Opportunities for Environmental Justice in California
Agency by Agency

May 2003
John Auyong, Adante Pointer, and Nicholas Wellington

The Public Law Research Institute at Hastings College of the Law prepared this report. It does not represent the views or policies of Hastings College of the Law, its Board of Directors or its faculty.
I. INTRODUCTION .................................................................................................................................................. 1

Note on Scope and Methodology ........................................................................................................................ 3

II. CALIFORNIA LAWS with EJ Consequences ............................................................................................... 7

A. EJ Laws .................................................................................................................................................................. 7

B. Public Participation Laws with EJ Significance .............................................................................................. 9

1. California Environmental Quality Act ........................................................................................................... 10

2. Bagley-Keene Open Meeting Act .................................................................................................................. 14

3. Office of Administrative Law ......................................................................................................................... 15

C. Other General Statutes with EJ Possibilities ............................................................................................... 15

DATA COLLECTION, INDEXING AND ARCHIVING .............................................................................. 17

III. EJ Strategies - Agency by Agency .............................................................................................................. 18

Methodology .......................................................................................................................................................... 18

California Energy Commission .......................................................................................................................... 19

A. Background ..................................................................................................................................................... 19

B. The CEC and environmental justice ............................................................................................................ 19

C. Statutory authority ........................................................................................................................................... 20

Agricultural Labor Relations Board .................................................................................................................. 26

A. Background ..................................................................................................................................................... 26

B. The ALRB and environmental justice ........................................................................................................... 26

California Coastal Commission .......................................................................................................................... 27

A. Background ..................................................................................................................................................... 27

B. The CCC and environmental justice ............................................................................................................ 27

C. Statutory Authority .......................................................................................................................................... 28

Department of Food and Agriculture .................................................................................................................. 34

A. Background ..................................................................................................................................................... 34

B. The Department and environmental justice ................................................................................................ 34

C. Statutory Authority ........................................................................................................................................... 34

Department of Forestry and Fire Protection ......................................................................................................... 38

A. Background ..................................................................................................................................................... 38

B. The CDF and environmental justice ............................................................................................................ 38

Department of Housing and Community Development ..................................................................................... 40

A. Background ..................................................................................................................................................... 40

B. HCD and Environmental Justice .................................................................................................................. 40

C. Statutory Authority .......................................................................................................................................... 41

Department of Industrial Relations ..................................................................................................................... 45

A. Background ..................................................................................................................................................... 45

B. The DIR and Environmental Justice ........................................................................................................... 45

C. Statutory authority ........................................................................................................................................... 45

Department of Parks and Recreation .................................................................................................................... 49

A. Background ..................................................................................................................................................... 49

B. The Department and Environmental Justice .............................................................................................. 49

C. Statutory authority ......................................................................................................................................... 49

Department of Pesticide Regulation ..................................................................................................................... 55

A. Background ..................................................................................................................................................... 55

B. The Department and environmental justice ................................................................................................ 55

C. Statutory authority ......................................................................................................................................... 55

San Francisco Bay Conservation and Development Commission ...................................................................... 62

A. Background ..................................................................................................................................................... 62

B. The Commission and environmental justice .............................................................................................. 62
C. Statutory Authority ........................................................................................................................................62
IV. CONCLUSION ............................................................................................................................................64
I. INTRODUCTION

Many disadvantaged, primarily low-income and minority communities across the nation are disproportionately affected by environmental degradation and pollution.\(^1\) Because these communities have traditionally lacked political power, they have not always had the ability to resist the placement of polluting facilities in their neighborhoods. Environmental justice developed as the broad movement dedicated to the idea these communities should not have to bear the brunt of environmental pollution and the attendant health risks.

So what is "environmental justice"? While the term "environmental justice" may mean different things to different people, in California "environmental justice' means the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies."\(^2\) This definition will constitute the meaning of environmental justice for the purpose of this paper.

\(^1\) See, e.g., Janisse Ray, Guardian of Grand Bois, SIERRA, May/June 2002, at 26 (describing the location of toxic sludge processing pits adjacent to a small Louisiana town populated with people primarily of Native American and Cajun descent, and their struggle to close down the polluting facility).

\(^2\) Government Code Section 65040.12(e). For an alternative definition, Executive Order 12898, for example, directs federal agencies to identify and address the disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority and low-income populations.
Beginning as an outgrowth of the national civil rights movement, environmental justice is a nationwide grass-roots movement that has been based in large part on Title VI of the federal Civil Rights Act of 1964.\footnote{Ellen M. Peter, \textit{Implementing Environmental Justice: The New Agenda for California State Agencies}, 31 \textit{Golden Gate U. L. Rev.} 529, 531 (2001). \textit{See} Title VI of the Civil Rights Act of 1964, as amended 42 U.S.C. Sections 2000d to 2000d-7 (1999) ("[n]o person . . . shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.").} Title VI applies to all recipients of federal funding, including many California state agencies, and prohibits those funding recipients from actions that are intentionally discriminatory or have a discriminatory effect based on race, color, or national origin.\footnote{The environmental justice movement gained momentum at the federal level with the issuance of Executive Order 12898, signed by President Bill Clinton on February 11, 1994, directing federal agencies to incorporate environmental justice into their missions. Exec. Order No. 12,898, 3 CFR 859 (1994 compilation), 59 Fed. Reg. 7,629 (Feb. 16, 1994). Several federal agencies have specifically added Executive Order 12898 to their regulatory requirements. \textit{See}, e.g., 24 CFR 50.4(l) and 24 CFR 58.5(j) (Department of Housing and Urban Development ("HUD") requirements that applicants to HUD and environmental review of HUD projects comply with the requirements of Executive Order 12898); 28 CFR 91.62 (U.S. Department of Justice requirements for making grants for correctional facilities include consideration of Executive Order 12898 when undergoing the environmental impact review process for project planning and site selection for correctional facilities).} However, the U.S. Supreme Court’s decision in \textit{Alexander v. Sandoval} effectively blocks private parties from suing in federal court to advance environmental justice.\footnote{For additional information on the EPA's environmental justice programs, visit the EPA's environmental justice website at http://es.epa.gov/oeca/main/ej/. \textit{See also} Kara Brown, Hillary Gross, and Hannah Shafsky, \textit{Environmental Justice: A Review of State Responses}, 8 \textit{Hastings W.-Nw. J. Envtl. L. \\ \\ & Pol'y} 41 (Fall 2001), available at http://www.uchastings.edu/plri/PDF/environjustice.pdf.} \textit{Sandoval} has led proponents of

\textit{Alexander v. Sandoval}, 532 U.S. 275 (2001)(holding that federal regulations implementing Title VI that have been used in racial discrimination cases involving disparate impact do not confer a right of action for private parties to bring suits to enforce those regulations). Disparate impact results when the implementation of "facially neutral laws (i.e., laws that do not explicitly advocate racial discrimination and do not mention race, national origin, ethnicity, etc.) nevertheless results in racial discrimination. Since a prohibition on disparate impact discrimination is not written into the statutory language of Title VI, various federal agencies promulgated regulations to prohibit disparate impact discrimination under authority of Title VI. \textit{Alexander v. Sandoval} involved the U.S. Department of Justice's disparate impact regulations that were used to challenge an Alabama English-only statute. The U.S. Supreme Court said that because the statutory language of Title VI did not create a private right of action to enforce the regulations, a private person could not sue to enforce those regulations. Thus, private parties must now rely on the federal government to enforce federal regulations prohibiting disparate impact discrimination.
environmental justice to turn to alternative means of pursuing environmental justice, most significantly, other federal and state laws.

Starting in 1999, a series of laws was enacted in California to implement environmental justice. The new laws require state and local government to consider how to create new laws and enforce existing environmental laws to address the problem of environmental justice in California, providing an alternative to federal laws. For instance, Government Code Section 11135 now expressly prohibits disparate impact discrimination and provides a private right of action to enforce any state anti-discrimination regulation created under section 11135. Thus, private parties in California can rely on the judicial system to address environmental justice concerns.

But, for the purposes of this paper, the most interesting post-*Sandoval* development has been the EPA’s effort to catalog those existing federal statutes and regulations (apart from Title VI and other laws specifically about environmental justice) which may be used to address environmental justice during the EPA's permitting process. This report takes as its model the EPA memorandum, in assessing how California state agencies might rely on existing California law to further the aims of environmental justice.

**Note on Scope and Methodology**

A brief mention should be made about the scope and purpose of this paper. Its fundamental purpose is to demonstrate how agencies can begin to re-examine their own statutory authority to incorporate environmental justice into their unique missions, even though the statutes (possibly passed before the advent of the EJ movement) might not specifically address environmental justice. In a sense, this paper is intended to begin the process of replicating, at a broader scope at the state level, the effort undertaken by the EPA at the federal level in the Guzy memorandum. This process is being undertaken to help educate state agencies about environmental justice so that they may begin to integrate environmental justice into their activities and, as a result, implement the spirit and mandates of California's new environmental justice laws.

---

7 Memorandum from Gary S. Guzy to Steven A. Herman, Robert Perciasepe, Timothy Fields, Jr., and J. Charles Fox (Dec. 1, 2000) (on file with the U.C. Hastings Public Law Research Institute).
Ideally, all California statutes would be examined for their potential impact on environmental justice. However, this report selects ten state agencies, with a view towards presenting models with which other agencies may examine their own organic statutes and organize their environmental justice efforts. Those agencies were generally selected because they were housed in those cabinet level agencies, namely the Business, Transportation and Housing Agency, the California Environmental Protection Agency, the Resources Agency, and the Trade and Commerce Agency, that are specifically identified in one of the recently enacted environmental justice laws.\(^8\)

\(^8\) Government Code Section 65040.12(b)(1) requires the Governor's Office of Planning and Research, as the state's environmental justice coordinating agency, to consult specifically with these four cabinet level agencies.
There are additional limitations that must be mentioned. First, since this paper is about environmental justice in California, this paper will use the California statutory definition of environmental justice stated above as the basis for evaluating existing statutes. Since Government Code Section 65040.12 (e) does not specifically define the terms "environmental laws, regulations, and policies," this paper focuses primarily on existing laws that, in the authors' opinion, are traditionally thought to relate to the environment, with the realization that this narrower approach has its limitations.\(^9\)

Second, the enactment of environment justice statutes is relatively recent in California. The first two environmental justice laws enacted in 1999 have already been amended, and new environmental justice laws have been enacted since then. It is likely that further amendments and new laws will probably be enacted. When evaluating agencies' efforts in this regard, it may be worth keeping in mind that to some degree their efforts are being measured against changing notions of environmental justice. While it is the purpose of this paper to simply identify statutes and not to

\(^9\) The California Environmental Quality Act defines "environment" as "the physical conditions which exist within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance." P.R.C. 21060.5. The focus of this paper will be to narrowly construe "environmental" laws, although some may argue that a broad reading of environmental justice. For example, it may be argued that issuance of liquor licenses by the Department of Alcoholic Beverage Control ("ABC") may contribute to the decline of certain neighborhoods, disempowering its residents and making it easier for polluting industries to locate in those neighborhoods. While the actions of the ("ABC") may indeed ultimately lead to problems of environmental justice, the statutes governing the ABC are not, in our opinion, necessarily traditional environmental laws. As another example, the diversion by the California Highway Patrol ("CHP") of diesel trucks through poor neighborhoods in the event of a highway closure certainly increases the particulate from diesel exhaust in those neighborhoods, temporarily impacting the health of its residents. While these types of actions by state agencies very well may contribute to environmental justice problems and should be explored in further detail, they are beyond the particular scope of this paper.
critique agencies’ environmental justice efforts, we will note areas in which we believe there are gaps in existing statutes that should be closed in order to strengthen environmental justice.

Third, this paper will not explore existing local ordinances and laws applicable only to cities and counties or to regional, governmental entities such as air quality management districts, regional transportation districts, or school districts that are not traditional state agencies, even though these agencies are sometimes charged with implementing state laws, such as in the area of health.\textsuperscript{10}

Fourth, the focus of the papers is on statutes, not the California Code of Regulations, although we recognize that implementing regulations (particularly the "CEQA" Guidelines\textsuperscript{11}) often may have specific provisions that may be better suited to address environmental justice concerns than the sometimes broader language in a statute. Finally, this paper does not assess the relative priority among these various existing statutes as new avenues for addressing environmental justice concerns nor evaluate their legal sufficiency for that purpose.

---

\textsuperscript{10} While a survey of local governments is beyond the scope of this paper, there are some regional agencies such as air quality management districts that have adopted environmental justice policies that may be worth exploring. \textit{See, e.g.}, Bay Area Air Quality Management District, \textit{Guiding Principles of Environmental Justice for the Bay Area Air Quality Management District}, (Aug. 4, 1999).

\textsuperscript{11} 14 Cal. Code Regs. 15000, \textit{et. seq.}
Organizationally, section II will briefly describe recently enacted California environmental justice statutes. Next, laws of general applicability that have implicit environmental justice mandates will be reviewed, specifically statutes that relate to public participation. These include agency-specific statutes that address otherwise generic processes like permitting that are common to several agencies. A brief discussion of the importance of data collection in determining, analyzing, and evaluating environmental justice issues will be next. Section III will feature the individual reviews of statutes applicable to specific agencies: a fuller description of the structure of the agency discussions themselves will be set out in the beginning of section III, below.

