

Congress of the United States

Washington, DC 20515

January 26, 2023

The Honorable Brenda Mallory
Chair
Council on Environmental Quality
730 Jackson Place, NW
Washington, DC 20503

Dear Chair Mallory,

The Council on Environmental Quality (CEQ) has an opportunity to make a significant contribution in the fight for environmental justice, building on its important efforts to date. One of President Biden’s first actions as president was to issue an Executive Order requiring federal agencies to make achieving environmental justice part of their missions and mandating the development of an Environmental Justice (EJ) Scorecard to keep track of that work.¹ On August 3, 2022, CEQ issued a request for information (RFI) “to solicit feedback on the vision, framework, and outcomes” of the EJ Scorecard.”² As strong supporters of environmental justice, we understand that the first version of the EJ Scorecard will establish a baseline by which to measure progress toward our shared environmental justice goals. We urge CEQ to develop a scorecard that is transparent and accessible, incorporates available data that measures and illustrates the effectiveness of federal funding in EJ communities, incorporates community-produced data, and presents the data in an actionable way so that agencies can use them to drive rulemakings and investments. The Scorecard should engage the communities it is intended to help.

As an initial and overarching matter, the EJ Scorecard must be transparent and accessible to everyone, especially those in EJ communities. This means making the EJ Scorecard publicly available and easily accessible, in multiple languages. While the EJ Scorecard should be internet-based, CEQ must consider and address the “digital divide” — limited or non-existent internet access rates in EJ communities. To maximize accessibility, CEQ should provide public access of the EJ Scorecard through partnerships with public libraries, community centers, and non-profit organizations and periodically publish hard-copy versions to be made available at such locations or regional agency offices. And to maximize community participation and stakeholder involvement in the EJ scoring process, CEQ should include a process for regional in-person, virtual, and hybrid feedback opportunities that anticipate and account for participant disabilities and language barriers.³

¹ Executive Order 140008, Tackling the Climate Crisis at Home and Abroad, 86 Fed. Reg. 719 (Feb. 1, 2021), <https://www.federalregister.gov/documents/2021/02/01/2021-02177/tackling-the-climate-crisis-at-home-and-abroad>.

² Environmental Justice Scorecard Feedback, Council on Environmental Quality, 87 FR 47397 (Aug. 3, 2022), <https://www.federalregister.gov/documents/2022/08/03/2022-16635/environmental-justice-scorecard-feedback>.

³ *Community Engagement Brief: Ensuring environmental justice communities participate in decision-making on the Justice40 Initiative and beyond*, We Act (Sept. 23, 2022), <https://www.weact.org/wp-content/uploads/2022/10/Community-Engagement-Brief-092322-FINAL.pdf>.

The RFI explains that the first version of the EJ Scorecard envisions three reporting categories: (1) Reducing Burdens and Harms in Communities, (2) Benefits to Communities, and (3) Centering Justice in Decision-Making.⁴ For each of those three categories, the EJ Scorecard should incorporate available data that demonstrate how the federal government is meeting those goals and, as additional data becomes available, that data should be included in future versions of the EJ Scorecard.⁵

Reducing Burdens and Harms in Communities

As the RFI explains, “[t]his category would measure the regulatory, enforcement, and other actions taken to reduce harms and environmental injustices.”⁶ We encourage CEQ to include in the EJ Scorecard metrics on: health; economic opportunity; food security; environmental quality; climate change; displacement; protection of sacred sites; and affordable access to quality housing, energy, multimodal transportation, safe drinking water, and sanitation, some of which can be obtained through the Climate and Economic Justice Screening Tool (CEJST). The difference in those metrics year-over-year will show the effectiveness or ineffectiveness of steps taken to combat environmental injustice.⁷ CEQ should also include metrics that track community displacement due to agency actions and discrimination and inequality metrics. We urge CEQ to complement this quantitative data with qualitative feedback from affected stakeholders and frontline organizations in order to ensure the scorecard reflects that realities that communities face on the ground. The Scorecard should integrate and consider qualitative feedback in a way that can justify agency action to address problems reported through these channels.

Another way to measure the reduction in burdens and harms to communities is through their engagement with federal environmental protection and remediation programs implemented by federal agencies and consolidate existing environmental protection data into one publicly accessible digital platform. The EJ Scorecard could track successful consultation and community engagement with feedback from relevant agencies, and assess how the agencies integrated community concerns into their decision-making, including the consent or lack thereof of communities and Tribes. The EJ Scorecard should track and measure how Indigenous Traditional Ecological Knowledge offered by Indigenous communities is incorporated into decision-making.

Enforcement actions can reduce burdens and harms in EJ communities. These include actions under federal statutes such as the Clean Air Act, the Clean Water Act, and Title VI of the Civil Rights Act of 1964. We urge you to consider how the EJ Scorecard could appropriately include Title VI enforcement, without improperly influencing ongoing enforcement actions, including by tracking and monitoring the number of outstanding and open Title VI complaints.

