



BAY AREA
AIR QUALITY
MANAGEMENT
DISTRICT

BOARD OF DIRECTORS MEETING September 21, 2022

THIS MEETING WILL BE CONDUCTED UNDER PROCEDURES AUTHORIZED BY ASSEMBLY BILL 361 (RIVAS 2021) ALLOWING REMOTE MEETINGS. THIS MEETING WILL BE ACCESSIBLE VIA WEBCAST, TELECONFERENCE, AND ZOOM. A ZOOM PANELIST LINK WILL BE SENT SEPARATELY TO COMMITTEE OR BOARD MEMBERS

- **THE PUBLIC MAY OBSERVE THIS MEETING THROUGH THE WEBCAST BY CLICKING THE LINK AVAILABLE ON THE AIR DISTRICT'S AGENDA WEBPAGE AT**

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- **THE PUBLIC MAY PARTICIPATE REMOTELY VIA ZOOM AT THE FOLLOWING LINK OR BY PHONE**

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BOARD OF DIRECTORS MEETING AGENDA

WEDNESDAY, SEPTEMBER 21, 2022

9:00 AM

Chairperson, John J. Bauters

1. **Call to Order - Roll Call**
2. **Pledge of Allegiance**
3. **Public Meeting Procedure**

The Board Chair shall call the meeting to order and the Clerk of the Boards shall take roll of the Board members.

This meeting will be webcast. To see the webcast, please visit www.baaqmd.gov/bodagendas at the time of the meeting. Closed captioning may contain errors and omissions and are not certified for their content or form.

***Public Comment on Agenda Items:** The public may comment on each item on the agenda as the item is taken up. Members of the public who wish to speak on matters on the agenda for the meeting, will have three minutes each to address the Board. No speaker who has already spoken on that item will be entitled to speak to that item again.*

4. **Special Orders of the Day**

CONSENT CALENDAR (Items 5 - 14)

5. Remote Teleconferencing per Assembly Bill (AB) 361 (Rivas)

The Board of Directors will consider approving a resolution authorizing Air District Board and Committee meetings using remote teleconferencing through October 21, 2022.

6. Approval of the Minutes of September 7, 2022

The Board of Directors will consider approving the draft minutes of the Board of Directors meeting of September 7, 2022.

7. Board Communications Received from September 7, 2022 through September 20, 2022

A copy of communications directed to the Board of Directors received by the Air District from September 7, 2022 through September 20, 2022, will be distributed to Board Members by way of email.

8. Personnel Out of State Business Travel Report for August 2022

In accordance with Section (b) of the Air District Administrative Code, Fiscal Policies and Procedures Section, the Board is hereby notified that the attached memorandum lists Air District personnel who have traveled on out-of-state business in the preceding months.

9. Projects and Contracts with Proposed Grant Awards Over \$500,000

The Board of Directors will consider approving recommended projects with proposed grant awards over \$500,000 and authorize the Interim Executive Officer/APCO to enter into all necessary agreements with applicants for the recommended projects.

10. Authorization to Execute a Contract with Trinity Technology Group, Inc. for Support of Grants Management Systems

The Board of Directors will consider authorizing the Interim Executive Officer/APCO to execute a contract with Trinity Technology Group, Inc. for a total cost not to exceed \$360,000 and a term of up to four years to support grants data management systems.

11. Authorization to Execute Contract Extensions for My Air Online (MAO) Software Development

The Board of Directors will consider authorizing the Interim Executive Officer/APCO to execute contract amendments for the My Air Online Division, in an amount not to exceed \$2,323,935.

12. Authorization to Execute a Contract Amendment with Van Dermeyden Makus Law Corporation

The Board of Directors will consider authorizing the Interim Executive Officer/APCO to amend the contract with Van Dermeyden Makus Law Corporation increasing the maximum dollar amount of the contract from \$250,000 to \$350,000 for legal services related to workplace investigations.

13. Report of the Community Advisory Council Meeting of September 8, 2022

The Board of Directors will receive a report of the Community Advisory Council Meeting of September 8, 2022.

14. Report of the Advisory Council Meeting of September 12, 2022

The Board of Directors will receive a report of the Advisory Council meeting of September 12, 2022.

PRESENTATION(S)

15. Update on Draft 2022 Scoping Plan

This item is informational only and will be presented by California Air Resources Board, Deputy Executive Officer, Rajinder Sahota.

DISCUSSION

16. Consideration of Proposition 30 (2022)

This is an action item to discuss and consider taking a position on California Proposition 30, appearing on the November 8, 2022, Statewide General Election Ballot, and will be presented by Alan Abbs, Legislative Officer.

OTHER BUSINESS

17. Public Comment on Non-Agenda Matters

Pursuant to Government Code Section 54954.3

Members of the public who wish to speak on matters not on the agenda for the meeting, will have three minutes each to address the Board.

18. Board Member Comments

Any member of the Board, or its staff, on his or her own initiative or in response to questions posed by the public, may: ask a question for clarification, make a brief announcement or report on his or her own activities, provide a reference to staff regarding factual information, request staff to report back at a subsequent meeting concerning any matter or take action to direct staff to place a matter of business on a future agenda. (Gov't Code § 54954.2)

19. Report of the Interim Executive Officer/APCO
20. Chairperson's Report
21. Time and Place of Next Meeting

Wednesday, October, 5, 2022, at 9:00 a.m., via webcast, teleconference, or Zoom, pursuant to procedures in accordance with Assembly Bill 361 (Rivas 2021).

CLOSED SESSION

22. Conference with Legal Counsel re Anticipated Litigation (Government Code Sections 54956.9(a) and (d)(2))

Pursuant to Government Code sections 54956.9(a) and (d)(2), the Board will meet in closed session with legal counsel to discuss a significant exposure to litigation, based on facts and circumstances not known to a potential plaintiff or plaintiffs: Two cases.

OPEN SESSION

23. Adjournment

The Board meeting shall be adjourned by the Board Chair.

CONTACT:
MANAGER, EXECUTIVE OPERATIONS
375 BEALE STREET, SAN FRANCISCO, CA 94105
vjohnson@baaqmd.gov

(415) 749-4941
FAX: (415) 928-8560
BAAQMD homepage:
www.baaqmd.gov

- Any writing relating to an open session item on this Agenda that is distributed to all, or a majority of all, members of the body to which this Agenda relates shall be made available at the Air District's offices at 375 Beale Street, Suite 600, San Francisco, CA 94105, at the time such writing is made available to all, or a majority of all, members of that body.

Accessibility and Non-Discrimination Policy

The Bay Area Air Quality Management District (Air District) does not discriminate on the basis of race, national origin, ethnic group identification, ancestry, religion, age, sex, sexual orientation, gender identity, gender expression, color, genetic information, medical condition, or mental or physical disability, or any other attribute or belief protected by law.

It is the Air District's policy to provide fair and equal access to the benefits of a program or activity administered by Air District. The Air District will not tolerate discrimination against any person(s) seeking to participate in, or receive the benefits of, any program or activity offered or conducted by the Air District. Members of the public who believe they or others were unlawfully denied full and equal access to an Air District program or activity may file a discrimination complaint under this policy. This non-discrimination policy also applies to other people or entities affiliated with Air District, including contractors or grantees that the Air District utilizes to provide benefits and services to members of the public.

Auxiliary aids and services including, for example, qualified interpreters and/or listening devices, to individuals who are deaf or hard of hearing, and to other individuals as necessary to ensure effective communication or an equal opportunity to participate fully in the benefits, activities, programs, and services will be provided by the Air District in a timely manner and in such a way as to protect the privacy and independence of the individual. Please contact the Non-Discrimination Coordinator identified below at least three days in advance of a meeting so that arrangements can be made accordingly.

If you believe discrimination has occurred with respect to an Air District program or activity, you may contact the Non-Discrimination Coordinator identified below or visit our website at www.baaqmd.gov/accessibility to learn how and where to file a complaint of discrimination.

Questions regarding this Policy should be directed to the Air District's Non-Discrimination Coordinator, Suma Peesapati, at (415) 749-4967 or by email at spesapati@baaqmd.gov.

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

375 BEALE STREET, SAN FRANCISCO, CA 94105

FOR QUESTIONS PLEASE CALL (415) 749-4941

EXECUTIVE OFFICE: MONTHLY CALENDAR OF AIR DISTRICT MEETINGS

SEPTEMBER 2022

<u>TYPE OF MEETING</u>	<u>DAY</u>	<u>DATE</u>	<u>TIME</u>	<u>ROOM</u>
Board of Directors Community Equity, Health and Justice Committee - CANCELLED	Thursday	15	9:30 a.m.	Webcast only pursuant to Assembly Bill 361
Board of Directors Stationary Source and Climate Impacts Committee	Monday	19	9:00 a.m.	Webcast only pursuant to Assembly Bill 361
Path to Clean Air Community Emissions Reduction Plan Steering Committee	Monday	19	5:30 p.m.	Webcast only pursuant to Assembly Bill 361
Board of Directors Meeting	Wednesday	21	9:00 a.m.	Webcast only pursuant to Assembly Bill 361
Board of Directors Administration Committee - CANCELLED	Wednesday	21	1:00 p.m.	Webcast only pursuant to Assembly Bill 361
Board of Directors Mobile Source and Climate Impacts Committee - CANCELLED	Thursday	22	9:30 a.m.	Webcast only pursuant to Assembly Bill 361
Board of Directors Budget and Finance Committee - CANCELLED	Wednesday	28	9:30 a.m.	Webcast only pursuant to Assembly Bill 361

OCTOBER 2022

<u>TYPE OF MEETING</u>	<u>DAY</u>	<u>DATE</u>	<u>TIME</u>	<u>ROOM</u>
Board of Directors Legislative Committee	Monday	3	1:00 p.m.	Webcast only pursuant to Assembly Bill 361
Board of Directors Meeting	Wednesday	5	9:00 a.m.	Webcast only pursuant to Assembly Bill 361
Board of Directors Community Equity, Health and Justice Committee	Thursday	6	9:30 a.m.	Webcast only pursuant to Assembly Bill 361
Board of Directors Legislative Committee- CANCELLED AND RESCHEDULED TO MONDAY, OCTOBER 3, 2022 AT 1:00 P.M.	Monday	10	1:00 p.m.	Webcast only pursuant to Assembly Bill 361
Technology Implementation Office (TIO) Steering Committee	Friday	14	1:00 p.m.	Webcast only pursuant to Assembly Bill 361
Board of Directors Stationary Source and Climate Impacts Committee	Monday	17	9:00 a.m.	Webcast only pursuant to Assembly Bill 361

OCTOBER 2022

<u>TYPE OF MEETING</u>	<u>DAY</u>	<u>DATE</u>	<u>TIME</u>	<u>ROOM</u>
Path to Clean Air Community Emissions Reduction Plan Steering Committee	Monday	17	5:30 p.m.	Webcast only pursuant to Assembly Bill 361
Board of Directors Meeting	Wednesday	19	9:00 a.m.	Webcast only pursuant to Assembly Bill 361
Board of Directors Administration Committee	Wednesday	19	1:00 p.m.	Webcast only pursuant to Assembly Bill 361
Board of Directors Budget and Finance Committee	Wednesday	26	9:30 a.m.	Webcast only pursuant to Assembly Bill 361
Board of Directors Mobile Source and Climate Impacts Committee	Thursday	27	9:30 a.m.	Webcast only pursuant to Assembly Bill 361
HL 9/12/22 – 8:45 a.m.				G/Board/Executive Office/Moncal

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson John J. Bauters and Members
of the Board of Directors

From: Sharon L. Landers
Interim Executive Officer/APCO

Date: September 21, 2022

Re: Remote Teleconferencing per Assembly Bill (AB) 361 (Rivas)

RECOMMENDED ACTION

Consider approving a resolution reauthorizing Air District Board and Committee meetings using remote teleconferencing through October 21, 2022.

BACKGROUND

AB 361 (R. Rivas 2021) (Open meetings: state and local agencies: teleconferences) allows the Board of Directors, Board committees, and other legislative bodies of the Air District to conduct public meetings using teleconferencing without complying with certain requirements imposed by the Ralph M. Brown Act during the COVID-19 state of emergency proclaimed by Governor Newsom. On September 7, 2022, the Board of Directors adopted Resolution No. 2022-18 authorizing such meetings under AB 361. AB 361 requires the Board to reconsider the state of emergency and adopt further resolutions every 30 days in order to continue conducting such meetings.

DISCUSSION

When the COVID-19 pandemic started, local agency boards struggled to conduct their meetings in compliance with the Brown Act's public accessibility requirements while still abiding by stay-at-home orders. As a result, Governor Newsom signed several executive orders to grant local agencies the flexibility to meet remotely during the COVID-19 pandemic. The Governor's executive orders allowed public agencies to meet remotely without requiring physical public access to each board member's remote meeting location. Those executive orders expired on September 30, 2021. AB 361 provides additional flexibility for local agencies looking to meet remotely during a proclaimed state of emergency. Agencies are required to consider and vote on this flexibility every 30 days in order to continue this practice under AB 361.

In order to continue conducting remote meetings without complying with all of the Brown Act's public accessibility requirements while the state of emergency remains active, or while state or local officials have imposed or recommended measures to promote social distancing, the Board

of Directors must make the following findings by majority vote:

(A) That the Board has reconsidered the circumstances of the state of emergency; and

(B) That any of the following circumstances exist: (i) The state of emergency continues to directly impact the ability of the members to meet safely in person; or (ii) State or local officials continue to impose or recommend measures to promote social distancing.

The circumstances set forth in (B) are present here, and upon reconsideration of the circumstances of the state of emergency, the Board has grounds to make the requisite AB 361 findings. First, the COVID-19 public health emergency continues to present imminent health and safety risks that directly impact the ability of members to meet safely in person. Second, state and local officials continue to impose or recommend measures to promote social distancing.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Sharon L. Landers
Interim Executive Officer/APCO

Prepared by: Alan Abbs
Reviewed by: Alexander G. Crockett

ATTACHMENTS:

1. Draft AB 361 Subsequent Resolution 092122

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

RESOLUTION NO. 2022-

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE BAY AREA AIR QUALITY MANAGEMENT DISTRICT AUTHORIZING CONTINUED REMOTE TELECONFERENCE MEETINGS FOR THE PERIOD SEPTEMBER 21 TO OCTOBER 21, 2022

WHEREAS, the Bay Area Air Quality Management District (Air District) is committed to preserving and nurturing public access to and participation in meetings of the Board of Directors, Board Committees, and all other legislative bodies of the Air District; and

WHEREAS, all meetings of Air District legislative bodies are open and public, as required by the Ralph M. Brown Act (Brown Act), Cal. Gov. Code §§ 54950-54963, so that any member of the public may attend, participate in, and watch the Air District's legislative bodies conduct their business; and

WHEREAS, beginning in 2020, the COVID-19 pandemic gave rise to significant health risks that made it unduly risky for the Air District's legislative bodies to hold in-person public meetings; and

WHEREAS, the Brown Act authorizes remote teleconferencing participation in meetings by members of a legislative body, but as of the beginning of the pandemic, it included certain restrictions in Government Code section 54953(b)(3) that made fully remote meetings impractical; and

WHEREAS, in response to this situation, and in order to facilitate remote meetings to promote public health and allow for social distancing during the COVID-19 pandemic, the Legislature enacted AB 361 (Rivas), which (among other things) created Government Code section 54953(e); and

WHEREAS, Government Code section 54953(e) makes provision for remote teleconferencing participation in meetings by members of a legislative body without compliance with the requirements of Government Code section 54953(b)(3), subject to the existence of certain conditions; and

WHEREAS, on September 7, 2022, the Board of Directors adopted Resolution No. 2022-18, finding that the requisite conditions exist for the legislative bodies of the Air District to conduct remote teleconference meetings without compliance with Government Code section 54953(b)(3), including (i) that there was and is a proclaimed state of emergency and state or local officials have imposed or recommended measures to promote social distancing, and (ii) that as a result of the state of emergency, meeting in person would present imminent risks to the health or safety of attendees; and

WHEREAS, as a condition of continuing the use of the provisions found in section 54953(e) after adopting Resolution No. 2022-18 on September 7, 2022, at least every 30 days thereafter, the

Board of Directors must reconsider the circumstances of the state of emergency that exists in the District, and the Board of Directors has done so; and

WHEREAS, the COVID-19 state of emergency remains active and Governor Newsom's COVID-19 Emergency Proclamation of March 4, 2020 remains in effect to prevent, mitigate, and respond to the spread of COVID-19; and

WHEREAS, measures to promote social distancing have been ordered or recommended by state and local public health authorities; and

WHEREAS, the Board of Directors does hereby find that the COVID-19 public health emergency continues to present imminent health and safety risks that directly impact the ability of members to meet safely in person; and

WHEREAS, state and local officials continue to impose or recommend measures to promote social distancing; and

WHEREAS, the Board of Directors desires to affirm that a state of emergency exists and re-ratify the Governor's proclamation of state of emergency; and

WHEREAS, as a consequence of the local emergency persisting, the Board of Directors does hereby find that the legislative bodies of the Air District shall continue to conduct their meetings without compliance with paragraph (3) of subdivision (b) of Government Code section 54953, as authorized by subdivision (e) of section 54953, and that such legislative bodies shall continue to comply with the requirements to provide the public with access to the meetings as prescribed in paragraph (2) of subdivision (e) of section 54953; and

WHEREAS, the Air District is publicizing in its meeting agendas zoom and webcast links and phone numbers for members of the public to participate remotely in meetings of the Air District's legislative bodies.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE BAY AREA AIR QUALITY MANAGEMENT DISTRICT DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. Recitals. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

Section 2. Affirmation that Local Emergency Persists. The Board of Directors hereby finds that the state of emergency related to COVID-19 in the District remains active, that measures to promote social distancing have been ordered or recommended by public health authorities, and that the state of emergency continues to present imminent health and safety risks that directly impact the ability of members to meet safely in person.

Section 3. Re-ratification of Governor's Proclamation of a State of Emergency. The Board of Directors hereby ratifies the Governor of the State of California's Proclamation of State of Emergency, effective as of its issuance date of March 4, 2020.

Section 4. Remote Teleconference Meetings. The staff and legislative bodies of the Air District are hereby authorized and directed to take all actions necessary to carry out the intent and purpose of this Resolution, including continuing to conduct open and public meetings in accordance with Government Code section 54953(e) and other applicable provisions of the Brown Act.

Section 5. Effective Date of Resolution. This Resolution shall take effect immediately upon its adoption and shall be effective until the earlier of (i) October 21, 2022, or (ii) such time the Board of Directors adopts a subsequent resolution in accordance with Government Code section 54953(e)(3) to extend the time during which the legislative bodies of the Air District may continue to teleconference without compliance with section 54953(b)(3).

The foregoing resolution was duly regularly introduced, passed, and adopted at a regular meeting of the Board of Directors of the Bay Area Air Quality Management District on the motion of _____, seconded by _____, on the 21st day of SEPTEMBER, 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

John Bauters
Chair of the Board of Directors

Teresa Barrett
Secretary of the Board of Directors

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson John J. Bauters and Members
of the Board of Directors

From: Sharon L. Landers
Interim Executive Officer/APCO

Date: September 21, 2022

Re: Approval of the Minutes of September 7, 2022

RECOMMENDED ACTION

Approve the attached draft minutes of September 7, 2022.

BACKGROUND

None.

DISCUSSION

Attached for your review and approval are the draft minutes of September 7, 2022.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Sharon L. Landers
Interim Executive Officer/APCO

Prepared by: Marcy Hiratzka
Reviewed by: Vanessa Johnson

ATTACHMENTS:

1. Draft Minutes of the Board of Directors Meeting of September 7, 2022

Bay Area Air Quality Management District
375 Beale Street, Suite 600
San Francisco, CA 94105
(415) 749-5073

Board of Directors Regular Meeting
Wednesday, September 7, 2022

DRAFT MINUTES

*Note: Audio recordings of the meeting are available on the website of the
Bay Area Air Quality Management District at
www.baaqmd.gov/bodagendas*

This meeting was conducted under procedures authorized by Assembly Bill 361 (Rivas 2021) allowing remote meetings. The Board of Directors participated by teleconference.

CALL TO ORDER

1. **Opening Comments:** Board of Directors (Board) Chairperson, John J. Bauters, called the meeting to order at 9:03 a.m.

Roll Call:

Present: Chairperson John J. Bauters; Vice Chairperson Davina Hurt; Secretary Teresa Barrett; and Directors Margaret Abe-Koga, David Canepa, John Gioia, David Haubert, Lynda Hopkins, Tyrone Jue, Sergio Lopez, Nate Miley, Karen Mitchoff, Rob Rennie, Mark Ross, Brad Wagenknecht, Shamann Walton, and Steve Young.

Absent: Directors Pauline Russo Cutter, Carole Groom, Erin Hannigan, David Hudson, Otto Lee, and Katie Rice.

2. **PLEDGE OF ALLEGIANCE**
3. **PUBLIC MEETING PROCEDURE**
4. **SPECIAL ORDERS OF THE DAY**

Chair Bauters introduced new Air District employee, Alicia Parker, Principal Env Planner. Ms. Parker introduced herself.

CONSENT CALENDAR (Items 5 – 21)

5. Remote Teleconferencing per Assembly Bill (AB) 361
6. Approval of the Minutes of July 20, 2022
7. Board Communications Received from July 20, 2022 through September 6, 2022

8. Notices of Violations Issued and Settlements in Excess of \$10,000 in the Months of June and July 2022
9. Personnel Out-of-State Business Travel Report for July 2022
10. Quarterly Report of California Air Resources Board Representative – Hon. Davina Hurt
11. Quarterly Report of the Executive Office and Division Activities for the Months of April – June 2022
12. Authorization to Execute a Purchase Order with Teledyne Inc.
13. Authorization to Execute Contract Amendment with Kadesh & Associates, LLC
14. Authorization to Execute Contract Amendment with Enforce LLC
15. Authorization to Execute a Legal Services Agreement with Woodruff, Spradlin & Smart to Represent the Air District in *The Athletics Investment Group LLC v. Bay Area Air Quality Management District et al.*
16. Participation in Community Air Protection Program Fiscal Year Ending (FYE) 2022
17. Report of the Advisory Council Meeting of July 11, 2022
18. Report of the Legislative Committee Meeting of July 11, 2022
19. Report of the Richmond Area Community Emissions Reduction Plan Steering Committee Meeting of July 18, 2022
20. Report of the Mobile Source & Climate Impacts Committee Meeting of July 28, 2022
21. Report of the Richmond Area Community Emissions Reduction Plan Steering Committee Meeting of August 15, 2022

Public Comments

No requests submitted.

Board Comments

None.

Board Action

Director Gioia made a motion, seconded by Vice Chair Hurt, to **approve** Consent Calendar Items 5 through 21, inclusive; and the motion **carried** by the following vote of the Board:

AYES:	Abe-Koga, Bauters, Barrett, Canepa, Gioia, Haubert, Hopkins, Hurt, Jue, Lopez, Miley, Mitchoff, Ross, Wagenknecht, Young.
NOES:	None.
ABSTAIN:	None.
ABSENT:	Cutter, Groom, Hannigan, Hudson, Lee, Rennie, Rice, Walton.

PRESENTATION

22. **VENDOR SELECTION FOR STRATEGIC COMMUNICATIONS AND EVALUATION OF THE FLEX YOUR COMMUTE PROGRAM (OUT OF ORDER, ITEM 24)**

Lisa Fasano, External Affairs Officer, gave the staff presentation *Vendor Selection for Strategic Communications and Evaluation of the Flex Your Commute Program*, including: outcome; outline;

background; scope of work; 2022 RFP process; evaluation criteria; bidder score and interview score; eliminated submission score; Kenough Consulting overview; and actions requested.

Public Comments

No requests received.

Board Comments

The Board and staff discussed concerns that the RPF response period (during which bidders can prepare and submit their proposals) was too short, and the Air District's standard RPF practices.

Board Action

Secretary Barrett made a motion, seconded by Director Abe-Koga, to **approve** the vendor selection of a Request for Proposal (RFP) No. 2022-007 for Strategic Communications and Evaluation of the Flex Your Commute Program to Keough Consulting in an amount not to exceed \$250,000 for one year with the option of extending the contract three additional years pending a positive year review and authorize the Interim Executive Officer/Air Pollution Control Officer (APCO) to execute contract; and the motion **carried** by the following vote of the Board:

AYES:	Abe-Koga, Bauters, Barrett, Canepa, Gioia, Haubert, Hopkins, Hurt, Jue, Lopez, Miley, Mitchoff, Ross, Wagenknecht, Young.
NOES:	None.
ABSTAIN:	None.
ABSENT:	Cutter, Groom, Hannigan, Hudson, Lee, Rennie, Rice, Walton.

CLOSED SESSION (9:27 a.m.)

23. PUBLIC EMPLOYEE APPOINTMENT AND EMPLOYMENT (GOVERNMENT CODE SECTION 54957(B)(1)) (ITEM 22)

Pursuant to Government Code Section 54957(b)(1)

Title: Executive Officer/Air Pollution Control Officer (APCO)

NOTED PRESENT: Directors Rennie and Walton were noted present at 10:00 a.m.

REPORTABLE ACTION: Alexander Crockett, District Counsel, reported that he had nothing to report.

OPEN SESSION (10:07 a.m.)

DISCUSSION

24. CONSIDER APPROVING THE ADVERTISING BROCHURE FOR THE UPCOMING EXECUTIVE OFFICER/APCO RECRUITMENT (ITEM 23)

Chair Bauters introduced Valerie Phillips of Bob Murray & Associates, who introduced the brochure that was designed to recruit for the position of Air District Executive Officer/APCO.

Public Comments

No requests received.

Board Comments

None.

Board Action

Director Mitchoff made a motion, seconded by Director Haubert, to **approve** the proposed advertising brochure for the upcoming Executive Officer/APCO recruitment, as amended (“Filing Deadline of October 26, 2022” on Page 11 will be changed to “October 19, 2022”); and the motion **carried** by the following vote of the Board:

AYES:	Abe-Koga, Bauters, Barrett, Gioia, Haubert, Hopkins, Hurt, Jue, Lopez, Miley, Mitchoff, Rennie, Ross, Wagenknecht, Walton.
NOES:	None.
ABSTAIN:	None.
ABSENT:	Canepa, Cutter, Groom, Hannigan, Hudson, Lee, Rice, Young.

OTHER BUSINESS

25. PUBLIC COMMENT ON NON-AGENDA MATTERS

No requests received.

26. BOARD MEMBERS’ COMMENTS

None.

27. REPORT OF THE EXECUTIVE OFFICER/APCO

Sharon L. Landers, Interim Executive Officer/APCO, made the following announcements:

- During the heat wave of the week of September 5, 2022, the Air District increased its communications with the public regarding the multiple Spare the Air alerts that were issued.
- A new cost recovery policy is being developed by Air District staff and consultants; it should be brought to the Board’s Budget & Finance Committee in October.
- In July, Director Lee had requested a report on the reasons for the Air District’s current backlog of permit applications, and staff is developing a presentation to address this issue.
- The Air District is partnering with Communities for a Better Environment to create a community-based Steering Committee to develop the East Oakland AB 617 Community Emissions Reduction Plan. The Committee’s first meeting is scheduled for September 15.

- Several budget bills that the Air District has been monitoring are awaiting the Governor's signature:
 - **AB 2449 (Rubio)** - Open meetings: local agencies: teleconferences.
 - **AB 2836 (E. Garcia)** - Carl Moyer Memorial Air Quality Standards Attainment Program: vehicle registration fees: California tire fee.
 - **AB 2721 (Lee)** – Bay Area Air Quality Management District: district board: compensation.
 - **AB 1749 (C. Garcia)** - Community emissions reduction programs: toxic air contaminants and criteria air pollutants.

Dr. Ranyee Chiang, Director of Meteorology and Measurement, was asked to provide a summary on recent air quality.

28. CHAIRPERSON'S REPORT

Chair Bauters announced that on August 9, 2022, the Marin County Board of Supervisors reappointed Katie Rice of the Air District's Board for a new four-year term, expiring August 2026.

29. TIME AND PLACE OF NEXT MEETING

Wednesday, September 21, 2022, at 9:00 a.m., via webcast, teleconference, or Zoom, pursuant to procedures in accordance with Assembly Bill 361 (Rivas 2021).

CLOSED SESSION (10:26 a.m.)

30. CONFERENCE WITH LEGAL COUNSEL RE EXISTING LITIGATION (GOVERNMENT CODE SECTIONS 54956.9(a) AND (d)(1))

Pursuant to Government Code Sections 54956.9(a) and (d)(1), the Board met in Closed Session with Legal Counsel to discuss the following case: The Athletics Investment Group, LLC, v. The Bay Area Air Quality Management District et al. (Schnitzer Steel Industries, Inc., Real Party in Interest), Case No. 3:22-cv-03268-MMC (N. Dist. Cal.).

REPORTABLE ACTION: Mr. Crockett had nothing to report.

31. CONFERENCE WITH LEGAL COUNSEL RE ANTICIPATED LITIGATION (GOVERNMENT CODE SECTIONS 54956.9(a) AND (d)(2))

Pursuant to Government Code sections 54956.9(a) and (d)(2), the Board met in Closed Session with Legal Counsel to discuss a significant exposure to litigation, based on facts and circumstances not known to a potential plaintiff or plaintiffs: Two cases.

REPORTABLE ACTION: Mr. Crockett reported that the Board voted to authorize the partial waiver of attorney-client privilege as required and determined by Counsel for the Air District for compliance with due process in employee discipline.

32. **PUBLIC EMPLOYEE APPOINTMENT AND EMPLOYMENT (GOVERNMENT CODE SECTION 54957(b)(1))**

Pursuant to Government Code Section 54957(b)(1)

Title: Executive Officer/APCO

REPORTABLE ACTION: Mr. Crockett had nothing to report.

33. **PUBLIC EMPLOYEE PERFORMANCE EVALUATION (GOVERNMENT CODE SECTION 54957(b)(1))**

Pursuant to Government Code Section 54957(b)(1)

Title: Interim Executive Officer/APCO

REPORTABLE ACTION: Mr. Crockett had nothing to report.

OPEN SESSION (11:59 a.m.)

34. **ADJOURNMENT**

The meeting adjourned at 12:00 p.m.

Marcy Hiratzka
Clerk of the Boards

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson John J. Bauters and Members
of the Board of Directors

From: Sharon L. Landers
Interim Executive Officer/APCO

Date: September 21, 2022

Re: Board Communications Received from September 7, 2022 through September 20,
2022

RECOMMENDED ACTION

None; receive and file.

BACKGROUND

None.

DISCUSSION

Copies of communications directed to the Board of Directors received by the Air District from September 7, 2022 through September 20, 2022, if any, will be distributed to the Board members by way of email.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Sharon L. Landers
Interim Executive Officer/APCO

Prepared by: Michelle Beteta
Reviewed by: Vanessa Johnson

ATTACHMENTS:

None

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson John J. Bauters and Members
of the Board of Directors

From: Sharon L. Landers
Interim Executive Officer/APCO

Date: September 21, 2022

Re: Personnel Out of State Business Travel Report for August 2022

RECOMMENDED ACTION

None; receive and file.

BACKGROUND

In accordance with Section 5.4 (b) of the District's Administrative Code, Fiscal Policies and Procedures Section, the Board is hereby notified of District personnel who have traveled on out-of-state business. The report covers out-of-state business travel for the month of August 2022. The monthly out-of-state business travel report is presented in the month following travel completion.

DISCUSSION

The following out of state business travel activities occurred in the month of August 2022:

National Ambient Air Monitoring Conference, Pittsburgh, PA, August 21-28, 2022 attendees:

- Jun Liu, Principal Air Quality Specialist
- Brett Yamaichi, Air Quality Specialist II
- Jonathan Bower, Manager
- Lilian Turcios, Advanced Projects Advisor
- Charity Garland, Asst. Manager
- Eileen Lek, Air Quality Specialist II
- Hernan Segura, Asst. Air Quality Specialist II
- Katherine Hoag, Asst. Manager
- Daniel Alrick, Principal Air and Meteorological Monitoring Specialist
- Michael Flagg, Principal Air Quality Specialist
- William Pochereva, Air Quality Specialist I
- Michael Chan, Air Quality Specialist II
- Quentin Malloy, Principal Air Quality Specialist
- Jack Connor, Air Quality Specialist I

BUDGET CONSIDERATION/FINANCIAL IMPACT

All associated business travel-related costs are covered by the respective division's Fiscal Year Ending 2023 Budget.

Respectfully submitted,

Sharon L. Landers
Interim Executive Officer/APCO

Prepared by: Stephanie Osaze
Reviewed by: Damian Breen

ATTACHMENTS:

None

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson John J. Bauters and Members
of the Board of Directors

From: Sharon L. Landers
Interim Executive Officer/APCO

Date: September 21, 2022

Re: Projects and Contracts with Proposed Grant Awards Over \$500,000

RECOMMENDED ACTION

Recommend the Board of Directors:

1. Approve recommended projects with proposed grant awards over \$500,000 as shown in Attachment 1; and
2. Authorize the Interim Executive Officer/APCO to enter into all necessary agreements with applicants for the recommended projects.

BACKGROUND

Carl Moyer Program and Mobile Source Incentive Fund

The Bay Area Air Quality Management District (Air District) has participated in the Carl Moyer Program (CMP), in cooperation with the California Air Resources Board (CARB), since the program began in fiscal year 1998-1999. The CMP provides grants to public and private entities to reduce emissions of nitrogen oxides (NOx), reactive organic gases (ROG), and particulate matter (PM) from existing heavy-duty engines by either replacing or retrofitting them. Projects eligible under the CMP guidelines include heavy-duty diesel engine applications such as on-road trucks and buses, off-road construction, agricultural equipment, marine vessels, locomotives, stationary agricultural pump engines, and refueling or recharging infrastructure that supports the deployment of new zero-emissions vehicles and equipment. Per AB 1390, at least 50% of CMP funds must be allocated to projects that benefit communities with the most significant exposure to air contaminants or localized air contaminants.

Assembly Bill (AB) 923 (Firebaugh), enacted in 2004 (codified as Health and Safety Code (HSC) Section 44225), authorized local air districts to increase motor vehicle registration surcharges by up to \$2 additional per vehicle and use the revenue to fund projects eligible under the CMP guidelines. AB 923 revenue is deposited in the Air District's Mobile Source Incentive Fund (MSIF).

The Board of Directors (Board) authorizes the Air District's participation in each cycle of the CMP, including an allocation of MSIF revenue as match funds.

Community Air Protection Program

In 2017, AB 617 directed CARB, in conjunction with local air districts to establish a new community-focused action framework to improve air quality and reduce exposure to criteria air pollutants and toxic air contaminants in communities most impacted by air pollution. The AB 617 initiative calls for strategies to address air quality issues in impacted communities, including community-level monitoring, uniform emission reporting across the State, stronger regulation of pollution sources, and incentives for reducing air pollution and public health impacts from mobile and stationary sources.

Beginning in fiscal year ending (FYE) 2018, the California Legislature approved funding from the State's Greenhouse Gas Reduction Fund (GGRF), which is used to reduce criteria pollutants, toxic air contaminants, and greenhouse gases, for the Community Air Protection Program (CAPP). CAPP funds may be used to fund projects eligible under the CMP and on-road truck replacements under the Proposition 1B Goods Movement Emission Reduction Program. Following additional approvals from CARB, CAPP funds may also potentially be used to fund stationary source and mobile source projects that have been identified and prioritized by communities with a Community Emissions Reduction Program, pursuant to HSC Section 44391.2. At least 80% of CAPP funds must be allocated to projects that benefit disadvantaged communities (Senate Bill (SB)535), and low-income communities (AB 1550).

Funding Agricultural Replacement Measures for Emission Reductions (FARMER)

In February 2018, CARB developed the FARMER Program Guidelines that outline requirements for eligible agricultural equipment replacement projects evaluated under the CMP guidelines, including harvesting equipment, heavy-duty trucks, pump engines, tractors, and other equipment used in agricultural operations. Subsequent updates to the FARMER guidelines expanded eligible projects to include zero-emission demonstration projects and added flexibility for funding zero-emission equipment. Under the California State Budget, GGRF funds are appropriated to CARB for each new cycle of the FARMER program for the continued reduction of criteria, toxic, and greenhouse gas emissions from the agricultural sector.

Transportation Fund for Clean Air

In 1991, the California State Legislature authorized the Air District to impose a \$4 surcharge on motor vehicles registered within the nine-county Bay Area to fund projects that reduce on-road motor vehicle emissions within the Air District's jurisdiction. The statutory authority and requirements for the Transportation Fund for Clean Air (TFCA) are set forth in HSC Sections 44241 and 44242. Sixty percent of TFCA funds are awarded by the Air District to eligible projects and programs implemented directly by the Air District (e.g., Spare the Air program) and to a program referred to as the Regional Fund. The remaining forty percent of the funds are passed through to the designated Bay Area County Program Managers who in turn award TFCA funds to eligible projects within their county. Each year, the Board allocates funding and adopts policies and evaluation criteria that govern the expenditure of TFCA monies. On April 6, 2022, the Board authorized funding allocations for use of the sixty percent of the TFCA revenue in FYE 2023, and cost-effectiveness limits for Air District-sponsored FYE 2023 programs. On May 4, 2022, the Board adopted policies and evaluation criteria for the FYE 2023 Regional Fund program.

For each new CMP, TFCA, CAPP, and FARMER funding cycle, the Board authorizes the Air District's participation in these programs. Initial or estimated allocations for available funding sources are shown in Table 1.

Table 1
Funding Source Allocations for Projects

Funding Source Cycle	Initial Allocation or Estimated Revenue (in Millions)*	Board Authorization Date
CMP Year 23	\$10.7	1/20/2021
CMP Year 24	\$31.2	12/1/2021
CAPP Year 5	\$35.4	12/1/2021
FARMER Year 4	\$ 3.5	12/1/2021
TFCA Regional Fund FYE 2023	\$28.9	4/6/2022
MSIF	\$12.0	n/a
Total	\$121.7	

*Some allocations were partially obligated to projects in FYE22 and therefore full amounts may not be available for award to projects in FYE23.

Applications for grant funding received by the Air District are reviewed and evaluated for eligibility under the respective governing policies and guidelines established by each funding source, e.g., CARB, the Board. At least quarterly, staff provides updates to the Mobile Source and Climate Impacts Committee or Board of Directors on the status of incentive funding for the current fiscal year, including total funding awarded, remaining funds available for award, funds allocated by county and by equipment category type, and percentage of funding benefitting low-income residents and impacted communities, including Air District-identified Community Air Risk Evaluation (CARE) areas, disadvantaged SB 535 communities, and/or low-income AB 1550 communities. The reported award allocations and emissions reduction benefits to counties and impacted communities, which are based on information provided by each applicant, does not include "regional" projects, where all communities receive benefits, or projects where the location of the benefit has not yet been determined.

On April 6, 2022, the Board authorized the Air Pollution Control Office (APCO)/Executive Officer to approve projects with awards up to \$500,000. For all projects with proposed awards greater than \$500,000, staff brings recommendations of these projects to the Board for approval.

DISCUSSION

For the FYE 2023, the Air District had approximately \$117 million available in CMP, MSIF, CAPP, FARMER, and TFCA funds for eligible projects, including prior year funds. This total may change as additional revenues are awarded to the Air District. Under these funding sources, the Air District accepts project applications on a rolling basis and evaluates them on a first-come, first-served basis.

Between July 1, 2022, and August 22, 2022, staff evaluated two eligible projects with proposed awards of over \$500,000. Together, these projects will replace a total of 8 diesel powered school buses with 8 electric powered school buses and install infrastructure for 8 chargers. These projects are estimated to reduce over 0.9 tons of NOx, ROG, and PM emissions per year. Staff recommends approval of the allocation of up to \$2,878,482 for these projects from a combination of CMP, MSIF, CAPP, and TFCA revenues. Attachment 1 provides additional information on the projects.

Attachment 2, updated at least quarterly, lists all eligible projects that have been awarded by the Air District between July 1, 2022, and August 22, 2022, including information about project equipment, award amounts, estimated emissions reductions, community benefits, and project locations. Approximately 97% of these funds have been awarded or allocated to low-income residents or to projects that reduce emissions in CARE, disadvantaged SB 535 communities, and/or low-income AB 1550 communities. The percentage will change over time as the remaining funds are awarded later in the fiscal year and as more complete information about the location of projects and program participants becomes available.

Attachment 3, updated at least quarterly, provides fiscal year facts and figures on the status of funding available and allocations by county and category.

BUDGET CONSIDERATION/FINANCIAL IMPACT

The Air District distributes the CMP, MSIF, CAPP, FARMER, and TFCA funding to project sponsors on a reimbursement basis. The two projects will cost up to \$2,878,482 and will be paid for from one or more of these state and local incentive funds. Funding for administrative costs is provided by each funding source.

Respectfully submitted,

Sharon L. Landers
Interim Executive Officer/APCO

Prepared by: Jessica DePrimo and Linda Hui
Reviewed by: Minda Berbeco and Alona Davis

ATTACHMENTS:

1. Proposed Projects with Grant Awards Greater than \$500,000 (evaluated 7/1/22 to 8/22/22)
 2. All Projects (awarded, allocated, and recommended 7/1/22 to 8/22/22)
 3. Funding Facts and Figures (7/1/22 through 8/22/22)
- .

ATTACHMENT 1

Table 1 - Projects with grant awards greater than \$500k (Evaluated between 7/1/22 and 8/22/22)
Carl Moyer Program, Transportation Fund for Clean Air, Mobile Source Incentive Fund, FARMER, and Community Air Protection Program

Project #	Applicant Name	Project Category	Project Description	Proposed Contract Award	Total Project Cost	Emission Reductions (tons per year)			County	Benefits Priority Area(s)
						NO _x	ROG	PM		
22SBP340	Sequoia Union High School District	School Bus (On-Road)	Replace 3 diesel-powered school buses with 3 electric-powered school buses and install infrastructure for 3 chargers.	\$1,237,496.00	\$ 1,315,812.47	0.325	0.033	0.002	San Mateo	No
22SBP279	East Side Union High School District	School Bus (On-Road)	Replace 5 diesel-powered medium duty buses with 5 electric-powered light-heavy duty school buses and install infrastructure for 5 chargers.	\$1,640,986.00	\$ 1,643,721.93	0.502	0.045	0.003	Santa Clara	Yes
2 Projects				\$ 2,878,482	\$ 2,959,534	0.827	0.078	0.005		

ATTACHMENT 2

Data in this table are updated quarterly. Funds awarded or allocated after the date range below will be reflected in the next quarterly update.

*CMP/MSIF, TFCA, FARMER and Community Air Protection Program projects
(awarded and allocated between 7/1/22 and 8/22/22)*

Project #	Project Category	Project Description	Number of Engines	Proposed Contract Award	Applicant Name	Emission Reductions (tons per year)			County	Board/ APCO Approval Date	Benefits Priority Area(s)	Funding Source [†]
						NOx	ROG	PM				
23R01	Trip Reduction	Enhanced Mobile Source & Commuter Benefits Enforcement	N/A	\$ 150,000	BAAQMD	TBD*	TBD*	TBD*	Regional	6/15/22	N/A	1
23R02	LD Vehicles	Vehicle Buy Back Program Implementation	N/A	\$ 200,000	BAAQMD	N/A	N/A	N/A	Regional	6/15/22	N/A	1
23R03	Trip Reduction	Spare The Air/ Intermittent Control/ Flex Your Commute Programs	N/A	\$ 2,290,000	BAAQMD	TBD*	TBD*	TBD*	Regional	6/15/22	N/A	1
22MOY305	Ag/ off-road	Equipment replacement	2	\$ 123,600	Shifflett Ranch & Vineyard LLC	0.241	0.035	0.024	Napa	7/1/22	No	2
22MOY311	Ag/ off-road	Equipment replacement	1	\$ 153,100	Jay A Clay	0.363	0.047	0.027	Sonoma	7/8/22	Yes	2
22SBP337	School Bus	Equipment replacement	1	\$ 400,000	Hayward Unified School District	0.042	0.002	0.001	Alameda	7/11/22	Yes	1, 2
22MOY229	Ag/ off-road	Equipment replacement	1	\$ 43,900	Boething Treeland Farms inc.	0.059	0.009	0.006	San Mateo	7/11/22	No	2
22MOY334	Ag/ off-road	Equipment replacement	1	\$ 135,800	Point Reyes Pastures Inc.	0.276	0.036	0.020	Marin	7/11/22	Yes	2
22SBP117	School Bus	Equipment replacement + Infrastructure	8	\$ 4,370,779	San Mateo Union High School District	0.731	0.058	0.026	San Mateo	7/20/22	Yes	1, 2
22SBP232	School Bus	Equipment replacement + Infrastructure	5	\$ 1,916,236	Antioch Unified School District	0.378	0.029	0.002	Contra Costa	7/20/22	Yes	1, 2
22SBP248	School Bus	Equipment replacement	3	\$ 648,794	Mt. Diablo Unified School District	0.203	0.016	0.008	Contra Costa	7/20/22	Yes	1
22MOY320	Ag/ off-road	Equipment replacement	1	\$ 49,300	Atlas Oaks Ranch, LLC	0.047	0.011	0.009	Napa	8/12/22	No	2
22MOY342	Ag/ off-road	Equipment replacement	3	\$ 100,300	Vinas Del Norte LLC	0.181	0.028	0.025	Napa	8/16/22	Yes	2
22MOY341	Ag/ off-road	Equipment replacement	1	\$ 65,800	Williams Ranch	0.276	0.036	0.025	Sonoma	8/17/22	No	2
22SBP279	School Bus	Equipment replacement + Infrastructure	5	\$ 1,640,986	East Side Union High School District	0.502	0.045	0.003	Santa Clara	Pending	Yes	1, 2
22SBP340	School Bus	Equipment replacement + Infrastructure	3	\$ 1,237,496	Sequoia Union High School District	0.325	0.033	0.002	San Mateo	Pending	Yes	1, 2
16 Projects			35	\$ 13,526,091		3.6	0.4	0.2				

[†] Funding source includes (1) Transportation Fund for Clean Air; (2) CMP/MSIF, FARMER and Community Air Protection Program.

* Funds have been allocated to these programs and projects and results will be determined at the end of project period.

ATTACHMENT 3

Funding Facts and Figures

7/1/22 through 8/22/22

Funding Sources Reported: Transportation Fund for Clean Air (TFCA), Carl Moyer Program (CMP), Community Air Protection Program (CAPP), Mobile Source Incentive Fund (MSIF), and Funding Agricultural Replacement Measures for Emission Reductions (FARMER)

Figure 1. Status of FYE 2023 funding

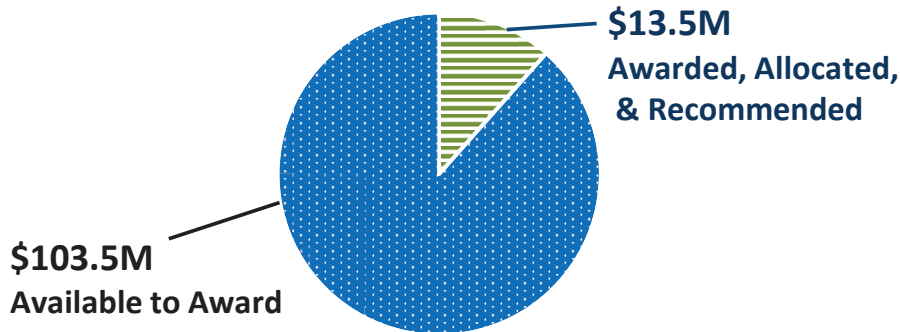


Figure 2. Funding Awarded by County in FYE 2023

includes funds allocated, awarded, & recommended for award

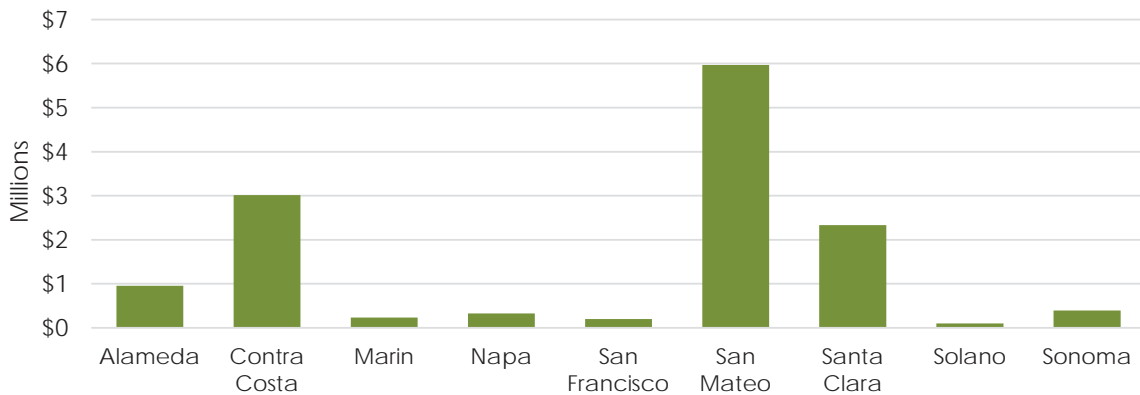
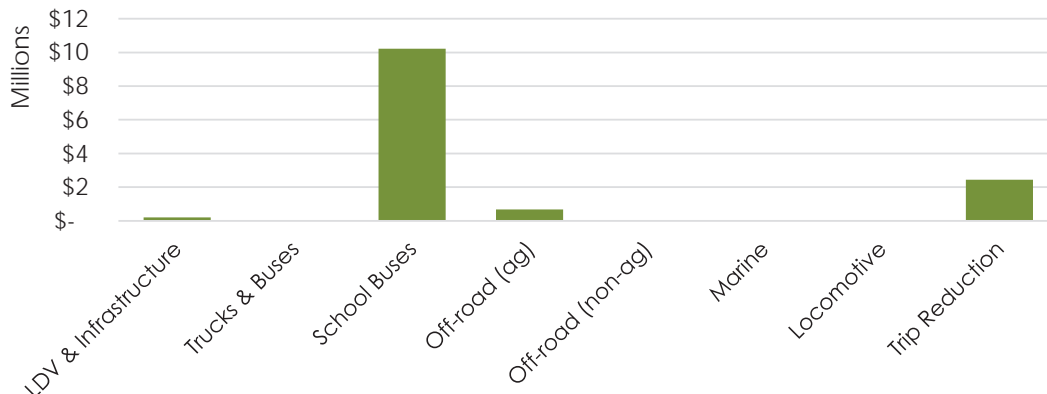


Figure 3. Funding Awarded by Project Category in FYE 2023

includes funds allocated, awarded, & recommended for award



BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson John J. Bauters and Members
of the Board of Directors

From: Sharon L. Landers
Interim Executive Officer/APCO

Date: September 21, 2022

Re: Authorization to Execute a Contract with Trinity Technology Group, Inc. for Support
of Grants Management Systems

RECOMMENDED ACTION

Authorize the Interim Executive Officer/APCO to execute a contract with Trinity Technology Group, Inc. for a total cost not to exceed \$360,000 and a term of up to four years at the Air District's discretion.

