

# Expanding Public Participation is Essential to Environmental Justice and the Democratic Decisionmaking Process

*Scott Kuhn\**

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## INTRODUCTION

Unless the people and communities who have to live with environmental pollution policies are actively and meaningfully involved in the decisionmaking process, it is irrelevant whether environmental regulatory control is located at the federal, state, or local level. For too long, the public's voice in environmental

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\* J.D. UC Hastings College of the Law 1997. Staff Attorney, Communities for a Better Environment, San Francisco, CA. The author would like to thank Richard Toshiyuki Drury and Luke Cole for their support and inspiration. For more information on this article, please contact Communities for a Better Environment at 415-243-8373.

regulation, which is an essential part of democracy, has been tokenized, stifled, drowned out by industry, or otherwise ignored. With increasing privatization, marketization, and decentralization of environmental decisionmaking, increased public participation is essential to achieving environmental justice. True public participation and environmental justice cannot be realized until the communities that are impacted by environmental regulations have a voice in the process equal to that of regulated industry.

This article briefly illustrates how federal, state, and local regulation has benefited from the increased public participation fostered by Communities for a Better Environment (CBE). The public, with assistance from CBE, has fought the implementation of market-based pollution trading programs because these programs remove the public from the decisionmaking process. At the local level, communities have stopped the cement industry from burning rubber tires without the public environmental review process required by the California Environmental Quality Act. At the county level, the public has worked to pass a Good Neighbor Ordinance to increase community review of major industrial projects. As we move into the next millenium, ensuring active, meaningful, and diverse public participation in environmental decisionmaking is a challenge that groups like CBE must continue to meet.

#### I.

#### THE PRINCIPLES OF ENVIRONMENTAL JUSTICE

A central tenet of the environmental justice movement is the right to self-determination and meaningful participation in the decisions that affect one's life. Historically, low income communities, women, and people of color have been excluded or tokenized in environmental decisionmaking. For example, just over one-fourth of the U.S. Environmental Protection Agency's (EPA) workforce are people of color, but "women and minorities continue to be underrepresented in EPA's management staff."<sup>1</sup> Many national environmental organizations, such as the Audu-

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1. ROBERT D. BULLARD, *DUMPING IN DIXIE: RACE, CLASS, AND ENVIRONMENTAL QUALITY* 101 (1990) (reporting that in 1992 "women and minorities constituted 28% and 9.7%, respectively, of the management staff"); See also Dianne Saunders, *Forest Service Prepares for the 21st Century*, RACE, POVERTY & THE ENV'T (Winter 1991) (discussing the Forest Service's Outreach/Recruitment Task Force created in 1989 as a result of a consent decree); Richard Lazarus, *Pursuing Environmental Justice: The Distributional Effects of Environmental Protection*, 87 N.W. U.L. REV. 787, 820-21, 851 (1994) (examining underrepresentation of racial minorities in government agencies).

bon Society, Natural Resources Defense Council, and the Sierra Club have been and are dominated by white males.<sup>2</sup> Women and people of color are also underrepresented in the boardrooms of the corporations that cause the majority of the pollution and environmental hazards.<sup>3</sup> Ensuring meaningful public participation must begin with an understanding of past alienation, discrimination, and exclusion.

In order to combat the historic and systematic exclusion of the public, especially women and people of color, and to increase public participation in decisionmaking,<sup>4</sup> the U.S. EPA's National Environmental Justice Advisory Council (NEJAC) developed a Model Plan for Public Participation containing seven core values.<sup>5</sup> In order to foster effective community involvement, the public participation process must:

1. allow people to have a say in decisions that affect their lives;
2. include the promise that the public's contribution will influence the ultimate decision;
3. communicate the interests and meet the process needs of all participants;
4. seek out and facilitate the involvement of those potentially affected;

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2. See Charles Jordan and Donald Snow, *Diversification, Minorities, and the Mainstream Environmental Movement*, in VOICES FROM THE ENVIRONMENTAL MOVEMENT: PERSPECTIVES FOR A NEW ERA 71, 75-78 (Donald Snow ed., 1991) (detailing racist exclusion of people of color from early conservation clubs and noting that several Southern California chapters of the Sierra Club formerly deliberately excluded African Americans and Jews from membership. When the San Francisco Sierra Club chapter tried in 1959 to introduce a policy of inclusion of the "four recognized colors" into the Club, the resolution failed. *Id.* As late as 1990, there were no African Americans or Asian Americans in the Sierra Club and only one Latino. In 1990, the Audubon Society had only three African Americans out of 350 staff members. *Id.* at 73.

