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Cal/EPA – EJ Program
1001 I Street, 25th Floor
Sacramento, CA 95814

Fax: (916) 445-6401
Email: envjustice@calepa.ca.gov

Comments on Draft Recommendations to the Interagency Working Group on Environmental Justice Document

Dear Advisory Committee:

The Dow Chemical Company (Dow) appreciates the opportunity to comment on the Draft Recommendations to the Interagency Working Group on Environmental Justice document. My comments are provided as a spokesman for Dow and as a professional chemical engineer licensed in the state of California (License #4058).

The Cal/EPA Advisory Committee on Environmental Justice is to be commended for its efforts in completing this comprehensive report. Dow lauds the committee's commitment to the goal of developing effective environmental justice policies.

In section III of the document, the committee affirms its commitment to sound science. Section V recognizes that no action can ever be shown to be risk free. Dow is concerned that some of the provisions in the document belie the committee's recognition of these principles.

In Section V, Goal #2, under Program Development and Adoption, the committee recommends that Cal/EPA "Officially recognize the importance of precaution, and that it is not always necessary or appropriate to wait for actual, measurable harm to public health or the environment before evaluating alternatives that can prevent or minimize harm." As one of the world's leading technology companies, Dow recognizes that for almost every beneficial new product conferred upon mankind, there is some degree of risk inherent in its production or use. One need only look anecdotally at the invention of the airplane. If the precautionary principle stated above had been effect at the time, one could have easily concluded that harm would come to the public from planes falling out of the sky and that ground transportation would be an effective alternative to prevent that harm. The same can be said for life-saving medical devices, pharmaceuticals, agricultural products, automobiles, kitchen appliances, etc. But almost everyone agrees in hindsight that these inventions and discoveries have improved the quality of life. Unfortunately, there is a general fear of chemicals, from which *everything good* is produced. The very nature and perception of chemicals might lead to a broadly overused application of this principle, effectively stifling innovation and further advances in

technology, to say nothing of job loss and quality of life issues. Whereas appropriate precaution is important, the proposed statement is overreaching and should be removed.

In Section V, Goal #2, under Program Implementation, the committee recommends that Cal/EPA “Develop a list of obvious, high-impact project scenarios that should be avoided...” There is no definition of “obvious, high-impact project scenarios” provided, nor are any examples given. Would the mere presence of hazardous compressed gases qualify? Would a rocket fuel manufacturing plant qualify? A new refinery? The California Environmental Quality Act (CEQA) already has provisions to assess the impact of projects of this nature, through the Environmental Impact Report (EIR) process. The proposed statement should be removed.

In Section V, Goal #2, under Program Implementation, the committee recommends that Cal/EPA “Develop tools for communities and local governments to use for evaluating the siting of facilities that significantly increase pollution in disproportionately impacted communities, including the authority for denial of permits...” This authority is currently conferred on Cal/EPA’s BDOs such as the Department of Toxic Substances Control, The State Water Resources Control Board, the California Air Resources Control Board, etc. and does not need to be expanded to additional governmental agencies. The statement should be removed.

In Section V, Goal #2, under Program Implementation, in several places the committee refers to “local governments, environmental justice and community groups, and other stakeholders.” In the interests of balance, the business community and labor organizations should be included explicitly. Or as an alternative, use only the word “stakeholders” without listing any group explicitly.

In Section V, Goal #2, under Program Implementation, the committee recommends that Cal/EPA “Significantly increase the role and influence of community residents and the weight of their recommendations...” This provision is included in the document without any evidence or suggestion that the current Public Notice, Public Hearing, and Board meeting processes are inadequate. It should be removed. As an alternative, it could be inserted as an issue to analyze for possible improvements. This comment applies to a similar point made in the final sub-bullet on page 26 of the document.

