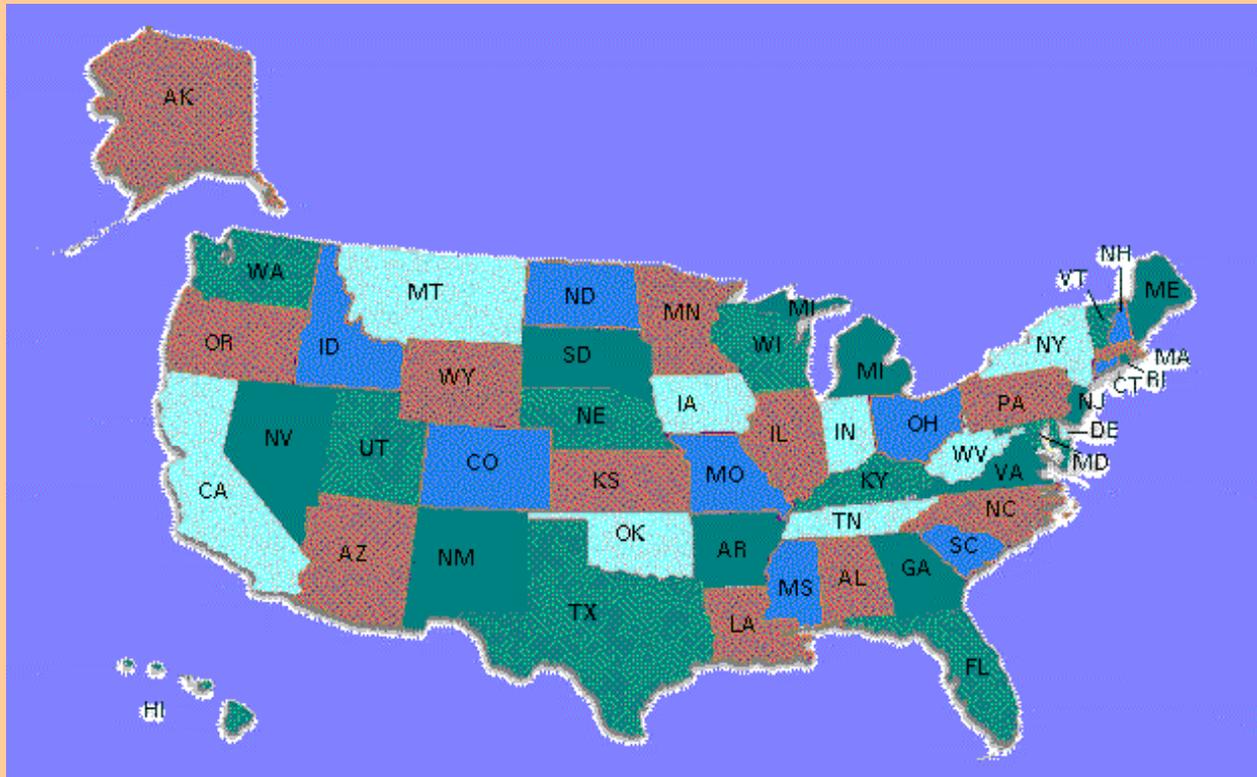


Environmental Justice For All

A Fifty-State Survey Of Legislation, Policies, and Initiatives



**Section of Individual
Rights & Responsibilities
American Bar Association**

**Public Law Research Institute
Hastings College of the Law
University of California**

**Section of Environment,
Energy, and Resources
Co-Sponsor**

January 2004

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Steven Bonorris, Editor

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You may obtain an electronically retrievable copy (PDF file) of this report, at no cost, from the website of the Environmental Justice Committee of the Section of Individual Rights and Responsibilities, ABA <www.abanet.org/irr/committees/environmental/>.

Preface and Acknowledgements

The environmental justice movement has been called the confluence of two great movements of the twentieth-century: the Environmental and Civil Rights movements. “Environmental justice” is commonly understood to stand for the principle that all people have the right to clean air, clean water, and clean land, and that those potentially affected by environmental decisions should have a meaningful say in the decisionmaking process regardless of race, income, or ethnicity.

This report identifies the statutes, policies, initiatives, or other commitments that states have undertaken to give force of law and/or tangible meaning to the goal of environmental justice. Importantly, the report finds that from the first policy issued in 1993 to the present more than 30 states have expressly addressed environmental justice, demonstrating increased attention to the issue at a political level. The wide-range and variety of policy strategies and approaches used by states, however, suggests that the issue will continue to mature over the coming years.

Responsible for this report, the Public Law Research Institute, University of California, Hastings Law School of the Law University of California, and the American Bar Association, Section of Individual Rights and Responsibilities, with the co-sponsorship of the Section of Environment, Energy & Resources, have an ongoing commitment to the study and achievement of environmental justice. This report was developed to assist people confronting and studying environmental justice, including: communities, government, business, lawyers, and academics. Recognizing the special needs of environmentally impacted communities, which are often in the greatest need of assistance and least able to afford expert advisors, we are making this report is available at no cost. Copies may be downloaded at <<http://www.abanet.org/irr/committees/environmental>>.

We are grateful to the many UC Hastings students, Jodene Isaacs ('03), Stephanie Stuart ('03), John Yun ('04), Paul Tokarz ('04), Caitlin Crary ('04), Hillary Gross ('01), Hannah Shafsky ('01), and the former Fellow in Public Law, Kara Brown, who contributed to this report and who have gained the legal knowledge to capably represent their future clients' environmental justice needs. We are also grateful to the many state officials who provided information, and to the reviewers, including those from communities, academia, and industry, who provided thoughtful comments on earlier drafts. We are particularly appreciative of the thoughtful leadership and guidance of Sandra Salazar-Thompson, Director of the Environmental Justice Project at the California Governor's Office of Planning and Research, and Bonnie Chiu, Program Coordinator. We also recognize the generous financial support of Interactive Sciences, Incorporated, which helped make this report possible. Finally, without the skill, dedication, and intellect of Steven Bonorris, Report Editor and Manager, this effort would not have succeeded.

We hope that you will find the report of assistance.

Nicholas Targ, Chair
Environmental Justice Committee
Section of Individual Rights & Responsibilities
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Note on Methodology

The authors of this report have endeavored to create a comprehensive list of state environmental justice authorities (*e.g.*, laws, regulations, cases, administrative orders) and initiatives (*e.g.*, programs, grants, policies, and guidelines). At a minimum, we researched each state's authorities and initiatives using the following sources: (1) the website of each state's environmental protection bureau; (2) Lexis/Nexis databases, including both primary and secondary sources; and (3) phone conversations with state and Federal officials. The report identifies in footnotes the source of the information upon which we relied.

For each state, legal authorities and initiatives that use the term "environmental justice," or "environmental equity" are set out first. Initiatives using either term follow thereafter. Closing each state section is the contact information of the state's EJ coordinator or the state's environmental protection agency.

In addition, we have included certain state authorities and initiatives that directly address the issue of environmental justice, but which do not use the language "environmental justice" or "environmental equity." For example, we have set out a description of Alabama's anti-concentration law, which restricts the building of solid or hazardous waste facilities within a county already housing such a facility. The ongoing concern of the environmental justice movement for patterns of co-location of waste and power facilities with minority and/or low-income communities mandates that we include anti-concentration laws. For similar reasons, we have included authorities that address cumulative impacts in the siting of new waste or power facilities, as well as authorities that enhance community participation in decisionmaking related to siting waste or power facilities.

Finally, the report includes Performance Partnership Agreements ("PPAs") between the United States Environmental Protection Agency ("US EPA") regional offices and states, if the PPA expressly references environmental justice. States and US EPA regional offices enter into PPAs to memorialize agreement on common goals, joint efforts, strategies and priorities. At least 35 states have signed PPAs with US EPA, although not all of these agreements have been made publicly available on the Internet or are currently in effect.¹ In late 2001, US EPA headquarters began requiring the EPA regional offices to include environmental justice goals or strategies in new PPAs.² Given the difficulty in obtaining active PPAs, however, the recital of PPAs included in this report is not necessarily comprehensive.

¹ Rena I. Steinzor, "Devolution and the Public Health," 24 Harv. Envtl. L. Rev. 351, 428 (2000)(notes omitted).

² Christine Todd Whitman, former Administrator of US EPA, "EPA's Commitment to Environmental Justice" (August 9, 2001). available at http://www.epa.gov/compliance/resources/policies/ej/admin_ej_commit_letter_081401.pdf (last accessed June 11, 2003).