3. See DEPARTMENT OF LABOR, GOOD FOR BUSINESS: MAKING FULL USE OF THE NATION'S HUMAN CAPITAL, FACT-FINDING REPORT OF THE FEDERAL GLASS CEILING COMMISSION, DAILY LAB. REP., Mar. 17, 1995 (Special Supplement DLR No. 52) ("According to surveys of Fortune 500 companies . . . 95 to 97% of senior managers—vice presidents and above—were men . . . 97% of male top executives were white."); see also Shari Caudron, *The Concrete Ceiling*, INDUSTRY WK., July 4, 1994, at 31 (noting that women held less than a third of all management jobs in 1992).

4. See Luke Cole, *Macho Law Brains, Public Citizens, and Grassroots Activists: The Models of Environmental Justice*, 14 VA. ENVTL. L.J. 687 (1995) (hereinafter *Macho Law Brains*); Luke Cole, *Legal Services, Public Participation, and Environmental Justice*, CLEARINGHOUSE REV. 449, 450 (1995) (hereinafter *Legal Services*) ("[T]he strategic use of the political participation provisions of environmental laws can help relieve the burden of environmental dangers on communities and bring those communities together to realize and exercise their collective power.").

5. PUBLIC PARTICIPATION AND ACCOUNTABILITY SUBCOMMITTEE, U.S. ENVT'L PROTECTION AGENCY, THE MODEL PLAN FOR PUBLIC PARTICIPATION (1996) (hereinafter MODEL PLAN).

5. involve participants in defining the participation process;
6. communicate to participants how their input was, or was not, utilized; and
7. provide participants with adequate information.<sup>6</sup>

The Model Plan's guiding principles are that communities and all types of stakeholders should be seen as equal partners in a dialogue on environmental justice issues and that interactions must encourage active community participation, institutionalize public participation, recognize community knowledge, and utilize cross-cultural formats and exchanges.<sup>7</sup>

## II.

### CASES STUDIES

#### A. *State and Federal Programs: Pollution Trading in the South Coast Air Quality Management District*

##### 1. *Pollution Trading: Rule 1610*

The 1990 Clean Air Act Amendments gave states and local air districts the option of creating market-based incentive programs. These Amendments had a profound effect in the 6600 square mile South Coast Air Basin, which includes Orange County and non-desert portions of Los Angeles, San Bernardino, and Riverside Counties. In the late 1980s, regulated industries in the South Coast Air Basin had already begun advocating strongly against command-and-control regulations and in favor of market-based regulations. Immediately after the Amendments were passed some of the largest polluters in the air basin created the Regulatory Flexibility Group in order to launch a campaign for market-based pollution control regulations.<sup>8</sup>

As a result of this industry and political pressure, the South Coast Air Quality Management District (SCAQMD) created a system of market-based regulations. Approved by SCAQMD in January, 1993, Rule 1610's goal is to reduce motor vehicle emissions, including volatile organic compounds (VOC), nitrogen ox-

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6. See *id.* citing INTERACT: THE JOURNAL OF PUBLIC PARTICIPATION, Vol. 2, No. 1 (Spring 1996).

7. See *id.*

8. Matthew Polesetsky, *Will a Market in Air Pollution Clean the Nation's Dirtiest Air? A Study of the South Coast Air Quality Management District's Regional Clean Air Market*, 22 ECOLOGY L.Q. 359 (1995) (noting that the RFG included at various times Chevron, Unocal, Shell, Mobil, Texaco, ARCO, and several of the other largest polluters).

ides (NOx), carbon monoxide (CO), and particulate matter (PM) in exhaust emissions by issuing mobile source emissions reduction credits in exchange for the destruction of old, high-emitting vehicles.<sup>9</sup> Rule 1610 allows companies to buy and sell credits and to use them as an alternative method of compliance with emissions reduction requirements in other SCAQMD and U.S. EPA-approved rules.