BACKGROUND

Trinity Technology Group, Inc. (TTG) designed, built, and currently maintains the two main data management systems that are used by Strategic Incentives staff to manage grant project related data. These legacy systems require at least annual updates to implement new program features, extend functionality to match evolving business requirements, and maintain security of data and records. The current contracts with TTG for these two systems will expire on October 31, 2022. Additional background information about these two systems is provided below.

Moyer Grants System: Around 2008, the Air District contracted with TTG to build a proprietary custom-built online system ("Moyer system") for managing data for the Air District's Carl Moyer (CMP) and Goods Movement (GMP) grant programs. The Moyer system was completed around 2010 and today houses most of the Air District's grant programs project data. Since then, the Air District has executed annual contracts with TTG for ongoing development and maintenance services for the Moyer system. In FYE 2020, the Air District conducted a noncompetitive Request for Qualifications (RFQ) process led by the Production System Office and Business Services Division that resulted in the selection of multiple authorized vendors to work on Air District data systems, including TTG, and on December 2, 2020, the Board of Directors authorized the execution of an amendment to an existing contract with TTG funds and extend the term for work related to Air District systems. The most recent contracts with TTG for work on the Moyer system were executed on July 23, 2021, and August 9, 2021, for the GMP and CMP, respectively.

Woodsmoke Reduction Grants System: On April 20, 2016, the Board of Directors approved the execution of a new contract for \$200,000 with TTG for the development of a new data management system that would be used to collect, manage, and store woodsmoke reduction grant program data. The initial system was used to manage woodsmoke reduction grants program from August 2016 through late 2019.

In 2021, the Environmental Protection Agency (EPA) awarded the Air District over \$2.3 million for the implementation of a new woodsmoke reduction program. Following the same RFQ process discussed above, on November 10, 2021, the Air District executed a contract with TTG in the amount of \$29,400 to initiate work updating the existing Woodsmoke Reduction Grants System, and to evaluate the cost and requirements for implementing the necessary program enhancements and for aligning the system with current day data management and software standards.

DISCUSSION

Staff recommends the execution of a new contract with TTG in an amount not to exceed \$360,000 over four years because TTG is the provider proven familiar with the Air District's legacy systems. Estimated costs to continue this work will range from \$60,000 to \$120,000 per fiscal year based on the work needed. Initial and ongoing work includes implementing annual system enhancements and providing ongoing support and maintenance until these systems can be replaced, and in addition for the Woodsmoke system, a one-time upgrade, or re-platforming, of that system. The cost of TTG staff time ranges from \$135/hr to \$160/hr, depending on the role.

Data Management System	Scope of Work	Total estimated cost over 4-year term
Woodsmoke Reduction Grants System	<p>Annually: Implement minor programmatic updates, provide system maintenance, conduct security upgrades, maintain software compatibility, and provide ongoing system support.</p> <p>Additionally for Year 1: Continue programmatic enhancements to support Woodsmoke Reduction grant program, including re-platforming; provide system go-live support upon grant program opening.</p>	\$ 204,000
Moyer System	<p>Annually: Implement programmatic updates for both Goods Movement and Moyer programs; provide system maintenance, conduct security upgrades, and provide ongoing system support.</p>	\$ 156,000
Total		\$ 360,000

This action will allow TTG to continue work on both legacy systems until these systems can be retired. In 2022, Strategic Incentives staff began working to develop a competitive Request for Proposals (RFP) that will solicit bids for the development of a new non-proprietary system that will be used to replace all of the Division's various systems for administering grant programs. Staff anticipate issuing the RFP by the end of 2022. Once a contract is approved, the new system is expected to take at least two to three years to build, and when it is complete, the existing legacy systems can be retired.

BUDGET CONSIDERATION/FINANCIAL IMPACT

Funding for administrative costs related to development and maintenance of grants management systems is provided by grant funding from State and Local sources, including the Carl Moyer Program, Goods Movement Program, Mobile Source Incentive Fund, Community Air Protection – Incentive Program, Transportation Fund for Clean Air, EPA Targeted Air Shed Program and the Air District's General Fund (previously authorized by this Board on December 16, 2020 as match for the EPA grant). The costs for the first year of service are included in the Strategic Incentives Division's FYE 2023 budget, and costs for work in FYE 2024, FYE 2025, and FYE 2026 will be budgeted appropriately in the ordinary course of the Air District's annual budget process.

Respectfully submitted,

Sharon L. Landers
Interim Executive Officer/APCO

Prepared by: Jessica DePrimo and Alona Davis
Reviewed by: Karen Schkolnick

ATTACHMENTS:

1. Draft Trinity Technology Group, Inc. Master Services Contract No. 2022.230

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

MASTER SERVICES CONTRACT

CONTRACT NO. 2022.230

1. **PARTIES** – The parties to this Contract (“Contract”) are the Bay Area Air Quality Management District (“DISTRICT”) whose address is 375 Beale Street, Suite 600, San Francisco, CA 94105, and **Trinity Technology Group, Inc.** (“CONTRACTOR”) whose address is 2015 J Street, Suite 105, Sacramento, CA 95811.
2. **RECITALS**
 - A. DISTRICT is the local agency with primary responsibility for regulating stationary source air pollution in the Bay Area Air Quality Management District in the State of California. DISTRICT is authorized to enter into this Contract under California Health and Safety Code Section 40701. DISTRICT desires to contract with CONTRACTOR for Services as defined herein. DISTRICT is entering into this Contract based on CONTRACTOR’s stated qualifications to perform the Services.
 - B. All parties to this Contract have had the opportunity to have this contract reviewed by their attorney.
3. **DEFINITIONS**
 - A. “Purchase Order” shall mean the written or electronic document used by DISTRICT to track payments to CONTRACTOR under this Contract.
 - B. “Services” shall mean the services to be provided by CONTRACTOR hereunder as generally described in the General Description of Services, attached hereto as Attachment A and made a part hereof by this reference, and as specifically described in Task Orders issued pursuant to this Contract.
 - C. “Task Order” shall mean a written request by DISTRICT for specific services to be performed by CONTRACTOR.
4. **PERFORMANCE REQUIREMENTS**
 - A. CONTRACTOR is authorized to do business in the State of California. CONTRACTOR attests that it is in good tax standing with federal and state tax authorities.
 - B. CONTRACTOR agrees to obtain any and all required licenses, permits, and all other appropriate legal authorizations from all applicable federal, state and local jurisdictions and pay all applicable fees.
 - C. CONTRACTOR shall comply with all laws and regulations that apply to its performance under this Contract, including any requirements to disclose potential conflicts of interest under DISTRICT’s Conflict of Interest Code.
 - D. CONTRACTOR shall not engage in any performance of work during the term of this contract that is in direct or indirect conflict with duties and responsibilities set forth in the Scope of Work.
 - E. CONTRACTOR shall exercise the degree of skill and care customarily required by accepted professional practices and procedures.
 - F. CONTRACTOR shall ensure that any subcontractors, employees and agents performing under this Contract comply with the performance standards set forth in paragraph A-E above.

5. TERM – The term of this Contract is from October 1, 2022 to June 30, 2026, unless further extended by amendment of this Contract in writing, or terminated earlier. CONTRACTOR shall not submit any invoice for services performed under this Contract until the Contract is fully executed.

6. TERMINATION

- A. The DISTRICT may terminate this Contract at any time, at will, and without specifying any reason, by notifying CONTRACTOR in writing. The notice of termination shall specify the effective date of termination, which shall be no less than thirty (30) calendar days from the date of delivery of the notice of termination, and shall be delivered in accordance with the provisions of section 13 below. Immediately upon receipt of the notice of termination, CONTRACTOR shall cease all services under this Contract, except such services as are specified in the notice of termination. CONTRACTOR shall deliver a final invoice for all remaining services performed but not billed, including any services specified in the termination notice, on or before ten (10) business days following the termination date.
- B. Either party may terminate this Contract for breach by the other party.
- i) Failure to perform any agreement or obligation contained in this Contract or failure to complete the services in a satisfactory manner shall constitute a breach of the Contract.
 - ii) The non-breaching party may terminate the Contract by delivery of a written notice of breach. The notice of breach shall specify the date of termination, which shall be no earlier than ten (10) business days from delivery of the notice of breach. In the alternative, at its sole discretion, the non-breaching party may require the breaching party to cure the breach. The notice of breach shall specify the nature of the breach and the date by which such breach must be cured.
 - iii) If CONTRACTOR fails to perform any obligation under this Contract, DISTRICT at its sole discretion, may perform, or cause the performance, of the obligation itself. In that event, DISTRICT shall deduct the costs to perform such obligation and any other costs to cure the breach from the payment otherwise due to CONTRACTOR for work performed under this Contract. DISTRICT's performance hereunder shall not be deemed a waiver or release of any obligation of, or default by, CONTRACTOR under this Contract.
 - iv) The notice of breach shall be provided in accordance with the notice requirements set forth in section 13.
 - v) The non-breaching party reserves all rights under law and equity to enforce this Contract and recover any damages.

7. INSURANCE

- A. CONTRACTOR shall maintain the following insurance:
- i) Workers' compensation and employers' liability insurance as required by California law or other applicable statutory requirements.
 - ii) Occurrence-based commercial general liability insurance or equivalent form with a limit of not less than one million dollars (\$1,000,000) each occurrence. Such insurance shall include DISTRICT and its officers, agents, and employees as additional insureds and shall be primary with respect to any insurance maintained by DISTRICT.
 - iii) Business automobile liability insurance or equivalent form with a limit of not less than one million dollars (\$1,000,000) each accident. Such insurance shall include coverage for owned, hired, and non-owned vehicles. If CONTRACTOR is a sole proprietor, CONTRACTOR may meet this insurance requirement with personal automobile liability insurance carrying a

business use endorsement or by demonstrating to the satisfaction of DISTRICT that business use is covered under the CONTRACTOR's personal automobile liability insurance. A CONTRACTOR using only rental vehicles in performing work under this Contract may meet this insurance requirement by purchasing automobile liability insurance in the required coverage amount from the rental agency.

- B. All insurance shall be placed with insurers acceptable to DISTRICT.
- C. Prior to commencement of work under this Contract, CONTRACTOR shall furnish properly-executed certificates of insurance for all required insurance. Upon request by DISTRICT, CONTRACTOR shall provide a complete copy of any required insurance policy. CONTRACTOR shall notify DISTRICT in writing thirty (30) days prior to cancellation or modification of any required insurance policy. Any such modifications are subject to pre-approval by DISTRICT.
- D. If CONTRACTOR fails to maintain the required insurance coverage set forth above, DISTRICT reserves the right either to purchase such additional insurance and to deduct the cost thereof from any payments owed to CONTRACTOR or to terminate this Contract for breach.

8. INDEMNIFICATION

- A. CONTRACTOR shall indemnify and hold DISTRICT, its officers, employees and agents harmless from and against any and all liability, loss, expense, including reasonable attorneys' fees, or claims for injury or damages arising out of the performance of this Contract but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of CONTRACTOR, its officers, agents, or employees.
- B. DISTRICT shall indemnify and hold CONTRACTOR, its officers, employees and agents harmless from and against any and all liability, loss, expense, including reasonable attorneys' fee, or claims for injury or damages arising out of the performance of this Contract but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of DISTRICT, its officers, agents, or employees.

9. AGREEMENT TO PROVIDE SERVICES

- A. CONTRACTOR hereby agrees to provide to DISTRICT, as DISTRICT may from time to time designate, such services as DISTRICT may order by Task Order, all in accordance with and subject to the terms, covenants and conditions of this Contract. DISTRICT agrees to pay for these services ordered by DISTRICT in accordance with and subject to the terms, covenants and conditions of this Contract.
- B. All Task Orders issued by DISTRICT to CONTRACTOR for services during the term of this Contract are subject to the provisions of this Contract as though fully set forth in such Task Order. In the event that the provisions of this Contract conflict with any Task Order issued by DISTRICT to CONTRACTOR, the provisions of this Contract shall govern. No other terms and conditions, including, but not limited to, those contained in CONTRACTOR's standard printed terms and conditions, on CONTRACTOR's order acknowledgment, invoices or otherwise, shall have any application to or effect upon or be deemed to constitute an amendment to or to be incorporated into this Contract, any Task Order, or any transactions occurring pursuant hereto or thereto, unless this Contract shall be specifically amended to adopt such other terms and conditions in writing by the parties.
- C. Notwithstanding any other provision of this Contract to the contrary, DISTRICT shall have no obligation to order or purchase any services hereunder and the placement of any Task Order

shall be in the sole discretion of DISTRICT. Without limiting the generality of the foregoing, the actual quantity of services to be purchased hereunder shall be determined by DISTRICT in its sole discretion and shall not exceed \$360,000. This Contract is not exclusive. CONTRACTOR expressly acknowledges and agrees that DISTRICT may purchase at its sole discretion, services that are identical or similar to the services described in this Contract from any third party.

10. TASK ORDERS – Each Task Order will specify the following items, as relevant: specific services requested, schedule for services, location where services are to be performed (with contact person), and cost or estimated cost of services. Each Task Order issued under this Contract shall be made part of, and be incorporated into this Contract, and shall reference this Contract on the face of each Task Order. Should any Task Order not conform to or satisfy the terms of this Contract, CONTRACTOR shall have five (5) business days after receipt to reject the Task Order. By not rejecting the Task Order within five (5) business days, CONTRACTOR will have accepted the Task Order. Acceptance by CONTRACTOR is limited to the provisions of this Contract and the Task Order. No additional or different provisions proposed by CONTRACTOR or DISTRICT shall apply. In addition, the parties agree that this Contract and accepted Task Orders constitute a contract for services and satisfy all statutory and legal formalities of a contract.
11. PRICING, INVOICES, AND PAYMENT
 - A. DISTRICT shall pay CONTRACTOR for all services ordered and provided in compliance with the terms and conditions of this Contract and with Task Orders issued under this Contract.
 - B. CONTRACTOR shall submit original invoices to DISTRICT in form and substance and format reasonably acceptable to DISTRICT. Each invoice, including supporting documentation, must be prepared in duplicate on CONTRACTOR's letterhead; must list DISTRICT's contract number, Purchase Order Number, and the CONTRACTOR's Social Security Number or Federal Employer Identification Number; and must be submitted to: Bay Area Air Quality Management District, 375 Beale Street, Suite 600, San Francisco, CA 94105, Attn: Contracts Manager.
 - C. Except as specifically set forth in Attachment A or in Task Orders under this Contract, DISTRICT shall not be responsible for any additional costs or expenses of any nature incurred by CONTRACTOR in connection with the provision of the services, including without limitation travel expenses, clerical or administrative personnel, long distance telephone charges, etc.
 - D. CONTRACTOR represents, warrants and covenants that the prices, charges and fees for services set forth in this Contract (on the whole) are at least as favorable as the prices, charges and fees CONTRACTOR charges (on the whole) to other of its customers or clients for the same or substantially similar services provided under the same or substantially similar circumstances, terms, and conditions. If CONTRACTOR agrees or contracts with other clients or customers similarly situated during the Term of this Contract, and offers or agrees to financial terms more favorable than those set forth herein (on the whole), CONTRACTOR hereby agrees that it will reduce the prices, charges and/or fees charged to DISTRICT in respect of the services hereunder to the most favorable rates received by those other clients or customers.
12. DISPUTE RESOLUTION – A party that disputes a notice of breach must first seek mediation to resolve the dispute in accordance with the provisions set forth below.
 - A. Upon receipt of a notice of breach of contract, the party may submit a demand for mediation to resolve whether or not a breach occurred. The party must state the basis of the dispute and deliver the demand within ten (10) business days of the date of receipt of the notice of breach.

- B. The mediation shall take place at DISTRICT's office at 375 Beale Street, Suite 600, San Francisco, or at such other place as may be mutually agreed upon by the parties and the mediator.
- C. The parties shall make good faith efforts to hold the mediation within thirty (30) days after receipt of the demand for mediation.
- D. Each party shall bear its own mediation costs.
- E. In the event the parties are unable to resolve the dispute, either party may file an action in a court of competent jurisdiction to enforce the Contract.
- F. Maximum recovery under this section shall be limited to the total value of all Task Orders issued under this Contract. The mediation costs shall not reduce the maximum amount recoverable under this section.

13. NOTICES – All notices that are required under this Contract shall be provided in the manner set forth herein, unless specified otherwise. Notice to a party shall be delivered to the attention of the person listed below, or to such other person or persons as may hereafter be designated by that party in writing. Notice shall be in writing sent by e-mail, facsimile, or regular first class mail. In the case of e-mail and facsimile communications, valid notice shall be deemed to have been delivered upon sending, provided the sender obtained an electronic confirmation of delivery. E-mail and facsimile communications shall be deemed to have been received on the date of such transmission, provided such date was a business day and delivered prior to 4:00 p.m. PST. Otherwise, receipt of e-mail and facsimile communications shall be deemed to have occurred on the following business day. In the case of regular mail notice, notice shall be deemed to have been delivered on the mailing date and received five (5) business days after the date of mailing.

DISTRICT: Bay Area Air Quality Management District
375 Beale Street, Suite 600
San Francisco, CA 94105
Attn: Karen Schkolnick

CONTRACTOR: Trinity Technology Group, Inc.
2015 J Street, Suite 105
Sacramento, CA 95811
Attn: Christopher Worley

14. ADDITIONAL PROVISIONS – All attachment(s) to this Contract are expressly incorporated herein by this reference and made a part hereof as though fully set forth.

15. EMPLOYEES OF CONTRACTOR

- A. CONTRACTOR shall be responsible for the cost of regular pay to its employees, as well as cost of vacation, vacation replacements, sick leave, severance pay, and pay for legal holidays.
- B. CONTRACTOR, its officers, employees, agents, or representatives shall not be considered employees or agents of DISTRICT, nor shall CONTRACTOR, its officers, employees, agents, or representatives be entitled to or eligible to participate in any benefits, privileges, or plans, given or extended by DISTRICT to its employees.

16. CONFIDENTIALITY – In order to carry out the purposes of this Contract, CONTRACTOR may require access to certain of DISTRICT's confidential information (including trade secrets, inventions, confidential know-how, confidential business information, and other information that DISTRICT

considers confidential) (collectively, "Confidential Information"). It is expressly understood and agreed that DISTRICT may designate in a conspicuous manner Confidential Information that CONTRACTOR obtains from DISTRICT, and CONTRACTOR agrees to:

- A. Observe complete confidentiality with respect to such information, including without limitation, agreeing not to disclose or otherwise permit access to such information by any other person or entity in any manner whatsoever, except that such disclosure or access shall be permitted to employees of CONTRACTOR requiring access in fulfillment of the services provided under this Contract.
- B. Ensure that CONTRACTOR's officers, employees, agents, representatives, and independent contractors are informed of the confidential nature of such information and to assure by agreement or otherwise that they are prohibited from copying or revealing, for any purpose whatsoever, the contents of such information or any part thereof, or from taking any action otherwise prohibited under this section.
- C. Not use such information or any part thereof in the performance of services to others or for the benefit of others in any form whatsoever whether gratuitously or for valuable consideration, except as permitted under this Contract.
- D. Notify DISTRICT promptly and in writing of the circumstances surrounding any possession, use, or knowledge of such information or any part thereof by any person or entity other than those authorized by this section. Take at CONTRACTOR's expense, but at DISTRICT's option and in any event under DISTRICT's control, any legal action necessary to prevent unauthorized use of such information by any third party or entity which has gained access to such information at least in part due to the fault of CONTRACTOR.
- E. Take any and all other actions necessary or desirable to assure such continued confidentiality and protection of such information during the term of this Contract and following expiration or termination of the Contract.
- F. Prevent access to such materials by a person or entity not authorized under this Contract.
- G. Establish specific procedures in order to fulfill the obligations of this section.

17. INTELLECTUAL PROPERTY RIGHTS – Title and full ownership rights to all intellectual property developed under this Contract shall at all times remain with DISTRICT, unless otherwise agreed to in writing.

18. PUBLICATION

- A. DISTRICT shall approve in writing any report or other document prepared by CONTRACTOR in connection with performance under this Contract prior to dissemination or publication of such report or document to a third party. DISTRICT may waive in writing its requirement for prior approval.
- B. Until approved by DISTRICT, any report or other document prepared by CONTRACTOR shall include on each page a conspicuous header, footer, or watermark stating "DRAFT – Not Reviewed or Approved by BAAQMD," unless DISTRICT has waived its requirement for prior approval pursuant to paragraph A of this section.
- C. Information, data, documents, or reports developed by CONTRACTOR for DISTRICT, pursuant to this Contract, shall be part of DISTRICT's public record, unless otherwise indicated. CONTRACTOR may use or publish, at its own expense, such information, provided DISTRICT approves use of such information in advance. The following acknowledgment of support and disclaimer must appear in each publication of materials, whether copyrighted or not, based upon or developed under this Contract.

“This report was prepared as a result of work sponsored, paid for, in whole or in part, by the Bay Area Air Quality Management District (District). The opinions, findings, conclusions, and recommendations are those of the author and do not necessarily represent the views of the District. The District, its officers, employees, contractors, and subcontractors make no warranty, expressed or implied, and assume no legal liability for the information in this report.”

- D. CONTRACTOR shall inform its officers, employees, and subcontractors involved in the performance of this Contract of the restrictions contained herein and shall require compliance with the above.
19. NON-DISCRIMINATION – In the performance of this Contract, CONTRACTOR shall not discriminate in its recruitment, hiring, promotion, demotion, and termination practices on the basis of race, religious creed, color, national origin, ancestry, sex, age, marital status, sexual orientation, medical condition, or physical or mental disability and shall comply with the provisions of the California Fair Employment & Housing Act (Government Code Section 12900 et seq.), the Federal Civil Rights Act of 1964 (P.L. 88-352) and all amendments thereto, and all administrative rules and regulations issued pursuant to said Acts. CONTRACTOR shall also require each subcontractor performing services in connection with this Contract to comply with this section and shall include in each contract with such subcontractor provisions to accomplish the requirements of this section.
20. PROPERTY AND SECURITY – Without limiting CONTRACTOR’S obligations with regard to security, CONTRACTOR shall comply with all the rules and regulations established by DISTRICT for access to and activity in and around DISTRICT’s premises.
21. ASSIGNMENT – No party shall assign, sell, license, or otherwise transfer any rights or obligations under this Contract to a third party without the prior written consent of the other party, and any attempt to do so shall be void upon inception.
22. WAIVER – No waiver of a breach, of failure of any condition, or of any right or remedy contained in or granted by the provisions of this Contract shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy shall be deemed a waiver of any other breach, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies. Further, the failure of a party to enforce performance by the other party of any term, covenant, or condition of this Contract, and the failure of a party to exercise any rights or remedies hereunder, shall not be deemed a waiver or relinquishment by that party to enforce future performance of any such terms, covenants, or conditions, or to exercise any future rights or remedies.
23. ATTORNEYS’ FEES – In the event any action is filed in connection with the enforcement or interpretation of this Contract, each party shall bear its own attorneys’ fees and costs.
24. FORCE MAJEURE – Neither DISTRICT nor CONTRACTOR shall be liable for or deemed to be in default for any delay or failure in performance under this Contract or interruption of services resulting, directly or indirectly, from acts of God, enemy or hostile governmental action, civil commotion, strikes, lockouts, labor disputes, fire or other casualty, judicial orders, governmental controls,

regulations or restrictions, inability to obtain labor or materials or reasonable substitutes for labor or materials necessary for performance of the services, or other causes, except financial, that are beyond the reasonable control of DISTRICT or CONTRACTOR, for a period of time equal to the period of such force majeure event, provided that the party failing to perform notifies the other party within fifteen calendar days of discovery of the force majeure event, and provided further that that party takes all reasonable action to mitigate the damages resulting from the failure to perform. Notwithstanding the above, if the cause of the force majeure event is due to party's own action or inaction, then such cause shall not excuse that party from performance under this Contract.

25. SEVERABILITY – If a court of competent jurisdiction holds any provision of this Contract to be illegal, unenforceable or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them will not be affected.
26. HEADINGS – Headings on the sections and paragraphs of this Contract are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Contract.
27. COUNTERPARTS/FACSIMILES/SCANS – This Contract may be executed and delivered in any number of counterparts, each of which, when executed and delivered, shall be deemed an original, and all of which together shall constitute the same contract. The parties may rely upon a facsimile copy or scanned copy of any party's signature as an original for all purposes.
28. GOVERNING LAW – Any dispute that arises under or relates to this Contract shall be governed by California law, excluding any laws that direct the application of another jurisdiction's laws. Venue for resolution of any dispute that arises under or relates to this Contract, including mediation, shall be San Francisco, California.
29. ENTIRE CONTRACT AND MODIFICATION – This Contract represents the final, complete, and exclusive statement of the agreement between the parties related to CONTRACTOR providing services to DISTRICT and supersedes all prior and contemporaneous understandings and agreements of the parties. No party has been induced to enter into this Contract by, nor is any party relying upon, any representation or warranty outside those expressly set forth herein. This Contract may only be amended by mutual agreement of the parties in writing and signed by both parties.
30. SURVIVAL OF TERMS – The provisions of sections 8 (Indemnification), 16 (Confidentiality), 17 (Intellectual Property Rights), and 18 (Publication) shall survive the expiration or termination of this Contract.

IN WITNESS WHEREOF, the parties to this Contract have caused this Contract to be duly executed on their behalf by their authorized representatives.

BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

TRINITY TECHNOLOGY GROUP, INC.

By: _____
Veronica Eady
Acting Executive Officer/APCO

By: _____
Christopher Worley
Chief Operating Officer

Date: _____

Date: _____

Approved as to form:
District Counsel

By: _____
Alexander Crockett
District Counsel

Attachment A
General Description of Services

Pursuant to Task Orders issued under this Contract, CONTRACTOR shall provide analysis, design and development services for the DISTRICT's Woodsmoke Reduction Grant Management Systems, Carl Moyer Program Online Application Tool and Goods Movement Program Online Application Tool. CONTRACTOR will also perform maintenance and support, along with implementing enhancements to further improve the user experience with these systems.

DRAFT

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson John J. Bauters and Members
of the Board of Directors

From: Sharon L. Landers
Interim Executive Officer/APCO

Date: September 21, 2022

Re: Authorization to Execute Contract Extensions for My Air Online (MAO) Software
Development

RECOMMENDED ACTION

Staff recommends the Board of Directors authorize the Interim Executive Officer/APCO to execute contract amendments with the following vendors in the amounts listed below:

Vendor	Amount	Service Description
C&G Technology Services	\$406,838	Software quality assurance and business analyst services for the permitting and compliance system.
Claytablet	\$20,250	Language translation software for transmission, editing and managing content.
Clearsparc	\$548,733	Software development services for the permitting and compliance system.
Cylogy	\$294,206	Website content management system integration, customization, operations, and support.
Dell	\$195,968	Microsoft value added reseller of Azure cloud infrastructure services.
ITDependz	\$512,897	Software development, business analysis and design services for the permitting and compliance system.
Malinda Lai	\$28,695	Website content management system and infrastructure support.
Salesforce	\$57,699	Salesforce acquired ExactTarget automation and analytics software for email, mobile and online communications and rebranded as Marketing Cloud.
Sitecore	\$55,333	Web Content Management (WCM) system for the District's

		public website.
Support Focus	\$203,316	Data extract, transform and load services for legacy systems.
TOTAL	\$2,323,935	

BACKGROUND

As is its practice, Air District staff recommends amendments for existing vendor contracts biannually to assist with software development and website support to meet the My Air Online fiscal year end 2023 goals.

DISCUSSION

The My Air Online Office is composed of the permit billing system, online services, and the unified digital payment process. These systems and services abide by a continuous improvement process whereby functionality is maintained and operated while new features are implemented to meet evolving business requirements.

To continue to support system improvements, staff plan to focus on the following activities for the following six months:

- Request for qualifications, periodic reevaluation of professional service vendors
- Legacy facility migration (forecasted to be 80% complete)
- Prime internal combustion engine device web form
- Combustion device web form
- Permitted graphic arts web form
- Abatement with integrated combustion device web form
- Material balance calculations
- Agenda Management System website integration
- Event notifications improved automation
- Bay Area Clean Air Foundation Website
- Web Content Management System upgrade
- Mobile device-based (responsive) forecast map
- Email and text notification subscription center
- Language translation (ongoing)
- Ongoing website support and maintenance

Staff recommends the continued use of software and professional service providers proven familiar with Air District systems and processes. The District has successfully collaborated with Cylogy and Malinda Lai in the design, development, and website content management system in prior technical engagements. The District has also successfully collaborated with C&G Technology Services, Clearsparc, Inc., ITDependz, and Support Focus in prior design, software development and quality assurance engagements. In addition, the District has successfully invested in software customization and integration with Salesforce, Claytablet, Sitecore, and Microsoft Azure cloud services (via Dell).

Vendor	Contract	Procurement Method
C&G Technology Services	FYE 2020	Request for Qualifications process in collaboration with the Districts Business Services Division.
Claytablet	FYE 2015	Through an industry analysis and an informal bid process, staff determined that only ClayTablet provides the services necessary to meet needs of the Air District. Single Source Memo.
Clearsparc	FYE 2020	Request for Qualifications process in collaboration with the Districts Business Services Division.
Cylogy	FYE 2020	Request for Qualifications process in collaboration with the Districts Business Services Division.
Dell	FYE 2020	Request for Quotations process in collaboration with Information and Business Services Division.
ITDependz	FYE 2020	Request for Qualifications process in conjunction with the Districts Business Services Division.
Malinda Lai	FYE 2006	Procurement occurred prior to the tenure of the web current team.
Salesforce	FYE 2012	Product was selected through an industry analysis and informal bid process. Staff considered services from three different vendors and determined that only the Salesforce / ExactTarget product was able to meet needs of the Air District.
Sitecore	FYE 2019	Request for Qualifications process in conjunction with the Districts Business Services Division.
Support Focus	FYE 2020	Request for Qualifications process in conjunction with the Districts Business Services Division.

BUDGET CONSIDERATION/FINANCIAL IMPACT

Funds for the contract recommendations are included in 725,309 and 125 program budgets for the fiscal year end of 2023.

Respectfully submitted,

Sharon L. Landers
Interim Executive Officer/APCO

Prepared by: Blair Adams
Reviewed by: Damian Breen

ATTACHMENTS:

None

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairperson John J. Bauters and Members
of the Board of Directors

From: Sharon L. Landers
Interim Executive Officer/APCO

Date: September 21, 2022

Re: Authorization to Execute a Contract Amendment with Van Dermynen Makus Law
Corporation

RECOMMENDED ACTION

Recommend the Board of Directors authorize the Interim Executive Officer/APCO to amend the contract with Van Dermynen Makus Law Corporation increasing the maximum dollar amount of the contract by \$100,000 -- from \$250,000 to \$350,000 -- for legal services related to workplace investigations.

BACKGROUND

From time to time, the Air District has the need to engage an outside law firm for the purpose of conducting workplace investigations. Outside law firms are utilized for this type of work instead of in-house counsel because of the specialization required in personnel matters.

DISCUSSION

Van Dermynen Makus has previously worked with the Air District and is familiar with the Air District's organizational structure, operations, and policies. Van Dermynen Makus specializes in workplace investigations, has experience working with public sector employers, and has successfully performed work in a timely and efficient manner for the Air District. Because of the additional cost required to familiarize a new vendor with the Air District's organizational structure, operations and policies, and because Van Dermynen has performed successfully in the past, this Amendment is requested as a no-bid contract amendment. Amending this contract will allow the Air District to engage proven investigators from Van Dermynen Makus on any current matters, and as the need arises in the future.

BUDGET CONSIDERATION/FINANCIAL IMPACT

These funds are included in the Fiscal Year Ending 2023 Program 104 budget.

Respectfully submitted,

Sharon L. Landers
Interim Executive Officer/APCO

Prepared by: Alexander G. Crockett

ATTACHMENTS:

1. Original Executed Van Dermyden Makus Law Corp. Contract No. 2021.149
2. Executed Van Dermyden Makus Law Corp. Contract No. 2021.149 - Amendment 1
3. Executed Van Dermyden Makus Law Corp. Contract No. 2021.149 - Amendment 2
4. Draft Van Dermyden Makus Law Corp. Contract No. 2021.149 - Amendment 3

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

PROFESSIONAL SERVICES CONTRACT

CONTRACT NO. 2021.149

1. **PARTIES** – The parties to this Contract (“Contract”) are the Bay Area Air Quality Management District (“DISTRICT”) whose address is 375 Beale Street, Suite 600, San Francisco, CA 94105, and **Van Dermeyden Makus Law Corporation** (“CONTRACTOR”) whose address is 2520 Venture Oaks Way, Suite 450, Sacramento, CA 95833.
2. **RECITALS**
 - A. DISTRICT is the local agency with primary responsibility for regulating stationary source air pollution in the Bay Area Air Quality Management District in the State of California. DISTRICT is authorized to enter into this Contract under California Health and Safety Code Section 40701. DISTRICT desires to contract with CONTRACTOR for services described in the Scope of Work, attached hereto as Attachment A and made a part hereof by this reference. DISTRICT is entering into this Contract based on CONTRACTOR’s stated qualifications to perform the services.
 - B. All parties to this Contract have had the opportunity to have this contract reviewed by their attorney.
3. **PERFORMANCE REQUIREMENTS**
 - A. CONTRACTOR is authorized to do business in the State of California. CONTRACTOR attests that it is in good tax standing with federal and state tax authorities.
 - B. CONTRACTOR agrees to obtain any and all required licenses, permits, and all other appropriate legal authorizations from all applicable federal, state and local jurisdictions and pay all applicable fees.
 - C. CONTRACTOR shall comply with all laws and regulations that apply to its performance under this Contract, including any requirements to disclose potential conflicts of interest under DISTRICT’s Conflict of Interest Code.
 - D. CONTRACTOR shall not engage in any performance of work during the term of this contract that is in direct or indirect conflict with duties and responsibilities set forth in the Scope of Work.
 - E. CONTRACTOR shall exercise the degree of skill and care customarily required by accepted professional practices and procedures.
 - F. CONTRACTOR shall ensure that any subcontractors, employees and agents performing under this Contract comply with the performance standards set forth in paragraph D above.
4. **TERM** – The term of this Contract is from August 1, 2021 to August 1, 2022, unless further extended by amendment of this Contract in writing, or terminated earlier. CONTRACTOR shall not submit any invoice for services performed under this Contract until the Contract is fully executed.
5. **TERMINATION**
 - A. The DISTRICT may terminate this Contract at any time, at will, and without specifying any reason, by notifying CONTRACTOR in writing. The notice of termination shall specify the effective date of termination, which shall be no less than thirty (30) calendar days from the date of delivery of the notice of termination, and shall be delivered in accordance with the provisions

of section 10 below. Immediately upon receipt of the notice of termination, CONTRACTOR shall cease all work under this Contract, except such work as is specified in the notice of termination. CONTRACTOR shall deliver a final invoice for all remaining work performed but not billed, including any work specified in the termination notice, on or before ten (10) business days following the termination date.

- B. Either party may terminate this Contract for breach by the other party.
- i) Failure to perform any agreement or obligation contained in this Contract or failure to perform the services in a satisfactory manner shall constitute a breach of the Contract.
 - ii) The non-breaching party may terminate the Contract by delivery of a written notice of breach. The notice of breach shall specify the date of termination, which shall be no earlier than ten (10) business days from delivery of the notice of breach. In the alternative, at its sole discretion, the non-breaching party may require the breaching party to cure the breach. The notice of breach shall specify the nature of the breach and the date by which such breach must be cured.
 - iii) If CONTRACTOR fails to perform any obligation under this Contract, DISTRICT at its sole discretion, may perform, or cause the performance, of the obligation itself. In that event, DISTRICT shall deduct the costs to perform such obligation and any other costs to cure the breach from the payment otherwise due to CONTRACTOR for work performed under this Contract. DISTRICT's performance hereunder shall not be deemed a waiver or release of any obligation of, or default by, CONTRACTOR under this Contract.
 - iv) The notice of breach shall be provided in accordance with the notice requirements set forth in section 10.
 - v) The non-breaching party reserves all rights under law and equity to enforce this Contract and recover any damages.

6. INSURANCE

- A. CONTRACTOR shall maintain the following insurance:
- i) Workers' compensation and employers' liability insurance as required by California law or other applicable statutory requirements.
 - ii) Occurrence-based commercial general liability insurance or equivalent form with a limit of not less than one million dollars (\$1,000,000) each occurrence. Such insurance shall include DISTRICT and its officers, agents, and employees as additional insureds and shall be primary with respect to any insurance maintained by DISTRICT.
 - iii) Business automobile liability insurance or equivalent form with a limit of not less than one million dollars (\$1,000,000) each accident. Such insurance shall include coverage for owned, hired, and non-owned vehicles. If CONTRACTOR is a sole proprietor, CONTRACTOR may meet this insurance requirement with personal automobile liability insurance carrying a business use endorsement or by demonstrating to the satisfaction of DISTRICT that business use is covered under the CONTRACTOR's personal automobile liability insurance. A CONTRACTOR using only rental vehicles in performing work under this Contract may meet this insurance requirement by purchasing automobile liability insurance in the required coverage amount from the rental agency.
 - iv) Professional liability insurance with limits not less than one million dollars (\$1,000,000) each claim.
- B. All insurance shall be placed with insurers acceptable to DISTRICT.

- C. Prior to commencement of work under this Contract, CONTRACTOR shall furnish properly-executed certificates of insurance for all required insurance. Upon request by DISTRICT, CONTRACTOR shall provide a complete copy of any required insurance policy. CONTRACTOR shall notify DISTRICT in writing thirty (30) days prior to cancellation or modification of any required insurance policy. Any such modifications are subject to pre-approval by DISTRICT.
- D. If CONTRACTOR fails to maintain the required insurance coverage set forth above, DISTRICT reserves the right either to purchase such additional insurance and to deduct the cost thereof from any payments owed to CONTRACTOR or to terminate this Contract for breach.

7. INDEMNIFICATION

- A. CONTRACTOR shall indemnify and hold DISTRICT, its officers, employees and agents harmless from and against any and all liability, loss, expense, including reasonable attorneys' fees, or claims for injury or damages arising out of the performance of this Contract but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of CONTRACTOR, its officers, agents, or employees.
- B. DISTRICT shall indemnify and hold CONTRACTOR, its officers, employees and agents harmless from and against any and all liability, loss, expense, including reasonable attorneys' fee, or claims for injury or damages arising out of the performance of this Contract but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of DISTRICT, its officers, agents, or employees.

8. PAYMENT

- A. DISTRICT shall pay CONTRACTOR for services in accordance with the terms set forth in the Cost Schedule, which is attached hereto as Attachment B and incorporated herein by this reference.
- B. CONTRACTOR shall submit invoice(s) to DISTRICT for services performed. Each invoice shall specify the total cost of the services for which the invoice is submitted, shall reference tasks shown in the Scope of Work, the hours associated with same, or percentage completion thereof, and the amount of charge claimed, and, as appropriate, shall list any charges for equipment, material, supplies, travel, and subcontractors' services.
- C. DISTRICT's payment of invoices shall be subject to the following limitations and requirements:
 - i) Each invoice, including supporting documentation, shall be prepared in duplicate on CONTRACTOR's letterhead; shall list DISTRICT's contract number, the period covered by the invoice, and the CONTRACTOR's Social Security Number or Federal Employer Identification Number; and shall be submitted to: Bay Area Air Quality Management District, 375 Beale Street, Suite 600, San Francisco, CA 94105, Attn: John Chiladakis.
 - ii) DISTRICT shall not pay interest, fees, handling charges, or the cost of money on the Contract.
 - iii) DISTRICT shall pay CONTRACTOR within thirty (30) calendar days after approval by DISTRICT of an itemized invoice.
- D. The total amount for which DISTRICT may be held liable for the performance of services specified in this Contract shall not exceed \$95,000.

- 9. DISPUTE RESOLUTION – A party that disputes a notice of breach must first seek mediation to resolve the dispute in accordance with the provisions set forth below.

- A. Upon receipt of a notice of breach of contract, the party may submit a demand for mediation to resolve whether or not a breach occurred. The party must state the basis of the dispute and deliver the demand within ten (10) business days of the date of receipt of the notice of breach.
 - B. The mediation shall take place at DISTRICT's office at 375 Beale Street, Suite 600, San Francisco, or at such other place as may be mutually agreed upon by the parties and the mediator.
 - C. The parties shall make good faith efforts to hold the mediation within thirty (30) days after receipt of the demand for mediation.
 - D. Each party shall bear its own mediation costs.
 - E. In the event the parties are unable to resolve the dispute, either party may file an action in a court of competent jurisdiction to enforce the Contract.
 - F. Maximum recovery under this section shall be limited to \$95,000. The mediation costs shall not reduce the maximum amount recoverable under this section.
10. NOTICES – All notices that are required under this Contract shall be provided in the manner set forth herein, unless specified otherwise. Notice to a party shall be delivered to the attention of the person listed below, or to such other person or persons as may hereafter be designated by that party in writing. Notice shall be in writing sent by e-mail, facsimile, or regular first class mail. In the case of e-mail and facsimile communications, valid notice shall be deemed to have been delivered upon sending, provided the sender obtained an electronic confirmation of delivery. E-mail and facsimile communications shall be deemed to have been received on the date of such transmission, provided such date was a business day and delivered prior to 4:00 p.m. PST. Otherwise, receipt of e-mail and facsimile communications shall be deemed to have occurred on the following business day. In the case of regular mail notice, notice shall be deemed to have been delivered on the mailing date and received five (5) business days after the date of mailing.

DISTRICT: Bay Area Air Quality Management District
375 Beale Street, Suite 600
San Francisco, CA 94105
Attn: John Chiladakis, Acting Chief Administrative Officer

CONTRACTOR: Van Dermeyden Makus Law Corporation
2520 Venture Oaks Way, Suite 450
Sacramento, CA 95833
Attn: Nikki Hall, Partner

11. ADDITIONAL PROVISIONS – All attachment(s) to this Contract are expressly incorporated herein by this reference and made a part hereof as though fully set forth.
12. EMPLOYEES OF CONTRACTOR
- A. CONTRACTOR shall be responsible for the cost of regular pay to its employees, as well as cost of vacation, vacation replacements, sick leave, severance pay, and pay for legal holidays.
 - B. CONTRACTOR, its officers, employees, agents, or representatives shall not be considered employees or agents of DISTRICT, nor shall CONTRACTOR, its officers, employees, agents, or representatives be entitled to or eligible to participate in any benefits, privileges, or plans, given or extended by DISTRICT to its employees.
 - C. DISTRICT reserves the right to review the credentials to perform the work of any of CONTRACTOR's employees assigned herein and to disapprove CONTRACTOR's assignments.

CONTRACTOR warrants that it will not employ any subcontractor(s) without prior written approval from DISTRICT.

13. [RESERVED]

14. INTELLECTUAL PROPERTY RIGHTS – Title and full ownership rights to all intellectual property developed under this Contract shall at all times remain with DISTRICT, unless otherwise agreed to in writing.

15. [RESERVED]

16. NON-DISCRIMINATION – In the performance of this Contract, CONTRACTOR shall not discriminate in its recruitment, hiring, promotion, demotion, and termination practices on the basis of race, religious creed, color, national origin, ancestry, sex, age, marital status, sexual orientation, medical condition, or physical or mental disability and shall comply with the provisions of the California Fair Employment & Housing Act (Government Code Section 12900 et seq.), the Federal Civil Rights Act of 1964 (P.L. 88-352) and all amendments thereto, and all administrative rules and regulations issued pursuant to said Acts. CONTRACTOR shall also require each subcontractor performing work in connection with this Contract to comply with this section and shall include in each contract with such subcontractor provisions to accomplish the requirements of this section.

17. PROPERTY AND SECURITY – Without limiting CONTRACTOR'S obligations with regard to security, CONTRACTOR shall comply with all the rules and regulations established by DISTRICT for access to and activity in and around DISTRICT's premises.

18. ASSIGNMENT – No party shall assign, sell, license, or otherwise transfer any rights or obligations under this Contract to a third party without the prior written consent of the other party, and any attempt to do so shall be void upon inception.

19. WAIVER – No waiver of a breach, of failure of any condition, or of any right or remedy contained in or granted by the provisions of this Contract shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy shall be deemed a waiver of any other breach, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies. Further, the failure of a party to enforce performance by the other party of any term, covenant, or condition of this Contract, and the failure of a party to exercise any rights or remedies hereunder, shall not be deemed a waiver or relinquishment by that party to enforce future performance of any such terms, covenants, or conditions, or to exercise any future rights or remedies.

20. ATTORNEYS' FEES – In the event any action is filed in connection with the enforcement or interpretation of this Contract, each party shall bear its own attorneys' fees and costs.

21. FORCE MAJEURE – Neither DISTRICT nor CONTRACTOR shall be liable for or deemed to be in default for any delay or failure in performance under this Contract or interruption of services resulting, directly or indirectly, from acts of God, enemy or hostile governmental action, civil commotion, strikes, lockouts, labor disputes, fire or other casualty, judicial orders, governmental controls, regulations or restrictions, inability to obtain labor or materials or reasonable substitutes for labor or materials necessary for performance of the services, or other causes, except financial, that are

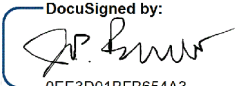
beyond the reasonable control of DISTRICT or CONTRACTOR, for a period of time equal to the period of such force majeure event, provided that the party failing to perform notifies the other party within fifteen calendar days of discovery of the force majeure event, and provided further that that party takes all reasonable action to mitigate the damages resulting from the failure to perform. Notwithstanding the above, if the cause of the force majeure event is due to party's own action or inaction, then such cause shall not excuse that party from performance under this Contract.

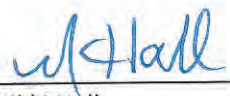
22. SEVERABILITY – If a court of competent jurisdiction holds any provision of this Contract to be illegal, unenforceable or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them will not be affected.
23. HEADINGS – Headings on the sections and paragraphs of this Contract are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Contract.
24. COUNTERPARTS/FACSIMILES/SCANS – This Contract may be executed and delivered in any number of counterparts, each of which, when executed and delivered, shall be deemed an original, and all of which together shall constitute the same contract. The parties may rely upon a facsimile copy or scanned copy of any party's signature as an original for all purposes.
25. GOVERNING LAW – Any dispute that arises under or relates to this Contract shall be governed by California law, excluding any laws that direct the application of another jurisdiction's laws. Venue for resolution of any dispute that arises under or relates to this Contract, including mediation, shall be San Francisco, California.
26. ENTIRE CONTRACT AND MODIFICATION – This Contract represents the final, complete, and exclusive statement of the agreement between the parties related to CONTRACTOR providing services to DISTRICT and supersedes all prior and contemporaneous understandings and agreements of the parties. No party has been induced to enter into this Contract by, nor is any party relying upon, any representation or warranty outside those expressly set forth herein. This Contract may only be amended by mutual agreement of the parties in writing and signed by both parties.
27. SURVIVAL OF TERMS – The provisions of sections 7 (Indemnification) and 14 (Intellectual Property Rights) shall survive the expiration or termination of this Contract.

IN WITNESS WHEREOF, the parties to this Contract have caused this Contract to be duly executed on their behalf by their authorized representatives.

BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

VAN DERMYDEN MAKUS LAW CORPORATION


By: 
DocuSigned by:
0EE3D01BFB654A3...
Jack P. Broadbent
Executive Officer/APCO

By: 
Nikki Hall
Partner

Date: 8/10/2021

Date: 8/5/21

Approved as to form:
District Counsel

By: 
DocuSigned by:
150A910F987E4D3...
Adan Schwartz
Acting, District Counsel

ATTACHMENT A

SCOPE OF WORK

CONTRACTOR shall perform legal services for the DISTRICT in the form of independent, impartial workplace investigations. CONTRACTOR will perform these duties as an attorney at law for the purpose of facilitating the rendering of legal advice to the DISTRICT by its counsel. CONTRACTOR's communications, work product, and the final report will be protected from disclosure pursuant to the attorney-client privilege unless waived by the DISTRICT.

ATTACHMENT B**COST SCHEDULE**

Fees and Costs. DISTRICT agrees to pay CONTRACTOR at the following rates for the work described in Attachment A, Scope of Work. CONTRACTOR will submit invoices for all services in accordance with Section 8, "Payment", of this Contract.

Staff	Discounted Hourly Rates for Public Entities
Senior Partner	\$460
Partner	\$385
Senior Associate	\$310
Associate	\$275
Law Clerk	\$185
Paralegal	\$140

Time charged will include, for example, time spent preparing for and interviewing witnesses, reviewing documents, writing the report of the findings, and performing any necessary research. The time charged will also include time spent on telephone calls and email correspondence relating to the investigation. Time spent traveling to and from interviews will also be billed.

CONTRACTOR may incur various costs and expenses in performing services under this Contract. DISTRICT agrees to pay for all costs and expenses, in addition to the hourly fee. These costs include mileage reimbursement at the federal standard mileage rate in effect for the year, bridge tolls, parking fees, messenger and other special delivery fees, and similar charges.

Fees and costs for the investigation will not exceed \$95,000. This limitation only applies to the fees and cost of the investigation itself, not time and expenses related to any post-investigative work.

Compensation for Post-Investigative Work. This engagement shall be considered concluded after CONTRACTOR has provided a final investigation report in this matter. After the conclusion of the engagement, should a need arise for CONTRACTOR to respond to any subpoena or discovery, to provide testimony at deposition, trial, arbitration, or at an administrative hearing, or to otherwise perform services with respect to any matter relating to or arising out of the investigation, DISTRICT shall compensate CONTRACTOR at its then applicable rates for time expended, including all required preparation time.

