

ENVIRONMENTAL JUSTICE AGENCY ASSESSMENT 2018

LEARNINGS AND RECOMMENDATIONS



CALIFORNIA
ENVIRONMENTAL
JUSTICE ALLIANCE

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I. About California Environmental Justice Alliance (CEJA)

The California Environmental Justice Alliance (CEJA) is a statewide, community-led alliance that works to achieve environmental justice (EJ) 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 pollution and poverty. Together, we are growing the statewide movement for environmental health and social justice.

For more about CEJA, please visit: www.caleja.org

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II. Introduction and Methodology

The California Environmental Justice Alliance (CEJA) is proud to release our third Environmental Justice Agency Assessment. This year, we are releasing our assessment in two parts. This initial short report is a stand-alone Executive Summary on “Learnings and Recommendations” from CEJA to our agencies. **The full 2018 Environmental Justice Agency Assessment will be released June 2019.**

The purpose of releasing an early report on “Learnings and Recommendations” is to provide the agencies with an immediate tool that can serve as a vital resource to shift and deepen work around environmental justice and equity. Our state’s environmental regulatory agencies have critical mandates to protect the public’s health, safety and welfare. Incorporation of environmental justice principles is necessary to ensure adequate protection of all communities, particularly those disproportionately impacted by environmental harms and that least enjoy environmental benefits. Furthermore, despite our critiques and challenges with many of our state agencies, we believe that all of them can succeed in meeting their mandates by prioritizing and by receiving increased funding to deepen their EJ and equity work. We also hope that these “Learnings and Recommendations” can serve as a resource for community members and advocates to name what our agencies can do better on in the coming year.

It is important to note that our assessments focus on key proceedings or decisions in which EJ organizations included in this report have been deeply engaged. Accordingly, these assessments do not reflect on the totality of decision-making within each agency, or what other organizations may have experienced.

This year, our assessment includes two new questions to more clearly identify where we recognize agency progress or gaps that remain, and offer a direct recommendation. We hope these additional questions, listed immediately below, will strengthen the utility of the assessment as a tool for improvement and potential partnership.

What has been the most significant improvement or failure for the agency in 2018 relative to our 8 principles?

What is one recommendation for this agency?

III. Learnings and Recommendations

1. California Air Resources Board

Most Significant Improvements and/or Failures: The California Air Resources Board (CARB) took a major positive step towards improving the health and quality of life in EJ communities across the state by approving the Innovative Clean Transit (ICT) regulation, which resulted from multiple years of advocacy from many groups. We recognize and appreciate that some CARB staff, particularly within the Executive Office, Environmental Justice team, Community Air Protection Program, and Greenhouse Gas and Toxics Emission Inventory Branch, have made efforts to be available and responsive. However, we are disappointed that this welcomed responsiveness has resulted in few positive material changes in agency decisions, rulemaking, or program implementation.

CARB missed an opportunity to exercise strong leadership and authority in its AB 617 Community Air Protection Program Blueprint. The Blueprint failed to include specific baseline emission reduction metrics or “in-district” requirements for all Community Emission Reduction Programs. CARB instead gave air districts wide discretion to implement programs which has led to inconsistent implementation of the program and participation of impacted communities. CARB can strengthen the Blueprint requirements to provide more guidance and expectations in 2019 which will provide EJ communities with meaningful protection and assurance of positive outcomes on the ground. In its AB 398 updates to the Cap and Trade program, CARB has continued to fail to prioritize and protect EJ communities. A few of the notable failings in the program design are: the lack of justification or explanation of the giveaway (Industrial Assistance Factor Credits) to the oil industry, continuing the bad practice of oversupplying allowances to current polluters, and not providing sufficient analysis of how the allowances will affect pricing and drive emission reductions beyond 2020.

