

## **The State of the States: Environmental Justice Programs**

### **Introduction**

In the past two decades, environmental justice campaigns have flourished at the local level in communities of color throughout the United States. Alongside these campaigns came an explosion of multi-disciplinary environmental justice research. This research and documentation of the problem of environmental racism led to change at the Federal level, resulting in President Clinton's 1994 Executive Order on Environmental Justice. But from this complex web of the local and the Federal, the role of the States in the environmental justice movement and as a focal point for environmental justice policy and programs is often ignored by movement activists.

This paper argues for why States matter in analyzing the success of the environmental movement and provides a preliminary "snapshot" of State level policy on environmental justice.<sup>1</sup> One of the goals of this paper is to highlight the relevant research and reports that have already been produced on the topic of State environmental justice programs. I also talk at some length about developments in California because it is a bellwether state for environmental policy in general and environmental justice policy in particular. This paper concludes by posing key questions and areas for further investigation. Among these: Should environmental justice activists focus on the state level? If so, how? What are the risks involved for communities of color in focusing on State policy? What are the potential opportunities?

### **Why States Matter: Devolution, Delegation and Deregulation**

"In American Politics, who controls the states controls the nation."<sup>2</sup> In Joel Rogers prescient and timely article, "Devolve This!" he identifies why Progressives have distrusted a state-level policy for social change, and the dangers of this reluctance. Although he doesn't say so explicitly, the civil rights movement depended on a federal strategy to achieve its goals, as "States' Rights" became a code-word for Jim Crow segregation and maintaining the "Southern Way of Life." However, Rogers argues that the lack of a Progressive state strategy has led to two harms. First, the Right has essentially taken over the States. Second, in ignoring the States, progressives have missed an "enormous political opportunity" in the age of devolution. This opportunity is because the vast majority of policy that affects people's lives as "workers, consumers, taxpayers, owners and citizens" run through the states.

This centrality of the States is certainly true when we look at the environmental arena. The Environmental Council of the States (ECOS), the national non-profit, non-partisan association of state and territorial environmental commissioners, makes this case in highlighting the importance of the States in the areas of Delegation, Spending, Enforcement, and Data collection. As of 2001, over 75% of the federal environmental programs that can be delegated have been delegated to the States. Two thirds of the money that States spend on the environment comes from non-federal sources. States conducted about 90% of all enforcement actions taken by the States and the Federal Environmental Protection Agency. Lastly, for six of the biggest federal environmental databases, the States provided an average of 94% of the data.<sup>3</sup>

Another important factor that cannot be ignored is the politics and controversies surrounding deregulation. Deregulation is a largely ideologically driven attempt by proponents to decrease the power of the government in regulating the private sector, and is of direct benefit to corporate interests. Deregulation is a retrenchment from older forms of governmental regulation. Its proponents use the language of liberation and the glorification of competition to advance their ideological and political agenda. One concrete example of a deregulating industry that has had ramifications for communities of color is State energy deregulation in California and New York. In both, deregulation schemes led to a large number of new power plants that were sited near communities of color through an expedited environmental review process.<sup>4</sup> Politicians and corporations sought to skirt environmental and siting regulations by using the spectre of the California blackouts to ramrod their projects online (The blackouts were later found to be a result of corporate pricing strategies and the flawed structure of deregulation). For communities of color living near power plants, deregulation is a concrete policy that hits their neighborhoods particularly hard, with little regard for their health or the environment.

### **The State of the State's Environmental Justice Policy and Legislation**

So what is exactly the state of the States with regards to environmental justice policy and programs? Fortunately, the Public Law Research Institute has undertaken this huge task, thus providing us an accurate and (relatively) current “snapshot” of this topic. In their January 2004 report “Environmental Justice for All’ A Fifty-State Survey of Legislation, Policies, and Initiatives,” the researchers created a “comprehensive list of state environmental justice authorities (laws, regulations, cases, administrative orders) and initiatives (programs, grants, policies and guidelines.”<sup>5</sup> The researchers’ methodology section outlines their process, using the Internet, Lexis/Nexis databases, and interviews with State and Federal officials. The 71 page report focuses on authorities and initiatives that use the term “environmental justice” and “environmental equity” and those which do not explicitly use that language, but which have similar implications, such as “anti-concentration” laws. It is a treasure trove of data on which states have environmental justice authorities and initiatives, and shows the wide range of ways in which states have addressed environmental justice, from specific issues such as transportation and brownfields, public participation, siting and permitting.