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ALABAMA

Policies

Alabama is in the process of developing an environmental justice (“EJ”) policy, though the Alabama Department of Environmental Management (“ADEM”) does not currently provide specific environmental justice information on its website. Once the program is created, it will likely be housed within the Public Relations Department and will begin as a policy initiative implemented within various state departments.³

Transportation Planning

The Alabama Department of Transportation (“ALDOT”) has recognized environmental justice as an issue in its Statewide Transportation Plan (“SWTP”), a long-range planning document.⁴ The SWTP, published in June 2000, states that ALDOT is “cognizant of and sensitive to the evolving environmental justice guidance, including Executive Order 12,898, which requires that states . . . consider the extent to which low-income and minority populations may be disproportionately impacted by transportation plans and projects.”⁵ The document goes on to state that “environmental justice is a relatively new concept in transportation planning and the actions required of the states are still largely undetermined. However, this plan reflects ALDOT’s efforts to begin to address environmental justice in statewide planning.”⁶ As of this writing, there is no other mention of environmental justice issues or implementation of any procedures on ALDOT’s website.

Executive Order

The Alabama Commission on Environmental Initiatives (“the Commission”) was formed by executive order.⁷ The purpose of the Commission, composed of 63 individuals including two members of community-based environmental justice organizations, included “researching and developing quality options and alternatives that encourage the long-term preservation of Alabama’s natural environment.”⁸ After holding numerous public forums on EJ issues, the Commission issued 40 recommendations for addressing EJ for the Governor’s consideration on December 6, 2000.

One recommendation suggested that the Alabama Department of Environmental Management (“ADEM”) research the number of air permits granted in a “spatial area” and assess whether there exists a “need to do cumulative emissions permitting for minor source permits in

³ Telephone interview with Sean Sibley, Alabama General Counsel’s Office (March 4, 2003).

⁴ Alabama Dept. of Transportation Statewide Transportation Plan, *available at* <http://www.dot.state.al.us/TransPlanning/stateplan.pdf> (Last visited Sept. 23, 2003).

⁵ *Id.*; Exec. Order No. 12,898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-income Populations* (February 11, 1994), 3 C.F.R. 859 (1995)(although the order only binds federal agencies, states receiving federal funds must derivatively heed the policies of the grantmaking agencies).

⁶ *Id.*

⁷ Exec. Order No. 26, Alabama Commission on Environmental Initiatives (April 26, 2000), *available at* <http://www.jsu.edu/depart/epic/executiveorder26.html> (Last visited Oct. 16, 2003).

⁸ Alabama Commission on Environmental Initiatives, *Report to the Governor* (Jan. 22, 2001), *available at* <http://www.jsu.edu/depart/epic/ACEI.html> (Last visited Oct. 10, 2003).

that area.”⁹ The Commission also suggested strengthening community notification to review hazardous waste siting permits in order to increase community input in the planning process.

Statute

Anti-Concentration Regulations

Alabama addresses environmental justice concerns through hazardous waste anti-concentration laws. Alabama sets both substantive and procedural requirements for the placement of hazardous waste treatment or disposal facilities. No more than one commercial hazardous waste treatment facility or disposal sites may be situated within a county.¹⁰ Commercial hazardous waste treatment or disposal sites may not be situated until the legislature receives and approves a written proposal addressing socioeconomic issues.¹¹ In considering whether to approve a siting request, legislators must take into account the “social and economic impacts of the proposed facility on the affected community, including changes in property values, community perception, and other costs.”¹² Alabama’s siting law also provides for notice and opportunity for public comment and the possibility of a public hearing before issuance of any permit for a hazardous waste treatment, storage or disposal facility.¹³

The anti-concentration laws apply only to commercial hazardous waste sites. Thus, opponents of other undesirable land uses cannot rely upon the statute to challenge other types of projects. However, Alabama law allows residents to file environmental justice-related complaints with the state's seven-member Environmental Management Commission.¹⁴

Contact

Alabama Department of Environmental Management

Telephone: (334) 271-7700

Website: <http://www.adem.state.al.us>

ALASKA

Alaska does not have formal environmental justice policies or laws. However, a manual was published by the Department of Conservation that addresses environmental justice type issues. *Seven Generations* was designed for people in rural Alaska desiring to accomplish environmental planning and management using a community based approach.¹⁵ The intended audience is rural Native-American tribes, and the manual assists communities with identifying environmental issues of concern such as drinking water quality and waste storage.¹⁶ It provides

⁹ *Id.*

¹⁰ ALA. CODE § 22-30-5.1(c) (2003).

¹¹ *Id.* at § 22-30-5.1(c) & (d).

¹² *Id.* at § 22-30-5.1(d)(1).

¹³ *Id.* at § 22-30-12(g).

¹⁴ *See generally, id.* § 22-22A-6.

¹⁵ Alaska Department of Conservation, *Seven Generations: Addressing Village Environmental Issues For Future Generations of Rural Alaska* (2001), available at <http://www.state.ak.us/local/akpages/ENV.CONSERV/dsps/compasst/7generations/7gen.htm> (Last visited Oct. 10, 2003).

¹⁶ *Id.*

practical information for local communities on how to organize and advocate solutions to environmental problems.

ARIZONA

Statutes

Although Arizona does not have formal EJ laws, the state has addressed environmental equity concerns in a statute that requires disclosure of information to affected communities. Arizona law requires the Arizona Department of Environmental Quality (“DEQ”) to provide notification of any major permit application to counties, cities, or towns that may be affected by a permitting decision.¹⁷ To implement the spirit of this law, DEQ has instituted its Public Notification Policy, directing its Air Quality, Water Quality, Hazardous Waste, and Solid Waste Divisions to “proactively support the Environmental Justice program and when deemed necessary by DEQ management, notify the environmental justice population affected within thirty-one (31) days of receipt of permit applications.”¹⁸

EJ Program

The Arizona DEQ is committed to protecting low-income and minority communities from disparate impacts associated with permitting facilities that violate the Civil Rights Act. Responsibility for coordinating and responding to concerns about environmental justice issues or complaints rests with the Counselor to the Director of DEQ.¹⁹ The department has dedicated one full-time staff position to coordinate its environmental justice efforts.²⁰

Community Participation and Process

Community Advisory Boards

As a component of DEQ’s Superfund program, the agency works with Community Advisory Boards (“CABs”) to “keep citizens informed about site progress and give them the opportunity to provide their concerns, issues, and opinions to assist DEQ in determining the best way to move forward with the remediation of the site.”²¹ CABs are composed of five to twenty members who represent a diversified cross-section of the community.²² Potential members fill out applications that are then reviewed and selected by a committee composed of an DEQ representative, a local elected official, two community members, and an “interested party,” defined by the DEQ as “an owner or operator of a facility within the site or an affected business or industry.”²³ Once formed, CABs meet at least four times per year with DEQ representatives

¹⁷ ARIZ. REV. STAT. ANN. § 49-111 (West 2003).

¹⁸ Chuck D. Barlow, *State Environmental Justice Programs and Related Authorities*, in THE LAW OF ENVIRONMENTAL JUSTICE: THEORIES AND PROCEDURES TO ADDRESS DISPROPORTIONATE RISKS, at p. 143 (Michael B. Gerrard ed., 1999).

¹⁹ Telephone interview with Patrick Gibbons, Public Information Officer, Arizona Department of Environmental Quality (Oct. 24, 2003).

²⁰ *Id.*

²¹ Arizona Dept. of Environmental Quality, *Waste Programs Division: Superfund Programs: Community Involvement*, <http://www.adeq.state.az.us/environ/waste/sps/community.html> (Last visited Oct. 15, 2003).

²² ADEQ, *Community Advisory Boards*, <http://www.adeq.state.az.us/environ/waste/sps/community.html#board> (Last visited Oct. 15, 2003).

²³ *Id.*

to discuss project status.²⁴ CABs duties include providing comments to DEQ on cleanup goals, methods and other issues; representing the community located around the site; participate in community outreach with respect to the project; and make visits to the clean-up site.²⁵ Rather than merely advising the state regarding community views and needs as most environmental justice-oriented advisory groups do, CABs serve a two-pronged function by providing feedback in the other direction to the community.

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ARKANSAS

Statutes

Environmental Equity Act

In 1993, Arkansas passed the Arkansas Environmental Equity Act, which addresses environmental justice issues in the siting context.²⁶ The Arkansas legislature explicitly recognized that high impact solid waste disposal facilities tended to be concentrated in lower-income or minority communities.²⁷ The legislature passed the law to “prevent[] communities from becoming involuntary hosts to a proliferation of high impact solid waste management facilities.”²⁸

The statute creates “a rebuttable presumption against permitting the construction or operation of any high impact solid waste management facility . . . within twelve (12) miles of any existing high impact solid waste management facility.”²⁹ This presumption may be rebutted by showing either the lack of other suitable sites or the presence of incentives that have prompted the host community to accept the siting of the facility (such as increased employment opportunities, host fees, financial contributions to the community infrastructure, compensation for decreased property values, or subsidization of community services).³⁰ The Arkansas Department of Environmental Quality (“AR DEQ”) may not process any application for a permit subject to Arkansas Code Annotated § 8-6-1504 until the affected local and regional authorities have issued definitive findings regarding the criteria required by this statute.³¹

²⁴ *Id.*

²⁵ *Id.*

²⁶ ARK. CODE ANN. § 8-6-150 (Michie 2003).