## 2. *Rule 1610 Has Been Used to Circumvent Rule 1142*

Another SCAQMD rule, also enforceable under the federal Clean Air Act, requires all refinery marine terminals to reduce Volatile Organic Compound (VOC) emissions.<sup>10</sup> Rule 1142 addresses the problem of toxic vapor releases, including the known human carcinogen benzene, during loading of oil tankers. As approved by the U.S. EPA in California's State Implementation Plan (SIP), Rule 1142 requires that VOC emissions be reduced by at least 95 percent during any loading, lightening, ballasting, or housekeeping events where emissions of VOCs exceed two pounds per thousand barrels.<sup>11</sup>

The only feasible way to directly comply with Rule 1142 is to install a marine vapor recovery system. These systems, which work in a way similar to vapor recovery nozzles used on gasoline pumps, reduce emissions of VOCs by over 98 percent. This equipment, already installed in the San Francisco Bay Area, Louisiana, New Jersey, and other locations, also reduces other harmful vapors released during loading and the risk of fire and explosion.<sup>12</sup>

The SCAQMD has allowed four oil companies, Unocal, Chev-

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9. South Coast Air Quality Management District, Regulation XVI, Rule 1610, available at <http://www.aqmd.gov/rules/html/r1610.html> (visited Jan. 12, 1999).

10. South Coast Air Quality Management District, Regulation XI, Rule 1142, available at <http://www.aqmd.gov/rules/html/r1142.html> (visited Jan. 12, 1999). Similar rules have been adopted by jurisdictions as diverse as the Bay Area Air Quality Management District and the states of New Jersey and Louisiana.

11. Approval and Promulgation of Implementation Plans, 59 Fed. Reg. 64,132 (1994) (amending 40 C.F.R. pt. 52).

12. A study by the Bay Area Air Quality Management District ("BAAQMD") concluded that vapor recovery systems "would have a beneficial impact on tanker safety . . . A risk analysis done for an oil company . . . indicates that controlling these vapors may improve safety by as much as eight orders of magnitudes (sic) (100,000,000)." BAAQMD, MARINE VESSEL LOADING TERMINALS RULE STAFF REPORT 12, (January, 1989). An EIR for the Unocal San Francisco Refinery Terminal reported that "use of the VCS may reduce the risk of fire or explosion at a tankship or barge during the loading process by a factor of 14 when compared with no vapor recovery." STATE LANDS COMMISSION, UNOCAL SAN FRANCISCO MARINE TERMINAL DRAFT ENVIRONMENTAL IMPACT REPORT 4.2-30.

ron, GATX<sup>13</sup> and Ultramar to avoid complying with the emissions reductions requirements of Rule 1142 by instead scrapping old vehicles under Rule 1610.<sup>14</sup> Through the use of Rule 1610, these oil companies continued to release extremely high levels of VOCs at their marine terminals, exposing workers and nearby residents to unacceptable health risks.<sup>15</sup> While car scrapping helps the marine terminals save money by avoiding the expense of vapor recovery systems, the economic benefit is realized at the expense of workers and local residents.<sup>16</sup> Compliance with Rule 1142 is required under the Clean Air Act,<sup>17</sup> and failure to comply with its emission reduction regulations is a violation of federal law.<sup>18</sup>

On July 23, 1997, CBE filed five lawsuits alleging violations under the Clean Air Act<sup>19</sup> and a complaint under Title VI of the Civil Rights Act of 1964 with the EPA.<sup>20</sup> By filing both actions,

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13. GATX actually installed marine vapor recovery equipment at its marine terminal, but used credits from cars scrapped under Rule 1610 to offset emissions during events conducted when the equipment was not operational. CBE and GATX have recently entered into a consent decree.

14. Rule 1610 has also been used by other companies to avoid compliance with emission control requirements at their facilities and ride-sharing programs.

