



OUR CHILDREN'S EARTH

Think clearly about the future.

April 2004/May 2004

Welcome to **Our Children's Earth Insider Update**, an e-bulletin for everyone interested protecting our earth from pollution.

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OCE IN ACTION

OCE Works to reduce Sewage Spills in Hawaii's Swimming Waters: The City and County of Honolulu's sewerage systems are in violation of the federal Clean Water Act and as a result, are polluting O'ahu's streams and near shore coastal waters. This pollution has resulted in beach closures, human health risks, and substantial economic losses to ocean recreation and tourist-based businesses.

OCE, the Sierra Club, Hawai‘i Chapter, and Hawai‘i’s Thousand Friends (“HTF”) gave the City 60-days notice of their intent to sue for hundreds of Clean Water Act violations at the Sand Island, Honouliuli, Kailua, Wai‘anae, and Kahuku Wastewater Treatment Plants and associated collection systems. The notice alleges the City has repeatedly violated its permits by failing to timely maintain, fix, or upgrade facilities, causing discharges of partially or inadequately treated sewage into ocean outfalls that exceed limits set by law for harmful bacteria and cancer-causing pesticides.

OCE Asks Court to stop Santa Barbara County from Illegally Spending State Transit Funds for Road Improvements: Our Children’s Earth filed a petition asking the Superior Court of California to stop the Santa Barbara County Association of Governments (SBCAG) from illegally spending transportation funds specifically set-aside for public transportation.

The petition, filed in Santa Barbara County Superior Court, asks the court to order SBCAG to set aside a decision made last month authorizing the County to spend about \$3.5 million of State Transportation Development Act (TDA) funds for roads and streets rather than for public transportation services.

Jesus Estrada, a member of Mixtec community, Santa Maria’s and David Pierce of Lompoc join OCE in the litigation. The suit seeks an order stopping the illegal diversion of transit funds to roads and consideration of transit services to meet the needs of thousands of strawberry workers who have few other transportation choices.

OCE Joins Others in Appealing Court Decision and Seeks Transit Improvements Promised by Regional Transit Agency in 1982: OCE and other environmental and community groups filed a petition in the Ninth Circuit Court of Appeals asking the court to rehear arguments in a case against the Metropolitan Transportation Commission. The original case sought enforcement of a transportation control measure promised by the Regional Transit Agency in 1982, to help clean the region’s air.

The two-to-one decision, issued April 6, 2004, by the U.S. Court of Appeals for the Ninth Circuit in *Bayview Hunters Point Community Advocates et al. v. Metropolitan Transportation Commission et al.*, found that MTC’s state implementation plan (SIP) provision to increase mass transit ridership does not create an enforceable obligation.

The coalition is concerned that if the April decision stands, and SIP provisions become simply “goals,” not enforceable rules, other transportation districts around the nation may try to get out of their commitments to clean the air as well. This case could set a damaging precedent that would undermine the ability of the EPA to enforce the Clean Air Act. In the petition, the coalition argues that the court misinterpreted the law and asks that the case be considered “en banc.” If the petition is granted, a larger, eleven-member panel of circuit judges will reconsider the case.

OCE and Ecological Rights Foundation Take Action Against US EPA For Failing To Review And Revise Water Standards: Under the Clean Water Act, the Federal EPA is required to review CWA regulations that establish a national minimum floor of pollution control based on currently available technology on an annual basis. These “effluent guidelines” regulations set uniform standards for 55 categories of industry that discharge water pollutants, and Congress required EPA to review these effluent guidelines annually to ensure that they are kept up-to-date with changes in available treatment technologies.

EPA failed to complete a review of effluent guidelines for a single category of industry last year, however, and the Bush Administration is proposing to review only two of the 55 categories of industry regulated by effluent guidelines in 2004. OCE and the Ecological Rights Foundation took action against by filing a lawsuit against the federal agency for its failure to update these standards.

*****OCE ADVOCACY AND EDUCATION INITIATIVES *****

OCE Wins Clean Air Award: OCE board member Scott McDonald accepted the “Clean Air Award” from the American Lung Association on April 29, 2004 on behalf of OCE for its efforts to pass the March 2004 ballot initiative Proposition I, or Healthy Air Enforcement Act of 2004. The ordinance requires the San Francisco Municipal Railway to replace all of its pre-1991 diesel buses in a series of deadlines before 2007. Diesel exhaust from all sources—mostly trucks and buses—accounts for 70 percent of the cancer risk from air pollution in the state, according to the California Air Resources Board. OCE worked with four other environmental, health and community groups on the initiative.