II. CALIFORNIA LAWS with EJ Consequences

A. EJ Laws

Building on the momentum of the environmental justice movement at the federal level, California recently enacted several laws specifically relating to environmental justice, including one designating the Governor's Office of Planning and Research ("OPR") as the "coordinating agency in state government for environmental justice programs." OPR's director is now required to consult specifically with the secretaries of the California Environmental Protection Agency ("CalEPA"), the Business, Transportation and Housing Agency, and the Resources Agency, and also to consult with other "appropriate state agencies" and interested members of the public and private sectors in California. Recognizing the federal government's lead in the area of environmental justice, the new laws also require OPR to coordinate with federal agencies regarding environmental justice.

Government Code Section 11135 is not an express environmental justice statute, but rather a general prohibition on discrimination in government programs and benefits. Prior to its amendment by the environmental justice law AB 677, Government Section 11135(a) provided simply that no person in California shall be denied the benefits of state programs based on ethnic group identification, religion, age, sex, color, or disability. As amended, Government Code Section 11135(a) now specifically provides that no person in California shall be denied "full and equal access" to the benefits of state programs as described above. This amendment puts a prohibition on "disparate impact" into the statute itself. Further, Government Code Section 11139 was amended by the new environmental justice laws to permit, through civil actions for equitable relief enforcement of regulations created by state agencies to implement Section 11135. Thus, disparate impact discrimination is now actionable in California under both the statute and regulations.

13 These laws are: SB 115 (Solis), SB 89 (Escutia), AB 970, AB 1390, AB 677, SB 32, SB 828, and AB 1553.
16 Gov. Code Section 65040.12(b)(2)-(3).
17 *i.e.*, those laws that don't expressly discriminate (so-called "facially-neutral" statutes) but when put into practice the result is discrimination.
Perhaps because its member agencies (e.g., the Air Resources Board, Office of Environmental Health Hazard Assessment, Integrated Waste Management Board, State Water Resources Control Board, and the Department of Toxic Substances Control) have a primary role in regulating the environmental effects on human health, several of the recently enacted environmental justice laws focus specifically on CalEPA. CalEPA is now required to take a variety of steps to incorporate environmental justice concerns in its mission. The laws also created a Working Group to assist CalEPA in developing an intra-agency environmental justice strategy.

CalEPA also has a role under some of the environmental justice laws targeted to local governments. For instance, local governments have the option of enacting an ordinance to implement the new California Land Environmental Restoration and Reuse Act, which would give local governments additional authority to require owners of potentially contaminated property to conduct environmental assessments prior to the property's reuse. CalEPA would create pollution standards and provide other guidelines for local government implementation of the act. Further, regional air quality management districts and air pollution control districts of over one million are now required, and districts with less than one million residents are now encouraged, to increase their purchases of cleaner burning buses, in consultation with the CalEPA's Air Resources Board.

In a major effort to incorporate environmental justice into local government planning decisions, OPR, as part of its new environmental justice coordinator role, must now incorporate environmental justice considerations in the next edition of its general plan guidelines. Since general plans are local governments' primary blueprints for land use, OPR's new environmental justice guidelines are intended to help local governments incorporate into their general plans methods that would, for example, plan for the equitable distribution of public facilities or avoid the over-concentration of toxic land uses in proximity to schools or residential dwellings.

B. Public Participation Laws with EJ Significance

---

Public participation is a key method to ensuring environmental justice because it allows members of the affected communities to directly express their concerns to the decisionmakers in state agencies. Some agencies have specific statutes applicable only to their public participation processes. This section, however, will discuss portions of three primary public participation statutes that are applicable to all state agencies in one way or another. These statutes are the California Environmental Quality Act ("CEQA") because of its specific focus on the environment, the Bagley-Keene Open Meeting Act because it is the main statute governing the public hearing process for state agencies, and statutes applicable to the rulemaking process in California that govern the promulgation of regulations by agencies to implement their substantive statutes. In all instances, agencies should afford the maximum public participation opportunities, especially participation early in the process.

1. **California Environmental Quality Act**

---

22 OPR has identified agency actions that can involve public participation--namely (1) making or funding land use decisions, (2) making permitting decisions, (3) writing or producing regulations, (4) taking discretionary actions, (5) provide funding for activities, and (6) interacting with the public--as leading to a high probability of environmental justice issues being raised. See EJ Overview, available at http://www.opr.ca.gov/ejustice/overview.shtml

23 Public Resources Code Sections 21000 et. seq.

24 Government Code Sections 11120 et. seq.

25 Government Code Sections 11340 et. seq.
One of CEQA’s policy mandates to state regulatory agencies is that regulation take place with consideration to preventing environmental damage while providing a decent home and satisfying living environment for every Californian. CEQA contains requirements for public participation as well as specific findings that an agency must make when evaluating a project for environmental impacts. Agencies must determine whether a project will have a significant effect on the environment. The determination of significance must be based on substantial evidence in the administrative record and can include not only expert scientific information but also residents' observations based on personal knowledge. Thus, agencies can consider residents' comments about environmental effects in their community based on personal knowledge to the same extent they would consider the information prepared by experts.

CEQA also requires a finding as to whether or not specific social considerations, among others, make infeasible the mitigation measures or alternatives to the project identified in the environmental review process. Agencies should carefully evaluate and thoroughly discuss whether measures or alternative projects that minimize significant environmental effects on low-income and minority communities truly are infeasible.

---

26 Public Resources Code 21000(g).
27 As mentioned above, the Guidelines that implement CEQA actually are part of the California Code of Regulations. While they may contain valuable authority for implementing environmental justice, they will not be discussed because they are not statutes.
28 Public Resources Code Section 21081(d).
30 Public Resources Code Section 21081(a).
31 Public Resources Code Section 21100.
An agency must find that a project has a significant effect on the environment if the possible effects of a project are individually limited but cumulative considerable. Considerable cumulative effects are those incremental effects of a proposed project that become considerable when viewed in connection with the effects of past projects, other current projects, and probable future projects. Agencies must also find that a project has a significant environmental effect if a proposed project's environmental effects will either directly or indirectly cause substantial adverse effects on human beings. Thus, agencies could theoretically limit the concentration of environmentally polluting industries in a low-income and minority community by determining whether a particular project's incremental effects would result in making that community's environmental problems considerably worse in light of existing polluting industry in the community.

These findings and requirements are to be fleshed out in the Guidelines that OPR adopts pursuant to Public Resources Code Section 21083 in order to implement that section. As described above, the Guidelines are regulatory and not statutory in nature. However, OPR should, pursuant to its statutory authority under Public Resources Code Section 21087, continually review the Guidelines and change them as appropriate to ensure that current themes in environmental justice, including the adoption of environmental-justice specific laws, are expressly addressed in the Guidelines.

Further, as required under Public Resources Section 21084, the Guidelines are to include classes of projects that are exempt from CEQA requirements. OPR should continually review these classes to ensure that their exemption does not result in unanticipated disproportionate environmental impacts on low-income and minority communities. Also, a state agency should consider using their authority under Public Resources Code Section 21086 to suggest to OPR changes to those exempt classes of projects if a state agency feels it has information to support its position that an exempt class of projects actually does have a significant effect on the environment.

---

32 Public Resources Code Section 21083(b).
33 Public Resources Code Section 21083(b).
34 Public Resources Code Section 21083(c).
Historic resources are covered under CEQA. Historic resources may in some instances provide a local point of pride for low-income and minority community. CEQA provides that the fact that a historic resource is not designated as an historic or cultural landmark by the local, state, or federal governments, does not automatically preclude an agency from determining that the resource is not historic and thus not worthy of protection.\textsuperscript{35}

Also, the Secretary of the Resources Agency should review the criteria under the CEQA provisions in Public Resources Code Section 21080.5(d) that allow state agencies to bypass CEQA if the Secretary certifies that the agency’s regulatory program contains provisions equivalent to CEQA. The criteria might be changed to included environmental justice, and certification withdrawn if agencies don’t follow those criteria.

\textsuperscript{35} Public Resources Code Section 21084.1.
State agencies should take maximum advantage of Government Code Section 21104(a) which allows but does not require state agencies to consult with members of the public prior to the preparation of an environmental impact report. Early participation provides greater assurances that members of a low-income and minority community have a say in shaping a project to minimize environmental problems rather than having to fight a project that has been essentially finalized by the time the public hearing occurs for final approval of the project. State agencies should also provide as much opportunity for notice and comment at the final public hearings as can be liberally construed under CEQA.36

2. Bagley-Keene Open Meeting Act

Generally, the Bagley-Keene Open Meeting Act requires agencies to deliberate in public, and presents an opportunity for state agencies to reach out to communities affected by environmental justice issues. A few examples of the public participation requirements and options available to state agencies include the provisions of Government Code Section 11123(b) which permits teleconferences as an option to encourage public participation, although due to expense and logistical difficulties it may not be a practical way to increase public participation by low-income and minority communities. Government Code Section 11124.1 does offer the option that, subject to certain requirements, videotaping and audiotaping of public meetings is allowed. This may be a means to convey information to members of low-income and minority communities who could not attend the meeting in person.

Agencies should remember that Government Code Section 11124 provides that the public is not required to sign in as a condition of attendance. It must be made clear that attendance lists, requests for completion of surveys, etc., are voluntary. This may alleviate the privacy concern of some members of the public that might otherwise discourage public participation. At the same time, these attendance lists may be valuable in developing mailing lists for future notices of similar hearings. Agencies may want to consider encouraging (in a non-coercive manner, of course) persons in low-income and minority communities to sign such lists after making it clear that the lists are for the purpose of facilitating their participation in decisions affecting their communities.

36 Public Resources Code Sections 21091, et. seq.
Government Code Section 11125.1(b) provides that writings distributed at meetings should be available for public inspection. Agencies should be careful, however, to ensure that invoking the provisions permitting the hearing of off-agenda items and convening special meetings and emergency meetings with shortened notice times\(^{37}\) do not jeopardize the opportunity of low-income and minority communities to participate in matters affecting their communities. Agencies should also liberally construe the provisions providing for opportunities for the public to address the governing board.\(^{38}\) When people feel they are being paid attention to and listened to, they may be less likely to create a disturbance at the meeting, the control for which is provided under the Government Code Section 11126.5.

3. **Office of Administrative Law**

State agencies promulgate regulations to implement their substantive statutes. Those regulations may have provisions that are more specific than the substantive statute, perhaps resulting in additional tools for addressing environmental justice issues. Sometimes, as in the case of the CEQA Guidelines, the implementing regulations are referenced and cited by agencies at least as much as, if not more often than, the statute itself. The importance of regulations cannot be underscored, even though they are not reviewed in this paper. It is paramount that the public have as much input as possible in the creation and adoption of the regulations, rather than having to work around an inadequate regulation that has already been adopted when it comes to an agency's individual actions made under the regulation.

Public comment can come at the time a particular agency is adopting its rules or at the time the rules are under review by the Office of Administrative Law ("OAL"). To this end, Government Code Section 11346.6, for example, discusses a state agency's determination of appropriateness to mail notice to interested parties. Government Code Section 11346.8 governs the hearing and comment procedures for rulemaking. State agencies and OAL both should strive to liberally construe of all the applicable statutes to make sure as many people in low-income and minority communities receive notice of and are afforded an opportunity to comment on regulations that may affect the environment in general or their communities in particular.

C. Other General Statutes with EJ Possibilities

The political appointment process, the permitting process, and the enforcement process are all opportunities for agencies to incorporate environmental justice principles. In addition, many agencies may have specific mandates to create programs to educate the public about the workings of the agency. Also, agencies that dispense grants or otherwise fund projects can have an impact on environmental justice concerns. Often, each agency has specific statutes that tailor these processes to its specific mission. However unique the statutes may be, each agency should take full advantage of these processes to incorporate environmental justice principles.

\(^{37}\) Government Code Sections 11125.3-11125.6.

\(^{38}\) Government Code Section 11125.7.
Where an agency is governed by a board or commission comprised of appointed members, the agency should strive to see that these members are committed to principles of environmental justice. These members, the final decisionmakers with respect to a particular agency's actions, are in a good position to ensure that the agency's actions address environmental justice issues. Sometimes, the statutes are very specific about the types of members sought. One example is the Integrated Waste Management Board where the Governor must specifically appoint one member "who has served as an elected or appointed official of a nonprofit environmental protection organization whose principal purpose is to promote recycling and the protection of air and water quality."\(^{39}\)

Where an agency has specific statutes governing its permit process separate and apart, or in addition to, the generally applicable public participation statutes, the agency should involve the public early in its decision-making process. Agencies that have enforcement authority should be sure they are taking action against parties that pollute the environments of disadvantaged communities, at least as equally as they take action against other parties.

