

Environmental Justice & Cal. Environmental Quality Act (CEQA)

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Federal Policy

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Environmental Justice

President Clinton's Executive Order - 1994

[Each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States. . . .

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Clinton's accompanying memo

- Consistent with Title VI of the federal Civil Rights Act of 1964, ensure that programs receiving federal money do not use criteria methods or practices that discriminate on basis of race, color or national origin.
- All federal agencies shall incorporate environmental justice analysis into NEPA environmental review and develop strategies.

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EPA Guidance for incorporating Environmental Justice

- Formal Guidance for using NEPA
- Definition: EJ 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 law, regulations, and policies." (Emphasis added)

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Fair treatment definition:

- "[N]o group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental and commercial operations or policies."

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Meaningful involvement definition

- “(1) people have an opportunity to participate . . .
- (2) the public’s contribution can influence the regulatory agency’s decision;
- (3) their concerns will be considered in the decision making process; and
- (4) the decision makers seek out and facilitate the involvement of those potentially affected.

Title VI test under fed. regulations

- If there is a disparate impact, then there is a prima facie showing of discrimination;
- Can be rebutted by showing a legitimate governmental purpose;
- Can still be established if there is a less discriminatory alternative.

California Policy

California Environmental Quality Act- Protects Environment and Informed Self-Government

- Initially modeled on NEPA
- Provides a process for environmental review of projects or government activities
- Purpose is to inform agency decision makers and public of:
 1. Significant environmental effects;
 2. Potential mitigation of effects;
 3. Reasonable alternatives.

CEQA Goal

- “Create and maintain conditions under which man and nature can exist in productive harmony to fulfill the social and economic requirements of present and future generations.”
- Cal. Public Resources Code §21001(e)

Crucial difference between CEQA and NEPA

“[P]ublic agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environment effects of such projects.”

Cal. Environmental Justice Policy

Follows US EPA:

Cal-EPA shall conduct its activities "in a manner that assures the fair treatment of people of all races, cultures, and income levels, including minority populations and low-income populations of the state."

Must adopt mission statements and strategies to address environmental justice.

Legislature reaffirms EJ in climate change law.

Cal. Civil Rights Law follows and exceeds Title VI

- Gov't Code §11135 bans discrimination based upon race, national origin, ethnic group identification, religion, age, sexual orientation, color, genetic information or disability by the state or any program funded by the state.
- Uses disparate impact test.
- Explicit prohibition on discriminatory siting.

Areas where EJ crosses over with CEQA [1]

- Is the process inclusive at an early stage?
- Has there been a thorough evaluation of the affected subpopulations' demographics?
- Are there unexpected exposure pathways to environmental harms?
- Are there multiple sources of pollutants causing synergistic or cumulative impacts?
- Are there biological and social factors increasing sensitivity to pollutants?

Areas where EJ crosses over with CEQA [2]

- Do the range of alternatives address avoiding disproportionate impacts to vulnerable subpopulations?
- Do the mitigation options address the full social and economic factors contributing to significant physical impacts?
- Do overriding "social" "or other benefits" considerations allow approval of a project with unavoidable significant impacts?