Session 504 | How Environmental Justice Is Creating Equity in Energy & Environmental Policies

Over the last year, the stark realities of the disparate impacts of the pandemic, the national reckoning over racial violence and discrimination sparked by the death of George Floyd and the continued impacts of climate change have brought questions of equity to the forefront. In particular, how are environmental and energy policies in our nation, in corporations, and at the state and local level contributing to environmental inequity, and what can be done to adjust these policies to reduce disparate impacts on pollution burdened communities? Join a panel of experts to learn about the evolution of environmental justice from a legal and social perspective, including how the Biden-Harris Administration is in the process of restructuring the federal government to address the intersection of environment and race, what the Administration can learn from States who have been taking the lead in addressing the inequitable distribution of environmental impacts and benefits, industry’s changing response to the risks and benefits from this evolution, and how environmental justice concepts can empower disadvantaged communities to create meaningful change in energy and environmental policies. Co-sponsored by the EE&S and Civil Rights Committees.

Moderator:

- Lily N. Chinn, Partner, Baker Botts

Speakers:

- Shalini Swaroop, General Counsel & Director of Policy, Marin Clean Energy
- Miya Yoshitani, Executive Director, Asian Pacific Environmental Network
- Commissioner Shawn LaTourette, New Jersey Department of Environmental Protection
SESSION NAME:

How Environmental Justice Is Creating Equity in Energy & Environmental Policies

Session 504
December 11, 2021
(10:45 am - 12:00 pm)
Speakers

Shalini Swaroop  
General Counsel & Director of Policy, Marin Clean Energy

Miya Yoshitani  
Executive Director, Asian Pacific Environmental Network

Shawn LaTourette  
New Jersey’s Commissioner of Environmental Protection

Moderator

Lily Chinn  
Baker Botts Partner (San Francisco)  
Co-chair of NAPABA’s Energy, Environment & Sustainability Committee
Roadmap

“Racial justice, economic justice, immigration justice — it’s all climate justice”

• What is Environmental Justice?
• Brief History of Environmental Justice
• Biden Administration
• Focus on States: New Jersey & California
• Community Case Study: Marin Clean Energy
WHAT IS ENVIRONMENTAL JUSTICE?
What is Environmental Justice?

- **Environmental justice** is 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.

- **Fair treatment** means that no group of people, including a racial, ethnic, or socioeconomic group, should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies.

- **Meaningful involvement** means that that public has an opportunity to participate in decisions about activities that may affect their environment and/or health; the public’s contribution can influence the regulatory agency’s decision; community concerns will be considered in the decision making process; and decision makers will seek out and facilitate the involvement of those potentially affected.

See [https://www.epa.gov/environmentaljustice](https://www.epa.gov/environmentaljustice); [https://www.nj.gov/dep/ej/](https://www.nj.gov/dep/ej/)
Understanding EJ Terminology / Concepts

- Environmental Justice
  - Fair Treatment and Meaningful Involvement
- Executive Orders Define
  - Equity
  - Underserved communities
- Congressional Definitions
  - Meaningful Involvement
  - Overburdened Census Tract
  - Fenceline Monitoring
  - Climate Justice
  - Community of Color
  - Community-Based Science
BRIEF HISTORY OF ENVIRONMENTAL JUSTICE
Environmental Justice Evolution

- Landfill Protests in Houston, TX and Warren County, NC (1979-1982)
- First National People of Color Environmental Leadership Summit in DC (Oct. 1991)
- Federal Attention

- United States General Accounting Office (GAO) - *Siting of Hazardous Waste Landfills and Their Correlation with Racial and Economic Status of Surrounding Communities* (1983);
- Office of Environmental Justice (1992)
- National Environmental Justice Advisory Council (NEJAC) (1993)
Environmental Justice Evolution

**Clinton’s Executive Order ("EO") 12898 (1994)**
- Federal Interagency Working Group on Environmental Justice (EJ IWG)

**Agency Efforts**
- CEQ Guidance on NEPA and EJ (1998)
- Federal Agency EJ Strategies (2012)

**Obama Administration**
- EJScreen (2015)
- EJ 2020 Action Agenda (2016)
Administration EJ Priorities: Whole of Government