\(^{39}\) Public Resources Code Section 40401(b).
Several agencies, such as the California Coastal Commission, the Integrated Waste Management Board, and OPR have statutes specifically requiring a public education component. For example, OPR is specifically required to "[e]stablish a public education and training program for planners, developers, and other interested parties to assist them in implementing [CEQA]."40 Because CEQA is a potentially important vehicle for addressing environmental justice concerns, OPR should ensure that it includes representatives of disadvantaged communities as part of its training of "other interested parties" so that those communities may have a better understanding of CEQA.

DATA COLLECTION, INDEXING AND ARCHIVING

Many state agencies generate and collect data that relates either directly or potentially to environmental justice issues. For example, the Air Resources Board gathers data on air quality in different parts of the state. The Division of Labor Statistics and Research collects and compiles data on occupational accidents and safety and other labor matters. The Departments of Health Services and Pesticide Regulation share responsibility to gather and assess data relating to consumption of pesticide-treated foods, and abortions, birth defects and infertility. This assessment must include risks relating to - and therefore the underlying data about - the diets of people of different ages, sexes and ethnic groups, and different regions of the state. The State Department of Health Services must also provide, along with various CalEPA agencies, lists of toxic and hazardous waste sites to the Secretary for Environmental Protection.41 The California Energy Commission collects and reviews forecasts of energy demand, and analyzes their environmental, economic, and public health and safety impacts. The examples are legion.

To understand and achieve environmental justice, it is essential to have adequate and accessible information and data. Without them, environmental injustice cannot be discerned, analyzed or remedied. Disparate impacts cannot be identified, and neither can low-income or minority communities. For example, the California Energy Commission relies on data about local demographics, costs of living, poverty standards, air quality, water quality, traffic patterns, and many other economic and environmental factors when it makes a determination about licensing a new power plant or an expansion to an existing power plant. Public Resources Code §§ 25500 et seq. Without this data, an environmental justice assessment would be impossible.

Thus almost every agency has an opportunity to further environmental justice if it takes these factors into consideration when making decisions about what data to collect, how to collect it, how to index it, how long to maintain it, and how to make it accessible and understandable to the public.

---

40 Public Resources Code Section 21159.9(a).
41 Government Code Section 65962.5.
III. EJ Strategies - Agency by Agency

**Methodology**

As set forth in the introduction, it is beyond the scope of this paper to identify statutes (other than the newly enacted environmental justice-specific statutes described above) that may be used to further environmental justice for each and every agency in state government. What follows is a survey of our findings for ten state agencies. First, for reasons described below, the California Energy Commission's efforts are detailed, in considerably greater detail than the rest. Second, the rest of the agencies are examined, with a stress upon agencies that are not currently pursuing environmental justice despite the existence of some useful statutory authority.

Generally, each agency “module” is as follows. First, there is a background discussion describing briefly what the agency does in a few sentences, as well as a description of the code sections in which the agency’s statutory authority is located. Second, after the background section, the modules provide examples of how the agency’s actions may raise environmental justice issues. This is particularly important for agencies that are not traditionally thought to have environmental justice impacts. Third, the modules will usually provide examples of existing statutory authority that can be used by the agency to minimize environmental justice impacts resulting from its actions. This may include examples of substantive authority (e.g., the specific types of environmental criteria on which to base its decisions) and/or procedural authority (e.g., an agency’s unique public participation procedures).

The California Energy Commission (“CEC”) will serve as a de facto case study for a variety of reasons. First, at the February 26, 2002 OPR environmental justice forum mentioned above, the majority of public comments were made about the CEC and the industry it regulates. Arguably, there is a lot of interest in the CEC’s efforts at addressing environmental justice concerns, perhaps more interest than in other agencies currently. Second, the CEC is part of the Resources Agency, one of the cabinet level agencies specifically identified in SB 115 (Solis). Third, the CEC is an example of an agency that has made an effort to incorporate environmental justice as part of its mission, and its successes and failures serve as useful guides for agencies interested in addressing EJ concerns in the administration of their authority. Moreover, the CEC’s treatment of EJ highlights some of the unique issues confronting California environmental justice, as the EJ itself evolves beyond its original focus on the permitting and environmental review processes.
A. Background

The California Energy Resources Conservation and Development Commission (“CEC”) falls within the Resources Agency. The five commissioners are nominated by the governor and approved by the state senate. The work of the CEC is funded by a surcharge on electricity consumption. Its statutory authority is found in the Warren-Alquist State Energy Resources Conservation and Development Act. See Public Resources Code §§ 25200 et seq.

The CEC is the primary agency for energy policy and planning, and its responsibilities include licensing and siting power plants, promoting energy efficiency and development of renewable energy sources, forecasting energy needs, and responding to energy emergencies. For further information, see http://www.energy.ca.gov/. In recent years, following the deregulation of the energy industry and subsequent “energy crisis,” the CEC has been thrust into the public spotlight. (This is hardly a surprise to the CEC, which was founded in 1974 in the immediate aftermath of an earlier national “energy crisis”). Advocates of environmental protection and environmental justice have voiced criticism and concern about the CEC’s role in licensing power plants.

B. The CEC and environmental justice

The legislature has declared that a principal goal of resource planning and investment by utilities is “to improve the environment.” Public Resources Code § 25000.1(a). Further, when calculating cost effectiveness of energy resources, “the commission shall include a value for any costs and benefits to the environment, including air quality.” Public Resources Code § 25000.1(e). The environmental mandate of the CEC is clear.

Either independently or in response to public or legislative pressure, the CEC has recognized that its acts, especially the licensing process for new power plants, implicate environmental justice. For example, in April 2000 the CEC held a series of “Environmental Justice Roundtables.” Environmentalists, scientists, developers, consultants and concerned members of the public met to discuss disparate environmental impacts, the process of public participation, health risks, and related topics. For further information about the CEC’s approach to environmental justice, see www.energy.ca.gov/env-justice/staff_env_justice_approach.html.

Critics, however, argue that even though these issues are now more widely and publicly discussed, the fundamental decisions are made prior to the public meetings and that public fora and panels are of token importance, conducted for purposes of compliance with procedural requirements rather than out of a genuine desire to receive and act on public input. This has also has the effect of making the public discussion reactive rather than participatory.
Compounding all of the above is electricity deregulation and the energy crisis. While the specter of deregulation resulted in a hiatus in power plant licensing and construction for most of the 1990s, the specter of rolling black-outs at the end of the decade sent the state and industry into a frenzy of applications, fast-track licensing, and construction. It also resulted in some older power plants - marked for their disparate impacts upon minority and/or low-income communities - staying online rather than being closed down.

In short, in these circumstances the CEC’s greater receptivity to environmental justice concerns make the CEC a flashpoint for environmental justice issues.

C. Statutory authority
C(1). Substantive statutory authority
C(1)(a). Analysis of the environmental consequences of energy trends

The CEC is specifically mandated to assess trends in energy consumption and “analyze the social, economic, and environmental consequences of these trends.” Public Resources Code § 25216(a). This gives the CEC opportunities to analyze data relevant to the disparate environmental effects of current and future energy policies. Having pertinent data is an essential requirement to identify, evaluate and, where appropriate, act on or dispel, environmental justice concerns.

C(1)(b). Research and development

The legislature mandates the CEC to carry out research and development into “alternative sources of energy, improvements in energy generation, transmission, and siting, fuel substitution, and other topics related to energy supply, demand, public safety, ecology, and conservation....” Public Resources Code § 25216(c). This specific combination of ecology and public safety in relation to energy policy squarely encompasses important environmental justice concerns.

Related to this is the Public Interest Research, Development and Demonstration Project. The CEC is instructed to develop a public interest program to address those energy and environmental needs of the state that are not adequately addressed by the market. Public Resources Code § 25620.1(a) The CEC is instructed “actively [to] solicit applications for ... underrepresented subject areas” such as environmental enhancements, environmentally-preferred advanced power generation technologies, and renewable technologies. Public Resources Code § 25620.1(b).

C(1)(c). Reduced diesel fuel emissions

The CEC provides technical assistance and support for research, development and demonstration projects for cleaner diesel fuels. Public Resources Code § 25617(b). The CEC also administers the Clean Fuels Account, to develop and promote methanol as an alternative fuel for heavy-duty diesel vehicles. Public Resources Code § 25625. These projects have especial significance for people who live next to traffic routes that are heavily traveled by diesel-fueled trucks and buses, drivers of these diesel vehicles, road toll collectors, and mechanics and workers at garages and truck stops. These groups might include disproportionate numbers of minority and low-income individuals.
Similarly, under the Katz Safe Schoolbus Clean Fuel Efficiency Demonstration Program, the CEC has overall responsibility for a program to replace older diesel school buses with newer models that are both safer and produce few air pollutants. Education Code § 17910 et seq. Children from minority, rural and low-income communities have the most to gain from this program because they make greater use of school buses and their school districts - funded by local property taxes - are likely to have older vehicles.

C(1)(d). Loanmaking powers

The CEC has a mandate to provide loans to local jurisdictions for energy efficient equipment, for alternative energy production, and to improve the efficiency of local transportation systems. Public Resources Code § 25442. This includes loans for audits, feasibility studies, engineering and design, and legal and financial analysis. Public Resources Code § 25442.5. One of the factors by which such loans must be evaluated, is the environmental benefit. Public Resources Code § 25446. An advisory board makes recommendations on this program. Public Resources Code § 25445.

This program gives the CEC numerous opportunities to investigate, evaluate and promote imaginative local projects that address environmental justice issues, e.g. replacing diesel buses with electric trolley buses or natural gas or methanol-powered buses in areas that are heavily impacted by industrial pollution and diesel truck traffic; using and expanding consumer awareness and activism about polluting energy facilities (e.g. in the Hunter’s Point and Potrero Hill neighborhoods of San Francisco) by promoting local solar energy projects. The CEC can ensure that the advisory board is representative of minority and low-income communities.

The legislature has stated its intent to create incentives, through grants and loans, to construct and retrofit buildings so that they are more energy efficient. Public Resources Code § 25433. Some of the specific measures mentioned by the legislature are installation of insulating siding and double-paned windows, and “low-income residents” are targeted by this policy. This gives the CEC an opportunity not only to assist poorer communities to reduce energy consumption, but to combine this goal with public health-related projects, such as lead paint abatement. For example, old single-paned windows in housing projects could be removed and replaced, not only because of their energy inefficiency, but because they contain lead paint and are in family housing. Similarly, energy-efficient siding could be installed to cover lead paint on exterior walls that might contaminate adjacent play areas and gardens.

C(1)(e). Power plant licensing

The CEC is the exclusive licensing authority for electricity-generating plants. The CEC has authority not only over proposed new facilities, but also over operation of existing facilities, modifications to existing facilities, and transmission lines. See Public Resources Code §§ 25216.3, 25500 et seq., 60 Ops. Atty.Gen. 239, July 14, 1977. Because of the profound environmental effects of power plants, licensing is the most contentious of the CEC’s functions.
It is also an area where the CEC has moved to address environmental justice concerns. In doing so, it is complying with its statutory mandates. It is, for instance, required to adopt design and operational standards for power facilities that “safeguard public health and safety.” Public Resources Code § 25216.3 (a). (But note this does not include air or water quality standards.) It is required to seek recommendations from local, regional, state and federal agencies “in relation to environmental quality, public health and safety, and other factors on which they may have expertise.” Public Resources Code § 25506. If a proposed site is on the coast or on the San Francisco Bay, the CEC must notify and cooperate with the Coastal Commission and San Francisco Bay Conservation and Development Commission. Public Resources Code §§ 25507, 25508. The CEC is also required to hold “public informational presentations” and hearings at various points in the process. Public Resources Code §§ 25509, 25509.5. In short, state statutes and regulations lay out a complex scheme for power plant licensing.


First, the CEC examines the demographic nature of the potentially “affected area,” i.e. within a six-mile radius of the proposed facility, or a more precise area when feasible. The criteria for what makes an area “affected” include air quality, water, visuals, traffic, public health, and noise effects. If “minority” or “low-income” individuals comprise over 50% of the population in this “affected area,” then an affected minority and/or low-income population is found. This finding, presumably, is the threshold for the CEC to determine that environmental justice is possibly implicated in the matter.

The assumptions underlying this finding, however, are debatable. For example, the determination of the affected area appears to consider only the additional impact of the power facility, not the cumulative impact of the facility with other existing conditions that affect air quality, water, public health, etc. in the area. These conditions might include pesticide applications in a rural community, air pollution from other heavy industries, or the location of heavily-trafficked roads. It is also open to question if the 50% threshold for a finding of a minority or low-income population is appropriate, and the use of the federal poverty level as the determinant in the Larkspur study for what constitutes “low-income” in California, is inapposite.

Second, the CEC engages in public outreach, which includes providing information to local media, contacting community groups, contacting local community activists “as appropriate,” holding public workshops and hearings, and providing translators and translations. (Contacting the media
and activists, and providing translators/translations, are ways in which the CEC is going beyond its statutory requirements.)

