

Environmental Justice

Open Dialogue Can Yield Cost-Effective, Sound Policies

Summary

Background

The environmental justice movement has been building momentum in the United States for the last 30 years, and perhaps nowhere more so than in the State of California. According to the U.S. Environmental Protection Agency, environmental justice is defined as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.”

In 1999, then-California Senator Hilda Solis (D-El Monte) introduced the first legislation addressing environmental justice in California. SB 115 (Chapter 690, Statutes of 1999) defined environmental justice as “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.” The Governor’s Office of Planning and Research and the California Environmental Protection Agency (Cal/EPA) were assigned as the agencies responsible for environmental justice programs. In addition, SB 115 required Cal/EPA to develop a model environmental justice mission statement for its boards, departments, and offices by January 1, 2001.

In the following years, the Legislature passed more than a dozen bills addressing various aspects of environmental justice, including legislation requiring the Cal/EPA, in conjunction with the Office of Environmental Health Hazard Assessment (OEHHA), to develop a guidance document and screening mechanism to help understand the complicated factors and procedures associated with environmental effects on the population. Ultimately, this legislation would result in what is now known as CalEnviroScreen, a tool that is used to help funnel resources into some of the communities in the state that have been identified as the most disadvantaged. Below we provide a more comprehensive discussion of the CalEnviroScreen tool.

The concept of environmental justice originally was focused narrowly to ensure that disadvantaged communities were being taken into account in the legislative and rulemaking processes. Over the last decade, the concept has expanded in scope and now is one of the foremost considerations in a multitude of different environmental and land use-related policy areas. Due in part to inaction at the local level, coupled with land use policies that in certain circumstances have exacerbated the issue, advocacy efforts by the environmental justice community in the State Capitol and various regulatory agencies have increased over the last several years. Accordingly, environmental justice and its role in California policymaking and rulemaking is an issue with which the business community must familiarize itself.

Evolution of Environmental Justice Movement in California

Unlike traditional environmental groups like the Sierra Club, Center for Biological Diversity, and the Natural Resources Defense Council, environmental justice groups tend to raise community-specific public health concerns stemming from a concern about being disproportionately impacted by pollution compared to other communities. The concerns raised by environmental justice groups are ones that the business community must consider as it continuously adjusts to an increasingly burdensome regulatory regime on the state level that, until recently, did not typically consider environmental justice concerns. Indeed, while environmental justice groups have been around for years, in recent years they have become more organized and thus have a large advocacy presence both in the Legislature and regulatory agencies.

Below are examples of areas of policy and regulatory agencies where environmental justice organizations have become active:

- **California Air Resources Board:** The Environmental Justice Advisory Committee is advising the California Air Resources Board (CARB) on the development of the scoping plan and other related climate change activities. AB 1288 (Atkins; D-San Diego; Chapter 586, Statutes of 2015) added two environmental justice members to the CARB.
- **California Environmental Quality Act:** Environmental justice organizations have used the California Environmental Quality Act process to sue lead agencies on development projects.
- **Department of Toxic Substances Control:** Responding to repeated environmental violations that had occurred at Exide Technologies’ battery recycling plant in Vernon, California—a facility that has since agreed to permanently close in exchange for avoiding criminal charges—the environmental justice community has

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now made the Department of Toxic Substances Control (DTSC) and its hazardous waste program a primary target for reform. Several bills and regulatory programs have since been introduced in an attempt to address environmental justice issues surrounding hazardous waste facilities.

- **Proposition 65:** The Safe Drinking Water and Toxic Enforcement Act of 1986, also known as Proposition 65, prohibits chemicals listed by the State of California as carcinogens and reproductive toxicants from being discharged into sources of drinking water. Although this provision of the law has been used very infrequently due in large part to other enforcement options for water contamination, recently an environmental justice group filed a notice against an oil and gas wastewater disposal company using the wastewater discharge provision. This may be an indication that the environmental justice community intends to increasingly use Proposition 65 to advance its cause.

