

CALIFORNIA  
ENVIRONMENTAL  
JUSTICE ALLIANCE

# ENVIRONMENTAL JUSTICE AGENCY ASSESSMENT 2016



## Environmental Justice Agency Assessment

The California Environmental Justice Alliance (CEJA) and CEJA Action are proud to release our first Environmental Justice Agency Assessment. To our knowledge, this assessment is the only one in the nation to assess how well state agencies develop, implement and monitor policies that address environmental issues that impact low-income communities and communities of color. This assessment can be used in conjunction with CEJA's Environmental Justice Scorecard, which analyzes the voting record of state legislators on environmental issues impacting communities of color.

Over the past several years, the environmental justice movement has won a historic number of new policies at the statewide level. In order for these policies to result in on-the-ground changes in communities most impacted by pollution, there must be aggressive, equitable implementation at California's agencies. Without strong leadership from our regulatory agencies, these groundbreaking policies will not lead to the meaningful reduction of pollutants, reduced impacts of climate change, increase in environmental benefits for communities of color, and improved environmental health and quality of life for communities most overburdened by pollution. The actions of state regulatory agencies are also a reflection of the Governor's priorities, since many of them though not all, fall under his administration and leadership.

CEJA and our sister organization CEJA Action have spent years cultivating environmental justice champions in the legislature, and the results of our 2016 Scorecard highlight the many decision-makers who are proactively addressing environmental issues that impact communities of color. Now it is time for a similar growth in leadership from staff and decision-makers within our regulatory agencies.

As our first ever agency assessment, we start by offering principles that agencies should uphold when implementing policies to ensure they are in alignment with environmental justice. We then look closely at how well two California agencies have met the principles: the Department of Toxic Substances Control and the California Public Utilities Commission. We selected these agencies because they are ones where our members have been deeply engaged for multiple years. Finally, we highlight several key state agencies that we will be closely monitoring in 2017, and end with a short discussion of upcoming regulatory appointments that will be critical to environmental justice communities.

We hope this assessment continues the conversation about how regulatory agencies, which play such a powerful role in protecting low-income communities and communities of color, can improve their commitment to and inclusion of environmental justice within policy implementation.



## Environmental Justice Principles For Policy Implementation At Regulatory Agencies

CEJA and our members have developed the following principles to assess whether agencies are effectively integrating environmental justice (EJ) into their policy development and implementation.

- (1) **Prioritize and value prevention, human health and improving quality of life:** Impacts on health must be given full weight in decision-making, not overlooked in favor of business interests or cost effectiveness, as is often the case, and particular concern must be given to the health and well-being of residents in highly impacted neighborhoods.
- (2) **Do no harm:** Regulatory agencies must commit to actions that do not further harms in environmental justice communities. The most egregious decisions are those that actively exacerbate environmental health and justice inequalities.
- (3) **Prioritize environmental justice communities:** State regulatory agencies have a responsibility to address the historic legacy of pollution in low-income communities and communities of color. This goes beyond simply preventing future harms, but also providing redress for the impacts of long-standing, disproportionate burdens of pollution. There is an ethical, environmental and public health imperative to ensure environmental justice communities are prioritized for resources, programs, and receive special consideration within regulatory decision-making by state agencies.
- (4) **Meaningful community engagement:** Residents in environmental justice communities must have the ability and opportunity to inform design and implementation for policies that impact their health and quality of life. Many agencies use a flawed “decide, announce, defend,” process whereby an agency determines and releases documentation on a policy devoid of any community input, engages with environmental justice communities in public discussions after-the-fact, and ultimately moves forward with implementing their initial proposed policy without incorporating significant feedback from environmental justice communities. Other times, community organizations and members are engaged in dialogue but agencies do not alter any decisions even after hearing significant feedback. Environmental justice communities must be engaged early, often and in a meaningful way.
- (5) **Responsiveness:** Agencies must respond, and be willing to address, community concerns once they have been articulated rather than simply noting them in the public record. Without a clear commitment to responsiveness, community engagement efforts become a “check box” rather than a meaningful attempt to work with stakeholders in policy design and implementation.
- (6) **Accountability:** Agencies must be accountable for any and all actions, or lack of action, commitments made, and decision-making processes that result in or perpetuate harm to environmental justice communities, related to the agency’s area of jurisdiction.
- (7) **Transparency:** Agencies must be clear in: (a) detailing the processes by which all decisions are made and regularly reviewing the processes to ensure accessibility by environmental justice communities, (b) disclosing all factors and stakeholders that inform and influence all decisions affecting all policies and projects, and (c) describing decisions made, in addition to upholding the principles of engagement and responsiveness outlined above.
- (8) **Proactive partnerships:** To be truly stellar on environmental justice issues, agencies need to work proactively and in partnership with environmental justice communities and organizations to develop innovative ways of addressing key environmental justice issues.