15. An Environmental Impact Report prepared for Unocal's now withdrawn Lease Renewal application at its marine terminal contained documentation that workers at the marine terminal will be exposed to a total cancer risk of 162 per million workers if that facility's lease is renewed to allow four additional ships per month to unload. *See Comments of the Los Angeles County Building and Construction Trades Council and the Steamfitters and Pipefitters Local 250 on the Draft Environmental Impact Report for the Renewal of Unocal's Lease for Berths 148-151 in FINAL ENVIRONMENTAL IMPACT REPORT, UNOCAL'S MARINE OIL TERMINAL LEASE RENEWAL FOR BERTHS 148-151 PORT OF LOS ANGELES, (May 1996) (on file with author).* This data was only based on an increase of four ships per month at one facility and does not include the cumulative health impacts of all ships at that terminal, let alone all loading events from the other terminals in the area.

16. Unocal and Chevron both have installed vapor recovery equipment at their San Francisco Bay Area marine terminals. By buying and junking 334 old cars, Ultramar was able to avoid installing expensive vapor-control equipment. John Fialta, *Breathing Easy: Clear Skies are Goal as Pollution is Turned into a Commodity*, WALL ST. J., Oct. 3, 1997.

17. "All rules incorporated through State Implementation Plans are enforceable under the CAA."

18. 61 Fed. Reg. 57775, 57777 (1996); *See also* U.S. v. Campbell Soup, No. CIV-S-95-1854-DFL, 1997 U.S. Dist. LEXIS 3211, at 19 (E.D. Ca. Mar. 11, 1997).

19. The complaints were refiled in the summer of 1998. The cases pending at the time of publication are: *Communities for a Better Env't. v. Unocal*, Civ. No. 98-5175 DT (BQRx) (C.D. Cal.), *Communities for a Better Env't. v. Ultramar*, Civ. No. 98-5174 DT (BQRx) (C.D. Cal.), *Communities for a Better Env't. v. Chevron*, Civ. No. 98-5173 DT (BQRx) (C.D. Cal.).

20. *Communities for a Better Env't. v. South Coast Air Quality Mgmt. Dist.*, EPA File No. 10R-97-R9. *See* Marla Cone, *Civil Rights Suit Attacks Trade in Pollution Trade-Offs*, L.A. TIMES, July 23, 1997, at A1. Robert Stevens, *Civil Rights Laws are Cited in Challenge to California Pollution-Control Tactics*, WALL ST. J., July 24, 1997.

CBE is proceeding with a solid legal claim under the Clean Air Act, while also filing the administrative complaint to attack the larger problem of environmental injustice.<sup>21</sup> Initial results of this two-prong legal attack have been promising. The EPA's Office of Civil Rights accepted CBE's Title VI complaint, and the case is pending with the US EPA. In addition Mr. Lohmann, one of two SCAQMD inspectors responsible for policing the car scrapping program, has recently come forward with testimony that the program is full of fraud, designed to be unenforceable, fraught with lax enforcement, and providing little, if any environmental benefit.<sup>22</sup> Lohmann's testimony also demonstrates that Rule 1610 fails to meet EPA's requirement that all emissions credits be real, quantifiable, and surplus.

### *3. Rule 1610 Removes the Public from Environmental Decisionmaking and Undermines Democracy in the Name of Cost-Efficiency*

From a more general perspective, Rule 1610 provides very little opportunity for public participation in environmental decisions. Under Rule 1610 precedents, CEOs and shareholders of companies decide, without community involvement, whether to comply with emissions reductions or offset reductions through the use of pollution credits.<sup>23</sup> Profit, not public health, is the deciding factor.<sup>24</sup> The pollution trades made pursuant to Rule

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Daniel Wood, *Blueprint for Cleaner Skies Under Fire*, CHRISTIAN SCIENCE MONITOR, July 28, 1997, at 1 (quoting Larry Berg, former Boardmember of the South Coast Air Quality Management District, as stating that "win or lose, the lawsuit will force an imperative nationwide . . . debate.")

21. CBE's approach demonstrates the effectiveness of employing litigation to serve multiple objectives. See generally Derek Bell, *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L.J. 470, 513 (1976) ("Litigation can and should serve lawyer and client as a community-organizing tool, an educational forum, a means of obtaining data, a method of exercising political leverage, and a rallying point for public support.")