²⁷ *Id.* § 8-6-1501(b).

²⁸ *Id.*

²⁹ *Id.* at § 8-6-1504(a)(1).

³⁰ *Id.*

³¹ *Id.* at § 8-6-1503.

Performance Partnership Agreement

Arkansas has signed a performance partnership agreement with US Environmental Protection Agency (“US EPA”). The agreement includes a section on environmental justice listing the following goals: (1) to enhance effectiveness in complying with Title VI of the Civil Rights Act of 1964;³² (2) to provide multi-media information to community and grassroots organizations; (3) to conduct audits of possible environmental injustices throughout the states; and (4) to develop strategies to safeguard the health and safety of communities impacted by possible environmental injustices.³³

In broad terms, US EPA and AR DEQ vowed to bridge the gap between regulatory agencies and the minority and low-income communities that they serve. The agencies agree that this can be accomplished through better dissemination of environmental information; the use of computer based mapping databases; collecting data on environmental injustices within the state; the development of strategies to protect the health and safety of communities; and soliciting input from minority and low-income communities in facility siting decisions.³⁴

Contact

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CALIFORNIA

Statutes

Governor’s Office of Planning and Research

In 1999, the legislature passed California’s first environmental justice law, SB 115 (Solis), designating the Governor's Office of Planning and Research (“OPR”) as the lead agency for environmental justice programs and of the state’s “environmental and state planning programs.”³⁵ The relevant duties of the OPR include recommending and implementing state policies with regard to land-use and growth planning; carrying out a program of policy research for the Governor and Cabinet; providing technical planning advice to local governments; and advising project proponents and government agencies on provisions of the California Environmental Quality Act.³⁶

³² Title VI of the Civil Rights Act of 1964, *as amended* 42 U.S.C. §§2000d to 2000d-7 (2003)(providing that “No person . . . shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”)

³³ *Performance Partnership Agreement Between the Arkansas Department of Environmental Quality and the United States Environmental Protection Agency Region 6* (effective July 1, 2001-June 30, 2002), available at http://www.adeq.state.ar.us/diroffice/strategic_plan/pdfs/ppa2001-2002.pdf (Last visited Sept. 13, 2003).

³⁴ *Id.* at pp. 22-23.

³⁵ CAL. GOV’T. CODE § 65040.12 (West 2003); Governor’s Office of Planning and Research, <http://www.opr.ca.gov/about/About.shtml> (Last visited July 29, 2003).

³⁶ CAL. GOV’T CODE §65040.12.

OPR, working with the Public Law Research Institute at University of California Hastings College of the Law, conducted a survey of state agencies in 2001, in order to determine how state agencies addressed environmental justice.³⁷ The survey prompted OPR, along with the California Environmental Protection Agency (“CalEPA”) and the US EPA, to conduct workshops for state personnel to be educated about the issues of the environmental justice movement; federal and state laws that address environmental justice; and how to address environmental justice issues as they arise in their day-to-day work.”³⁸

With respect to community involvement, “OPR conducts EJ Forums throughout the state on a regular basis to build a network of EJ contacts throughout California and beyond, to evaluate efforts to increase meaningful public involvement in government, and to hold public hearings on EJ Guidelines for local General Plans.”³⁹

California Environmental Protection Agency

SB 115 requires CalEPA to take specified actions in designing its mission for programs, policies, and standards within the agency and to develop a model environmental justice mission statement for boards, departments, and offices within the agency by January 1, 2001.⁴⁰ SB 115 also directs CalEPA to comport its programs and enforce its regulations in accordance with the principles of environmental justice.⁴¹ The agencies that fall under CalEPA include the Air Resources Board, the Integrated Waste Management Board, the State Water Resources Control Board, the Regional Water Quality Control Board, the Department of Pesticide Regulation, the Department of Toxic Substances Control, and the Office of Environmental Health Hazard Assessment.⁴²

In accordance with SB 89, CalEPA formed a Working Group on Environmental Justice to develop an interagency EJ strategy.⁴³ Further, the Working Group “is charged with identifying gaps in environmental laws, regulations and policies as they relate to environmental justice and creating a strategy to address such gaps.”⁴⁴ CalEPA also convened an Advisory Committee on Environmental Justice to assist the interagency working group.⁴⁵ The Committee recently released its draft of *Recommendations to the Interagency Working Group on Environmental Justice* document for public review. The document is “intended to provide a set of comprehensive recommendations to establish and implement an effective environmental justice

³⁷ Governor’s Office of Planning and Research, <http://www.opr.ca.gov/ejustice/Overview.shtml> (Last visited July 29, 2003).

³⁸ *Id.*

³⁹ Governor’s Office of Planning and Research, <http://www.opr.ca.gov/ejustice/EJustice.shtml> (Last visited Oct. 2, 2003).

⁴⁰ See SB 115, 1999 Leg. 145th Sess. (Ca. 1999), *added as* CAL. PUB. RES. CODE § 72000-01 (later renumbered to §§ 71110-11 by SB 828 (Alarcón, 2001)).

⁴¹ *Id.*

⁴² California Environmental Protection Agency, <http://www.calepa.ca.gov/EnvJustice/Partners/> (Last visited Oct. 2, 2003).

⁴³ CAL. PUB. RES. CODE § 72002.

⁴⁴ Governor’s Office of Planning and Research, <http://www.opr.ca.gov/ejustice/Overview.shtml> (Last visited Oct 16, 2003).

⁴⁵ As required by SB 89 (codified at CAL. PUB. RES. CODE § 72003); CalEPA, *Environmental Justice Program*, <http://www.calepa.ca.gov/EnvJustice/News/> (Last visited July 29, 2003).

program at CalEPA.”⁴⁶ Among its goals, the report seeks to provide guidance on (1) improving the public’s meaning access and participation in hearings; (2) integrating EJ goals into the process of forming and implementing environmental policy; and (3) improving data collection efforts.⁴⁷

Recent EJ Statutes

In the last three years, California has passed eight laws pertaining to environmental justice, with the state continuing to emphasize a multi-agency approach to EJ issues.⁴⁸

Assembly Bill 1390 (Firebaugh, 2001)⁴⁹

AB 1390 extends until January 1, 2007, the policy enacted in the 2001-02 State Budget that directs air districts to target at least 50 percent of the \$48 million General Fund appropriated for three diesel emission reduction programs to environmental justice communities. The law exempts small air districts from this requirement. It also makes federal agencies eligible to receive grants to purchase Zero Emission Vehicles that would be located in low income and minority communities.

Assembly Bill 1553 (Keeley, 2001)⁵⁰

AB 1553 requires OPR to adopt guidelines for local agencies when addressing environmental justice issues in its general plans. OPR would be required to adopt the guidelines by July 1, 2003. OPR recently issued the second draft of the General Plan Guidelines.⁵¹ These guidelines may be “the most comprehensive in the United States,” and include a “host of issues forecasting the direction of the movement.”⁵²

Senate Bill 32 (Escutia, 2001)⁵³

SB 32 authorizes local governments to investigate and cleanup small parcels of property contaminated with hazardous waste. The bill requires CalEPA to conduct scientific peer review of screening values, or advisory numbers estimating cleanup efforts are needed for developing a property. Most pertinent for this EJ survey, SB 32 requires the development of a guidance document to assist citizen groups, community-based organizations, environmental organizations and others in understanding the complicated factors and procedures used for making site investigation and remediation decisions, furthering the ability of community groups to participate meaningfully in decisions with environmental justice implications.⁵⁴

⁴⁶ CalEPA Advisory Committee on Environmental Justice, *Recommendations to the Interagency Working Group on Environmental Justice*, available at http://www.calepa.ca.gov/EnvJustice/Documents/2003/7_11Report.pdf / (Last visited Aug. 20, 2003).

⁴⁷ *Id.*

⁴⁸ CalEPA, *Legislation: Environmental Justice Program*, <http://www.calepa.ca.gov/EnvJustice/Legislation/> (Last visited July 29, 2003).

⁴⁹ CAL. HEALTH & SAFETY CODE §§ 43023.5, 44260.

⁵⁰ CAL. GOV’T CODE §§ 65040.2 and 65040.12.

⁵¹ Available at http://www.opr.ca.gov/planning/PDFs/2003_General_Plan_Guidelines_Second_Draft.pdf (July 2003) (Last visited Aug. 28, 2003).

⁵² Telephone interview with Romel Pascual, Assistant Secretary for Environmental Justice, CalEPA (July 29, 2003).

⁵³ CAL. HEALTH & SAFETY CODE §§ 57008, 57009, and 57010 and §§ 25401 *et seq.*

⁵⁴ *Id.* at § 57008(e).