## Assessment Of Two Key Agencies: California Department Of Toxic Substances Control And California Public Utilities Commission

CEJA looked at how well two agencies, the California Department of Toxic Substances Control and California Public Utilities Commission conformed with each of the principles we outlined, and then created an assessment of “poor,” “fair,” or “good” for each agency’s performance on that principle.

### California Department Of Toxic Substances Control (DTSC)

The California Department of Toxic Substances Control is tasked with protecting California’s people and environment from the harmful effects of toxic substances by restoring contaminated resources, enforcing hazardous waste laws, reducing hazardous waste generation, and encouraging the manufacturing of chemically safer products. After years of mismanagement, senior staff and leadership turn-over, and high-profile toxic disasters exposing hundreds of thousands of California residents to hazardous substances, the environmental justice community and the legislature has demanded accountability and reform from DTSC.

In 2015, community outrage over the direct human health impacts of DTSC’s failures prompted residents to form the “The People’s Senate,” a statewide network comprised of 14 communities living next to hazardous waste facilities or hazardous waste clean-up sites. They have become a leading community voice working to address environmental justice issues within DTSC. The network issued a broad set of recommendations for DTSC-wide reform and solutions for site-specific issues, which were presented to DTSC leadership. These recommendations covered everything from organizational and programmatic reforms to benchmarks for 14 hazardous waste sites under DTSC’s authority.

Also in 2015, legislative leadership began to address deficiencies at DTSC. Senate Bill 83 established an Independent Review Panel (IRP) within DTSC to review and make recommendations to improve the department’s permitting, enforcement, public outreach, and fiscal management. The IRP, a three-person review panel, began hearings in 2016. The creation of IRP came with an infusion of financial resources intended to make the much-needed progress possible:

DTSC’s funding increased by \$13 million and the agency added dozens of new positions, including formalizing a new Assistant Director for Environmental Justice position and an Office of Environmental Justice and Tribal Affairs to support environmental justice communities as reforms hit the ground.

Over the past two years, DTSC has taken steps to reform its program areas and bring in new leadership. However, any assessment of the success of DTSC’s efforts to implement EJ principles must be rooted in actual on the ground improvements in communities impacted by toxic substances.