Third, the CEC does an impact assessment. In the Larkspur study (see above) the only factors that were examined were air quality and public health risks, and the conclusion reached that environmental justice issues were not implicated. The official, public, approach, however, is much broader, and includes an assessment of factors such as “traffic and transportation, noise, hazardous materials, visual resources, water resources, land use, transmission line safety and nuisance, waste management and socioeconomics.” It specifically includes cumulative impacts, indirect impacts, mitigation, and consideration of alternative sites.

The CEC appears to be making a good faith effort to addressing certain environmental justice issues in the licensing of power plants. Whether these efforts are sufficient is open to debate. It might be most effective to ask some questions:

• Are the public hearings merely informational, or is comment truly welcome?
• Have the important decisions already been made prior to any public announcement or hearing?
• Are all of the technical factors considered when assessing impacts? Or do “visuals” only matter in areas that are popular tourist attractions? Does “traffic” only matter in congested zones between suburbs and cities?
• Are cumulative and indirect impacts taken into full consideration, and how?
• Are the definitions of “minority” and “low-income” appropriate or accurate?
• Does current and future policy take adequate account of history of the proximity of many power facilities to minority and/or low-income communities?

C(1)(f). Minority and low-income representation

One important way to ensure and promote environmental justice is to appoint Commissioners who represent the interests of environmental protection, minorities and low-income communities. The statutory framework for the composition of the Commission permits this, especially because it must contain a member with a “background and experience in the field of environmental protection or the study of ecosystems” and a member “from the public at large.” Public Resources Code § 25201.

Similarly, a Public Adviser position exists, appointed by the Governor to assist the public in CEC business and hearings. Public Resources Code § 25307.5. One of the roles this official can play is to facilitate environmental justice.
C(2). Procedural statutory authority

C(2)(a). Form of applications for power facilities

The CEC prescribes “the form and content of applications for facilities.” Public Resources Code § 25216.5(a). It can therefore ensure that this information is in a form that is comprehensible to the communities that will be impacted by the facility, for example, that information about adverse impacts is presented in plain language and is *prima facie* rather than buried in legal or technical writing and data.

C(2)(b). Data and information

The CEC is a central repository for “collection, storage, retrieval, and dissemination of data and information on all forms of energy supply, demand, conservation, public safety, research, and related subjects.” Public Resources Code § 25216.5(d). This data and information must be gathered from “all sources”. Public Resources Code § 25216.5(d). The Commission therefore has a public interest responsibility, to gather and compile information likely to be useful not only to industry, but to all Californians - including community groups concerned about public safety. The Commission is also required to make this information available to the public. Public Resources Code § 25223. Access to appropriate data is essential to making a determination of disparate impact upon not only a minority or low-income community, but any community.

The CEC is also required to collect and analyze forecasts, produced by the electrical utilities, of energy demand. Public Resources Code § 25305. This evaluation must include analysis of environmental, economic, and public health and safety impacts, and of measures to avoid or ameliorate adverse impacts. Public Resources Code § 25305(a). When assessing future electrical energy demand, the Commission’s report must balance various factors, including protection of public health and safety and preservation of environmental quality. Public Resources Code § 25305(e).

The CEC must also hold public hearings on its report. Public Resources Code §§ 25307, 25307.5. These hearings are complex and evidentiary, and their nature could deter or exclude participation by communities who are might be most impacted by the operation or siting of a power plant. However, the CEC could also seize the opportunity to cultivate relations with these groups, and facilitate their participation.

Every two years the CEC is required to submit a comprehensive energy report to the legislature and governor. The purpose of the report is to assist in formation of state energy policy. Public Resources Code § 25309. Based on the future trends it discerns, the CEC is mandated to identify “potential adverse social, economic, or environmental impacts,” including “significant increases in air, water, and other forms of pollution, threats to public health and safety, and loss of scenic and natural areas.” Public Resources Code § 25309(e).
Similarly, the CEC is required, every two years, to submit a forecast of transportation energy demand. Public Resources Code § 25309.1. This forecast must include a forecast under a “least environmental and economic cost” scenario, which includes factors such as environmental quality, air pollution, water pollution and global warming and other adverse environmental impacts. Public Resources Code § 25309.1(c).

This report appears to overlap with a mandate to consult with other agencies, industries and the public to “identify and evaluate energy programs which might be used to achieve the forecast of energy use under a least environmental and economic cost scenario” described above. Public Resources Code § 25324. Among the specific programs the CEC must consider are alternative fuel vehicles, transportation control measures, integrated transportation and land use planning, and conservation. Public Resources Code § 25324(a-d). The results of this consultation must be reported to the legislature. Public Resources Code § 25325.
Agricultural Labor Relations Board

A. Background


B. The ALRB and environmental justice

The relationship between the ALRB and environmental justice, is at once removed and extensive. On one hand, the statute simply concerns labor relations. It is particularly concerned with preventing and resolving unfair labor practices, and with creating a framework for democratic workplace elections. On the other hand, agriculture and the environment are inextricably linked, as are work conditions and health and safety. The great majority of agricultural workers are low-income and/or Latino and/or recent immigrants. Further, the issues that often underlie agricultural labor-management relations are not simply wages, pensions, rest periods and provision of toilet facilities adjacent to the fields. Rather, they frequently involve pesticide use, pesticide monitoring, living conditions in farm labor camps, and similar issues. The primary issue in an election, for instance, or in a dispute on a particular farm, might concern whether or not workers receive adequate protection when applying pesticides or when working in areas where pesticides have recently been applied. Or it might concern housing for workers and their families that is located next to a highway heavily trafficked by diesel trucks, or next to a polluting feed mill, or surrounded by fields and exposed to pesticide drift.

The history of the United Farm Workers shows the importance of these non-monetary issues to many California agricultural workers and their families. See, for example, http://www.ufw.org. Growers and property owners share many of these concerns, such as the stability and health of the agricultural workforce, food safety, and contamination of groundwater by pesticides.

These are classic environmental justice issues of disparate impact on minority and low-income communities. They both require and give the opportunity for the ALRB to be sensitive to environmental justice, through rigorous and fair enforcement of laws regulating labor practices and union representation.
California Coastal Commission

A. Background

The California Coastal Act of 1976 ("Coastal Act")\(^{43}\) charges the California Coastal Commission ("Commission") with, among other things, the protection of "the overall quality of the coastal zone environment and its natural and artificial resources[,]"\(^{44}\) assuring balanced use and conservation of coastal resources "taking into account the social and economic needs of the people of the state[,]"\(^{45}\) and maximizing public access and public recreation opportunities in the coastal zone within reason.\(^{46}\)

B. The CCC and environmental justice

---

\(^{43}\) Public Resources Code Sections 30000, \textit{et. seq.} (Division 20 of the Public Resources Code). All citations are to the Public Resources Code unless otherwise specified.

\(^{44}\) \textit{Id.} at Section 30001.5(a).

\(^{45}\) \textit{Id.} at Section 30001.5(b).

\(^{46}\) \textit{Id.} at Section 30001.5(c).
Because of the relatively small geographic jurisdiction of the Commission,\textsuperscript{47} the overall higher levels of wealth in the coastal zone, limits on the Commission's statutory authority\textsuperscript{48} (such as its lack of authority to maintain or require affordable housing in the coastal zone) and other legal constraints\textsuperscript{49}, and the not so frequent occurrence of noxious uses in the coastal zone, the Commission's activities may result in less environmental justice concerns than those of other agencies. As with all agencies, political and budgetary constraints may preclude the effective consideration of environmental justice concerns by the Commission.

Nevertheless, the Commission may be able to include environmental justice concerns in the following ways: (1) through its permitting process, particularly with respect to public works facilities, energy facilities, and port facilities that could impact the quality of waters in which persons from disadvantaged communities fish and swim and result in other environmental impacts; (2) through its federal consistency reviews; (3) through its review of port development plans and long-range development plans that delegate the Commission's permitting authority to certain port authorities, public works agencies, and universities that have large facilities that may impact the environment, and (4) its public education mandates.

C. Statutory Authority
C(1). Substantive statutory authority
C(1)(a). Permitting and Coastal Protection Policies

\textsuperscript{47} The Commission's terrestrial jurisdiction extends inland generally only 1,000 yards from the mean high tide line of the sea, although it occasionally extends as far inland as several miles in less populated areas such as Malibu. \textit{Id.} at Section 30103(a). The Commission's marine jurisdiction extends seaward to the state's outer limit of jurisdiction, around 3 miles or so. \textit{Id.}

\textsuperscript{48} The Commission, for example, no longer has significant authority to require or maintain affordable housing in the coastal zone that may serve the needs of low-income minority populations.

\textsuperscript{49} As a regulatory agency, for example, the Commission is subject to takings jurisprudence.
The "Chapter Three" policies of the Coastal Act\textsuperscript{50} contain the standards against which to evaluate development in the coastal zone. These policies deal in part with water quality, public access and recreation, and to a lesser extent, air quality issues.

1. **Water Quality**

\textsuperscript{50} Id. at Sections 30200, \textit{et. seq.} ("[T]he policies of this chapter [i.e., Chapter 3 of the Coastal Act] shall constitute the standards by which the adequacy of local coastal programs [and] the permissibility of proposed developments subject to the provisions of this division are determined.").
Article 4 of the Coastal Act\textsuperscript{51} contains policies designed to protect the marine environment. For example, Section 30231 specifically requires the consideration of adverse impacts to water quality on human health.\textsuperscript{52} Here, the Commission could look at water quality impacts that might adversely affect the health of low-income, minority populations that may tend to fish and swim in polluted waters at higher rates than the general population. Further, Section 30241(c) (contained in Article 5 of Chapter 3 which deals with land resources) requires the maintenance of agricultural production "[b]y assuring that public service and facility expansions and nonagricultural development do not impair agricultural viability, either through increased assessment costs or degraded air and water quality." While not addressing water quality impacts to human health in the context of the marine environment, this section may allow the Commission to consider air and water quality impacts that may affect the health of low-income farmworkers in the coastal zone. Because much polluted runoff occurs outside the coastal zone, the Commission has no real authority to address the quality of water that flows into the coastal zone. To the extent that the Commission can regulate development within the coastal zone that adversely impacts water quality, the Commission may be able to address environmental justice impacts in this regard.

2. Air Quality

\textsuperscript{51} Id. at Sections 30230, \textit{et. seq.}

\textsuperscript{52} PRC Section 30231 states: "The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms \textit{and for the protection of human health} shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams." (emphasis added).
Section 30241(e) Act may allow the Commission, cited above, may allow the Commission to consider air quality impacts on the health of farmworkers. In addition, Section 30253 requires that the Commission consider whether new development in the coastal zone would "[b]e consistent with requirements imposed by an air pollution control district or the State Air Resources Control Board as to each particular development[53]" and would "[m]inimize energy consumption and vehicle miles traveled."54 As with water quality issues, the Commission may have little real ability to address air quality impacts on human health since most air quality problems arise outside the coastal zone. Another real limitation is the fact that Section 30253 only covers new development, and not existing development. To the extent, however, that the Commission can consider whether new development adds to the overall air quality pollution picture, particularly with respect to impacts on neighborhoods immediately adjacent to the subject development, the Commission should consider the environmental justice impacts of such development.

3. Public Access and Recreation

While not necessarily a traditional environmental issue, the issue of providing public access to the coast and providing public recreational opportunities in the coastal zone may be looked at as an environmental justice issue. This is because a large number of coastal zone visitors will likely include residents of inland low-income minority communities. These persons residing outside the coastal zone may not have as strong a voice before the Commission as the wealthier property owners situated within the coastal zone. Since the latter may wish to exclude the former, the Commission should look at this issue from an environmental justice perspective. Further, the ability of low-income minority communities to take advantage of public recreational opportunities in the coastal zone may be negatively affected by the water quality impacts described earlier.

C(2). Procedural statutory authority

C(2)(a). Notice

53 Id. at Section 30253(3).
54 Id. at Section 30253(4).
The Commission's notice procedures are probably no less stringent than those of other government agencies. Generally, notice of the proposed development is required to be mailed to property owners and occupants adjacent to the development site as well as other interested parties, and a notice is required to be posted at the development site. This applies to the Commission's retained permitting jurisdiction and the permitting authority it has delegated to local governments. Like other governmental agencies, perhaps the biggest opportunity (and a probably difficult one to take advantage of) for the Commission to address environmental justice issues is to ensure that it hears the voices of low-income minority communities. However, most low-income persons will probably not be reached by the Commission's standard noticing procedures (e.g., many may not live or own property within 300 feet of the development site and thus will not get a public hearing notice mailed to them nor will they likely see the notice posted at the site of the proposed development). It is probably infeasible to publish newspaper notices for every single development that comes before the Commission. Nevertheless, the Commission should determine whether a development has environmental justice issues and search for practical ways to notice low-income persons of those developments.

C(2)(b). Federal Consistency

The Commission is vested with the authority to determine whether activities undertaken by the federal agencies within the coastal zone are consistent with the requirements of the Coastal Act. While finding that an activity is not consistent does not have the same effect as the denial of a coastal development permit, a Commission finding of inconsistency may preclude the federal agency from obtaining required federal permits. A common past example of federal consistency activities that have potential environmental justice issues is the offshore disposal of contaminated soils dredged by the U.S. Army Corps of Engineers to maintain navigation in harbors and other navigable waterways.