Recommendations: We encourage CARB to follow the lead of its staff who proactively reached out to share information, discuss, and explain their work on the Criteria and Toxic Emissions Reporting Regulation during the drafting process. We would appreciate more practices like this across the agency to improve transparency, communication, and engagement with EJ advocates and community members. CARB should post meeting and workshop agendas and relevant materials, including staff presentations, as far in advance as possible, at least one week beforehand, to allow people to review and prepare. Meeting minutes, transcripts, notes, and other relevant materials, including board resolutions, should be posted and publicly available as soon as possible after a meeting or workshop. With regard to the AB 617 Community Air Protection Program, CARB staff and board members should actively and vocally support Community Steering Committees and ensure that air districts respect and respond to their recommendations.

2. California Department of Pesticide Regulation

Most Significant Improvements and/or Failures: We have seen improvement in the Department of Pesticide Regulation’s (DPR) willingness to meet and discuss community concerns and questions. DPR has been open to receiving public input and making some important changes to the Department’s air monitoring network, its enforcement compendium, and notification pilot projects. DPR’s most significant and dangerous failure in 2018 was its unwillingness to listen to EJ community expertise and demands that the agency take concrete actions to immediately protect community and children’s health, especially Latinx children, from exposure to the brain-harming pesticide, *Chlorpyrifos*, and the carcinogenic fumigant pesticide, *Telone*. We are pleased that as of May 8, 2019, at the direction and leadership of the new administration, chlorpyrifos will be banned and phased out over the next two years. This is an important win as resounding evidence and documentation by the U.S. EPA and DPR scientists show that no use of chlorpyrifos is safe, especially through its documented detail of the life-long harms caused by prenatal exposure to chlorpyrifos¹. Until this most recent decision, DPR continued to allow nearly 1,000,000 pounds of chlorpyrifos to be used in agricultural fields each year, endangering workers and

¹ US Environmental Protection Agency (EPA). Chlorpyrifos Revised Human Health Risk Assessment (2016) <https://www.regulations.gov/document?D=EPA-HQ-OPP-2015-0653-0454>

their families, and also nearby residents. We hope that DPR will swiftly implement the new directive to prevent undue delay in finally protecting communities.

Recommendations: To best fulfill the mission of DPR to protect human health and the environment, DPR should adopt a plan, with annual benchmarks, to help growers reduce their use of the most hazardous pesticides (including organophosphates, fumigants and neonicotinoids). DPR's Integrated Pest Management (IPM) training program in schools and daycares is an excellent model that should be expanded. DPR should shift staff and departmental resources to prioritize fostering and supporting growers' adoption of reduced-risk crop and pest management, which will better protect communities and the environment, while ensuring the longer-term sustainability of farming in California. DPR should proactively engage other relevant agencies and departments in a plan on how to work in a complementary fashion to help move toward a more sustainable farming vision for California. Sustainable practices can protect key water and other natural resources, bolster farmers' ability to adapt to challenging conditions caused by climate change, and benefit community health, local and rural economies and the environment.

3. California Department of Toxic Substances Control

Most Significant Improvements and/or Failures: We appreciate the increasing commitment and prioritization to environmental justice concerns, as the size and composition of the Department of Toxic Substances Control (DTSC) Office of Environmental Justice and Tribal Affairs has grown since 2016. We also have witnessed improvements in its engagement and outreach efforts in 2018 to include more stakeholders in its agency-wide rulemaking efforts. However, the most significant change in 2018 is a structural funding deficit that has reached a crisis point. Despite years of warning of an impending deficit, the State of California took no action to prevent the full depletion of the Hazardous Waste Account with the Toxic Substances Control Account to follow within a year or two. These financial constraints have real and immediate consequences for environmental justice communities. Without sufficient remediation funds, DTSC is unable to investigate and characterize the between 10,000 to 212,000 potentially contaminated sites in the state or even fulfill its obligations to provide remediation funds to prevent potential toxic exposures from identified contaminated sites. The funding deficit may also reduce the number of inspections and enforcement actions taken at hazardous waste facilities. Overdue permitting decisions will slow even more, increasing the already high number of hazardous waste facilities (mostly located in low-income communities of color) allowed to operate on expired permits. Any cutbacks to the department's enforcement, permitting and remediation activities will disproportionately harm environmental justice communities.