- **Water:** Legislation passed stating that access to water is a basic human right spurred environmental justice communities to pursue bills that give disadvantaged communities access to water via consolidation with surrounding water districts or funds for new wells. Urban and agricultural dischargers are being pressed to limit discharges into water and to clean up existing contaminated waters to the benefit of disadvantaged communities.

- **Coastal Commission:** The commission is requiring additional affordable hotel/motel rooms and camping sites in the coastal area as one of the conditions of building or remodeling hotels or resorts, as well as providing public access to beaches. All permits are being scrutinized to ensure that public access to the coast is not impeded and adequate parking is available.

CalEnviroScreen

CalEnviroScreen was developed jointly by Cal/EPA and OEHHA. It is a tool that uses 12 types of pollution and environmental factors and eight population characteristics and socioeconomic factors to score census tracts in the state. The first draft version was issued in January 2013 and the tool has undergone subsequent updates, the most recent of which is CalEnviroScreen 3.0, which is scheduled to be released in early 2017.

The tool is intended to provide a broad environmental snapshot and help funnel resources into some of the communities in the state that have been identified as the most disadvantaged. CalEnviroScreen makes relative comparisons among census tracts on a statewide basis and is not an absolute assessment of impacts in any given community. There is no trigger or cutoff point in scoring that indicates when impacts are disproportionate or whether a community can be considered disadvantaged; rather, CalEnviroScreen applies a score to census tracts and ranks them among each other throughout the state.

CalEnviroScreen has limitations, such as the fact that the scoring results are not applicable to the cumulative impacts analysis required by the California Environmental Quality Act. In addition, although CalEnviroScreen compares the relative burdens on each community, it is not an absolute measure of those burdens and is not a substitute for formal risk assessments. It also does not conclusively show which communities suffer the greatest health risks from exposure to environmental pollution, nor does it show which factors or sources cause health problems, and it omits many factors that contribute to disease.

Although CalEnviroScreen may be appropriate for state incentive programs, other programs aiming to target state resources, or grant funding to aid disadvantaged communities, utilization of this tool and its integrated scoring system for other purposes, such as permit considerations, raises concern. Indeed, there have been multiple attempts through both legislation and regulation to utilize the CalEnviroScreen tool beyond the purpose for which it was intended. There is concern that the tool may undercut the intended effect of supporting and invigorating the impacted communities by creating a disincentive for industry to locate or expand in those areas, thereby undermining their economic viability rather than strengthening it.

Where to Watch

What was once a movement to address environmental concerns within communities has now transitioned to a much broader and more proactive movement at the state level. Instead of focusing narrowly on site-specific cleanups, the environmental justice community is seeking policy changes on issues that traditionally have been in the exclusive domain of environmental groups.

AB 2722 (Burke; D-Inglewood; Chapter 371) was passed in 2016 to provide funding for transformative climate communities. Also passed was SB 1000 (Leyva; D-Chino; Chapter 587), to mandate that environmental justice be incorporated into local general plans. As a result, there will be additional regulatory proceedings to

develop these policies further. In addition, with the development of the climate change scoping plan at CARB, environmental justice concerns will be taken into consideration before the adoption of the final document. We can anticipate additional legislation and regulatory changes that seek to address environmental justice concerns.

CalChamber Position

- Support sound policies that bring jobs and programs to environmental justice communities throughout the state.
- Encourage an open and productive dialogue between the business community and environmental justice communities.
- Support the implementation of environmental and land use policies that are cost-effective, feasible and which benefit environmental justice communities.
- Oppose legislative and regulatory efforts to use the CalEnviroScreen tool to identify businesses for targeted regulation, that use the tool for permitting decisions, or that otherwise draw an unsubstantiated or attenuated causal relationship between a facility or activity and resulting health impacts in a particular geographic area.
- Oppose legislative and regulatory attempts which seek to impose unwarranted penalties on industries located within environmental justice communities.

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