“Environmental Justice for All” refrains from making major findings or evaluations of the environmental justice authorities and initiatives. One major finding evident in the report is that there are 10 states in which there were no “relevant environmental justice programs, policies, or statutes.”<sup>6</sup> The report does not speculate as to what are the factors may shape whether a State adopts an environmental justice policy or program, define what an effective program would look like, or how to evaluate a successful program. Lastly, since the report’s publication in January, two more states, Alabama and New Mexico, have started initiatives on environmental justice. Because there are so many states, and no central person or organization that tracks these programs, it is entirely possible that more States have started initiatives, or that other States with programs at the time the report was researched have since abandoned their programs because of a change in Administration or in personnel. Without active monitoring, it is impossible to know. Thus, the report, while a great resource is also limited.

An *evaluative* approach in targeted states fills in some of the gaps in “Environmental Justice for All.” A 2002 report by a panel of the National Academy of Public Administration (NAPA) undertaken at the request of the E.P.A. Office of Environmental Justice examined four state environmental justice programs.<sup>7</sup> Although it is older, it poses important questions and

provides answers to these. At three times the length, “Models of Change: Efforts by Four States to Address Environmental Justice,” focuses on Indiana, Florida, New Jersey and California in great depth and provides a high level of detail and analysis.<sup>8</sup> The study was designed to: “identify specific measures adopted by these four states; analyze their strengths and limits; develop findings and recommendations to aid in all states in responding to environmental justice concerns, and aid the public, including business, academia, and community in understanding how states can respond to environmental justice issues, and evaluating their states’ programs for this purpose and participating in their states’ environmental decisions.” There are 25 Findings in four major categories: Leadership and Accountability, Permitting, Setting Priorities to Reduce Pollution, and Public Participation. Additionally, there are 39 specific recommendations. Through interviews with agency staff, administrators, and activists, the report makes conclusions of why certain states have strong environmental justice programs, and how to strengthen already existing programs. One key factor is the role of “champions” within power centers at the state level (both legislators and administrators) who support, encourage, and require the state to address environmental justice.

Although laws are covered in “Environmental Justice for All” and “Models for Change” they are not highlighted per se. The four State study suggests some of the problems with taking the legislative route. Specifically, the laws did not integrate environmental justice into core environmental programs. The state of State environmental justice legislation as a separate and distinct category is tracked by the State Environmental Resource Center (SERC).<sup>9</sup> SERC tracks what states have passed environmental justice legislation and what types on their “Environmental Justice State Activity Page.”<sup>10</sup> The strengths of SERC’s information is its usability. For example, SERC provides actual sample bill text that a community group could theoretically use in their state. These bills are for creating an “Environmental Justice Task Force and Advisory Council,” and “Environmental Justice Considerations for Permits and Public Participation.” SERC also provides “Talking Points,” a “Fact Pack,” and “Press Clips,” to educate legislators.<sup>11</sup>

## **California**

It is exceedingly hard to generalize when it comes to the 50 States. The four state study focuses on those states that have a strong record on environmental justice, but space limits what can be said about these here. Thus, I want to talk about one state in particular, drawing from “Models for Change” and other resources.

California is an important state to look closely at for several reasons. It is a bellwether state when it comes to policy, both regressive and progressive. From Proposition 13 in 1978 that limited property tax increases that served as the opening salvo in three decades of tax revolt, to the recently announced attempt to reduce greenhouse gas emissions from cars, the sense that “Where California goes, so goes the nation” is powerful. According to the California Legislative Analysts’ Office in 2002, California has the 5<sup>th</sup> largest economy in the world (after the United States as a whole, Japan, Germany and the United Kingdom).<sup>12</sup> California’s demographic transformations have also been well-documented. It is a “majority-minority” state where 53% of its 33.8 million residents are African-American, Latino, Asian, Pacific Islander and other non-white groups. It is also home of a large number of environmental injustices, with a number of environmental justice organizations that are vibrant and politically savvy. It is also the state that has passed the most environmental justice legislation (although they have not necessarily been fully funded and implemented) and which has, arguably, the strongest state level environmental justice strategy. According to “Models for Change,” California has enacted significant