Senate Bill 828 (Alarcón, 2001)⁵⁵

SB 828 adds deadlines for developing an interagency environmental justice strategy affecting boards, departments and offices within the CalEPA. Subsequently, the bill will require each of the CalEPA boards, departments, and offices, by December 31, 2003, to review, identify, and address program obstacles impeding environmental justice.

Assembly Bill 2312 (Chu, 2002)⁵⁶

AB 2312 establishes an Environmental Justice Small Grant Program administered by CalEPA. The law “empowers communities to address public health concerns and strengthens community involvement in environmental decision making that affects their lives,” said former California Governor Gray Davis in a press release following his signing of the bill.⁵⁷ The program will provide grants of up to \$20,000 for local community groups focusing on local environmental issues, and aims to fund three objectives: (1) addressing environmental public health hazards, (2) informing communities about environmental justice, and (3) facilitating participation in the decisionmaking process.⁵⁸

Senate Bill 1542 (Escutia, 2002)⁵⁹

SB 1542 requires that the California Integrated Waste Management Board provide environmental justice models and information to local jurisdictions for siting landfills by April 1, 2003. Moreover, permit applications for new or expanded solid waste transformation or disposal facilities submitted after January 1, 2003 trigger new requirements for local agencies, which now must describe actions taken to solicit public participation of members of the affected communities, including minority and low-income populations. The statute also expands CalEPA's Advisory Committee on Environmental Justice from a (13) thirteen member committee to a (17) seventeen member committee, with required representatives from federally recognized tribe(s), environmental justice organizations, and business.⁶⁰

Assembly Bill 1497 (Montanez, 2003)⁶¹

This law requires the operator of a solid waste facility to receive regulatory approval before making “significant changes” to a solid waste facility's design or operation, beyond the scope of the original permit.⁶² Before granting a revised permit, the enforcement agency must hold at least one public hearing on the proposed permit decision, and notify property owners

⁵⁵ CAL. PUB. RES. CODE §§ 72000, 72001, 72001.5, 72002, 72003, and 72004.

⁵⁶ CAL. PUB. RES. CODE § 71116.

⁵⁷ Office of the Governor Press Release (Sept. 27, 2002), *available at* http://www.ca.gov/state/govsite/gov_htmldisplay.jsp?sFilePath=/govsite/press_release/2002_09/20020927_L02204_Enviro_justice.html&sCatTitle=Press%20Release&iOID=36604&sTitle=Press%20Release%20%20%20%20%202002/09/27&BV_SessionID=@@/@1082459786.1059754954@@/@&BV_EngineID=dadchljidiigbemgcfkmchchi.0 (Last visited July 31, 2003).

⁵⁸ *California State Assemblymember Judy Chu – Accomplishments*, <http://democrats.assembly.ca.gov/members/a49/legislation0102.htm> (Last visited July 31, 2003).

⁵⁹ CAL. PUB. RES. CODE §§ 40912, 41701, and 71114. This represents California's “first law to ensure state regulators include low-income and minority communities in the decision making for the siting of future landfills.” Environmental Justice Program, <http://www.calepa.ca.gov/EnvJustice/News/> (Last visited July 29, 2003).

⁶⁰ CalEPA, *Legislation: Environmental Justice Program*, *supra* note 48.

⁶¹ The relevant provisions are to be codified at CAL. PUB. RES. CODE § 44004.

⁶² *Id.* at § 44004(a).

within 300 feet of the waste facility of the upcoming hearing.⁶³ Further, the law requires the enforcement agency to consider “environmental justice issues when preparing and distributing the notice to ensure that the notice is concise and understandable for limited-English-speaking populations.”⁶⁴

Assembly Bill 1360 (Steinberg, 2003)⁶⁵

The law directs the Office of Environmental Health Hazard Assessment (OEHHA) at CalEPA to develop “environmental indicators,” or “scientific measurements of environmental conditions or trends.”⁶⁶ AB 1360 requires OEHHA to develop and maintain the environmental indicator system to provide a means for evaluating the effectiveness of CalEPA’s efforts in improving “environmental quality and protecting public health throughout the state, including environmental quality and public health in low-income communities and communities of color.”⁶⁷

Other Statutes

The following statutes address a core concern of the EJ movement, namely, avoiding the undue concentration of environmental risks upon EJ populations, particularly in the core areas of waste disposal and power generating facilities.

Hazardous Waste Facility Permit Requirements

California has created enhanced public participation mechanisms in its hazardous waste permit regime.⁶⁸ In enacting the law, the legislature intended “to establish specific means to give the concerned public a voice in decisions relating to the siting and issuing of permits for hazardous waste facilities; and to establish a process for appealing local decisions on applications for land use approval for hazardous waste facilities.”⁶⁹ Before a new facility can be approved, public notification of the application must be made through newspapers, posted notices in the community, and direct mailings to adjacent property owners.⁷⁰ The siting requirements also create a mechanism allowing any interested party to appeal a land use decision “made by a local agency for a specified hazardous waste facility project with the Governor or the Governor’s designee.”⁷¹ When an appeal is filed, a special appeal board is convened and an administrative review of the local agency findings ensues.⁷²

Thermal Powerplant Permitting

California requires applications for the siting of a thermal powerplant to address disproportionate impacts “in a manner consistent with Section 650410.12 of the Government

⁶³ *Id.* at § 44004(h)(1)(A).

⁶⁴ *Id.* at § 44004(h)(1)(C).

⁶⁵ The relevant provisions are to be codified at CAL. PUB. RES. CODE §§ 71800-02.

⁶⁶ *Id.* at § 71080(b).

⁶⁷ *Id.* at § 71081(a)(2).

⁶⁸ CAL. HEALTH & SAFETY CODE § 25199 *et seq.* (Deering’s 2003).

⁶⁹ CAL. HEALTH & SAFETY CODE § 25199(c).

⁷⁰ *Id.* at § 25199.7.

⁷¹ *Id.* at § 25199.9.

⁷² *Id.*

Code.”⁷³ The regulations promulgated by the California Public Utilities Commission to implement this law require the disproportionate impact data to include:⁷⁴ (A) demographic information by census tract, based on the most recent census data available, showing the number and percentage of minority populations and people living below the poverty level within six miles of the proposed site; (B) one or more maps at a scale of 1:24,000 showing the distribution of minority populations and low-income populations and significant pollution sources within six miles of the proposed site, such as those permitted by the U.S. Environmental Protection Agency (Toxic Release Inventory sites), the local air quality management district, or the California Department of Toxic Substances Control; and (C) identification of available health studies concerning the potentially affected population(s) within a six-mile radius of the proposed power plant site.

Policies and Programs

CALFED Bay-Delta Program

The California Bay-Delta Authority’s (“CALFED”) mission is “to develop and implement a long-term comprehensive plan that will restore ecological health and improve water management for beneficial uses of the Bay-Delta System.”⁷⁵ CALFED takes environmental justice into account in the examination of “the potential effects of water management reforms on rural communities and the public health and financial impacts of ecosystem restoration and water quality program actions on the large numbers of minorities and disadvantaged people living in urban as well as rural areas.”⁷⁶

CALFED has appointed an interim Environmental Justice Coordinator, who proceeded to convene regional workshops, “geographically dispersed across the State, to hold discussions and gain input on environmental justice issues related to CALFED implementation.”⁷⁷ The interim coordinator also formed a subcommittee “that will operate as a public advisory group” and meets on an almost monthly basis.⁷⁸

California Department of Transportation

The California Department of Transportation (“CalTrans”) has developed an Environmental Justice Desk Guide “to provide guidance and background information to planners at all levels (state, regional, local and community) on the principles and best practices in

⁷³ CAL. PUB. RES. CODE § 25550 (g), *see also* CAL. GOVT CODE § 650410.12 (defining “environmental justice” for California, and outlining OPR’s duties with respect to coordinating state government action in keeping with EJ principles).

⁷⁴ CAL. CODE REGS. tit. 20, § 2022(b)(4) (Barclays 2003).

⁷⁵ California Bay-Delta Authority, <http://calwater.ca.gov/AboutCalfed/AboutCalfed.shtml> (Last visited July 31, 2003).

⁷⁶ CALFED Bay-Delta Authority, *Environmental Justice*, <http://calwater.ca.gov/EnvironmentalJustice/EnvironmentalJustice.shtml> (Last visited July 31, 2003).

⁷⁷ CALFED Bay-Delta Program, *Environmental Justice Accomplishments*, <http://calwater.ca.gov/EnvironmentalJustice/EnvironmentalJusticeAccomplishments.shtml> (Last visited July 31, 2003).