## How Has DTSC Fulfilled CEJA's EJ Principles For Policy Implementation?

Principle	Assessment	Reasoning
<b>Prioritize and value prevention, human health and improving quality of life</b>	<b>Poor</b>	Community groups submitted 50 site-specific requests to DTSC aimed at protecting and improving the health of communities surrounding toxic sites. A follow-up report found that DTSC only responded to 12 of these requests and only completed one. <sup>1</sup>
<b>Do no harm</b>	<b>Poor</b>	Agency failures and inaction continue to directly and negatively impact health and quality of life for communities. DTSC allows many facilities to continue operating under expired permits, including Phibro-Tech whose permit expired in 1996; fails to enforce clean-up orders; and downplays risks at clean-up sites, including signing off on new development even when extensive contamination remained at Jordan Downs and Agricultural Park.
<b>Prioritize environmental justice communities</b>	<b>Fair</b>	DTSC has added significant environmental justice staffing, indicating some agency-wide efforts to prioritize environmental justice communities. However, these efforts have not yet translated into better protection of human health at specific toxic clean-up sites and facilities in low-income communities and communities of color.
<b>Meaningful community engagement</b>	<b>Poor</b>	DTSC is working on updating its public participation and community engagement practices. However, these efforts will be challenged by the agency's difficulties in recognizing or valuing community expertise. Most communities living near contaminated sites report that after two years of agency reform efforts, "none of the 12 participating communities reported increased confidence or trust in the agency." Additionally, DTSC's refusal to respond publicly and forcefully to racist and sexist emails between staff members have undermined DTSC's ability to rebuild community trust in the agency.
<b>Responsiveness</b>	<b>Poor</b>	DTSC has consistently failed to be responsive to community concerns and requests. Residents have been unable to get DTSC to respond to very specific questions posed formally and informally to all levels of staff over the past two years.
<b>Transparency</b>	<b>Poor</b>	DTSC has consistently provided inadequate information and communication to the public. DTSC has failed to provide additional information or public meetings when asked multiple times by community residents. The agency's website is incomplete and difficult for members of the public to use.
<b>Accountability</b>	<b>Poor</b>	DTSC continues to be one of the only permitting and regulatory departments at the California Environmental Protection Agency without a governing board or other accountability body. Decisions are made behind closed doors with little opportunity for public input or transparency in how decisions are made. DTSC hears and decides all appeals of its decisions, a clear conflict of interest.
<b>Proactive partnerships</b>	<b>Fair</b>	DTSC is working on reforming various program areas, including permitting, enforcement and public participation. While these areas need to be addressed, DTSC is overly focused on process while failing to assess how these reforms will reduce toxic threats and address community concerns. Without this outcome oriented lens, DTSC's reform efforts will not likely be successful.

**Assessment:** DTSC has failed to meet CEJA's EJ Principles for Policy Implementation, despite all the promise, expectations, and invested resources. Approximately a year and a half since the IRP's creation, the continued lack of progress and responsiveness to both agency-wide and site-specific concerns is unacceptable, and violates almost all of our environmental justice principles for policy implementation.

1 Groundtruthing DTSC: The Big Picture. The People's Senate, presented to the Independent Review Panel, October 2016.

## California Public Utilities Commission (CPUC)

The California Public Utilities Commission (CPUC) regulates privately owned electric, natural gas, telecommunications, water, railroad, rail transit, and passenger transportation companies. The CPUC is the primary agency with regulatory authority and oversight duties over utility companies, who build and operate power plants. We assess the CPUC's engagement on two specific proceedings in which CEJA and our members have been deeply involved.

**Puente Power Project Proceeding:** For over two years, hundreds of local community residents in Oxnard have fought Southern California Edison's (SCE) proposal for another dirty power plant on their coast, mobilizing widespread opposition to the proposal. In 2012, SCE proposed a new natural gas fired power plant in the City of Oxnard. The plant, called Puente Power Project, would be run by NRG and would supply energy to the Southern California region. Oxnard currently has three power plants - all the power plants in the region. Oxnard is 85% people of color and is among the top 20% of communities in the state most impacted by pollution, with some of the highest asthma rates in California.

Throughout the proceeding, a broad coalition advised the CPUC to uphold its legal mandate to protect low-income communities like Oxnard and use readily available renewable energy rather than fossil fuels to generate power. Residents applauded an initial proposed decision from the CPUC that would have held approval for the Puente project until further assessment. However, in 2016, CPUC Commissioner Carla Peterman issued an alternate proposed decision to allow SCE and NRG to move forward with the contract, and the Puente project was approved by the Commission in May 2016.

