickly and efficiently as possible. It has been a long time coming.

I have attached for your consideration my line-by-line comments on the draft document. I have also attached a slightly revised and updated version of the cumulative impacts gaps list that I provided to OEHHA during the work group process. While I took the initiative to draft the gaps list, I based it on input from other work group members and public comments. I ask that Cal/EPA and OEHHA consider the gaps list and propose a process and timeline for making sure that they get addressed without further delay.

As I think you may already know, I have recently taken on the job of President and CEO of the Coalition for Clean Air (CCA). CCA is dedicated to achieving clean and healthful air for all of California. I submit these comments on behalf of CCA and based on my experience as a member and Co-Chair of the Cal/EPA Advisory Committee on Environmental Justice and

member of the Cal/EPA Cumulative Impacts and Precautionary Approaches Work Group. If you have any questions or need any additional information, please contact me at (213) 630-1192 x103 or joe@coalitionforcleanair.org.

Sincerely,



Joseph K. Lyou, Ph.D.

Attachments: As stated.

Cc: Ms. Linda Adams, Cal/EPA
Dr. Joan Denton, OEHHA
Dr. John Faust, OEHHA

Line-by-Line Comments on *Cumulative Impacts: Building a Scientific Foundation*

Joseph K. Lyou, Ph.D.
Coalition for Clean Air
September 23, 2010

Executive Summary

- ❒ Last paragraph: Use active tense. Passive tense is too vague.

Introduction

- ❒ p. 2: The "Background" section should reference the requirement to address environmental justice gaps by December 31, 2001, in H&S Code §71114.1 (SB 898, Alarcon).
- ❒ p. 3: In its EJ Action Plan, Cal/EPA also promised proposals for changes to policies, regulations, and laws. Please add a reference to this commitment.

Chapter 1. Scientific Evidence

- ❒ p. 7: Bad example – DDT is not uniformly distributed. Just ask Cynthia Babich of the Del Amo Action Committee. It is highly concentrated in some immigrant populations and among those exposed at the Montrose Superfund site.
- ❒ p. 9: Add "It works when . . ." to help readers understand when epidemiological studies are more likely to reach valid conclusions (e.g., unique relationship between the toxic chemical and the disease outcome, when you have lots of valid data collected over many years, etc.).
- ❒ p. 9, Table 1: Far too short a list, which suggests that there are only a few diseases associated with environmental exposures. At minimum, please add a reference to a more comprehensive list, which can be found on the Collaborative on Health and Environment web site (http://www.healthandenvironment.org/tddb).
- ❒ Need to mention how much we know and don't know (i.e., how many empty boxes there are in the pollutant-toxicological endpoint matrix).
- ❒ p. 11: Should include reference to "move-in" findings of the Morello-Frosh team; and their findings about ethnic churning and poor-poor vs. working poor neighborhoods.
- ❒ p. 16: Need to add discussion about cultural practices and exposure (e.g., basket weavers and subsistence fishing populations).

Chapter 2. Definitions and Terms

- ❒ p. 28: Add "census tracks" to the geographic area list.

Chapter 3. Screening Method

- ❒ I encourage OEHHA to undertake more sophisticated statistical analyses to assess the potential issues of double-counting, weighting, validity, and robustness.
- ❒ It would help to have caveats included about the possible liabilities associated with relying upon the Toxic Release Inventory (e.g., missing large numbers of small sources, data reliability and validity, etc.).
- ❒ p. 36: I disagree with the proposal to use the screening method as a precursor to reliance upon risk assessments; Chapter One on scientific evidence demonstrates why risk assessment doesn't work; the end cannot be more risk assessment. There is a logical disconnect in proposing to use the screening method to identify areas in need of risk assessments.

Chapter 4. Cumulative Impacts in Decision-Making

- ❒ p. 42: "Enhanced risk assessment" is ill-defined and guaranteed to raise all of the same issues that led to Cal/EPA focusing on cumulative impacts and precautionary approaches in the first place.

Chapter 5. Next Steps

- ❒ When and how do we get to the mitigation and prevention of cumulative impacts?

Cumulative Impacts Gap List

Joseph K. Lyou, Ph.D., Coalition for Clean Air

1. Agencies rarely if ever consider cumulative impacts when they make decisions about:
    a. the issuance, renewal, or amendment of permits;
    b. the development, adoption, and implementation of regulations;
    c. land use planning and zoning;
    d. the enforcement of environmental laws;
    e. the use of incentive funding to prevent or reduce pollution;
    f. responding to complaints;
    g. public participation and outreach programs; and
    h. research and data collection activities.
2. We lack agreement upon how to identify which communities have cumulative impact problems bad enough to require extra protection beyond existing policies and practices. Who makes these decisions and how? What is the size of the geographical area included in the assessment?
3. We do not understand the additive and synergistic effects of cumulative environmental impacts.
4. Any single environmental agency is unlikely to know about multi-media cumulative impact issues that fall under the authority of other agencies.
5. Government agencies do not know what to do about cumulative environmental impacts when someone proposes to site a new source of pollution within a heavily impacted community.
6. There is no analysis of the legal authority government agencies have to address cumulative environmental impact problems. What can agencies do?
7. When implementing the National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA), agencies typically treat existing cumulative environmental impacts as the "baseline" condition.
8. Agencies have no way of dealing with uncertainty when assessing existing and future cumulative environmental impacts.
9. Much of the information needed to assess cumulative environmental impacts is missing, incomplete, unreliable, unconsolidated, and difficult to interpret (e.g., qualitative data).
10. Agencies that do not specialize in environmental issues make many of the most important decisions about issues that create or exacerbate cumulative environmental impact

problems (e.g., planning departments, school boards, transportation agencies, port authorities, etc.).

11. We haven’t decided upon our priorities and what could be done quickly, efficiently, and cost-effectively to reduce and prevent cumulative environmental impacts.

12. We lack a clear end goal because we have not agreed upon the definition of a healthy community.