OCE to Host Prestigious Equal Justice Works Fellow: Equal Justice Works, an organization which hosts the nation’s largest postgraduate legal fellowship program, selected OCE’s proposal for a two-year Equal Justice Works fellowship. Beginning in September, Marcie Keever will join OCE to focus on the Air Pollution Community Involvement Project, which seeks to enforce specific portions of the Clean Air Act through citizen involvement, administrative advocacy and citizen lawsuits. The project has two major focus areas: To improve compliance with the Clean Air Act’s Title V permitting program in the Bay Area through oversight, investigation, and litigation, and to create a manual on the Title V permitting and appeals process for use by other clean air legal practitioners. Marcie was formerly an attorney with Golden Gate University’s Environmental Law & Justice Clinic.

OCE urges the Environmental Protection Agency to Strengthen the Proposed Interstate Air Quality Rule: OCE joined other environmental groups, including National Parks Conservation Association, in urging the Environmental Protection Agency (EPA) to protect the health of American citizens and improve the hazy skies plaguing our national parks. Specifically, the coalition called for a strengthening of the proposed Interstate Air Quality Rule (IAQR) and finalizing the rulemaking this year.

Particulate matter pollution causes significant health problems, placing the elderly, children, and individuals suffering from lung and heart diseases at risk. PM pollution emitted by U.S. power plants shortens the lives of an estimated 30,000 Americans each year—exceeding the number of deaths attributed to drunk driving accidents or homicides. In addition, power plant pollution triggers hundreds of thousands of asthma attacks and illnesses annually leading to millions of days of missed work.

The coalition is advocating that emissions from power plants be reduced to levels no less stringent than the national cap of 2 million tons of sulfur dioxide and 1.25 million tons of nitrogen dioxide annually. This change will save many additional lives in addition to being cost effective. The group also called on EPA to implement the emission reductions on an earlier schedule which in turn, would give states the opportunity to attain the national air quality standards for particulate matter 2.5 and ground level ozone.

OCE pushes for more stringent controls on cruise ships and shipping vessels: Each cruise ship in port for half a day generates the pollution of at least 12,240 vehicles and exceeds the Bay Area Air Quality Management District's daily maximum for air emissions for particulate pollution and nitrogen oxides, both cancer-causing and pre-cursors to smog. Cruise ships operate on dirty diesel engines that are unregulated, producing vast quantities of diesel exhaust. Many studies show that the particle matter in this exhaust can lead to asthma *and* premature death, and that respiratory disease in general is aggravated as a result of air pollution.

Staff Attorney Mike Costa attended a Rules Committee Meeting to oppose the creation of a new Cruise Ship Task Force. In his testimony, Costa emphasized that it *is* important to develop this Task Force in order to attract new ships to the Port of San Francisco, it should be done *only* when air quality protection measures have been finalized for the new cruise ship terminal – scheduled to occur in 2005 or sooner.

OCE Opposes NPDES Permit for Kerr-McGee in Henderson, Nevada: In a letter to the Department of Conservation and Natural Resources Division of Environmental Protection in Carson City, Nevada, the OCE joined other groups in opposing the perchlorate effluent limitations proposed in the modified NPDES Permit for Kerr-McGee Corporation in Henderson, Nevada. Perchlorate is a naturally occurring and man-made chemical that is primarily used in solid rocket propellant. Studies show that perchlorate interferes with iodine uptake in the thyroid gland, which ultimately leads to a disruption of normal thyroid function in adults.

OCE joined other environmental groups in opposing the proposed effluent limits because the new limits would allow the interim discharge of perchlorate at 80 parts per billion into Las Vegas Wash, a tributary to Lake Mead, which is a vital source of drinking water. This increase in the effluent flow is in excess of the State of Nevada's action level for drinking water; the U.S. EPA's reference dose drinking water equivalent of 4 to 18 ppb; and the proposed NPDES effluent in other states, including a proposed limitation for perchlorate effluent at 4 ppb in California. Additionally, the proposed permit terms would not ensure that discharges do not cause or contribute to violations of numeric and narrative water quality standards, in violation of the Clean Water Act.

OCE Supports Efforts to Clean-up Diesel School Buses in San Joaquin Valley: OCE joined with Natural Resources Defense Council, the Steven and Michele Kirsch Foundation, and the Planning and Conservation League in support of a new School Bus Fleets Rule. The rule will both improve the air quality throughout the San Joaquin Valley through reduced pollution from school buses, and reduce exposure of bus riders and drivers to toxic diesel exhaust. It is critical to reduce toxic exposures of children, who are much more vulnerable to pollution than adults, wherever possible.