C(2)(c). Port Development Plans, Long-Range Development Plans, and Public Works Project

The Coastal Act allows selected ports as well as public works agencies and universities located in the coastal zone to prepare plans that delegate's the Coastal Commission's permitting authority to the port, public works agency or university. Since development activities of these entities are likely to include large facilities that have wide ranging impacts, the Coastal Commission should assure that the plans contain adequate provisions to address environmental justice concerns.

C(2)(d). Public Education

C(2)(b). Federal Consistency

55 CCR Section 13054(a).
56 Id. at Section 13054(b).
57 Public Resources Code Section 30008.
58 Public Resources Code Section 30605 and Sections 30700, et. seq.
As mentioned earlier, the Coastal Act has provisions providing for public education. The Commission could use its outreach efforts to schools, youth, and the public to encourage learning about environmental justice issues in the context of the coastal zone. To the extent that funding and staffing permits, the Commission should use its Coastal Resource Information Center clearinghouse for coastal zone scientific information as well as its Coastal Resources Guide to educate the public about the environmental resources in the coastal zone that can be enjoyed by members of low-income and minority populations.

---

59 Public Resources Code Section 30012, 30343, and 30344.
Department of Food and Agriculture

A. Background
The Department of Food and Agriculture (“Department”) fulfills numerous functions, including providing services for pest control, plant health protection, product marketing, inspections, licensing, animal health, and food safety. The Department includes a network of county-based commissioners and employees, and numerous councils and commissions. It is headed by the Board of Food and Agriculture, with members drawn from the agricultural industry and academia or with interest in and knowledge about environmental and consumer issues. Food & Agricultural Code §§ 901-902, 951. Statutory authority for the Department is found in the California Food and Agricultural Code.

B. The Department and environmental justice
The Department’s actions implicate issues of environmental justice in many ways. The Department has a broad mandate to promote and protect California’s agriculture, and to protect “public health, safety and welfare.” The Food and Agricultural Code is “liberally construed” to accomplish these purposes. Food & Agricultural Code § 3. The Department also has an environmental mandate: “To sustain the long-term productivity of the state’s farms by conserving and protecting the soil, water, and air, which are agriculture’s basic resources.” Food & Agricultural Code § 821(c). It is also important to note that the great majority of California’s agricultural workers are low-income and/or minority and/or recent immigrants, and that this is true of many rural communities in the state.

The Department’s responsibilities therefore include producer, worker, consumer and environmental issues relating to food, agriculture and fishing. The actions of the Department impact all Californians (and many people beyond the state’s borders), but the Department also has the authority to ensure that its actions benefit and protect all Californians equally. For example, if the Department’s food quality and safety inspection programs in suburban supermarkets are more rigorous and frequent than those of in corner stores in inner cities, this policy choice implicates environmental justice. Similarly, environmental justice is not served if the Department promotes a healthful food only on television networks that target middle class demographics, and devotes no resources to media that program in Spanish or Vietnamese.

The Department has specific authority to address certain environmental justice concerns.

C. Statutory authority
C(1). Substantive statutory authority
C(1)(a). Fertilizers
Some fertilizers contain high levels of toxic materials such as chromium, cadmium, vanadium, mercury, lead and arsenic. These toxic materials are introduced when fertilizer manufacturers incorporate hazardous industrial wastes into their products. While these wastes are rich sources of zinc (an important nutrient), they also contain other toxic materials. Humans can be exposed through contact with and application of these fertilizers. Crops and other plants extract these toxic metals from the soil and the metals then enter the human food supply. Run-off from fertilized soils can contaminate groundwater with nitrates and toxic metals.
The presence of toxic materials in fertilizers impacts children disproportionately because they often play on the ground and put their hands in their mouths. This is likely to be especially pronounced in communities adjacent to areas that are fertilized heavily or frequently. Farm workers and gardeners are also impacted disproportionately. Further, under current law only the beneficial ingredients of fertilizers have to be labeled. Farmers, farm workers and the public are therefore unaware whether or not the fertilizers they purchase or use contain toxic materials.

The Department recently promulgated regulations on this matter. California Code of Regulations, Title 3, §§ 2302 and 2303. The legislature intended the Department, in exercising this power, to promote distribution of safe fertilizers, to assure consumers that fertilizers are properly identified, and to assure consumers that the representations of the manufacturers are correct. Food & Agricultural Code § 14501. Fertilizers with high levels of toxic materials might run foul of the misbranding and/or adulteration statutes. For instance, a fertilizer is adulterated if it is “a threat to public safety” or if its actual composition differs from its labeling. Food & Agricultural Code § 14682(b), (d).

C(1)(b). Biotechnology

The legislature has found it important not only to understand the opportunities offered by agricultural biotechnology, but also “to evaluate the potential risks.” Food & Agricultural Code § 491(b). The risks of genetically engineered products are likely to burden farmworkers disproportionately, and most farmworkers are minorities, immigrants and/or low-income. Their interests should therefore be taken into particular account by the Food Biotechnology Task Force and its advisory committee. This Task Force will make a report by January 1, 2003. Food & Agricultural Code § 492.

Also in relation to biotechnology, the legislature has found that “consumers have an interest in being informed about the benefits and potential quantifiable risks to their health from products they consume.” The legislature requires that “effective communications” be used. Food & Agricultural Code § 491. This places a special responsibility on the Department to communicate information about this new and complex technology, in effective ways, to communities in which many people are illiterate or semi-literate, unfamiliar with the relevant scientific notions and debates, and/or not native English speakers. This might include fostering informative debate on radio and television programs that target minority communities, producing written educational materials that are very easy to understand and/or in languages other than English, and distributing these materials at likely points of sale of genetically-modified foods.

C(1)(c). Pesticides

The Department of Pesticide Regulation carries primary responsibility for promulgating and enforcing pesticide regulations, and for monitoring pesticide residues. Food & Agricultural Code § 12500. The Department of Food and Agriculture, however, shares responsibility with the Department of Health Services, to provide for safe use of pesticides and safe working conditions for farm workers, pest control applicators and others who handle or store pesticides or work in pesticide-treated areas. Food & Agricultural Code § 12980. These include a disproportionate number of people from minority and/or low-income communities. As illustrated, for instance, by
the history of the United Farm Workers, pesticide application, residues, drift and monitoring, are classic environmental justice issues. See http://www.ufw.org.

C(1)(d). Farmers’ markets

The Department regulates direct marketing by farmers at certified public markets. Food & Agricultural Code §§ 47001 et. seq. The range of consumers at these markets is broad, but includes large numbers of minorities, non-English speaking immigrants, and people from low-income communities, seeking to take advantage of lower prices, fresh produce and access to specialty produce. The Department has, through these markets, regular and numerous opportunities to promote environmental justice, e.g. by ensuring that statutory and regulatory health, safety, weighing and labeling standards are met and enforced for products and conditions at these markets; by promoting the good health effects of locally-grown, fresh produce; by locating markets in proximity to minority and low-income communities; and by appointing minority and low-income community representatives to the advisory committees for these markets. Food & Agricultural Code §§ 47000(d), (g), 47010 to 47013.

These acts could educate low-income and minority urban communities who often live in neighborhoods where the typical food sources are fast food franchises and the freezer shelves in corner stores. Locating farmers’ markets in these communities would offer reasonably-priced and healthy alternatives.

C(1)(e). Labeling and the right to know

The Department is empowered to prevent deceptive labeling and packing of agricultural products. Food & Agricultural Code § 402. This provides the Department with opportunities to promote consumption of healthy and fresh foods by all Californians.

C(2). Procedural statutory authority

C(2)(a). Councils, Commissions and Advisory Boards

The Department uses councils, commissions and advisory bodies extensively. Their general purposes are within the public interest purpose to “ensure ... a continuous and safe supply of food and fiber”. Food & Agricultural Code § 231. While this general purpose is to promote the agricultural and seafood industries because of their economic value to the state, the legislature defines this as providing a benefit to all the people of the state. Food & Agricultural Code § 63901(d). The legislature declared that the activities of these bodies includes food safety research, consumer education relating to health and consumption of agricultural and seafood products, consumer education relating to environmental protection and conservation, regulation of product packaging and labeling, sanitary measures, regulating pesticide residues, and resolving crises involving public health and safety in a cooperative manner. Food & Agricultural Code § 63901.3.

These bodies therefore have responsibilities for many matters of concern to minority and low-income communities. One way to address these concerns is to ensure that minorities and low-income communities are represented on these bodies. Among those with responsibilities that most
obviously touch the lives of minorities and low-income communities, are the Agricultural Pest
Control Advisory Committee, Food & Agricultural Code § 12042, the Pest Management Advisory
Committee, Food & Agricultural Code § 12536, the Biotechnology Advisory Committee and Task
Force, Food & Agricultural Code § 492, the Fertilizer Advisory Board, Food & Agricultural Code §
14581, and the major agricultural product councils (e.g. Beef, Dairy, Seafood, Tomatoes). Food &
Agricultural Code, Division 22. Among the specific responsibilities of the product councils is to
gather and publicize information about human consumption of the specific commodity in relation to
public health, diet and proper nutrition. These bodies have an opportunity to direct their efforts not
only to communities with attractive marketing demographics, but also to those who live at or below
federal poverty levels, and to address their special nutritional and health needs.

The Seafood Council has unique responsibilities because of widespread subsistence fishing
by minority and low-income families, and the human health risks this poses, e.g. from frequent
consumption of bottom-feeding fish caught in the San Francisco bay and delta. The overall purpose
of the Council is to promote the fishing industry, but this is within the presumption of it as a
provider of “fresh, wholesome seafood products.” Food & Agricultural Code § 78525(a). People
who are not savvy to the nuances of the English language or are not sophisticated consumers, could
be misled into believing that the fish they catch and eat are wholesome. The Council is also required
to work with organizations to “preserve, protect, and enhance aquatic habitat and species.” Food &
Agricultural Code § 78525(c). This empowers to the Council to participate in efforts to educate and
warn subsistence fishers.
A. **Background**

The California Department of Forestry and Fire Protection ("CDF") is the state agency that protects the people of California from fires and also protects and enhances forest, range, and watershed values providing social, economic, and environmental benefits to rural and urban citizens. The statutory authority of the CDF is found primarily in Public Resources Code Sections 4001, *et. seq.* While the CDF's programs and responsibilities are myriad, this module will focus specifically on the Urban Forestry Program.

B. **The CDF and environmental justice**

Public Resources Code Sections 4799.06, *et. seq.*, comprise the California Urban Forestry Act of 1978. Pursuant to the Act, the CDF has established the Urban and Community Forestry Program. The structure and delivery of the program is built upon cooperative relationships among federal, state, and local agencies and contractual arrangements with various nonprofit organizations dedicated to urban forestry purposes. The Act also allows the CDF to make grants for the purpose of tree-planting in urban areas. The CDF makes such grants under programs such as its new "Leaf-it-to-Us" program that encourages schoolchildren to improve their school environments.

---

60 Public Resources Code Sections 4799.10 and 4799.11. *See also* the CDF's website on the Urban and Community Forestry Program at http://www.cdf.ca.gov/ResourceManagement/UrbanForestry.asp.

61 Public Resources Code Section 4799.10, subsections (a) and (b).

62 Public Resources Code Section 4799.12
This program is being highlighted because it can contribute to a positive natural environment in low-income and minority communities that may offset their environmental pollution problems. The Legislature found that the benefits of such a program to plant more trees in urban areas include maintaining property values and reducing air pollution.63 Thus, the program can directly contribute to improvements in the quality of life in urban areas.

Because "urban area" is broadly defined by statute to mean any urban place of more than 2,500 people (as commonly delineated by the Census Bureau),64 the CDF should ensure that it is not ignoring those urban areas that are comprised primarily of low-income and minority communities when making grants, providing technical assistance, or otherwise carrying out the program. Further, the CDF should attempt to ensure that it is adequately taking advantage of its statutory authority to create jobs in urban areas, particularly through hiring persons on welfare.65 By creating jobs in low-income and minority communities, the CDF can help reverse the cycle of powerless of these communities that contribute to the rise of environmental justice issues in the first place.

63 Public Resources Code Section 4799.07.
64 Public Resources Code Section 4799.09(c).
65 Public Resources Code Section 4799.10(f). See also Public Resources Code Section 4799.08(b) (one purpose of the Act is to "[facilitate the creation of permanent jobs in tree maintenance and related urban forestry activities in neighborhood, local, and regional urban areas.")
Department of Housing and Community Development

A. **Background**

The Department of Housing and Community Development ("HCD") is one of 13 departments within the Business, Transportation and Development Agency. As California’s principal housing agency its mission is to provide leadership, policies and programs to expand and preserve safe and affordable housing opportunities and promote strong communities for all Californians. The Department is specifically charged with developing, administering and enforcing building codes to conserve and improve the State’s housing conditions and the health and safety of its residents.

The Department’s statutory authority is found in § 17965 of the Health and Safety Code.