Total cost of Contract not to exceed: \$95,000.

AMENDMENT NO. 1 TO
BAY AREA AIR QUALITY MANAGEMENT DISTRICT

CONTRACT NO. 2021.149

This amendment to the above-entitled contract ("Contract Amendment") is dated, for reference purposes only, November 18, 2021.

RECITALS:

1. The Bay Area Air Quality Management District ("DISTRICT") and **Van Dermeyden Makus Law Corporation** ("CONTRACTOR") (hereinafter referred to as the "PARTIES") entered into the above-entitled contract for independent and impartial workplace investigations (the "Contract"), which Contract was executed on behalf of CONTRACTOR on August 5, 2021 and on behalf of DISTRICT on August 10, 2021.
2. The PARTIES seek to amend the total maximum cost of the Contract because the DISTRICT seeks to have CONTRACTOR continue to provide the services prescribed in the Contract, and CONTRACTOR desires to continue to provide those services, up to the new total maximum cost.
3. In accordance with Section 26 of the Contract, DISTRICT and CONTRACTOR desire to amend the above-entitled Contract as follows:

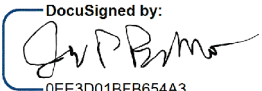
TERMS AND CONDITIONS OF CONTRACT AMENDMENT:

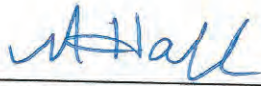
1. By this Contract Amendment, DISTRICT and CONTRACTOR amend Paragraph D of Section 8, "Payment," of the Contract to replace "\$95,000" with "\$250,000."
2. By this Contract Amendment, DISTRICT and CONTRACTOR amend Paragraph F of Section 9, "Dispute Resolution," of the Contract to replace "\$95,000" with "\$250,000."
3. By this Contract Amendment, DISTRICT and CONTRACTOR amend Attachment B, Cost Schedule of the Contract by replacing "\$95,000" where it appears with "\$250,000."
4. DISTRICT and CONTRACTOR agree that all other terms and conditions of the Contract shall remain in full force and effect.

IN WITNESS WHEREOF, the PARTIES have caused this Contract Amendment to be duly executed on their behalf by their authorized representatives.

BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

VAN DERMYDEN MAKUS LAW
CORPORATION

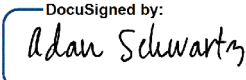
By: 
DocuSigned by:
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Jack P. Broadbent
Executive Officer/APCO

By: 
Nikki Hall
Partner

Date: 11/24/2021

Date: 11/19/21

Approved as to form:
District Counsel

By: 
DocuSigned by:
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Adan Schwartz
Acting District Counsel

AMENDMENT NO. 2 TO
BAY AREA AIR QUALITY MANAGEMENT DISTRICT
CONTRACT NO. 2021.149

This amendment to the above-entitled contract ("Contract Amendment") is dated, for reference purposes only, June 1, 2022.

RECITALS:

1. The Bay Area Air Quality Management District ("DISTRICT") and **Van Dermeyden Makus Law Corporation** ("CONTRACTOR") (hereinafter referred to as the "PARTIES") entered into the above-entitled contract for independent and impartial workplace investigations (the "Contract"), which Contract was executed on behalf of CONTRACTOR on August 5, 2021 and on behalf of DISTRICT on August 10, 2021.
2. The PARTIES entered into Amendment No. 1 to the Contract, dated November 18, 2021, for reference purposes only, to amend the total maximum cost of the Contract.
3. The PARTIES seek to amend the term of the Contract because the DISTRICT seeks to have CONTRACTOR continue to provide the services prescribed in the Contract, and CONTRACTOR desires to continue to provide those services, up to the new term end date.
4. In accordance with Section 26 of the Contract, DISTRICT and CONTRACTOR desire to amend the above-entitled Contract as follows:

TERMS AND CONDITIONS OF CONTRACT AMENDMENT:


1. By this Contract Amendment, DISTRICT and CONTRACTOR amend Section 4, "Term." The term of the Contract shall be extended so that the termination date of the Contract is now August 1, 2023.
2. DISTRICT and CONTRACTOR agree that all other terms and conditions of the Contract shall remain in full force and effect.

IN WITNESS WHEREOF, the PARTIES have caused this Contract Amendment to be duly executed on their behalf by their authorized representatives.

BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

VAN DERMYDEN MAKUS LAW
CORPORATION

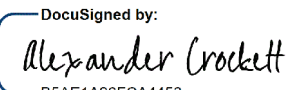
By:  DocuSigned by:
B447A99E2C334D2...
Sharon Landers
Interim Executive Officer/APCO

By: 
Nikki Hall
Partner

Date: 7/14/2022

Date: June 2, 2022

Approved as to form:
District Counsel

By:  DocuSigned by:
B5AE1A26FCA4453...
Alexander G. Crockett
District Counsel

AMENDMENT NO. 3 TO
BAY AREA AIR QUALITY MANAGEMENT DISTRICT
CONTRACT NO. 2021.149

This amendment to the above-entitled contract ("Contract Amendment") is dated, for reference purposes only, September 21, 2022.

RECITALS:

1. The Bay Area Air Quality Management District ("DISTRICT") and **Van Dermynen Makus Law Corporation** ("CONTRACTOR") (hereinafter referred to as the "PARTIES") entered into the above-entitled contract for independent and impartial workplace investigations (the "Contract"), which Contract was executed on behalf of CONTRACTOR on August 5, 2021 and on behalf of DISTRICT on August 10, 2021.
2. The PARTIES entered into Amendment No. 1 to the Contract, dated November 18, 2021 (for reference purposes only), to increase the total maximum cost of the Contract from \$95,000 to \$250,000.
3. The PARTIES entered into Amendment No. 2 to the Contract, dated June 1, 2022 (for reference purposes only), to extend the Term of the Contract.
4. The PARTIES now seek to amend the total maximum cost of the Contract because the DISTRICT seeks to have CONTRACTOR continue to provide the services prescribed in the Contract, and CONTRACTOR desires to continue to provide those services, up to the new total maximum cost.
5. In accordance with Section 26 of the Contract, DISTRICT and CONTRACTOR desire to amend the above-entitled Contract as follows:

TERMS AND CONDITIONS OF CONTRACT AMENDMENT:

1. By this Contract Amendment, DISTRICT and CONTRACTOR amend Paragraph D of Section 8, "Payment," of the Contract to replace "\$250,000," which is the effective limit pursuant to Amendment No. 1, with "\$350,000."
2. By this Contract Amendment, DISTRICT and CONTRACTOR amend Paragraph F of Section 9, "Dispute Resolution," of the Contract to replace "\$250,000," which is the effective limit pursuant to Amendment No. 1, with "\$350,000."

3. By this Contract Amendment, DISTRICT and CONTRACTOR amend Attachment B, Cost Schedule of the Contract by replacing "\$250,000," which is the effective limit pursuant to Amendment No. 1, with "\$350,000."
2. DISTRICT and CONTRACTOR agree that all other terms and conditions of the Contract shall remain in full force and effect.

IN WITNESS WHEREOF, the PARTIES have caused this Contract Amendment to be duly executed on their behalf by their authorized representatives.

BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

VAN DERMIDEN MAKUS LAW
CORPORATION

By: _____

Sharon Landers
Interim Executive Officer/APCO

By: _____

Nikki Hall
Partner

Date: _____

Date: _____

Approved as to form:
District Counsel

By: _____

Alexander G. Crockett
District Counsel

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson John J. Bauters and Members
of the Board of Directors

From: Sharon L. Landers
Interim Executive Officer/APCO

Date: September 21, 2022

Re: Report of the Community Advisory Council Meeting of September 8, 2022

RECOMMENDED ACTION

None; receive and file.

BACKGROUND

None.

DISCUSSION

The Air District's Community Advisory Council on September 8, 2022 and approved the Minutes of June 30, 2022. This meeting was conducted under procedures authorized by Assembly Bill 361. Members of the Council participated by teleconference.

The Council then received the presentation *Approval of Panelists to Interview the Air District's Air Pollution Control Officer Candidates*, given by Board Chairperson, John J. Bauters. The Board had invited up to seven Council members to serve on a panel to interview the Executive Officer/Air Pollution Control Officer candidates on November 9, 2022. In response, the Council's three Co-Chairs and four additional Councilmembers expressed interest to participate in the interview panel. Two additional Councilmembers volunteered to serve as alternate panelists, should those seven Councilmembers not be available to interview the candidates on November 9. The Council voted to **approve** the following list of Councilmembers to participate in the Executive Officer/Air Pollution Control Officer interview panel: Co-Chairs M. Gordon, K. Jefferson, and L. Washington; and Councilmembers A. Harrison, H. Mendoza, C. Reed, and K. Ruano-Hernandez.

The Council then received the presentation *Selection of an Environmental Justice Policy Ad Hoc Committee* from Suma Peesapati, Environmental Justice and Community Engagement Officer, and Vernice Miller-Travis, Executive Vice President for the Environmental Justice and Social Justice Metropolitan Group. The presentation asked the Council to select members for an ad-hoc committee to develop an Environmental Justice policy for consideration by the Board's

Community, Equity, Health, and Justice Committee. A concern of several Councilmembers was that no Board members would be members of this new ad hoc committee, perpetuating the perception of a lack of collaboration between the Board and Community Advisory Council. The Council voted to **approve** the following list of Councilmembers to become members of the ad-hoc committee to develop an Environmental Justice policy: Co-Chairs K. Jefferson, and L. Washington; and Councilmembers A. Harrison, H. Mendoza, R. Molina, K. Ruano-Hernandez, V. Saena, and K. Szutu.

The Council then received the presentation *Revised Community Advisory Council Meeting Land Acknowledgement or Alternative Statement In Lieu of Pledge of Allegiance* given by Councilmembers K. Ruano-Hernandez and K. Szutu. At a previous meeting, the Council had been asked to consider accepting a land acknowledgement statement that would replace the Pledge of Allegiance, however, additional time was requested to continue finalizing the language. At the September 8th meeting, two options were brought before the Council: 1) a Land Acknowledgement (Option 1) would recognize and pay respect to the Indigenous People as traditional stewards of this land and the enduring relationship that exists between Indigenous Peoples and their traditional territories, also recognizing the challenges that People of Color and other disadvantaged communities have endured in this country as a result of white supremacy; and an Alternative Mission and Equity statement (Option 2) that focuses on Council's commitments and objectives, which could serve to guide the Council's discussion and work. A motion to accept the revised land acknowledgement and have it read at the beginning of each Council meeting, **failed**. The Council **approved** the following subsequent motion:

1) **Approve** the revised land acknowledgment and reference it within the Council's bylaws, on Council agendas, and on the Council's webpage; and 2) **Consider the approval** of the proposed Mission & Equity statement after it has been revised by the Council's Governance Ad Hoc Committee (to be later referenced within the Council's bylaws, on Council agendas, and on the Council's webpage.)

The Council then received the staff presentation *Air District's Services to Address Community-Identified Air Quality Concerns*.

The Council then received the staff presentation *Update on Air Quality Concerns at the Alice Griffith Housing Development in Bayview-Hunters Point*.

Updates from the Council's Work Plan and Governance Ad Hoc Committees were continued until the next meeting, due to the late hour.

The next meeting of the Community Advisory Council will be held at the Call of the Co-Chairs. This concludes the Summary Report of the Community Advisory Council.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Sharon L. Landers
Interim Executive Officer/APCO

Prepared by: Marcy Hiratzka
Reviewed by: Vanessa Johnson

ATTACHMENTS:

1. Community Advisory Council September 8, 2022 Meeting Memorandums

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Members of the Community Advisory Council

From: Sharon L. Landers
Interim Executive Officer/APCO

Date: September 8, 2022

Re: Selection of an Environmental Justice Policy Ad Hoc Committee

RECOMMENDED ACTION

Select Council members for an ad-hoc committee to develop an Environmental Justice (EJ) Policy for consideration by the Community, Equity, Health, and Justice Committee of the Board.

BACKGROUND

This is an action item for the Council to create the Environmental Justice Policy Ad Hoc Committee and select members to discuss and develop an Environmental Justice policy. The Environmental Justice Policy Ad Hoc Committee is anticipated to convene from October 2022 to October 2023.

DISCUSSION

The Council will have the opportunity to vote to establish an ad hoc committee to develop an Environmental Justice policy for consideration by the Community, Equity, Health, and Justice Committee of the Board. The Council will develop an Environmental Justice policy the Air District can implement to promote equity and Environmental Justice in all of the agency's work. In compliance with the Brown Act, the Council will be able to select up to 8 Council members to serve on a workplan ad hoc committee.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None. Stipends for the work of the Community Advisory Council members selected to participate in the ad-hoc committee are included in the fiscal year ending 2022 and fiscal year ending 2023 budgets.

Respectfully submitted,

Sharon L. Landers
Interim Executive Officer/APCO

Prepared by: Lisa Flores
Reviewed by: Veronica Eady

ATTACHMENTS:

1. US EPA Environmental Justice, Civil Rights, & Permitting Policy
2. California Environmental Protection Agency's February 2020 Enforcement Memo
3. New Jersey Environmental Justice Law
4. New York Climate Leadership and Community Protection Act
5. Vermont's EJ Policy, Senate Bill 148



Environmental Protection Agency

Interim **Environmental Justice and Civil Rights in Permitting Frequently Asked Questions**

August 2022

Office of General Counsel
Office of Policy

U.S. Environmental Protection Agency
Washington, D.C. 20460

This document discusses a variety of federal statutory and regulatory provisions, but does not itself have legal effect, and is not a substitute for those provisions and any legally binding requirements that they may impose. It does not expressly or implicitly create, expand, or limit any legal rights, obligations, responsibilities, expectations or benefits to any person. To the extent there is any inconsistency between this document and any statutes, regulations or guidance, the latter take precedence. EPA retains discretion to use or deviate from this document as appropriate.

Acknowledgements

The EPA *Interim Environmental Justice and Civil Rights in Permitting Frequently Asked Questions (FAQs)* benefitted from significant input from across the Agency. This effort spawned from questions and topics raised from within the agency, from external partners such as National Environmental Justice Advisory Council (NEJAC) and from states. It was informed by earlier NEJAC recommendations and experience with state partners and was coordinated through the Environmental Justice and Civil Rights in Permitting Community of Practice (Permitting CoP), led by EPA's Office of Policy (OP) and Office of General Counsel (OGC). The subcommittee on FAQs from the Permitting CoP was comprised of representatives of OP, OGC, External Civil Rights Compliance Office (ECRCO), Office of Water, Office of Air and Radiation, Office of Land and Emergency Management, and Regions 2, 5, 8 and 9. OGC, ECRCO and Region 5's Tribal and Multimedia Programs Office and Air and Radiation Division took a leadership role, working with OP (including Office of Environmental Justice and Office of Federal Activities-Permitting Policy Division) and expert staff from the Permitting CoP to carry the work through fruition. Many thanks, also, to staff in EPA programs and regions for their input, and to all EPA staff who contributed to this valuable resource. We look forward to continued engagement and refinement on this iterative living document, including with our state partners and the NEJAC.

COMMUNITY ADVISORY
MEETING OF 09/08/22

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Introduction

These Frequently Asked Questions (FAQs) provide information to federal, state, and local environmental permitting programs to help them meet their responsibilities to integrate environmental justice (EJ) and civil rights into relevant environmental permitting processes. They do not change obligations to comply with applicable environmental and civil rights laws or create any new legal rights or responsibilities.¹ This is a “living document” that EPA will update and refine as the practice of integrating EJ and civil rights into permitting advances.

1

Why is it important for permitting programs to ensure consideration of environmental justice and comply with federal civil rights laws, including Title VI of the Civil Rights Act of 1964, as well as state civil rights and environmental justice laws?²

EPA’s mission is to protect human health and the environment. EPA is committed to achieving our mission for all people in the United States, regardless of race, color, national origin (including limited English proficiency [LEP] status), disability, age, sex, or income. For decades, many people of color, as well as low-income and indigenous populations, have been disproportionately burdened by pollution and denied equal access to a healthy environment.³ This legacy of environmental injustice represents a systemic deficit in public health and environmental protection. Finding solutions is not only the right thing to do; it is also our collective obligation.

Federal environmental justice policy directs EPA to address environmental injustices to the full extent authorized by law.⁴ This policy was based, in part, on the nation’s civil rights laws, which were enacted

¹ EPA is committed to issuing additional guidance in the near future to update and clarify information about investigative and legal standards applicable to external civil rights claims, including those concerning permitting.

² As discussed below, Title VI and EPA Title VI implementing regulations do not apply to the federal government itself. Moreover, these FAQs provide general information about integrating environmental justice and civil rights obligations, where applicable, recognizing that the implementation of these principles by permitting programs will vary depending on their statutory and regulatory authority. See generally EPA Legal Tools to Advance Environmental Justice (2022), <https://www.epa.gov/ogc/epa-legal-tools-advance-environmental-justice>.

³ See, e.g., Tessum, C.W., Paolella, D.A., Chambliss, S.E., Apte, J.S., Hill, J.D., & Marshall, J.D. *PM2.5 polluters disproportionately and systemically affect people of color in the United States*, *Science Advances* 7(18) (2021), [10.1126/sciadv.abf4491](https://doi.org/10.1126/sciadv.abf4491); Ihab Mikati, Adam F. Benson, Thomas J. Luben, Jason D. Sacks, & Jennifer Richmond-Bryant, *Disparities in Distribution of Particulate Matter Emission Sources by Race and Poverty Status*, *Am J Public Health* 108(4): 480–485 (2018), [10.2105/AJPH.2017.304297](https://doi.org/10.2105/AJPH.2017.304297); U.S. Env’t Prot. Agency, *Technical Guidance for Assessing Environmental Justice in Regulatory Analysis*, Section 4, https://www.epa.gov/sites/default/files/2016-06/documents/eitg_5_6_16_v5.1.pdf; Catherine Jampel, *Intersections of Disability Justice, Racial Justice, and Environmental Justice*, *Environmental Sociology* (2018); [10.1080/23251042.2018.1424497](https://doi.org/10.1080/23251042.2018.1424497); USGCRP, *Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, Volume II*, Chapter 19 (discussing rural communities) [Reidmiller, D.R., C.W. Avery, D.R. Easterling, K.E. Kunkel, K.L.M. Lewis, T.K. Maycock, and B.C. Stewart (eds.)], U.S. Global Change Research Program, Washington, DC, USA, 1515 pp. doi: 10.7930/NCA4.2018 (2018), <https://nca2018.globalchange.gov>.

⁴ Executive Order 12898: “Federal actions to address environmental justice in minority populations and low-income populations,” <https://www.archives.gov/files/federal-register/executive-orders/pdf/12898.pdf>.

to address all forms of discrimination.⁵ To date, most federal enforcement action in the civil rights arena has focused on other sectors, e.g., education, employment, housing, and transportation—and not on environmental protection. EPA recognizes that it is time to use the full extent of its enforcement authority under federal civil rights laws, including Title VI of the Civil Rights Act of 1964.

EPA also recognizes that it does not and need not stand alone in pursuing environmental justice. More than 40 states and the District of Columbia have laws, policies, or programs pertaining to environmental justice. Several states (e.g., California, Minnesota, and New Jersey) and municipalities have enacted laws to address cumulative and disproportionate impacts in the permitting context, and others are considering such legislation.⁶ In addition, most states and many local jurisdictions also have civil rights laws. These state and local laws may provide independent authority to advance environmental justice and ensure protection of civil rights. EPA greatly values the contribution of its partners in this critical effort.

Historically, industrial facilities have been sited, have expanded, and have added to the pollution burden in already vulnerable communities without due consideration of whether, either intentionally or in effect, the decisions allowing such outcomes are discriminatory under civil rights law or unfair under environmental justice policies. By considering the principles of environmental justice, complying with federal civil rights laws, and complying with applicable state environmental justice and civil rights policies and laws, environmental permitting programs can better identify and address discriminatory or unfair permitting processes and outcomes. EPA intends these FAQs to help permitting programs consider these critical issues.

2

What are EPA's responsibilities under federal environmental justice policy, including with respect to permitting?

Three Executive Orders (E.O.s) establish federal policy on equity and environmental justice:

- [E.O. 12898](#) *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (1994)* lays the foundation of EPA's EJ policy. It directs each listed federal agency, including EPA, to "make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations." Agencies must do this to the "greatest extent practicable and permitted

⁵ See Memorandum on Environmental Justice (Feb. 11, 1994), <https://www.govinfo.gov/content/pkg/WCPD-1994-02-14/pdf/WCPD-1994-02-14-Pg279.pdf> (requiring federal agencies to ensure that all programs or activities receiving federal financial assistance that affect human health or the environment do not "use criteria, methods, or practices that discriminate on the basis of race, color, or national origin"). See also Title VI of the Civil Rights Act of 1964, 42 United States Code §§ 2000d to 2000d-7 (Title VI); Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 *et seq.*; Age Discrimination Act of 1975, 42 U.S.C. §§ 6101 *et seq.*; Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500 § 13, 86 Stat. 903 (codified as amended at 33 U.S.C. § 1251 (1972)); 40 C.F.R. Parts 5 and 7.

⁶ See generally *Environmental Justice for All: A Fifty State Survey of Environmental Justice Legislation, Policies and Cases* (2007), <https://www.issuelab.org/resources/3124/3124.pdf>.

by law.” The Presidential memorandum accompanying E.O. 12898 notes that existing environmental and civil rights statutes provide many opportunities to ensure that all communities and persons live in a safe and healthful environment.

- [E.O. 14008](#) *Tackling the Climate Crisis at Home and Abroad (2021)* reaffirms the importance of environmental justice and makes explicit that agencies should address “climate-related and other cumulative impacts on disadvantaged communities, as well as the accompanying economic challenges of such impacts.” It also establishes a federal policy “to secure environmental justice and spur economic opportunity for disadvantaged communities that have been historically marginalized and overburdened by pollution and underinvestment in housing, transportation, water and wastewater infrastructure, and health care.”
- [E.O. 13985](#) *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (2021)* establishes a whole-of-government equity agenda to address entrenched disparities in our laws and policies and to promote equal opportunity for underserved communities that have been denied fair, just, and impartial treatment.

3

What responsibilities do EPA staff and managers with permit issuance and review responsibilities have to ensure compliance with civil rights laws by recipients of EPA financial assistance?

As a federal agency, EPA is responsible for civil rights enforcement. EPA is also committed to carrying out its permitting processes in a nondiscriminatory manner and improving the accessibility of its programs and activities to ensure meaningful access for persons with disabilities and persons with limited English proficiency.⁷

As discussed below, EPA civil rights regulations prohibit state, local, or other entities that receive federal financial assistance, either directly or indirectly from EPA (“recipients”), from taking actions that are intentionally discriminatory as well as practices that have an unjustified discriminatory effect, including on the basis of race, color, or national origin. Two provisions of EPA’s civil rights regulations are particularly relevant to recipients’ permitting processes:

“A recipient shall not use criteria or methods of administering its program or activity which have the effect of subjecting individuals to discrimination because of their race, color, national origin, ...or have the effect of defeating or substantially impairing

⁷ Title VI is inapplicable to EPA actions because it only applies to programs and activities of recipients of federal financial assistance, not to federal agencies. Nonetheless, EPA is committed to a policy of nondiscrimination in its own permitting programs. The equal protection guarantee in the Due Process Clause of the U.S. Constitution prohibits the federal government from engaging in intentional discrimination. Moreover, section 2–2 of Executive Order 12898, *Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*, directs federal agencies to ensure, in part, that federal actions substantially affecting human health or the environment do not have discriminatory effects based on race, color, or national origin. See 40 C.F.R. Part 12: “NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE ENVIRONMENTAL PROTECTION AGENCY; Executive Order 13166, *Improving Access to Services for Persons With Limited English Proficiency*, <https://www.govinfo.gov/content/pkg/FR-2000-08-16/pdf/00-20938.pdf>; EPA LEP Guidance and Materials, <https://www.epa.gov/ogc/assisting-people-limited-english-proficiency>.

accomplishment of the objectives of the program or activity with respect to individuals of a particular race, color, [or] national origin ...”⁸

“A recipient shall not choose a site or location of a facility that has the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program or activity to which this part applies on the grounds of race, color, or national origin...; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of this subpart.”⁹

When accepting assistance, recipients of EPA funding acknowledge that they have an affirmative obligation “to implement effective Title VI compliance programs” and to ensure that their actions “do not involve discriminatory treatment and do not have discriminatory effects even when facially neutral.”¹⁰ When reviewing environmental permits issued by states and other recipients, EPA staff and managers with permit review responsibilities have authority and are encouraged to work with their servicing legal office as needed to provide comments on environmental justice and civil rights issues raised by such permits, including the potential for adverse and disproportionate impacts from a permit decision, as well as issues regarding meaningful involvement and fair treatment of any population adversely and disproportionately affected by a permit. EPA also offers technical assistance on civil rights compliance.

4

What is the relationship between EJ and civil rights compliance, particularly in the context of environmental permitting?

Environmental justice and civil rights compliance are complementary. Integrating environmental justice in decision-making and ensuring compliance with civil rights laws can together address the strong correlation between the distribution of environmental burdens and benefits and the racial and ethnic composition, as well as income level, of communities.

EPA defines environmental justice as the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Environmental justice policies and laws, provisions requiring that cumulative impacts be identified and addressed in a permit decision, and many other measures that ensure fair treatment and empower communities affected by government decisions all represent pathways to fairer distribution of environmental burdens and benefits. Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, establishes executive branch policy on environmental justice on the federal level.

⁸ 40 C.F.R. § 7.35(b).

⁹ 40 C.F.R. § 7.35(c).

¹⁰ EPA, General Terms and Conditions Effective October 1, 2021, at 26, https://www.epa.gov/system/files/documents/2021-09/fy_2022_epa_general_terms_and_conditions_effective_october_1_2021.pdf.

For recipients of federal financial assistance, civil rights compliance is mandatory—and it is a critical tool for achieving environmental justice when a permitting action is likely to have an adverse and disproportionate impact, particularly on the basis of race, color, or national origin. Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin by recipients of federal funds, is the civil rights law that is most frequently invoked in the permitting context. It applies to public and private entities that receive federal financial assistance but does not apply to the federal government itself. It covers all of the operations of programs or activities that receive federal financial assistance without regard to whether specific portions of the program or activity are federally funded. The term “program or activity” means all of the operations of a department, agency, or the entity to which federal financial assistance is extended.¹¹ Title VI covers both intentional discrimination and acts that have an unjustified disparate impact on the basis of race, color, or national origin. The disparate impact analysis under Title VI of the Civil Rights Act of 1964 and EPA regulations includes not only an assessment of whether a permit will have a disproportionate impact on the basis of race, color, or national origin, but also whether there is a substantial and legitimate justification for any such disproportionate impact, as well as whether there is a less discriminatory alternative. See [FAQ #11](#).

As discussed at more length below, environmental justice and civil rights analyses undertaken by permitting authorities may overlap substantially. Environmental justice policies and laws and civil rights laws generally incorporate procedural requirements, and EPA has long recognized the value of “early, inclusive and meaningful public involvement throughout the entire permitting process.”¹² See [FAQ #15](#). As noted above, both environmental justice policies at the federal level—and, in many cases, at state and local levels—and civil rights laws call on decision-makers to identify and address whether programs and activities, including permitting decisions, have adverse disproportionate impacts on the basis of race, color and national origin (including LEP status). At the federal level, Executive Order 12898 and environmental justice policies more generally also address disproportionate impacts on the basis of income. In both contexts, decision-makers should consider the potential impacts of a permitted activity in light of cumulative impacts in overburdened communities. Methodologies for conducting environmental justice analyses, such as health impact assessments (HIAs), create opportunities for considering a range of mitigations that can be pursued if appropriate under federal or state environmental and environmental justice laws and can also be relevant to consideration of civil rights compliance. See [FAQ #10](#).

¹¹ See DOJ, *Title VI Legal Manual*, <https://www.justice.gov/crt/fcs/T6manual5> (discussing “Program or Activity”).

¹² Title VI Public Involvement Guidance, 71 Fed. Reg. at 14210 (discussing belief that meaningful public involvement will help ensure compliance with Title VI and EPA’s Title VI implementing regulations); *see also* EPA, Learn About Environmental Justice, <https://www.epa.gov/environmentaljustice/learn-about-environmental-justice> (defining “meaningful involvement”).

5

Does an entity's full compliance with the federal environmental laws in carrying out its permitting programs and decisions equate to compliance with the federal civil rights laws?

State, local, and other recipients of federal financial assistance have an independent obligation to comply with federal civil rights laws with respect to all of their programs and activities, including environmental permitting programs.¹³

A recipient's compliance with the requirements of federal environmental laws with respect to permitting activities and decisions does not necessarily mean that the recipient is complying with federal civil rights laws. Federal civil rights laws prohibit recipients of federal financial assistance from taking actions that discriminate based on race, color, national origin, disability, age, and sex. Enforcement of federal civil rights laws and implementation of environmental laws are complementary. Used together, these laws help to ensure the non-discriminatory protection of human health and the environment.

6

How could a permitting decision raise a statutory civil rights compliance concern about intentional discrimination, or have a discriminatory effect?

Intentional discrimination can occur when a recipient makes a permitting decision or takes an action that deliberately treats individuals differently or otherwise knowingly causes them harm because of their race, color, national origin (including LEP status), disability, age, or sex. Evidence of intentional discrimination can be direct, such as a comment by a decision-maker that expresses a discriminatory motive. A claim of intentional discrimination can also be shown with different types of indirect or circumstantial evidence that, taken together, allow an inference that the recipient acted, at least in part, because of race, color, national origin (including LEP status), disability, age, or sex.

For example, intentional discrimination may be present in the following scenario: a recipient decides to hold public hearings about a proposed permit for a facility in a town that has racially identifiable neighborhoods. The facility is to be sited in the west section of a town, which has a population that is predominantly Black. The east section of town is predominantly White. The recipient holds two hearings in the east section of town and provides opportunities to participate in both the daytime and in the evening after work hours. By contrast, the recipient holds only one daytime hearing in the west section of town—and that hearing is shorter. Armed security officers also attend the west section hearing. The differences in the time for community comment, when the hearings are scheduled, and how the

¹³ See EPA, *U.S. EPA's External Civil Rights Compliance Office Compliance Toolkit* (EPA ERCO's Toolkit) Chapter I (January 18, 2017), https://www.epa.gov/sites/default/files/2017-01/documents/toolkit-chapter1-transmittal_letter-faqs.pdf.

hearings are staffed in the predominantly White community compared to the predominantly Black community raise different treatment concerns.¹⁴

Discrimination may also occur under Title VI and EPA's implementing regulation when a recipient's permitting decision has an adverse and disproportionate impact based on race, color, or national origin (including LEP status). The focus in a "disparate impact" case of discrimination¹⁵ is on whether the consequences of the recipient's permitting policies, decisions, and actions, or failure to act, has had or will have the effect of subjecting persons to discrimination, regardless of the recipient's intent. For example, a recipient approves a Clean Air Act permit for a power plant. The population living in proximity to the plant ("residents") is disproportionately Black, as compared to the rest of the town, county, or state. If those residents have reason to believe that the recipient's permitting of the power plant will cause them to suffer adverse health and/or non-health impacts, such as odor, noise, or decrease in property values, at comparatively higher rates as compared to the larger population of persons not adversely impacted, then this may potentially raise a viable disparate impact claim and provide a reason to file a federal civil rights complaint.¹⁶ As discussed in [FAQ #11](#), the question of whether there is a disparate impact is not the end of the inquiry in evaluating whether the permit approval might violate civil rights law.

7

In addition to federal civil rights laws, what other laws and regulations support consideration of environmental justice in permitting?

Specific provisions of the nation's environmental statutes authorize and may require consideration of environmental justice in permitting, including the National Environmental Policy Act and state policy review laws, Clean Air Act, Clean Water Act, Safe Drinking Water Act, and Resource Conservation and Recovery Act. EPA's 2022 *Legal Tools to Advance Environmental Justice* provides an overview of these authorities, among others.¹⁷

As noted at [FAQ #1](#), many states and municipalities have also enacted laws that support consideration of environmental justice, including in the environmental permitting process. Permitting programs should carefully review applicable authorities for opportunities to incorporate environmental justice considerations and to ensure that such considerations are adequately and appropriately incorporated into permitting decisions.

¹⁴ See EPA ECRCO's Toolkit Chapter I at p. 4, *supra* note 13. If a prima facie case of disparate treatment is established, the recipient then has the burden of producing a legitimate, non-discriminatory reason for the challenged policy or decision and the different treatment. If the recipient articulates such a reason, EPA must then determine if there is evidence that the proffered reason is false, i.e., that the nondiscriminatory reason(s) the defendant gives for its actions are a pretext for discriminatory intent. See DOJ, *supra* note 11.

¹⁵ The terms "disparate impact" and "discriminatory effect" are used interchangeably in this document.

¹⁶ See generally DOJ, *supra* note 11.

¹⁷ See EPA, *EPA Legal Tools to Advance Environmental Justice* (2022), <https://www.epa.gov/ogc/epa-legal-tools-advance-environmental-justice>.

8

How can states and other recipients screen for EJ and civil rights concerns with respect to their permitting programs and decisions?

States and other recipients administering environmental permitting programs can adopt a routine process of screening for EJ and civil rights concerns early in the permitting process.¹⁸ If a permit applicant initiates pre-application discussions, knowledge gained from conducting an early EJScreen can make early discussions more meaningful and productive and add predictability and efficiency to the permitting process.

This type of screening will indicate whether a permitting decision has the potential to cause or contribute to significant public health or environmental impacts, whether the community may be particularly vulnerable to any adverse effects of the proposed permitting action, and whether the community is already disproportionately bearing public health or environmental burdens. A sound screening practice will also provide important information to states and other recipients as to whether there are residents of the affected community who could be disproportionately subjected to adverse health, environmental, and/or quality of life impacts on the basis of race, color, or national origin (including LEP status).

This screening process will also provide valuable information for the development of plans to meaningfully involve the affected community. For example, demographic information gathered during this screening process will help inform action to ensure meaningful access for persons with limited English proficiency, persons with disabilities, persons of different ages, and persons who are low-income who may lack access to the internet or necessary equipment. For more information about meaningful community engagement, see [FAQ #15](#).

Finally, and critically, screening may inform recipients as to whether a more extensive analysis of potential disproportionate impacts would aid them in avoiding a violation of Title VI. See [FAQs #9-10](#).

Best Practices for Screening:

- Geographic Information System (GIS) tools such as EPA's EJScreen¹⁹ or state EJ mapping tools²⁰ can be used as a starting point to assess whether the permitting action raises environmental justice or civil rights concerns, using indicators of community characteristics and existing conditions in the potentially affected community. Considered together with readily available information on community concerns, these tools can help the permitting program quickly assess and document the extent of community vulnerability and pollution burden and the associated potential for disproportionate impacts. They can also support consistent approaches by using standard benchmarks to characterize the potential for disproportionate impacts. EJScreen

¹⁸ The term "EJ concerns" is used to indicate the "actual or potential lack of fair treatment or meaningful involvement of minority populations, low-income populations, tribes, and indigenous peoples in the development, implementation and enforcement of environmental laws, regulations and policies." <https://www.epa.gov/sites/default/files/2015-06/documents/considering-ej-in-rulemaking-guide-final.pdf> at p. 9.

¹⁹ EPA, *EJScreen: Environmental Justice Screening and Mapping Tool*, <https://www.epa.gov/ejscreen>.

²⁰ A number of state EJ mapping tools are linked at <https://www.epa.gov/ejscreen/additional-resources-and-tools-related-ejscreen#other-maps>.

indices simplify the use of benchmarks for initial screening by highlighting indices at the 80th, 90th, and 95th percentiles in terms of the potential for disproportionate impacts relative to state, regional, and national averages.

- Identify and record responses to key questions such as: is there the potential that the affected population already experiences disproportionate impacts? How likely are the potential impacts of the permit under consideration to cause or contribute to disproportionate impacts?
- Especially when GIS tools or known community concerns suggest a potential for disproportionate impacts, review other readily available data. For example, EJScreen makes a range of demographic and environmental data layers readily available for review. It also identifies additional resources and tools for further analysis.²¹ State databases or GIS tools may also include additional data. Other information relevant to screening for disproportionate impacts includes:
 - Other permitted facilities in the area, including whether these facilities are major or minor sources of pollution and contribute to community risk. An area with an above average number of sources, especially if those sources are large or close to people in the area, is a sign of concern.²²
 - Applicant compliance record.
 - Demographic data including race and national origin,²³ age (percent less than 5 years, older than 64 years), percent non-English speakers, income, and education.²⁴
 - Environmental data that reflects pollutant measurements (e.g., ambient concentrations, total loadings in waterbody, etc.), presence of other significant emissions sources (e.g., woodstoves, ports, freight facilities, highways), facilities handling hazardous materials, etc.
 - Health data such as mortality rates, asthma, incidence of infant mortality, and incidence of low birth weight. Data on unhoused populations and healthcare access.
- Local knowledge and information from past community engagement are important components of the screening process for potential environmental justice or civil rights concerns. This is best

²¹ *Id.*

²² EPA's ECHO mapping tool (<https://echo.epa.gov/>) can be used to identify all regulated facilities in a given area together with information on their permits and compliance monitoring and enforcement history.

²³ EJSCREEN defines "people of color" as people "who list their racial status as a race other than white alone and/or list their ethnicity as Hispanic or Latino" in the U.S. Census. The Census Bureau provides the following choices for people to self-identify racial status: American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, White, or "Some Other Race." People may report multiple races. For ethnicity, the Census Bureau, based on the Office of Management and Budget standards, classifies individuals in one of two categories: "Hispanic or Latino" or "Not Hispanic or Latino." The Census Bureau uses the term "Hispanic or Latino" interchangeably with the term "Hispanic," and also refers to this concept as "ethnicity." See <https://www.census.gov/programs-surveys/decennial-census/decade/2020/planning-management/release/faqs-race-ethnicity.html>.

²⁴ The Centers for Disease Control also considers factors such as the experience of racism to be "social determinants of health." See CDC, *NCHHSTP Social Determinants of Health*, <https://www.cdc.gov/nchhstp/socialdeterminants/index.html>. "The social determinants of health are the conditions in which people are born, grow, live, work and age as well as the complex, interrelated social structures and economic systems that shape these conditions. Social determinants of health include aspects of the social environment (e.g., discrimination, income, education level, marital status), the physical environment (e.g., place of residence, crowding conditions, built environment [i.e., buildings, spaces, transportation systems, and products that are created or modified by people]), and health services (e.g., access to and quality of care, insurance status)" (citations omitted).

accomplished by establishing early and ongoing relationships in a community, particularly those with a history of EJ and civil rights concerns. Such relationships assist in the trust and communication needed to gain input from impacted residents, stakeholders, local agencies, tribal governments, and others. For more information about community engagement, see [FAQ #15](#).

- Relevant information may be found in public complaints to federal, state, tribal, and local authorities; media reports; and national, state, or local environmental or health data. Complaints may directly relate to the permitting action at issue (e.g., anticipated facility traffic or emissions) or reflect conditions in the community (e.g., high rates of asthma, unemployment, or elderly populations).

9

If the screening analysis indicates that a proposed permitting action raises civil rights and/or environmental justice concerns, what additional steps can a permitting program consider to address EJ concerns and ensure compliance with Title VI?

The screening analysis identified in [FAQ #8](#) may identify EJ concerns and possible issues of civil rights compliance, i.e., questions about whether a state's or other recipient's permitting decision may violate Title VI and EPA implementing regulations by disproportionately subjecting persons to adverse health, environmental, and/or quality of life impacts on the basis of race, color, or national origin (including LEP status). In such cases, states and other recipients can consider conducting additional analysis.

In the EJ context, EPA has generally referred to this additional consideration as an EJ analysis. Although they may overlap, conducting an EJ analysis will not satisfy Title VI requirements. In the civil rights context, the analysis used to evaluate whether a recipient's action has an adverse and disproportionate impact on the basis of race or national origin is generally referred to as a disparate impact analysis. In many respects, the line of inquiry is similar to the environmental justice analysis: Who is being affected by the action? How, and how much? Compared to whom? Can we and how do we mitigate the effects? There are, however, several particular considerations in the civil rights context. In [FAQs #11-13](#), we explain these unique considerations.

When a screening analysis identifies potential EJ or civil rights concerns, the permitting program can consider the following steps:

- Conducting an appropriately scoped EJ analysis or disparate impact analysis as needed to further evaluate and address adverse and disproportionate impacts, and to inform and support enhanced community engagement – see [FAQ #15](#);
- Exercising relevant statutory and regulatory authority and discretion under federal, state, and local environmental laws, as well as applicable environmental justice and civil rights laws, to prevent or mitigate any adverse disproportionate impacts that would otherwise violate Title VI; and

- To the extent mitigation included in the permit is not sufficient to address adverse and disproportionate impacts that would otherwise violate Title VI; consider implementing mitigation outside the context of the permit, coordinating across agency programs, state agencies, community organizations, NGOs, etc. See [FAQ #14](#).

10

What are promising practices in conducting an EJ analysis?

There is a significant body of practice, policy, and caselaw about EJ analysis in permitting upon which permitting programs can draw when developing and conducting an EJ analysis.

First, additional EJ analysis should be tailored to the specific permitting decision. The scope may depend on several factors, including but not limited to the potential for adverse and disproportionate impacts associated with a given facility, community concerns, and potential cumulative impacts. EPA recognizes that permits vary widely in purpose and effect, and that there is no "one size fits all" approach to EJ analysis. Appropriately scoped, additional EJ analysis should accomplish two purposes: (1) it should address the principle of fair treatment by further evaluating adverse and disproportionate impacts beyond the screening results and identifying ways to prevent or mitigate such impacts; and (2) it should address the principle of meaningful involvement by fostering enhanced community engagement in the permitting decision.

One promising practice for conducting EJ analyses is the Health Impact Assessment (HIA), which systematically evaluates how a proposed action may impact health and well-being.²⁵ HIAs explicitly consider potential distributive effects (e.g., whether there will be disproportionate impacts) and inform decision-makers of potential outcomes before the decision is made. HIAs generally:

- Determine the potential effects of a proposed decision on the health of a population and the distribution of those effects within the population;
- Consider input from stakeholders, including those impacted by the decision;
- Use different types of qualitative and quantitative evidence and analytical methods;
- Are flexible based on available time and resources; and
- Provide evidence and recommendations to decision-makers in a timely manner.²⁶

²⁵ See EPA, *The Health Impact Assessment (HIA) Resource and Tool Compilation* (2016), https://www.epa.gov/sites/default/files/2017-07/documents/hia_resource_and_tool_compilation.pdf; see also HIA report issued by the City of Chicago, Chicago Department of Public Health, Health Impact Report, RMG/Southside Recycling Permit Application (February 2022), https://www.chicago.gov/content/dam/city/sites/rgm-expansion/documents/RMG_RecyclingPermit_HealthImpactAssessment_Feb2022.pdf; see also different HIA applications at <https://www.epa.gov/healthresearch/epa-health-impact-assessment-case-studies>.

²⁶ See EPA, *Health Impact Assessments*, <https://www.epa.gov/healthresearch/health-impact-assessments>.

A permitting program may find it helpful to organize an EJ analysis by applying HIA practice standards and elements, including by adapting the six key steps that guide the HIA process:

1. **Screening.** Determines the need for and value of an HIA. (See [FAQ #8](#) for application to an EJ analysis.)
2. **Scoping.** Identifies the project partners, health and social impacts requiring assessment, methodology for the analysis, and a work plan.
3. **Assessment.** Provides an analysis of existing conditions; an assessment of the policy, plan, project, or program under study; and an evaluation of the potential impacts of the policy, plan, project, or program on existing conditions.
4. **Recommendations.** Develops a set of recommendations for maximizing health outcomes.
5. **Reporting.** Develops a report and communicates findings and recommendations.
6. **Monitoring.** Tracks the impact of the HIA on the proposed policy, plan, project, or program and the impacts of the final policy, plan, project, or program on existing conditions.²⁷

11

What is a disparate impact analysis under Title VI?

Title VI disparate impact regulations ensure that federal financial assistance is not spent in any fashion which encourages, entrenches, subsidizes, or results in racial discrimination. Recipients are prohibited from practices having a discriminatory effect on members of a group identified by race, color, or national origin, even if the actions or practices are not intentionally discriminatory. The disparate impact analysis under Title VI examines a number of critical questions to evaluate whether a recipient's policy or practice has an unjustified disparate impact prohibited by Title VI.²⁸

- **Disparate impact:** Does a recipient's criteria or method of administering its program or activities adversely and disparately affect members of a group identified by race, color, or national origin?
 - **Adverse Impacts:** Is there an adverse impact of the policy or practice? Adverse impacts could include harmful health effects, odor, noise, decrease in property values, etc.

²⁷ See EPA, *A Review of Health Impact Assessments in the U.S.: Current State-of-Science, Best Practices, and Areas of Improvement* (2014), https://www.epa.gov/sites/default/files/2013-12/documents/health-impact-assessment-factsheet_0.pdf; HIP, *HIA Minimum Elements and Practice Standards for HIA*, <https://humanimpact.org/hipprojects/hia-minimum-elements-and-practice-standards>.

²⁸ Courts have developed analytical frameworks to assess disparate impact claims in litigation that inform agencies' investigative process. See DOJ, *supra* note 11. The disparate impact analysis described in [FAQ #11](#) is used not only by EPA, but also by twenty-five other federal agencies that also have Title VI regulations that include provisions addressing the discriminatory effects/impacts standard.

- **Disproportionality:** Is a disproportionate share of the adversity borne based on race, color, or national origin (including LEP status)? Disparity is a fact-specific inquiry that involves identifying an appropriate measure.²⁹
- **Causation:** Is there a causal link between the recipient's policy or practice and the disparate impact?³⁰
- **Justification:** If so, is there a substantial legitimate justification for the policy or practice? This question is unique to a disparate impact analysis. See [FAQ #13](#).
- **Less discriminatory alternative:** Even if there is a substantial legitimate justification for the policy or practice causing the disparate impact, is there an alternative practice that may be comparably effective with less disparate impact?³¹

Questions about the disparate impact and less discriminatory alternative may have been evaluated, at least in part, during the EJ analysis. See [FAQs #9-10](#). The “less discriminatory alternative” inquiry, however, may go beyond mitigation measures usually examined in an EJ analysis. See [FAQ #13](#).

12

How would EPA consider “cumulative impacts” within the Title VI disparate impact analysis?

In the context of Title VI investigations, EPA considers cumulative impacts when evaluating whether there is an adverse impact from the recipient's policy or practice.³² That is, EPA considers whether any adverse impact caused by the permitting decision—and borne disproportionately by persons on the basis of race, color, or national origin (including LEP status)—may be even greater considering cumulative impacts from other chemical and non-chemical stressors.

As EPA notes in guidance on considering cumulative impacts in the NEPA context, “cumulative impacts result when the effects of an action are added to or interact with other effects in a particular place and within a particular time.”³³ EPA's Office of Research and Development recently offered an operational

²⁹ See, e.g., *S. Camden Citizens in Action v. New Jersey Dept. of Env'tl. Protec.*, 145 F. Supp. 2d 446, 493 (D.N.J. 2001), *opinion modified and supplemented*, 145 F. Supp. 2d 505 (D.N.J. 2001), *rev'd*, 274 F.3d 771 (3d Cir. 2001) (disparity analysis); see also DOJ, *supra* note 11.

³⁰ *Texas Dep't of Hour. & Cmty. Affairs v. Inclusive Communities*, 135 S. Ct. 2507, 2523 (citing *Wards Cove*, 490 U.S. at 653); See also U.S. DOJ, *supra* note 11.

³¹ *Id.* See also ECRCO's Toolkit Chapter I and FAQ, *supra* note 13; see also U.S. DOJ, *supra* note 11.

³² See, e.g., Final Genesee Complaint Letter to Director Grether, 19-23 (Jan. 19, 2017), <https://www.epa.gov/sites/default/files/2017-01/documents/final-genesee-complaint-letter-to-director-grether-1-19-2017.pdf> (consideration of cumulative air toxics data from point sources countywide); see also *S. Camden Citizens in Action v. New Jersey Dept. of Env'tl. Protec.*, 145 F. Supp. 2d 446, 490 (D.N.J. 2001), *opinion modified and supplemented*, 145 F. Supp. 2d 505 (D.N.J. 2001), *rev'd*, 274 F.3d 771 (3d Cir. 2001) (interpreting EPA methodology as requiring consideration of the totality of the circumstances and cumulative environmental burdens and finding that plaintiffs demonstrated that permitting and operation of a facility was likely to have adverse impacts in context of “current health conditions and existing environmental burdens” in the community).

³³ U.S. EPA Office of Federal Activities, *Consideration of Cumulative Impacts in EPA Review of NEPA Documents*, (2252A) EPA 315-R-99-002/May 1999 (1999), <https://www.epa.gov/sites/default/files/2014-08/documents/cumulative.pdf>.

definition of “cumulative impacts” based on definitions developed by various state and federal agencies, as follows:

*“Cumulative impacts” refers to the total burden – positive, neutral, or negative – from chemical and non-chemical stressors and their interactions that affect the health, well-being, and quality of life of an individual, community, or population at a given point in time or over a period of time. Cumulative impacts include contemporary exposures in various environments where individuals spend time and past exposures that have lingering effects. Total burden encompasses direct health effects and indirect effects to people through impacts on resources and the environment that affect human health and well-being. Cumulative impacts provide context for characterizing the potential state of vulnerability or resilience of the community, i.e., their ability to withstand or recover from additional exposures under consideration.*³⁴

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What if a Title VI disparate impact analysis by a permitting program concludes that the permit decision will have adverse disparate impacts on the basis of race, color, or national origin (including LEP status)?