- “Whole-of-government” Approach
  - Overarching and unifying objective
  - Appointments with strong EJ backgrounds
  - Enforcement and funding initiatives
  - Role for every federal agency (EPA, DOT, HUD...)
  - Directed Funding
    - Justice40 - minimum of 40 percent of overall benefits from Federal climate & clean energy investments to disadvantaged communities
    - Brownfields, Superfund grants, Community empowerment
    - July 20, 2021 – “Justice40 Implementation Guidance”

- Key Committees and Offices
  - EPA’s National Environmental Justice Advisory Committee (NEJAC)
  - White House Environmental Justice Advisory Committee (WEJAC)
  - Refocus EPA’s External Civil Rights Compliance Office (ECRCO)

- “Made in All of America” – public investments (procurement, R&D, infrastructure, training, and education) focused on urban, rural, communities of color
Administration EJ Priorities: Executive Orders

Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis

Executive Order on Tackling the Climate Crisis at Home and Abroad

Executive Order on Climate-Related Financial Risk
Administration EJ Priorities: Rapid Policy Developments

• April 7, 2021 EPA Administrator Directive
  – Strengthen enforcement in overburdened communities
  – Assess and reduce impacts to overburdened communities from regulations
  – Meaningful and frequent engagement with EJ communities affected by rulemakings, permitting and enforcement

• EPA Guidance Memos
  – April 30, 2021 “Strengthening Enforcement in Communities with Environmental Justice Concerns”
  – June 21, 2021 “Strengthening Environmental Justice Through Criminal Enforcement”
  – July 1, 2021 “Strengthening Environmental Justice Through Cleanup Enforcement Actions”
Administration EJ Priorities: Enforcement

Priorities
- Focus on EJ communities
- Expanding SEC disclosures
- Community notification programs

Tools
- Data Mapping for Cases / EJ Screen / New Climate Screen
- Enhanced monitoring
- SEPs and Mitigation

State Partnerships
- Joint Task Forces
- Enforcement MOUs
Environmental Justice & Title VI of the Civil Rights Act

Section 601: No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Section 602: Authorizes federal agencies “to effectuate the provisions of § 601] by issuing rules, regulations, or orders of general applicability.”

- Guardians Ass’n – Supreme Ct. (1983): Section 601 requires proof of intentional discrimination
- Sandoval – Supreme Ct. (2001): Section 602 doesn’t provide for private people to enforce regulations; result is Agency loses funding
- EJ communities moved to filing administrative complaints with federal agencies, such as EPA.
- Biden Plan: Legislative reversal of Sandoval; overhaul the EPA External Civil Rights Compliance Office.
Recent Examples of Environmental Justice Cases

**Friends of Buckingham v. State Air Pollution Control Board, 947 F.3d 68 (4th Cir. 2020)**

Group of Virginia residents challenged a state air permit to build and operate a compressor station in their community approved by the Virginia State Air Pollution Control Board based on an application to the Virginia Department of Environmental Quality. The group alleged that the compressor station would exacerbate the health conditions already suffered by the largely African-American Union Hill community’s occupants. The U.S. Court of Appeals for the Fourth Circuit ultimately found that the environmental justice review was inadequate and vacated the permit approval.


The U.S. District Court for the District of Columbia held that the Corps’ decision not to prepare an EIS “largely complied with NEPA,” save for three “substantial exceptions,” one of which was the Corps’ failure to conduct an adequate environmental justice analysis of disproportionate impacts to the Standing Rock tribe in the event of a spill. Specifically, the court said that the Corps “did not adequately consider the impacts of an oil spill on fishing rights, hunting rights, or environmental justice, or the degree to which the pipeline’s effects are likely to be highly controversial.” The court remanded to the Corps to address this issue, as well as the two others.
Recent Examples of Environmental Justice Cases

<table>
<thead>
<tr>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>A coalition of plaintiffs challenged the Bureau of Land Management’s (&quot;BLM&quot;) rescission of an oil and gas resource waste rule on several grounds, including an alleged failure to comply with NEPA by issuing a brief Environmental Assessment and finding of no significant impact that, plaintiffs argued, neglected to address concerns raised by commenters about disproportionate health risks to Native Americans in low-income communities from oil and gas emissions. The court agreed with the challengers, finding BLM's assertion that most federal oil and gas development occurs in &quot;sparsely populated areas&quot; unsupported by the record and determining that NEPA requires consideration of &quot;the localized impacts to people for whom the public health impacts are of clear significance.&quot;</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Sierra Club v. FERC, 867 F.3d 1357 (D.C. Cir. 2017)</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Petitioners alleged that FERC failed to adequately consider a natural gas pipeline project’s impact on low-income and minority communities, but the court found that FERC had met its environmental justice obligations under NEPA by addressing the project's environmental effects and disproportionate impact on environmental justice communities, explaining that “an agency is not required to select the course of action that best serves environmental justice,&quot; so long as it “take[s] a ‘hard look’ at environmental justice issues.”</td>
</tr>
</tbody>
</table>
FOCUS ON STATES:
NEW JERSEY & CALIFORNIA
New Jersey – Environmental Justice Principles

