

# Answers From Nicky Sheats to Questions from the Committee on Natural Resources Regarding the EJ For All Act

July 17, 2022

## Questions from Rep. Steve Cohen, TN

### **1. Could you describe how the screening tool that you are working on with the White House Environmental Justice Advisory Council to identify communities that need help due to risks and impacts caused by pollution will be helpful to policymakers?**

The Economic and Climate Justice Screening Tool that the Council on Environmental Quality (CEQ) is developing is part of the Biden's Administration Justice40 Initiative.<sup>1</sup> This Initiative requires that 40% of the benefits produced by federal investments in the environment and other areas go to "disadvantaged" communities.<sup>2</sup> The screening tool will be used to identify disadvantaged communities that will be eligible to receive Justice40 benefits. An initial version of the screening tool has been released to the public and is being beta tested.<sup>3</sup> Input gathered from the public will be incorporated into the tool in an effort to refine and improve its performance. CEQ intends for improvement of the tool to be an ongoing and iterative process.<sup>4</sup>  
(145)

### **2. Are there any current tools or technology available that can be used to measure the cumulative impacts of a future project?**

There are several states and scholars that have developed cumulative impacts and other types of EJ screening tools.<sup>5</sup> But perhaps the tool that has faced the most examination and vetting is the one developed by the state of California, which is called CalEnviroScreen.<sup>6</sup> This screening tool develops an overall cumulative impacts score for California census tracts.

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<sup>1</sup> See Executive Order 14008: Tackling the Climate Crisis at Home and Abroad, § 223(a) (January 27, 2021).

<sup>2</sup> *Ibid.*

<sup>3</sup> See The Economic and Climate Justice Screening Tool website located at:

<https://screeningtool.geoplatform.gov/en/about#3/33.47/-97.5>.

<sup>4</sup> See The Economic and Climate Justice Screening Tool website at <https://screeningtool.geoplatform.gov/en/public-engagement> regarding public input into the construction and operation of the screening tool, and the author of these comments has attended several meetings with CEQ during which the Council stated its intention to make input into the tool an iterative process.

<sup>5</sup> For example, the states of Minnesota and Michigan have developed, are developing, or it has been recommended that they develop a cumulative impacts tool and, of course, EPA has EJ screen, which provides demographic and pollution-related information to communities. For a good discussion of these tools and activities around cumulative impacts in these jurisdictions see Laura Grier et al., *Assessing the State of Environmental Justice in Michigan*, A report submitted in partial fulfillment of the requirements for the degree of Master of Science, School for Environment and Sustainability, University of Michigan (May 2019). Faber and Krieg also developed an EJ screening tool they applied to communities in Massachusetts. See D. Faber and E. Krieg, *Unequal Exposure to Ecological Hazards: Environmental Injustices in the Commonwealth of Massachusetts*, 110 ENVIRONMENTAL HEALTH PERSPECTIVES 277 (supplement 2) (April 2002).

<sup>6</sup> See CalEnviroScreen website which can be accessed at <https://oehha.ca.gov/calenviroscreen>.

New Jersey adopted a groundbreaking cumulative impacts and EJ law in 2020<sup>7</sup> and proposed regulations<sup>8</sup> to implement the law were issued by the New Jersey Department of Environmental Protection in early June of this year. The regulations detail how to conduct an EJ analysis mandated by the law that takes into account cumulative impacts. It is likely that this analysis developed by New Jersey will be highly scrutinized for possible utilization in other states and perhaps even on the federal level.

### **3. Could you elaborate on any effect that considering a project's cumulative impact would have on its design and implementation under the National Environmental Policy Act (NEPA)?**

Because the concept of cumulative impacts takes into consideration the contribution of multiple sources to the total amount of pollution in a community, a cumulative impacts analysis identifies sources of pollution, including relatively small ones, that might be ignored by more traditional types of analyses that examine the impacts of individual sources in isolation.<sup>9</sup> A cumulative impacts analysis would also look at the *combined* impact that multiple sources and pollutants would have on a community as opposed to isolated individual impacts.<sup>10</sup> Additionally, a cumulative impacts analysis would also incorporate social vulnerabilities that exist in Of Color communities and communities with low-income.<sup>11</sup> These social vulnerabilities could make the impacts of pollution more harmful in EJ communities than in other communities that suffer from fewer social and economic issues.<sup>12</sup> Again, more traditional types of pollution and environmental analyses would most likely ignore these vulnerabilities. Since a cumulative impacts analysis should address the impact of the total amount of pollution in a community, as well as relatively small sources of pollution and social vulnerabilities that could intensify the impact of combined pollution sources, mechanisms to eliminate or at least mitigate these problematic aspects of a project could be incorporated into the project design and implementation. Therefore, consideration of cumulative impacts should result in a project that is less harmful to a community than a project that is designed and implemented using more traditional analyses.

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<sup>7</sup> N.J.S.A. 13:1D-157, et. seq.

<sup>8</sup> The proposed regulations were published in the New Jersey Register on June 6, 2022, and a curtesy copy can be accessed on the New Jersey Department of Environmental Protection website at <https://www.nj.gov/dep/rules/proposals/proposal-20220606a.pdf>.

<sup>9</sup> A definition for cumulative impacts that is often used by the New Jersey EJ community is: The risks and impacts caused by multiple pollutants, both individually and when they interact with each other and any social vulnerabilities that exist in a community. The pollutants are usually emitted by multiple sources that are sited within a community. For other formal definitions see *Cumulative Impacts: Building a Scientific Foundation*, CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY, at 3 (2010); *Ensuring Risk Reduction In Communities With Multiple Stressors: Environmental Justice and Cumulative, Risks/Impacts*, NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL, at 5 (2004).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> See Rachel Morello Frosch et al., *Understanding the Cumulative Impacts of Inequalities In Environmental Health: Implications for Policy* 30 HEALTH AFFAIRS 879, 880-881 (2011);