If the permitting action will have a disparate impact on the basis of race, color, or national origin (including LEP status) (i.e., it raises a possible violation of Title VI), then the next steps in a civil rights disparate impact framework discussed in [FAQs #9](#) and [#11-12](#) include:

- Identify a substantial legitimate justification for the challenged policy or practice.³⁵ That is, can the recipient show that the challenged policy was “necessary to meet a goal that was legitimate, important, and integral to the [recipient’s] institutional mission” in order to establish a “substantial legitimate justification”?³⁶
- Even if the recipient identifies a substantial legitimate justification, a sufficient Title VI analysis evaluates whether there are any comparably effective alternative practices that would achieve the same legitimate objective but with a less discriminatory effect. That is, is there a comparably effective alternative decision or action that would result in less adverse impact? For example, can the recipient prevent any adverse and disproportionate effects by requiring that the facility be operated in a manner that would eliminate or mitigate its disproportionate impact, e.g., by

³⁴ Cumulative Impacts Recommendation for ORD Research EXTERNAL REVIEW DRAFT at p. 6, January 2022.

³⁵ ECRCO’s Toolkit Chapter I and FAQs at pp. 9-10, *supra* note 13.

³⁶ EPA will evaluate whether the policy was “necessary” by requiring that the justification bear a “manifest demonstrable relationship” to the challenged policy. As part of its assessment, EPA will generally consider not only the recipient’s perspective, but the views of the affected community in its assessment of whether a permitted facility, for example, will provide direct, economic benefits to that community. ECRCO’s Toolkit Chapter I and FAQs, *supra* note 13. *See also* U.S. DOJ, *supra* note 11.

modifying permit operating conditions, employing practicable mitigation measures to lessen or eliminate the demonstrated adverse impacts, or by not renewing the permit?³⁷

- If there are no mitigation measures the permitting authority can take, whether within or outside the permitting program, that can address the disparate impacts, and there is no legally sufficient justification for the disparate impacts, denial of the permit may be the only way to avoid a Title VI violation. Whether denial of a permit is required to avoid a Title VI violation is a fact-specific determination that would take into account an array of circumstances, including whether the facility will have an unjustified racially disproportionate impact, as well as the less discriminatory alternatives available.³⁸

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What are some examples of measures that a permitting program may be able to take to mitigate adverse and disproportionate impacts and/or develop and implement less discriminatory alternatives?

Under a civil rights analysis pursuant to Title VI and EPA's implementing regulations, recipients are obligated to adopt a comparably effective less discriminatory alternative to address an unjustified disparate impact on the basis of race, color, or national origin (including LEP status). If a permitting program's decision is likely to have an adverse and disproportionate effect on the basis of race, color, or national origin (including LEP status), then the program should consider broadly the availability of less discriminatory alternatives. This might include the range of mitigation measures discussed below or working with the permit applicant for alternative siting. However, as discussed in [FAQ #13](#), if there are no mitigation measures that can address the unjustified disparate impacts, denial of the permit may be the only means of avoiding a Title VI violation. This will be a fact-specific determination.

EJ principles and practices call for consideration of whether mitigation measures will reduce or eliminate unfair treatment. Whether mitigation will effectively address adverse and disproportionate impacts will depend on the unique circumstances of each permit, the community in which the pollution source is or will be located, and other factors.

Some proactive mitigation measures that a state or other recipient might explore include the following:

Permit terms:

- Enforceable requirements for continuous compliance monitoring equipment (e.g., opacity cameras) to ensure proper operation of control devices, compliance with permitted limits, and adherence to industry best practices.

³⁷ ECRCO's Toolkit Chapter I and FAQs at p. 15, *supra* note 13.

³⁸ See generally ECRCO's Toolkit Chapter I and FAQs at 14-15, *supra* note 13 (discussing disparate impact- municipal solid waste landfill permit example).

- Enhancements to compliance assurance provisions, including additional continuous or periodic monitoring, recordkeeping, or reporting requirements.
- Establishment of a public-facing website with all relevant compliance information about the facility and real-time data measurements.
- Additional pollution controls or more stringent limits.
- Inclusion of enforceable work practices, operating plans, and/or best practices for minimizing emissions and/or discharges (e.g., a fugitive emission plan).
- Incorporating modeling assumptions as legally and practically enforceable limits or work practices (e.g., hours of operation).
- Expansion of buffers or modification of operational hours.

The use of non-environmental authorities:

- Use public health authority to implement a mobile health monitoring program in the affected community.
- Use transportation authority to develop new traffic plan to reduce diesel emissions in the affected community.
- Use public health authority to establish a citizen hotline with a 24-hour response time.

Other potential commitments:

- Third-party monitoring of community complaints.
- Support for public transparency of monitoring information, including community-driven monitoring.
- Other enforceable agreements (e.g., community benefit agreements).

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When and how should permitting programs conduct community engagement?

Community engagement should occur as soon as possible and should go far beyond simply posting public notices. With respect to permitting actions that could result in significant health, environmental and quality of life impacts, the stakes are often that much higher for communities with EJ concerns. The goal of community engagement is to ensure that the people most affected by the permit have input into the decisions that will impact their lives. Community engagement is an active process that requires permitting programs to be proactive in outreach to the public. While some of these activities are required to satisfy statutory obligations and comply with environmental justice directives, going beyond such requirements when called for is good government practice. Among other things, it builds ongoing

relationships with community leaders necessary for a deeper level of engagement. Robust community engagement is crucial for making informed permitting decisions that meaningfully consider the site-specific circumstances of the permitting action.³⁹

In addition, it is important that states and other recipients ensure that community engagement and other public participation actions be conducted consistent with the federal civil rights law, which require that no person shall be excluded on the basis of race, color, national origin, or other prohibited grounds from participation in any program or activity receiving EPA financial assistance.⁴⁰ Meaningful involvement consists of informing, consulting, and working with potentially affected communities at various stages of the environmental decision-making process to address their questions and concerns.⁴¹ This includes:

- Ensuring that public involvement processes are available to all persons regardless of race, color, national origin (including LEP status), disability, sex, and age, or prior exercise of rights or opposition to actions protected by 40 C.F.R. Parts 5 and 7 and the federal non-discrimination laws;
- Ensuring that the factors used to determine the appropriate time, place, location, duration, and security at public meetings are developed and applied in a non-discriminatory manner; and
- Ensuring that public participation processes specifically address the needs of persons with limited English proficiency, persons with disabilities, and persons of different ages. Best practice and environmental justice policy would also call for ensuring that processes are accessible to persons without access to digital communication, and other members of the recipient's communities who may have limited access to information.

Best practice to demonstrate compliance is to have in place a public involvement plan, yet EPA recognizes that a recipient's staff size, available resources, and the nature of its programs and activities may dictate the type and scope of written public involvement policies and procedures. EPA guidance identifies as a best practice that all government entities – for example, state, regional, county, and local government entities – have written and published public involvement procedures that are consistent with the federal civil rights laws and EPA's Public Participation Guidance.⁴²

By implementing the following steps, states and other recipients will be in a better position to provide opportunities for effective public participation that is meaningfully accessible to all persons regardless of race, color, national origin (including LEP status), disability, age, and sex each time they engage in a process involving public participation:

- Develop a description of the relevant/affected community (including demographics, history, and background, such as: percentage of the area that includes people of color, has less than a high

³⁹ "Community engagement," "public involvement," and "public participation" are used interchangeably in this document.

⁴⁰ See Title VI of the Civil Rights Act of 1964, 42 United States Code §§ 2000d to 2000d-7 (Title VI); Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 et seq.; Age Discrimination Act of 1975, 42 U.S.C. §§ 6101 et seq.; Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500 § 13, 86 Stat. 903 (codified as amended at 33 U.S.C. § 1251 (1972)); 40 C.F.R. Parts 5 and 7. See also EPA, *supra* note 12.

⁴¹ "Meaningful involvement" and "meaningful participation" are used interchangeably for purposes of this document.

⁴² See EPA, *supra* note 12.

school education, has members of households who speak a language other than English and/or speak English less than very well, has a history of filing complaints, has an inability to access traditional communication channels, internet, etc.);⁴³

- Provide a contact list for relevant staff members on the recipient's website, including phone numbers and email addresses, to allow the public to communicate via phone or internet;
- Develop a list of past and present community civil rights concerns (including any complaints filed under the federal non-discrimination laws), and actions undertaken in response to such concerns;
- Develop and implement a detailed plan of action (including outreach activities) the recipient will take to address concerns raised by the public;
- Develop and implement a contingency plan for unexpected events that impact public meetings or other public participation avenues;
- Identify location(s) where public meetings will be held (considering the availability and schedules of public transportation), and ensure that public meetings are held at times and in locations that allow for meaningful involvement by individuals with LEP and individuals with disabilities;
- Develop and maintain a plan for providing reasonable modifications and auxiliary aids and services at no cost for individuals with disabilities and language assistance services for limited English proficient persons, including translation of documents and/or interpreters for meetings;
- Develop and maintain a list of appropriate local media contacts (based on the cultural and linguistic needs of the community);
- Develop guidance to help ensure the meaningful involvement of individuals with limited English proficiency and individuals with disabilities at any in-person public meetings and when in-person meetings are not possible due to national, state, or local emergencies; and
- In addition, develop public involvement plans with public input. The plans should be prominently highlighted online for the benefit of interested residents and should explain how interested residents can participate in the permitting process under various environmental laws.
- The public involvement plan and other plans to provide meaningful access should also be made available for the public in areas that would be easily accessible to the community (e.g., libraries, community centers, etc.).

⁴³ See EPA, *Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons* (2004), <https://www.federalregister.gov/documents/2004/06/25/04-14464/guidance-to-environmental-protection-agency-financial-assistance-recipients-regarding-title-vi>.

Also, to be most effective, recipients' public involvement plans should incorporate the following elements:

- How the recipient will meaningfully engage the public prior to and during significant activities (e.g., how the public can request a public hearing and criteria for determining whether public hearings will be held);
- How the recipient will effectively communicate and engage with the public regarding its programs, activities, and services (e.g., public notice procedures for submitting public comment during permit comment periods); and
- What methods the recipient will implement to ensure the public can access publicly available information and documents regarding its programs, activities, and services.

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How does tribal consultation differ from community engagement?

Tribal consultation is a process of meaningful communication and coordination between EPA and tribal officials prior to EPA taking actions or implementing decisions that may affect tribes.⁴⁴ [Executive Order 13175: Consultation and Coordination with Indian Tribal Governments](#) (November 6, 2000) describes important elements of the federal government's consultation with federally recognized tribes and calls for federal agencies to have an accountable process to ensure meaningful and timely input by tribal officials in the development of certain regulatory actions and policies that have tribal implications. EPA's tribal consultation policy calls for EPA to consult on a government-to-government basis with federally recognized tribes on a broad range of EPA actions and decisions that may affect tribal interests. Tribal consultation is an important element of fulfilling the federal government's trust responsibility that arises from treaties, statutes, executive orders, and the historical relations between the United States and tribes. Conducting government-to-government tribal consultation is separate and distinct from EPA's obligations to involve the public as required by environmental laws. Conducting community engagement, including with tribal and indigenous communities, cannot replace tribal consultation, and tribal consultation cannot replace community engagement.

Apart from EPA consultation with tribes, it is also appropriate for States to consider tribal interests in their permitting processes by reaching out to and coordinating with affected tribal governments to ensure their views are obtained and appropriately factored into permitting decisions.

⁴⁴ See EPA, [Response to Tribal Consultation & Coordination Comments on Plan EJ 2014 Strategy and Implementation Plans](#), EPA Policy on Consultation and Coordination with Indian Tribes (2011) (<https://www.epa.gov/tribal/epa-policy-consultation-and-coordination-indian-tribes>). See also EPA, *Plan for Implementing Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*, <https://www.epa.gov/system/files/documents/2021-08/epa-plan-to-implement-eo-13175.pdf>.

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What are some resources on environmental justice, civil rights, and tribal consultation?

EPA has many tools to help permitting programs engage in public outreach. The following additional resources and references on Community Engagement and Tribal Consultation may be helpful:

Environmental Justice

- Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (1994): <https://www.archives.gov/files/federal-register/executive-orders/pdf/12898.pdf>
- Executive Order 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* (2021): <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>
- Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad* (2021): <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/>
- EPA Activities to Promote Environmental Justice in the Permit Application Process, 78 Fed. Reg. 27220 (May 9, 2013): <https://www.federalregister.gov/documents/2013/05/09/2013-10945/epa-activities-to-promote-environmental-justice-in-the-permit-application-process>
- Regional Environmental Justice Implementation Plans: <https://www.epa.gov/environmentaljustice/environmental-justice-your-community>
- EPA Legal Tools to Advance Environmental Justice (2022): <https://www.epa.gov/ogc/epa-legal-tools-advance-environmental-justice>
- Promising Practices for Environmental Justice Methodologies in NEPA Reviews (2016): https://www.epa.gov/sites/default/files/2016-08/documents/nepa_promising_practices_document_2016.pdf (focusing on the agency practices identified by the EJ IWG NEPA Committee concerning the interface of environmental justice considerations through NEPA processes)
- Guidance on Considering Environmental Justice During the Development of a Regulatory Action (2015): <https://www.epa.gov/sites/default/files/2015-06/documents/considering-ej-in-rulemaking-guide-final.pdf>; and Technical Guidance for Assessing Environmental Justice in Regulatory Analysis (2016): https://www.epa.gov/sites/default/files/2016-06/documents/ejtg_5_6_16_v5.1.pdf (while focused on the rulemaking process, these guidance documents provide useful information when considering and addressing disproportionate impacts in other contexts as well).

In addition, the National Environmental Justice Advisory Council (NEJAC) provides independent advice and recommendations to the EPA Administrator on a broad range of issues related to environmental justice. NEJAC produced three recommendations related to EJ in permitting:

- Environmental Justice in the Permitting Process (2000): <https://www.epa.gov/sites/default/files/2015-02/documents/permit-recom-report-0700.pdf>
- Enhancing Environmental Justice in EPA Permitting Programs (2011): <https://www.epa.gov/sites/default/files/2015-02/documents/ej-in-permitting-report-2011.pdf>
- Recommendations Regarding EPA Activities to Promote Environmental Justice in the Permit Application Process (2013): <https://www.epa.gov/sites/default/files/2015-02/documents/2013-ej-in-permitting.pdf>.

Civil Rights

- Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 69 Fed. Reg. 35602 (June 25, 2004): <https://www.govinfo.gov/content/pkg/FR-2004-06-25/pdf/04-14464.pdf>
- The Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Recipient Guidance), 54 Fed. Reg. 14207 (Mar. 21, 2006): https://www.epa.gov/sites/default/files/2020-02/documents/title_vi_public_involvement_guidance_for_epa_recipients_2006.03.21.pdf
- EPA's External Civil Rights Compliance Office Toolkit at https://www.epa.gov/sites/default/files/2017-01/documents/toolkit-chapter1-transmittal_letter-faqs.pdf
- DOJ Title VI Legal Manual (Updated April 22, 2021): <https://www.justice.gov/crt/fcs/T6Manual7#W>

Tribal Consultation

- EPA Policy for the Administration of Environmental Programs on Indian Reservations (1984): <https://www.epa.gov/sites/default/files/2015-04/documents/indian-policy-84.pdf>
- EPA Policy on Consultation and Coordination with Indian Tribes: Guidance for Discussing Tribal Treaty Rights (2016): https://www.epa.gov/tribal/forms/consultation-and-coordination-tribes#policy_consultation_coordination
- U.S. Environmental Protection Agency (EPA) Response to Tribal Consultation & Coordination Comments on Plan EJ 2014 Strategy and Implementation Plans (2012): <https://www.epa.gov/sites/default/files/2015-02/documents/plan-ej-tribal-consult-responses.pdf>
- Policy on Environmental Justice for Working with Federally Recognized Tribes and Indigenous Peoples (2014) : <https://www.epa.gov/environmentaljustice/epa-policy-environmental-justice-working-federally-recognized-tribes-and>

- EPA Plan for Implementing Policies & Directives of E.O. 13175 (2021):
<https://www.epa.gov/tribal/epa-plan-implementing-policies-and-directives-eo-13175-consultation-coordination-indian>

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How do I get additional information or provide feedback on the FAQs?

Please email EJ.permitting@epa.gov with any questions or feedback.

COMMUNITY ADVISORY COUNCIL
MEETING OF 09/08/22

MEMORANDUM

TO: CalEPA Staff

FROM: Jared Blumenfeld 
Secretary for Environmental Protection
California Environmental Protection Agency

DATE: February 14, 2020

SUBJECT: Environmental Enforcement

Enforcement is an essential part of CalEPA's mission. A robust, equitable and forward leaning enforcement and compliance program enables us to protect California's residents and its natural resources from environmental degradation caused by those who violate environmental laws. Although California has an abundance of enforcement tools, the State faces persistent environmental challenges, including the disparate impact of pollution on environmental justice communities.

CalEPA's Office of the Secretary is responsible for developing a program to ensure that our boards, departments and offices (BDOs) take "consistent, effective and coordinated enforcement and compliance actions to protect public health and the environment." (Gov. Code § 12812.2 (a)(1).) While we share the responsibility for environmental enforcement and compliance with our federal, local and tribal partners, the public expects the State of California to take the lead in assuring that environmental laws are enforced. To do that, we must maximize state resources to achieve the most strategic outcomes in the most efficient ways possible.

Effective use of our enforcement tools not only assures that individual violators become compliant with regulatory requirements; it also serves as a deterrent to those similarly situated and thus has a multiplier effect. Strong enforcement also respects and honors the hard work by the public, non-governmental organizations, and legislators who have enacted environmental laws. Without effective enforcement, these laws risk losing meaning. By removing a potentially unfair business advantage, effective enforcement also levels the economic playing field and promotes a competitive market for the regulated community.

This memo sets forth the basic elements of a proactive state environmental enforcement program, with recognition that some of these elements already exist within the BDOs. This memo also provides a framework to strengthen CalEPA's coordination and oversight of enforcement work at the boards and the departments with the goal of achieving a high level of environmental compliance throughout the state.

1. Leadership

It is critical to establish a clear and consistent enforcement message, philosophy and policies across the CalEPA boards and departments.

CalEPA's enforcement authority is defined by: constitutional, jurisdictional, statutory, and regulatory authority; internal policy and guidance documents; and, common law. Within that legal framework, CalEPA holds discretion in the allocation of enforcement resources and prioritization of enforcement goals. CalEPA seeks to apply that discretion to achieve a robust deterrent-based enforcement and compliance program that the general public and businesses trust. At core, we need a clear and consistent enforcement message, philosophy and policy that is implemented across the boards and departments. I will be asking the CalEPA General Counsel's Office to work with the BDOs to help develop and implement a consistent enforcement philosophy, as well as consistent messages and programs across all the BDOs. We will also engage in more data-driven monitoring of board and department enforcement efforts to make certain that enforcement efforts are yielding tangible and significant pollution-reduction results.

2. Planning, Prioritization and Effective Resource Utilization

It is critical that CalEPA strategically deploy limited resources to address the most pressing environmental enforcement and compliance priorities, violations and emerging issues.

A successful enforcement and compliance program requires strategic vision, targeting and resource allocation decisions, and effective adaptability, within the bounds of CalEPA's jurisdictional authority. The program must implement core enforcement functions as well as incorporate new initiatives designed to promote CalEPA's enforcement goals. Enhanced CalEPA enforcement leadership will facilitate effective deployment of limited resources and will include strategic sharing of resources, including personnel and equipment, to address ongoing and evolving enforcement challenges.

In the spirit of a "one CalEPA" culture," and to ensure that CalEPA as a whole is effectively allocating its enforcement resources, CalEPA will track the enforcement work of the boards and departments. This will include a regular review of:

- Bi-annual sectoral prioritization (e.g., facilities using large quantities of flammable materials);
- Geographic targeting focused on environmental risk;
- The number and type of active enforcement investigations and cases;
- The amount of pollution/risk reduction as a result of enforcement efforts;
- The penalties assessed on violators through enforcement;
- Injunctive relief to remediate violations and SEPs incorporated into settlements;
- Results-focused, inter-agency coordination of investigation/inspection/enforcement;
- Compliance rates of regulated industries; and
- Most common types of violations observed.

3. Local Government Enforcement Oversight and Coordination

Environmental enforcement programs must promote strong local action, through work-sharing, resource utilization and effective oversight.

Local partners are critical to the success of California's enforcement and compliance programs. CalEPA's oversight responsibilities require that we establish clear guidelines, goals, deadlines, and consequences for all local environmental programs subject to state oversight, including but not limited to the CUPAs, the County Agricultural Commissioners, Air Quality Control Districts, and local solid waste enforcement agencies. Auditing of local agencies (such as DTSC and Water Board's periodic auditing of CUPAs) should be coordinated, consistent and complete.

To be successful, we will need to assess the strengths and weaknesses of local enforcement programs and work with partners to deploy their resources effectively. CalEPA staff should also make efforts to effectively coordinate with local agencies outside of the CalEPA's purview. For example, to the extent possible, the BDOs should coordinate investigation, inspection, enforcement and compliance assistance efforts with cities, counties, and District Attorneys. Close ties with local programs will also assist in collection of information and data that will assist in determining where to target state resources. Where oversight is indirect, and where appropriate, CalEPA will leverage its expertise to provide informal and formal input in local enforcement efforts. CalEPA also reserves the right to formally participate in the public processes provided by local agencies during permitting and enforcement activities.

4. Multi-Media and Cross-Program Enforcement

Effective enforcement looks across our statutory and organizational "stove-pipes" to successfully meet our goals to protect public health and the environment.

The CalEPA boards and departments, and CalEPA itself, have responsibility to assure compliance with a multitude of state and federal environmental laws. CalEPA is positioned to explore opportunities to effectively and efficiently conduct enforcement efforts that address a broad range of potential environmental violations. Multimedia enforcement, pursuing a single facility for violations occurring in more than one media and under more than one statutory scheme, can address violations more efficiently for both the state and for facilities than serial inspections/actions by several boards and departments. Furthermore, cross-program strategies to address environmental problems in disadvantaged communities are increasingly important as CalEPA pursues efforts to assure environmental justice.

5. Well-Trained Enforcement and Compliance Assistance Personnel

An effective environmental enforcement and compliance program requires well-trained personnel and state of the art enforcement tools.

It is critical to a strong enforcement program to attract and retain a strong and well-trained workforce of inspectors, case developers and other enforcement personnel who can meaningfully assist regulated entities in achieving compliance and readily pursue enforcement opportunities. Enforcement requires not only a high degree of technical knowledge and deep knowledge of the relevant regulations, but also the skills to interact appropriately with the

regulated community and, in particular, those who violate the law. We also want to build excellence by providing the support, encouragement, mentoring and training to assure that each member of the enforcement workforce has the necessary tools to inspect, develop and prosecute the type and number of complicated cases we want to bring. That effort includes exploring technological tools that integrate data analysis across agencies.

Well-trained enforcement personnel also understand how to meaningfully and transparently interact with impacted communities. Apart from being responsive to community complaints, CalEPA will consider pathways for incorporating community based science, traditional ecological knowledge and participatory research in data gathering efforts. BDOs should also develop protocols around communicating inspection and sampling results, along with enforcement outcomes, with affected communities.

6. State and Federal Enforcement Partners

Strong partnerships with other state and federal agencies are essential

Enforcement cases often involve partnerships with other entities, including the California Attorney General in their independent capacity, U.S. EPA, the U.S. DOJ, the Resources Agency, CalGEM, the State Lands Commission and others. The success of our state enforcement programs hinge on developing and maintaining excellent working relationships with these other state and federal enforcement entities. Having a central point of contact at CalEPA to coordinate enforcement work with other state and federal entities will enhance CalEPA's ability to lead state-wide. In addition, it is important that our state partners have a clear point of contact to raise enforcement related issues and a clear counterpart at the agency level with whom to coordinate on broad issues such as evaluation of legislative cross-media enforcement proposals and response to judicial decisions that have cross-media enforcement effects.

7. Tribal Enforcement Partners

Building strong government-to-government relations with California Native American Tribes

California has the second largest number of federally-recognized tribes in the nation, and, according to the 2010 US Census, the largest Native American population in the United States. All California Native American Tribes, whether officially recognized by the federal government or not, have environmental, economic and public health concerns that are at times different from and at times similar to concerns of non-Tribe California residents. Enforcement agencies need to establish strong government-to-government relations with California Native American Tribes and effective partnerships, including enforcement action partnerships, to ensure protection of members of Native American Tribes and Tribal resources from environmental harms.

8. Enforcement and Program Integration

A strong enforcement and compliance program requires coordination between permitting, policy and enforcement to assure that priorities are in alignment.

Program functions such as rulemaking and permitting must be carried out with a view toward the ultimate enforcement of the rules that are adopted and conditions included in permits. That requires coordination between enforcement staff and program staff in the update of current regulations and the development of new rules and permit conditions. CalEPA will develop agency-wide protocols for that coordination, including protocols for consideration in each permit decision and rulemaking decision of how compliance with new rule requirements and permit conditions will be monitored and enforced.

9. Enforcement and Communications Coordination

The deterrent effect of enforcement is lost if the regulated community never learns of enforcement actions by the CalEPA boards and departments. An effective enforcement program requires dedicated attention to the most effective methods of making certain that the regulated community and affected community members learn of all enforcement activity. This can be through traditional media for major enforcement actions, but can also be through trade publications and other resources for more routine enforcement actions. CalEPA will develop agency-wide protocols for coordination between enforcement with communications operations, with requirements that notice of all enforcement action be disseminated effectively to the regulated community.

10. Equity in Enforcement

The State recognizes historical and ongoing inequity in the distribution of environmental burdens and benefits among Californians. In an effort to remedy those inequities, CalEPA BDOs should develop policies and metrics to ensure equitable deployment of enforcement and compliance resources. A key goal of CalEPA's enforcement program is to prioritize the deployment of enforcement resources to communities with highest pollution burdens and environmental risks. This means that BDO enforcement chiefs should work closely with the EJ Task Force to ensure coordination and integration of the Task Force's work into each BDO's enforcement agenda. Likewise, BDOs should integrate community based enforcement leads, such as tips and complaints from the Identifying Violations Affecting Neighborhoods (IVAN) networks, into enforcement efforts.

To measure progress in enforcement equity, CalEPA should develop protocols to compare enforcement results, such as pounds of pollution reduced and penalties assessed, to data focused on environmental risk. Environmental risk may be measured through data-driven tools such as CalEnviroScreen.

Conclusion

I want to recognize the excellent enforcement work that has already taken place in CalEPA's boards and departments.

This plan to enhance CalEPA's enforcement coordination and oversight, including ensuring that all board and department enforcement efforts incorporate the elements set forth above, will require work by all of us. With this in mind, the Office of the Secretary's Assistant General Counsel for Enforcement (Enforcement AGC) will oversee and coordinate the development of a cross-BDO enforcement program that meets the goals set forth in this memo and provide regular updates on progress. The Enforcement AGC will work with the BDOs to first develop and document a baseline understanding of CalEPA's current enforcement activities. The Enforcement AGC will then work with the BDOs to develop policies and provide guidance aimed at building the enforcement capacities and cultures outlined above. CalEPA-wide enforcement staff meetings will be held quarterly.

I am looking forward to doing the required work together to produce the very best environmental results we can. Thank you.

CHAPTER 92

AN ACT concerning the disproportionate environmental and public health impacts of pollution on overburdened communities, and supplementing Title 13 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.13:1D-157 Findings, declarations relative to impact of pollution on overburdened communities.

1. The Legislature finds and declares that all New Jersey residents, regardless of income, race, ethnicity, color, or national origin, have a right to live, work, and recreate in a clean and healthy environment; that, historically, New Jersey's low-income communities and communities of color have been subject to a disproportionately high number of environmental and public health stressors, including pollution from numerous industrial, commercial, and governmental facilities located in those communities; that, as a result, residents in the State's overburdened communities have suffered from increased adverse health effects including, but not limited to, asthma, cancer, elevated blood lead levels, cardiovascular disease, and developmental disorders; that children are especially vulnerable to the adverse health effects caused by exposure to pollution, and that such health effects may severely limit a child's potential for future success; that the adverse effects caused by pollution impede the growth, stability, and long-term well-being of individuals and families living in overburdened communities; that the legacy of siting sources of pollution in overburdened communities continues to pose a threat to the health, well-being, and economic success of the State's most vulnerable residents; and that it is past time for the State to correct this historical injustice.

The Legislature further finds and declares that no community should bear a disproportionate share of the adverse environmental and public health consequences that accompany the State's economic growth; that the State's overburdened communities must have a meaningful opportunity to participate in any decision to allow in such communities certain types of facilities which, by the nature of their activity, have the potential to increase environmental and public health stressors; and that it is in the public interest for the State, where appropriate, to limit the future placement and expansion of such facilities in overburdened communities.

C.13:1D-158 Definitions relative to impact of pollution on overburdened communities.

2. As used in this act:

"Department" means the Department of Environmental Protection.

"Environmental or public health stressors" means sources of environmental pollution, including, but not limited to, concentrated areas of air pollution, mobile sources of air pollution, contaminated sites, transfer stations or other solid waste facilities, recycling facilities, scrap yards, and point-sources of water pollution including, but not limited to, water pollution from facilities or combined sewer overflows; or conditions that may cause potential public health impacts, including, but not limited to, asthma, cancer, elevated blood lead levels, cardiovascular disease, and developmental problems in the overburdened community.

“Facility” means any: (1) major source of air pollution; (2) resource recovery facility or incinerator; (3) sludge processing facility, combustor, or incinerator; (4) sewage treatment plant with a capacity of more than 50 million gallons per day; (5) transfer station or other solid waste facility, or recycling facility intending to receive at least 100 tons of recyclable material per day; (6) scrap metal facility; (7) landfill, including, but not limited to, a landfill that accepts ash, construction or demolition debris, or solid waste; or (8) medical waste incinerator; except that “facility” shall not include a facility as defined in section 3 of P.L.1989, c.34 (C.13:1E-48.3) that accepts regulated medical waste for disposal, including a medical waste incinerator, that is attendant to a hospital or university and intended to process self-generated regulated medical waste.

“Limited English proficiency” means that a household does not have an adult that speaks English “very well” according to the United States Census Bureau.

“Low-income household” means a household that is at or below twice the poverty threshold as that threshold is determined annually by the United States Census Bureau.

“Major source” means a major source of air pollution as defined by the federal “Clean Air Act,” 42 U.S.C. s.7401 et seq., or in rules and regulations adopted by the department pursuant to the “Air Pollution Control Act,” P.L.1954, c.212 (C.26:2C-1 et seq.) or which directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant, or other applicable criteria set forth in the federal “Clean Air Act,” 42 U.S.C. s.7401 et seq.

“Overburdened community” means any census block group, as determined in accordance with the most recent United States Census, in which: (1) at least 35 percent of the households qualify as low-income households; (2) at least 40 percent of the residents identify as minority or as members of a State recognized tribal community; or (3) at least 40 percent of the households have limited English proficiency.

“Permit” means any individual permit, registration, or license issued by the department to a facility establishing the regulatory and management requirements for a regulated activity under the following State laws: R.S.12:5-1 et seq.; P.L.1975, c.232 (C.13:1D-29 et al.); the “Solid Waste Management Act,” P.L.1970, c.39 (C.13:1E-1 et seq.); section 17 of P.L.1975, c.326 (C.13:1E-26); the “Comprehensive Regulated Medical Waste Management Act,” P.L.1989, c.34 (C.13:1E-48.1 et al.); P.L.1989, c.151 (C.13:1E-99.21a et al.); the “New Jersey Statewide Mandatory Source Separation and Recycling Act,” P.L.1987, c.102 (C.13:1E-99.11 et al.); the “Pesticide Control Act of 1971,” P.L.1971, c.176 (C.13:1F-1 et seq.); “The Wetlands Act of 1970,” P.L.1970, c.272 (C.13:9A-1 et seq.); the “Freshwater Wetlands Protection Act,” P.L.1987, c.156 (C.13:9B-1 et al.); the “Coastal Area Facility Review Act,” P.L.1973, c.185 (C.13:19-1 et seq.); the “Highlands Water Protection and Planning Act,” P.L.2004, c.120 (C.13:20-1 et seq.), the “Air Pollution Control Act (1954),” P.L.1954, c.212 (C.26:2C-1 et seq.); the “Water Supply Management Act,” P.L.1981, c.262 (C.58:1A-1 et al.); P.L.1947, c.377 (C.58:4A-5 et seq.); the “Water Pollution Control Act,” P.L.1977, c.74 (C.58:10A-1 et seq.); P.L.1986, c.102 (C.58:10A-21 et seq.); or the “Flood Hazard Area Control Act,” P.L.1962, c.19 (C.58:16A-50 et seq.); except that “permit” shall not include any authorization or approval necessary to perform a remediation, as defined pursuant to section 23 of P.L.1993, c.139 (C.58:10B-1), or any authorization or approval

required for a minor modification of a facility's major source permit for activities or improvements that do not increase emissions.

C.13:1D-159 List of overburdened communities on website.

3. No later than 120 days after the effective date of this act, the department shall publish and maintain on its Internet website a list of overburdened communities in the State. The department shall update the list of overburdened communities at least once every two years. The department shall notify a municipality if any part of the municipality has been designated an overburdened community pursuant to this act.

C.13:1D-160 Requirements for permit applicants.

4. a. Beginning immediately upon the adoption of the rules and regulations required pursuant to section 5 of this act, the department shall not consider complete for review any application for a permit for a new facility or for the expansion of an existing facility, or any application for the renewal of an existing facility's major source permit, if the facility is located, or proposed to be located, in whole or in part, in an overburdened community, unless the permit applicant first:

(1) Prepares an environmental justice impact statement that assesses the potential environmental and public health stressors associated with the proposed new or expanded facility, or with the existing major source, as applicable, including any adverse environmental or public health stressors that cannot be avoided if the permit is granted, and the environmental or public health stressors already borne by the overburdened community as a result of existing conditions located in or affecting the overburdened community;

(2) Transmits the environmental justice impact statement required to be prepared pursuant to paragraph (1) of this subsection, at least 60 days in advance of the public hearing required pursuant to paragraph (3) of this subsection, to the department and to the governing body and the clerk of the municipality in which the overburdened community is located. Upon receipt, the department shall publish the environmental justice impact statement on its Internet website; and

(3) Organizes and conducts a public hearing in the overburdened community. The permit applicant shall publish a notice of the public hearing in at least two newspapers circulating within the overburdened community, including one local non-English language newspaper, if applicable, not less than 60 days prior to the public hearing. The permit applicant shall provide a copy of the notice to the department, and the department shall publish the notice on its Internet website and in the monthly bulletin published pursuant to section 6 of P.L.1975, c.232 (C.13:1D-34). The notice of the public hearing shall provide the date, time, and location of the public hearing, a description of the proposed new or expanded facility or existing major source, as applicable, a map indicating the location of the facility, a brief summary of the environmental justice impact statement, information on how an interested person may review a copy of the complete environmental justice impact statement, an address for the submittal of written comments to the permit applicant, and any other information deemed appropriate by the department. At least 60 days prior to the public hearing, the permit applicant shall send a copy of the notice to the department and to the

governing body and the clerk of the municipality in which the overburdened community is located. The applicant shall invite the municipality to participate in the public hearing. At the public hearing, the permit applicant shall provide clear, accurate, and complete information about the proposed new or expanded facility, or existing major source, as applicable, and the potential environmental and public health stressors associated with the facility. The permit applicant shall accept written and oral comments from any interested party, and provided an opportunity for meaningful public participation at the public hearing. The permit applicant shall transcribe the public hearing and, no later than 10 days after the public hearing, submit the transcript along with any written comments received, to the department. Following the public hearing, the department shall consider the testimony presented and any written comments received, and evaluate the issuance of, or conditions to, the permit, as necessary in order to avoid or reduce the adverse environmental or public health stressors affecting the overburdened community.

The department may require the applicant to consolidate the public hearing held pursuant to this paragraph with any other public hearing held or required by the department regarding the permit application, provided the public hearing meets the other requirements of this paragraph. The department shall consider a request by a permit applicant to consolidate required public hearings and, if the request is granted by the department, the consolidation shall not preclude an application from being deemed complete for review pursuant to subsection a. of this section.

b. Notwithstanding the provisions of P.L.1975, c.232 (C.13:1D-29 et seq.) or any other law, or rule or regulation adopted pursuant thereto, to the contrary, the department shall not issue a decision on an application for a permit for a new facility or for the expansion of an existing facility, or on an application for the renewal of an existing facility's major source permit, if such facility is located, or proposed to be located, in whole or in part in an overburdened community until at least 45 days after the public hearing held pursuant to paragraph (3) of subsection a. of this subsection.

c. Notwithstanding the provisions of any other law, or rule or regulation adopted pursuant thereto, to the contrary, the department shall, after review of the environmental justice impact statement prepared pursuant to paragraph (1) of subsection a. of this section and any other relevant information, including testimony and written comments received at the public hearing, deny a permit for a new facility upon a finding that approval of the permit, as proposed, would, together with other environmental or public health stressors affecting the overburdened community, cause or contribute to adverse cumulative environmental or public health stressors in the overburdened community that are higher than those borne by other communities within the State, county, or other geographic unit of analysis as determined by the department pursuant to rule, regulation, or guidance adopted or issued pursuant to section 5 of this act, except that where the department determines that a new facility will serve a compelling public interest in the community where it is to be located, the department may grant a permit that imposes conditions on the construction and operation of the facility to protect public health.

d. Notwithstanding the provisions of any other law, or rule or regulation adopted pursuant thereto, to the contrary, the department may, after review of the environmental

justice impact statement prepared pursuant to paragraph (1) of subsection a. of this section and any other relevant information, including testimony and written comments received at the public hearing, apply conditions to a permit for the expansion of an existing facility, or the renewal of an existing facility's major source permit, concerning the construction and operation of the facility to protect public health, upon a finding that approval of a permit or permit renewal, as proposed, would, together with other environmental or public health stressors affecting the overburdened community, cause or contribute to adverse cumulative environmental or public health stressors in the overburdened community that are higher than those borne by other communities within the State, county, or other geographic unit of analysis as determined by the department pursuant to rule, regulation, or guidance adopted or issued pursuant to section 5 of this act.

e. If a permit applicant is applying for more than one permit for a proposed new or expanded facility, the permit applicant shall only be required to comply with the provisions of this section once, unless the department, in its discretion, determines that more than one public hearing is necessary due to the complexity of the permit applications necessary for the proposed new or expanded facility. Nothing in this section shall be construed to limit the authority of the department to hold or require additional public hearings, as may be required by any other law, rule, or regulation.

f. Nothing in this section shall be construed to limit the right of an applicant to continue facility operations during the process of permit renewal to the extent such right is conveyed by applicable law, rule, or regulation, including the application shield provisions of the rules and regulations adopted pursuant to the "Air Pollution Control Act (1954)," P.L.1954, c.212 (C.26:2C-1 et seq.).

g. In addition to any other fee authorized by law, rule, or regulation, the department shall assess each permit applicant a reasonable fee in order to cover the department's costs associated with the implementation of this act, including costs to provide technical assistance to permit applicants and overburdened communities as needed to comply with this act.

C.13:1D-161 Rules, regulations.

5. a. The department shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) rules and regulations to implement the provisions of this act.

b. The department may issue a technical guidance for compliance with this act, which the department shall publish on its Internet website.

6. This act shall take effect immediately.

Approved September 18, 2020.

N.J. Stat. § 13:1D-157

Section 13:1D-157 - Findings, declarations relative to impact of pollution on overburdened communities

The Legislature finds and declares that all New Jersey residents, regardless of income, race, ethnicity, color, or national origin, have a right to live, work, and recreate in a clean and healthy environment; that, historically, New Jersey's low-income communities and communities of color have been subject to a disproportionately high number of environmental and public health stressors, including pollution from numerous industrial, commercial, and governmental facilities located in those communities; that, as a result, residents in the State's overburdened communities have suffered from increased adverse health effects including, but not limited to, asthma, cancer, elevated blood lead levels, cardiovascular disease, and developmental disorders; that children are especially vulnerable to the adverse health effects caused by exposure to pollution, and that such health effects may severely limit a child's potential for future success; that the adverse effects caused by pollution impede the growth, stability, and long-term well-being of individuals and families living in overburdened communities; that the legacy of siting sources of pollution in overburdened communities continues to pose a threat to the health, well-being, and economic success of the State's most vulnerable residents; and that it is past time for the State to correct this historical injustice.

The Legislature further finds and declares that no community should bear a disproportionate share of the adverse environmental and public health consequences that accompany the State's economic growth; that the State's overburdened communities must have a meaningful opportunity to participate in any decision to allow in such communities certain types of facilities which, by the nature of their activity, have the potential to increase environmental and public health stressors; and that it is in the public interest for the State, where appropriate, to limit the future placement and expansion of such facilities in overburdened communities.

N.J.S. § 13:1D-157

Added by L. 2020, c. 92,s. 1, eff. 9/18/2020.

Climate Leadership and Community Protection Act

An Overview

On July 18, 2019, The New York State Climate Leadership and Community Protection Act (CLCPA) was enacted into law. The CLCPA (Chapter 106 of 2019) establishes aggressive, legally binding targets to completely transition New York's economy off fossil fuels. This new law has significant implications for every sector, and will spur innovation, create jobs, and make New York a true global climate leader.

To get from where we are today to a fossil-fuel free New York by 2050, the law creates a framework of emissions reduction targets, action plans, a blueprint for an equitable transition across all sectors of the economy, and important government reporting and accountability measures.

Key Provisions



Emission Reduction Targets

The goal of the CLCPA is to eliminate 100% of the climate pollution caused by humans, calling for an 85% reduction in greenhouse gas emissions by 2050, with an interim target of 40% by 2030.

The legislation allows for the remaining 15% of emissions beyond the 85% reduction mandate to be achieved by a very limited offset program that only some select industries can participate in. The CLCPA also provides for an electricity-sector mandate, requiring 70% of all of New York's electricity to come from renewable sources by 2030 and 100% zero emission generation by 2040. The electric generation sector is not one that can participate in the offset program.



Action Plan

To meet the objectives set out in the CLCPA, all of state government will need to reorient its many decision making processes. This will be achieved mainly through the development and implementation of a Climate Action Plan.

The Climate Action Plan will be created by a Climate Action Council, which will consist of 22 members from key state agencies and independent legislative appointments. The Department of Environmental Conservation (DEC) and New York State Energy Research and Development Authority (NYSERDA) will co-lead the council.

The Council's work will be informed by several newly created working groups and expert advisory panels, including a Climate Justice Working Group, Environmental Justice Advisory Group, and Just Transition Working Group. The Council will be expected to develop a plan that provides detailed recommendations for action in the areas of transportation, energy intensive and trade-exposed industries, land use and local government, energy efficiency and housing, power generation, and agriculture and forestry.

Climate Leadership and Community Protection Act

An Overview ...continued

The plan will guide the adoption of rules and regulations to ensure compliance with state-wide emissions limits and implementation of the recommendations contained within the final plan. The initial draft Action Plan is due by January 1, 2022 with the final report due by January 1, 2023.

Just Transition

Disadvantaged communities are suffering the effects of climate change and pollution today. The CLCPA acknowledges the need to assist in a 'Just Transition' off fossil fuels and significantly incorporates the principles of equity and environmental justice in the investment and decision-making framework. The CLCPA establishes the Climate Justice Working Group, the Environmental Justice Advisory Group, and the Just Transition Working Group, which will all play different roles in the just transition off of fossil fuels.

The Climate Justice Working Group will help identify disadvantaged communities who under the legislation will receive at least 35% of the benefits of clean energy and energy efficiency initiatives implemented by the state. The Environmental Justice Advisory Group will advise state agencies to embed the concept of equity in state agency decision-making and the Just Transition Working Group will prepare a comprehensive workforce development plan for the Climate Action Council.

Reporting and Accountability

In order to measure progress, the CLCPA contains a number of accountability measures, including:

- A comprehensive report on statewide greenhouse gas emissions, including emissions associated with imported electricity and fossil fuels. (Annual, DEC)
- Period reports on the progress toward meeting greenhouse gas limits and recommending modifications to regulations to ensure the state meets climate and equity goals. (Once every four years, DEC)
- Mandates for all of state government to apply a climate and equity screen to every decision they make, from launching new programs to issuing a permit and authorizes state agencies and authorities to promulgate regulations to implement the policies of the CLCPA.
- Requirements for DEC to monitor and enforce compliance with its greenhouse gas emission reduction regulations.
- Increased legal standing for the public to challenge agency decisions.

STATE OF NEW YORK

S. 6599

A. 8429

2019-2020 Regular Sessions

SENATE - ASSEMBLY

June 18, 2019

IN SENATE -- Introduced by Sens. KAMINSKY, HOYLMAN, ADDABBO, BAILEY, BENJAMIN, BIAGGI, BRESLIN, BROOKS, CARLUCCI, COMRIE, GAUGHRAN, GIANARIS, GOUNARDES, HARCKHAM, JACKSON, KAPLAN, KAVANAGH, KENNEDY, KRUEGER, LIU, MARTINEZ, MAY, MAYER, METZGER, MONTGOMERY, MYRIE, PARKER, PERSAUD, RAMOS, RIVERA, SALAZAR, SANDERS, SEPULVEDA, SERRANO, SKOUFIS, STAVISKY, STEWART-COUSINS, THOMAS -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

IN ASSEMBLY -- Introduced by M. of A. ENGLEBRIGHT, LIFTON, FAHY, ORTIZ, CAHILL, WALKER, CARROLL, L. ROSENTHAL, THIELE, JAFFEE, SIMON, OTIS, DINOWITZ, WILLIAMS, ROZIC, ABINANTI, MOSLEY, BARRETT, STECK, GALEF, GOTTFRIED, LUPARDO, PHEFFER AMATO, DE LA ROSA, JEAN-PIERRE, COLTON, CUSICK, PEOPLES-STOKES, SEAWRIGHT, PICHARDO, WEPRIN, SIMOTAS, GLICK, FERNANDEZ, D'URSO, O'DONNELL, GRIFFIN, REYES, BURKE, SOLAGES, ROMEO, STIRPE, MAGNARELLI, EPSTEIN, TAYLOR, FALL, CRUZ, STERN, SANTABARBARA, BRONSON, BARNWELL, DAVILA, HEVESI, NIOU, HUNTER, M. G. MILLER, BENEDETTO, RODRIGUEZ, QUART, WRIGHT, HYNDMAN, CRESPO, FRONTUS, RYAN, SAYEGH, BARRON, PRETLOW, GUNTHER, RICHARDSON, RAYNOR, KIM, McMAHON, DICKENS, JACOBSON, WEINSTEIN -- Multi-Sponsored by -- M. of A. DenDEKKER, LENTOL, NOLAN, PAULIN, RAMOS -- (at request of the Governor) -- read once and referred to the Committee on Ways and Means

AN ACT to amend the environmental conservation law, the public service law, the public authorities law, the labor law and the community risk and resiliency act, in relation to establishing the New York state climate leadership and community protection act

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. Legislative findings and declaration. The legislature here-
- 2 by enacts the "New York state climate leadership and community
- 3 protection act" and finds and declares that:

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD12037-01-9

1 1. Climate change is adversely affecting economic well-being, public
2 health, natural resources, and the environment of New York. The adverse
3 impacts of climate change include:

4 a. an increase in the severity and frequency of extreme weather
5 events, such as storms, flooding, and heat waves, which can cause direct
6 injury or death, property damage, and ecological damage (e.g., through
7 the release of hazardous substances into the environment);

8 b. rising sea levels, which exacerbate damage from storm surges and
9 flooding, contribute to coastal erosion and saltwater intrusion, and
10 inundate low-lying areas, leading to the displacement of or damage to
11 coastal habitat, property, and infrastructure;

12 c. a decline in freshwater and saltwater fish populations;

13 d. increased average temperatures, which increase the demand for air
14 conditioning and refrigeration among residents and businesses;

15 e. exacerbation of air pollution; and

16 f. an increase in the incidences of infectious diseases, asthma
17 attacks, heart attacks, and other negative health outcomes. These
18 impacts are having a detrimental effect on some of New York's largest
19 industries, including agriculture, commercial shipping, forestry, tour-
20 ism, and recreational and commercial fishing. These impacts also place
21 additional strain on the physical infrastructure that delivers critical
22 services to the citizens of New York, including the state's energy,
23 transportation, stormwater, and wastewater infrastructure.

24 2. a. The severity of current climate change and the threat of addi-
25 tional and more severe change will be affected by the actions undertaken
26 by New York and other jurisdictions to reduce greenhouse gas emissions.
27 According to the U.S. Global Change Research Program (USGCRP) and the
28 Intergovernmental Panel on Climate Change (IPCC), substantial reductions
29 in greenhouse gas emissions will be required by mid-century in order to
30 limit global warming to no more than 2°C and ideally 1.5°C, and thus
31 minimize the risk of severe impacts from climate change. Specifically,
32 industrialized countries must reduce their greenhouse gas emissions by
33 at least 80% below 1990 levels by 2050 in order to stabilize carbon
34 dioxide equivalent concentrations at 450 parts per million--the level
35 required to stay within the 2°C target.

36 b. On December 12, 2015, one hundred ninety-five countries at the 21st
37 Conference of the parties of the United Nations Framework Convention on
38 Climate Change adopted an agreement addressing greenhouse gas emissions
39 mitigation, adaptation, and finance starting in the year 2020, known as
40 the Paris Agreement. The Paris Agreement was adopted on November 4,
41 2016, and is the largest concerted global effort to combat climate
42 change to date.

43 3. Action undertaken by New York to reduce greenhouse emissions will
44 have an impact on global greenhouse gas emissions and the rate of
45 climate change. In addition, such action will encourage other jurisdic-
46 tions to implement complementary greenhouse gas reduction strategies and
47 provide an example of how such strategies can be implemented. It will
48 also advance the development of green technologies and sustainable prac-
49 tices within the private sector, which can have far-reaching impacts
50 such as a reduction in the cost of renewable energy components, and the
51 creation of jobs and tax revenues in New York.

52 4. It shall therefore be a goal of the state of New York to reduce
53 greenhouse gas emissions from all anthropogenic sources 100% over 1990
54 levels by the year 2050, with an incremental target of at least a 40
55 percent reduction in climate pollution by the year 2030, in line with

1 USGCRP and IPCC projections of what is necessary to avoid the most
2 severe impacts of climate change.

3 5. Although substantial emissions reductions are necessary to avoid
4 the most severe impacts of climate change, complementary adaptation
5 measures will also be needed to address those risks that cannot be
6 avoided. Some of the impacts of climate change are already observable in
7 New York state and the northeastern United States. Annual average
8 temperatures are on the rise, winter snow cover is decreasing, heat
9 waves and precipitation are intensifying, and sea levels along New
10 York's coastline are approximately one foot higher than they were in
11 1900. New York has also experienced an increasing number of extreme and
12 unusual weather events, like Hurricanes Irene and Lee and the
13 unprecedented Superstorm Sandy in 2012, which caused at least 53 deaths
14 and \$32 billion in damage in New York state.