⁷⁸ *Id.*

Environmental Justice and Context-Sensitive Planning.”⁷⁹ The Guide is the first document of its kind to address environmental justice in California transportation planning.⁸⁰

CalTrans also provides grants to promote environmental justice, and will offer an estimated \$3 million in the 2003-04 fiscal year, with six possible application categories: Context-Sensitive Planning, Community Planning, Partnership Planning, Statewide Planning, Transit Technical Assistance, and Transit Professional Development.⁸¹

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COLORADO

Supplemental Environmental Projects

Colorado Department of Public Health and Environment Agency-wide Supplemental Environmental Projects Policy

Colorado allows violators of environmental laws and regulations to reduce the amount of their fines by funding an approved project benefiting the environment, as part of the settlement of an enforcement action.⁸² These beneficial projects are formally known as Supplemental Environmental Projects (“SEPs”). SEPs must not involve any action required by local, state or federal law, and approval of SEPs is at the discretion of the Colorado Department of Public Health and Environment (“CDPHE”).⁸³ While SEPs may be used to mitigate some or all of a civil penalty, “the cost of a SEP will generally exceed the amount of penalty mitigation offered in exchange.”⁸⁴ SEPs are attractive to the violator for their public relations value and their

⁷⁹ California Department of Transportation, <http://www.dot.ca.gov/hq/tpp/offices/epar/titleVIandEJ.htm> (Last visited July 31, 2003).

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Colorado Department of Public Health and Environment Agency-wide Supplemental Environmental Projects Policy*, at p. 1, <http://www.cdphe.state.co.us/ap/sep/SEPPolicy.pdf> (Last visited June 22, 2003).

⁸³ *Id.*

⁸⁴ *Id.*

ability to be deducted as a business expense, unlike a civil penalty.⁸⁵ The five categories of approvable SEPs are: (1) pollution prevention projects; (2) pollution reduction projects; (3) environmental and restoration projects; (4) environmental assessments; and (5) environmental awareness or public health projects.⁸⁶

Should a SEP be approved, the extent to which CDPHE will mitigate a penalty is determined by multiple factors. Significantly, one factor favors projects that “mitigate damage or reduce risk to minority or low-income populations that have been disproportionately exposed to pollution, or are at environmental risk,” and would accord these projects a greater degree of penalty reduction.⁸⁷

Performance Partnership Agreement

The 2001-2002 Colorado Environmental Performance Partnership Agreement specifically addressed community-based and environmental justice programs.⁸⁸ The plan recommended a “coordination and contact” process at the Colorado Department of Public Health and Environment (“CDPHE”) with the goal of developing cross-media coordination and integration.⁸⁹ Further, US EPA and CDPHE agreed to identify joint priorities, coordinate processes, pool resources, and continue to develop a “place driven” rather than a “program driven” approach.⁹⁰

US EPA and CDPHE also agreed that other specific areas of concern included community-based environmental protection, industrial sector compliance activities, integrated environmental data systems and funding to achieve equitable environmental results.”⁹¹

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CONNECTICUT

Policy

The Connecticut Department of Environmental Protection’s (“DEP”) has developed an Environmental Equity Policy that states “no segment of the population should, because of its racial or economic makeup, bear a disproportionate share of the risks and consequences of

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ Colorado Dept. of Public Health and Environment and US EPA Region 8, *Colorado Environmental Performance Partnership Agreement - FY2002*, at pp. 8-9, 20, available at <http://www.cdphe.state.co.us/oe/ceppa/fy02ceppa.pdf> (Last visited Oct. 16, 2003).

⁸⁹ *Id.* at p. 23.

⁹⁰ *Id.*

⁹¹ *Id.* at p. 9.

environmental pollution or be denied equal access to environmental benefits.”⁹² The policy also proposes several courses of action for DEP to take in incorporating environmental equity into its program development, policy making, and regulatory activities.⁹³ Another aim of the policy is “to enhance meaningful access to all DEP proceedings and ensure opportunities for communication with state regulators to our diverse communities.”⁹⁴ Furthermore, Environmental Justice Community Advisory Boards were created as part of this social justice initiative in Hartford and New Haven in 1998.

EJ Programs & Services

Connecticut Office of Urban and Community Ecology

DEP’s website lists the various programs and services managed by the Office of Urban and Community Ecology (“OUCE”).⁹⁵ Among other things, OUCE develops EJ legislative proposals, coordinates community health studies and job training programs, interprets and administers laws with environmental justice ramifications, evaluates populations at risk of exposure to toxic substances, and plans and coordinates environmental justice-related conferences and public and neighborhood meetings.⁹⁶

EJ Complaint Contact and Investigator

One of the most notable things about the OUCE is its “EJ Complaint Investigator.”⁹⁷ This investigator is one of three OUCE staffers whose job is to answer and investigate complaints related to environmental justice.⁹⁸ According to Edith Pestana, Connecticut’s Environmental Justice Administrator, “nothing is out of [OUCE’s] jurisdiction.”⁹⁹ For instance, OUCE could receive an environmental justice complaint that implicates the jurisdiction and services of four different states, local, and or federal agencies, then OUCE will see to it that all agencies are notified about the complaint, and monitor the progress after such notification.¹⁰⁰ To illustrate this point, Ms. Pestana described a hypothetical illegal auto body shop, which could include aerosol paint (possible CT Department of Public Health jurisdiction), chemical storage and dumping (DEP jurisdiction), parked cars lining the street (CT Department of Motor Vehicle jurisdiction), and maybe even roaming guard dogs (Local Animal Control jurisdiction).

The tactic is noteworthy because the staffers are enforcement and not policy personnel. The complaint investigators assist EJ populations in navigating the state bureaucracy, and serve as advocates of the EJ complaint.

⁹² Connecticut Department of Environmental Protection, <http://www.dep.state.ct.us/envequity/envequitypolicy.htm> (Last visited Sept. 17, 2003), *see also* http://www.dep.state.ct.us/pao/general_fact/envequit.htm (Last visited Sept. 17, 2003).

⁹³ *Id.*, <http://www.dep.state.ct.us/envequity/envequitypolicy.htm>.

⁹⁴ Connecticut Department of Environmental Protection, *Connecticut Recognized for Work in Environmental Justice and Will Serve on the National Environmental Justice Advisory Council* (Sept. 28, 1998), at <http://www.dep.state.ct.us/whatsap/press/1998/cr092898.htm> (Last visited Oct. 10, 2003).

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ Telephone interview with Edith Pestana, Administrator, Environmental Equity Program (Feb. 24, 2003).

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

Special EJ Focus on Schools

Another OUCE service relates to its work with schools. In apparent recognition that children are likely among the most vulnerable to environmental health problems, the OUCE focuses much of its environmental justice efforts towards schools.¹⁰¹ One aspect of their school efforts involves the OUCE's school environmental justice inspections: scanning for violations ranging from vermin infestations and faulty playground equipment to the misuse of pesticides. Another aspect of the program involves the creation of "outdoor classrooms" in urban areas.¹⁰² These outdoor classrooms range from setting up vegetable gardens to making "nature pathways"—in the attempt to bring environmental benefits to a population more likely to experience environmental risks.¹⁰³

State and Local Government Joint Program

In an effort to address some of the health problems experienced in EJ communities in the city of Hartford, DEP, through its Hartford Neighborhood Environmental Project, assembled an extensive chart of environmental contacts for Hartford residents.¹⁰⁴ These contacts were initially meant for neighborhood block watch captains for their use in "environmental problem solving sessions,"¹⁰⁵ and were later made available on the DEP website for all Hartford residents.¹⁰⁶ The chart includes both city and state contacts to help alleviate a variety of environmental topics, including asbestos, unwanted animals and rats, carbon monoxide, brownfields, drinking water quality, the dumping of used motor oil and antifreeze, garbage, household hazardous products, land use, lead paint, noise pollution, odors, smoke, dust, pesticides, radon, recycling, sewers, underground storage tanks, and environmental equity.¹⁰⁷

Supplemental Environmental Projects

Connecticut's Supplemental Environmental Projects program allows the DEP to include SEPs as a component of consensual settlements of environmental enforcement actions.¹⁰⁸ The DEP's SEP policy states that after threshold concerns are met (*e.g.*, that the project does not further degrade the environment), the SEP should fit under one of eight categories, such as environmental assessment, public health, and environmental restoration.

Of the eight categories, "pollution prevention projects are preferred, especially a pollution prevention project that positively impacts communities where environmental equity may be an issue."¹⁰⁹ The DEP envisions its SEP policy as falling under its longstanding

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ Environmental Contacts for Hartford Neighborhoods, <http://www.dep.state.ct.us/wst/p2/urban/econtacts.htm> (Last visited June 22, 2003).

¹⁰⁵ Urban Initiatives for Pollution Prevention, <http://www.dep.state.ct.us/wst/p2/urban/urbanin.htm> (Last visited June 22, 2003).

¹⁰⁶ Environmental Contacts for Hartford Neighborhoods, <http://www.dep.state.ct.us/wst/p2/urban/econtacts.htm> (Last visited June 22, 2003).

¹⁰⁷ Urban Initiatives for Pollution Prevention, *supra* note 105.

¹⁰⁸ Connecticut Department of Environmental Protection, *Policy on Supplemental Environmental Projects* (1996), at p. 1, available at <http://dep.state.ct.us/enf/policies/sep.pdf> (Last visited Oct. 19, 2003).