The CPUC's decision is in stark contrast to their sister agency, the Coastal Commission, who also has to approve the Puente project given its jurisdiction over coastal protection. In September, the Coastal Commission unanimously recommended that the Puente project be built somewhere besides the proposed Oxnard site. The Coastal Commission rightly weighed the serious environmental justice and climate change issues at risk, specifically sea level rise.

**SB 43 Proceeding:** Enacted in 2013, SB 43 established the Green Tariff Shared Renewables (GTSR) Program. The program requires the three major utility companies - PG&E, Southern California Edison, and San Diego Gas & Electric - to make 600 megawatts of renewable energy available to customers through smaller, shared projects. These "shared renewable projects" enables customers who can't install their own systems to benefit from and support the adoption of renewable energy. SB 43 requires the program to ensure 100 megawatts are available directly to environmental justice communities. These kinds of carve outs are an effort to bridge the "green divide," which leave low-income communities and communities of color unable to access the benefits of renewable energy.



## How Has The CPUC Fulfilled Our EJ Principles For Policy Implementation In These Two Proceedings?

Principle	Assessment	Reasoning
<b>Prioritize and value prevention, human health and improving quality of life</b>	<b>Poor</b>	The CPUC failed to prioritize human health when they approved a contract for a natural gas power plant in an already impacted community, instead of prioritizing clean energy choices.
<b>Do no harm</b>	<b>Poor to Fair</b>	Approving the Puente power plant directly harms the community of Oxnard. However, programs such as the GTSR program help move California overall towards a sustainable, fossil-free future.
<b>Prioritize environmental justice communities</b>	<b>Poor to fair</b>	The CPUC ensured the GTSR program uses an accurate definition of an EJ community, which is a critical component to effectively prioritizing EJ. However, the CPUC favored larger scale project sizes that will ultimately not penetrate the most impacted EJ communities. Moreover, the Puente decision demonstrates the lack of deep integration of EJ community needs, especially when it comes to bigger proceedings such as a power plant approval.
<b>Meaningful community engagement</b>	<b>Poor</b>	The Puente proceeding had high levels of community engagement, but the CPUC grossly failed to take the opposition into account. The approval overrides the City of Oxnard's own moratorium on beachside power plants. Within GTSR implementation, the CPUC has had a mixed record. The CPUC and utilities did create a working group that included organizations, such as CEJA, to determine how to best identify EJ communities in the program. While laudable, they failed to directly outreach to or engage community residents from impacted areas.
<b>Responsiveness</b>	<b>Poor</b>	The CPUC failed to respond to community concerns within the Puente proceeding, as outlined above. The one time the agency did respond positively – with the first proposed decision – it was reversed. Throughout the GTSR proceeding, the CPUC also did not fully recognize and pay enough attention to the 100 MW carve out for disadvantaged communities, the main part of the program for EJ communities. CEJA became the lone voice in the proceeding that continued to push the CPUC to focus on this aspect of the program. The CPUC further allowed the utilities to ram through costly charges that made the GTSR program prohibitively expensive for low-income households.
<b>Transparency</b>	<b>Poor</b>	The CPUC has an opaque decision-making process. Timelines of hearings and decisions are often shifted without sufficient notice. In the Puente proceeding, the Commissioner assigned to oversee the proceeding changed from Commissioner Florio to Commissioner Peterman without any public reasoning. This makes it difficult for the public to understand how best to work with the agency, obfuscates reasoning on decisions within proceedings, and makes the agency more susceptible to industry pressure and lobbying.
<b>Accountability</b>	<b>Poor</b>	Between the initial proposed and final decision on the Puente project, CPUC Commissioners were subject to relentless industry lobbying and political pressure. Overall, it is unclear who the CPUC is accountable to; the Governor has power over the agency, and the CPUC decisions are often influenced by pressure from large utilities.
<b>Proactive partnerships</b>	<b>Poor</b>	We have rarely seen the CPUC proactively work to address the many inequities in energy supply and regulation. Almost all beneficial programs have been the result of legislation creating new programs at the agency.