Recommendations: The State must immediately restructure hazardous waste fees in order to increase revenue; ensure that all industries that generate and dispose of hazardous materials are contributing to the Department's funding; and incentivize a reduction in hazardous waste generation. The State must provide full and adequate funding to the Department, without raiding funds for other important purposes (such as the Lead-Acid Battery Cleanup Fund). Lastly, state funding must be coupled with concrete conditions to ensure that the Department meets its statutory mandates, such as the creation of a Governing Board or other oversight body to increase accountability, transparency and responsiveness.

4. California Division of Oil, Gas, and Geothermal Resources

Most Significant Improvements and/or Failures: We witnessed some growth and improvement by the Division of Oil, Gas, and Geothermal Resources (DOGGR) through its commitment to provide trainings to residents on a citizen's science project related to the monitoring and reporting of environmental exposures from oil and gas operations in communities. This is a step toward developing a working relationship relative to CEJA's principle of meaningful community engagement. This commitment is nevertheless far from the level of community engagement necessary in permitting and decision-making processes. DOGGR has failed in its responsibility to include EJ principles within its decision-making processes despite the evidence that EJ communities are disproportionately impacted by

oil and gas activity. DOGGR has approved projects that lead to increased toxic air pollution and water pollution, in addition to traffic, noise and light pollution that leads to adverse health impacts.

Recommendations: To better serve the health and needs of residents, DOGGR should use its regulatory authority to institute a science-based mandatory 2,500 foot health and safety buffer zone between sensitive receptors (schools, day cares, residential homes, and hospitals) and oil and gas operations for all new permits. Its project approval processes should carefully abide by California Environmental Quality Act (CEQA), and also include community member notices and participation opportunities, and integrate health and safety assessments.

5. California Public Utilities Commission

Most Significant Improvements and/or Failures: We are pleased overall with the California Public Utilities Commission's (CPUC) progress. In 2018, the Commission created a DAC Advisory Group, which included Community Based Organization (CBO) leaders. The CPUC also adopted environmental and social justice action plans, such as the San Joaquin Proceeding where the Commission proactively sought community input and engaged the local EJ organizations in the proceeding. It also improved its work through its Integrated Resource Plan (IRP), in which the Commission took a firm position on the impact on Disadvantaged Communities and included criteria to consider pollutants. It further made strides in 2018 by proactively engaging communities and supporting EJ recommendations within the Green Tariff Program and introducing the Climate Adaptation Proceeding. The biggest failure for the CPUC, specifically the Energy Division, was its lack of accountability and transparency in a serious decision regarding Solar on Multifamily Affordable Housing Program (SOMAH) administration funds made over the summer without much notice to the Program Administrator (PA) or implementing CBOs. By approving utility requests for extraordinary funding, it depleted funds necessary for the community implementation by the PA and CBOs and further delayed implementation. Due to the Commission's subsequent action that course-corrected, implementation, while delayed, is now able to move forward.

Recommendations: Although the CPUC overall fared well as to our principles in 2018, we hope it will improve its ability to timely launch projects and that it continues to work closely with disadvantaged communities through project completion. Again, for example, the years-long delay in advancing SOMAH, a policy intended to benefit disadvantaged communities, prevented CBOs from planning and executing the program and initiating outreach. We are also monitoring how the CPUC handles decisions and issues regarding utility responsibility for California wildfires and mitigation plans, and hope that communities and equity are prioritized.

6. California State Lands Commission

Most Significant Improvements and/or Failures: The State Lands Commission (SLC) took a significant step forward in 2018 through its commitment to listening to the Environmental Justice Working Group and other members of the environmental community and public concerning its EJ policy. In December 2018, at a public meeting in San Diego, the SLC approved an update to its Environmental Justice Policy that includes recommendations by the EJ Working Group, as follows:²

Honor the importance of Native Californian's ancestral homelands;

Increase Equitable public access to state lands and resources;

Practice inclusion of EJ communities in decision-making;

Prevent pollution from oil and gas, as well as ports and transportation; and

Analyze benefits and burdens of projects in a more equitable manner.