environmental justice legislation that has “established a strong state policy to address environmental justice problems.” It also describes the impetus for the programs and the complex agency structure at the California Environmental Protection Agency (Cal/EPA), as well as the position of Assistant Secretary for Environmental Justice within the agency. Cal/EPA has two separate committees with different responsibilities for environmental justice: The Interagency Working Group on Environmental Justice and the Advisory Committee.<sup>13</sup> In September 2003, the Advisory Committee produced a 53 page report of Recommendations to the Interagency Working Group.<sup>14</sup> Most recently, in October 2004, Cal/EPA published its Environmental Justice Action Plan which focuses on: developing guidance for the precautionary principle; developing guidance on cumulative impact analysis; improving tools for public participation and ensuring that environmental justice will be considered in the Governor’s Action Plan.<sup>15</sup>

Despite the gains in California, there are still significant environmental justice problems in communities of color. It is unclear whether the various policy initiatives have yet concretely achieved goals that communities care about- such as reducing environmental health disparities, their pollution and health burdens, and cleaning up noxious facilities. “Building Healthy Communities from the Ground Up: Environmental Justice in California” was released in September 2003 by five environmental justice groups in California.<sup>16</sup> It is an excellent and detailed report, that offers a potential model for environmental justice in other groups to emulate, in attempting to assess how to move forward. It begins by outlining the Environmental Justice Crisis in California (pollution, toxic waste, working conditions, environmental health risks, poor housing and inequitable land uses). It then defines “Environmental Justice Approaches to Creating Health Communities” and the different approaches that environmental justice organizations have adopted to remediate the problems. It shows examples of organizing successes and the passage of state legislation. Still, the report argues: “While these advances have been important for Environmental Justice in California, much more strategic and coordinated efforts are needed in order to build and sustain grassroots involvement and leadership at the state level. For example, key questions remain about whether or not such policy approaches substantively address issues and conditions in environmental justice communities. Environmental policy-making has historically excluded the communities most impacted from playing a meaningful role in the formation of environmental policy and regulations. Without meaningful participation by communities, legislative strategies may be limited to tactical, short-term, and politically convenient solutions rather than long-term, systematic approaches able to affect real change in communities.”<sup>17</sup> Lastly, the report ends by outlining “What is will take to build Healthy Communities and Achieve Environmental Justice.” These Factors are: State-level Advocacy Capacity, Increase in Philanthropic Resources, and Building Solidarity with Social and Economic Justice Movements.

## **Conclusion**

It is clear from these reports and resources that there are many gains that have been made in state level environmental justice policy and programs, as well as many gaps. What is also clear is that crucial information on what has worked in other states has not necessarily been disseminated through the proper channels, from activists, administrators, and legislators.

At the same time, there may be important drawbacks for environmental justice activists in focusing on implementing or changing State environmental justice programs and policies. When political administrations change, and new appointments are made, and staff leave, innovative programs can stall. Community groups and environmental justice activists need to decide if a

state strategy is the best use of their time and limited resources. This strategic thinking and planning process for environmental justice groups is most important at the beginning of the process of deciding to work for environmental justice and social change at the state level. Here again, the experience of environmental justice groups in California is instructive. Progressive funders were, and can be elsewhere, an effective conduit for this kind of proactive strategizing, with potentially impressive and meaningful results.

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<sup>1</sup> The author benefited from correspondence and interviews with the following people: Veronica Eady (West Harlem Environmental Action); Raquel Morello-Frosch; Romel Pascual (U.S. E.P.A., and former Assistant Secretary for Environmental Justice at Cal/EPA) and Max Weintraub (U.S. E.P.A. and the Environmental Justice and Health Union, available from World Wide Web at <http://www.ejhu.org/>).

<sup>2</sup> Rogers, Joel. "Devolve This!" *The Nation* August 30/September 6 (2004): 20-28.

<sup>3</sup> Available from World Wide Web: (<http://www.sso.org/ecos/>)

<sup>4</sup> A Latino Issues Forum report, "Power Against the People" (November 2001) analyzed 18 proposed power plants in California in the wake of the California energy crisis, and showed that for 16 of the 18 facilities, the population within six miles was more than 50 percent people of color, higher than the state average of population of Latino population at 32.4%. For 80 percent of the plants, the proportion of Latinos in the surrounding population exceeded state averages. In terms of income, for 83 percent of the plants, the family income for nearby residents was less than 25 thousand per year, far less than the state mean household income of \$69,979 per year. Available at ([http://www.lif.org/publications/power\\_rpt.pdf](http://www.lif.org/publications/power_rpt.pdf)). In New York City, the New York Power Authority's demographic analysis of its proposed facilities showed that areas around the sites had higher poverty rates and higher proportions of minorities than city-wide averages, within a half mile radius.