15 6. New York should therefore minimize the risks associated with
16 climate change through a combination of measures to reduce statewide
17 greenhouse gas emissions and improve the resiliency of the state with
18 respect to the impacts and risks of climate change that cannot be
19 avoided.

20 7. Climate change especially heightens the vulnerability of disadvan-
21 taged communities, which bear environmental and socioeconomic burdens as
22 well as legacies of racial and ethnic discrimination. Actions undertaken
23 by New York state to mitigate greenhouse gas emissions should prioritize
24 the safety and health of disadvantaged communities, control potential
25 regressive impacts of future climate change mitigation and adaptation
26 policies on these communities, and prioritize the allocation of public
27 investments in these areas.

28 8. Creating good jobs and a thriving economy is a core concern of New
29 York state. Shaping the ongoing transition in our energy sector to
30 ensure that it creates good jobs and protects workers and communities
31 that may lose employment in the current transition must be key concerns
32 of our climate policy. Setting clear standards for job quality and
33 training standards encourages not only high-quality work but positive
34 economic impacts.

35 9. Workers are at the front lines of climate change. Construction
36 workers and building service workers were some of the first workers
37 dedicated to cleaning up damage inflicted by recent storms. These work-
38 ers were often operating in unsafe and toxic environments, cleaning up
39 mold, and working in unstable buildings. In order to protect the health
40 and welfare of these workers, it is in the interest of the state of New
41 York to establish safe and healthy working conditions and proper train-
42 ing for workers involved in climate change related activities. In addi-
43 tion, much of the infrastructure work preparing our state for additional
44 climate change events must happen quickly and efficiently. It is in the
45 interest of the state to ensure labor harmony and promote efficient
46 performance of work on climate change related work sites by requiring
47 workers to be well-trained and adequately compensated.

48 10. Ensuring career opportunities are created and shared geograph-
49 ically and demographically is necessary to ensure increased access to
50 good jobs for marginalized communities while making the same neighbor-
51 hoods more resilient. Climate change has a disproportionate impact on
52 low-income people, women, and workers. It is in the interest of the
53 state of New York to protect and promote the interests of these groups
54 against the impacts of climate change and severe weather events and to
55 advance our equity goals by ensuring quality employment opportunities in
56 safe working environments.

11. The complexity of the ongoing energy transition, the uneven distribution of economic opportunity, and the disproportionate cumulative economic and environmental burdens on communities mean that there is a strong state interest in setting a floor statewide for labor standards, but allowing and encouraging individual agencies and local governments to raise standards.

12. By exercising a global leadership role on greenhouse gas mitigation and climate change adaptation, New York will position its economy, technology centers, financial institutions, and businesses to benefit from national and international efforts to address climate change. New York state has already demonstrated leadership in this area by undertaking efforts such as:

a. executive order no. 24 (2009), establishing a goal to reduce greenhouse gas emissions 80% by the year 2050, creating a climate action council, and calling for preparation of a climate action plan;

b. chapter 433 of the laws of 2009, establishing a state energy planning board and requiring the board to adopt a state energy plan;

c. chapter 388 of the laws of 2011, directing the department of environmental conservation to promulgate rules and regulations limiting emissions of carbon dioxide by newly constructed major generating facilities;

d. the adoption of a state energy plan establishing clean energy goals for the year 2030 aimed at reducing greenhouse gas emission levels by 40% from 1990 levels, producing 70% of electricity from renewable sources, increasing energy efficiency from 2012 levels by 23% and the additional expressed goal of reducing 100% of the electricity sector's greenhouse gas emissions by 2040;

e. collaboration with other states on the Regional Greenhouse Gas Initiative, and the development of a regional low carbon fuel standard;

f. creation of new offices and task forces to address climate change, including the New York state office of climate change, the renewable energy task force, and the sea level rise task force; and

g. the enactment of the Community Risk and Resiliency Act (CRRRA), which requires agencies to consider sea level rise and other climate-related events when implementing certain state programs.

This legislation will build upon these past developments by creating a comprehensive regulatory program to reduce greenhouse gas emissions that corresponds with the targets established in executive order no. 24, the state energy plan, and USGCRP and IPCC projections.

§ 2. The environmental conservation law is amended by adding a new article 75 to read as follows:

ARTICLE 75

CLIMATE CHANGE

Section 75-0101. Definitions.

75-0103. New York state climate action council.

75-0105. Statewide greenhouse gas emissions report.

75-0107. Statewide greenhouse gas emissions limits.

75-0109. Promulgation of regulations to achieve statewide greenhouse gas emissions reductions.

75-0111. Climate justice working group.

75-0113. Value of carbon.

75-0115. Community air monitoring program.

75-0117. Investment of funds.

75-0119. Implementation reporting.

§ 75-0101. Definitions.

1 For the purposes of this article the following terms shall have the
2 following meanings:

3 1. "Allowance" means an authorization to emit, during a specified
4 year, up to one ton of carbon dioxide equivalent.

5 2. "Carbon dioxide equivalent" means the amount of carbon dioxide by
6 mass that would produce the same global warming impact as a given mass
7 of another greenhouse gas over an integrated twenty-year time frame
8 after emission.

9 3. "Co-pollutants" means hazardous air pollutants produced by green-
10 house gas emissions sources.

11 4. "Council" means the New York state climate action council estab-
12 lished pursuant to section 75-0103 of this article.

13 5. "Disadvantaged communities" means communities that bear burdens of
14 negative public health effects, environmental pollution, impacts of
15 climate change, and possess certain socioeconomic criteria, or comprise
16 high-concentrations of low- and moderate- income households, as identi-
17 fied pursuant to section 75-0111 of this article.

18 6. "Emissions reduction measures" means programs, measures and stand-
19 ards, authorized pursuant to this chapter, applicable to sources or
20 categories of sources, that are designed to reduce emissions of green-
21 house gases.

22 7. "Greenhouse gas" means carbon dioxide, methane, nitrous oxide,
23 hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, and any other
24 substance emitted into the air that may be reasonably anticipated to
25 cause or contribute to anthropogenic climate change.

26 8. "Greenhouse gas emission limit" means the maximum allowable level
27 of statewide greenhouse gas emissions, in a specified year, expressed in
28 tons of carbon dioxide equivalent, as determined by the department
29 pursuant to this article.

30 9. "Greenhouse gas emission offset" means a deduction representing one
31 metric ton of carbon dioxide equivalent emissions, reduced, avoided, or
32 sequestered by a greenhouse gas emission offset project from a measured
33 baseline of emissions pursuant to the statewide greenhouse gas emissions
34 report.

35 10. "Greenhouse gas emission offset projects" means one or more
36 projects, including:

37 a. Natural carbon sinks including but not limited to afforestation,
38 reforestation, or wetlands restoration;

39 b. Greening infrastructure;

40 c. Restoration and sustainable management of natural and urban forests
41 or working lands, grasslands, coastal wetlands and sub-tidal habitats;

42 d. Efforts to reduce hydrofluorocarbon refrigerant, sulfur hexafluor-
43 ide, and other ozone depleting substance releases;

44 e. Anaerobic digesters, where energy produced is directed toward
45 localized use;

46 f. Carbon capture and sequestration;

47 g. Ecosystem restoration; and

48 h. Other types of projects recommended by the council in consultation
49 with the climate justice working group that provide public health and
50 environmental benefits, and do not create burdens in disadvantaged
51 communities.

52 11. "Greenhouse gas emission source" or "source" means any anthropo-
53 genic source or category of anthropogenic sources of greenhouse gas
54 emissions, determined by the department:

55 a. whose participation in the program will enable the department to
56 effectively reduce greenhouse gas emissions; and,

1 b. that are capable of being monitored for compliance.

2 12. "Leakage" means a reduction in emissions of greenhouse gases with-
3 in the state that is offset by an increase in emissions of greenhouse
4 gases outside of the state.

5 13. "Statewide greenhouse gas emissions" means the total annual emis-
6 sions of greenhouse gases produced within the state from anthropogenic
7 sources and greenhouse gases produced outside of the state that are
8 associated with the generation of electricity imported into the state
9 and the extraction and transmission of fossil fuels imported into the
10 state. Statewide emissions shall be expressed in tons of carbon dioxide
11 equivalents.

12 14. "Statewide greenhouse gas emissions limit" or "statewide emissions
13 limit" means the maximum allowable level of statewide greenhouse gas
14 emissions in a specified year, as determined by the department pursuant
15 to this article.

16 15. "Environmental justice advisory group" shall mean the permanent
17 environmental justice advisory group established by a chapter of the
18 laws of two thousand nineteen amending the environmental conservation
19 law relating to establishing a permanent environmental justice advisory
20 group and an environmental justice interagency coordinating council, as
21 proposed in legislative bills numbers S. 2385 and A. 1564.

22 § 75-0103. New York state climate action council.

23 1. There is hereby established the New York state climate action coun-
24 cil ("council") which shall consist of the following twenty-two members:

25 a. the commissioners of transportation, health, economic development,
26 agriculture and markets, housing and community renewal, environmental
27 conservation, labor, the chairperson of the public service commission,
28 the presidents of the New York state energy research and development
29 authority; New York power authority; Long Island power authority; the
30 secretary of state, or their designees.

31 b. two non-agency expert members appointed by the governor;

32 c. three members to be appointed by the temporary president of the
33 senate;

34 d. three members to be appointed by the speaker of the assembly;

35 e. one member to be appointed by the minority leader of the senate;
36 and

37 f. one member to be appointed by the minority leader of the assembly.

38 2. The at large members shall include at all times individuals with
39 expertise in issues relating to climate change mitigation and/or adapta-
40 tion, such as environmental justice, labor, public health and regulated
41 industries.

42 3. Council members shall receive no compensation for their services
43 but shall be reimbursed for actual and necessary expenses incurred in
44 the performance of their duties.

45 4. The co-chairpersons of the council shall be the commissioner of
46 environmental conservation and the president of the New York state ener-
47 gy research and development authority or their designee.

48 5. Each member of the council shall be entitled to one vote. The coun-
49 cil's approval and adoption of the final scoping plan pursuant to this
50 section, and any subsequent interim updates thereto, shall require a
51 supermajority of the council. No action may be taken by the council
52 unless there is a quorum, which shall at all times be a majority of the
53 members of the council.

54 6. Any vacancies on the council shall be filled in the manner provided
55 for the initial appointment.

1 7. The council shall convene advisory panels requiring special exper-
2 tise and, at a minimum, shall establish advisory panels on transporta-
3 tion, energy intensive and trade-exposed industries, land-use and local
4 government, energy efficiency and housing, power generation, and agri-
5 culture and forestry. The purpose of the advisory panels shall be to
6 provide recommendations to the council on specific topics, in its prepa-
7 ration of the scoping plan, and interim updates to the scoping plan, and
8 in fulfilling the council's ongoing duties.

9 a. Each advisory panel shall be chaired by the relevant agency head or
10 his or her designee. The council may convene and dissolve additional
11 advisory panels, in its sole discretion, and pursuant to the require-
12 ments herein.

13 b. Advisory panels shall be comprised of no more than five voting
14 members. The council shall elect advisory panel members, and such
15 membership shall at all times represent individuals with direct involve-
16 ment or expertise in matters to be addressed by the advisory panels
17 pursuant to this section.

18 c. Advisory panels shall work directly with the council on the prepa-
19 ration of the scoping plan pursuant to this section. Each advisory panel
20 shall coordinate with the environmental justice advisory group and
21 climate justice working group.

22 d. All agencies of the state or subdivisions thereof may, at the
23 request of any such advisory panel or the council, provide the advisory
24 panel with such facilities, assistance, and data as will enable advisory
25 panels to carry out their powers and duties.

26 8. The council shall convene a just transition working group. The
27 working group shall be chaired by the commissioner of labor and the
28 president of the New York state energy research and development authori-
29 ty and shall consist of no less than thirteen, but no more than seven-
30 teen members and shall include the commissioners of housing and communi-
31 ty renewal, the chair of the department of public service,
32 representatives of environmental justice communities and representatives
33 of labor organizations, clean energy developers and at least five repre-
34 sentatives of distinct energy-intensive industries. The just transition
35 working group shall:

36 a. advise the council on issues and opportunities for workforce devel-
37 opment and training related to energy efficiency measures, renewable
38 energy and other clean energy technologies, with specific focus on
39 training and workforce opportunities for disadvantaged communities, and
40 segments of the population that may be underrepresented in the clean
41 energy workforce such as veterans, women and formerly incarcerated
42 persons;

43 b. identify energy-intensive industries and related trades and identi-
44 fy sector specific impacts of the state's current workforce and avenues
45 to maximize the skills and expertise of New York state workers in the
46 new energy economy;

47 c. identify sites of electric generating facilities that may be closed
48 as a result of a transition to a clean energy sector and the issues and
49 opportunities presented by reuse of those sites;

50 d. with respect to potential for greenhouse gas emission limits devel-
51 oped by the department of environmental conservation pursuant to this
52 article, advise the council on the potential impacts of carbon leakage
53 risk on New York state industries and local host communities, including
54 the impact of any potential carbon reduction measures on the competi-
55 tiveness of New York state business and industry;

1 e. advise the council and conduct stakeholder outreach on any other
2 workforce matters directed by the council; and

3 f. at a time frame determined by the council, prepare and publish
4 recommendations to the council on how to address: issues and opportu-
5 nities related to the energy-intensive and trade-exposed entities; work-
6 force development for trade-exposed entities, disadvantaged communities
7 and underrepresented segments of the population; measures to minimize
8 the carbon leakage risk and minimize anti-competitiveness impacts of any
9 potential carbon policies and energy sector mandates.

10 g. The just transition working group is hereby authorized and directed
11 to conduct a study of and report on:

12 i. The number of jobs created to counter climate change, which shall
13 include but not be limited to the energy sector, building sector, trans-
14 portation sector, and working lands sector;

15 ii. The projection of the inventory of jobs needed and the skills and
16 training required to meet the demand of jobs to counter climate change;
17 and

18 iii. Workforce disruption due to community transitions from a low
19 carbon economy.

20 9. The department and the New York state energy research and develop-
21 ment authority shall provide the council with such facilities, assist-
22 ance and data as will enable the council to carry out its powers and
23 duties. Additionally, all other agencies of the state or subdivisions
24 thereof may, at the request of the co-chairpersons, provide the council
25 with such facilities, assistance, and data as will enable the council to
26 carry out its powers and duties.

27 10. The council shall consult with the climate justice working group
28 established in section 75-0111 of this article, the department of state
29 utility intervention unit, and the federally designated electric bulk
30 system operator.

31 11. The council shall on or before two years of the effective date of
32 this article, prepare and approve a scoping plan outlining the recommen-
33 dations for attaining the statewide greenhouse gas emissions limits in
34 accordance with the schedule established in section 75-0107 of this
35 article, and for the reduction of emissions beyond eighty-five percent,
36 net zero emissions in all sectors of the economy, which shall inform the
37 state energy planning board's adoption of a state energy plan in accord-
38 ance with section 6-104 of the energy law. The first state energy plan
39 issued subsequent to completion of the scoping plan required by this
40 section shall incorporate the recommendations of the council.

41 12. The draft scoping plan shall be developed in consultation with the
42 environmental justice advisory group, and the climate justice working
43 group established pursuant to section 75-0111 of this article and other
44 stakeholders.

45 a. The council shall hold at least six regional public comment hear-
46 ings on the draft scoping plan, including three meetings in the upstate
47 region and three meetings in the downstate region, and shall allow at
48 least one hundred twenty days for the submission of public comment.

49 b. The council shall provide meaningful opportunities for public
50 comment from all segments of the population that will be impacted by the
51 plan, including persons living in disadvantaged communities as identi-
52 fied pursuant to section 75-0111 of this article.

53 c. On or before three years of the effective date of this article, the
54 council shall submit the final scoping plan to the governor, the speaker
55 of the assembly and the temporary president of the senate and post such
56 plan on its website.

13. The scoping plan shall identify and make recommendations on regulatory measures and other state actions that will ensure the attainment of the statewide greenhouse gas emissions limits established pursuant to section 75-0107 of this article. The measures and actions considered in such scoping plan shall at a minimum include:

a. Performance-based standards for sources of greenhouse gas emissions, including but not limited to sources in the transportation, building, industrial, commercial, and agricultural sectors.

b. Measures to reduce emissions from the electricity sector by displacing fossil-fuel fired electricity with renewable electricity or energy efficiency.

c. Land-use and transportation planning measures aimed at reducing greenhouse gas emissions from motor vehicles.

d. Measures to achieve long-term carbon sequestration and/or promote best management practices in land use, agriculture and forestry.

e. Measures to achieve six gigawatts of distributed solar energy capacity installed in the state by two thousand twenty-five, nine gigawatts of offshore wind capacity installed by two thousand thirty-five, a statewide energy efficiency goal of one hundred eighty-five trillion British thermal units energy reduction from the two thousand twenty-five forecast; and three gigawatts of statewide energy storage capacity by two thousand thirty.

f. Measures to promote the beneficial electrification of personal and freight transport and other strategies to reduce greenhouse gas emissions from the transportation sector.

g. Measures to achieve reductions in energy use in existing residential or commercial buildings, including the beneficial electrification of water and space heating in buildings, establishing appliance efficiency standards, strengthening building energy codes, requiring annual building energy benchmarking, disclosing energy efficiency in home sales, and expanding the ability of state facilities to utilize performance contracting.

h. Recommendations to aid in the transition of the state workforce and the rapidly emerging clean energy industry.

i. Measures to achieve healthy forests that support clean air and water, biodiversity, and sequester carbon.

j. Measures to limit the use of chemicals, substances or products that contribute to global climate change when released to the atmosphere, but are not intended for end-use combustion.

k. Mechanisms to limit emission leakage as defined in subdivision eleven of section 75-0101 of this article.

l. Verifiable, enforceable and voluntary emissions reduction measures.

14. In developing such plan the council shall:

a. Consider all relevant information pertaining to greenhouse gas emissions reduction programs in states in the United States Climate Alliance, as well as other states, regions, localities, and nations.

b. Evaluate, using the best available economic models, emission estimation techniques and other scientific methods, the total potential costs and potential economic and non-economic benefits of the plan for reducing greenhouse gases, and make such evaluation publicly available. In conducting this evaluation, the council shall quantify:

i. The economic and social benefits of greenhouse gas emissions reductions, taking into account the value of carbon, established by the department pursuant to section 75-0113 of this article, any other tools that the council deems useful and pertinent for this analysis, and any environmental, economic and public health co-benefits (such as the

1 reduction of co-pollutants and the diversification of energy sources);
2 and

3 ii. The costs of implementing proposed emissions reduction measures,
4 and the emissions reductions that the council anticipates achieving
5 through these measures.

6 c. Take into account the relative contribution of each source or
7 source category to statewide greenhouse gas emissions, and the potential
8 for adverse effects on small businesses, and recommend a de minimis
9 threshold of greenhouse gas emissions below which emission reduction
10 requirements will not apply.

11 d. Identify measures to maximize reductions of both greenhouse gas
12 emissions and co-pollutants in disadvantaged communities as identified
13 pursuant to section 75-0111 of this article.

14 15. The council shall update its plan for achieving the statewide
15 greenhouse gas emissions limits at least once every five years and shall
16 make such updates available to the governor, the speaker of the assembly
17 and the temporary president of the senate and post such updates on its
18 website.

19 16. The council shall identify existing climate change mitigation and
20 adaptation efforts at the federal, state, and local levels and may make
21 recommendations regarding how such policies may improve the state's
22 efforts.

23 17. The council shall maintain a website that includes public access
24 to the scoping plan and greenhouse gas limit information.

25 § 75-0105. Statewide greenhouse gas emissions report.

26 1. No later than two years after the effective date of this article,
27 and each year thereafter, the department shall issue a report on state-
28 wide greenhouse gas emissions, expressed in tons of carbon dioxide
29 equivalents, from all greenhouse gas emission sources in the state,
30 including the relative contribution of each type of greenhouse gas and
31 each type of source to the statewide total.

32 2. The statewide greenhouse gas emissions report shall be a comprehen-
33 sive evaluation, informed by a variety of data, including but not limit-
34 ed to:

35 a. information relating to the use of fossil fuels by sector, includ-
36 ing for electricity generation, transportation, heating, and other
37 combustion purposes;

38 b. information relating to fugitive and vented emissions from systems
39 associated with the production, processing, transport, distribution,
40 storage, and consumption of fossil fuels, including natural gas;

41 c. information relating to emissions from non-fossil fuel sources,
42 including, but not limited to, garbage incinerators, biomass combustion,
43 landfills and landfill gas generators, and anaerobic digesters;

44 d. information relating to emissions associated with manufacturing,
45 chemical production, cement plants, and other processes that produce
46 non-combustion emissions; and

47 e. information from sources that may be required to participate in the
48 registration and reporting system pursuant to subdivision four of this
49 section.

50 3. The statewide greenhouse gas emissions report shall also include an
51 estimate of greenhouse gas emissions associated with the generation of
52 imported electricity and with the extraction and transmission of fossil
53 fuels imported into the state which shall be counted as part of the
54 statewide total.

55 4. Within one year after the effective date of this article, the
56 department shall consider establishing a mandatory registry and report-

1 ing system from individual sources to obtain data on greenhouse gas
2 emissions exceeding a particular threshold. If established, such regis-
3 try and reporting system shall apply a consistent reporting threshold to
4 ensure the unbiased collection of data.

5 5. The statewide greenhouse gas emissions report shall also include an
6 estimate of what the statewide greenhouse gas emissions level was in
7 1990.

8 6. The statewide greenhouse gas emissions report shall utilize best
9 available science and methods of analysis, including the comparison and
10 reconciliation of emission estimates from all sources, fuel consumption,
11 field data, and peer-reviewed research.

12 7. The statewide greenhouse gas emissions report shall clearly explain
13 the methodology and analysis used in the department's determination of
14 greenhouse gas emissions and shall include a detailed explanation of any
15 changes in methodology or analysis, adjustments made to prior estimates,
16 as needed, and any other information necessary to establish a scientif-
17 ically credible account of change.

18 8. The department shall hold at least two public hearings to seek
19 public input regarding the methodology and analysis used in the determi-
20 nation of statewide greenhouse gas emissions, and periodically thereaft-
21 er.

22 § 75-0107. Statewide greenhouse gas emissions limits.

23 1. No later than one year after the effective date of this article,
24 the department shall, pursuant to rules and regulations promulgated
25 after at least one public hearing, establish a statewide greenhouse gas
26 emissions limit as a percentage of 1990 emissions, as estimated pursuant
27 to section 75-0105 of this article, as follows:

28 a. 2030: 60% of 1990 emissions.

29 b. 2050: 15% of 1990 emissions.

30 2. Greenhouse gas emission limits shall be measured in units of carbon
31 dioxide equivalents and identified for each individual type of green-
32 house gas.

33 3. In order to ensure the most accurate determination feasible, the
34 department shall utilize the best available scientific, technological,
35 and economic information on greenhouse gas emissions and consult with
36 the council, stakeholders, and the public in order to ensure that all
37 emissions are accurately reflected in its determination of 1990 emis-
38 sions levels.

39 4. In order to comply with the statewide greenhouse gas emissions
40 limits promulgated pursuant to this section, a source may utilize the
41 alternative compliance mechanism established pursuant to subdivision
42 four of section 75-0109 of this article. The use of such mechanism shall
43 be in accordance with the provisions of that subdivision.

44 § 75-0109. Promulgation of regulations to achieve statewide greenhouse
45 gas emissions reductions.

46 1. No later than four years after the effective date of this article,
47 the department, after public workshops and consultation with the coun-
48 cil, the environmental justice advisory group, and the climate justice
49 working group established pursuant to section 75-0111 of this article,
50 representatives of regulated entities, community organizations, environ-
51 mental groups, health professionals, labor unions, municipal corpo-
52 rations, trade associations and other stakeholders, shall, after no less
53 than two public hearings, promulgate rules and regulations to ensure
54 compliance with the statewide emissions reduction limits and work with
55 other state agencies and authorities to promulgate regulations required

1 by section eight of the chapter of the laws of two thousand nineteen
2 that added this article.

3 2. The regulations promulgated by the department pursuant to this
4 section shall:

5 a. Ensure that the aggregate emissions of greenhouse gases from green-
6 house gas emission sources will not exceed the statewide greenhouse gas
7 emissions limits established in section 75-0107 of this article.

8 b. Include legally enforceable emissions limits, performance stand-
9 ards, or measures or other requirements to control emissions from green-
10 house gas emission sources, with the exception of agricultural emissions
11 from livestock.

12 c. Reflect, in substantial part, the findings of the scoping plan
13 prepared pursuant to section 75-0103 of this article.

14 d. Include measures to reduce emissions from greenhouse gas emission
15 sources that have a cumulatively significant impact on statewide green-
16 house gas emissions, such as internal combustion vehicles that burn
17 gasoline or diesel fuel and boilers or furnaces that burn oil or natural
18 gas.

19 3. In promulgating these regulations, the department shall:

20 a. Design and implement all regulations in a manner that seeks to be
21 equitable, to minimize costs and to maximize the total benefits to New
22 York, and encourages early action to reduce greenhouse gas emissions.

23 b. Ensure that greenhouse gas emissions reductions achieved are real,
24 permanent, quantifiable, verifiable, and enforceable by the department.

25 c. Ensure that activities undertaken to comply with the regulations do
26 not result in a net increase in co-pollutant emissions or otherwise
27 disproportionately burden disadvantaged communities as identified pursu-
28 ant to section 75-0111 of this article.

29 d. Prioritize measures to maximize net reductions of greenhouse gas
30 emissions and co-pollutants in disadvantaged communities as identified
31 pursuant to section 75-0111 of this article and encourage early action
32 to reduce greenhouse gas emissions and co-pollutants.

33 e. Incorporate measures to minimize leakage.

34 4. a. The department may establish an alternative compliance mechanism
35 to be used by sources subject to greenhouse gas emissions limits to
36 achieve net zero emissions.

37 b. The use of such mechanism shall account for not greater than
38 fifteen percent of statewide greenhouse gas emissions estimated as a
39 percentage of nineteen ninety emissions pursuant to section 75-0105 of
40 this article, provided that the use of this mechanism must offset a
41 quantity greater than or equal to the greenhouse gases emitted. The
42 offset of greenhouse gas emissions shall not result in disadvantaged
43 communities having to bear a disproportionate burden of environmental
44 impacts.

45 c. The department shall verify that greenhouse gas emission offset
46 projects authorized pursuant to this subdivision represent greenhouse
47 gas equivalent emission reductions or carbon sequestration that are
48 real, additional, verifiable, enforceable, and permanent.

49 d. Any greenhouse gas emissions offset project shall comply with all
50 of the requirements of this subdivision.

51 e. The department shall establish an application process that, at a
52 minimum, requires a source to sufficiently demonstrate that compliance
53 with the greenhouse gas emissions limits is not technologically feasi-
54 ble, and that the source has reduced emissions to the maximum extent
55 practicable. After an initial four year period, the department shall
56 review the participation of a source in this mechanism, and make a

1 determination as to the source's continued need for an alternative
2 compliance, considering the extent to which the source is utilizing the
3 best available technology standards.

4 f. Sources in the electric generation sector shall not be eligible to
5 participate in such mechanism.

6 g. The following types of projects shall be prohibited:

7 i. waste-to-energy projects, including incineration and pyrolysis; and

8 ii. biofuels used for energy or transportation purposes.

9 h. Any greenhouse gas emission offset project approved by the depart-
10 ment shall:

11 i. be designed to provide a discernable benefit to the environment
12 rather than to the source;

13 ii. be located in the same county, and within twenty-five linear
14 miles, of the source of emissions, to the extent practicable;

15 iii. enhance the conditions of the ecosystem or geographic area
16 adversely affected; and

17 iv. substantially reduce or prevent the generation or release of
18 pollutants through source reduction.

19 i. A greenhouse gas emission offset project shall not be approved by
20 the department where the project:

21 i. is required pursuant to any local, state or federal law, regu-
22 lation, or administrative or judicial order;

23 ii. contains measures which the source would have undertaken anyway
24 within the next five years;

25 iii. contributes to environmental research at a college or university;
26 or

27 iv. is a study or assessment without a commitment to implement the
28 results.

29 j. In approving greenhouse gas emission offset projects, the depart-
30 ment shall prioritize projects that maximize public health and environ-
31 mental benefits within the state and especially localized benefits in
32 disadvantaged communities, defined pursuant to section 75-0111 of this
33 article.

34 k. The department shall establish a public registry of greenhouse gas
35 emission offset projects approved pursuant to this subdivision.

36 l. Prior to the inclusion of any alternative compliance mechanism in
37 the regulations, to the extent feasible and in the furtherance of
38 achieving the statewide greenhouse gas emissions limit, the department
39 shall do all of the following:

40 i. consult with the council, the environmental justice advisory group,
41 and the climate justice working group;

42 ii. consider the potential for direct, indirect, and cumulative emis-
43 sion impacts from this mechanism, including localized impacts in disad-
44 vantaged communities as identified pursuant to section 75-0111 of this
45 article;

46 iii. design the alternative compliance mechanism to prevent any
47 increase in the emissions of co-pollutants; and

48 iv. maximize additional environmental, public health, and economic
49 benefits for the state and for disadvantaged communities identified
50 pursuant to section 75-0111 of this article, as appropriate.

51 § 75-0111. Climate justice working group.

52 1. There is hereby created within the department, no later than six
53 months after the effective date of this article, a "climate justice
54 working group". Such working group will be comprised of representatives
55 from: environmental justice communities, the department, the department

1 of health, the New York state energy and research development authority,
2 and the department of labor.

3 a. Environmental justice community representatives shall be members of
4 communities of color, low-income communities, and communities bearing
5 disproportionate pollution and climate change burdens, or shall be
6 representatives of community-based organizations with experience and a
7 history of advocacy on environmental justice issues, and shall include
8 at least three representatives from New York city communities, three
9 representatives from rural communities, and three representatives from
10 upstate urban communities.

11 b. The working group, in consultation with the department, the depart-
12 ments of health and labor, the New York state energy and research devel-
13 opment authority, and the environmental justice advisory group, will
14 establish criteria to identify disadvantaged communities for the
15 purposes of co-pollutant reductions, greenhouse gas emissions
16 reductions, regulatory impact statements, and the allocation of invest-
17 ments related to this article.

18 c. Disadvantaged communities shall be identified based on geographic,
19 public health, environmental hazard, and socioeconomic criteria, which
20 shall include but are not limited to:

21 i. areas burdened by cumulative environmental pollution and other
22 hazards that can lead to negative public health effects;

23 ii. areas with concentrations of people that are of low income, high
24 unemployment, high rent burden, low levels of home ownership, low levels
25 of educational attainment, or members of groups that have historically
26 experienced discrimination on the basis of race or ethnicity; and

27 iii. areas vulnerable to the impacts of climate change such as flood-
28 ing, storm surges, and urban heat island effects.

29 2. Before finalizing the criteria for identifying disadvantaged commu-
30 nities and identifying disadvantaged communities pursuant to subdivision
31 one of this section, the department shall publish draft criteria and a
32 draft list of disadvantaged communities and make such information avail-
33 able on its website.

34 a. The council shall hold at least six regional public hearings on the
35 draft criteria and the draft list of disadvantaged communities, includ-
36 ing three meetings in the upstate region and three meetings in the down-
37 state region, and shall allow at least one hundred twenty days for the
38 submission of public comment.

39 b. The council shall also ensure that there are meaningful opportu-
40 nities for public comment for all segments of the population that will
41 be impacted by the criteria, including persons living in areas that may
42 be identified as disadvantaged communities under the proposed criteria.

43 3. The group will meet no less than annually to review the criteria
44 and methods used to identify disadvantaged communities and may modify
45 such methods to incorporate new data and scientific findings. The
46 climate justice working group shall review identities of disadvantaged
47 communities and modify such identities as needed.

48 § 75-0113. Value of carbon.

49 1. No later than one year after the effective date of this article,
50 the department, in consultation with the New York state energy research
51 and development authority, shall establish a social cost of carbon for
52 use by state agencies, expressed in terms of dollars per ton of carbon
53 dioxide equivalent.

54 2. The social cost of carbon shall serve as a monetary estimate of the
55 value of not emitting a ton of greenhouse gas emissions. As determined
56 by the department, the social cost of carbon may be based on marginal

1 greenhouse gas abatement costs or on the global economic, environmental,
2 and social impacts of emitting a marginal ton of greenhouse gas emis-
3 sions into the atmosphere, utilizing a range of appropriate discount
4 rates, including a rate of zero.

5 3. In developing the social cost of carbon, the department shall
6 consider prior or existing estimates of the social cost of carbon issued
7 or adopted by the federal government, appropriate international bodies,
8 or other appropriate and reputable scientific organizations.

9 § 75-0115. Community air monitoring program.

10 1. For purposes of this section, the following definitions and related
11 provisions shall apply:

12 a. "Community air monitoring system" means advanced sensing monitoring
13 equipment that measures and records air pollutant concentrations in the
14 ambient air at or near sensitive receptor locations in disadvantaged
15 communities.

16 b. "Disadvantaged community" means a community identified as disadvan-
17 tagged pursuant to the criteria set forth in section 75-0111 of this
18 article.

19 c. "Sensitive receptors" includes hospitals, schools and day care
20 centers, and such other locations as the department may determine.

21 2. a. On or before October first, two thousand twenty-two, the depart-
22 ment shall prepare, in consultation with the climate justice working
23 group, a program demonstrating community air monitoring systems.

24 b. The program shall identify the highest priority locations in disad-
25 vantaged communities around the state to deploy community air monitoring
26 systems, which shall be communities with potentially high exposure
27 burdens for toxic air contaminants and criteria air pollutants. The
28 program shall be undertaken in no less than four communities statewide
29 with regional consideration.

30 c. The department shall publish the air quality data produced by the
31 community air monitoring systems deployed pursuant to this section on
32 its website as it becomes available.

33 3. On or before June first, two thousand twenty-four, the department
34 shall prepare, in consultation with the climate justice working group, a
35 strategy to reduce emissions of toxic air contaminants and criteria air
36 pollutants in disadvantaged communities affected by a high cumulative
37 exposure burden. The strategy shall include criteria for the development
38 of community emission reduction programs. The criteria presented in the
39 strategy shall include, but are not limited to, the following:

40 a. an assessment and identification of communities with high cumula-
41 tive exposure burdens for toxic air contaminants and criteria air pollu-
42 tants.

43 b. a methodology for assessing and identifying the contributing sourc-
44 es or categories of sources, including, but not limited to, stationary
45 and mobile sources, and an estimate of their relative contribution to
46 elevated exposure to air pollution in impacted communities identified
47 pursuant to paragraph a of this subdivision.

48 c. an assessment of the existing and available measures for reducing
49 emissions from the contributing sources or categories of sources identi-
50 fied pursuant to paragraph b of this subdivision.

51 4. a. Based on the assessment and identification of disadvantaged
52 communities with high cumulative exposure burdens for toxic air contam-
53 inants and criteria air pollutants completed pursuant to paragraph a of
54 subdivision three of this section, the department shall select disadvan-
55 tagged communities around the state for preparation of community emis-

1 sions reduction programs. The department may select additional locations
2 annually thereafter, as appropriate.

3 b. The department shall have the authority to adopt regulations estab-
4 lishing programs to achieve emissions reductions for the locations
5 selected using the most cost-effective measures identified pursuant to
6 paragraph c of subdivision three of this section.

7 § 75-0117. Investment of funds.

8 State agencies, authorities and entities, in consultation with the
9 environmental justice working group and the climate action council,
10 shall, to the extent practicable, invest or direct available and rele-
11 vant programmatic resources in a manner designed to achieve a goal for
12 disadvantaged communities to receive forty percent of overall benefits
13 of spending on clean energy and energy efficiency programs, projects or
14 investments in the areas of housing, workforce development, pollution
15 reduction, low income energy assistance, energy, transportation and
16 economic development, provided however, that disadvantaged communities
17 shall receive no less than thirty-five percent of the overall benefits
18 of spending on clean energy and energy efficiency programs, projects or
19 investments and provided further that this section shall not alter funds
20 already contracted or committed as of the effective date of this
21 section.

22 § 75-0119. Implementation reporting.

23 1. The department in consultation with the council shall, not less
24 than every four years, publish a report which shall include recommenda-
25 tions regarding the implementation of greenhouse gas reduction measures.

26 2. The report shall, at minimum, include:

27 a. Whether the state is on track to meet the statewide greenhouse gas
28 emissions limits established in section 75-0107 of this article.

29 b. An assessment of existing regulations and whether modifications are
30 needed to ensure fulfillment of the statewide greenhouse gas emissions
31 limits.

32 c. An overview of social benefits from the regulations or other meas-
33 ures, including reductions in greenhouse gas emissions and copollutants,
34 diversification of energy sources, and other benefits to the economy,
35 environment, and public health.

36 d. An overview of compliance costs for regulated entities and for the
37 department and other state agencies.

38 e. Whether regulations or other greenhouse gas reduction measures
39 undertaken are equitable, minimize costs and maximize the total benefits
40 to the state, and encourage early action.

41 f. Whether activities undertaken to comply with state regulations
42 disproportionately burden disadvantaged communities as identified pursu-
43 ant to section 75-0111 of this article.

44 g. An assessment of local benefits and impacts of any reductions in
45 co-pollutants related to reductions in statewide and local greenhouse
46 gas emissions.

47 h. An assessment of disadvantaged communities' access to or community
48 ownership of the services and commodities identified in section six of
49 the chapter of the laws of two thousand nineteen which added this arti-
50 cle.

51 i. Whether entities that have voluntarily reduced their greenhouse gas
52 emissions prior to the implementation of this article receive appropri-
53 ate credit for early voluntary reductions.

54 j. Recommendations for future regulatory and policy action.

3. In preparing this report, the department shall, at a minimum, consult with the council, and the climate justice working group established in section 75-0111 of this article.

4. The report shall be published and posted on the department's website.

§ 3. Paragraphs f and g of subdivision 1 of section 54-1523 of the environmental conservation law, as added by section 5 of part U of chapter 58 of the laws of 2016, are amended and a new paragraph h is added to read as follows:

f. enabling communities to become certified under the climate smart communities program, including by developing natural resources inventories, right sizing of municipal fleets and developing climate adaptation strategies; ~~and~~

g. climate change adaptation planning and supporting studies, including but not limited to vulnerability assessment and risk analysis of municipal drinking water, wastewater, and transportation infrastructure~~[-]~~; and

h. to establish and implement easily-replicated renewable energy projects, including solar arrays, heat pumps and wind turbines in public low-income housing in suburban, urban and rural areas.

§ 4. The public service law is amended by adding a new section 66-p to read as follows:

§ 66-p. Establishment of a renewable energy program. 1. As used in this section:

(a) "jurisdictional load serving entity" means any entity subject to the jurisdiction of the commission that secures energy to serve the electrical energy requirements of end-use customers in New York state;

(b) "renewable energy systems" means systems that generate electricity or thermal energy through use of the following technologies: solar thermal, photovoltaics, on land and offshore wind, hydroelectric, geothermal electric, geothermal ground source heat, tidal energy, wave energy, ocean thermal, and fuel cells which do not utilize a fossil fuel resource in the process of generating electricity.

2. No later than June thirtieth, two thousand twenty-one, the commission shall establish a program to require that: (a) a minimum of seventy percent of the state wide electric generation secured by jurisdictional load serving entities to meet the electrical energy requirements of all end-use customers in New York state in two thousand thirty shall be generated by renewable energy systems; and (b) that by the year two thousand forty (collectively, the "targets") the statewide electrical demand system will be zero emissions. In establishing such program, the commission shall consider and where applicable formulate the program to address impacts of the program on safe and adequate electric service in the state under reasonably foreseeable conditions. The commission may, in designing the program, modify the obligations of jurisdictional load serving entities and/or the targets upon consideration of the factors described in this subdivision.

3. No later than July first, two thousand twenty-four and every two years thereafter, the commission shall, after notice and provision for the opportunity to comment, issue a comprehensive review of the program established pursuant to this section. The commission shall determine, among other matters: (a) progress in meeting the overall targets for deployment of renewable energy systems and zero emission sources, including factors that will or are likely to frustrate progress toward the targets; (b) distribution of systems by size and load zone; and (c) annual funding commitments and expenditures.

1 4. The commission may temporarily suspend or modify the obligations
2 under such program provided that the commission, after conducting a
3 hearing as provided in section twenty of this chapter, makes a finding
4 that the program impedes the provision of safe and adequate electric
5 service; the program is likely to impair existing obligations and agree-
6 ments; and/or that there is a significant increase in arrears or service
7 disconnections that the commission determines is related to the program.

8 5. No later than July first, two thousand twenty-four, the commission
9 shall establish programs to require the procurement by the state's load
10 serving entities of at least nine gigawatts of offshore wind electricity
11 generation by two thousand thirty-five and six gigawatts of photovoltaic
12 solar generation by two thousand twenty-five, and to support three giga-
13 watts of statewide energy storage capacity by two thousand thirty.

14 6. In any proceeding commenced by the commission with a goal of
15 achieving one hundred eighty-five trillion British thermal units of
16 end-use energy savings below the two thousand twenty-five energy-use
17 forecast, the commission will include mechanisms to ensure that, where
18 practicable, at least twenty percent of investments in residential ener-
19 gy efficiency, including multi-family housing, can be invested in a
20 manner which will benefit disadvantaged communities, as defined in arti-
21 cle seventy-five of the environmental conservation law, including low to
22 moderate income consumers.

23 7. In the implementation of this section, the commission shall design
24 programs in a manner to provide substantial benefits for disadvantaged
25 communities, as defined in article seventy-five of the environmental
26 conservation law, including low to moderate income consumers, at a
27 reasonable cost while ensuring safe and reliable electric service.
28 Specifically, the commission shall:

29 (a) To the extent practicable, specify that a minimum percentage of
30 energy storage projects should deliver clean energy benefits into NYISO
31 zones that serve disadvantaged communities, as defined in article seven-
32 ty-five of the environmental conservation law, including low to moderate
33 income consumers, and that energy storage projects be deployed to reduce
34 the usage of combustion-powered peaking facilities located in or near
35 disadvantaged communities;

36 (b) In pursuing the state's solar deployment goals, the New York state
37 energy research and development authority shall consider enhanced incen-
38 tive payments for solar and community distributed generation projects,
39 focusing in particular but not limited to those serving disadvantaged
40 communities, as defined in article seventy-five of the environmental
41 conservation law, which result in energy cost savings or demonstrate
42 community ownership models; and,

43 (c) In the allocation of ratepayer funds for clean energy, direct the
44 New York state energy research and development authority and investor
45 owned utilities to develop and report metrics for energy savings and
46 clean energy market penetration in the low and moderate income market
47 and in disadvantaged communities, as defined in article seventy-five of
48 the environmental conservation law, and post such information on the
49 authority's website.

50 § 5. This act shall be subject to current prevailing wage law.

51 § 6. Report on barriers to, and opportunities for, community ownership
52 of services and commodities in disadvantaged communities. 1. On or
53 before two years of the effective date of this act, the department of
54 environmental conservation, in cooperation with the New York state ener-
55 gy research and development authority and the New York power authority,
56 with input from relevant state agencies, the environmental justice advi-

1 sory group as defined in section 75-0101 of the environmental conserva-
2 tion law, the climate justice working group as defined in section
3 75-0111 of the environmental conservation law and Climate Action Council
4 established in article 75 of the environmental conservation law, and
5 following at least two public hearings, shall prepare a report on barriers
6 to, and opportunities for, access to or community ownership of the
7 following services and commodities in disadvantaged communities as iden-
8 tified in article 75 of the environmental conservation law:

- 9 a. Distributed renewable energy generation.
- 10 b. Energy efficiency and weatherization investments.
- 11 c. Zero-emission and low-emission transportation options.
- 12 d. Adaptation measures to improve the resilience of homes and local
13 infrastructure to the impacts of climate change including but not limit-
14 ed to microgrids.
- 15 e. Other services and infrastructure that can reduce the risks associ-
16 ated with climate-related hazards, including but not limited to:
 - 17 i. Shelters and cool rooms during extreme heat events;
 - 18 ii. Shelters during flooding events; and
 - 19 iii. Medical treatment for asthma and other conditions that could be
20 exacerbated by climate-related events.

21 2. The report, which shall be submitted to the governor, the speaker
22 of the assembly and the temporary president of the senate and posted on
23 the department of environmental conservation website, shall include
24 recommendations on how to increase access to the services and commod-
25 ities.

26 3. The department of environmental conservation shall amend the scop-
27 ing plan for statewide greenhouse gas emissions reductions in accordance
28 with the recommendations included in the report.

29 § 7. Climate change actions by state agencies. 1. All state agencies
30 shall assess and implement strategies to reduce their greenhouse gas
31 emissions.

32 2. In considering and issuing permits, licenses, and other administra-
33 tive approvals and decisions, including but not limited to the execution
34 of grants, loans, and contracts, all state agencies, offices, authori-
35 ties, and divisions shall consider whether such decisions are inconsis-
36 tent with or will interfere with the attainment of the statewide green-
37 house gas emissions limits established in article 75 of the
38 environmental conservation law. Where such decisions are deemed to be
39 inconsistent with or will interfere with the attainment of the statewide
40 greenhouse gas emissions limits, each agency, office, authority, or
41 division shall provide a detailed statement of justification as to why
42 such limits/criteria may not be met, and identify alternatives or green-
43 house gas mitigation measures to be required where such project is
44 located.

45 3. In considering and issuing permits, licenses, and other administra-
46 tive approvals and decisions, including but not limited to the execution
47 of grants, loans, and contracts, pursuant to article 75 of the environ-
48 mental conservation law, all state agencies, offices, authorities, and
49 divisions shall not disproportionately burden disadvantaged communities
50 as identified pursuant to subdivision 5 of section 75-0101 of the envi-
51 ronmental conservation law. All state agencies, offices, authorities,
52 and divisions shall also prioritize reductions of greenhouse gas emis-
53 sions and co-pollutants in disadvantaged communities as identified
54 pursuant to such subdivision 5 of section 75-0101 of the environmental
55 conservation law.

§ 8. Authorization for other state agencies to promulgate greenhouse gas emissions regulations. 1. The public service commission, the New York state energy research and development authority, the department of health, the department of transportation, the department of state, the department of economic development, the department of agriculture and markets, the department of financial services, the office of general services, the division of housing and community renewal, the public utility authorities established pursuant to titles 1, 1-A, 1-B, 11, 11-A, 11-B, 11-C and 11-D of article 5 of the public authorities law and any other state agency shall promulgate regulations to contribute to achieving the statewide greenhouse gas emissions limits established in article 75 of the environmental conservation law. Provided, however, any such regulations shall not limit the department of environmental conservation's authority to regulate and control greenhouse gas emissions pursuant to article 75 of the environmental conservation law.

§ 9. Chapter 355 of the laws of 2014, constituting the community risk and resiliency act, is amended by adding two new sections 17-a and 17-b to read as follows:

§ 17-a. The department of environmental conservation shall take actions to promote adaptation and resilience, including:

(a) actions to help state agencies and other entities assess the reasonably foreseeable risks of climate change on any proposed projects, taking into account issues such as: sea level rise, tropical and extra-tropical cyclones, storm surges, flooding, wind, changes in average and peak temperatures, changes in average and peak precipitation, public health impacts, and impacts on species and other natural resources.

(b) identifying the most significant climate-related risks, taking into account the probability of occurrence, the magnitude of the potential harm, and the uncertainty of the risk.

(c) measures that could mitigate significant climate-related risks, as well as a cost-benefit analysis and implementation of such measures.

§ 17-b. Major permits for the regulatory programs of subdivision three of section 70-0107 of the environmental conservation law shall require applicants to demonstrate that future physical climate risk has been considered. In reviewing such information the department may require the applicant to mitigate significant risks to public infrastructure and/or services, private property not owned by the applicant, adverse impacts on disadvantaged communities, and/or natural resources in the vicinity of the project.

§ 10. Nothing in this act shall limit the existing authority of a state entity to adopt and implement greenhouse gas emissions reduction measures.

§ 11. Nothing in this act shall relieve any person, entity, or public agency of compliance with other applicable federal, state, or local laws or regulations, including state air and water quality requirements, and other requirements for protecting public health or the environment.

§ 12. Review under this act may be had in a proceeding under article 78 of the civil practice law and rules at the instance of any person aggrieved.

§ 13. Severability. If any word, phrase, clause, sentence, paragraph, section, or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgement shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the word, phrase, clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which such judgement shall have been rendered.

1 § 14. This act shall take effect on the same date and in the same
2 manner as a chapter of the laws of 2019, amending the environmental
3 conservation law, relating to establishing a permanent environmental
4 justice advisory group and an environmental justice interagency coordi-
5 nating council, as proposed in legislative bills numbers S. 2385 and A.
6 1564, takes effect; provided further, the provisions of section 75-0115
7 of the environmental conservation law as added by section two of this
8 act shall take effect October 1, 2022.

COMMUNITY ADVISORY COUNCIL
MEETING OF 09/08/22

This act summary is provided for the convenience of the public and members of the General Assembly. It is intended to provide a general summary of the act and may not be exhaustive. It has been prepared by the staff of the Office of Legislative Counsel without input from members of the General Assembly. It is not intended to aid in the interpretation of legislation or to serve as a source of legislative intent.

Act No. 154 (S.148). Conservation and development; government; environmental justice

An act relating to environmental justice in Vermont

This act establishes an environmental justice policy for the State of Vermont and requires the State agencies to incorporate environmental justice into their work, rules, and procedures. It establishes the Environmental Justice Advisory Council and the Interagency Environmental Justice Committee to advise the State on environmental justice issues. It also requires the creation of an environmental justice mapping tool.

Effective Date: May 31, 2022

COMMUNITY ADVISORY COUNCIL
MEETING OF 09/08/22

No. 154. An act relating to environmental justice in Vermont.