¹⁰⁹ *Id.* at p. 6.

commitment that “no segment of the population should, because of racial or economic makeup, bear a disproportionate share of the risks and consequences of environmental pollution or be denied equal access to environmental benefits.”¹¹⁰

Performance Partnership Agreement

In Connecticut’s PPA, the state has agreed to “continue to work with environmental equity communities to improve access to the permitting process.”¹¹¹ The state agreed to focus assistance and outreach efforts on a number of constituencies including minorities and other historically under-represented interests to improve environmental quality.¹¹² Community-based initiatives were aimed at targeting enhanced federal RCRA activities within the identified Environmental Equity communities in Connecticut.¹¹³

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DELAWARE

Statute

In September 1999, the Delaware Department of Natural Resources and Environmental Control (“DNREC”) chartered an interdisciplinary external advisory committee, the Community Involvement Advisory Council (“CIAC”), to address barriers to inclusion of under-served populations in environmental decisionmaking.¹¹⁴ Two years later, the legislature made the CIAC a permanent entity for the purpose of advising the Secretary of DNREC.¹¹⁵ CIAC’s mission is to address interactions between the DNREC and local communities and to “work to ensure that no community in the State is disparately affected by environmental impacts.”¹¹⁶ The committee is comprised of eleven appointed members and includes representatives from adversely affected

¹¹⁰ *Id.* at fn. 4.

¹¹¹ *Environmental Performance Partnership Agreement Between Connecticut Department of Environmental Protection and US Environmental Protection Agency, Region 1 for Federal Fiscal Years 2000 and 2001*, Section III.B.3, available at <http://www.dep.state.ct.us/deao/ppa/ppa.pdf> (Last visited Oct. 13, 2003).

¹¹² *Id.* at III.B.4.

¹¹³ *Id.* at III.F.2; Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq.* (1976).

¹¹⁴ *Report of the Community Involvement Advisory Committee to the Delaware Department of Natural Resources and Environmental Control*, March 22, 2001, available at <http://www.dnrec.state.de.us/dnrec2000/Admin/BusServ/CIACReport.pdf> (Last visited Sept. 12, 2003).

¹¹⁵ DEL. CODE ANN. tit. 29 § 8016A (2003).

¹¹⁶ *Id.*

communities, community-based nonprofit organizations, environmental organizations, health care providers, local government, academic institutions and business/industry.¹¹⁷

In addition to establishing the CIAC, the legislature created a Community Ombudsman position to serve as a liaison between DNREC and local communities statewide. The Community Ombudsman “shall engage communities in identifying and understanding environmental issues and addressing or resolving environmental problems, advocate for communities, assist communities in obtaining information on environmental issues, and serve as a point of contact for the Department with communities and community organizations.”¹¹⁸

CIAC released a report in March 2001 that contains several recommendations for facilitating and implementing community participation in environmental permitting and decisionmaking.¹¹⁹ However, it is unclear if or how the recommendations from the 2001 report have been implemented at DNREC.

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DISTRICT OF COLUMBIA

EJ Program and Services

The District of Columbia has an EJ program within the Department of Health, Environmental Health Administration division. The purpose of the program is to ensure fair treatment of residents when the Department implements environmental health programs, issues permits, or enforces District environmental health laws.¹²⁰ Another goal of the program is to reduce disparate impacts and focus public attention on environmental health issues through education and outreach.¹²¹

The EJ program is staffed by an EJ Coordinator who responds to public concerns and educates communities on how to participate in environmental decisionmaking proceedings.¹²² The EJ Coordinator may also comment on the potential EJ impacts of projects subject to Department’s environmental review process.¹²³

The Office of Enforcement, Compliance & Environmental Justice is currently implementing a project to improve auto repair shops’ compliance with environmental rules and

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Report of the Community Involvement Advisory Committee, supra* note 114.

¹²⁰ Interview with Kendolyn Hodges-Simons, Environmental Justice Coordinator, District of Columbia Department of Health (Oct. 16, 2003).

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

regulations.¹²⁴ The pilot project, Environmental Education for the Compliance of Auto Repair Shops, has targeted auto repair shops in one section of the city and will be examining whether low income and/or minority communities are disproportionately impacted by potentially hazardous wastes and emissions associated with the repair shops.¹²⁵

Statutes

Provisions within the District’s solid waste facility siting statutes address environmental justice concerns and neighborhood participation. For example, as part of the permit review, all solid waste facilities must create a traffic flow plan and post that plan for public review.¹²⁶ Advisory Neighborhood Councils then must submit comments within forty-five days.¹²⁷ Furthermore, prior to making a solid waste siting decision, the Solid Waste Transfer Facility Site Selection Advisory Panel must consult with the National Environmental Justice Advisory Council.¹²⁸

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FLORIDA

Statutes

Community Environmental Health Program

In 1999, the state legislature created the Community Environmental Health Program (“Program”).¹²⁹ The primary purpose of the Program “. . . is to ensure the availability of public health services to members of low-income communities that may be adversely affected by contaminated sites located in or near the community.”¹³⁰ These services include measures to address the health effects associated with exposure to environmental contamination.¹³¹

Community Environmental Health Advisory Board

Florida state law also instructs the Department of Health (“DOH”) to create a Community Environmental Health Advisory Board (“Board”) with the majority of members being low-income residents and the rest composed of representatives from county health departments,

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ D.C. CODE ANN. § 8-1055(c)(2) (2003).

¹²⁷ *Id.*

¹²⁸ D.C. CODE ANN. § 6-3461.

¹²⁹ FLA. REV. STAT § 381.1015 (2003).

¹³⁰ *Id.* at § 381.1015(1).

¹³¹ *Id.*

health care professionals and providers, and elected officials.¹³² The Board is required to “identify the community environmental health needs and types of services which should be provided.”¹³³ The Board has stopped meeting however, due to discontinued funding for fiscal year 2002.¹³⁴

Siting of Hazardous Waste Facilities

The Department of Environmental Regulation must notify each local government within three miles of a proposed hazardous waste facility within thirty days of the receipt of a complete application to construct the facility.¹³⁵ In addition, a notice must be published in a local newspaper, alerting the affected communities and helping to avoid disproportionate concentration of hazardous waste facilities within minority and low-income communities.¹³⁶

Brownfield Redevelopment Act

Florida has an extensive brownfields program that addresses environmental justice concerns. The preamble of the brownfields statute states that minority and low-income communities are disproportionately impacted by environmentally hazardous sites. And that “the existence of brownfields within a community may contribute to, or may be a symptom of, overall community decline, including issues of human diseases and illness, crime, educational and employment opportunities, and infrastructure decay.”¹³⁷ Furthermore, the statute states that there is a need for the health and risk exposure assessments of minority and poverty populations around environmentally hazardous sites in this state.¹³⁸

Local governments responsible for brownfields redevelopment must utilize advisory committees for “the purpose of improving public participation and receiving public comments on rehabilitation and redevelopment of the brownfield area...and environmental justice.”¹³⁹ The advisory panel should be drawn from residents from the area surrounding the brownfield area.¹⁴⁰

EJ Programs and Services

Partnership with Academia

Unlike the majority of states, administering environmental justice programs within the bureaucratic framework of state government, Florida has adopted a university-based approach. In this model, most environmental justice efforts are implemented outside of the state’s Department of Environmental Regulation.

¹³² *Id.* at § 381.1015(2).

¹³³ *Id.*

¹³⁴ National Academy of Public Administration, *Models for Change: Efforts by Four State to Address Environmental Justice* (June 2002), available at [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) (Last visited June 22, 2003).

¹³⁵ FLA. REV. STAT § 403.723 (3).

¹³⁶ *Id.*

¹³⁷ FLA. REV. STAT § 376.78 (8).

¹³⁸ FLA. REV. STAT § 376.78(6) - (8).

¹³⁹ FLA. REV. STAT § 376.80 (4).

¹⁴⁰ *Id.*

The Center for Environmental Equity and Justice (“CEEJ”) was created by the Florida legislature in 1998 to “conduct and facilitate research, develop policies, engage in education, training, and community outreach activities with respect to environmental equity and justice issues.”¹⁴¹ According to the statute, the center is administered through the Environmental Sciences Institute at Florida Agricultural & Mechanical University. In addition to conducting environmental justice research and training in Florida, CEEJ also “maintains the state’s birth-defects registry, which can be used to determine whether there are links between birth defects and environmental conditions.

Center for Urban Transportation Research

Under a mandate from the Florida Highway Administration, the Florida Department of Transportation in conjunction with researchers at the Center for Urban Transportation Research at the University of South Florida completed a report on environmental justice and community impact assessment for the state’s transit agencies.

The objective of the project was to provide the state’s transit agencies with information related to environmental justice and social equity using community impact assessment techniques. The ultimate goal of the project is encourage transit planners to keep environmental justice concerns in mind when planning, and to use the community impact assessment data to better transportation in all communities.