B. **HCD and Environmental Justice**

There are several ways in which the actions of the Department of Housing and Community Development potentially implicate environmental justice issues. Specifically, HCD is charged with enforcing the building standard code for all buildings used for human habitation, licensing and inspecting of employee housing facilities for migratory farm workers and conserving and increasing California’s supply of safe and affordable housing for low income residents.

---

66 website
The Department of Housing and Community Development is responsible for the eradication of substandard housing stock. The California legislature has found that decent housing is essential to creating sustainable communities. The Legislature also determined that unsanitary and unsafe dwellings create conditions that contribute to causing an increase in disease and crime. Hence, the fact that one in every 8 dwelling units in California is classified as substandard housing, that if left unchecked will eventually pose a serious threat to the safety and health of its occupants is a danger that must be dealt with. Environmental Justice and principles of equity of invoked due to the fact that substandard dwelling units are disproportionately inhabited by low-income minority occupants.

The Department’s authority to regulate, inspect and enforce the building standard code pertaining to employee housing can be used to protect the thousands of migrant farm workers that are inadvertently exposed to pesticide drift in their homes. These laborers are often on the front lines of pesticide use and are repeatedly exposed to pesticides in the course of employment while in the fields. Unfortunately, the risk does not end nor subside with the setting of the sun. Migratory farm workers continue to be exposed in their homes due to the dilapidation and close proximity of many farm worker dwellings to the crops and fields they work. HCD can limit the workers exposure through restricting the construction of farm worker housing within close proximity to toxic fields and adopting building standards which take into account the unique dangers posed by pesticide drift.

C. Statutory Authority
C(1)(a). Eradicating Substandard Housing
HCD is charged with eradicating substandard housing. A building is classified as being substandard and as a consequence deemed unsuitable for human habitation if it exhibits any combination of the factors listed and enumerated in § 17920.3 of the California Health and Safety Code. This sections lists inadequate sanitation, dampness of the room, lack of proper ventilation, lack of adequate garbage disposal, various nuisances and structural hazards as among the conditions taken into account in evaluating whether a structure is substandard.

C(I)(a)(2). Code Enforcement Incentive Program

In order to combat the prevalence of substandard housing which exists in California, HCD is authorized to administer the Code Enforcement Incentive Program. This program is aimed at increasing the enforcement of the Building Code by reporting the abuse of low-income tenants. This program was created to address the deficiency of local government code enforcement efforts. The deficiency stems from the fact that code enforcement at the local level is often performed on a complaint by complaint basis and this is insufficient to effectively abate the most serious violations. HCD is specifically charged with initiating a coordinated active community approach to code enforcement by creating pilot programs and making financial grants available to local government seeking to bolster their code enforcement activities.

C(I)(a)(2). Safe Migratory Farm Worker Employee Housing

70 17998(f)
71 17998(g)
72 17998(a)
Section 17001 of California’s Health and Safety Code mandates that buildings used for human habitation and buildings accessory to them used for employee housing shall comply with the State Building Standards Code. HCD is authorized to adopt, amend, repeal rules and regulations for the protection of public health, safety and general welfare governing the construction, erection, occupancy, sanitation of all employee housing. HCD is only authorized to assume powers of enforcement if a city or county does not properly enforce the provisions of the Building Standards Code pertaining to employee housing. However, this creates a possible enforcement gap since not only must HCD monitor the cities that have qualifying employee housing units but the city in turn must develop its own mechanism of investigating and enforcing the Act. As a result, violators or non-complying landowners may slip through cracks endangering their tenant workers in the process. In addition, what constitutes diligent enforcement is not established or articulated under current law. HCD must adopt a clear set of standards to evaluate each city covered by this Act. Without a set of clear standards the potential for possible evasion is too great a risk for the migratory farm workers to bear.

C(2)(b). Procedural Authority
C(2)(b)(1). Worker participation in housing hearings

---

\(^{74}\) 17040
\(^{75}\) 17050(c)(e)
Section 17030 of the California Health and Safety Code requires that every person operating employee housing obtain a permit to operate the housing from the enforcement agency. These permits are valid for 1 year and must renewed annually. An effective way to ensure that the building structure in question passes muster is to require the workers who will be inhabiting the structure testify during the permit process or that a representative sit on the local review board. In addition, notices in the native language of the contemplated workers should be posted in and around the workers current dwellings to increase their participation in the permit approval process.
A. Background

The Department of Industrial Relations (Department) regulates working conditions in California. It is mandated “to foster, promote, and develop the welfare of the wage earners of California, to improve their working conditions, and to advance their opportunities for profitable employment.” Labor Code § 50.5.


B. The DIR and Environmental Justice

The relationship between this Department and environmental justice is not immediately apparent. However, after recognizing that (i) what workers do at work has various impacts upon their families and the community at large, (ii) particular race or ethnic groups tend to fill certain occupations, and (iii) particular occupations receive low remuneration and are therefore almost certainly filled by people from low-income communities, the connections with environmental justice issues are tangible and important.

For instance, if employers and employees are informed about carcinogens and hazards at an industrial facility, this awareness is likely to spread to the whole community. Similarly, if workers are aware that they are potentially exposed at work to materials that damage human health - such as lead, asbestos, pesticides or dry-cleaning agents - and are provided with protective gear, changing rooms and hot showers, they are unlikely to go home wearing clothes contaminated with asbestos fibers or lead oxide. Therefore the carpets and seats of their vehicles and homes will not get contaminated and their children and partners, hugging them after work, will not be exposed. Taking this one step further, if these facilities and trainings are provided only to employees in traditional blue collar industries, or in large facilities, or in English, or in highly technical language, this will have a substantial negative effect on low-income communities, on those who are not English-speaking or have low levels of education and literacy, or on those who work in small or family-run businesses.

In short, if the Department effectively ensures “the welfare of the wage earners of California,” it will go a long way to ensure the welfare of all Californians. Labor Code § 50.5.

C. Statutory authority

C(1). Substantive statutory authority

C(1)(a). Occupational safety and health

The purpose of the Occupational Safety and Health Act is to assure “safe and healthful working conditions for all California working men and women by authorizing the enforcement of effective standards, assisting and encouraging employers to maintain safe and healthful working
conditions, and by providing for research, information, education, training, and enforcement in the
field of occupational safety and health.” Labor Code § 6300.

The Occupational Safety and Health Division of the Department has powers over every
place of employment to ensure the safety and health of every employee, Labor Code § 6307,
investigate unsafe working conditions, Labor Code § 6309, require, regulate and enforce standards
for protective and safety devices in workplaces, Labor Code § 6308, ensure that employees are not
discharged for reporting unsafe workplace conditions, Labor Code § 6310, or for refusing to work in
unsafe conditions, Labor Code § 6311, and investigate serious accidents and exposures and order
corrective/preventive actions. Labor Code § 6313. It can issue citations to employers that violate
these provisions. Labor Code § 6317 et. seq.

The Division has the authority to implement and enforce these measures for the benefit of
all employees, including members of minority communities, low wage earners, and those with only
tenuous connections to the political process.

For example, after investigating a serious accident or exposure, the Division is required to
“issue any orders necessary to eliminate the causes and to prevent reoccurrence.” Labor Code
§ 6313(b). Within this mandate the Division can make sure that, if there are illiterate workers at the
facility, the employer provides effective verbal instructions, or, if there are workers who do not read
or understand English, that instructions are given in languages they do understand.

Similarly, the Division can prohibit use of a workplace if it believes that the workplace
contains friable asbestos and employee protection is inadequate. Labor Code § 6325.5. The
Division can interpret this authority broadly. For instance, an auto brake shop might have
permissible levels of airborne asbestos fibers when the extractor fans are operating and the garage
doors are open, but these levels might be elevated after-hours when the doors are closed, the fans
are off, and the janitors are sweeping the facilities. Similarly, the fireproofing and other asbestos-
containing materials in a high-rise office building might be encapsulated and non-friable, but the
insulation materials on the boilers and steam pipes in the basement areas where regular employees
do not work, might be friable. Yet those are the areas where janitors and maintenance workers
often go, and they are often members of low-income and/or minority communities who are
unaware of asbestos hazards, or unable to read warning signs, or not provided with protective
equipment, or afraid that if they complain they will lose their jobs or, if illegal, get deported. A
broad interpretation of this statute enables the Division to reach and protect workers who are at
foreseeable risk.

C(1)(b). Education and research

The Occupational Safety and Health Division has an education and research program to
provide, among other activities, “safety education for employees and employers [and] research and
consulting safety services.” Labor Code § 6350.
The Division can use this mandate in imaginative ways to reach all California workers and employers, including minorities, those in low-income communities, and those who do not speak English. See Labor Code §§ 6351, et seq. These workers are often in occupations with high health and safety risks, and are therefore of especial concern to the Division. Labor Code § 6352.

The Division is also required to conduct research into “methods, means, operations, techniques, processes and practices necessary for improvement of occupational safety and health of employees.” Labor Code § 6353. The Division has authority, for instance, to research safety and health issues in relation to the new industries and the highly mobile and diverse workforce that characterize 21st century California. In this society patterns of occupational disease and injury are difficult to discern. Workers, especially young people and those without higher levels of education, are easily lulled into a belief that they do not face significant occupational health risks. Few California workplaces match the classic models of smokestack industries that, by their very nature, warn of injury. Instead, chemicals are carefully packaged and labeled - but no less lethal. A semiconductor facility is fastidiously dust-free and workers do not suffer sudden and dramatic injuries; rather, the tumors and nervous system damage are often slow to manifest, by which time the workforce that was originally exposed has scattered. The Division is challenged to address these novel and complex issues, many of which disproportionately impact workers in minority and low-income communities.

C(1)(c). Information, training and warnings about hazardous substances

The Hazardous Substances Information and Training Act, Labor Code §§ 6360 et seq., acknowledges that employers and employees have both “a right” and “a need” to know about “the properties and potential hazards of substances to which they may be exposed.” Labor Code § 6361(a)(1). The provision of a MSDS for each such substance is at the heart of this statutory scheme. Labor Code § 6398(a). A MSDS, however, is of little utility to a worker who does not read English or who is illiterate. It is therefore important for the Department to enforce other provisions of the Act, such as those requiring employers to furnish information to employees about the contents of each relevant MSDS and about their rights under the Act. Labor Code § 6398(b) and (c). Providing this information in languages other than English, in non-technical language, and in training programs in the vernacular, are possible means to guarantee this employee right.

The Department has similar obligations about use of carcinogens. Labor Code §§ 9000 et seq. Employers are required to submit a written report to the Department about each occasion when employees may have been exposed to a potentially hazardous amount of a carcinogen (including asbestos and vinyl chloride.) Labor Code § 9030. This report must be conspicuously posted and provided to the affected employees. Labor Code § 9031. Through regulation and enforcement, the Department has the opportunity to ensure that these provisions are effective for all workers, including day laborers, those who do not read English, and those who do not understand the significance of exposure to carcinogens or the long-term and/or cumulative effects.

Similarly, when providing educational programs about carcinogens and employee rights under § 9052, the Department can provide programs that reach workers whose first language is not English and who are unsophisticated in industrial hygiene and occupational health issues.
C(2). Procedural statutory authority

C(2)(a). Notice and hearings

When the Department holds hearings and/or provides notice of its regulations and actions, it can take steps to make the procedures and information known, accessible and understandable to all affected workers, such as by providing translation services, explanations of procedures, notices in languages other than English, and posting in places where minority workers and those foreseeably affected by the actions tend to gather. See also Government Code §§ 7290 et seq.

C(2)(b). Data collection, indexing and archiving

The Department generates and collects data on important issues relating to employers, employees, workplace conditions, hazardous substances and equipment, safety, health, risks and potential risks. In particular, the Division of Labor Statistics and Research collects and compiles data “relating to the condition of labor ... including information as to cost of living, labor supply and demand, industrial relations, industrial disputes, industrial accidents and safety, labor productivity, sanitary and other conditions ... and ... other matters in relation to labor.” Labor Code § 150, italics added.

To ascertain and achieve environmental justice, it is essential to have adequate and accessible data about relevant factors. Without it, environmental injustice can be neither demonstrated nor disproved, neither clearly understood nor effectively remedied. The Department can be part of this statewide effort when it keeps in mind the goals of environmental justice when making decisions about what data to gather, how to index it, how long to maintain it, and how to make it accessible. For example, it can correlate occupational injuries and risks with occupations that are predominantly filled by individuals from minority communities or that pay low wages. It can gather and organize data in ways that are compatible with data collected by other agencies about community health and environmental exposures. It can ensure that records about exposures to hazardous materials are archived for a time period at least as long as the longest latency period for symptoms to emerge of the diseases or injuries that exposure to the materials can reasonably be expected to cause. Labor Code § 9030. (In the case of asbestos and other carcinogens this is likely to be for several decades.)