In Section V, Goal #2, under Facility or Project Siting and Permitting, the committee recommends that Cal/EPA “Establish and provide to local government health-based permitting requirements that would prevent the issuance of permits for certain types of activities near sensitive receptors.” This recommendation is inappropriate. “Permitting requirements” that “prevent the issuance of permits” are not permitting requirements at all. They are automatic permit denials. What if the “certain types of activities” in question are shown to have no adverse impact through pollution prevention or pollution controls? This statement should be removed.

In Section V, Goal #2, under Program Implementation, there are four sub-bullets under the final bullet in the section. None of these sub-bullets, which deal with alternative

materials, has an element of cost/benefit associated with it. Among the justification issues should be cost. This would better reflect the committee's recognition of the tension and potential trade-offs between economic vitality and job creation vs. environmental and health impacts.

In Section V, Goal #2, under Program Implementation, the committee recommends that Cal/EPA conduct "Other alternatives analyses" which include process changes. As a licensed chemical engineer practicing in the state of California, I do not believe that environmental regulators have the expertise to do such analyses over the broad spectrum of chemical processes currently operating in the state. Dow engineers spend years in very narrowly-focused areas of chemistry just to become proficient in that one area. It is unimaginable and inappropriate for state employees to develop that same expertise to be able to analyze myriad process alternatives in a meaningful way. Regulators should regulate emissions from, and the safety of, operating units but not try to determine the appropriateness of chemical processes developed through years of research and development. This provision should be removed.

In Section V, Goal #2, under Risk Reduction and Pollution Prevention, the committee recommends that Cal/EPA "Develop criteria and protocols to enhance current approaches to cost-benefit analysis (where such analysis is needed and required)..." The parenthetical comment should be changed to "needed or required."

In Section V, Goal #2, under Risk Reduction and Pollution Prevention, the committee recommends that Cal/EPA "Require adoption of non/less toxic alternatives through a comprehensive alternatives assessment process that includes evaluation of technical feasibility and cost..." It is completely impossible to have a recommendation that requires adoption of an alternative but bases it on an evaluation of technical feasibility and cost. If the technical feasibility and/or cost render all substitutes unusable, how can the requirements of this provision be met? The word "require" should be changed to "consider."

In Section V, Goal #2, under Risk Reduction and Pollution Prevention, the committee recommends that Cal/EPA "Requir[e] schools and municipalities to implement Pollution Prevention or precautionary approaches to reduce and eliminate the use of toxic pesticides..." Again, the reference to the precautionary approach should be eliminated. See earlier comment. And "reduce and eliminate" should be reduce or eliminate.

In Section V, Goal #2, under Risk Reduction and Pollution Prevention, the committee provides several selected examples of risk reduction. These examples should not begin with the word "require." This is at odds with the committee's affirmation of sound science because there could be more adverse unintended consequences of some of the examples. For instance, rerouting diesel traffic could lead to greater congestion, more idle engines, and greater overall pollution.

In Section V, Goal #2, under Risk Reduction and Pollution Prevention, the committee recommends that Cal/EPA "Us[e] the public process [to] establish goals and performance

measures to reduce the threat of harm to human health and the environment in these disproportionately impacted communities...” The public process is already used by Cal/EPA’s BDOs to establish goals, limits, standards, and other performance measures to reduce these threats. It does not need to be repeated here and should be removed.

In Section V, Goal #2, under Program Enforcement, the committee recommends that Cal/EPA “Adopt progressively more punitive measures against permit holders who repeatedly violate environmental laws or regulations.” In the interest of fairness and balance, a companion provision should be added to the document which reads: “Adopt progressively decreasing inspection frequency and documentation requirements for permit holders who repeatedly demonstrate exemplary compliance with environmental laws or regulations.”

Again, I thank you for the opportunity to comment on the subject document and look forward to your response to these comments. If you would like clarification on any of these comments, please contact me.

Sincerely,

Randy Fischback, P.E.
Government & Regulatory Affairs Leader
California Operations
(925) 432-5122
fischback@dow.com