In order to facilitate their objectives, project researchers conducted both phone interviews and written surveys to determine the current awareness regarding environmental justice and social equity issues. The research results were compiled into a booklet entitled *Environmental Justice and Community Impact Statement for Transit Agencies*.¹⁴²

Supplemental Environmental Projects

In 1998, Florida’s legislature passed the Accidental Release Prevention and Risk Management Planning Act, providing a framework for the delegation of authority from US EPA under the federal Clean Air Act. The law specifies enforcement authorities and remedies for violations of the reporting requirements for the accidental release of air-borne pollutants.¹⁴³

The legislature authorized the Department of Community Affairs (“DCA”) to “offer and accept the use of emergency planning, training, and response-related Supplemental Environmental Projects, consistent with the guidelines established by the United States Environmental Protection Agency,”¹⁴⁴ in the exercise of DCA’s enforcement authority. In furtherance of the “overarching goal” of environmental justice, the US EPA’s SEP guidelines encourage the targeting of “SEPs in communities where environmental justice concerns are

¹⁴¹ Center for Environmental Equity and Justice, www.famu.edu/acad/colleges/esi/CEEJ/mission.html (Last visited July 1, 2003).

¹⁴² Research conducted by Beverly Ward, Ph.D, at the Center for Urban Transportation Research at the University of Southern Florida.

¹⁴³ Fla. Stat. § 252.934 *et seq.* (2002).

¹⁴⁴ Fla. Stat. § 252.940(d)(3).

present.”¹⁴⁵ Accordingly, the Florida SEP program incorporates environmental justice principles by reference.

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GEORGIA

Statutes

Anti-Concentration Law for Solid Waste Facilities

Georgia prohibits municipal solid waste disposal facilities from locating inside or within one half mile of a city or county’s border without that entity's permission.¹⁴⁶ The state also limits the number of solid waste facilities that may be sited within a given area.¹⁴⁷ Before siting a solid waste disposal facility there must first be “at least one public meeting to discuss waste management needs of the local government or region and to describe the process of siting facilities to the public.”¹⁴⁸ The statute also requires the permitting agency to notify the general public in the newspaper of the place and time for meetings where siting decisions will occur.¹⁴⁹

Policy

As part of “Transit Share,” the Transportation Improvement Program (“TIP”) administered by the Georgia Regional Transportation Authority (“GRTA”) includes fiscal, land use, and environmental considerations as part of its agenda. The Board passed a resolution giving relative approval of the Fiscal Year 2001-FY2003 TIP and included a Benefits and Burden analysis relating to Environmental Justice.¹⁵⁰ This is an example of an agency implementing environmental justice into the early stages of its planning process.

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¹⁴⁵ US EPA, *Final EPA Supplemental Environmental Projects Policy Issued*, 63 Fed. Reg. 24796 (May 5, 1998).

¹⁴⁶ GA CODE ANN. § 12-8-25 (2003).

¹⁴⁷ *Id.* at § 12-8-25.4.

¹⁴⁸ *Id.* at § 12-8-26(a).

¹⁴⁹ *Id.*

¹⁵⁰ Georgia Regional Transportation Authority, *Board Meeting Minutes (June 14, 2000)*, available at, http://www.grta.org/news_section/board_minutes/pdf_files_2000_2001/2000/Bd_Minutes_061400.pdf (Last visited Oct. 15, 2003).

HAWAII

Statutes

Pending EJ Legislation

In January of 2003, the Hawaii Senate passed a bill that would require all government agencies to develop, implement and report on environmental justice strategies.¹⁵¹ The bill would also require the creation of an interagency working group and a non-governmental advisory group to advise the working group. The state also is in the process of determining how to define environmental justice communities.¹⁵² The debate lies in how “Native Hawaiian” will be defined in the bill, whether the term encompasses only indigenous Hawaiians or other (mostly Asian) groups that lived in the islands prior to U.S. annexation.¹⁵³ As of this writing, the bill under consideration by the Hawaii House of Representatives.¹⁵⁴

Policy

Oahu Transportation Planning

The Oahu Metropolitan Planning Organization (“OMPO”) was originally established by the Hawaii Legislature in 1975 to advise both the Honolulu City Council and the Legislature regarding transportation planning on the island of Oahu.¹⁵⁵ OMPO continues to perform this advisory role through developing integrated plans to assist several transportation agencies in the state.¹⁵⁶ OMPO has made an effort to conform its transportation plans to principles of environmental justice,¹⁵⁷ and OMPO issued its twenty-five year Oahu Regional Transportation Plan in 2001. The plan identifies communities where minority populations are concentrated so agencies can devise services to adequately serve those communities’ needs.¹⁵⁸ In preparation for the report, OMPA surveyed many communities for feedback on proposed transportation services and projects, and forums were held for the discussion of proposed road projects that would directly affect minority neighborhoods.¹⁵⁹

In addition to the Oahu Regional Transportation Plan, OMPO issued an report that “evaluated the effectiveness of the metropolitan planning process in meeting Title VI and environmental justice requirements and implemented a process to analyze the distribution of benefits and disproportionate impacts of planned investments.”¹⁶⁰

¹⁵¹ H.I. S.B. 1593 (2003).

¹⁵² Telephone interview with Genevieve Salmonson, Director, Hawaii Health Department’s Office of Environmental Quality Control (March 21, 2003).

¹⁵³ *Id.*

¹⁵⁴ Oct. 16, 2003.

¹⁵⁵ Oahu Metropolitan Planning Organization, *Transportation for Oahu Plan*, Ch. 1, at pp. 1-2 (Oct. 2001), available at http://oahumpo.org/ORTP/ORTP2025/final_top2025_1001.pdf (Last visited Sept 17, 2003).

¹⁵⁶ Oahu Metropolitan Planning Organization, <http://oahumpo.org/Home/about.html> (Last visited Sept. 17, 2003).

¹⁵⁷ Oahu Metropolitan Planning Organization, *Transportation for Oahu Plan*, Ch. 5 at pp. 5-16.

¹⁵⁸ *Id.* at 5-18.

¹⁵⁹ *Id.*

¹⁶⁰ Oahu Metropolitan Planning Organization, *Environmental Justice in the OMPO Planning Process*, available at <http://oahumpo.org/T6EJ/t6ej.html> (Last visited Sept. 17, 2003).

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IDAHO

The authors did not find any relevant environmental justice programs, policies, or statutes for the state of Idaho.

ILLINOIS

Policy and Procedure

The state of Illinois, through its Environmental Protection Agency (“IEPA”), has set out an Interim EJ Policy.¹⁶¹ Elements of the finalized policy will include defining responsible persons (*e.g.*, an EJ coordinator), defining environmental justice activities, and preparing channels for incoming environmental justice concerns or inquiries.¹⁶² In the meantime, the Policy identifies several interim approach/strategies that will be taken to address environmental justice concerns, as set out below:

Public Notice Hearing and Receipt of Public Comments

This component incorporates public participation into decisionmaking such as permitting. The Community Relations group is charged with identifying community concerns; conducting small group meetings; responding to inquiries from both the public and the media; and assisting with public hearings. The Community Relations group must also compile a mailing list of “Interested and Potentially Affected Citizens.” Those on the mailing list will “. . . receive notices of hearings on regulations, permit applications, or any other significant Agency action likely to impact the community in which the individual lives, or in which the group has expressed an interest.”¹⁶³

¹⁶¹ Illinois Environmental Protection Agency, *Interim Environmental Justice Policy*, available at <http://www.epa.state.il.us/environmental-justice/policy.html> (Last visited Oct. 2, 2003).

¹⁶² Illinois Environmental Protection Agency, *Environmental Justice*, <http://www.epa.state.il.us/environmental-justice/> (Last visited Oct. 2, 2003).

¹⁶³ *Id.*

Receipt of Complaint

The environmental justice officer will develop a process for “investigating, responding to, and, where appropriate, addressing EJ complaints.”¹⁶⁴ The complaint process will include a procedure whereby the permit applicant will be notified of the complaint, and asked to respond.

Training Policy/Handbook

The Agency will develop a training/policy handbook for agency staff. In addition to training staff in the area of environmental justice, the Handbook will also report recent developments in the field and in the state’s policy. The Handbook reflects IEPA’s philosophy that the concept of environmental justice is in constant evolution, so it is critical to keep agency staff informed of the latest developments in the field.