Environmental Justice at DEP

DEP’s Three Priority EJ Principles

Empower Communities
- Through Awareness and Education
- By Building Local Capacity
- Supporting Access to Decision Makers

Protect Human Health and the Environment in Overburdened Communities
- Focus on Environmental and Health Stressors

Strengthen Partnerships
- Between Community Organizations and Residents
- Among Local, State, and Federal Governments
- With Regulated Entities

For more information, visit nj.gov/dep/communities.html

https://www.nj.gov/dep/dep.html
• **“Whole of State Government Approach”**
  - “It is a priority not only for the DEP, but for all state agencies, to incorporate environmental justice considerations into their actions.” [https://www.nj.gov/dep/ej/aboutus.html](https://www.nj.gov/dep/ej/aboutus.html)

• **Environmental Justice Law, N.J.S.A. 13:1D-157 (2020):**
  - The Legislature finds and declares that
    - “[A]ll New Jersey residents, regardless of income, race, ethnicity, color, or national origin, have a right to live, work, and recreate in a clean and healthy environment.”
    - “[N]o community should bear a disproportionate share of the adverse environmental and public health consequences that accompany the State’s economic growth”
  - Directs DEP to promulgate regulations evaluating cumulative environmental and public health impacts of certain facilities on “overburdened communities.”
    - Permit applicants prepare **“EJ impact statements,”** hold a hearing in the community
    - DEP **must deny permit for a new facility if** granting it would “cause or contribute to adverse cumulative environmental or public health stressors in the overburdened community that are higher than those borne by other communities”
    - Grant only if new facility serves **“compelling public interest in the community where it is located”** & DEP imposes construction, operational conditions
New Jersey – Potential EJ Process for Evaluating Facility Permits

1. **Step 1 – Initial Screen**
   Using the **publicly-available data mapping tool**, determine whether overburdened community is subject to disproportionate environmental and public health stressor levels when compared to other communities.

2. **Step 2 – Disproportionate Impact Analysis**
   Applicant prepares EJ Impact Statement (including a public hearing in the host community) and analyzes whether and how the proposed facility will cause or contribute to disproportionate stressor levels and proposes avoidance measures. **If the Applicant cannot avoid cause or contribution, a disproportionate impact is present.**

3. **Step 3 – Permit Conditions (Facility Expansions/Title V Renewals)**
   Where necessary to avoid or minimize potential adverse impacts, DEP imposes binding permit conditions concerning the construction and operation of the facility.

4. **Step 4 – Denial or Compelling Public Interest (New Facilities)**
   DEP shall deny the permit application unless the new facility will serve a compelling public interest in the community where it is to be located. If so, DEP may impose binding permit conditions on the construction and operation of the facility to protect public health.

Source: New Jersey Department of Environmental Quality, 4th EJ Rulemaking Stakeholder Meeting, [https://nj.gov/dep/ej/docs/ej-pres-20210407.pdf](https://nj.gov/dep/ej/docs/ej-pres-20210407.pdf)
First-of-its-kind statewide initiative announced in 2018 that prioritizes enforcement in overburdened communities.

Acting AG Bruck, DEP Commissioner LaTourette Announce Seven New Environmental Enforcement Actions, Six Environmental Justice Communities

For Immediate Release: October 8, 2021
NJ Department of Law & Public Safety
- Andrew J. Bruck, Acting Attorney General
NJ Department of Environmental Protection
- Shawn M. LaTourette, Commissioner

Focused on Contaminated, Income and Minority Communities

For Further Information:
Media Inquiries-
Lee Moore (LPS) Leland.Moore@njoag.gov
Larry Hajna (DEP) Larry.Hajna@dep.nj.gov

August 1, 2018
December 6, 2018
October 25, 2019
New Jersey – EJ Mapping Tool

Pursuant to the Law, the Legislature designated an overburdened community as any census block group, as determined in accordance with the most recent United States Census, in which: (1) at least 35 percent of the households qualify as low-income households (at or below twice the poverty threshold as determined by the United States Census Bureau); (2) at least 40 percent of the residents identify as minority or as members of a State recognized tribal community, or (3) at least 40 percent of the households have limited English proficiency (without an adult that speaks English “very well” according to the United States Census Bureau).