⁴ 87 Fed.Reg. at 47398.

⁵ *Community Engagement Brief: Ensuring environmental justice communities participate in decision-making on the Justice40 Initiative and beyond*, We Act (Sept. 23, 2022), <https://www.weact.org/wp-content/uploads/2022/10/Community-Engagement-Brief-092322-FINAL.pdf>.

⁶ 87 Fed.Reg. at 47398.

⁷ WE ACT_Response to CEQ-2022-0004_10032022 (Oct. 3, 2022), file:///C:/Users/ac82404/Downloads/CEQ-2022-0004-0014_attachment_1.pdf.

Benefits to Communities

As the RFI explains, “[t]his category would measure the Administration’s progress on implementation of the Justice40 Initiative, among other environmental justice efforts.”⁸ That initiative would “ensur[e] that 40 percent of the overall benefits of certain Federal investments—those made in climate, clean energy and energy efficiency, clean transit, affordable and sustainable housing, training and workforce development, the remediation and reduction of legacy pollution, and the development of critical clean water infrastructure—flow to disadvantaged communities that are marginalized and overburdened by pollution and underinvestment in basic services.”

As with reducing burdens and harms to the EJ community, the EJ scorecard can use the CEJST to identify and measure benefits to communities. Additionally, we urge CEQ and other agencies to continue improving the definition for ‘disadvantaged communities’ to accurately include and increasingly reflect the realities on the ground for overburdened, underserved, and marginalized communities. The EJ Scorecard can likewise incorporate metrics surrounding agency action and how community feedback is taken into consideration.

The EJ Scorecard also should expansively track federal spending to evaluate which environmental justice communities benefit from *Infrastructure Investment and Jobs Act*, *Inflation Reduction Act*, and other federal funding opportunities across agencies—opportunities that may include but should not be limited to programs within the Justice40 initiative.⁹ These efforts should be integrated with already ongoing oversight by the Government Accountability Office (GAO) and the Office of Management and Budget (OMB), as outlined in and funded by the *Inflation Reduction Act*.¹⁰ The EJ Scorecard should identify communities applying for agency grants and how grant funding is distributed and spent.¹¹ To better understand why communities and projects are not granted awards, the EJ Scorecard should track why eligible applicants did not receive funding.

Centering Justice in Decision Making

As the RFI explains, “[t]his category would capture measures taken to reform agency decision making to incorporate the perspectives, priorities, and lived experiences of environmental justice communities.”¹² To achieve that result, in the short term, the EJ Scorecard should record the number of community comments, listening sessions, roundtables, and feedback opportunities on EJ community engagement with federal agencies. We support any efforts for nation-to-nation consultation in order to ensure that the EJ scorecard is useful for Tribal and Indigenous peoples, as well as metrics to track ongoing nation-to-nation engagement within agency actions. The EJ Scorecard should further identify whether and how those agencies have changed their EJ

⁸ 87 Fed.Reg. at 47398.

⁹ White House Environmental Justice Advisory Council, *Phase One Scorecard Recommendations Report* (M (Mar. 8, 2022), <https://www.epa.gov/system/files/documents/2022-04/whejac-phase-one-scorecard-recommendations-report.pdf>).

¹⁰ Pub. L. No. 117-169, § 70004-70005 (2022).

¹¹ *Id.*

¹² *Id.*

community engagement processes to increase participation, conducted targeted outreach to communities, and whether and how those agencies have changed their priorities and programs based on community feedback and input. The EJ Scorecard should also add metrics to assess whether federal advisory groups sufficiently include representatives from EJ communities. Over time, the EJ Scorecard should also take account of community feedback on Justice40 programs and other federal investments, whether the federal agencies acted on that feedback or not, and why.

In the long term, the EJ Scorecard should measure and show how the entire federal government integrates community input, and how that reform served communities and improved their economic, health, and environmental conditions.¹³

As CEQ integrates stakeholder and congressional feedback, please keep us informed of the progress you are making and provide a timeline for the release of the EJ Scorecard. The EJ Scorecard is a critical tool for ensuring federal government action on environmental injustices and community engagement that keeps agencies accountable. We look forward to working with you and our frontline communities to implement the best EJ Scorecard possible.

Sincerely,



Edward J. Markey
United States Senator



Cori Bush
Member of Congress



Tammy Duckworth
United States Senator



Cory A. Booker
United States Senator



Elizabeth Warren
United States Senator



Ron Wyden
United States Senator

¹³ WE ACT_Response to CEQ-2022-0004_10032022 (Oct. 3, 2022), file:///C:/Users/ac82404/Downloads/CEQ-2022-0004-0014_attachment_1.pdf.



Jeffrey A. Merkley
United States Senator



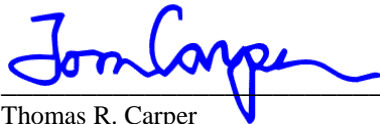
Alex Padilla
United States Senator



Mazie K. Hirono
United States Senator



Richard Blumenthal
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Greg Casar
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