(S.148)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. FINDINGS

The General Assembly finds that:

(1) According to American Journal of Public Health studies published in 2014 and 2018 and affirmed by decades of research, Black, Indigenous, and Persons of Color (BIPOC) and individuals with low income are disproportionately exposed to environmental hazards and unsafe housing, facing higher levels of air and water pollution, mold, lead, and pests.

(2) The cumulative impacts of environmental harms disproportionately and adversely impact the health of BIPOC and communities with low income, with climate change functioning as a threat multiplier. These disproportionate adverse impacts are exacerbated by lack of access to affordable energy, healthy food, green spaces, and other environmental benefits.

(3) Since 1994, Executive Order 12898 has required federal agencies to make achieving environmental justice part of their mission by identifying and addressing disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and populations with low incomes in the United States.

(4) According to the Centers for Disease Control and Prevention, 30 percent of Vermont towns with high town household poverty have limited

access to grocery stores. In addition, a study conducted at the University of Vermont showed that in Vermont, BIPOC individuals were twice as likely to have trouble affording fresh food and to go hungry in a month than white individuals.

(5) Inadequate transportation impedes job access, narrowing the scope of jobs available to individuals with low income and potentially impacting job performance.

(6) In 2020, the Center for American Progress found that 76 percent of BIPOC individuals in Vermont live in “nature deprived” census tracts with a higher proportion of natural areas lost to human activities than the Vermont median. In contrast, 27 percent of white individuals live in these areas.

(7) The U.S. Centers for Disease Control and Prevention states that systemic health and social inequities disproportionately increases the risk of racial and ethnic minority groups becoming infected by and dying from COVID-19.

(8) According to the Vermont Department of Health, inequities in access to and quality of health care, employment, and housing have contributed to disproportionately high rates of COVID-19 among BIPOC Vermonters.

(9) An analysis by University of Vermont researchers found that mobile homes are more likely than permanent structures to be located in a flood hazard area. During Tropical Storm Irene, mobile parks and over 561 mobile homes in Vermont were damaged or destroyed. Mobile homes make up 7.2

percent of all housing units in Vermont and were approximately 40 percent of sites affected by Tropical Storm Irene.

(10) A University of Vermont study reports that BIPOC individuals were seven times more likely to have gone without heat in the past year, over two times more likely to have trouble affording electricity, and seven times less likely to own a solar panel than white Vermonters.

(11) The U.S. Environmental Protection Agency recognized Vermont's deficiencies in addressing environmental justice concerns related to legacy mining and mobile home park habitability, providing grants for these projects in 1998 and 2005.

(12) Vermont State agencies receiving federal funds are subject to the antidiscrimination requirements of Title VI of the Civil Rights Act of 1964.

(13) In response to the documented inadequacy of state and federal environmental and land use laws to protect vulnerable communities, increasing numbers of states have adopted formal environmental justice laws and policies.

(14) At least 17 states have developed mapping tools to identify environmentally overburdened communities and environmental health disparities.

(15) The State of Vermont does not currently have a State-managed mapping tool that clearly identifies environmentally overburdened communities.

(16) The 1991 Principles of Environmental Justice adopted by The First National People of Color Environmental Leadership Summit demand the right of all individuals to participate as equal partners at every level of decision making, including needs assessment, planning, implementation, enforcement, and evaluation.

(17) Article VII of the Vermont Constitution establishes the government as a vehicle for the common benefit, protection, and security of Vermonters and not for the particular emolument or advantage of any single set of persons who are only a part of that community. This, coupled with Article I's guarantee of equal rights to enjoying life, liberty, and safety, and Article IV's assurance of timely justice for all, encourages political officials to identify how particular communities may be unequally burdened or receive unequal protection under the law due to race, income, or geographic location.

(18) Lack of a clear environmental justice policy has resulted in a piecemeal approach to understanding and addressing environmental justice in Vermont and creates a barrier to establishing clear definitions, metrics, and strategies to ensure meaningful engagement and more equitable distribution of environmental benefits and burdens.

(19) It is the State of Vermont's responsibility to pursue environmental justice for its residents and to ensure that its agencies do not contribute to unfair distribution of environmental benefits to or environmental burdens on low-income, limited-English proficient, and BIPOC communities.

Sec. 2. 3 V.S.A. chapter 72 is added to read:

CHAPTER 72. ENVIRONMENTAL JUSTICE

§ 6001. PURPOSE

The purpose of this chapter is to identify, reduce, and eliminate environmental health disparities to improve the health and well-being of all Vermont residents.

§ 6002. DEFINITIONS

As used in this chapter:

(1) “Environmental benefits” means the assets and services that enhance the capability of communities and individuals to function and flourish in society. Examples of environmental benefits include access to a healthy environment and clean natural resources, including air, water, land, green spaces, constructed playgrounds, and other outdoor recreational facilities and venues; affordable clean renewable energy sources; public transportation; fulfilling and dignified green jobs; healthy homes and buildings; health care; nutritious food; Indigenous food and cultural resources; environmental enforcement; and training and funding disbursed or administered by governmental agencies.

(2) “Environmental burdens” means any significant impact to clean air, water, and land, including any destruction, damage, or impairment of natural resources resulting from intentional or reasonably foreseeable causes.

Examples of environmental burdens include climate change impacts; air and

water pollution; improper sewage disposal; improper handling of solid wastes and other noxious substances; excessive noise; activities that limit access to green spaces, nutritious food, Indigenous food or cultural resources, or constructed outdoor playgrounds and other recreational facilities and venues; inadequate remediation of pollution; reduction of groundwater levels; increased flooding or stormwater flows; home and building health hazards, including lead paint, lead plumbing, asbestos, and mold; and damage to inland waterways and waterbodies, wetlands, forests, green spaces, or constructed playgrounds or other outdoor recreational facilities and venues from private, industrial, commercial, and government operations or other activities that contaminate or alter the quality of the environment and pose a risk to public health.

(3) “Environmental justice” means all individuals are afforded equitable access to and distribution of environmental benefits; equitable distribution of environmental burdens; and fair and equitable treatment and meaningful participation in decision-making processes, including the development, implementation, and enforcement of environmental laws, regulations, and policies. Environmental justice recognizes the particular needs of individuals of every race, color, income, class, ability status, gender identity, sexual orientation, national origin, ethnicity or ancestry, religious belief, or English language proficiency level. Environmental justice redresses structural and institutional racism, colonialism, and other systems of oppression that result in

the marginalization, degradation, disinvestment, and neglect of Black, Indigenous, and Persons of Color. Environmental justice requires providing a proportional amount of resources for community revitalization, ecological restoration, resilience planning, and a just recovery to communities most affected by environmental burdens and natural disasters.

(4) “Environmental justice focus population” means any census block group in which:

(A) the annual median household income is not more than 80 percent of the State median household income;

(B) Persons of Color and Indigenous Peoples comprise at least six percent or more of the population; or

(C) at least one percent or more of households have limited English proficiency.

(5) “Limited English proficiency” means that a household does not have a member 14 years or older who speaks English “very well” as defined by the U.S. Census Bureau.

(6) “Meaningful participation” means that all individuals have the opportunity to participate in energy, climate change, and environmental decision making. Examples include needs assessments, planning, implementation, permitting, compliance and enforcement, and evaluation. Meaningful participation also integrates diverse knowledge systems, histories, traditions, languages, and cultures of Indigenous communities in decision-

making processes. It requires that communities are enabled and administratively assisted to participate fully through education and training.

Meaningful participation requires the State to operate in a transparent manner with regard to opportunities for community input and also encourages the development of environmental, energy, and climate change stewardship.

§ 6003. ENVIRONMENTAL JUSTICE STATE POLICY

It is the policy of the State of Vermont that no segment of the population of the State should, because of its racial, cultural, or economic makeup, bear a disproportionate share of environmental burdens or be denied an equitable share of environmental benefits. It is further the policy of the State of Vermont to provide the opportunity for the meaningful participation of all individuals, with particular attention to environmental justice focus populations, in the development, implementation, or enforcement of any law, regulation, or policy.

§ 6004. IMPLEMENTATION OF STATE POLICY

(a) As used in this chapter, “covered agencies” means the following State agencies, departments, and bodies: the Agencies of Natural Resources, of Transportation, of Commerce and Community Development, of Agriculture, Food and Markets, and of Education; the Public Utility Commission; the Natural Resources Board; and the Departments of Health, of Public Safety, and of Public Service.

(b) The covered agencies shall consider cumulative environmental burdens, as defined by rule pursuant to subsection 6005(a) of this title, and access to environmental benefits when making decisions about the environment, energy, climate, and public health projects; facilities and infrastructure; and associated funding.

(c) Each of the covered agencies shall create and adopt on or before July 1, 2025 a community engagement plan that describes how the agency will engage with environmental justice focus populations as it evaluates new and existing activities and programs. Community engagement plans shall align with the core principles developed by the Interagency Environmental Justice Committee pursuant to subdivision 6006(c)(2)(B) of this title and take into consideration the recommendations of the Environmental Justice Advisory Council pursuant to subdivision 6006(c)(1)(B) of this title. Each plan shall describe how the agency plans to provide meaningful participation in compliance with Title VI of the Civil Rights Act of 1964.

(d) The covered agencies shall submit an annual summary beginning on January 15, 2024 and annually thereafter to the Environmental Justice Advisory Council, detailing all complaints alleging environmental justice issues or Title VI violations and any agency action taken to resolve the complaints. The Advisory Council shall provide any recommendations concerning those reports within 60 days after receipt of the complaint summaries. Agencies shall consider the recommendations of the Advisory

Council pursuant to subdivision 6006(c)(1)(E) of this title and substantively respond in writing if an agency chooses not to implement any of the recommendations, within 90 days after receipt of the recommendations.

(e) The Agency of Natural Resources, in consultation with the Environmental Justice Advisory Council and the Interagency Environmental Justice Committee, shall review the definitions contained in section 6002 of this title at least every five years and recommend revisions to the General Assembly to ensure the definition achieves the Environmental Justice State Policy.

(f) The Agency of Natural Resources, in consultation with the Interagency Environmental Justice Committee and the Environmental Justice Advisory Council, shall issue guidance on how the covered agencies shall determine which investments provide environmental benefits to environmental justice focus populations on or before September 15, 2023. A draft version of the guidance shall be released for a 40-day public comment period before being finalized.

(g)(1) On or before February 15, 2024, the covered agencies shall, in accordance with the guidance document developed by the Agency of Natural Resources pursuant to subsection (f) of this section, review the past three years and generate baseline spending reports that include:

(A) where investments were made, if any, and which geographic areas, at the municipal level and census block group, where practicable, received environmental benefits from those investments; and

(B) a description and quantification of the environmental benefits as an outcome of the investment.

(2) The covered agencies shall publicly post the baseline spending reports on their respective websites.

(h) On or before July 1, 2024, it shall be the goal of the covered agencies to direct investments proportionately in environmental justice focus populations.

(i)(1) Beginning on January 15, 2026, and annually thereafter, the covered agencies shall either integrate the following information into existing annual spending reports or issue annual spending reports that include:

(A) where investments were made and which geographic areas, at the municipal level and census block group, where practicable, received environmental benefits from those investments; and

(B) the percentage of overall environmental benefits from those investments provided to environmental justice focus populations.

(2) The covered agencies shall publicly post the annual spending reports on their respective websites.

(j) Beginning on January 15, 2025, the covered agencies shall each issue and publicly post an annual report summarizing all actions taken to incorporate

environmental justice into its policies or determinations, rulemaking, permit proceedings, or project review.

§ 6005. RULEMAKING

(a) On or before July 1, 2025, the Agency of Natural Resources, in consultation with the Environmental Justice Advisory Council and the Interagency Environmental Justice Committee, shall adopt rules to:

(1) define cumulative environmental burdens;

(2) implement consideration of cumulative environmental burdens within the Agency of Natural Resources; and

(3) inform how the public and the covered agencies implement the consideration of cumulative environmental burdens and use the environmental justice mapping tool.

(b) On or before July 1, 2026 and as appropriate thereafter, the covered agencies, in consultation with the Environmental Justice Advisory Council, shall adopt or amend policies and procedures, plans, guidance, and rules, where applicable, to implement this chapter.

(c)(1) Prior to drafting new rules required by this chapter, agencies shall consult with the Environmental Justice Advisory Council to discuss the scope and proposed content of rules to be developed. Agencies shall also submit draft rulemaking concepts to the Advisory Council for review and comment. Any proposed rule and draft Administrative Procedure Act filing forms shall be provided to the Advisory Council not less than 45 days prior to submitting

the proposed rule or rules to the Interagency Committee on Administrative Rules (ICAR).

(2) The Advisory Council shall vote and record individual members' support or objection to any proposed rule before it is submitted to ICAR. The Advisory Council shall submit the results of their vote to both ICAR and the Legislative Committee on Administrative Rules (LCAR).

§ 6006. ENVIRONMENTAL JUSTICE ADVISORY COUNCIL AND
INTERAGENCY ENVIRONMENTAL JUSTICE COMMITTEE

(a) Advisory Council and Interagency Committee.

(1) There is created:

(A) the Environmental Justice Advisory Council (Advisory Council) to provide independent advice and recommendations to State agencies and the General Assembly on matters relating to environmental justice, including the integration of environmental justice principles into State programs, policies, regulations, legislation, and activities; and

(B) the Interagency Environmental Justice Committee (Interagency Committee) to guide and coordinate State agency implementation of the Environmental Justice State Policy and provide recommendations to the General Assembly for amending the definitions and protections set forth in this chapter.

(2) Appointments to the groups created in this subsection shall be made on or before December 15, 2022.

(3) Both the Advisory Council and the Interagency Committee shall consider and incorporate the Guiding Principles for a Just Transition developed by the Just Transitions Subcommittee of the Vermont Climate Council in their work.

(b) Meetings. The Advisory Council and Interagency Committee shall each meet not more than eight times per year, with at least four meetings occurring jointly. Meetings may be held in person, remotely, or in a hybrid format to facilitate maximum participation and shall be recorded and publicly posted on the Secretary's website

(c) Duties.

(1) The Advisory Council shall:

(A) advise State agencies on environmental justice issues and on how to incorporate environmental justice into agency procedures and decision making as required under subsection 6004(b) of this title and evaluate the potential for environmental burdens or disproportionate impacts on environmental justice focus populations as a result of State actions and the potential for environmental benefits to environmental justice focus populations;

(B) advise State agencies in the development of community engagement plans;

(C) advise State agencies on the use of the environmental justice mapping tool established pursuant to section 6008 of this title and on the

enhancement of meaningful participation, reduction of environmental burdens,
and equitable distribution of environmental benefits;

(D) review and provide feedback to the relevant State agency,
pursuant to subsection 6005(c) of this title, on any proposed rules for
implementing this chapter; and

(E) receive and review annual State agency summaries of complaints
alleging environmental justice issues, including Title VI complaints, and
suggest options or alternatives to State agencies for the resolution of systemic
issues raised in or by the complaints.

(2) The Interagency Committee shall:

(A) consult with the Agency of Natural Resources in the
development of the guidance document required by subsection 6004(g) of this
title on how to determine which investments provide environmental benefits to
environmental justice focus populations; and

(B) on or before July 1, 2023, develop, in consultation with the
Agency of Natural Resources and the Environmental Justice Advisory Council,
a set of core principles to guide and coordinate the development of the State
agency community engagement plans required under subsection 6004(d) of
this title.

(3) The Advisory Council and the Interagency Committee shall jointly:

(A) consider and recommend to the General Assembly, on or before
December 1, 2023, amendments to the terminology, thresholds, and criteria of

the definition of environmental justice focus populations, including whether to include populations more likely to be at higher risk for poor health outcomes in response to environmental burdens; and

(B) examine existing data and studies on environmental justice and consult with State, federal, and local agencies and affected communities regarding the impact of current statutes, regulations, and policies on the achievement of environmental justice.

(d) Membership.

(1) Advisory Council. Each member of the Advisory Council shall be well informed regarding environmental justice principles and committed to achieving environmental justice in Vermont and working collaboratively with other members of the Council. To the greatest extent practicable, Advisory Council members shall represent diversity in race, ethnicity, age, gender, urban and rural areas, and different regions of the State. The Advisory Council shall consist of the following 11 members, with a goal to have more than 50 percent residing in environmental justice focus populations:

(A) the Director of Racial Equity or designee;

(B) the following members appointed by the Committee on Committees:

(i) one representative of municipal government;

(ii) one representative of a social justice organization;

(iii) one representative of mobile home park residents;

(C) the following members appointed by the Speaker of the House:

(i) one representative who resides in a census block group that is designated as an environmental justice focus population;

(ii) one representative of an organization working on food security issues;

(iii) one representative of immigrant communities in Vermont;

(iv) one representative of a statewide environmental organization;

(D) one representative of a State-recognized Native American Indian tribe, recommended and appointed by the Vermont Commission on Native American Affairs;

(E) the Executive Director of the Vermont Housing and Conservation Board or designee; and

(F) the Chair of the Natural Resources Conservation Council or designee.

(2) Interagency Committee. The Interagency Committee shall consist of the following 11 members:

(A) the Secretary of Education or designee;

(B) the Secretary of Natural Resources or designee;

(C) the Secretary of Transportation or designee;

(D) the Commissioner of Housing and Community Development or designee;

(E) the Secretary of Agriculture, Food and Markets or designee;

(F) the Commissioner of Health or designee;

(G) the Director of Emergency Management or designee;

(H) the Commissioner of Public Service or designee;

(I) the Director of Racial Equity or designee;

(J) the Chair of the Natural Resources Board or designee; and

(K) the Chair of the Public Utility Commission or designee.

(3) The Advisory Council and the Interagency Committee may each elect two co-chairs.

(4) After initial appointments, all appointed members of the Advisory Council shall serve six-year terms and serve until a successor is appointed. The initial terms shall be staggered so that one third of the appointed members shall serve a two-year term, another third of the appointed members shall serve a four-year term, and the remaining members shall be appointed to a six-year term.

(5) Vacancies of the Advisory Council shall be appointed in the same manner as original appointments.

(6) The Advisory Council shall have the administrative, technical, and legal assistance of the Agency of Natural Resources.

§ 6007. ENVIRONMENTAL JUSTICE MAPPING TOOL

(a) The Agency of Natural Resources shall create and maintain the State environmental justice mapping tool. The Agency, in consultation with the Environmental Justice Advisory Council and the Interagency Environmental

Justice Committee, shall determine indices and criteria to be included in the State mapping tool to depict environmental justice focus populations and measure environmental burdens at the smallest geographic level practicable.

(b) The Agency of Natural Resources may cooperate and contract with other states or private organizations when developing the mapping tool. The mapping tool may incorporate federal environmental justice mapping tools, such as EJSCREEN, as well as existing State mapping tools such as the Vermont Social Vulnerability Index.

(c) On or before January 1, 2025, the mapping tool shall be available for use by the public as well as by the State government.

Sec. 3. SPENDING REPORT

On or before December 15, 2025, the Agency of Natural Resources shall submit a report to the General Assembly describing whether the baseline spending reports completed pursuant to 3 V.S.A. § 6004(g) of this section indicate if any municipalities or portions of municipalities are routinely underserved with respect to environmental benefits, taking into consideration whether those areas receive, averaged across three years, a significantly lower percentage of environmental benefits from State investments as compared to other municipalities or portions of municipalities in the State. This report shall include a recommendation as to whether a statutory definition of “underserved community” and any other revisions to this chapter are necessary to best carry out the Environmental Justice State Policy.

Sec. 4. APPROPRIATIONS

(a) There is appropriated the sum of \$500,000.00 in fiscal year 2023 from the General Fund to the Agency of Natural Resources for the cost of developing the mapping tool required in 3 V.S.A. § 6007 and for conducting community outreach associated with the work of the Environmental Justice Advisory Council.

(b) There is appropriated the sum of \$250,000.00 in fiscal year 2023 from the General Fund to the Agency of Natural Resources for the following positions:

(1) one full-time Civil Rights Compliance Director; and

(2) two new full-time positions to assist in the implementation of the Environmental Justice State Policy and support the Environmental Justice Advisory Council, one to be hired after July 1, 2022 and one to be hired after December 31, 2022.

Sec. 5. EFFECTIVE DATE

This act shall take effect on passage.

Date Governor signed bill: May 31, 2022

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Members of the Community Advisory Council

From: Sharon Landers
Interim Executive Officer/APCO

Date: September 8, 2022

Re: Revised Community Advisory Council Meeting Land Acknowledgement or
Alternative Statement in Lieu of Pledge of Allegiance

RECOMMENDED ACTION

Approve the revised Land Acknowledgement or alternative Mission and Equity statement, which will replace the Pledge of Allegiance at the beginning of each Council meeting.

BACKGROUND

During the June 30, 2022 Community Advisory Council (CAC) meeting, the CAC decided to table the Land Acknowledgement item and return with a revised statement at the next CAC meeting. A group of Council members volunteered to support Council member Ruano Hernandez in revising and updating the presentation and Land Acknowledgment. The presentation includes the Land Acknowledgment (Option 1) as previously proposed with edits provided by Council member Jefferson and Council member Molina. It also includes the alternative statement (Option 2) as proposed by Council member Szutu, which is distinct from the Land Acknowledgments proposed during the June 30th meeting.

DISCUSSION

The Land Acknowledgement (Option 1) will recognize and pay respect to the Indigenous People as traditional stewards of this land and the enduring relationship that exists between Indigenous Peoples and their traditional territories. This Land Acknowledgment also recognizes the challenges People of Color and other disadvantaged communities have endured in this country as a result of white supremacy. It celebrates the brilliance and leadership of People of Color in resistance, vision, wisdom, and love.

The alternative proposal (Option 2) is a Mission and Equity statement that focuses on the commitments and aims to bring the CAC together. Should the CAC adopt this statement, its principles could serve to guide the CAC's discussion and work.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Sharon L. Landers
Interim Executive Officer/APCO

Prepared by: Lisa Flores
Reviewed by: Veronica Eady

ATTACHMENTS:

None

COMMUNITY ADVISORY COUNCIL
MEETING OF 09/08/22

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Members of the Community Advisory Council

From: Sharon L. Landers
Interim Executive Officer/APCO

Date: September 8, 2022

Re: Air District's Services to Address Community-Identified Air Quality Concerns –
Overview of the Air Quality Complaint Program and Investigation Process

RECOMMENDED ACTION

None; receive and file.

BACKGROUND

The Air Quality Complaint Program is a core program of the Compliance & Enforcement Division that provides an avenue for members of the public to communicate air quality concerns to the Air District. The Air District investigates every air pollution complaint received to achieve early intervention in resolving air quality problems and identifying violations of State or Federal law or Air District regulations. Air pollution complaints are an important part of the daily work of Inspectors, and it is essential that complaint investigations are handled in an objective, efficient, and professional manner. The Air District investigates all air pollution complaints as an impartial party to determine facts and circumstances surrounding alleged air emission releases and takes appropriate enforcement actions for violations of air quality regulations. Mitigating and resolving community air pollution concerns through the Air Quality Complaint Program continues to be a top priority for the Air District.

DISCUSSION

The presentation will provide an overview of the Air Quality Complaint Program and highlight the different steps in the complaint investigation process to ensure compliance with air quality regulations. Staff will speak to the program goals and objectives, how the public may report a complaint via phone and online, and how Inspectors investigate a complaint at an alleged site/facility to determine and identify the potential source(s) of emissions. The presentation will explain the role of the Air District Inspector and the actions taken to document an alleged complaint, investigation findings and enforcement actions when non-compliance is discovered.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Sharon L. Landers
Interim Executive Officer/APCO

Prepared by: Ying Yu and Tracy Lee
Reviewed by: Damian Breen and Veronica Eady

ATTACHMENTS:

None

COMMUNITY ADVISORY COUNCIL
MEETING OF 09/08/22

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Members of the Community Advisory Council

From: Damian Breen
Senior Deputy Executive Officer of Operations

Date: September 8, 2022

Re: Update on Community Air Quality Concerns at the Alice Griffith Housing Development in Bayview Hunters Point, San Francisco

RECOMMENDED ACTION

None; receive and file.

BACKGROUND

Residents of the Alice Griffith Housing Development and members of the community have expressed concerns about health and quality of living impacts from air pollution emitted by facilities and construction activities near this Bayview Hunters Point neighborhood. Material handling facilities to the residents' east and past and present construction activities within and around the surrounding area contributed to particulate matter (PM) pollution including dust and PM2.5 and raised concerns of exposure to naturally occurring asbestos (NOA).

DISCUSSION

Staff will provide an update on the actions taken by Air District staff and other partnering agencies to address community air quality concerns at the Alice Griffith Housing Development in Bayview Hunters Point, San Francisco. The presentation will include a discussion of the Air District's enforcement process, an overview of the regulated facilities adjacent to the housing development, a discussion of neighborhood air quality concerns, and an overview of the actions taken to address these air quality concerns over the past year.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Damian Breen
Senior Deputy Executive Officer of Operations

Prepared by: John Marvin

Reviewed by: Jeff Gove

ATTACHMENTS:

None

COMMUNITY ADVISORY COUNCIL
MEETING OF 09/08/22

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Members of the Community Advisory Council

From: Sharon L. Landers
Interim Executive Officer/APCO

Date: September 8, 2022

Re: Approval of Panelists to Interview the Air District's Air Pollution Control Officer Candidates

RECOMMENDED ACTION

Approve the list of Council members to participate in the Executive Officer / Air Pollution Control Officer interview panel.

BACKGROUND

The Air District Board of Directors invited the Community Advisory Council (CAC) to participate in the process to select the next Executive Officer / Air Pollution Control Officer (APCO). During the June 30, 2022 CAC meeting, the CAC created a list of desired qualifications for the APCO. During the Board's July 20, 2022 meeting, Co-Chair Ms. Washington presented the CAC's list of desired qualifications. The CAC Co-Chairs subsequently sent a letter to the Board on July 25, 2022 with the list of desired qualifications for the Board to consider including it in the APCO's job listing.

The Board also invited up to seven CAC members to serve on a panel to interview the APCO candidates. The three CAC Co-Chairs and four additional Council members self-nominated to participate in the interview panel. Interested Council members self-nominated to be interviewers by submitting a short essay.

DISCUSSION

The CAC will vote to approve the list of Council members selected to participate in the CAC panel to interview candidates for the Air District's APCO role.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None. Stipends for the work of the CAC members selected to participate in the ad-hoc committee are included in the fiscal year ending 2022 and fiscal year ending 2023 budgets.

Respectfully submitted,

Sharon L. Landers
Interim Executive Officer/APCO

Prepared by: Lisa Flores
Reviewed by: Veronica Eady

ATTACHMENTS:

None

COMMUNITY ADVISORY COUNCIL
MEETING OF 09/08/22

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson John J. Bauters and Members
of the Board of Directors

From: Sharon L. Landers
Interim Executive Officer/APCO

Date: September 21, 2022

Re: Report of the Advisory Council Meeting of September 12, 2022

RECOMMENDED ACTION

None; receive and file.

BACKGROUND

None.

DISCUSSION

The Advisory Council met on Monday, September 12, 2022, and approved the minutes of July 11, 2022. This meeting was conducted under procedures authorized by Assembly Bill 361. Members of the Council participated by teleconference.

The Council then received and discussed the staff presentation *Fine Particulate Matter Local Risk Methodology Update*, containing updates to the methodology that are responsive to Advisory Council feedback concerning factors that would be protective of at-risk populations.

The Council then received and discussed the staff presentation *Source Prioritization Framework, regarding a* draft Source Prioritization Framework to prioritize the list of sources and rules that need further research. Although this was not an action item, several of the Councilmembers present stressed the importance of reducing greenhouse gases and requested that Air District staff find a way to incorporate climate benefits into the Source Prioritization, including the possibility of weighting climate co-benefits more heavily. Other suggestions from the Councilmembers included incorporating an Environmental Justice factor and breaking out the "Other Impacts" factor into more specific and separate factors.

The next meeting of the Council will be held on Monday, November 14, 2022, at 8:30 a.m., via webcast, teleconference, or Zoom, pursuant to procedures in accordance with Assembly Bill 361 (Rivas 2021). This concludes the Chair Report of the Advisory Council meeting.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Sharon L. Landers
Interim Executive Officer/APCO

Prepared by: Marcy Hiratzka
Reviewed by: Vanessa Johnson

ATTACHMENTS:

1. Advisory Council September 12, 2022 Meeting Memorandums

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairpersons Linda Rudolph and Gina Solomon, and Members
of the Advisory Council

From: Sharon L. Landers
Interim Executive Officer/APCO

Date: September 12, 2022

Re: Fine Particulate Matter Local Risk Methodology Update

RECOMMENDED ACTION

None; receive and file.

BACKGROUND

A regional regulatory framework has been successful in reducing PM_{2.5} exposures for the Bay Area population overall, but an expanded toolset is warranted to accelerate exposure reductions for the Bay Area's most impacted populations. Responding to the Advisory Council's 2020 *Particulate Matter Reduction Strategy Report PM Reduction Strategy Report*, staff have assembled a draft methodology for use in managing health risks posed by specific sources of PM_{2.5} at a local level.

At the Advisory Council Meeting on July 11, 2022, Agenda Item 5 ("Fine Particulate Matter Local Risk Methodology: Update and Key Questions") presented relevant epidemiological evidence and posed key questions to the Advisory Council concerning safety/uncertainty factors. The updates presented in this item are responsive to the comments and recommendations offered by the Council at that time.

DISCUSSION

Staff will present updates to the methodology that are responsive to Advisory Council feedback concerning factors that would be protective of at-risk populations. Staff will present an updated approach that uses multiplicative factors to adjust population-average (a) breathing rates and (b) effect sizes. For breathing rates, we propose using 95th percentile age- and activity-specific rates, in line with existing guidance on health risk assessments. For effect sizes, we recommend a factor of three, based on empirical studies of sensitive populations that report variations in health outcomes. We link the corresponding adjustments to (1) the concentration-exposure-dose-response framework, and (2) the key equation supporting calculations of impacts based on relative risks.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Sharon L. Landers
Interim Executive Officer/APCO

Prepared by: David Holstius
Reviewed by: Phil Martien and Greg Nudd

ATTACHMENTS:

1. PM25-local-risk-method-v0.6.1_090622

ADVISORY COUNCIL
MEETING OF 09/12/22

Modeling Local Sources of Fine Particulate Matter (PM_{2.5}) for Risk Management

August 2022

Bay Area Air Quality Management District

Project Lead

David Holstius, PhD, Senior Advanced Projects Advisor
Assessment, Inventory and Modeling Division

Reviewed by

Greg Nudd, Deputy Air Pollution Control Officer
Policy and Equity Office

Phil Martien, PhD, Director
Assessment, Inventory and Modeling Division

Advisors and Contributors

Gina Solomon, MD, MPH, Co-Chair
Linda Rudolph, MD, MPH, Co-Chair
Michael Kleinman, PhD
Adrienne Hollis, PhD, JD
Pallavi Phartiyal, PhD
Danny Cullenward, PhD, JD
Garima Raheja
Bay Area Air Quality Management District Advisory Council

Yuanyuan Fang, PhD, Statistician
Air Quality Modeling and Analysis Section

Judith Cutino, DO, Health Officer
Policy and Equity Office

The Bay Area Air Quality Management District (Air District) also wishes to acknowledge the thoughtful feedback offered by staff at the Office of Environmental Health Hazard Assessment (OEHHA), the California Air Resources Board (CARB), and the United States Environmental Protection Agency (US EPA): Lauren Zeise; Vincent Cogliano; John Faust; Rupa Basu; Keita Ebisu; Xiangmei Wu; Heather Bolstad; Bonnie Holmes-Gen; Hye-Youn Park; Jinhyok Heo; Arash Mohegh; Ken Davidson; and Neal Fann. Special thanks also go to Amy Kyle for her feedback on earlier drafts. Finally, our thanks to all the stakeholders who have participated throughout the public process and strengthened this methodology through their critiques and suggestions.

Abbreviations

BAAQMD	Bay Area Air Quality Management District
BenMAP-CE	Benefits Mapping and Analysis Program, Community Edition
CARB	California Air Resources Board
CDC	Centers for Disease Control and Prevention
HRA	Health risk assessment
MEI	Maximally exposed individual
NAAQS	National Ambient Air Quality Standards
OEHHA	Office of Environmental Health Hazard Assessment
PM _{2.5}	Particulate matter less than 2.5µm in aerodynamic diameter
RR	Relative risk
US EPA	United States Environmental Protection Agency
WAF	Worker adjustment factor

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1. Introduction and Background

This document updates and extends a draft white paper (BAAQMD 2022) on modeling risk from local sources of fine particulate matter (PM_{2.5}) developed by the Bay Area Air Quality Management District (Air District), presented to the Air District's Advisory Council (Advisory Council), and distributed to staff at the United States Health Protection Agency (US EPA), the California Air Resources Board (CARB), and California's Office of Environmental Health Hazard Assessment (OEHHA). As summarized in presentations to the Advisory Council, the draft white paper's methodology assessed only the risk of premature mortality for a statistically average adult. The Advisory Council enjoined staff to augment the methodology with factors to protect sensitive groups, and to consider assessing chronic health impacts as well. Staff at OEHHA also requested that the Air District be mindful of vulnerabilities, and members of the public urged the Air District to include asthma. This updated methodology is responsive to those requests.

The purpose of this document is to propose and demonstrate a general methodology that can support the assessment and regulation of health risks from fine particulate matter (PM_{2.5}) at a local level. National- and regional-scale assessments for PM_{2.5} have been conducted for many years (e.g., Fann et al. 2011; Tanrikulu et al. 2011, 2019; see also Hubbell et al. 2009), corresponding to the needs of current regulatory frameworks that focus on reducing regional PM_{2.5} levels to meet the National Ambient Air Quality Standards (NAAQS). Continuous observation of ambient PM_{2.5} levels, through agencies' official measurement networks, has also been successful in monitoring and verifying the success of policies to reduce average ambient PM_{2.5} and meet the current NAAQS in many regions. However, it has become increasingly clear that gaps left by the NAAQS-centered approach must be addressed.

A gap that this work seeks to help close is the persistent exposure of some populations to locally elevated concentrations of PM_{2.5}. Although a large fraction of PM_{2.5} is regionally contributed (Blanchard 2004), elevated concentrations of PM_{2.5} exist near sources of emissions (Ito et al. 2004; Wilson et al. 2005; Karner et al. 2010; Gu et al. 2018; Wang et al. 2020; Chambliss et al. 2021), have persisted in the same patterns over decades (Colmer et al. 2020), and have been linked to structural and institutional discrimination (Houston et al. 2004, 2008; Fisher et al. 2006; Morello-Frosch and Lopez 2006; Banzhaf et al. 2019; Colmer et al. 2020).

Compared to the NAAQS, the US EPA's air toxics program "places comparatively greater emphasis on reducing risks among highly exposed individuals." (Fann et al. 2016) Thus, to regulate carcinogens, for several decades the Air District has conducted local-scale modeling and set corresponding source-specific or project-specific thresholds for maximum contributions to a lifetime risk of cancer. The Air District has also modeled source-specific contributions to local elevations of PM_{2.5}, but to date has not conducted any corresponding health risk assessments (HRAs). This methodology would enable those assessments.

2. Concepts and Methods

Modeling of exposure. The general framework proposed here is similar to a framework that is widely employed in health risk assessments (HRAs) of toxic air contaminants. It is source-specific and based on modeling. We assume that a given source's contributions to near-field ambient concentrations can be adequately estimated using a steady-state dispersion model, which relies on user-supplied data to describe site conditions and meteorological conditions. When data are also supplied to describe the emissions of some pollutant from a source, including the way those emissions are released (at what elevation, velocity, and so on), such a model can be used to predict that source's direct contribution to the total concentration of the given pollutant at any nearby coordinate ("receptor location"). Detailed explanations and discussions are available in other publications (OEHHA 2012, 2015; BAAQMD 2021).

For a given source and pollutant, it is conventional to model impacts on different types of receptors¹ in the vicinity, each with its own characteristics. These include residents, off-site workers, students, and so forth. For each combination of receptor type, averaging time, and pollutant², dispersion-modeling results are used to identify a location corresponding to the most-impacted receptor of that type. These are termed "maximally exposed individual" (MEI) receptors. For a given source, averaging time, and pollutant, there will be at most one residential MEI, one off-site worker MEI, and so on.

In this version of the methodology, we work exclusively with annual averaging times. Having identified the MEI receptor locations for annual average PM_{2.5}, and the corresponding contributions of the source, we proceed with assumptions and/or site-specific data about the time-activity patterns of a given receptor type, and potentially the operational schedule of the source as well. (OEHHA 2015; BAAQMD 2021). Using this information, we convert from incremental average *concentrations* to incremental average *exposure intensities*. The latter take the co-presence of the source's emissions, and the envisioned receptor, into account. If 100% of a source's emissions are assumed to occur when a modeled receptor is present at the given receptor location (e.g., during the working hours of an off-site worker), then the incremental average exposure intensity will be equal to the incremental average concentration. If they never coincide, then it will be zero. Although the receptor may be exposed to other sources, this methodology is concerned with contributions from the modeled source.

Modeling of responses to exposure. To re-express the modeled incremental average exposure intensities in the form of health risks, we leverage response functions from epidemiological

¹ "Receptor" as a term of art in air quality modeling can refer either to (a) an entity exposed to pollution, or (b) the location at which that exposure is assumed to occur.

² Impacts from multiple pollutants may be aggregated, so long as they can be expressed in terms of the same impact metric.

studies of the health effects of PM_{2.5}. In this version of the methodology, we leverage response functions for (a) premature adult mortality and (b) pediatric asthma onset, applying these to residential, off-site worker, school, and daycare receptors.

The response functions that we rely on are used to calculate relative risks. We convert these to incremental absolute risks using information about baseline rates. To illustrate: suppose we take the *relative* risk of asthma onset, per µg/m³, to be 1.04 for five-year-old children. For a scenario in which the annual average exposure intensity at a corresponding receptor is increased by 1 µg/m³, we take the baseline annual incidence³ rate of asthma and multiply it by 1.04. Subtracting the baseline from this scaled result yields an estimate of the excess probability (risk) of developing asthma before turning six, compared to the baseline scenario.

The following equations express this in mathematical terms.⁴ Let $\Delta x = x - x_0$ and $\Delta y = y - y_0$, where x_0 and y_0 represent the baseline PM_{2.5} concentration and the baseline incidence rate of some health endpoint. Taking $\Delta x > 0$ to mean an increase in PM_{2.5}, and $\Delta y > 0$ a corresponding increase in risk, we have:

$$\begin{aligned} y/y_0 &= e^{\beta \Delta x} \\ y - y_0 &= \Delta y = y_0(e^{\beta \Delta x} - 1) \end{aligned}$$

The effect size, or the change in y associated with a unit change in x , is represented in these equations by the term β . Typically, β will be based on an epidemiological study in which ambient outdoor PM_{2.5}, measured or estimated at some locations, was the independent variable. Generally, epidemiological studies estimate β by adjusting for other measured factors in such a way that β will (ideally) approximate the causal effect of x alone. Most such studies report an estimated risk ratio, such as a relative risk (RR), hazard ratio (HR), or odds ratio (OR), for a given increment of PM_{2.5}. In the equations above, β is essentially the natural logarithm of the risk ratio. The average marginal effect size that β is intended to represent will reflect the distribution of factors that lay on the causal pathways between ambient PM_{2.5} and the outcome of interest in the population that was studied. For example, the breathing rates of the studied population will be implicit in the resulting population-average estimate of β . In Section 4, to account for at-risk populations, we incorporate adjustments to some of these factors.

Multi-year exposures. To extend the exposure duration to more than one year, we follow the principles behind existing guidance developed for HRAs (OEHHA 2015; BAAQMD 2021). For residential receptors, current guidelines assume a window of exposure that is up to 30 years. Consistent with a focus on maximal risk, in cancer-risk HRAs this is taken to be the first 30 years

³ The baseline rate here is in terms of *incidence* (new cases per unit time), rather than *prevalence* (existing cases at a point in time).

⁴ For additional discussion, see Fann et al (2011) and US EPA (2010, 2022).

of life.⁵ For premature mortality, on the other hand, the most vulnerable window is during the later years of life. For pediatric asthma onset, by definition, the window is within the first 18 years of life.

By applying relative risks in a sequential fashion to each year within a defined window of exposure, and by comparing a less-exposed scenario to a more-exposed scenario, we can arrive at an overall result that summarizes the multi-year risk on an additive scale. Figure 1 illustrates this approach. The following two sections provide a series of worked examples, culminating in the results reported in Table 11.

⁵ It also includes the third trimester of pregnancy.

3. Example Calculations

This section illustrates the application of the concepts and methods described above.⁶ Example calculations are provided in stages. For simplicity, we refer to a hypothetical concentration increase of $0.1 \mu\text{g}/\text{m}^3$ at all stages, but later provide a lookup table for larger and smaller increments. After illustrating the fundamentals, in the next section (“Sensitive Individuals”) we complete the method by accounting for children and adults who are more at risk.

In this section, we first calculate the risk of premature mortality for a residential receptor that is maximally exposed but has otherwise “statistically average” characteristics—breathing rate, health status, and so on.⁷ Such a receptor does not represent any actual person, but the result corresponds to the result we would expect if we modeled a representative sample of a very large number of people and then took the average of the results.⁸ Second, we model premature mortality for a statistically average adult of working age, shortening and shifting the exposure window so that it ends with retirement. Third, we introduce another health endpoint (pediatric asthma onset) and calculate relevant risks for residential, school, and daycare receptors.

Senior resident. As explained in Section 2, the relevant exposure window when assessing premature mortality should be later in life. Currently, life expectancy in the Bay Area is just under 80 years, and given our baseline rates, approximately half the population should survive to age 85. Taking this into account, when assessing the risk of mortality for a residential receptor we define the exposure window to be ages 55–84.

To calculate an incremental average exposure intensity, we multiply our example concentration increment ($0.1 \mu\text{g}/\text{m}^3$) by factors that describe the overlap between the schedules of the source and receptor. Following guidance from OEHHA (2015), for an adult residential receptor, we assume that 73% of the time is spent at home, 350 days per year, yielding an overall conversion factor of 0.70. The resulting incremental average exposure intensity is then $0.7 \times 0.1 \mu\text{g}/\text{m}^3 = 0.07 \mu\text{g}/\text{m}^3$. Consistent with the ranges reported in the Air District’s recent evaluations of health impacts on regional populations (Fang et al. 2021a, 2021b), we take the relative risk of premature mortality to be 1.01 per $1 \mu\text{g}/\text{m}^3$ $\text{PM}_{2.5}$. (For a justification, see Appendix B.) The relative risk of mortality corresponding to this increment, using the equations from Section 2, is then $e^{\beta \cdot \Delta x} = e^{\ln(1.01) \cdot 0.07} \approx 1.0007$.

Next we set up a comparison of baseline rates versus rates for baseline plus this increment. In Table 2, columns labeled “A” represent the baseline, while columns labeled “B” represent

⁶ An interactive spreadsheet is also available on request.

⁷ Conditional on age, which is linked to the exposure window.

⁸ For attributes generally regarded as categorical, such as Medicare eligibility or sex, this “statistically average individual” becomes perhaps more obviously the construct that it is.

baseline plus an increment of $0.1 \mu\text{g}/\text{m}^3$ $\text{PM}_{2.5}$. As described in Section 2, comparing A and B allows us to assess the attributable risk. For baseline rates of mortality (Table 1; Table 2, second column), we rely on data for the nine-county Bay Area obtained from the Centers for Disease Control and Prevention (CDC 2021). During any given year, the expected rate or risk for the more exposed scenario (B) should be 1.0007 times that for A. Given this ratio, and the age-specific annual mortality rates for A, we calculate the age-specific annual mortality rates for B (Table 2, under “Incidence Rate”).

The probability of surviving any given year is equal to one minus the risk of mortality during that year. The columns labeled “Survival” in Table 2 contain the cumulative products of these annual probabilities; they represent the overall probabilities of survival from age 55 until the end of any given year. Given our assumptions, we calculate the difference (A - B) at the end of the 30-year exposure window to be $54.3654\% - 54.3419\% = 0.0235\% = 2.3 \times 10^{-4}$.

Off-site worker. For a worker receptor, the Air District’s cancer-risk HRA methodology (OEHHA 2015; BAAQMD 2021) specifies a 25-year exposure duration. Work is assumed to end with retirement at age 65, so the exposure window for seniors is unsuitable for workers. However, the same principle applies: older workers are generally expected to experience a higher risk of mortality for the same level of $\text{PM}_{2.5}$. Thus, for worker receptors, we adopt a 25-year window of exposure that begins at age 40 and ends with age 64.

Basic assumptions for an off-site worker receptor include a schedule of 8 hours per day, 5 days per week, 250 days per year. Consistent with existing HRA guidance (OEHHA 2015; BAAQMD 2021), we also apply a default “worker adjustment factor” (WAF) of $\frac{24}{8} \times \frac{7}{5} = 4.20$ to the average exposure intensity, to account for a scenario in which the source’s operations and the receptor’s schedule overlap to a large degree.⁹ For our reference increment of $+0.1 \mu\text{g}/\text{m}^3$ in the modeled annual average concentration, this results in a mortality-risk score of $90.5208\% - 90.5122\% = 0.0086\% = 8.6 \times 10^{-5}$. Calculations are shown in Table 3.

Pediatric asthma onset. We calculate the risk of pediatric asthma onset in the same way. In this case, “survival” translates to remaining asthma-free. The relevant schedule at a daycare or K-8 school is assumed to be 10 hr/day, 5 day/wk, 180 day/yr, and the relevant exposure windows are ages 0–5 and 5–13, respectively. and To account for potential overlap with the source’s schedule, we apply a default adjustment factor of $\frac{24}{10} \times \frac{7}{5} = 3.36$. The overall ratio of incremental exposure intensity to incremental modeled concentration is therefore $\frac{180}{365} \times \frac{10}{24} \times 3.36 = 0.69$. For a daycare receptor, we calculate the increased risk corresponding to our reference increment of $+0.1 \mu\text{g}/\text{m}^3$ to be $87.8488\% - 87.8141\% = 3.5 \times 10^{-4}$ (Table 4). For a receptor at a K-8 school, it is 2.4×10^{-4} (Table 5).

⁹ The WAF is a good example of a parameter that may be refined using site-specific information. In this document, we focus on screening-level calculations.

In these screening-level calculations of the risk of pediatric asthma onset for a residential receptor, the fraction of time at home (FAH) is assumed to be 100% for ages 0–15, consistent with (BAAQMD 2021).¹⁰ We calculate the corresponding risk to be 80.0128% - 79.9381% = 7.5×10^{-4} (Table 6).

Lookup table. Table 7 summarizes the results that we obtain, following the steps above, for PM_{2.5} increments spanning several orders of magnitude. Values from this table can be linearly interpolated to yield good approximations of exact calculations for intermediate values.

Some adults and children will be more at risk. The next section completes the methodology by accounting for variation in sensitivity among individuals.

¹⁰ Air District guidance for cancer-risk assessment allows relaxation of this assumption if no schools are identified within the corresponding 1.0×10^{-6} isopleth (BAAQMD 2021).

4. Sensitive Individuals

Up to this point, calculations have assumed a maximal annual average exposure, but apart from the selection of an exposure window, no consideration has yet been given to other factors relevant to a maximal risk. Other factors include:

1. Factors on the pathway from concentration to dose (e.g., indoor/outdoor ratios; breathing rates; etc.); and
2. Factors that mediate dose-response relationships (e.g., co-stressors, pre-existing conditions, other predispositions, etc.)

The focus of this methodology is on maximal risks. As such, potential variation in the factors above must be considered. During the development of this methodology, the Air District's Advisory Council determined that available evidence supported factors of at least three to account for known and unknown variation.

Taking the above into consideration, we can complete the picture by accounting for variation in two ways. First, we can adjust the exposure intensities for different receptors to reflect variation in factors on the pathway from concentration to exposure or dose. Second, we can adjust the estimates of relative risk to compensate for individuals who exhibit a larger or more severe exposure-response or dose-response relationship. We can also do this to account for data deficiencies. Table 8 summarizes these factors, and the calculations to which we apply them. Instead of re-working the calculations of the preceding section step-by-step, we conclude by providing a final lookup table that reflects these considerations (Table 11).

Breathing rates. Variation in breathing rates is accounted for in current HRA guidance concerning the risk of cancer. It is well established that children breathe more air than adults per kg of body mass. For our pediatric asthma onset calculations, this fact has generally been captured, as the relevant study excluded adults (Tétreault et al. 2016). However, among different children, as well as adults, there is also individual variation: conditional on age, 95th percentiles of average daily breathing rates are approximately 60% higher than means, and 8-hour moderate activity rates can be four times as high as daily rates (OEHHA 2012 chap. 3; 2015).

Table 9 shows the breathing rate data we use to adjust results for all receptors and endpoints. For daycare, school, and off-site worker receptors, we select 95th percentile moderate-activity 8-hour rates; for residential receptors, we select 95th percentile daily rates. We then divide those rates by the mean daily rates for the corresponding ages, and use the resulting ratios (Table 10) to scale the average exposure intensities (Δx) in our multi-year calculations.

Sensitive groups. To characterize variation in the relative risks of premature mortality among seniors, we have an empirical basis: important studies of PM_{2.5} report effect sizes for sensitive groups—including seniors of color, seniors eligible for Medicaid, and seniors residing in low-income ZIP codes—that are two to three times the average (e.g., Di et al. 2017; Yazdi et al.

2021). On reviewing the relevant evidence presented at the Advisory Council meeting in July 2022, public commenters recommended “factor(s) higher than 3x” to “safeguard the most vulnerable.” The Advisory Council Co-Chairs stated that “we need the largest safety or uncertainty factor that [the Air District] can possibly support,” seeing no reasons not to have a “robust” factor and, conversely, “many reasons to go in that direction.” The Advisory Council further advised that it would be “no problem to support a three-fold [factor] for vulnerable subpopulations based on the data that [the Air District] presented, but that even more could be supported.” Taking this into account, we scale the population-average relative risk of premature mortality ($RR = 1.01$) by a factor of 3, resulting in a relative risk of 1.03 per $1 \mu\text{g}/\text{m}^3$.¹¹

Data deficiencies. There are gaps in the data concerning other endpoints and groups, where variations in impacts are not yet adequately quantified. To compensate for this, the Advisory Council remarked that a factor of three is conventionally used by default, and that this factor should be included “at a minimum.” Taking this into account, we adopt a factor of three for data deficiencies concerning pediatric asthma onset and premature mortality among working-age adults. The adjusted relative risks for those receptors and endpoints are then 1.99 per $6.53 \mu\text{g}/\text{m}^3$ and 1.03 per $1 \mu\text{g}/\text{m}^3$, respectively.