We appreciate that the SLC respected the recommendations of EJ Working Group and strengthened its EJ Policy by incorporating them.

² <http://www.cbcal.org/wp-content/uploads/2018/12/STATELANDS-PRESS-RELEASE.pdf>

Recommendations: We urge the staff to actively implement the SLC’s newly amended EJ policies. This requires a cultural shift in the SLC’s understanding of and approach to its mission, especially its responsibilities to frontline communities that bear the brunt of fossil fuel impacts as explored in the EJ Working Group’s report documenting various case studies.³

7. California Water Resources Control Board

Most Significant Improvements and/or Failures: We have appreciated the efforts of the current Chair of the Water Resources Control Board, who has provided steadfast support for Safe and Affordable and Drinking Water legislation in 2018. However, we continue to be disappointed that the Board has failed to adequately uphold regulations that would guarantee the protection of source water, particularly for communities in unincorporated areas relying on private wells.

Recommendations: We are continually concerned about how much nitrate, among other contaminants, seep into our source water. This often leaves communities in the Central Valley that rely on a well system for water, without access to clean and affordable water, instead needing to rely on water kiosks as a solution. We recommend that the Water Resources Control Board adopt an order that is strong enough to ensure that contamination does not happen, including more constant and detailed analysis of well systems to ensure that discharges are compliant. We continue to encourage the Board to work with communities to identify long-term solutions to the root-cause of contamination instead of short-term gap solutions, such as providing water kiosks to impacted communities.

8. California Strategic Growth Council

Most Significant Improvements and/or Failures: The Strategic Growth Council (SGC) has consistently performed well when it comes to CEJA’s eight principles. SGC constantly engages EJ communities for feedback and responds with intentionality and listening when EJ communities request meetings or offer feedback. SGC programs, particularly the Transformative Climate Communities (TCC), consider how decisions will impact communities’ health, staff are upfront and transparent in discussing with the community what can change and cannot change in program implementation, and has recognized and respected EJ communities as full-partners with expertise in the development of TCC program guidelines. SGC could improve its performance by finding more effective ways to address the needs of additional disadvantaged communities within the TCC program, not just incorporated disadvantaged communities that score in the top 5% of CalEnviroScreen (CES) 3.0 results.

Recommendations: As of May 15, 2019, some of California’s high need disadvantaged communities are still ineligible to apply for TCC Implementation grants—including disadvantaged unincorporated communities (DUCs) and communities scoring below the top 5% of CES 3.0 results. For the past two years, SGC has awarded fourteen Planning Grants to promising communities across the state, including a number of DUCs and EJ communities that fall within the AB 1550 (2016) definition of disadvantaged communities and low-income communities. We strongly recommend that SGC broaden the TCC Program’s eligibility requirements for Implementation Grants so that more of these communities can apply for and win grants that can bring important and transformative benefits to their region.

9. California Coastal Commission

Most Significant Improvements and/or Failures: The adoption of *Environmental Justice (EJ) Policy* was both the most significant failure and improvement of the agency. The initial EJ Policy demonstrated the Commission’s historic lack of engagement with EJ communities, lack of familiarity with issues affecting our communities, and tendency towards non-inclusive and insular policy-making process.

However, after careful critique, the Commission responded with sincerity and a serious commitment to

³ <http://www.healthyworldforall.org/en/pdf/EnvironmentalJusticeWorkingGroupCaseStudies.pdf>

improve these missteps. We appreciated the Commission's intentional engagement with EJ advocates and communities through meetings and listening sessions that resulted in a much stronger and more community-grounded EJ policy.

Recommendations: We recommend that the Coastal Commission continue to build relationships with EJ communities to effectively implement its new *Environmental Justice Policy*, learn about our issues, and bridge the historic divide between coastal policy and communities of color. We recommend that it undertake a study on access to and quality of coastal land based on race, economic, and EJ lens. We think this would be a productive process to identify barriers and opportunities.