<sup>5</sup> Available from the World Wide Web: (<http://www.abanet.org/irr/committees/environmental/statestudy.pdf>)

<sup>6</sup> These are Idaho, Iowa, Kansas, Maine, Nebraska, Nevada, North Dakota, Oklahoma, Vermont, and Wyoming.

<sup>7</sup> Available from World Wide Web:

([http://209.183.198.6/NAPA/NAPAPubs.nsf/9172a14f9dd0c36685256967006510cd/95fffb0b62b4e26d85256be3004ff436/\\$FILE/Final+State+EJ+2002.pdf](http://209.183.198.6/NAPA/NAPAPubs.nsf/9172a14f9dd0c36685256967006510cd/95fffb0b62b4e26d85256be3004ff436/$FILE/Final+State+EJ+2002.pdf)) or the report can be opened from Ann Goode's overview of State Approaches to Environmental Justice, Available from World Wide Web: (<http://www.abanet.org/irr/committees/environmental/newsletter/dec03/Goode.html>)

<sup>8</sup> These states were chosen for specific reasons. These are states that enacted new legislation, proposed new regulation, issued executive orders or policies, convened advisory committees of diverse stakeholders, or implements various management strategies.

<sup>9</sup> SERC "researches state environmental policies and assembles information and tools to help legislators make important decisions on key environmental issues. SERC identifies the most innovative and effective state policies, and exposes anti-environmental legislative trends," retrievable at <http://www.serconline.org/>

<sup>10</sup> These include: Establishing an Environmental Equity and Justice Center; Establishing a Working Group and/or Advisory Council; Addressing Environmental Justice in the Permitting/Siting Process; Identifying and Tracking Health Effects; Declaring High Impact Areas; Addressing Affected Communities Impacted by Air Pollution; Providing Grants to Environmental Justice Nonprofit Groups; Requiring Studies on Environmental Indicators that May Affect Environmental Justice Plans.

<sup>11</sup> If there was more visibility of SERC's information, in particular the bill text, environmental justice groups may decide that it is advantageous to try to pass environmental justice legislation. Another way that SERC's Environmental Justice Issue Pack could be strengthened is if the actual bill text for the other categories of environmental justice legislation (in addition to the two it lists) were made available, so that environmental justice groups could find what kind of legislation would be most valuable in a particular state.

<sup>12</sup> Available from World Wide Web: ([http://www.lao.ca.gov/2002/cal\\_facts/econ.html](http://www.lao.ca.gov/2002/cal_facts/econ.html))

<sup>13</sup> Available from World Wide Web: (<http://www.calepa.ca.gov/EnvJustice/>)

<sup>14</sup> Available from World Wide Web: (<http://calepa.ca.gov/EnvJustice/Documents/2003/FinalReport.pdf>)

<sup>15</sup> Available from World Wide Web: (<http://www.calepa.ca.gov/EnvJustice/ActionPlan/Documents/October2004/ActionPlan.pdf>)

<sup>16</sup> The report was written by Martha Matsuoka, and released by the Asian Pacific Environmental Network, Communities for A Better Environment, Environmental Health Coalition, People Organizing to Demand Environmental and Economic Rights, Silicon Valley Toxics Coalition/ Health and Environmental Justice Project. It is Available from World Wide Web: (<http://www.calendow.org/reference/publications/pdf/disparities/BUILDINGHEALTHYCOMMUNITY4.pdf>) and at the web sites of the organizations that sponsored the report.

<sup>17</sup> (Matsuoka, 12). The report also describes six concrete Policy Areas for Achieving Environmental Justice in California, with detailed recommendations on how to achieve these: Address Existing Environmental Health Risks and Prevent Future Ones; Ensure Safe, Decent and Affordable Housing; Protect and Ensure Workers' Rights and Safety; Promote and Ensure Community-Based Land-Use Planning and Economic Development; Ensure that Transportation Planning, Investments, and Operations Support and Strengthen, not Destroy Communities and Ensure Safe and Health Schools and Quality Education.