Children are among the most vulnerable segment of the population to air pollution, because they have higher breathing rates and their organs and immune system are still developing, among other reasons. Studies have shown that school buses can pose a particularly potent toxic chemical exposure pathway to children. For example, a 2001 NRDC study of diesel particulate levels on school buses in California showed that diesel exhaust particulate averaged almost 20 $\mu\text{g}/\text{m}^3$ leading to elevated cancer risks ranging from 23 to 46 per million for children riding a school bus from one to two hours each school day. A 2003 Air Resources Board study of particulate matter levels on school buses had similar findings. The levels of particulate matter and other pollutants, which are particularly high on older buses, can also have severe impacts on respiratory illnesses, such as asthma.

*****OCE Staff News*****

OCE Names Charlene Garland Managing Director: OCE is pleased to welcome Charlene Garland as its managing director. Charlene brings 10 years of experience to OCE, which includes private sector consulting, non-profit start-up, capacity building, fundraising and strategic planning. Prior to moving to the bay area in 2002, Charlene was the associate director of Clean Air-Cool Planet, a leading non-profit in the northeastern US working on climate change issues. Most recently, she was the deputy director for The Vote Solar Initiative, a San-Francisco based non-profit organization. A New Hampshire native, Charlene has a B.S. in Environmental Conservation from the University of New Hampshire and a M.A. in Urban and Environmental Policy from Tufts University in Medford, Massachusetts. Welcome Charlene!

OCE Representative Attends DC Meetings: Our Washington, DC-based communications advisor, Jennifer Burcham regularly represents OCE at the National Air Heads meetings in Washington. The meeting brings together national groups concerned with environmental air issues bi-weekly to discuss current US Congressional topics that affect air quality throughout the country.

*****Become a Member*****

Joining OCE is easy. Just click on our website at www.ocefoundation.org and follow the simple directions! Remember becoming a member - sends a message that OCE's mission is important and we have a right to be heard in government proceedings and in court! Here is how you can help us achieve our mission:

- **Donate!** We need funds to continue our work to improve air quality nationwide. Your tax-deductible donation will enable OCE to continue to push for cleaner air for all of us.

Donating is easy. Just click on the OCE website www.ocefoundation.org/donate.html and follow the directions.

- **Volunteer for OCE!** OCE needs volunteers with a wide variety of skills to help us with a number of tasks. If you are interested in donating some of your time, please contact Aimee O'Donnell at aodonnell@ocefoundation.org
- **Become a Member Recruiter!** OCE is looking for folks to help recruit new members throughout the country. For more information, contact Aimee O'Donnell at aodonnell@ocefoundation.org

We would like to thank our lawyers and community partners for participating in our recent successes

A Walk in the Woods
American Lung Association
Bayveiw Hunters Point Community Advocates
Communities for a Better Environment
Clean Water Action
Ecological Rights Foundation
Matthew Hagemann
Nevada Environmental Coalition, Inc.
Physicians for Social Responsibility-Los Angeles
Center for Public Environmental Oversight
Environmental Working Group
Environmental Defense
Earthjustice Legal Defense Fund
George Hays
Golden Gate University Environmental Law &
Justice Clinic
Latino Issues Forum
Marc S. Chytilo
Environmental Advocates
Planning and Conservation League

National Parks Conservation Association
Natural Resources Defense Council
Reed Zars
Sierra Club
Chris Sproul
Transportation Solutions Defense and Education
Fund
Union of Concerned Scientists
Urban Habitat, a project of the Tides Center
Environmental Integrity Project
Santa Barbara ChannelKeeper
Get Oil Out
Coalition for Mercury-Free Dentistry
Montana Environmental Information Center
Physicians for Social Responsibility
Clean Air Council
Northwest Environmental Defense Center
Hilton Kelley
Steven and Michele Kirsch Foundation

**Thank You to all members and donors
for your SUPPORT!!**

Kalman Sachs Andrew and Molly Mercy. Daniel Burke Suzanne Vitullo Rose M. Shahinian (made by Lori Cline)	Cheston Zimmer David Pierce Shirley Heffernen Alex Pujo Jayme Hill
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Thanks so much for your help. We appreciate you!

***** About OCE *****

OCE is a non-profit dedicated to protecting the public, especially children, against the harmful effects of air pollution, primarily through enforcement of the Clean Air Act. Our view is that our country's environmental laws are great laws - if they were implemented and enforced. OCE is in the trenches providing an integral check on the democratic system - making the system work!

OCE collaborates with leading clean air advocates, law clinics, and community organizations to empower individuals, families and communities to take action in protecting their rights to breathe clean air. We do this through a multi-dimensional strategy of education, litigation, and advocacy.

OCE publishes a semi-monthly on-line newsletter to inform our members and other interested individuals of our efforts.

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