This interactive mapping tool allows users to view the overburdened communities, the criteria each block group meets, and the municipality for which the overburdened community is designated in accordance with the New Jersey Environmental Justice Law, N.J.S.A. 13:1D-157, as well as query addresses to determine if they are within an overburdened community.

Please note: The boundary information in the shapefiles used are for statistical data collection and tabulation purposes only; their depiction and designation does not constitute a determination of jurisdictional authority or rights of ownership or entitlement and they are not legal land descriptions.

https://www.arcgis.com/apps/webappviewer/index.html?id=34e507ead25b4aa5a5051dbb85e55055
“Most importantly, underpinning AB 617 is the understanding that community members must be active partners in envisioning, developing, and implementing actions to clean up the air in their communities.”
California – Investment Opportunities

AB1550 and SB335 establish statutory minimum spending amounts.

**California Climate Investments** invests Cap-and-Trade proceeds in projects “reducing greenhouse gas emissions, strengthening the economy and improving public health and the environment—particularly in disadvantaged communities.”

- Administered by more than 20 state agencies;
- As of 2021, more than $3 Billion invested in “priority populations.”

**Priority Populations**

- “Disadvantaged communities” are defined as “the top 25% of communities experiencing disproportionate amounts of pollution, environmental degradation, and socioeconomic and public health conditions according to CalEnviroScreen tool.”
- “Low-income communities and households are those with incomes either at or below 80 percent of the statewide median or below a threshold designated as low-income by the Department of Housing and Community Development.”

Source: California Climate Investments Webpage.
California – EJ Enforcement

Cal/EPA EJ Task Force (2013)

• Identify and target disproportionately impacted areas for targeted compliance assistance and enforcement;
• Public outreach;
• Increase coordination among Cal/EPA boards and departments and with local, state, and federal regulatory and law enforcement agencies;
• Grants and funding opportunities.

AG’s Bureau of Environmental Justice (2018)

• Compliance with CEQA and land use planning laws;
• Penalizing and preventing illegal discharge to air and water from facilities located in communities already burdened disproportionately with pollution;
• Eliminating or reducing exposure to lead and other toxins in the environment and consumer products;
• Remediating contaminated drinking water; and
• Challenging the Federal Government’s actions that repeal or reduce public health and environmental protections.
California – CalEnviroScreen v. 4.0 (Cumulative EJ Impacts)

CalEnviroScreen Formula

*The Environmental Effects component is weighted one-half when combined with the Exposures component.
California – CalEnviroScreen v. 4.0 (Cumulative EJ Impacts)

Census Tract: 6013379000 (Population: 7,003)

The results for each indicator range from 0.100 and represent the percentile ranking of census tract 6013379000 relative to other census tracts.

**Overall Percentiles**
- CalEnviroScreen 4.0 Percentile: 93
- Pollution Burden Percentile: 80
- Population Characteristic Percentile: 93

**Exposures**
- Ozone: 3
- Particulate Matter 2.5: 37
- Diesel Particulate Matter: 98
- Tobacco: 84
- Traffic: 40
- Pesticides: 0
- Drinking Water: 4
- Lead from Housing: 94

**Environmental Effects**
- Cleanup Sites: 97
- Groundwater Threats: 81
- Hazardous Waste: 98
- Impaired Waters: 83
- Solid Waste: 0

**Sensitive Populations**
- Asthma: 89
- Low Birth Weight: 98
- Cardiovascular Disease: 58

**Socioeconomic Factors**
- Education: 89
- Linguistic Isolation: 71
- Poverty: 85
- Unemployment: 57
- Housing Burden: 84

[Link to CalEnviroScreen website: https://experience.arcgis.com/experience/ed5953d89038431dbf4f22ab9abfe40d/]

Race/Ethnicity Profiles
- 24.1% African American
- 63.9% Hispanic

Age Profiles
- Age 10 or Less
- Age 10-64

Hover over the pie chart segments to see the racial/ethnicity in percentages and approximate counts.