**Assessment:** The CPUC has failed to meet CEJA's EJ Principles for Policy Implementation.

We will be closely monitoring the CPUC's implementation of AB 693, the Multifamily Affordable Solar Roofs Program, as well as implementation of SB 350, the state's Renewable Portfolio Standard passed in 2015. Both proceedings offer the CPUC an opportunity to demonstrate proactive engagement and support of programs that will directly benefit environmental justice communities.

## Agencies To Watch: Air Resources Board And The Strategic Growth Council

While almost all state environmental agencies have regulations, programs and policies that may disproportionately impact or have opportunities to benefit EJ communities, there are two agencies whose actions in 2017 merit close attention: the California Air Resources Board and the Strategic Growth Council. The following are some of the specific implementation activities we will be monitoring in the coming year to assess how well they meet our EJ Principles for Policy Implementation.

### California Air Resources Board

The California Air Resources Board (CARB) is charged with regulating air pollutants, including greenhouse gases. 2016 marked the first year CARB had two environmental justice representatives on the Board, pursuant to the passage of AB 1288 (Atkins). Diane Takvorian, appointed by Speaker Emeritus Toni Atkins, and Former Senator Dean Florez, appointed by Senate pro Tem Kevin de León, have been welcome additions to the Board, and we have already seen positive impacts. Takvorian and Former Senator Florez helped push forward the creation of a new Assistant Executive Officer for Environmental Justice, a high level position at CARB that will ensure environmental justice is fully integrated throughout agency programs.





In addition, CARB has rolled out a range of important equity-focused programs, such as increasing agency resources for the meaningful involvement of the Environmental Justice Advisory Committee (EJAC), including sponsoring eleven community meetings throughout California on the AB 32 Scoping Plan, creating a Supplemental Environmental Projects program that benefits environmental justice communities, and investigating barriers to low carbon transportation options for low income communities. CARB has also taken important regulatory positions, such as delaying approval of an inadequate San Joaquin Valley State Implementation Plan in order to identify further stationary and mobile source measures to achieve additional emissions reductions that are much-needed in the basin. The Board has also expressed support for 100 percent Zero Emission Vehicle buses, with anticipated regulatory action in 2017.



We have not conducted an extensive assessment of CARB, but given the importance of the agency in regards to the health and quality of life in environmental justice communities, we will be closely engaging in and monitoring a number of processes in 2017 to see how well CARB upholds our EJ Principles for Policy Implementation. These include:

- The AB 32 Scoping Plan update, outlining CARB's proposed path to achieve 2030 targets. The plan received extensive community input from across the state, and we will be closely watching to see how well this feedback is included in the final scoping plan, specifically addressing recommendations from the formal Environmental Justice Advisory Committee.
- Proactively addressing the issues outlined in the October 2016 report released by Manuel Pastor, Rachel Morello-Frosch, Jim Sadd and several other academics, highlighting environmental justice challenges within California's cap-and-trade program. The report is available online at [bit.ly/CER2016](http://bit.ly/CER2016). Similarly, we are monitoring the release of CARB's own analysis on the impacts of cap and trade in disadvantaged communities, as required by a 2015 Executive Order, and will be watching to see how recommendations from both are included in the AB 32 Scoping Plan.
- AB 197, the Climate Equity and Transparency Act, which was signed into law in 2016. This bill requires prioritization of direct emission reductions in environmental justice communities and full disclosure of toxic pollutants in each region.
- Short Lived Climate Pollutant regulation, including implementation of SB 1383, which requires regulation of short lived climate pollutants, in particular methane from industrial dairies, which have severe health impacts in rural communities.
- Releasing a strong Adaptive Management Plan, the main tool ARB uses to monitor if there are hotspots developing in EJ communities as a result of climate change policies.
- Greenhouse Gas Reduction Fund (GGRF) investments that meet community needs, including AB 1550 implementation, which was signed into law in 2016, expands eligibility for disadvantaged communities within the GGRF Fund. In addition to implementing this important measure, CARB must continue ensuring that GGRF investments are meeting emission reduction, clean transportation and public transit needs in low-income communities.

