

September 12, 2003

The California Environmental Protection Agency (Cal/EPA)  
Advisory Committee on Environmental Justice  
1001 I Street  
P.O. Box 2815  
Sacramento, CA 95812

Re: Draft Recommendations of the Cal/EPA Environmental Justice Advisory  
Committee to the Cal/EPA Interagency Working Group on Environmental Justice

Dear Fellow Advisory Committee Members:

Pacific Gas and Electric Company (PG&E) appreciates and supports the important work conducted to date by the Cal/EPA Advisory Committee on Environmental Justice. We have worked hard together to develop an in-depth set of draft recommendations on which we have largely reached consensus. This would not have occurred without open minds, hard work, and much dedication.

Environmental Justice is an important issue for PG&E. PG&E is one of the first U.S. corporations to adopt a formal Environmental Justice policy. PG&E's policy affirms our commitment to incorporate Environmental Justice considerations into our daily operations; comply with the letter and spirit of Environmental Justice laws and regulations; seek meaningful involvement from community members in decision making that could affect their health and well-being; and work with communities to develop creative ways of minimizing or avoiding adverse effects.

#### Summary of PG&E's Comments

While PG&E supports the vast majority of the draft recommendations contained in this important Report, we have strong reservations regarding certain recommendations contained in Goal 2 of Section V. Specifically, we are concerned about the call for separate, community-specific regulatory requirements. Further, we believe the document should reflect a more orderly and methodical approach to assessing cumulative risks/impacts. In addition, we believe any recommendations calling for material substitution are inappropriate. It is inappropriate to single out a subset of potential risk reduction activities absent a scientifically based finding that these areas pose meaningful risk. We raised these concerns with respect to previous drafts as discussed in our June 17 letter to the Committee and they still apply to the current draft. Below, we explain in more detail our concerns with portions of Section V, Goal 2.

## Report discussion of Precaution

The Report discussion of precaution should be consistent throughout the document. On page 21, the 5<sup>th</sup> bullet on precaution reads, “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.” To be consistent, the word always should be added to the 2<sup>nd</sup> sentence in the 2<sup>nd</sup> to last paragraph on page 13 to read, “Committee members believe it is not always necessary....”

## Land Use and Zoning

Several draft recommendations on page 22 are proposed for reducing impacts of pollution in communities identified as disproportionately impacted. The creation of buffer zones around significant sources of risk makes sense going forward. However, this may not be feasible for existing sources. In such cases, programs should foster other modes of protection such as enforcement and pollution reduction where buffer zones are not available. Relocating small sources raises a host of concerns. For example, who was there first? Is the business willing and financially able to move? Who should pay for the relocation? Forcing a business to move may drive it out of business, create job loss, and hurt the very community this recommendation is intended to help. Again, it may be better to rely upon existing laws and regulation to require reduced impact. Instead of recommending the denial of permits or the adoption of stricter control and/or pollution prevention measures, it seems more logical that the committee first recommend a review of existing laws and regulations to identify where changes are warranted. Communities clearly have a role to play in land use planning processes, but ultimately it is the government’s responsibility to make land use planning decisions.

## Facility or Project Siting and Permitting

This section of the Report, as well as the Risk Reduction and Pollution Prevention sections addresses cumulative impact and aspects of substitute materials. There is some duplication here and at least one recommendation in the latter section should be moved up to the Facility or Project Siting and Permitting section. Specifically, the recommendation on page 25 to conduct a public process to establish a common definition of ‘cumulative impact’ more logically belongs earlier in the report, e.g., in this section on page 24 where the topic is first discussed.

The draft recommendation on page 24 calling for establishing permit action thresholds and control requirements commensurate with an area’s media specific cumulative pollution burden is premature. This is a complex issue with no readily available solution. The tools to conduct cumulative pollution burden assessments have yet to be developed. Prior to setting thresholds and control requirements, the definition of cumulative risk/impacts/pollution burden needs clarification and acceptance. What do we mean by cumulative pollution burden? How is this impact determined and by whom? What is the

protocol for addressing this burden? Cal/EPA should help foster an orderly and methodical approach to this issue. In addition, we propose that the Committee recommend the development of an appropriate method for calculating cumulative pollution burden and that this process include an opportunity for stakeholder input with respect to health and environmental concerns. It makes most sense to develop the analytical tools first. We need to understand the science and impacts so as to ensure that we obtain the intended health and environmental benefits. This will take some time, but Cal/EPA is in a position to move the process along.

PG&E supports and practices pollution prevention and the use of the least toxic materials when they are reasonably available, and providing that their performance meets the requirements of the application. But, we are concerned about the report's recommendations on page 24 with respect to mandating material substitution. As with the topic of cumulative impacts/risks, the recommendations should call for an orderly and methodical approach to this issue. First, clear protocol for material substitution needs defining. Cal/EPA should encourage research, foster education, and create incentives for municipalities and businesses to use those alternatives. Government regulators are not trained in product/process design or manufacturing, nor are they responsible for product performance, product safety, product warranties or product liability. Our agencies should establish and enforce limits on emissions, discharges or risk levels rather than mandate which chemicals, products or processes the company may use to meet the limits.

#### Risk Reduction and Pollution Prevention

As mentioned above, the recommendation on page 25 to conduct a public process to establish a common definition of 'cumulative impact' more logically belongs on page 24 in the Facility or Project Siting and Permitting Section where the topic is first discussed.

PG&E does not believe existing cumulative methods are sufficiently established or accepted to allow the steps listed on page 26 under the recommendation, "Reduce existing and potential environmental health problems in impacted communities by taking the following actions..." to be performed with the necessary scientific certainty.

Our comments in the above Facility or Project Siting and Permitting section with respect to material substitution similarly pertain to the recommendation on page 25 in this section requiring adoption of non/less toxic alternatives. It is inappropriate to single out a subset of potential risk reduction activities absent a scientifically based finding that these areas pose meaningful risk. The examples of risk reduction actions proposed on page 26 seem overly selective and arbitrary. Why focus on schools and municipalities and welding operations and boat paints? Why not hospitals? Where is the research? What is the basis for selecting this particular list of actions? Who decides? Scientifically based guidance should come from the state with respect to the use of potentially toxic products or a ranking of products based upon toxicity. It should be up to a business to choose materials and processes as long as the overall impact meets the prescribed limits.

As a member of this Advisory Committee, I offer these comments in the spirit of making Environmental Justice a reality for all Californians. I look forward to our discussion of these issues at the Advisory Committee meeting on September 29-30.

Please feel free to contact me or Holly Welles of my staff at (415 973-4407) with any questions you may have.

Sincerely,

cc: Winston H. Hickox, Secretary of Cal/EPA