Hover over the pie chart segments to see the age characteristics in percentages and approximate counts.
MCE
A local, not-for-profit electricity provider
Community Choice Aggregation

• Local not-for-profit government agency
• Default service provider in opt out model
• CCA takes over generation services, offering customer choice

Enabling Legislation
AB 117, 2002
U.S. Community Choice

Authorized in 9 States:
- California
- Illinois
- Massachusetts
- New Hampshire*
- New Jersey
- New York
- Ohio
- Rhode Island
- Virginia*

Actively Investigating:
- Arizona
- Colorado
- Connecticut
- Maryland
- Michigan
- New Mexico

Watch List/Potential:
- Oregon
- Washington

* Not yet implemented
CCAs in California

Redwood Coast Energy Authority: Humboldt County, water district & 7 cities
Sonoma Clean Power: Sonoma & Mendocino Counties
MCE: Marin & Napa Counties, Unincorporated Solano County & 2 cities, Unincorporated Contra Costa County & 14 cities
CleanPowerSF: San Francisco County
East Bay Community Energy: Unincorporated Alameda County & 14 cities
Peninsula Clean Energy: Unincorporated San Mateo County & 20 cities
San Jose Clean Energy: City of San Jose
Silicon Valley Clean Energy: Unincorporated Santa Clara County & 12 cities
King City Community Power: City of King City
Central Coast Community Energy: Unincorporated Monterey, San Benito, Santa Barbara & Santa Cruz Counties & 26 cities
Lancaster Choice Energy: City of Lancaster
Apple Valley Choice Energy: City of Apple Valley
Pico Rivera Innovative Municipal Energy: City of Pico Rivera
San Jacinto Power: City of San Jacinto
Clean Power Alliance: Unincorporated Ventura County & 7 cities, Unincorporated Los Angeles County & 22 cities
Desert Community Energy: City of Palm Springs
Rancho Mirage Energy Authority: City of Rancho Mirage
Clean Energy Alliance: 3 cities
San Diego Community Power: 5 cities

Orange County Power Authority: Cities of Brea, Park, Fullerton, Huntington Beach, Irvine, Lake Forest
Baldwin Park Resident Owned Utility District: City of Baldwin Park
Pomona Choice Energy: City of Pomona

CCAs in
California
Race and Environmental Justice
MCE’S MISSION

Address climate change by reducing energy-related greenhouse gas emissions

Renewable energy and energy efficiency

Cost-competitive rates

Economic and workforce benefits

More equitable communities
Customer Value Proposition

MCE customers are greening our electricity supply while benefitting from investments in local energy programs.

- Renewable, locally-controlled, cost-competitive electricity options
- 90% greenhouse gas-free
- Almost twice the amount of renewable energy than traditional service
Community Benefits

Estimated: $180M

Customer Savings: $78M
Local Renewable Projects: $62M
Customer Programs and Rebates: $20M
Resiliency: $11M
Local Employment: $9M
MCE Impact Across California

Eliminated almost 500K metric tons of GHGs = 108,000 cars off the road for an entire year

Default service is 60% renewable since 2017 and 95% carbon-free by 2023

MCE customers have saved over $68M since 2010

Committed over $1.75B to build new CA renewable projects

49 MW new renewable projects built in our service area
37 Member Communities

4 Bay Area Counties

~540,000 Accounts

1 million + Customers
Building Trust: Community Power Coalition

77 members representing 44 organizations
Bi-monthly meetings, 5-6 meetings/year

Key topics covered in 2021

[Logos of various organizations]
MCE Solar One

• Online Q4 2017
• One of the Bay Area’s largest public-private solar partnerships
• Chevron remediated brownfield site
• 341 jobs supported
  – 50% local hire requirement
• Partners: City of Richmond, sPower, Cenergy Power, Chevron, Richmond BUILD

10.5 MW
ground-mounted solar in Richmond
Workforce Development

Community Investment
- $45,000
Social Impact
- 330 job hours
- 50% local hire requirement at MCE Solar One

Community Investment
- $140,000
Social Impact
- 400 multifamily units received upgrades
- 1,369 job hours

Community Investment
- $275,000 allocated
Social Impact
- 95 job hours
- 31 local on-the-job training hours

Community Investment
- $535,000 allocated
Social Impact
- 231 free or very low cost solar systems installed

Community Investment
- $240,000
Social Impact
- 1,798 job hours
- 62 people trained

Community Investment
- $15,000
Social Impact
- 23 local energy efficiency providers cross-trained to provide comprehensive health & safety services
The Face of Local Energy Projects

Throughout our Service Area
Questions?