22. Mr. Bruce Lohmann is a SCAQMD Air Quality Inspector II, one of two inspectors designated by the SCAQMD to enforce Rule 1610, and has made these statements under oath in a declaration. See Marc Cooper, *Smoke Screen*, L.A. NEW TIMES, Feb. 5-11, 1998, at 11. Mr. Lohmann's testimony destroys each of the assumptions underlying Rule 1610 and demonstrates that: (1) the vehicles scrapped rarely would have been driven the assumed 4,000 to 5,000 miles per year; (2) few of the scrapped vehicles had three years of useful life remaining; (3) people who sell the vehicles rarely buy newer, cleaner vehicles.

23. A public notice is only required when companies intend to use Rule 1610 credits as offsets for new sources. To date, not one new source has applied to use such credits.

24. See Lisa Heinzerling, *Selling Pollution Forcing Democracy*, 14 STAN. ENVTL. L.J. 300, 318 (1995) (noting that the history of the 1990 Clean Air Act Amendments

1610 are not subject to public review or comment. In fact, the public will have a very difficult time ever finding out which companies are scrapping cars to avoid compliance with pollution control standards.<sup>25</sup> As Lisa Heinzerling notes, "in deciding whether to adopt a trading program or some other regulatory strategy, democracy cannot be counted on the side of pollution trading."<sup>26</sup> As Rule 1610 demonstrates, when "pollution trading programs do not assure meaningful citizen participation in decisions about the environment, the distributional objective goes unmet: some unconsenting citizens must endure greater pollution, in the service of reducing the overall costs of environmental compliance."<sup>27</sup>

In order to foster public participation, CBE organized a morning press conference and an evening public hearing, attended by over 200 local community members, to coincide with the filing of the lawsuits and the administrative complaint. Many of the community members directly impacted by the pollution shared their concerns and demands with officials of the South Coast Air Quality Management District and the local press.<sup>28</sup> The hearing gave the community, which has traditionally been disenfranchised and neglected by policymakers, a chance to voice their concerns. Building the political power of low-income communities of color will enable them to hold decisionmakers accountable and to ensure that their voices are heard by government and industry.<sup>29</sup>

In this case, it appears that community pressure has had an effect. While final outcomes of the legal actions are pending, the

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challenges the view that "establishing a system of marketable permits will promote democratic values, such as deliberation, decentralization, and freedom from faction. In reality, Congress paid little attention to [debating the overall pollution limits] . . . [and] the 1990 Amendment owes much of its content to the influence of special interest groups.").

25. Public participation has proven very successful as a tactic to prevent and reduce pollution. For example, the Toxic Release Inventory data, which is required by the Emergency Planning and Community Right to Know Act, has proven very successful in mobilizing public opposition that has led to pollution prevention and reduction. See generally Cole, *Legal Services*, *supra* note 4; Cole, *Macho Law Brains*, *supra* note 4.

26. Heinzerling, *supra* note 24, at 341.

27. *Id.* at 343.

28. Communities for a Better Environment has several community organizers on its staff and has actively organizing communities of color in Los Angeles for over five years. Through CBE's LA CAUSA project, community members have received environmental justice trainings and have recently opened an environmental justice resource center in Huntington Park.

29. For a discussion of similar strategies, see Luke Cole, *Empowerment as the Key to Environmental Protection: The Need for Environmental Poverty Law*, 19 *ECOLOGY L.Q.* 619 (1992). See also Cole, *Macho Law Brains*, *supra* note 4.

results to date have been very favorable. The Title VI complaint and law suit have sparked a national debate over pollution trading and environmental justice.<sup>30</sup> As a result of CBE's lawsuits and Title VI complaint, California EPA has put all district credit rules and trading programs on hold;<sup>31</sup> U.S. EPA is considering making environmental justice concerns part of the approval of any new pollution trading schemes; and the SCAQMD Board of Directors unanimously passed the 10-point program for environmental justice.<sup>32</sup>

### B. Public Participation at the Local Level

#### 1. How the California Cement Industry Has Thwarted Public Participation

In 1993, California Portland Cement Company applied for a permit to burn old rubber tires as fuel in its cement kiln in Mojave City, California. Local residents opposed the project and voiced their concerns to the permitting agency, the Kern County Air Pollution Control District. CBE presented scientific evidence to the Kern County Air District proving that tire burning in cement kilns generates highly toxic chemicals, including dioxins, PCBs, lead, mercury, and chromium. Disregarding community concerns, the Air District refused to require California Portland to conduct any environmental review of the project under the California Environmental Quality Act (CEQA). The Air District also failed to consider alternatives to the project or pollution control technologies to reduce toxic chemical emissions. CBE, Boalt Hall's Environmental Law Community Clinic, and the Center on Race, Poverty, and the Environment represented

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30. See generally Fialta, *Breathing Easy*, *supra* note 16.