Lookup table. Table 11 summarizes the corresponding results for $\text{PM}_{2.5}$ increments spanning several orders of magnitude. The next section discusses Table 11 in more detail.

¹¹ To adjust by a multiplicative factor a , the formula is $RR_{adj} = 1 + [a \cdot (RR - 1)]$.

5. Discussion and Conclusion

This update on modeling risk from local sources of fine particulate matter (PM_{2.5}) makes several important advances beyond the previous draft (BAAQMD 2022). The updated methodology:

- Accounts for variations in sensitivity;
- Expands the set of health endpoints and populations considered, by including pediatric asthma onset;
- Improves consistency with existing HRA methods, by calculating risk differences for multi-year exposure windows; and
- Provides a screening table, spanning several orders of magnitude, that can be used when PM_{2.5} concentrations have already been modeled.

The response functions that we leverage are derived from population-based studies in which a cohort of individuals is followed over a long period of time, and small contrasts in modeled or measured PM_{2.5} concentrations are observed. Within a policy-relevant range of baseline PM_{2.5} concentrations, from potentially 5 µg/m³ to 15 µg/m³ or higher, estimates of the average marginal impacts of the increments we have considered in Tables 7 and 11 will therefore be well supported.

The US EPA's air toxics program "seeks to protect the greatest number of individuals from a lifetime cancer risk greater than 1×10^{-6} and in all cases limit risk to the individual most exposed to no greater than 1×10^{-4} " (Fann et al. 2016). Given an increment of 0.1 µg/m³ PM_{2.5}, we calculate a maximal excess risk of premature mortality to be 1.1×10^{-3} for a residential receptor (Table 11). For worker receptors, although breathing rates are higher (Table 10), lower baseline mortality rates (Table 1) mean that the net result is slightly lower (9.6×10^{-4}). In terms of pediatric asthma onset, we calculate an excess risk of 3.0×10^{-3} for a residential receptor. In the context of a daycare, the exposure window is shortened to ages 0–5, but higher breathing rates and higher baseline rates result in a larger net result (3.6×10^{-3}). In all cases, the values reported in Table 11 can be linearly interpolated to yield screening-level estimates for larger or smaller increments of PM_{2.5} (see Technical Notes). We report values to two significant digits to support that interpolation.

In the case of larger sources, estimating impacts on a local population (Hubbell et al. 2009) can be a valuable complement to this methodology. Such an approach has been recommended by OEHHA (2012) as a complement to MEI-focused risk assessments. Presently, the Air District models annual health and welfare impacts for the regional population using BenMAP-CE (US EPA 2022; e.g., Tanrikulu et al. 2011, 2022), and has done so for sub-populations as small as 1 million residents (e.g., Fang et al. 2021a, 2021b).

Finally, while the methodology we have developed here can calculate risk, it cannot determine acceptable levels of risk. Work remains to establish appropriate thresholds for risk management.

DRAFT
ADVISORY COUNCIL
MEETING OF 09/12/22

6. Figures and Tables

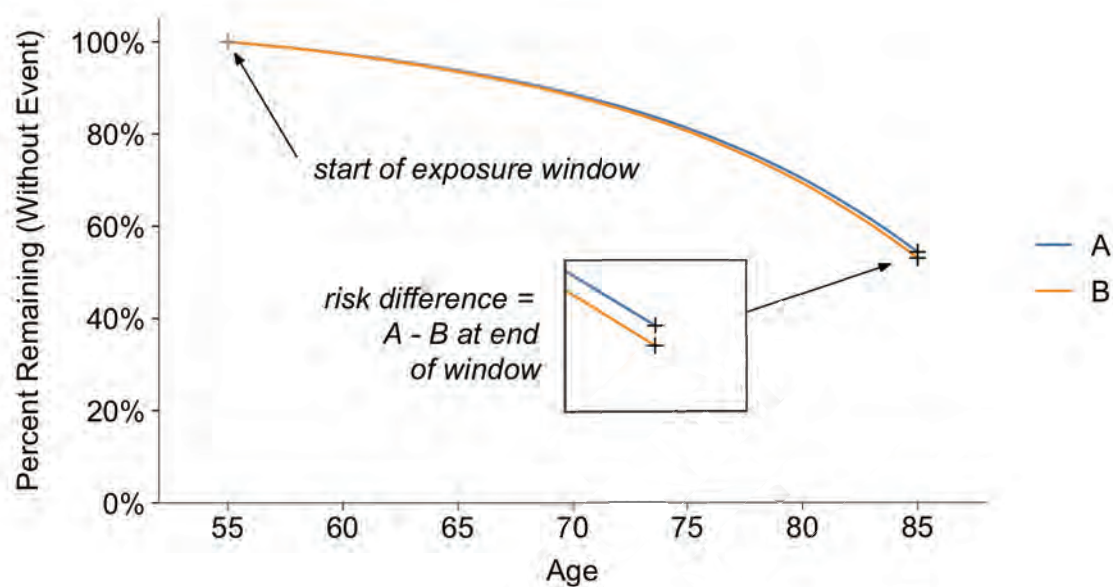


Figure 1: Illustration of the method applied to a multi-year exposure window. B is consistently exposed to more PM_{2.5} than A.

Table 1: Mortality data for the nine-county Bay Area, 2007-2016 (CDC-WONDER).

Age	Person-Years	Deaths	Rate per 100k
40	1,076,380	1,142	106.1
41	1,070,670	1,311	122.4
42	1,075,763	1,446	134.4
43	1,083,573	1,620	149.5
44	1,087,421	1,744	160.4
45	1,089,624	1,852	170.0
46	1,086,099	2,138	196.9
47	1,087,746	2,349	216.0
48	1,075,963	2,552	237.2
49	1,078,475	2,845	263.8
50	1,075,008	3,137	291.8
51	1,072,370	3,342	311.6
52	1,062,414	3,583	337.3
53	1,044,307	3,950	378.2
54	1,028,359	4,199	408.3
55	1,005,568	4,566	454.1
56	982,292	4,743	482.8
57	961,176	4,806	500.0
58	935,149	5,241	560.4
59	908,344	5,546	610.6
60	883,480	5,784	654.7
61	849,086	6,077	715.7
62	810,649	6,133	756.6
63	762,413	6,340	831.6
64	728,685	6,428	882.1
65	691,688	6,576	950.7
66	648,937	6,463	995.9
67	605,206	6,711	1,108.9
68	564,743	6,666	1,180.4
69	527,713	6,879	1,303.5
70	483,456	6,980	1,443.8
71	458,660	6,977	1,521.2
72	432,137	7,431	1,719.6
73	406,466	7,650	1,882.1
74	381,014	7,907	2,075.3
75	357,940	8,313	2,322.5
76	341,736	8,821	2,581.2
77	327,610	9,111	2,781.1
78	311,751	9,767	3,132.9
79	295,780	10,242	3,462.7
80	279,343	11,109	3,976.8
81	266,362	11,775	4,420.7
82	253,935	12,264	4,829.6
83	239,396	13,302	5,556.5
84	224,786	14,031	6,241.9

Table 2: Mortality rates and cumulative probabilities of survival for an average senior, age 55–84. Columns labeled “A” represent exposure to a baseline concentration of PM_{2.5}. Columns labeled “B” represent baseline plus an increment of 0.1 µg/m³.

Age	Incidence Rate (per 100,000)		Survival (Cumulative)	
	A	B	A	B
55	454.07	454.39	99.54593%	99.54561%
56	482.85	483.19	99.06527%	99.06462%
57	500.01	500.36	98.56993%	98.56894%
58	560.45	560.84	98.01750%	98.01613%
59	610.56	610.99	97.41904%	97.41726%
60	654.68	655.14	96.78126%	96.77905%
61	715.71	716.21	96.08858%	96.08590%
62	756.55	757.08	95.36162%	95.35846%
63	831.57	832.15	94.56862%	94.56493%
64	882.14	882.75	93.73440%	93.73016%
65	950.72	951.38	92.84325%	92.83843%
66	995.94	996.63	91.91859%	91.91317%
67	1,108.88	1,109.65	90.89932%	90.89326%
68	1,180.36	1,181.18	89.82638%	89.81964%
69	1,303.55	1,304.46	88.65545%	88.64798%
70	1,443.77	1,444.78	87.37547%	87.36722%
71	1,521.17	1,522.23	86.04634%	86.03729%
72	1,719.59	1,720.79	84.56669%	84.55676%
73	1,882.08	1,883.39	82.97508%	82.96423%
74	2,075.25	2,076.70	81.25314%	81.24131%
75	2,322.46	2,324.07	79.36607%	79.35321%
76	2,581.23	2,583.03	77.31745%	77.30349%
77	2,781.05	2,782.99	75.16721%	75.15214%
78	3,132.95	3,135.13	72.81226%	72.79602%
79	3,462.71	3,465.12	70.29099%	70.27355%
80	3,976.83	3,979.60	67.49563%	67.47694%
81	4,420.68	4,423.76	64.51187%	64.49193%
82	4,829.58	4,832.95	61.39622%	61.37507%
83	5,556.48	5,560.36	57.98474%	57.96240%
84	6,241.94	6,246.29	54.36537%	54.34190%

Table 3: Mortality rates and cumulative probabilities of survival for an average off-site worker receptor, age 40–64. Columns labeled “A” represent exposure to a baseline concentration of PM_{2.5}. Columns labeled “B” represent baseline plus an increment of 0.1 µg/m³.

Age	Incidence Rate (per 100,000)		Survival (Cumulative)	
	A	B	A	B
40	106.10	106.20	99.89390%	99.89380%
41	122.45	122.56	99.77159%	99.77137%
42	134.42	134.54	99.63748%	99.63713%
43	149.50	149.65	99.48851%	99.48803%
44	160.38	160.53	99.32896%	99.32832%
45	169.97	170.13	99.16013%	99.15933%
46	196.85	197.04	98.96493%	98.96395%
47	215.95	216.16	98.75122%	98.75003%
48	237.18	237.41	98.51700%	98.51559%
49	263.80	264.05	98.25711%	98.25546%
50	291.81	292.09	97.97038%	97.96846%
51	311.65	311.94	97.66506%	97.66286%
52	337.25	337.57	97.33569%	97.33317%
53	378.24	378.60	96.96752%	96.96467%
54	408.32	408.71	96.57158%	96.56836%
55	454.07	454.51	96.13308%	96.12946%
56	482.85	483.31	95.66890%	95.66485%
57	500.01	500.49	95.19055%	95.18606%
58	560.45	560.98	94.65706%	94.65208%
59	610.56	611.14	94.07912%	94.07362%
60	654.68	655.31	93.46319%	93.45715%
61	715.71	716.39	92.79427%	92.78763%
62	756.55	757.28	92.09223%	92.08497%
63	831.57	832.36	91.32642%	91.31849%
64	882.14	882.98	90.52079%	90.51217%

Table 4: Baseline incidence rates and cumulative probabilities of remaining asthma-free from ages 0–5, representing an average child at a daycare. Columns labeled “A” represent exposure to a baseline concentration of PM_{2.5}. Columns labeled “B” represent baseline plus an increment of 0.1 µg/m³.

Age	Incidence Rate (per 100,000)		Asthma-Free (Cumulative)	
	A	B	A	B
0	2,340.00	2,347.07	97.66000%	97.65293%
1	2,340.00	2,347.07	95.37476%	95.36095%
2	2,340.00	2,347.07	93.14299%	93.12277%
3	2,340.00	2,347.07	90.96344%	90.93712%
4	2,340.00	2,347.07	88.83490%	88.80276%
5	1,110.00	1,113.35	87.84883%	87.81408%

Table 5: Baseline incidence rates and cumulative probabilities of remaining asthma-free from ages 5–13, representing an average student at a K-8 school. Columns labeled “A” represent exposure to a baseline concentration of PM_{2.5}. Columns labeled “B” represent baseline plus an increment of 0.1 µg/m³.

Age	Incidence Rate (per 100,000)		Asthma-Free (Cumulative)	
	A	B	A	B
5	1,110.00	1,113.35	98.89000%	98.88665%
6	1,110.00	1,113.35	97.79232%	97.78569%
7	1,110.00	1,113.35	96.70683%	96.69699%
8	1,110.00	1,113.35	95.63338%	95.62042%
9	1,110.00	1,113.35	94.57185%	94.55582%
10	1,110.00	1,113.35	93.52210%	93.50308%
11	1,110.00	1,113.35	92.48401%	92.46207%
12	440.00	441.33	92.07708%	92.05400%
13	440.00	441.33	91.67194%	91.64774%

Table 6: Baseline incidence rates and cumulative probabilities of remaining asthma-free from ages 0–17, representing an average residential receptor. Columns labeled “A” represent exposure to a baseline concentration of PM_{2.5}. Columns labeled “B” represent baseline plus an increment of 0.1 µg/m³.

Age	Incidence Rate (per 100,000)		Asthma-Free (Cumulative)	
	A	B	A	B
0	2,340.00	2,349.82	97.66000%	97.65018%
1	2,340.00	2,349.82	95.37476%	95.35558%
2	2,340.00	2,349.82	93.14299%	93.11489%
3	2,340.00	2,349.82	90.96344%	90.92686%
4	2,340.00	2,349.82	88.83490%	88.79024%
5	1,110.00	1,114.66	87.84883%	87.80054%
6	1,110.00	1,114.66	86.87371%	86.82186%
7	1,110.00	1,114.66	85.90941%	85.85409%
8	1,110.00	1,114.66	84.95581%	84.89711%
9	1,110.00	1,114.66	84.01280%	83.95080%
10	1,110.00	1,114.66	83.08026%	83.01504%
11	1,110.00	1,114.66	82.15807%	82.08970%
12	440.00	441.85	81.79658%	81.72699%
13	440.00	441.85	81.43667%	81.36588%
14	440.00	441.85	81.07835%	81.00637%
15	440.00	441.85	80.72161%	80.64845%
16	440.00	441.35	80.36643%	80.29251%
17	440.00	441.35	80.01282%	79.93814%

Table 7: Screening-level risk scores calculated without adjusting for variations in sensitivity. Exposure windows are indicated in parentheses.

Annual Average Concentration Increment	Pediatric Asthma Onset			Premature Mortality	
	Daycare (0–5)	Student (5–13)	Resident (0–17)	Worker (40–64)	Resident (55–84)
$3 \times 10^{-1} \mu\text{g}/\text{m}^3$	1.0×10^{-3}	7.3×10^{-4}	2.2×10^{-3}	2.6×10^{-4}	7.0×10^{-4}
$1 \times 10^{-1} \mu\text{g}/\text{m}^3$	3.5×10^{-4}	2.4×10^{-4}	7.5×10^{-4}	8.6×10^{-5}	2.3×10^{-4}
$3 \times 10^{-2} \mu\text{g}/\text{m}^3$	1.0×10^{-4}	7.3×10^{-5}	2.2×10^{-4}	2.6×10^{-5}	7.0×10^{-5}
$1 \times 10^{-2} \mu\text{g}/\text{m}^3$	3.5×10^{-5}	2.4×10^{-5}	7.5×10^{-5}	8.6×10^{-6}	2.3×10^{-5}
$3 \times 10^{-3} \mu\text{g}/\text{m}^3$	1.0×10^{-5}	7.2×10^{-6}	2.2×10^{-5}	2.6×10^{-6}	7.0×10^{-6}
$1 \times 10^{-3} \mu\text{g}/\text{m}^3$	3.5×10^{-6}	2.4×10^{-6}	7.5×10^{-6}	8.6×10^{-7}	2.3×10^{-6}

Consistent with screening-level HRA guidance from BAAQMD (2021), for a residential receptor the assumed fraction of time at home (FAH) is 100% for age 0–15 and 73% for age 16 and older, 350 days per year. Schedule parameters for an off-site worker receptor are 8 hr/day, 250 day/yr, with an adjustment factor of 4.2 applied to account for potential overlap in the schedules of the source and receptor. For a school or daycare receptor, schedule parameters are 10 hr/day, 180 day/yr, with an adjustment factor of 3.36.

The population-average relative risk for premature adult mortality is taken to be 1.01 per 1 $\mu\text{g}/\text{m}^3$. For pediatric asthma onset, it is 1.33 per 6.53 $\mu\text{g}/\text{m}^3$. Baseline rates for mortality are obtained from CDC-WONDER for the 9-county Bay Area, while those for asthma incidence are obtained from BenMAP.

Table 8: Factors applied to account for variations in individual response. See also Tables 9 and 10.

Endpoint/Receptor	Factor	Description
(all)	(varies)	Age- and activity-specific breathing rates.
Mortality (senior)	3x	Consistent with epidemiological data for at-risk groups.
Mortality (worker)	3x	Default factor for data deficiencies.
Asthma onset	3x	Default factor for data deficiencies.

Table 9: Breathing rates (L/kg-day) by level of activity, summary statistic, and age. Values obtained from Tables 5.7 and 5.8 of OEHHA (2015).

Type	Statistic	0-1	2-15	> 16*
Daily	Mean	658	452	185
Daily	95th percentile	1,090	745	290
Moderate 8-hr	Mean	2,670	1,140	510
Moderate 8-hr	95th percentile	3,600	1,560	690

* Original data are for ages 16-70.

Table 10: Factors applied to account for variation in breathing rates. Values derived from Table 9, as described in the main text (Section 4).

Receptor	Age	Factor
Resident	0-1	1.7x
Resident	2-15	1.6x
Resident	16-17	1.6x
Resident	55-84	1.6x
Worker	40-64	3.7x
Daycare	0-1	5.5x
Daycare	2-5	3.5x
Student	5-13	3.5x

Values rounded to one decimal.

Table 11: Screening-level risk scores that incorporate potential variations in sensitivity. Exposure windows are indicated in parentheses.

Annual Average Concentration Increment	Pediatric Asthma Onset			Premature Mortality	
	Daycare (0–5)	Student (5–13)	Resident (0–17)	Worker (40–64)	Resident (55–84)
$3 \times 10^{-1} \mu\text{g}/\text{m}^3$	1.1×10^{-2}	6.3×10^{-3}	9.1×10^{-3}	2.9×10^{-3}	3.3×10^{-3}
$1 \times 10^{-1} \mu\text{g}/\text{m}^3$	3.6×10^{-3}	2.0×10^{-3}	3.0×10^{-3}	9.6×10^{-4}	1.1×10^{-3}
$3 \times 10^{-2} \mu\text{g}/\text{m}^3$	1.1×10^{-3}	6.1×10^{-4}	8.9×10^{-4}	2.9×10^{-4}	3.3×10^{-4}
$1 \times 10^{-2} \mu\text{g}/\text{m}^3$	3.5×10^{-4}	2.0×10^{-4}	3.0×10^{-4}	9.6×10^{-5}	1.1×10^{-4}
$3 \times 10^{-3} \mu\text{g}/\text{m}^3$	1.1×10^{-4}	6.0×10^{-5}	8.9×10^{-5}	2.9×10^{-5}	3.3×10^{-5}
$1 \times 10^{-3} \mu\text{g}/\text{m}^3$	3.5×10^{-5}	2.0×10^{-5}	3.0×10^{-5}	9.6×10^{-6}	1.1×10^{-5}

Consistent with screening-level HRA guidance from BAAQMD (2021), for a residential receptor the assumed fraction of time at home (FAH) is 100% for age 0–15 and 73% for age 16 and older, 350 days per year. Schedule parameters for an off-site worker receptor are 8 hr/day, 250 day/yr, with an adjustment factor of 4.2 applied to account for potential overlap in the schedules of the source and receptor. For a school or daycare receptor, schedule parameters are 10 hr/day, 180 day/yr, with an adjustment factor of 3.36.

Average exposure intensities are adjusted using age-specific 95th percentile breathing rates from OEHHA (2015). Moderate-activity 8-hr rates are used for worker, student, and daycare receptors; daily rates are used for residential receptors.

To account for variations in effect size, population-average relative risks for premature adult mortality and pediatric asthma onset are each adjusted by a factor of three, resulting in $RR = 1.03$ per $1 \mu\text{g}/\text{m}^3$ and $RR = 1.99$ per $6.53 \mu\text{g}/\text{m}^3$, respectively. Baseline rates for mortality are obtained from CDC-WONDER for the 9-county Bay Area, while those for asthma incidence are obtained from BenMAP.

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Appendix A. Technical Notes

The reader who is more familiar with cancer-risk calculations may note two distinct features of the delta-response equation that is central to this methodology. First, it is nonlinear in the term representing $PM_{2.5}$ (Δx). Second, it includes a term representing baseline conditions (y_0). These features have a few practical consequences.

First, in modeling an increase of $\Delta x \text{ } \mu\text{g}/\text{m}^3$, the baseline is conceptually defined as the (annual average) $PM_{2.5}$ concentration that would be obtained in the absence of the modeled source's contribution. Importantly, the baseline incidence rate y_0 is also assumed to correspond to that scenario. In modeling a reduction of $\Delta x \text{ } \mu\text{g}/\text{m}^3$, with $\Delta x > 0$, the equation $\Delta y = y_0(1 - e^{-\beta \Delta x})$ should instead be used, with $\Delta y > 0$ interpreted as a benefit. Using the wrong setup/equation will not result in a very large error; for mortality, given a plausible value for Δx , the error will be a few percent at most. This asymmetry is absent from conventional cancer-risk assessments, where the key equation is linear in Δx . It is present in population-level assessments conducted by scientists and professionals—using tools such as BenMAP-CE, for example—that use the same equations.

Second, risk scores will not accumulate exactly in the way that they do in a linear framework. The calculated risk for an increment of $0.1 \text{ } \mu\text{g}/\text{m}^3$ will in fact be slightly *more* than ten times that for an increment of $0.01 \text{ } \mu\text{g}/\text{m}^3$. (This can be observed in Table 11.) It may help to re-conceptualize this situation in terms of ten *successive* increments of $0.01 \text{ } \mu\text{g}/\text{m}^3$. In this case it becomes clear that updating y_0 after each increment should be necessary, as the additional $PM_{2.5}$ should increase it. The importance of the potential discrepancy varies with the size of β , and with the sizes of the $PM_{2.5}$ increments. For this particular example, among the endpoints and receptors we have considered, the potential discrepancies should amount to a few percent at most.

Appendix B. Frequently Asked Questions

Questions and comments received during review of prior drafts and presentations are captured in this section.

Q. These risks seem very high. Can small amounts of PM_{2.5} really be this big of a risk driver?

Yes. In the Bay Area, current levels of PM_{2.5} are responsible for thousands of premature deaths each year, and even more cases of asthma. Relatively small changes in PM_{2.5} at or around baseline levels are the subject of epidemiological studies on which this methodology is based. Sensitive individuals will be more at risk, given the same increase in exposure.

Q. Why did you select these particular estimates of relative risk?

For premature adult mortality, the value we selected (1.01 per 1 µg/m³) is consistent with the ranges reported in the District's recent evaluations of impacts on regional populations (Fang et al. 2021a, 2021b; Tanrikulu et al. 2022). It is also consistent with the estimates reported by Di et al (2017): 1.073 overall per +10 µg/m³, and 1.136 per +10 µg/m³ for exposures less than 12 µg/m³. Di et al (2017) is the core study on which the US EPA relies for estimates of attributable mortality among seniors (US EPA 2022). Yazdi et al (2021) arrive at similar results using different methods, again studying baseline exposures under 12 µg/m³. Vodonos et al (2018), summarizing a wide range of studies across all ages via meta-regression, arrive at a relative risk of 1.0129 per +1 µg/m³ for a baseline centered on 10 µg/m³.

In the Bay Area, about 98% of the residential population lives where a modeled annual average PM_{2.5} concentration¹² is less than 12 µg/m³, and 75% where it is less than 10 µg/m³. Recent meta-analyses indicate that marginal effects on mortality are at least as large at these baseline levels (Vodonos et al. 2018; Papadogeorgou et al. 2019), and appear to be larger, compared to the historically higher levels that were the basis of older studies. This lends additional weight to the newer studies cited above.

For pediatric asthma calculations, we use the value supplied by the US EPA's BenMAP-CE platform: 1.33 per 6.53 µg/m³ (US EPA 2022). The mean PM_{2.5} concentration in the supporting study was approximately 10 µg/m³ (Tétreault et al. 2016).

Q. What about other health effects, like those on reproduction or cognition?

During earlier development, this methodology was restricted to premature adult mortality. In a conventional population-wide assessment, mortality typically receives over 95% of the overall valuation. However, feedback from stakeholders indicated that it was critical to assess at least one other endpoint. Respiratory effects, and asthma in particular, figure prominently in the concerns of community members and community representatives. Asthma can be measured in many ways: hospitalizations; inhaler use; progression; and new onset, to name a few. Asthma

¹² The Air District's modeling currently excludes wildfire impacts.

onset (newly developed or diagnosed asthma) was selected because it receives the highest valuation in the District's current population-based assessments, and because it is a necessary condition for other metrics, such as hospitalizations.

Importantly, this methodology does not attempt to consolidate multiple risk scores, nor does it attempt to be exhaustive. PM_{2.5} has very broad effects, and evidence continues to accumulate for reproductive, neurological, and other endpoints. More endpoints could be assessed, if it became clear that this would make a practical difference to policy or risk-management outcomes. Work still remains to establish an appropriate metric, or method for combining multiple metrics, to be used in threshold-based decision-making.

Q. Some communities have higher rates of asthma and mortality. Aren't they more at risk?

Throughout the development of this methodology, this question has been a focus of discussion. People in overburdened communities are more at risk. Quantitatively accounting for this faces limitations in a HRA framework, especially when the framework is focused on modeling maximum potential risk to an individual receptor. There are ways to address the problem at a risk-management or policy level, and we recommend that approach. An example is the Air District's recently updated Regulation 2, Rules 1 and 5, which establish geographically defined "overburdened communities" based on multiple relevant factors, and then establish thresholds that vary according to whether a source is located in or near such a community.

Generally, baseline rates of disease will be higher among at-risk groups and in overburdened communities. Baseline rates can be a good indicator of susceptibility to a particular stressor, but not always. First, rates can be higher in communities that are not otherwise overburdened. This can happen, for example, with mortality in communities that are older but otherwise more well-off. Second, rates can be lower among groups that will be more impacted overall by the same increase in PM_{2.5}. Either of these can happen because air pollution is not the only thing that affects baseline rates. So, because the marginal impacts of air pollution are conventionally estimated relative to those rates, we can be led in the wrong direction. As an example: all-cause mortality rates are lower than average among Hispanic/Latino residents. Calculations using those baseline rates, without any additional information, would indicate that lower impacts would result from locating a source of PM_{2.5} in a Hispanic/Latino community. However, additional knowledge points the other way (Di et al. 2017); differences in effect size (β) outweigh these differences in baseline rates (BAAQMD 2022).

We sometimes have geographically resolved information on important predictors of the baseline rate and/or the effect. For example, studies report (varying) results for individual race/ethnicity as a predictor or modifier of the effect size. They also report comparable results for other factors, such as income and Medicaid status. The selections of variables, and the adjustments for other variables—many of which are correlated—are often inconsistent across studies. Integrating results across such studies into a single, coherent adjustment factor for the effect size (β) would be a major challenge, which we do not currently know how to solve. Acknowledging that new scientific understandings will inevitably emerge, the semi-quantitative

factors in Section 4 are intended to be adequately protective of sensitive individuals across multiple dimensions. They can also be protective where data are currently lacking, as in the case of pediatric asthma onset.

A final practical concern is that we do not have individual-level data on potential receptors. Small-area population data can be imprecise, outdated, or inaccurate (Hubbell et al. 2009). This is especially a weakness at the spatial scales that correspond to the distances between most local sources and their MEI receptors, which in urban areas would typically be the size of a Census block or smaller. Results based on such micro-data, which often have unreported sources of error and/or uncertainty, can introduce a false sense of precision and reliability during risk communication or decision-making. This is especially true when used to evaluate maximum impacts. Statistical summaries at a community level—as provided, for example, by BenMAP-CE—are more reliable. But, this methodology is focused on risks for maximally impacted receptors, rather than impacts on the whole of a community.

For these reasons, we have elected to use age-specific but otherwise average baseline rates as a foundation, and cover potential variation in individual sensitivity by using the approach explained in Section 4. Insofar as locally elevated exposures to PM_{2.5} are more frequent and more severe in overburdened communities, the regulatory application of this methodology stands to reduce those disparities in exposure. We also recommend that equity-focused extensions be implemented at a risk management or policy level. These could take the form of refinements to the screening-level parameters that we have provided, or the establishment of context-specific thresholds (for example). To implement the former, Section 4 shows how multiplicative factors can be used to adjust the average exposure intensity (as with breathing rates), or the relative risk per $\mu\text{g}/\text{m}^3$ (as with sensitive groups), as appropriate.

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairpersons Linda Rudolph and Gina Solomon, and Members
of the Advisory Council

From: Sharon L. Landers
Interim Executive Officer/APCO

Date: September 12, 2022

Re: Source Prioritization Framework

RECOMMENDED ACTION

None; receive and file.

BACKGROUND

Last year, Air District staff began updating the rule-making process to improve transparency and predictability. A draft source prioritization framework was developed to align rule efforts to agency priorities and improve transparency with the Board of Directors (Board), advocates, and the regulated community. There are some implications of adopting the framework, which raise questions for the Advisory Council's consideration.

DISCUSSION

Source Prioritization Framework

Staff developed a draft Source Prioritization Framework to prioritize the long list of sources and rules that need further research. The idea is to screen all sources against a set of criteria. The criteria includes commitments, health and equity impacts, legal authority, emission control or reduction potential, and other impacts. All existing commitments, born out of legal requirements or adopted community plans, would be identified first, and weighted most heavily. Commitments would then be ranked by their health and equity impacts, based on the source being controlled. Legislative authority, emission reduction potential and other economic, socio-economic, and other environmental considerations would be considered. Priority factors would also determine the appropriate policy approach. For example, if the Air District does not have regulatory authority over a source, then other strategies would be recommended.

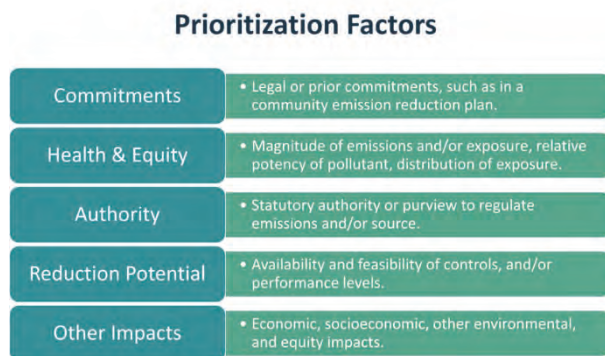


Figure 1. Priority Factors

Implications and Questions for Advisory Council

Implementing the prioritization framework has several implications, described below:

- **Only Commitments Go Forward in Coming Years:** There are many existing rules and source evaluations that the Air District has committed to, either via legal requirements or from commitments made in recently adopted plans. An example is commitments related to Assembly Bill 617. AB 617 requires that the Air District adopt Best Available Control Technology (BARCT) rules, and to adopt community emission reduction plans. The West Oakland plan has prioritized numerous rules that will have an impact on the community, and additional plans will be adopted in the coming years, including Richmond-North Richmond-San Pablo and East Oakland. AB617 has significantly contributed to the list of rulemaking to which the Air District has committed. Therefore, due to limited resources, there will be insufficient resources available in the next few years to take on any new, non-previously committed rule efforts.
- **Climate Related Rules Low Priority:** Direct local health and equity impacts from CO₂, methane, and other greenhouse gases are significantly smaller than from emissions of particulate matter and other air toxics. Since the priority framework weights health and equity highly, efforts to reduce CO₂, methane or other climate pollutants may rank lower in the prioritization, so much so that these sources would not be addressed by rule development for several years.

These implications raise several questions for the Advisory Council.

1. What is the role of rulemaking in addressing climate change? Under current state law, the Air District cannot require reductions of CO₂ from sources subject to cap-and-trade. With limited legal authority over greenhouse gasses, Air District staff have been challenged to find the right role for rulemaking.
2. Considering the implications, namely not addressing non-existing commitments and climate, are the factors the correct ones?

3. Is there more that the Air District staff should consider when quantifying local health impacts from greenhouse gas emissions in this framework, that may change the prioritization of climate-related sources?

Next Steps

Staff would like to discuss the proposed Source Prioritization Framework with the Community Advisory Committee later this year.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Sharon L. Landers
Interim Executive Officer/APCO

Prepared by: Christy Riviere
Reviewed by: Elizabeth Yura and Greg Nudd

ATTACHMENTS:

None

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson John J. Bauters and Members
of the Board of Directors

From: Sharon L. Landers
Interim Executive Officer/APCO

Date: September 21, 2022

Re: Update on Draft 2022 Scoping Plan

RECOMMENDED ACTION

None; receive and file.

BACKGROUND

In 2006, the Legislature passed the California Global Warming Solutions Act of 2006 (AB 32), which created a comprehensive, multi-year program to reduce greenhouse gas (GHG) emissions in California. AB 32 required the California Air Resources Board (CARB) to develop a Scoping Plan that laid out the strategy for the State to achieve the AB 32 goal of reducing emissions to 1990 levels by 2020. Subsequently, in 2016, the Legislature adopted Senate Bill 32 (SB32), which requires CARB to develop a strategy to reduce greenhouse gas emissions to 40% below 1990 levels by 2030. In addition, in 2018, Governor Brown signed Executive Order B-55-18 setting a statewide goal to achieve carbon neutrality as soon as possible, but no later than 2045.

The Scoping Plan was first approved by CARB in 2008 and must be updated at least every five years. Since 2008, there have been two updates to the Scoping Plan – in 2013 and 2017. The Draft 2022 Scoping Plan (Draft Plan) assesses progress toward the statutory 2030 target, while laying out a path to achieving carbon neutrality no later than 2045.

DISCUSSION

The Draft Plan aims to provide a “technologically feasible, cost-effective and equity focused” roadmap for how California will achieve its climate goals. The Draft Plan assesses progress towards achieving the State’s 2030 emissions reduction goal and includes a suite of regulations, incentives, carbon pricing policies and new approaches in a comprehensive strategy to achieve carbon neutrality by 2045 or sooner. The Draft Plan includes a focus on integrating equity and environmental justice in climate protection programs, to ensure that vulnerable communities are not disproportionately impacted by climate change.

CARB staff will present the Draft 2022 Scoping Plan, including a discussion of the key objectives, strategies and anticipated outcomes of the Draft Plan.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Sharon L. Landers
Interim Executive Officer/APCO

Prepared by: Abby Young
Reviewed by: Henry Hilken

ATTACHMENTS:

None

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson John J. Bauters and Members
of the Board of Directors

From: Sharon L. Landers
Interim Executive Officer/APCO

Date: September 21, 2022

Re: Consideration of Proposition 30 (2022)

RECOMMENDED ACTION

Recommend the Board of Directors (Board) discuss and consider taking a position on Proposition 30 (2022), appearing on the November 8, 2022, Statewide General Election Ballot.

BACKGROUND

Proposition 30: “Clean Cars and Clean Air Act”

Provides funding for programs to reduce greenhouse gas emissions by increasing tax on personal income over \$2 million. Initiative statute.

Secretary of State Summary: Increases tax on personal income over \$2 million by 1.75% for individuals and married couples and allocates new tax revenues as follows: (1) 45% for rebates and other incentives for zero-emission vehicle purchases and 35% for charging stations for zero-emission vehicles, with at least half of this funding directed to low-income households and communities; and (2) 20% for wildfire prevention and suppression programs, with priority given to hiring and training firefighters. Requires audits of programs and expenditures. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local governments: Increased annual state tax revenue ranging from \$3 billion to \$4.5 billion, with the additional revenue used to support zero-emission vehicle programs and wildfire-related activities. Potential increased state administrative costs paid from other funding sources that could reach tens of millions to the low hundreds of millions of dollars annually. Net decrease in state and local transportation revenue of up to several tens of millions of dollars annually in the initial years, and growing to up to a few hundreds of millions of dollars annually after several years.

DISCUSSION

Staff will present the background and status of Proposition 30 and the Board will discuss and consider taking a position on this statewide ballot measure, appearing on the November 8, 2022, Statewide General Election Ballot.

The attached analysis from the Legislative Analyst Office and attached article from Politico – “Gavin Newsom is fighting a wealth tax that would fund his own climate goals” – together provide an excellent summary of the issues surrounding Proposition 30, which would increase state income tax on high income households to fund zero-emission vehicle purchases, zero-emission vehicle infrastructure, and wildfire response and suppression programs. Specifically, the funding would be directed per the table below.

Program Allocation Table:

Program (Fund)	Focus Area	Program Allocation	Focus Area Minimum Allocation
ZEV Infrastructure Program (ZEV Investment Plan)	Multifamily Charging	35% of total revenue	20%
	Single-Family Charging		10%
	Fast-Fueling ZEVs		10%
	M/HD ZEV Fueling		10%
ZEV Affordability Program (ZEV & Clean Mobility Fund)	Passenger ZEVs	45% of total revenue	67%
	M/HD ZEV & Non-Vehicle Mobility		33%
Reducing Wildfire GHG Program (RWGP) (RWGP Fund)	Fire Marshal P&S Account*	20% of total revenue	25%
	CAL FIRE General Account*		75%

**Both accounts can be spent on suppression and prevention programs defined in the measure. The CalFire General Account prioritizes suppression for the first six years (with up to 25% of funds spent on prevention), after which the relative allocation is discretionary.*

As noted in the Politico article, support and opposition has not fallen along traditional lines. As of this writing, supporters include Lyft, a major financial supporter of the signature gathering, environmental organizations, and some labor groups that would likely supply workers to the resulting infrastructure projects. Lyft, like other ride-share companies, has a vehicle miles traveled (VMT) requirement by 2030 for 90% of ride-share miles to be zero-emission, and Proposition 30 would assist ride-share drivers in making that transition. Opposition includes Governor Newsom, the California Teachers Association, the Chamber of Commerce, and the Howard Jarvis Taxpayers Association. Because the proposition would lock in a tax increase for up to 20 years, other advocacy groups with hopes of accessing future state funding through a tax measure may join in opposition. It is unknown though, whether any opposition plans to spend money campaigning against the measure. Polling performed by the Public Policy Institute of California (PPIC) over the summer suggested early support for the proposition at about 60%.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Sharon L. Landers
Interim Executive Officer/APCO

Prepared by: Alan Abbs
Reviewed by: Sharon L. Landers

ATTACHMENTS:

1. Proposition 30 - Ballot Measure Text (21-0037A1)
2. Analysis of Proposition 30 - Legislative Analyst's Office
3. July 29, 2022 Politico Article "Gavin Newsom is Fighting a Wealth Tax That Would Fund His Own Climate Goals"

December 13, 2021

VIA PERSONAL DELIVERY

Hon. Rob Bonta
Attorney General of California
1300 I Street, 17th Floor
Sacramento, CA 95814

RECEIVED

DEC 13 2021

**INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE**

Attention: Ms. Anabel Renteria, Initiative Coordinator

Re: Request for Title and Summary for Proposed Initiative Statute (A.G. No.
21- 0037) – Amended Language

Dear Mr. Bonta:

Pursuant to Section 9002(b) of the California Elections Code, please find attached hereto amendments to the above-captioned initiative measure. I hereby request that a title and summary be prepared for the initiative measure using the amended language. My address as a registered voter, the required proponent affidavits pursuant to Sections 9001 and 9608 of the California Elections Code, and a check for \$2,000.00 were included with the original submission.

All inquiries or correspondence relative to this initiative should be directed to joe@jfwiedman.com or 510-219-6925.

Thank you for your assistance.

Sincerely,



Joseph Wiedman, Proponent

Enclosure: Proposed Initiative Statute – *Amended Language*

SECTION 1. Division 47 (commencing with Section 80200) is added to the Public Resources Code, to read:

**DIVISION 47. REDUCTION AND MITIGATION OF MAJOR SOURCES OF
GREENHOUSE GAS EMISSIONS**

CHAPTER 1. Clean Cars and Clean Air Act.

ARTICLE 1. Title, Findings and Declarations, Statement of Purpose.

80200. Title.

This division shall be known and may be cited as the Clean Cars and Clean Air Act.

80201. Findings and Declarations.

The People of the State of California find and declare the following:

(a) Climate change is already having a disruptive impact on California. Our state is increasingly experiencing record-setting wildfires and droughts that ruin our air quality, damage California's iconic natural beauty, destroy property, hurt our state's economy, and cost lives. In order to achieve the state's carbon goals and avoid the worst impacts of climate change, action is needed now regarding two of the largest sources of greenhouse gas ("GHG") emissions in our state: transportation and wildfires.

(b) Transportation remains California's largest source of the GHG emissions that cause climate change. We need to dramatically increase all Californians' access to affordable zero-emission vehicles ("ZEVs") like electric vehicles and the necessary related charging infrastructure in order to meet our climate goals.

(c) Electric vehicles remain too expensive for many Californians who are already dealing with the high cost of living in this state. Existing financial help for consumers has not been enough for low- and middle-income California families or many organizations to be able to purchase or lease an electric vehicle. We need to make electric vehicles more affordable for all Californians so we can significantly reduce GHG emissions from our transportation sector.

(d) California lacks the electric vehicle charging infrastructure needed to ensure Californians with electric vehicles have convenient access to vehicle charging at home, at work,

and everywhere they may travel throughout the state. We need to develop a network of affordable charging stations for homes, workplaces, apartments, and throughout the state so that driving a battery-powered electric vehicle is just as convenient as driving a gas-powered car.

(e) California also needs to lower emissions from medium- and heavy-duty vehicles like buses and big-rig trucks that are the source of significant GHG emissions and pollutants, particularly in low-income and disadvantaged communities. Converting buses and large trucks to electric vehicles will significantly reduce GHG emissions from the transportation sector and will clean up the air we all breathe.

(f) In addition to helping our state reach its GHG reduction goals, investing in electric vehicle charging infrastructure in our state will create thousands of good-paying green jobs for skilled workers.

(g) Climate change and catastrophic wildfires are closely linked: as climate change gets worse, wildfires get worse, which in turn releases more climate-changing carbon emissions into the air. The continued escalation of wildfires in California is thwarting our state's fight against climate change. In 2020 alone, wildfires emitted the same amount of greenhouse gases as over 24 million cars. Wildfires now emit more GHG in California than power plants.

(h) This division dedicates additional resources specifically to preventing future catastrophic wildfires and to putting them out sooner before they do additional damage to our climate goals, our economy, our homes and communities, and the health of our families.

(i) In addition to being primary sources of GHG emissions, transportation and wildfires also directly pollute our air with particulate matter and smoke, worsening our air quality and threatening our health and quality of life. More than 90% of Californians now breathe unhealthy levels of air pollutants at some point during the year. Seven of the 10 smoggiest cities in the United States are in California. The increasing prevalence of catastrophic wildfires, which also destroys lives and property, dramatically worsens air quality throughout the entire state. The number of unhealthy smoke days has increased 230% in Los Angeles and San Diego and 400% in San Jose since just 2016. This wildfire smoke – a complex mixture of air pollutants – is unhealthy to breathe and can be especially dangerous for children, the elderly, pregnant women and people with heart or respiratory conditions. Reducing GHG emissions from transportation and wildfires is particularly important because it has the added benefit of cleaning up our state's air quality.

(j) Our state's future and our ability to meet our climate goals while improving our air quality in the process depends on cleaner transportation and fewer catastrophic wildfires. But not everyone pays their fair share. Wealthy individuals use loopholes in the tax code to avoid paying their fair share for public services in our state, requiring lower- and middle-income Californians to pay more to make up the difference.

(k) This measure requires an equitable contribution from the highest-income earners to fund a generational public investment towards meeting our climate change goals through a cleaner transportation sector and by preventing and suppressing catastrophic wildfires. Specifically, investments in access to electric vehicles and electric vehicle charging infrastructure for all Californians and improvements in the prevention and suppression of catastrophic wildfires will generate unprecedented environmental and economic benefits for our state.

(l) Along with electric vehicles, there are other zero-emission vehicles like hydrogen fuel cell vehicles. These vehicles have applications for both passenger vehicles and medium- and heavy-duty vehicles like buses, garbage trucks, and big-rig trucks. This measure further reduces GHG emissions by providing additional resources to help California residents afford these vehicles and to develop the necessary infrastructure for fueling and charging them.

(m) As California continues on its path to 100 percent clean electricity, the large-scale deployment of electric vehicles and electric vehicle charging infrastructure can lead to a stronger and more reliable electricity grid and lower electricity rates while also reducing GHG emissions. Because electric vehicles can be charged when there is spare capacity on the grid and when there is an abundance of clean electricity, they can improve the utilization and operation of the system, reducing the price of electricity to the benefit of all utility customers. This measure requires state agencies to prioritize grid reliability and resilience.

80202. Statement of Purpose.

The purpose of this division is to reduce emissions from two of the state's primary sources of greenhouse gases--transportation and wildfires--through public investments in electrification of vehicles used in California and improvements in the prevention and suppression of catastrophic wildfires while improving our air quality in the process.

ARTICLE 2. Clean Cars and Clean Air Trust Fund.

80203. Creation of the Clean Cars and Clean Air Trust Fund.

(a) The Clean Cars and Clean Air Trust Fund ("Fund") is hereby established in the State Treasury.

(b) Notwithstanding any other provision of law:

(1) The Fund is a special fund, permanently separate and apart from the General Fund or any other state fund or account.

(2) The Fund, and every sub-fund and account within the Fund, is hereby declared to be a trust fund, trust sub-fund, or trust account.

(c) Except as expressly provided in this division, moneys deposited into, or required to be deposited into, the Fund, and any interest earned thereon, shall not be permanently or temporarily borrowed, loaned, or otherwise transferred to the General Fund or other fund in the State Treasury. Moneys deposited into the Fund, and any sub-fund or account within the Fund, including any interest earned thereon, shall only be used for the specific purposes set forth in this division. No action shall be taken that permanently or temporarily changes the status of the Fund as a trust fund and special fund, or borrows, diverts, or appropriates the moneys in the Fund, or moneys required to be deposited into the Fund, in a manner inconsistent with this division.

80204. Fund Oversight and Accountability.

(a) The People of the State of California hereby declare their unqualified intent for the moneys deposited into the Fund to be used to support the purposes set forth in this division without delay or interruption. The purpose of this section is to provide oversight and accountability mechanisms to guarantee that the People's intent is carried out.

(b)(1) The Attorney General shall expeditiously investigate, and may seek civil or criminal fines and penalties for, any misuse or unauthorized use of moneys deposited into, or allocated from, the Fund or any sub-fund or account within the Fund.

(2) In addition to any other remedy available at law, if any recipient of moneys provided pursuant to this division is determined by final judicial or administrative judgment, settlement, or resolution to have wilfully or knowingly used those moneys in a manner not permitted by this division or the regulations adopted hereunder, that recipient shall be permanently ineligible for receipt of additional moneys provided pursuant to this division. For purposes of this paragraph, "recipient of moneys" shall not include a state agency or department receiving a continuous appropriation pursuant to this division.

(3) Any fines recovered by the Attorney General pursuant to this subdivision shall be retained by the Attorney General.

(c) The nonpartisan California State Auditor shall conduct a biennial independent financial audit of the programs receiving moneys from the Fund. The California State Auditor shall report the findings to the Governor and both houses of the Legislature, and shall make the findings available to the public on its internet website.

(d) Every four years, the Controller shall conduct a performance audit of efforts and programs funded with moneys from the Fund to ensure the moneys are disbursed and expended solely according to this division and shall report the findings to the Governor and both houses of the Legislature, and shall make the findings available to the public on its internet website.

(e)(1) The California State Auditor and Controller shall each be separately reimbursed from moneys in the Fund for actual costs incurred in conducting the financial audit required by subdivision (c) and the performance audit required by subdivision (d), in an amount not to exceed six hundred thousand dollars (\$600,000) per audit.

(2) The six hundred thousand dollar (\$600,000) per audit maximum limit shall be adjusted decennially to reflect any increase in inflation as measured by the Consumer Price Index for All Urban Consumers (CPI-U). The Treasurer's office shall calculate and publish the adjustments required by this paragraph.

80205. Sub-Funds within the Fund.

After deducting and transferring the necessary moneys pursuant to Section 80204 for the California State Auditor's financial audit and the Controller's performance audit, the Controller shall allocate and transfer the remaining moneys in the Fund to the following sub-funds, in the following amounts:

(a) Thirty-five percent (35%) to the ZEV Infrastructure Investment Plan Sub-Fund, which is hereby created in the Fund.

(b) Forty-five percent (45%) to the ZEV and Clean Mobility Sub-Fund, which is hereby created in the Fund.

(c) Twenty percent (20%) to the Wildfire GHG Emissions Reduction Sub-Fund, which is hereby created in the Fund.

80206. Continuous Appropriation of Moneys in the Fund.

Notwithstanding Section 13340 of the Government Code, and except for payment of tax refunds, all moneys deposited into the sub-funds created within the Fund by Section 80205, together with interest earned thereon, are hereby continuously appropriated, without regard to fiscal years, as follows:

(a) All moneys in the ZEV Infrastructure Investment Plan Sub-Fund to CEC solely for the purposes set forth in Chapter 2.

(b) All moneys in the ZEV and Clean Mobility Sub-Fund to CARB solely for the purposes set forth in Chapter 3.

(c) All moneys in the Wildfire GHG Emissions Reduction Sub-Fund to CAL FIRE solely for the purposes set forth in Chapter 4.

80207. Administration.

(a)(1) CEC, CARB, CAL FIRE, and any other state or local government agency receiving moneys from the Fund, shall use no more than five percent (5%) of the moneys in any sub-fund or account in the Fund, or moneys received from any sub-fund or account in the Fund, for administrative expenses.

(2) For purposes of this subdivision, “administrative expenses” does not include expenses for public outreach.

(b) CEC, CARB, and CAL FIRE shall expend and distribute moneys in the ZEV Infrastructure Investment Plan Sub-Fund, ZEV and Clean Mobility Sub-Fund, and Wildfire GHG Emissions Reduction Sub-Fund, and any accounts therein, on a July 1 to June 30 fiscal year basis. Programs established pursuant to this division shall be budgeted and funded on the same July 1 to June 30 fiscal year basis.