- SB 375 implementation that sets aggressive greenhouse gas reduction targets for each region through the Metropolitan Planning Organizations to achieve the 2030 targets created by SB 32, and improving CARB's oversight and authority for implementation.

### Strategic Growth Council

The Strategic Growth Council (SGC) is a cabinet level committee responsible for coordinating activities across agencies to improve environmental and climate goals and programs. In 2016, CEJA worked hard to help create the Transformative Climate Community (TCC) program, enacted into law through the passage of AB 2722, authored by Assembly Member Burke and Assembly Member Arambula.

We are excited to see the level of leadership SGC has taken to create the Transformative Climate Community program. We have outlined our own vision for the program in a new report, available online at [bit.ly/TCC2017](http://bit.ly/TCC2017). SGC also implements the Affordable Housing and Sustainable Communities fund, one of the last sources of funding for affordable housing in the state. The program will undergo another round of guideline revisions in 2017, and must continue to find ways to be responsive to rural and sub-rural community needs, while proactively addressing the rising costs of housing in low-income areas.

We will be closely monitoring the implementation of both TCC and AHSC programs to assess whether SGC meets our EJ Principles for Policy Implementation in 2017.





### **Conclusion: Environmental Justice Leadership Within Agencies**

Just as the actions of agencies such as DTSC reflect programmatic priorities derived from the Governor, his appointments and hires for leadership positions in the many regulatory agencies under his purview are also an important signifier of the Administration's priorities. Early 2017 has already seen two new Commissioners appointed to the CPUC who we hope can help advance environmental justice at the agency. In 2017, Governor Brown will also be appointing the first-ever "environmental justice" seat to the Coastal Commission, and will make new appointments to the State Water Resources Control Board.

In 2017, CEJA will closely monitor these appointments, as well as the activities of the agencies mentioned above, to assess whether incoming leaders at regulatory agencies have a track record of fulfilling CEJA's EJ Principles for Policy Implementation or have demonstrated a commitment to doing so in their leadership at regulatory agencies. Strong, new environmental justice leadership at agencies will be critical to ensuring policy victories in the legislature translate into on-the-ground changes in our most polluted and vulnerable communities.





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## About the California Environmental Justice Alliance (CEJA)

CEJA is a statewide, community-led alliance that works to achieve environmental justice by advancing policy solutions. We unite the powerful local organizing of our members in the communities most impacted by environmental hazards – low-income communities and communities of color – to create comprehensive opportunities for change at a statewide level. We build the power of communities across California to create policies that will alleviate poverty and pollution. Together, we are growing the statewide movement for environmental health and social justice.

California Environmental Justice Alliance Action (CEJA Action) builds the political power of communities of color to advance environmentally and socially just policies in California. We accomplish this by engaging voters in communities of color, organizing and training grassroots leaders to engage in civic and electoral politics, and advocacy to advance critical policies that will improve the health and quality of life in communities of color. We believe California's communities of color are a powerful force for equitable environmental policies and a more participatory, inclusive democracy.

Our members and partners are: Asian Pacific Environmental Network; Center for Community Action and Environmental Justice; Center on Race, Poverty & the Environment; Central Coast Alliance United for a Sustainable Economy; Communities for a Better Environment; Environmental Health Coalition; Leadership Counsel for Justice and Accountability; Pacoima Beautiful; People Organizing to Demand Environmental and Economic Rights; Physicians for Social Responsibility – Los Angeles; and Strategic Concepts in Organizing and Policy Education.

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