31. See Letter from Michael Kenney, Executive Officer, California EPA, to David Howekamp, Director, Air Division, U.S. EPA Region IX (August 18, 1997) (on file with author); Frank Clifford, *Approval of Smog Credits is Suspended*, L.A. TIMES, Aug. 28, 1997 at A26.

32. See Frank Clifford, *AQMD Plan Will Target Pollution in Poor Areas*, L.A. TIMES, Oct. 11, 1997, at A1. The program will cost over one million dollars and will involve: town hall meetings; ambient monitoring of air toxics; community response teams; a restructuring of the public comment process under the California Environmental Quality Act (CEQA); creation of an environmental justice task force that will address environmental justice concerns, including those related to Rule 1142; clean-up incentives for diesel fuel; use of modern field inspection technology; consideration of amending current permitting practices for portable equipment; and reopening for public comment of Rules 1401—New Source Review of Carcinogenic Air Contaminants and 1402—Control of Toxic Air Contaminants from Existing Sources (on file with author).

Southern Kern Residents Against Pollution and other community groups in a lawsuit to require an environmental impact report.

Discovery in the case revealed that the Air District had never required any project applicant to prepare an environmental impact report (EIR) under CEQA. Based on this information, the California Air Resources Board initiated an investigation of the Kern Air District that found widespread violations of CEQA and other environmental laws. In addition to the state investigation, the lawsuit resulted in two orders by the Kern County Superior Court. First, the court ordered California Portland to stop burning tires immediately. Second, the court ordered the Air District to conduct CEQA review prior to moving forward with the tire-burning project. California Portland then appealed the Superior Court ruling to the Fifth District Court of Appeals, which affirmed the trial court.

In response, California Portland and other cement kilns wanting to burn tires took their battle to the state legislature, seeking a bill endorsing tire burning. CBE and other environmental and community groups, including California Communities Against Toxics (CCAT) and the West County Citizens Air Watch, learned of the legislation and presented several alternatives to burning tires'.<sup>33</sup> In fact, a California Integrated Waste Management Board (CIWMB) study shows that increased use of rubberized asphalt could eliminate all waste tires in the state within two years, without the toxic emissions related to tire burning. The legislation was soundly defeated.

Finally, the cement industry attempted to make an end-run around the courts and legislature, appealing to the CIWMB for an endorsement of tire burning. The CIWMB, an appointed agency, first notified CBE that it was going to consider a resolution endorsing tire burning only 48 hours before a scheduled hearing. CBE objected and was able to convince the CIWMB to postpone the hearing. Communities living near these cement kilns began investigating and learned that the CIWMB had already hired a team of independent experts from the University of California, Davis. The UC Davis team found that tire burning is

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33. See *State Putting New Spin on Plans for Old Tires*, L.A. TIMES, Feb. 13, 1998 at D2 (noting that the Cabazon band of Mission Indians were entering into a joint venture to build a plant on tribal land that would recycle tires and produce rubberized asphalt, insulation, and playground mats). Waste tires can be used to: pave roads as an additive to asphalt, recapp of old tires, and recycled for use in other rubber products. Thus, instead of being burned and creating pollution, the tires are actually recycled and reused, preventing pollution and creating much-needed economic development on Indian Reservations.

a poor disposal alternative because it generates highly toxic chemicals. Nevertheless, several CIWMB Board members continue to favor tire burning despite the recommendations of their own independent scientists.

The day of the hearing finally came, and due to community pressure, the CIWMB never even voted on the resolution. Instead, it merely reaffirmed an earlier resolution supporting various uses for old tires. The public's victory at each stage of this process signifies the important role the public can play in educating decisionmakers about the real impacts of a project.