Data collection and computation procedures are also important because data is used to identify risks and hazards and those employers and industries that merit particular attention. For instance, the Department identifies “high hazardous industries with the highest incidence of preventable occupational injuries and illnesses and workers compensation losses” and it does this not from anecdote or a statutory determination, but from data from sources such as the California Work Injury and Illness program, the Occupational Injuries and Illness Survey, the federal hazardous employers' list, insurance company ratings, and the violations of the Occupational Safety and Health Act. Labor Code § 6314.1(a). A failure by any of these entities to gather or maintain this data therefore has a ripple effect, not only skewing the data per se, but influencing whether or not investigations and inspections will follow and therefore having a direct effect on public health. Labor Code §§ 6315 and 6315.3.
Department of Parks and Recreation

A. Background

The Department of Parks and Recreation ("Department") has the primary responsibility for providing a wide range of natural, cultural and recreational services to the public. The Department actively engages in the acquisition and management of a broad range of public lands including but not limited to parks, recreation areas, historic parks and cultural reserves. The Department also provides educational opportunities to California residents through the acquisition and operation of cultural and historically significant landmarks. In geographic terms, the Department oversees nearly one-third of California’s coastline, 625 miles of lake and river frontage and hundreds of historical and cultural points of interest established or acquired by the State or which are under its control.77

The statutory authority for the Department is found in Public Resource Code § 5001 et seq.

B. The Department and Environmental Justice

The Department’s activities implicate environmental justice concerns in a number of ways that may or may not be readily apparent to the public or the Department. However, what is clear is that there are some gaps that can be closed through a more cognizant and zealous prosecution of the Department’s mission. Nevertheless, there exists ample statutory authority providing fertile ground for environmental justice issues to be addressed, problems mitigated and benefits enhanced for all Californians under existing law.

---

77 Public Resource Code 5002.
The Department has a broad mandate to “administer, protect, develop, and interpret the property under its jurisdiction for the use and enjoyment of the public.”78 In addition, the Department has the power and duty to expend all moneys of the Department, from whatever source derived, for the care, protection, supervision, extension and improvement or development of State Park System property.79 In furtherance of these ends, the Department’s stated mission is to provide for the “health, inspiration and education of the people of California.” See www.parks.ca.gov, visited March 16, 2002. Consequentially, the Department is charged with protecting state park environs for the use and enjoyment of not just current California residents but for future generations as well.

In conjunction with the Department’s duty to conserve State park land for future generations, the Department must ensure that the State’s natural resources and funds are equitably distributed across society for the use, enjoyment and education of all California residents. The Department’s services must be administered in a geographical and socially equitable manner for the Department to truly serve as a “public resource.” This means urban and rural, majority and minority residents must be able to access and benefit from the services provided by the Department.

78 5003
This is of considerable import to California’s urban centers where 90 percent of California’s present population resides, not to mention that as a direct result of this high population concentration the State’s urban centers suffer from acute deficiencies in open space and recreational areas. These deficiencies disproportionately effects the State’s most needy and disadvantaged residents because they are less likely to travel to rural State parks or recreational facilities. The high concentration of social and economic ills of the urban city coupled with the residents lack of access to rural recreational outlets makes providing open-space, recreational and educational opportunities in these areas a priority for the Department.

The Department should take a proactive approach to fund culturally relevant educational programs. This can be accomplished by acquiring and incorporating cultural and historically significant landmarks into the Park system.

In sum, the Department of Parks and Recreation administers a number of programs and distributes billions of dollars generated from the sale of bonds that could have a direct impact in: promoting the historical and cultural contributions of California’s diverse population, ensuring the acquisition, development and maintenance of open space and recreational facilities in urban areas, and working towards the amelioration/mitigation of environmental hazards disproportionately borne by California’s minority population.

C. Statutory authority

C(1)(a). Increasing Urban Open Space and Recreational Opportunity
California’s Urban Areas suffer from a lack of open space, high quality recreational opportunities and adequate educational facilities. As a result of these deficiencies, California’s urban centers are in a “distressed state” and are facing an increasingly complex set of problems stemming from the interaction of poverty, race relations, environmental concerns, crime and adequate educational facilities. These problems can be partially alleviated by increasing the recreational, educational and culturally relevant opportunities offered to urban residents through the Department of Parks and Recreation.

C(1)(a)(1). The Urban Park Act of 2001

The Urban Park Act of 2001 (“ACT”) establishes a program which in turn provides funds on a competitive basis to local agencies and community based organizations to finance the acquisition and development of parks and recreation areas in communities that are currently least served by park and recreation providers. Under this Act, the Department can encourage grant recipients to use these funds to acquire and clean up areas that are toxic hazards to the community. However, the Department could enforce a policy of requiring grant recipients to include environmental justice concerns as an element of their grant application.

C(1)(a)(2). State Urban Parks and Healthy Communities Act
The State Urban Parks and Healthy Communities Act authorizes the Department to make efforts at solving the social ills plaguing California’s metropolitan areas. This Act authorizes the Department to make grant funds available to state agencies, urbanized local agencies and community based organizations that are conducting projects that “wholly or partially replace an area of blight, or contribute significantly to the economic revitalization of the immediate community.”85 Hence, the Department could use its authority under this Act to support local agencies and empower community residents to ameliorate environmental hazards or create economic opportunities. Community residents and local agencies should be encouraged to apply the funds toward converting unsightly environmentally hazardous industrial sites into public recreation areas or small business incubators.

C(1)(a)(3). The Roberti-Z’Berg-Harris Urban-Open Space and Recreation Program

The California legislature passed the Roberti-Z’Berg-Harris Urban-Open Space and Recreation Program in response to the increasing demand for urban open space and recreational facilities due in large part to California’s exploding population growth.86 Increasing market and population pressures are converting previous open space and recreational areas into housing and other non-recreational use parcels. A provision of the Act addresses these pressures by authorizing the Department to provide grants to “high-priority projects” that satisfy the “most urgent park and recreational needs in the most heavily populated and most economically disadvantaged areas” of the State. This Act can be interpreted to allow for the acquisition of open space and recreational facilities for the use, enjoyment and education of residents living in California’s concrete jungles. The acquisition and development of such areas would provide a welcome respite from the cement and steel confines of urban California in addition to offering solace and peace of mind to its visitors.

85 5095.5(3)
86 5622(a)-(c)
The Act also requires that a study be conducted no less than every five years to ascertain what California’s most pressing needs are. The study would be most effective if it provides for community input. This can be accomplished by allowing the community to comment on proposed projects prior to grant approval or by structuring the process so that communities could submit a list of what they consider to be a “high priority” need within their respective community.

C(1)(b)(1). Using Environmental Justice Principles to Promote the Contributions of California’s Diverse Populations

An individual’s environment directly contributes to how an individual views herself and the way in which she interacts and copes with the external world. Hence, an external environment that positively reflects, acknowledges and celebrates the achievements and contributions of California’s ethnic and cultural minorities will help to foster a sense of pride and belonging amongst those groups that have historically been on the fringes of society. The Department of Parks and recreation has the statutory authority to create such an environment for California’s cultural and ethnic minorities.

C(1)(b)(2). The State Heritage Network

The Department has the authority and ability to memorialize the contributions of California’s ethnic and cultural minorities through the State Heritage Network. The Department is authorized to expend funds towards the expansion and acquisition of California’s “heritage” corridors. These corridors are to be constructed to provide access to cultural or historical resources. Under current law a funded project must be representative of the concerns and needs of a broad range of constituencies or an underrepresented constituency.

In the United States and California, ethnic minorities are an underrepresented constituency and hence cultural or historical tributes to the legacies and achievements they contributed to California history would fall within the scope of the purpose of the Heritage Program. By erecting and developing memorials, museums and signs commemorating the contributions and achievements of California’s ethnic minorities in these groups respective communities would serve as source of motivation, inspiration and education.
Department of Pesticide Regulation

A. Background

The Department of Pesticide Regulation ("Department") is the state agency that regulates pesticide sales and use, with the purpose of protecting the environment, and the health of pesticide users and food consumers. In doing so it seeks to manage pests in ways that reduce health and environmental risks.

The Department’s statutory authority is found in several California Codes, especially the Food and Agricultural Code and the Health and Safety Code.

B. The Department and environmental justice

California’s pest control legislation gives a strong mandate to address environmental protection and environmental justice. It is framed by human and environmental safety considerations: to ensure “the proper, safe, and efficient use of pesticides” and “protection of the public health and safety,” to “protect the environment,” to “assure... agricultural and pest control workers of safe working conditions,” to ensure that consumers obtain proper information about pesticides, and to encourage use of pest control systems that do “the least possible harm to nontarget organisms and the environment.” Food & Agricultural Code § 11501.

The term “environment” - when applied to the Department’s statutory authority - refers broadly to “the aggregate of all factors that influence the conditions of life ... affected by the use of pesticides or related materials.” Food & Agricultural Code § 14101. The legislature instructs the Department to “prohibit or regulate the use of environmentally harmful materials” and to take “whatever steps” deemed necessary to protect the environment. Food & Agricultural Code § 14102.

The Department’s activities touch the lives of all Californians in innumerable ways, whether through the levels of pesticide residues on the fruits and vegetables they purchase, the pesticide they spray in their gardens, or the herbicide applied to the vegetation alongside the road on which they commute to work. However, there are also ways in which the Department’s acts or failures to act have a disproportionate impact on some Californians, especially certain low-income, minority and/or recent immigrant communities. Agricultural workers are the most conspicuous example, many of whom are low-income, Latino, recent immigrants, and/or not native English-speakers. Similarly, those who live adjacent to cultivated fields where pesticides are applied, or whose diet exposes them to heightened levels of pesticide residues, or whose exposure to pesticides is cumulative, require protection equal to that given to those who live in urban areas or do not have a particular “ethnic’ diet.

As well as these general responsibilities towards environmental justice, the Department has explicit authority to address certain environmental justice issues.

C. Statutory authority

C(I). Substantive statutory authority

C(I)(a). Pesticide residues on food
The Department is mandated to monitor pesticide residues, especially those associated with cancer, birth defects, reproductive disorders. The monitoring program prioritizes those pesticides that present the “greatest health concern and contribution to dietary exposure.” It also prioritizes monitoring of “various subpopulations which may be uniquely sensitive to pesticide residues, with special emphasis on infants and children.” Food & Agricultural Code § 12535. This recognizes that the diets of minority and low-income communities are often different from those of the remainder of the population, and that the sensitivities of infants, children, and nursing, pregnant and/or fertile mothers in these communities are especially important. Similarly, the statute authorizes the Department to take into account the heightened sensitivities of and cumulative impacts upon farm workers, gardeners and pest eradication workers who have raised levels of occupational exposures to pesticides.

The Department is also required to “continuously interpret” the monitoring program “in order to assess its general effectiveness at preventing public exposure to illegal pesticide residues” and to make an annual public report summarizing this information. Food & Agricultural Code § 12532 (2001). By implication, this interpretation and publication should consider the dietary and other exposures of the subpopulations mentioned above. While the statute only requires release of a generic public report, the Department could go further and produce and make available a version that is abbreviated and non-technical to those communities in which individuals with heightened sensitivities are likely to be located. This would truly be a “public” report.

The Department and the Department of Health Services are required to review existing programs to determine if they adequately protect infants and children from dietary exposure to pesticide residues. Food & Agricultural Code § 13135. The Department has the opportunity to measure the adequacy of this protection not only for infants and children in the suburbs, but also for those in migrant farm labor camps.

The Department of Health Services has authority to regulate tolerances for pesticide chemicals and other poisonous or deleterious substances such as food colorings and food additives. Health & Safety Code § 110070. Among the factors that the Department of Health Services must consider is the “probable consumption and effect of the substance in the diet of man.” Health & Safety Code § 110075(c). This is an area where the duties of the Department and the Department of Health Services overlap; it is important that this overlap does not result in the communities most at risk (because of heightened dietary, occupational and/or location exposure) receiving lower protection.

C(1)(b). Water contamination
Pesticide contamination of drinking water is a particular concern for communities that draw their water from underground wells and for those who drink tap water rather than purchase bottled water. In many cases these are rural, low-income and/or minority communities.

Every citizen has a right to drink “safe, potable, wholesome, and pure drinking water.” The legislature is concerned to prevent pesticide pollution of groundwater aquifers and has found that “rural communities and individual farm families” are at particular risk from contaminated water because of the proximity of their water sources to pesticides. Food & Agricultural Code § 13141. To ensure safe drinking water the Department is required to monitor soil and groundwater
contamination, publish annual reports, and restrict the use of pesticides that contaminate. Food & Agricultural Code §§ 13141-13152. The Department is therefore required to protect rural and farm communities who are most at risk from this contamination.

C(1)(c). Air contamination

Certain hazardous airborne pesticides are identified as toxic air contaminants. Food & Agricultural Code § 14021; 42 U.S.C. § 7412. The Department and the Air Resources Board have responsibility to evaluate if a pesticide emitted into the ambient air poses “a present or potential hazard to human health,” and if it should therefore be classified as a toxic air contaminant. Food & Agricultural Code § 14022.

In making this evaluation, the Department must “consider all available scientific data,” including relevant data provided by international and federal health agencies, and public health and environmental organizations. Factors the Department must consider include the risk of harm to public health, persistence in the atmosphere, and “ambient concentrations in the community.” Food & Agricultural Code § 14022. The Department must then make public a report on the health effects of the pesticide and, if the scientific methodology of the evaluation is approved, regulate the pesticide as a toxic air contaminant. Appropriate control measures must then be determined, and any person can submit written information for consideration on this topic. Food & Agricultural Code § 14023. Also, any person may petition for review of an evaluation or control measure; this petition must specify additional scientific or any other evidence to justify a new determination. Food & Agricultural Code § 14025.