(c) In designing programs and determining funding allocations as required by this division, CEC, CARB, and CAL FIRE shall consult with other appropriate local, regional, state, and federal agencies.

(d) No moneys in the Fund shall be used in a manner that permits public utility electrical corporations to (1) avoid making investments with shareholder dollars they are legally compelled to make; or (2) earn any profit off of the public investments funded by this division which have the effect of making electrical systems safer.

(e) In order to fast-track efforts to reduce GHG emissions from transportation and wildfires, CEC, CARB, and CAL FIRE shall make every effort to commence awarding financial incentives and making expenditures as set forth in this division by no later than the second January 1 occurring after the effective date of this division.

80208. Treatment of Revenues Deposited in and Expended from the Fund.

(a) This section is intended to ensure the greatest public investment in the purpose and subject of this measure, which is to reduce GHG emissions from two of the state’s primary sources of greenhouse gases—transportation and wildfires.

(b) Special Trust Fund Revenues.

(1) Notwithstanding any other provision of law to the contrary, the tax imposed by Section 17044 of the Revenue and Taxation Code and the revenue derived therefrom, including interest and penalties but less payment of refunds, are required to be deposited into the Fund, which is a special fund and trust fund permanently and irrevocably separate and apart from the

General Fund. Moneys in the Fund are continuously appropriated without regard to fiscal year for the purposes set forth in this division.

(2) Therefore, notwithstanding any other provision of law to the contrary, the tax and the revenue resulting therefrom described in paragraph (1) shall not be considered to be part of the General Fund, as that term is used in Chapter 1 (commencing with Section 16300) of Part 2 of Division 4 of Title 2 the Government Code, shall not be considered General Fund revenues for purposes of Section 8 of Article XVI of the California Constitution and its implementing statutes, and shall not be considered “General Fund revenues,” “state revenues,” “moneys,” or “General Fund proceeds of taxes” for purposes of subdivisions (a) and (b) of Section 8 of Article XVI of the California Constitution and its implementing statutes.

(c) Appropriations for Qualified Capital Outlay Expenditures and Tax Refunds.

(1) In addition to the appropriations for qualified capital outlay projects described in Section 7914 of the Government Code, an appropriation for a “qualified capital outlay project,” as used in subdivision (d) of Section 9 of Article XIII B of the California Constitution, also means an appropriation for any of the following regardless of the asset’s useful life or value:

(A) A financial incentive or subsidy of any kind for a zero-emissions vehicle fueling or charging station pursuant to Chapter 2, including construction and deployment thereof.

(B) A financial incentive or subsidy of any kind for purchase of a light-, medium-, or heavy-duty ZEV pursuant to Chapter 3, if the ZEV is purchased by a state or local government agency.

(2)(A) During any fiscal year in which the State receives revenues in excess of the State Appropriations Limit for purposes of Article XIII B of the California Constitution, or in the fiscal year immediately following that occurrence, CEC and CARB may restructure the financial incentives and other subsidies of any kind provided pursuant to Chapter 2 and Chapter 3 to California residents as a tax refund that can only be spent for the purposes set forth in Chapter 2 and Chapter 3.

(B) CEC and CARB shall only restructure financial incentives and other subsidies pursuant to subparagraph (A) upon a written request from the Director of Finance. CEC and CARB shall coordinate with the Department of Finance in implementing this paragraph.

80209. Non-Supplantation.

(a) Except as provided in subdivision (c), moneys in the Fund are intended to be used to increase and enhance the achievement of the purposes and objectives described in this division, and not to replace any other existing revenues for those purposes and objectives.

(b) CEC, CARB, and CAL FIRE shall annually prepare a report detailing whether or not compliance with subdivision (a) is being achieved.

(c) Notwithstanding subdivision (a), reduction or elimination of funding pursuant to the Clean Vehicle Rebate Project authorized by Statutes of 2007, Chapter 750 does not violate this section.

CHAPTER 2. ZEV INFRASTRUCTURE PROGRAM

ARTICLE 1. Purpose of Chapter.

80210. Purpose.

The purpose of this chapter is to reduce GHG emissions from California's transportation sector by:

(a) Making refueling a ZEV more accessible and convenient than refueling a diesel or gasoline-powered vehicle for every Californian regardless of where they live or work.

(b) Closing any ZEV infrastructure or electric grid gaps in the state identified by CEC pursuant to AB 2127 (2018) or another relevant state agency analysis to ensure that California residents can fuel ZEVs where they live, work, and play.

(c) Increasing access for disadvantaged, low-income, and moderate-income communities and consumers to passenger ZEV fueling infrastructure, and to increase the placement of that passenger ZEV infrastructure in those communities and with those consumers in order to lower GHG emissions, enhance the air quality, and promote overall benefits for those communities and consumers.

(d) Ensuring the state's electric grid is prepared for the clean vehicle future accelerated by this division.

(e) Achieving GHG emissions reductions while maximizing domestic manufacturing and high-quality job growth in California.

ARTICLE 2. Implementation by California Energy Commission.

80211. Implementation.

(a) CEC shall use the moneys in the ZEV Infrastructure Investment Plan Sub-Fund, and the accounts established therein, to fund construction, planning, deployment, operation, or maintenance of ZEV fueling stations in this state, certification programs for personnel installing ZEV fueling stations, and public education outreach necessary to ensure California residents are aware of, and educated on, how to use the incentives made available by this chapter. CEC may use moneys in the ZEV Infrastructure Investment Plan Sub-Fund, and the accounts established therein, for direct expenditures, rebates, grants, block grants, or loans.

(b) CEC shall consult and coordinate with the Public Utilities Commission, applicable public utility electrical corporations, and applicable local publicly owned electric utilities to ensure the following so that the purposes of this chapter can be accomplished without delay:

(1) Electric utilities plan, engineer, and construct the necessary infrastructure on the utility side of the meter, and that the work is funded in a timely manner.

(2) None of the activities compromise the reliability of the electric grid.

(c) CEC shall be guided by, but not limited to, the following principles in designing any program utilizing funds under this chapter:

(1) Low Cost to Drivers - Ensure that drivers have the opportunity for ZEV charging at a reasonable cost.

(2) Price Transparency - Strive for transparency of charging or fueling pricing to allow drivers to know what they will be charged for charging or fueling prior to arriving at a ZEV fueling station.

(3) Long-Term Reliability - Ensure that the ZEV charging or fueling infrastructure continues to be well-maintained, operational, and available over the long-term.

(4) Grid Support - Ensure that drivers and fleet operators benefit from charging and load management in a manner that supports operation of the electric grid.

(5) Robust Grid - Ensure that the electric grid can support ZEV charging, remains reliable, and that it can take advantage of the flexible nature of ZEV-related load and energy storage inherent in vehicle batteries, in collaboration with other relevant state agencies.

(6) Equitable Access - Ensuring all California residents can access ZEV fueling.

80212. Accounts.

(a) Moneys in the ZEV Infrastructure Investment Plan Sub-Fund shall be deposited into the following accounts, which are hereby established therein:

(1) Except as provided in subdivision (d), fifty percent (50%) into the Infrastructure Access Account.

(2) After the deposit into the Infrastructure Access Account pursuant to paragraph (1), the remainder shall be deposited into the General Infrastructure Account.

(b) Moneys in the Infrastructure Access Account shall be dedicated solely for projects, activities, and to the benefit of people, in low-income and disadvantaged communities.

(c) For at least the five consecutive fiscal years commencing July 1, 2023, CEC shall ensure that the following spending minimums are met for moneys in both the Infrastructure Access Account and the General Infrastructure Account:

(1) At least twenty percent (20%) shall be spent on programs, projects, or activities authorized by Article 3 of this chapter.

(2) At least ten percent (10%) shall be spent on programs, projects, or activities authorized by Article 4 of this chapter.

(3) At least ten percent (10%) shall be spent on programs, projects, or activities authorized by Article 5 of this chapter.

(4) At least ten percent (10%) shall be spent on programs, projects, or activities authorized by Article 6 of this chapter.

(d)(1) On and after July 1, 2026, the maximum balance in the Infrastructure Access Account shall be two hundred percent (200%) of the average annual amount deposited therein during the immediately prior two fiscal years.

(2) As long as the Infrastructure Access Account is at or above its maximum balance, moneys otherwise required to be deposited into that account shall instead be deposited into the General Infrastructure Account

ARTICLE 3. Multifamily Dwelling ZEV Charging Stations.

80213. Multifamily Dwelling ZEV Charging Stations.

(a) Moneys in the Infrastructure Access Account and General Infrastructure Account shall be used to fund construction, planning, deployment, operation, or maintenance of charging stations at or near multifamily dwelling properties to serve residents of multifamily dwelling properties.

(b) In allocating moneys pursuant to this article, CEC shall consider charging hardware or systems that support the operation and cost-effectiveness of the electric grid.

(c) When awarding moneys directly to third-party providers of charging station construction, planning, equipment, maintenance, operation, or installation, CEC shall award moneys based on a competitive process.

ARTICLE 4. Single-Family Dwelling ZEV Charging Stations.

80214. Single-Family Dwelling ZEV Charging Stations.

(a) Moneys in the Infrastructure Access Account and General Infrastructure Account shall be used to fund charging stations and electrical upgrades at single-family dwelling properties as set forth in this section.

(b)(1) Moneys described in subdivision (a) shall be made available as rebates, block grants, grants, or direct expenditures for electrical work including wiring, conduit, or electric panel upgrades, and purchase or installation of CEC-preapproved L2 hardware or charging systems at single-family dwelling properties.

(2) In allocating moneys under this section, CEC shall consider charging hardware or systems that support the operation and cost-effectiveness of the electric grid.

ARTICLE 5. Passenger ZEV Fast-Fueling Infrastructure.

80215. Funding for Passenger ZEV Fast-Fueling Infrastructure.

(a) Moneys in the Infrastructure Access Account and General Infrastructure Account shall be used to fund deployment of passenger ZEV fast-fueling infrastructure as set forth in this section.

(b)(1) Moneys described in subdivision (a) shall be made available as rebates, block grants, grants, subsidized loans, or direct expenditures for deployment of passenger ZEV fast-fueling infrastructure.

(2) CEC shall prioritize allocations for projects in low-income and disadvantaged communities, locations near multifamily dwelling properties that cannot be served by onsite charging infrastructure, city centers, airports, and other locations that CEC determines are not well-served by passenger ZEV fast-fueling infrastructure. In addition, CEC may prioritize allocations for projects at critical infrastructure locations along emergency egress routes.

(c) The State of California shall prioritize, work with local governments, and fast-track, to the maximum extent possible, permitting and zoning for installation of passenger ZEV fast-fueling infrastructure in order to minimize the time needed to make those fueling stations operational.

(d) When awarding moneys directly to third-party providers of fast-fueling station equipment, maintenance, operation, and installation, CEC shall award moneys based on a competitive process.

(e) The state shall make available state-owned properties as sites for installation of passenger ZEV fast-fueling infrastructure where doing so is feasible, reasonable, cost-effective, and would further the purposes of this division.

ARTICLE 6. Medium- and Heavy-Duty ZEV Fueling Infrastructure.

80216. Funding for Medium- and Heavy-Duty ZEV Fueling Infrastructure.

(a) Moneys in the Infrastructure Access Account and General Infrastructure Account shall be used to fund deployment of medium- and heavy-duty ZEV fueling infrastructure as set forth in this section.

(b)(1) Moneys described in subdivision (a) shall be made available as rebates, block grants, grants, subsidized loans, or direct expenditures for deployment of medium- and heavy-duty ZEV fueling infrastructure.

(2) CEC shall prioritize allocations for projects in locations that CEC determines are not well-served by medium- and heavy-duty ZEV fueling infrastructure.

(c) The State of California shall prioritize, work with local governments, and fast-track, to the maximum extent possible, permitting and zoning for installation of medium- and heavy-duty ZEV fueling infrastructure under this section in order to minimize the time needed to make that fueling infrastructure operational.

(d) When awarding moneys directly to third-party providers of medium- and heavy-duty ZEV fueling infrastructure equipment, maintenance, operation, and installation, CEC shall award moneys based on a competitive process.

(e) The state shall make available state-owned properties as sites for installation of medium- and heavy-duty ZEV fueling infrastructure under this section where doing so is feasible, reasonable, cost-effective, and would further the purposes of this division.

CHAPTER 3. ZEV AFFORDABILITY PROGRAM

ARTICLE 1. Purpose of Chapter.

80217. Purpose.

The purpose of this chapter is to reduce GHG emissions from California's transportation sector by:

- (a) Making ZEVs accessible and affordable to all California residents.
- (b) Converting passenger vehicles, which are the state's largest single source of GHG emissions, to ZEVs as quickly as possible.
- (c) Converting medium-, heavy-duty, and off-road vehicles to ZEVs with a focus on benefitting the air quality in low-income and disadvantaged communities while reducing GHG emissions.
- (d) Increasing access to zero-emission clean mobility options that do not require car ownership.
- (e) Providing access to, and affordability for, moderate-income, low-income and disadvantaged communities and consumers to ZEVs, to increase the placement of ZEVs in those communities and with those consumers to lower GHG emissions, enhance air quality, and promote overall benefits for those communities and consumers.

(f) Converting passenger vehicles that are used for high-utilization purposes to ZEVs as quickly as possible in order to reduce GHG emissions as quickly as possible.

(g) Maximizing domestic manufacturing and high-quality job growth in California.

ARTICLE 2. Implementation by CARB.

80218. Implementation.

(a) CARB shall use the moneys in the ZEV and Clean Mobility Sub-Fund, and the accounts established therein, to fund rebates, loans, block grants, grants, and other financial incentives for programs authorized under this chapter, and public education outreach necessary to ensure California residents are aware of, and educated on how to utilize, those programs.

(b) Passenger vehicles are the largest single-source of GHG emissions in this state. Therefore, in order to effectively reduce GHG emissions from passenger vehicles, CARB shall ensure that, during at least the five consecutive fiscal years commencing July 1, 2023, at least two-thirds ($\frac{2}{3}$) of the total moneys deposited in the ZEV and Clean Mobility Sub-Fund shall be allocated to projects, programs, purposes, and activities that support the deployment of passenger ZEVs operated in this state.

80219. Accounts.

(a) Except as provided in subdivision (c), moneys in the ZEV and Clean Mobility Sub-Fund shall be deposited into the following accounts as follows, which are hereby established therein:

(1) Fifty percent (50%) into the ZEV Equity and Air Quality Account.

(2) Fifty percent (50%) into the ZEV General Account.

(b) Moneys in the ZEV Equity and Air Quality Account shall be allocated to fund programs that primarily benefit people who live in low-income and disadvantaged communities. Programs eligible for funding from the ZEV Equity and Air Quality Account include, but are not limited to, the programs described in Article 3.

(c)(1) On and after July 1, 2026, the maximum balance in the ZEV Equity and Air Quality Account shall be two hundred percent (200%) of the average annual amount deposited therein during the immediately prior two fiscal years.

(2) As long as the ZEV Equity and Air Quality Account is at or above its maximum balance, one hundred percent (100%) of the moneys transferred to the ZEV and Clean Mobility Sub-Fund shall be deposited into the ZEV General Account.

ARTICLE 3. GHG Reduction, Affordability, Equity, and Air Quality Programs.

80220. Eligible Programs.

Programs eligible for funding pursuant to this chapter may include, but are not limited to, those that:

(a) Provide block grants, grants, loans, or other incentives for zero-emission school buses so pupils ride to school in ZEVs.

(b) Provide block grants, grants, loans, or other incentives for zero-emission transit buses so people get to where they need to go in ZEVs.

(c) Provide incentives, grants, and block grants for governments and businesses to buy medium-, heavy-duty, and off-road agricultural and construction ZEVs.

(d) Provide financing assistance to help those without access to capital or high credit acquire new and used ZEVs.

(e) Help people retire old polluting vehicles and replace them with new and used ZEVs or other zero-emission mobility options.

(f) Help agricultural workers and others utilize zero-emission vanpools.

(g) Provide local air quality benefits in communities overburdened by diesel pollution, in addition to reducing GHG emissions.

(h) Increase access to clean mobility options, including but not limited to:

(1) Electric bikes.

(2) Bike-sharing.

(3) Protected bike lanes.

(4) Transit passes.

(i) Provide financial incentives pursuant to Article 4.

ARTICLE 4. Factory New Passenger ZEV Incentive Program.

80221. Factory New Passenger ZEV Incentive Program.

(a)(1) CARB shall establish a factory new ZEV incentive program pursuant to this article.

(2) Moneys in the ZEV General Account shall be used to fund rebates, subsidies, grants, and other financial incentives determined by CARB for all California residents to purchase or lease factory new ZEVs, as set forth in this section. Moneys in the ZEV Equity and Air Quality Account may also be used for this purpose.

(b) In dispersing moneys pursuant to this section, CARB shall prioritize applications in the following order:

(1) Applications from California residents described in paragraph (1) of subdivision (c) of Section 80228.

(2) Applications from California residents described in paragraphs (2) and (3) of subdivision (c) of Section 80228 for passenger ZEVs for high-utilization purposes.

(3) Applications from other California residents described in paragraphs (2) and (3) of subdivision (c) of Section 80228.

(c)(1) A California resident described in paragraph (1) of subdivision (c) of Section 80228 shall be eligible for a refundable point-of-sale rebate when purchasing or leasing a factory new ZEV. The rebate shall be transferable to licensed automobile dealers and other financing entities.

(2) Rebate amount and eligibility for California residents described in paragraph (1) of this subdivision shall be determined by CARB. In determining rebate amount and eligibility, CARB shall prioritize maximizing the number of California residents who gain the ability to afford to lease or purchase a factory new ZEV as a result of this section.

(d) California residents described in paragraphs (2) and (3) of subdivision (c) of Section 80228 shall be eligible for a point-of-sale rebate per vehicle purchased to apply toward the purchase or lease of factory new ZEVs for use in California. Rebates provided pursuant to this subdivision shall be funded from the ZEV General Account.

(1) Rebate amount and eligibility for California residents described in paragraphs (2) and (3) of subdivision (c) of Section 80228 shall be determined by CARB. Rebate amounts and allocations shall be consistent with meeting the state's ZEV and climate goals and regulations.

(2) In determining rebate amount and eligibility, CARB shall prioritize achieving the greatest reduction in GHG emissions from California's transportation sector. CARB shall

establish rebate amount and eligibility under this subdivision in a manner that furthers the purposes described in subdivisions (b) and (f) of Section 80217.

(e) CARB may impose a reasonable limit on the number or aggregate value of rebates a California resident may obtain in a single fiscal year, so long as CARB demonstrates by clear and convincing evidence that the limit does not undermine the accomplishment of the purposes described in subdivisions (b) and (f) of Section 80217.

(f) Subject to the priorities listed in subdivision (b), CARB shall make every effort to disburse all moneys in the ZEV General Account for permissible uses under this section by the end of each fiscal year consistent with the purposes set forth in this chapter.

ARTICLE 5. Minimum Ownership or Lease Requirements for Compliance with this Chapter.

80222. Minimum Registration Requirements.

If an incentive is obtained pursuant to this chapter for the purchase or lease of a ZEV, CARB may require the vehicle to be registered with the Department of Motor Vehicles for a specified period of time.

CHAPTER 4. REDUCING WILDFIRE GHG EMISSIONS

ARTICLE 1. Purpose of Chapter.

80223. Purpose.

The purposes of this chapter are as follows:

(a) To ensure the State of California and local governments have sufficient firefighting capacity to reduce the amount of GHG emissions from extreme wildfires, while also reducing the air pollution wildfires produce.

(b) To reduce GHG emissions from extreme fire events in California through improvements in wildfire suppression, prevention, mitigation, resilience, and preparedness, and restoration and maintenance of a more natural, safer fire regime on California's landscapes.

(c) To mitigate, prevent, and suppress impacts, including GHG emissions, of extreme wildfire events upon people, essential infrastructure, and communities.

(d) To advance wildfire prevention implementation activities.

ARTICLE 2. Wildfire Prevention, Mitigation, and Suppression Resources.

80224. Accounts.

(a) Moneys in the Wildfire GHG Emissions Reduction Sub-Fund shall be deposited into the following accounts, where are hereby established therein:

(1) Twenty-five percent (25%) into the State Fire Marshal Prevention and Suppression Account.

(2) Seventy-five percent (75%) into the General Prevention and Suppression Account.

(b) During the six fiscal years commencing July 1, 2024 and ending June 30, 2030, up to twenty-five percent (25%) of the moneys deposited in the General Prevention and Suppression Account shall be used for wildfire prevention and resilience efforts, including efforts described in paragraphs (4) through (6) of subdivision (a) of Section 80226.

80225. Fire Prevention and Suppression Efforts Within the Office of State Fire Marshal.

(a) Moneys in the State Fire Marshal Prevention and Suppression Account shall be available for the exclusive distribution and use by the Office of the State Fire Marshal for wildfire prevention and suppression efforts as set forth in this section.

(b) Fire prevention and suppression efforts funded by the State Fire Marshal Prevention and Suppression Account shall be selected by the Office of the State Fire Marshal in conjunction with a statewide apprenticeship committee established to improve the quality of education and training within the fire service and set professional standards for firefighters in the state.

80226. Additional Fire Prevention and Suppression Resources.

(a) Moneys in the General Prevention and Suppression Account shall be used by CAL FIRE for additional efforts to prevent, manage and suppress wildfires in this state. Moneys may be used for the following:

(1) Retaining, housing, training, and hiring CAL FIRE permanent and seasonal firefighters necessary to prevent and suppress wildfires.

(2) Advanced wildfire detection and monitoring systems, including camera and satellite networks.

(3) Improving fire suppression and safety infrastructure in fire-prone communities.

(4) Improving defensible spaces around homes and communities.

(5) Grants for home-hardening retrofits focused on low-income communities.

(6) Support activities and programs such as forest resilience programs, prescribed burning, watershed restoration and management, and vegetation management.

(b) In expending moneys pursuant to this section, primary priority shall be given to paragraph (1) of subdivision (a).

80227. Non-Supplantation.

(a) Moneys in the Wildfire GHG Emissions Reduction Sub-Fund, and the accounts established therein, shall be used to supplement, and not replace, existing moneys appropriated for the purposes described in this chapter.

(b) The State of California bears the burden of proving by clear and convincing evidence that the moneys in the Wildfire GHG Emissions Reduction Sub-Fund, and the accounts established therein, are not being used to supplant preexisting moneys appropriated for the purposes described in this chapter.

CHAPTER 5. DEFINITIONS

80228. Definitions.

For purposes of this division, as used in both the singular and plural form, the following definitions shall apply:

(a) "California Air Resources Board" or "CARB" means the State Air Resources Board established at Division 26 (commencing with Section 39000) of the Health and Safety Code.

(b) "California Department of Forestry and Fire Protection" or "CAL FIRE" means the Department of Forestry and Fire Protection established at Chapter 2.5 (commencing with Section 700) of Division 1 of the Public Resources Code.

(c) “California resident” means all of the following:

- (1) An individual resident of this state.
- (2) A legal entity that has employees or owns property in California.
- (3) A state or local government agency.

(d) “City center” means an area within an incorporated municipality intended by the city for development of an urban center with higher intensity residential, retail, office, and entertainment uses.

(e) “Electric utility” is either a public utility electrical corporation or local publicly owned electric utility.

(f) “Energy Resources Conservation and Development Commission,” “California Energy Commission,” or “CEC” means the State Energy Resources Conservation and Development Commission established at Chapter 3 (commencing with Section 25200) of Division 15 of the Public Resources Code.

(g) “Fast-fueling infrastructure” includes, but is not limited to, electric vehicle charging at high power such as 150kW DCFC chargers and hydrogen fueling stations.

(h) “Fund,” when used as a proper noun, means the Clean Cars and Clean Air Trust Fund established in Section 80203.

(i) “Greenhouse gas” or “GHG” means carbon dioxide (CO[2]), methane (CH[4]), nitrous oxide (N[2]O), sulfur hexafluoride (SF[6]), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and other fluorinated greenhouse gases as defined in Section 95102 of Title 17 of the California Code of Regulations.

(j) “High-utilization purpose” means a use of a ZEV where the purchaser can provide documentation that such use is likely to result in more than 25,000 miles per year on average.

(k) “Level 2 charging station” means a charging station with a typical Voltage rating of 208-250V, a typical Amperage rating of 15-90 Amperes, and a typical male plug of SAE J1772 to mate or interact with a typical port or inductive charging or other charging system.

(l) “Licensed automobile dealer” means a person or entity licensed by the State of California to engage in the sale of motor vehicles.

(m) “Local publicly owned electric utility” has the same meaning as provided in Section 224.3 of the Public Utilities Code.

(n)(1) “Low-income and disadvantaged community” means any of the following:

(A) A disadvantaged community identified by the California Environmental Protection Agency pursuant to Section 39711 of the Health and Safety Code.

(B) A low-income community described in paragraph (2) of subdivision (d) of Section 39713 of the Health and Safety Code.

(2) “Low-income and disadvantaged community” also includes a low-income household, as defined in paragraph (1) of subdivision (d) of Section 39713 of the Health and Safety Code, that is outside of, but within a 1/2 mile of, a community described in subparagraph (A) of paragraph (1) of this subdivision.

(o) “Multifamily dwelling property” means a real property improvement intended for human habitation with more than 4 dwelling units.

(p) “Passenger ZEV” means a passenger vehicle as defined in Section 465 of the Vehicle Code that also meets the definition of a “Zero-emission vehicle.”

(q) “Public utility electrical corporation” means an electrical corporation as defined in Section 218 of the Public Utilities Code that also meets the definition of a “public utility” as set forth in Section 216 of the Public Utilities Code.

(r) “Single-family dwelling property” means a real property improvement intended for human habitation with 4 or fewer dwelling units.

(s) “State or local government agency” means the State of California, a city, a county, a city and county, or a special district, or any public authority, public agency, or other political subdivision or public corporation in the State.

(t) “Zero-emission vehicle” or “ZEV” means a vehicle that is eligible to earn compliance credits for zero-emission operations under CARB’s ZEV, Advanced Clean Truck, or other relevant regulations, as determined by CARB.

(u) “ZEV fueling” means, but is not limited to, electric vehicle electric battery charging.

CHAPTER 6. REALLOCATION OF MONEYS.

80229. Modification of Percentage Allocations of Moneys.

(a)(1) The percentage allocation of money described in subdivision (c) of Section 80212 may be modified by CEC after June 30, 2028 as set forth in this section.

(2) The percentage allocation of money described in subdivision (b) of Section 80218 may be modified by CARB after June 30, 2028 as set forth in this section.

(b)(1) All modifications to percentage allocations of money described in subdivision (a) shall be accomplished through a public process with at least a 30-day comment period, including at least one stakeholder workshop. The modification shall be consistent with an annual or multi-year investment plan.

(2) When making modifications pursuant to paragraph (1), CEC and CARB shall convene a stakeholder advisory committee to review and provide input into the annual or multi-year investment plan.

(c) CEC and CARB shall not propose a modification to the percentage allocations of money described in subdivision (a) unless and until CEC or CARB, as the case may be:

(1) Determines that another percentage allocation would better serve the purposes of this division.

(2) Publishes a report describing how the modification of the percentage allocation will better serve the purposes of this division.

CHAPTER 7. AMENDMENTS.

80230. Amendment of Division.

(a)(1) Except as provided in paragraph (2), the Legislature may amend this division by a statute passed in each house of the Legislature by rollcall vote entered into the journal, three-fourths of the membership concurring, provided that the statute is consistent with, and furthers the purpose of, this division.

(2) The Legislature may amend subdivision (a) of Section 80207 by a rollcall vote entered into the journal, two-thirds of the membership concurring, provided that the statute is consistent with, and furthers the purpose of, this division.

(b) No statute enacted after October 1, 2021, but prior to the effective date of this division, that would constitute an amendment of this division, shall be operative after the

effective date of this division unless the statute was passed in accordance with the requirements of subdivision (a).

SECTION 2. Section 17044 is hereby added to Chapter 2 (commencing with Section 17041) of Part 10 of Division 2 of the Revenue and Taxation Code, to read:

17044. (a) For each taxable year beginning on or after January 1, 2023, in addition to any other taxes imposed by this part, an additional tax shall be imposed at the rate of 1.75 percent on that portion of a taxpayer's taxable income in excess of two million dollars (\$2,000,000).

(b) For purposes of applying Part 10.2 (commencing with Section 18401) of Division 2, the tax imposed under this section shall be treated as if imposed under Section 17041.

(c) The following shall not apply to the tax imposed by this section:

(1) The provisions of Section 17039, relating to the allowance of credits.

(2) The provisions of Section 17041, relating to filing status and recomputation of the income tax brackets.

(3) The provisions of Section 17045, relating to joint returns.

(d) The revenues generated from the tax imposed by this section shall be deposited into the Clean Cars and Clean Air Trust Fund established by Section 80203 of the Public Resources Code.

SECTION 3. Sunset.

(a) Except as provided in subdivision (b), the provisions of this Act shall become inoperative as follows:

(1) The following section shall become inoperative on January 1, 2043:

(A) Section 2, adding Section 17044 to the Revenue and Taxation Code.

(2) The following sections shall become inoperative on June 30, 2043:

(A) Section 1, adding Division 47 to the Public Resources Code.

(b)(1) Notwithstanding subdivision (a), if for three consecutive calendar years on or after January 1, 2030 the statewide greenhouse gas emissions are at least 80 percent below the statewide 1990 level of greenhouse gas emissions as reported in the greenhouse gas inventory

required under Section 39607.4 of the Health and Safety Code, then the provisions of this Act shall become inoperative as set forth in this subdivision:

(2) The section of this Act described in subparagraph (A) of paragraph (1) of subdivision (a) shall become inoperative on the January 1 following the calendar year in which the condition set forth in paragraph (1) is satisfied.

(3) The section of this Act described in subparagraph (A) of paragraph (2) of subdivision (a) shall become inoperative on the next June 30 following the end of the calendar year in which the condition set forth in paragraph (1) is satisfied.

(c) Any moneys remaining in the Clean Cars and Clean Air Trust Fund after Division 47 of the Public Resources Code becomes inoperative shall be appropriated by the Legislature to further the purposes of this Act.

(d) Any section of this Act that becomes inoperative pursuant to this section is hereby repealed one year after the date the section becomes inoperative.

SECTION 4. Severability.

The provisions of this Act are severable. If any portion, section, subdivision, paragraph, subparagraph, clause, sentence, phrase, word, or application of this Act is for any reason held to be invalid by a decision of any court of competent jurisdiction, that decision shall not affect the validity of the remaining portions of this Act. The People of the State of California hereby declare that they would have adopted this Act and each and every portion, section, subdivision, paragraph, subparagraph, clause, sentence, phrase, word, and application not declared invalid or unconstitutional without regard to whether any part of this Act or application thereof would be subsequently declared invalid.

SECTION 5. Conflicting and Non-Conflicting Initiative Measures.

The People of the State of California hereby find and declare:

(a) Conflicting Initiative Measures.

In the event that this initiative measure and another initiative measure or measures that raises state revenues to fund reductions in GHG emissions from transportation and wildfires

appear on the same statewide election ballot, the other initiative measure or measures shall be deemed to be in conflict with this measure. In the event that this initiative measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other initiative measure or measures shall be null and void.

(b) Non-conflicting Initiative Measures.

(1) This initiative measure is an exercise of the statewide voters' initiative power pursuant to Section 1 of Article IV, and Section 8 of Article II, of the California Constitution.

(2)(A) Other initiative measures that deal with the procedures for the adoption of taxes, fees, and charges by the state Legislature, local legislative bodies, and local voters deal with separate and distinct constitutional powers from the constitutional powers described in paragraph (1). These initiatives include, but are not necessarily limited to, the initiatives initially designated by the Attorney General as Initiative No. 21-0026 and Initiative No. 21-0042.

(B) Other initiative measures that increase taxes on personal incomes to fund programs or efforts not including reductions in GHG emissions from transportation and wildfires deal with separate and distinct subjects. These initiatives include, but are not necessarily limited to, the initiative initially designated by the Attorney General as Initiative No. 21-0022.

(3) For purposes of subdivision (b) of Section 10 of Article II of the California Constitution, because they deal with separate and distinct constitutional powers and separate and distinct subjects, this initiative measure does not conflict with any initiative measure described in paragraph (2). The voters hereby declare that this initiative measure and the initiative measures described in paragraph (2) are not competing all-or-nothing alternatives. The voters hereby freely and unequivocally express their intent that if this initiative measure and any of the initiative measures described in paragraph (2) are approved at the same election, that both this initiative measure and the other initiative measure(s) should both be given full force and effect.

(c) If this initiative measure is approved by the voters but superseded in whole or in part by any other conflicting initiative measure approved by the voters at the same election, and such conflicting measure is later held invalid, this measure shall be self-executing and given full force and effect.

SECTION 6. Liberal Construction.

This Act is an exercise of the initiative power of the people of the State of California pursuant to Article II and Article IV of the Constitution, and shall be liberally construed to effectuate the purposes set forth in this Act.

SECTION 7. Standing.

Notwithstanding any other provision of law, if the state or any of its officials fail to defend the constitutionality of this act, following its approval by the voters, any other state or local government agency of this state shall have the authority to intervene on behalf of the State of California in any court action challenging the constitutionality of this act for the purpose of defending its constitutionality, whether that action is in state or federal trial court, on appeal, or on discretionary review by the Supreme Court of California or the Supreme Court of the United States. The reasonable fees and costs of defending the action shall be a charge on funds appropriated to the Department of Justice, which shall be satisfied promptly.



PROPOSITION 30
**Provides Funding for Programs to Reduce Air Pollution
and Prevent Wildfires by Increasing Tax on Personal Income
Over \$2 Million. Initiative Statute.**

ANALYSIS OF MEASURE

BACKGROUND

California Personal Income Taxes. The state collects a tax on personal income earned within the state. Last year, the personal income tax raised over \$130 billion in revenue. Most of the revenue helps pay for education, prisons, health care, and other public services.

Zero-Emission Vehicle Programs. The state has goals to limit greenhouse gas emissions that contribute to climate change, such as carbon dioxide from burning fossil fuels. To help meet these goals, the state has programs that promote zero-emission vehicles (ZEVs)—or vehicles that do not release pollution from the tailpipe. Examples of ZEVs include electric cars and hydrogen fuel cell cars. The state requires ride-sharing companies (such as Uber and Lyft) to use an increasing number of ZEVs for their services. The state also gives some funding to help households, businesses, and governmental agencies buy new ZEVs and install fueling infrastructure, such as charging stations for electric cars.

Wildfire Response and Prevention Programs. The state has the main responsibility for wildfire response activities—commonly known as firefighting—on about one-third of California’s land area. (The federal government and local agencies have the main responsibility for wildfire response everywhere else in California.) Wildfire response activities help limit the spread of large wildfires and stop them from damaging communities and harming residents. The state also runs wildfire prevention programs to reduce the chances that wildfires will start and to limit the damage they cause when they do occur. Some examples of wildfire prevention activities include removing trees from overgrown forests and clearing dead plants that are likely to catch on fire in areas near buildings.

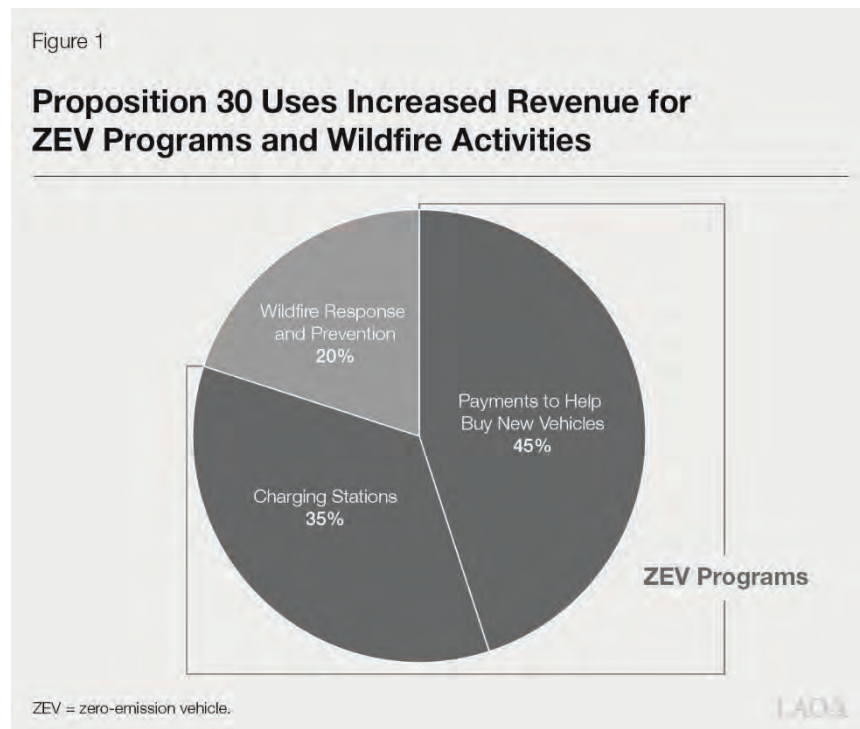
PROPOSAL

Creates a New Tax on High-Income Taxpayers

Beginning January 2023, Proposition 30 requires taxpayers with incomes above \$2 million each year (annually) to pay an additional tax of 1.75 percent on the share of their income above \$2 million. This additional tax would end by January 2043. The tax could end several years earlier if California is able to drop its statewide greenhouse gas emissions below certain levels before then.

Uses Revenue to Expand ZEV Programs and Wildfire Activities

Proposition 30 requires that the revenue from the new tax go to increasing funding for ZEV programs and wildfire activities, as shown in Figure 1. The money would go to several state agencies to manage the programs and activities.



ZEV Programs (80 Percent). About 80 percent of the total revenue is for two ZEV program categories:

- **Payments to Help Buy New Vehicles.** Most of this money must be used to help households, businesses, and governments pay for part of the cost of new passenger ZEVs (such as cars, vans, and pick-up trucks). The rest of the money would be available for other programs. These include payments to businesses and governments

to help buy large ZEVs (such as trucks and buses) and programs that encourage less driving and improve local air quality.

- **Charging Stations.** This money would be used to install and operate ZEV charging and fueling stations at places such as apartment buildings, single-family homes, and public locations.

For each category above, at least half of the money must be spent on projects that benefit people who live in or near heavily polluted and/or low-income communities. The rest of the money could be spent on projects anywhere in the state.

Wildfire Response and Prevention Activities (20 Percent). About 20 percent of total revenue must be spent on wildfire response and prevention activities. In general, the state would have to prioritize spending to hire, train, and retain state firefighters. The rest of the money could be used for other wildfire response and prevention activities.

FISCAL EFFECTS

Increased State Tax Revenues From New Tax for ZEV Programs and Wildfire Activities. The new tax on high-income taxpayers typically would raise \$3.5 billion to \$5 billion annually, growing over time. This range reflects the changes in the incomes of high-income taxpayers. Their incomes often change greatly due to changes in the economy and stock market. Based on the spending requirements in Proposition 30, this funding would support:

- **ZEV Programs.** The proposition would increase state funding for ZEVs by \$2.8 billion to \$4 billion annually. The state typically spends hundreds of millions of dollars annually on ZEV programs and also recently committed to spending about \$10 billion over a five-year period on these programs.
- **Wildfire Response and Prevention Activities.** The proposition would increase state funding for wildfire response and prevention activities by \$700 million to \$1 billion annually. The state typically spends about \$2 billion to \$4 billion annually on wildfire activities, mostly on firefighting.

Potential State and Local Effects From Increased ZEV Spending. The additional funding for ZEV programs under Proposition 30 could impact the number of ZEVs, as well as gasoline- or diesel-powered vehicles, being driven in California. However, the actual effect the proposition would have is uncertain for a variety of reasons. Most notably, while this analysis was being written, the state was considering requiring that car companies sell an increasing share of ZEVs in future years until 2035 when they would only be able to sell ZEVs. (The state was scheduled to decide on this requirement by August 2022.) This requirement is sometimes called a “ZEV mandate.” The proposition’s potential transportation-related fiscal effects on state and local governments depend on whether or not the ZEV mandate is approved.

- If the state *approves* the ZEV mandate, then the additional funding from the proposition to help buy new ZEVs would not have much effect on the total number of ZEVs driven in California. This is because the ZEV mandate would already require a significant increase in the number of ZEV sales, even without the additional spending. Instead, the proposition’s main effect would be to shift who pays for the

ZEVs. That is, more costs would be covered by revenue from the new tax on high-income taxpayers instead of by vehicle sellers and/or buyers. This would not have much effect on state and local finances.

- If the state *does not approve* the ZEV mandate, then the funding from the proposition to help buy new ZEVs would increase the number of ZEVs—and decrease the number of gasoline- or diesel-powered vehicles—driven in California. As a result, the amount of gasoline being used would be less. Over the long term, this change could have several different fiscal effects on state and local governments, including lower gasoline tax revenues that are used for transportation projects, higher revenues from electricity taxes, and other effects related to less air pollution. The net fiscal effect of these changes are uncertain, but likely minor compared to the hundreds of billions of dollars state and local governments spend annually on all activities.

Potential Decreased State and Local Costs for Wildfire Response and Recovery.

Proposition 30 could somewhat decrease state and local government costs related to firefighting, clean-up, and recovery if the additional funding for wildfire activities ends up reducing the severity of future wildfires. However, any cost reductions would depend on (1) which specific wildfire activities end up being funded, (2) how effectively these activities reduce wildfire severity, and (3) the severity of wildfires that would have otherwise taken place in any specific year. All of these factors are uncertain, which makes the size of the potential fiscal effects on state and local governments unclear.

Decreased State Revenue for Other Activities. Some taxpayers probably would take steps to reduce the amount of income taxes they owe. This would reduce existing state revenues used to pay for activities not funded by Proposition 30. The degree to which this would happen and how much revenue the state might lose as a result is unknown.

Potential Reductions to Other State Programs to Comply With State Spending Limit. With some exceptions, such as responding to emergencies and building infrastructure, the California Constitution limits how much the state can spend. In recent years, state spending has reached this limit. Some of the spending required by Proposition 30—likely an amount ranging from about \$1.5 billion to \$3 billion annually—would count toward this limit. As a result, when state spending is at the limit, the proposition would require the state to reduce an equal amount of spending from other programs to “make room” for the new required spending on ZEV programs and wildfire activities.

YES/NO STATEMENT

A **YES** vote on this measure means: Taxpayers would pay an additional tax of 1.75 percent on personal income above \$2 million annually. The revenue collected from this additional tax would support zero-emission vehicle programs and wildfire response and prevention activities.

A **NO** vote on this measure means: No change would be made to taxes on personal income above \$2 million annually.

SUMMARY OF LEGISLATIVE ANALYST'S ESTIMATE OF NET STATE AND LOCAL GOVERNMENT FISCAL IMPACT

- Increased state tax revenue ranging from \$3.5 billion to \$5 billion annually, with the new funding used to support zero-emission vehicle programs (80 percent) and wildfire response and prevention activities (20 percent).

BALLOT LABEL

Fiscal Impact: Increased state tax revenue ranging from \$3.5 billion to \$5 billion annually, with the new funding used to support zero-emission vehicle programs and wildfire response and prevention activities.

Gavin Newsom is fighting a wealth tax that would fund his own climate goals

By Jeremy B. White 07/29/2022 09:11 AM EDT Link Copied

On the hood of an electric car, California Gov. Gavin Newsom signs an executive order requiring all new passenger vehicles sold in the state to be zero-emission by 2035 on Sept. 23, 2020, at Cal Expo in Sacramento. | Daniel Kim/The Sacramento Bee via AP

California environmentalists know how to fund Gov. Gavin Newsom's aggressive plan to get gas-powered vehicles off the road: Tax the rich.

What's standing in their way? Newsom.

The state's ambitious, progressive governor is vehemently opposing a November ballot initiative to subsidize the electric vehicle market through a wealth tax. He declared the measure a "cynical scheme" by one of its key backers, ride-hail company Lyft, to meet a state EV mandate on the public's dime.

Lyft's environmentalist bedfellows see something else: a governor standing in the way of a clean car transition he's touted but failed to fully fund.

"I'm pretty disgusted," said Mary Creasman, CEO of California Environmental Voters, another of the measure's backers and the type of environmentalist who has cheered much of Newsom's assertive climate agenda. "It is astounding to say the least from a governor who says he's progressive and wants to be a climate leader."

The issue isn't whether to swap gas cars for electric — something Newsom has ordered — but how to pay for the transition. Passing any new tax is a heavy political lift, even in deeply Democratic California, and the governor views this one as benefiting a single, deep-pocketed company.

The ballot battle underscores the enormous financial and logistical obstacles — and highlights the political perils for companies such as Lyft that are seeking public help to achieve mandates. Newsom's alignment with anti-tax Republicans and business groups demonstrates that warning signs have the Democratic governor treading carefully.

The reaction from backers of the measure, known as Proposition 30, is a sign of the bitter battles to come as California, the largest new car market in the nation, tries to wean itself off the carbon-emitting vehicles that are one of the principal causes of climate change. It also reflects the difficult balancing act Newsom faces as he tries to achieve his policy goals.

Prop 30 would raise income taxes on people earning more than \$2 million a year to fund zero-emission vehicle purchases and infrastructure. Half the money for incentives would go to people in lower-income communities and a share of the money for infrastructure would be used to install charging stations at apartment buildings. A portion would also be used to fund wildfire prevention efforts, a provision that backers have stressed as they tout support from firefighters."

Newsom galvanized environmentalists and bolstered California's ambitious climate agenda with his 2020 order requiring all new vehicles sold in the state to be zero-emission by 2035. A related but less-noticed law compels ride-hailing companies like Lyft and Uber to

mostly abolish internal combustion engines from their fleets by 2030. That last requirement is proving challenging since electric vehicles are still pricey, chargers remain relatively scarce, and the people driving for ride-hail apps work as independent contractors.

That tech industry mandate has now attracted outside attention.

Lyft has also spent years lobbying the state for more money. It has spent \$15 million so far to pass Prop 30.

Newsom noticed. His denunciation of the company was a notable contrast from his stance to Silicon Valley giants during the 2020 election cycle, when the governor frustrated some allies by remaining neutral on a ballot initiative that Lyft and other tech firms funded to carve themselves out of a new employment mandate.

"Prop. 30 is fiscally irresponsible and puts the profits of a single corporation ahead of the welfare of the entire state," Newsom said in a statement.

The governor's fiery denunciation abruptly opened a fissure between Newsom and some typical allies, including the California Democratic Party. Creasman called Newsom's assertion that the measure was solely intended to benefit Lyft "an out-right lie," and said the governor is placing the interests of his donors over the public.

"We've been hearing this is driven by billionaire donors saying they don't want higher taxes," Creasman said.

A Newsom spokesman, Nathan Click, dismissed the idea that donors played a role, saying the governor was minding the "welfare and fiscal health of the entire state." Lyft has already given a maximum donation to Newsom's re-election bid.

The company declined to comment on Newsom's broadside. It said in an earlier statement it backed the initiative "to help people afford zero-emission vehicles and develop a more robust and convenient charging network."

The company has long sought more electric vehicle and charger funding. It lobbied against a 2018 California bill requiring the company to deploy more zero-emission vehicles. It ultimately dropped its opposition but subsequently pressed regulators for more help.

The governor was joined in opposition by the powerful California Teachers Association, a close ally that deployed significant resources to defend Newsom from last year's recall attempt. The union says Prop 30 could take money from schools by setting aside a portion of the general fund to subsidize electric vehicles.

Unions that would build electric infrastructure have backed the initiative.

Newsom's position aligned him with the California Republican Party and with conservative groups like the California Chamber of Commerce. The business group said "the last thing California needs right now is a tax increase" as inflation soars and economists warn of a potential recession. The governor has signaled a similar aversion to new taxes. His team conveyed its opposition to another initiative that sought to fund pandemic detection by taxing the rich. That measure did not qualify for the ballot.

Newsom drew national praise when he unveiled the 2020 order requiring all new vehicles sold in California to be electric by 2035. Reaching that goal, however, will likely not be cheap.

Although California has already spent heavily over the years to incubate and nurture the

growing electric vehicle market, automakers and environmental policy experts broadly agree that the state will need to keep the funds flowing to reach Newsom's benchmark.

"I think it is necessary to reach the goals that the state has set," said Mary Nichols, former chair of the California Air Resources Board and a Prop 30 endorser. "I understand and share the reluctance to create permanent protected funding sources for particular favored projects, but this area is one that, although it has received a lot of funding, needs more."

Zero-emission vehicles accounted for about 12 percent of California's light-duty car sales last year, although annual purchases and market share are gradually growing as car companies ramp up production amid rising demand. The roughly 79,000 operational charging stations around the state are far short of the number needed, and the majority are privately owned.

The market is dominated by wealthier consumers who can afford, say, a Tesla and a charging station in their single-family home. Expanding that market to middle-and-lower-income buyers will require subsidies both for purchasing vehicles and for charging stations in public places and apartment complexes, say policy experts and industry players.

"It's unclear to us where, as automakers, that volume of charging infrastructure is going to come from if there's not state investment," said Curt Augustine, senior director of state affairs for the Alliance for Automotive Innovation, an industry group that has remained neutral on the ballot initiative. "With this state mandate we're going to need all the help we can get."

Newsom noted in his opposition statement that the state has already allocated billions of dollars to build infrastructure, with his latest budget channeling part of an enormous surplus to \$6.1 billion for clean vehicles over the next five years. California has already handed out roughly 450,000 rebates to help people purchase low-emission vehicles — part of a suite of subsidies that Newsom has argued were critical to launching electric vehicle companies like Tesla.

Yet the message from Prop 30 supporters is: It's not enough. They argue that budget booms like California's current windfall are fleeting, and they worry that the Legislature will turn its attention to other issues if electric vehicle funding is not set aside for the future.

"If there is a stable source of funding both for wildfire and EVs, then you create the ability to plan in a more profound way," said Ken Alex, who was a high-level climate adviser to former Gov. Jerry Brown and now heads UC Berkeley's Project Climate. "I think there's a ways to go. That doesn't mean it needs to go on forever, but if it was 10 years, 15 years, that wouldn't surprise me."

Link to article: <https://www.politico.com/news/2022/07/29/newsom-wealth-tax-climate-goals-00047722?cid=apn>