## 2. *CBE's Good Neighbor Ordinance and Bucket Brigade*

Oil refineries are one of the largest pollution sources in the world.<sup>34</sup> In Contra Costa County, California oil refineries and other large industrial plants experience a major accident every five weeks.<sup>35</sup> Local, state, and federal regulators have not taken adequate steps to respond to the public's concerns about these accidents.<sup>36</sup> Nor have regulators adequately punished polluters who break the law.<sup>37</sup> To fill this void, CBE worked with community groups and the unions to get the Contra Costa County Board of Supervisors to pass the Good Neighbor Ordinance and create a CBE-run "Bucket Brigade," which enables community members to take air samples.<sup>38</sup>

CBE has created an air-monitoring device, made from a five gallon bucket, that enables community members to take reliable, scientifically and legally valid "grab samples"<sup>39</sup> of air quality. The need for the community Bucket Brigade arose from the persistent lack of air monitoring from agency regulators. One major success of the program is that it holds agencies and industry accountable and lets them know that communities will be keeping

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34. Glen Martin, *Bay Refineries Called Among Worst Polluters in State*, S.F. CHRON., May 30, 1997, at A6 (citing Environmental Working Group study on refinery pollution).

35. Jane Kay, *Report Tallies Toxic Leaks*, S.F. EXAMIN., July 9, 1997 at A4 (reporting the findings of a report by CBE and labor unions that found 55 major accidents in 8.5 years).

36. See Michael Hytha, *Refineries A Worry, Poll Finds*, S.F. CHRON., Aug. 14, 1997, at A17 (62% of randomly selected adults in Contra Costa County said the refineries posed a very serious or somewhat serious threat).

37. See Michael Hytha, *Watchdog Group to Help Citizens Monitor Spills*, S.F. CHRON., July 16, 1997, at A14 (reporting that Contra Costa County Board of Supervisors had unanimously agreed to hire an ombudsman to handle citizen complaints).

38. See Michael Hytha, *Kids Helping Clear Air by Measuring Pollution*, S.F. CHRON., Feb. 6, 1998 at A19.

39. At the ELQ Symposium, CBE Board of Director Donald "The Bucket Man" Brown demonstrated how to use the sampler, actually taking an air sample.

an eye, and a nose, on them. The potential of the program is underscored by the fact that the United States Environmental Protection Agency recently awarded CBE and the County a grant to expand the Bucket Brigade.

The Good Neighbor Ordinance requires companies planning large-scale maintenance and construction projects over one million dollars to get approval from the county before beginning work. A primary goal of the ordinance is to increase public review of major industrial projects that had previously avoided such scrutiny through permitting and procedural loopholes and technicalities.

The power of the Ordinance can be seen by the strong and unified industry opposition to it. The first real test came when CBE alleged that Shell's Martinez refinery was violating the ordinance.<sup>40</sup> Since then, several industrial firms have had lawsuits challenging the Ordinance dismissed.<sup>41</sup> The true impact of the Ordinance on public health and safety remains to be seen, but the model is one that other communities, cities, and counties should consider.

#### CONCLUSION

Increasing public participation is a key to achieving environmental justice. Environmental justice necessarily includes active and meaningful public participation. As the struggles discussed in this article illustrate, the unfortunate trend is toward privatization and capitalization. To ensure and expand the role of the public in environmental decisionmaking, environmental justice advocates and supporters will have to increase their public education, community organizing, and legal advocacy. Only through increased public participation, will we see the day when, true environmental justice [is] achieved with a vocal, informed, and empowered community expressing its vision of what its community can and should be. An empowered community has the resources, motivation, information, and political savvy not only to reject and oppose, but also to formulate, initiate, and implement its own plans, and to monitor the administration and operation of such initiatives.<sup>42</sup>

CBE will continue to work toward this goal.

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40. Michael Hytha, 'Good Neighbor Law' Gets First Real Test, S.F. CHRON., Sept. 6, 1997 at A15.

41. Ariel Ambruster, *Refineries lose legal challenge to safety law*, CONTRA COSTA TIMES Sept. 17, 1997 at A4.

42. Peggy Shepard, *Issues of Community Empowerment*, 21 FORDHAM URB. L.J. 739, 751-52 (1994).