IV. Recommendations for Agencies to Watch

We have not sufficiently worked with the following agencies to offer a complete assessment; however, we are following and engaging with these agencies in key proceedings and programs in 2019. Based on our principles and emergent work with these agencies, we encourage the following recommendations:

10. California Department of Food and Agriculture

Recommendations: We appreciate the Department of Food and Agriculture (CDFA) leadership's active support in pushing against pesticide use in agriculture to protect source water. We believe that the CDFA can continue its support of the right to clean air and water by reconsidering its financial and regulatory support of the dairy digester program, which creates hazardous air quality conditions for the communities living nearby. We believe that the CDFA should invest energy into more sustainable farming and energy practices and look forward to engaging in productive dialogue on these issues.

11. California Department of Water Resources

Recommendations: We are paying attention to the Department of Water Resources' (DWR) Groundwater Sustainability Planning process, which is authorized by the 2014 Sustainable Groundwater Management Act. These planning processes will shape how we protect source water, who has access to clean and affordable drinking water, and who is burdened. It is essential that the DWR engage with communities in this planning process, particularly those living with wells and those who lack healthy and accessible clean water programs.

12. California Energy Commission

Recommendations: We appreciate the CEC's continued focus on prioritizing equity within its efforts to improve access to clean energy. For example, the Electric Program Investment Charge (EPIC) decision requires consideration of DACs and working with community-based organizations. This is an improvement, as there are not many decisions that definitively require engagement with CBOs. The CEC has been working to make other public participation and transparency improvements, such as making transcripts public. We are following EPIC and encourage the CEC to strengthen its community engagement process in its implementation. In our experience, it is difficult for community organizations to navigate grants like EPIC. We recommended that the CEC: evaluate community organizations based on the geographic location and demographic profile of their respective communities; develop a survey to inform the creation of a publicly available and active list of past and prospective applicants, categorized by sector; provide an online platform with discussion threads and online meet and greets; and offer technical assistance on grant applications for community-based organizations.

13. California Transportation Commission

Recommendations: We are discouraged that the majority of the CTC's policy, planning, and funding decisions continue to support highways and freight infrastructure without consideration of the climate and disproportionate pollution and health impacts borne by environmental justice communities. We recommend that the CTC make a concerted effort to make its processes more transparent, accessible, and inclusive, to engage the communities most impacted by transportation inequities and transportation-related pollution, and to prioritize the needs and interests of these communities in decision-making.

V. ENVIRONMENTAL JUSTICE PRINCIPLES FOR POLICY IMPLEMENTATION AT REGULATORY AGENCIES

CEJA, our members and partners have developed the following principles to assess whether agencies are effectively integrating environmental justice into their policy implementation and regulatory proceedings. We assess whether state agencies are meeting these basic guidelines for effective integration of environmental justice into policy development and implementation.

(1) Prioritize and value prevention, human health, and improving quality of life: These needs 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 harm environmental justice communities. The most egregious decisions are those that actively exacerbate environmental health and justice inequalities, and these are unfortunately all too common.

(3) Prioritize environmental justice communities: There is a long-standing history of pollution burdens and environmental hazards disproportionately impacting low-income communities and communities of color, which is well documented by communities themselves, as well as academic and state agency studies. It is simply not sufficient to look at impacts of policies moving forward; there is a historic legacy and burden the regulatory agencies have a responsibility to proactively address. There is an ethical, environmental and public health imperative to ensure that environmental justice communities are prioritized for targeted resources and 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: As the public stewards of a clean and healthy environment for all Californians, state regulatory agencies must be accountable for any and all (in)actions and commitments made from policy or project inception through implementation, all decision-making processes, and all relevant impacts from their (in)actions, commitments, and decision-making processes, including benefits and harm.

(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 communities most impacted by environmental hazards; (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) Proactivity: To be truly stellar on environmental justice issues, regulatory agencies need to work proactively and in partnership with environmental justice communities and organizations to develop innovative ways of addressing key environmental justice issues in communities.

VI. ACKNOWLEDGEMENTS

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