When making these evaluations and enforcing control measures, the Department has the opportunity to ensure careful protection of communities most at risk from such contamination, e.g. migrant farm labor camps, communities and schools adjacent to or downwind from sprayed fields or in the take-off and landing flight paths of crop-duster airplanes, communities adjacent to or downwind from pesticide and chemical plants, and communities adjacent to roads and highways that are sprayed with pesticides. The Department also has the opportunity to make sure that its report is made available to the “public” that is likely to experience the greatest impacts, and in a form that is informative to those communities.

C(1)(d). Farm worker protection

The Department, together with the Department of Health Services, have joint responsibility for safe use of pesticides and safe working conditions for farm workers, pest control applicators and others handling pesticides or working in pesticide-treated areas. Food & Agricultural Code § 12980 et. seq.

A high proportion of these individuals are minorities, low-income and/or recent immigrants, and would therefore bear the brunt of lax enforcement. They are a highly mobile group of workers and likely to be exposed to an array of pesticides, e.g. in the Imperial Valley in the early months of the year, in Oregon in the summer, in Washington in the fall, a furlough in Michoacan, Mexico. The period of exposure is, in many cases, a life-time, e.g. many farm workers are the children of farm workers. These realities suggest that the Department should evaluate health effects of a pesticide not in isolation, but on the assumption of complex cumulative exposures and possible synergistic effects with other pesticides (including those prohibited in California).
C(1)(e). Healthy Schools

Under the Healthy Schools Act of 2000 the legislature adopted a policy of integrated pest management at schools. The preferred method to manage pests on school premises is by use of the least toxic pest management practice, so as to reduce children's exposure to toxic pesticides. Food & Agricultural Code § 13182.

To achieve this policy, the Department of Pesticide Regulation must promote and facilitate voluntary integrated pest management programs in all school districts that choose to participate. For the school districts that choose to participate, the Department must identify and encourage adoption of least-hazardous management programs at every school in that district. The Department must also develop a model program guidebook that includes information about integrated pest management in schools, how to establish a “community-based school district advisory committee,” record keeping, and “a community-based right-to-know standard for notification and posting of pesticide applications.” Food & Agricultural Code § 13183.

The Department must also establish a website to facilitate this voluntary program. Food & Agricultural Code § 13184.

Although this discretionary program depends upon participation by school districts, the Department has a valuable opportunity to promote the program to those districts where children are most at risk and where levels of awareness are lowest. It can also ensure that within school districts that choose to participate the program is implemented in all of the schools within the district and reaches all of the communities within the district, e.g. through representation of parents from at-risk, low-income and minority communities on the citizen advisory boards.

C(1)(f). Pesticide-induced birth defects, abortion and infertility

The Birth Defect Prevention Act of 1984 sets out a complete scheme with the aim of preventing pesticide induced abortions, birth defects and infertility. Food & Agricultural Code § 13122. The statute mandates the Department and the Department of Health Services to assess the dietary risks associated with consumption of pesticide-treated food. This risk assessment must consider differences in “age, sex, ethnic, and regional consumption patterns”. If certain types of data are lacking or insufficient, the producer is required to provide them. If a dietary risk is found, the Department must prohibit use or take action to modify use or modify the permissible residue tolerance. The risk assessment is public information. Food & Agricultural Code § 13134.

The Department is therefore required to take into account dietary patterns of all Californians, including, for example, fast food diets of urban teenage girls and diets favored by specific ethnic minorities.

C(1)(g). Medical education

Doctors are required to report all instances of disease or injury caused, or possibly caused, by pesticide exposure, to the local health officer. This officer is, in turn, required to inform other agencies, and authorized to investigate the disease or injury and the exposure. Health & Safety Code § 105200. The Office of Environmental Health Hazard Assessment is required to implement an
educational program to alert physicians and other health care professionals to the symptoms, diagnosis, treatment, and reporting of pesticide poisoning. Health & Safety Code § 105205.

Poor, minority and rural communities are often under-served by the health care system. In acknowledging and attempting to remedy this, the Department could interpret the term “other health care professionals” broadly, to include social workers, school nurses, medical assistants, pharmacists and traditional healers. This would go further to ensure that all are educated about pesticide poisoning. This would provide maximum benefit to low-income, minority, farm worker, transient, and recent immigrant communities.

C(1)(h). Inadvertent exposures

Pesticides must be used in a manner that prevents substantial drift to nontarget areas. Food & Agricultural Code § 12972. Agricultural workers and their families, and low-income communities, are often located on land immediately bordering land on which pesticides are applied, and are therefore at heightened risk from pesticide drift. People who hunt or forage are also at risk if they do so in areas downstream or downwind from pesticide-treated areas, e.g. pesticide-tainted run-off from a herbicide-treated reforestation area could contaminate mushrooms picked and consumed by unwitting mycologists.

Before pesticides are applied on school grounds, parks or other public areas where public exposure is foreseeable, the agency responsible for the application must post the area with English and Spanish warning signs. This provision protects children, who make disproportionate use of schools and parks. The statute, however, reaches further than this. For instance, homeless people often use parks at night and often sleep on the ground; it is therefore important that the posting be visible and effective after nightfall. In some instances a barrier might be more effective, and this is within the statute. The statute requires posting in areas “where public exposure is foreseeable” - for example, reaching public areas that are not parks but where it is foreseeable that children or transients might enter. The requirement for bilingual postings indicates the legislature’s intent to make the warnings apparent to many people. If an area has a significant population of residents or transients who are neither English nor Spanish speaking, and/or who are illiterate, the agency could act according to the spirit of the statute and posted the area with notices in other languages and/or with symbols illustrating the hazard.

C(1)(i). Special urban eradication

If an urban area of the state is proclaimed an eradication area under Food & Agricultural Code § 5761, as happened with medfly infestations in southern California, the Department is required to notify residents and physicians in the area at least 72 hours before conducting any aerial spraying. Food & Agricultural Code § 5771-5772. The notice must be hand delivered to each residential unit. Food & Agricultural Code § 5773. It must be in English and in any other language spoken by over 5% of the people receiving the notice. Food & Agricultural Code § 5777. Local print and broadcast media must also be notified. Food & Agricultural Code § 5771-5772. If the pesticide is not sprayed aerially, these procedures may still be followed, but are not required. Food & Agricultural Code § 5779.

These provisions give the Department broad responsibility to ensure that everyone in the area where the pesticide will be applied, receives advance notice in a language that they can
understand. The statute specifies the alternative language requirement when 5% of the people receiving the notice are non-English speakers. Thus, even though the proportion of Vietnamese in a city might be 3%, if a neighborhood in which Vietnamese comprise 10% of the population is designated for pesticide application, this would require advance notification in Vietnamese.

C(2). Procedural statutory authority
C(2)(a). Notice, permitting and hearing requirements

Many of Department’s regulations and permitting actions require notice and hearings. Because of the heightened impact of pesticide use on low-income and minority communities, it is especially important for the Department to ensure that these communities receive reasonable notice, and to take into account the various languages that they speak, the fact that many farm workers are migrants and/or transient, and that new immigrants might be unfamiliar with the administrative and political process in the United States.

C(2)(b). Gathering data

The Department gathers and receives data from many sources, and most of it must be available to the public. The sources include:

- People damaged by pesticide use: If a person has loss or damage because of use or application of a pesticide, within 30 days of him/her discovering this loss or damage, s/he must file a report with the county agricultural commissioner. Food & Agricultural Code § 11761.

- Pesticide users: Pesticide use reports must be submitted, and the data incorporated in setting priorities for food monitoring, pesticide use enforcement, farm worker safety programs, environmental monitoring, pest research, public health monitoring and research, and other activities. Food & Agricultural Code § 12979.

- Doctors: Physicians are required to report all instances of disease or injury caused, or possibly caused, by pesticide exposure, to the local health officer, who, in turn, must inform other agencies. Health & Safety Code § 105200.

- Police: Police officers have a duty to report pesticide spills on roadways. Vehicle Code § 20017l.

- Public employees: All public employees whose responsibilities include matters relating to health and safety, environmental protection, or use or transportation of pesticides, are required to notify the local health officer if they know or have reason to believe that a pesticide has been spilled or accidentally released. Health & Safety Code § 105215. Local health officers are required to inform other agencies, and the Director of Environmental Health Hazard Assessment must make these reports available to the public and index them, at a minimum, by county and type of pesticide. Health & Safety Code § 105220.

The Department is therefore uniquely positioned to maintain and collate this data in ways that facilitate an understanding of pesticide effects not only on Californians in general, but also on specific subgroups, such as farm workers, the infants and children of farm workers, low-income communities located downwind from pesticide manufacturing and distribution facilities, or ethnic minorities whose diets are markedly different from those of most other Californians. This type of data collection, organization and maintenance can provide a basis to identify, prove, or disprove environmental justice issues.
C(2)(c). Public reports

The Department is mandated to produce public reports on many topics, including some that implicate environmental justice (discussed above.) The Department could use these mandates as an opportunity to reach out to those members of the public who are most at-risk and provide them with information, reassurance and warning, as required.
San Francisco Bay Conservation and Development Commission

A. Background

The San Francisco Bay Conservation and Development Commission ("Commission") is the state agency that oversees development along the shoreline of San Francisco Bay. The Commission's statutory authority derives primarily from the McAteer-Petris Act ("Act"), Government Code Section 66600 et. seq. (Title 7.2 of the Government Code).

B. The Commission and environmental justice

The Commission’s mandate and the Act's express legislative findings create a clear link between the Commission and the aims of environmental justice. The Commission enjoys jurisdiction over highly accessible waterfront that is at the same time the recipient of years of environmental abuse; to further section 66602's advocacy of public access to the Bay shoreline, the Commission can act to ensure that minority and low income populations do not take on environmental risks in using the Bay. In addition, section 66602.1 contains findings that salt ponds should be protected because, along with the Bay itself, the large surface water area moderates the Bay Area climate and alleviates air pollution.

Section 66601 states that "uncoordinated, haphazard filling in San Francisco Bay threatens the bay itself and is therefore inimical to the welfare of both present and future residents of the area surrounding the bay; . . . and that further piecemeal filling of the bay may place serious restrictions on navigation in the bay, may destroy the irreplaceable feeding and breeding grounds of fish and wildlife in the bay, may adversely affect the quality of bay waters and even the quality of air in the bay area, and would therefore be harmful to the needs of the present and future population of the bay region." These elements of environmental risk have special meaning in the context of environmental justice, as the areas currently bearing disproportionate amounts of environmental degradation would best benefit from careful stewardship of the bay.

C. Statutory Authority

C(1). Substantive statutory authority

C(1)(a). San Francisco Bay Plan

Section 66650, et. seq., Chapter 5 (the San Francisco Bay Plan) provides the guide to regulate development along the Bay shoreline. Because the plan contains policies that the Commission must consider in deciding whether to issue a permit, the Commission can advance the principles of environmental justice by ensuring that amendments to the plan consider those principles. In addition, to further those principles, the Commission should ensure that adequate notice is given to disadvantaged communities regarding public hearings at which the Commission will decide whether to amend the plan.

C(2). Procedural statutory authority

C(2)(a). Committee Composition

1. Section 66620 sets out the requirements for members of the Commission: seven of the Commission's 27 Commissioners are to be public members that reside in the Bay Area. This is a

90 All code citations are to the Government Code unless indicated otherwise.
perfect opportunity to ensure that environmental justice concerns are taken into consideration by ensuring that some of the public members represent disadvantaged communities.

2. Section 66636 of the Act concerns the establishment of a Citizen Advisory Committee: here the Commission is presented with an opportunity to include representatives of disadvantaged communities on the Citizen Advisory Committee, even though not specifically required.

C(2)(b) Permit Requirements

Section 66632(b) and (d) provide that the Commission should establish reasonable requirements regarding the information that permit applicants must submit. The Commission could require that this information include the possible environmental justice effects of a project. Subsection (f) authorizes promulgation of regulations that allow permits to be issued by the Executive Director, a clear opportunity to reshape the criteria for permit granting to reflect an enhanced concern for environmental justice.

Section 6663, et. seq. (Dredging) provides that when environmental impacts of ocean and upland disposal are considered, environmental justice impacts could be considered even though not expressly required by statute.
IV. CONCLUSION

Aside from the recently enacted environmental justice-specific statutes, there are statutes that currently exist that do not expressly address environmental justice concerns but which may nevertheless be used for those purposes. These statutes take the form of laws applicable to most state agencies or laws that are applicable only to a specific state agency. This paper has identified some of those statutes. Additional efforts should be made to review all California statutes, as well as implementing regulations.

Agencies should take advantage of the statutes identified thus far and continue to review statutes not identified herein. If nothing else, meaningful attempts at addressing environmental justice concerns will entail early, genuine involvement of the public in the decision-making processes of state agencies.