Office of Community Relations

Within IEPA, the Office of Community Relations was created in order to “offer the public the opportunity to provide input on environmental decisions and foster communications between technical staff and the regulated community, local officials and citizens affected by Agency activities.”¹⁶⁵ The Community Relations Coordinators are assigned to all the major program areas within IEPA, and their primary function is to interface with the public. An example of their duties includes: (1) explaining environmental laws and regulations to the public in plain language; (2) evaluating and responding to environmental complaints from citizens, environmental groups and local officials; (3) coordinating public meetings, hearings, workshops and conferences to address public concerns and to answer questions about IDEA activities, such as pending permit decisions, site cleanups and new program initiatives; and (4) participating in environmental education outreach activities.¹⁶⁶

Performance Partnership Agreement

In its PPA with US EPA, Illinois has agreed to specific federal enforcement and compliance assistance responsibilities including protecting at-risk populations, especially children and environmental justice communities, from disproportionate impacts of environmental hazards.¹⁶⁷ In addition, the PPA seeks to ensure that all people have an adequate opportunity to participate in environmental decisionmaking processes. The PPA indicates that US EPA Region 5 will continue working with state and local agencies in coordinating cleanup and remediation programs in EJ communities.¹⁶⁸

Contact

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¹⁶⁴ Illinois Environmental Protection Agency, *Interim Environmental Justice Policy*, <http://www.epa.state.il.us/environmental-justice/policy.html> (Last visited Oct. 2, 2003).

¹⁶⁵ Illinois Environmental Protection Agency Office of Community Relations, *at* <http://www.epa.state.il.us/community-relations> (Last visited Oct. 10, 2003).

¹⁶⁶ Illinois Environmental Protection Agency Office of Community Relations, *About the Office of Community Relations*, <http://www.epa.state.il.us/community-relations/about.html> (Last visited Oct. 10, 2003).

¹⁶⁷ Illinois Environmental Protection Agency, *FY 2003 Performance Partnership Agreement Between Illinois EPA and Region 5 US EPA*, at pp. 9-10, available at <http://www.epa.state.il.us/ppa/ppa-fy2003.pdf> (Last visited Oct. 2, 2003).

¹⁶⁸ *Id.*

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INDIANA

Policy and Programs

Environmental justice efforts in Indiana are coordinated through the Indiana Department of Environmental Management (“IDEM”). IDEM has initiated several policies and programs to address EJ issues including an EJ Strategic plan. The plan provides information to EJ communities on their participation in decisionmaking and uses computer mapping technology to identify EJ areas of concern.

Environmental Justice Strategic Plan

One of its first goals of the plan is the identification of geographic areas of environmental justice concern.¹⁶⁹ A second, supporting goal is IDEM's plan to take an interagency approach to ensure that information is available to community residents. In order to implement its environmental principles, IDEM facilitates the opportunity for all affected parties to communicate their concerns to the Department for decisions involving environmental justice issues, including permitting decisions.¹⁷⁰ The initiative states that IDEM, with community input, will evaluate the effectiveness and appropriateness of existing public processes for environmental decisionmaking. The initiative also indicates that IDEM will educate communities about environmental issues, the public's role as a participant in environmental decisionmaking and the Department's statutory roles and responsibilities.¹⁷¹

Although IDEM is responsible for implementing environmental justice programs and policies, the state's air, water and waste boards retain the authority to issue rules in their respective areas. According to IDEM staff, this structure “limits their ability to modify or adopt new, cross-cutting rules to address environmental justice, either substantively or procedurally.”¹⁷²

Guide for Citizen Participation

In order to provide the most effective programs to address environmental justice concerns, IDEM developed the *Guide for Citizen Participation*.¹⁷³ The purpose of the guide is to provide residents with information regarding state and federal environmental laws in a reader friendly format. Moreover, in an effort to maximize access to this important information, IDEM has made the guide available both in hard copy and electronically. The guide is published in Spanish as well as English in order to maximize the number of Indiana residents who can access

¹⁶⁹ National Academy of Public Administration, *Models for Change: Efforts by Four State to Address Environmental Justice*, *supra* note 134, at 39-41.

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.* at p. 38.

¹⁷³ IDEM's *Environmental Guide to Public Participation*, available at <http://www.in.gov/idem/guides/publicparticipation> (Last visited Sept. 19, 2003).

the information. The guide is a tool designed to help state residents participate in the making of environmental statutes and regulations, and permitting decisions.

Mapping “Indiana Areas of Potential Concern”

Using the 2000 U.S. Census data, IDEM has created four maps that identify potential areas of environmental concern based on factors such as race and income.¹⁷⁴ In addition to identifying low-income and minority residents, IDEM has used Geographic Information Systems (“GIS”) mapping software to collect information regarding the locations of Superfund sites, hazardous waste facilities, and major air and water permits. By providing a visual display which links the proximity of low-income and minority residents to environmental hazards, IDEM staff and the public at large become more aware of the environmental justice issues faced by particular communities.

Brownfields

In May 2003, IDEM updated its Brownfield Redevelopment Resource Guide.¹⁷⁵ While most states’ Brownfields programs make little effort to ensure that redevelopment efforts do not adversely affect EJ populations, the Indiana guide mentions environmental justice as a key concern.¹⁷⁶ The guide, however, does not make any substantive recommendations for incorporating environmental justice techniques or practices into the program.

Performance Partnership Agreement

As with many PPAs, Indiana’s agreement with US EPA indicates that IDEM will address its obligations under Title VI of the Civil Rights Act “as well as our responsibility to ensure that all people in our state are included in making decisions that affect their environment by implementing an environmental justice strategy.” The PPA also states that “to achieve the Department’s environmental justice goals, the strategies pursued as a result of this planning process will be ongoing and sustainable, will be developed in partnership with the communities affected by environmental justice issues, and will involve the institutionalization of processes and policies to reduce the disparate impact of environmental burden on people of color and low income status.”¹⁷⁷

The PPA outlines implementation steps including the formation of an advisory committee and processes to inform department staff of EJ issues.¹⁷⁸ In addition, IDEM promises to familiarize staff with the environmental burdens on minority and low income populations; increase meaningful public input on environmental decisions and facilitate dispute resolution among parties to environmental decisions.¹⁷⁹

Granular steps already undertaken include the identification of geographical areas of environmental justice concern and the establishment of an environmental justice point of

¹⁷⁴ *Id.*

¹⁷⁵ Indiana Brownfields Redevelopment Guide 2003, available at <http://www.in.gov/idem/land/brownfields/pdf/files/guidance/resourceguide.pdf> (Last visited Oct. 13, 2003).

¹⁷⁶ *Id.* at p. 15.

¹⁷⁷ Indiana Environmental Performance Partnership Agreement, *Section 2: State/Federal Relationship, Part III: Environmental Justice*, at p. 253, available at <http://www.in.gov/idem/enppa/enppa.pdf> (Last visited Aug. 10, 2003).

¹⁷⁸ *Id.* at pp. 299-300.

¹⁷⁹ *Id.*

contact/clearinghouse within the Department to serve as a link between affected communities, industries and all levels of government.¹⁸⁰ Additionally, IDEM plans to integrate and institutionalize environmental justice issues and processes within its day-to-day work.¹⁸¹

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IOWA

The authors did not find any relevant environmental justice programs, policies, or statutes for the state of Iowa.

KANSAS

The authors did not find any relevant environmental justice programs, policies, or statutes for the state of Kansas.

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KENTUCKY

Statute

Hazardous Waste Permits

Before granting a permit for the storage, treatment, recycling, or disposal of hazardous waste, the Kentucky Regional Integrated Waste Treatment and Disposal Facility Siting Board must consider the “social and economic impacts of [a] proposed action on the affected community, to include, at minimum changes in property values, community perception and other psychic costs . . . to support the facility and promote public health, safety, and the environment.”¹⁸² This provision also applies to the construction or operation of a regional integrated waste treatment and disposal demonstration facility.¹⁸³

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¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² KY REV. STAT. ANN. § 224.46-520 (1)(c) (2002).

¹⁸³ KY REV. STAT. ANN. § 224.46-830 (2)(a) (2002).

Website: <http://www.nr.state.ky.us/nrepc/dep/dep2.htm>

LOUISIANA

EJ Programs and Services

The state of Louisiana began addressing the issue of environmental justice in 1992 when the Louisiana Department of Environmental Quality (“LDEQ”) developed a “conceptual approach to Environmental Justice” and contracted with Louisiana State University for an environmental equity study.¹⁸⁴ Between 1994 and 1996, Louisiana created an Environmental Justice Panel Process in several communities.¹⁸⁵ The Environmental Justice Panels were designed to facilitate communication between industries and communities.¹⁸⁶

In 1998, the governor issued an executive order to address EJ in the parishes bordering the Mississippi River Corridor, encompassing the area from Baton Rouge to New Orleans.¹⁸⁷ At that time, the area had the highest level of permitted releases in the State.¹⁸⁸ The executive order created the Mississippi River Corridor Task Force to hold public discussions and dialogue on EJ issues in the river corridor. One of the duties of the Task Force was to identify “the types of adverse human health and environmental issues which may arise as a result of new permits applications to build, construct, or expand a commercial or industrial project.”¹⁸⁹ The Task Force was also to make recommendations to the governor and to submit two written reports.

Community Industry Relations

The environmental justice program at LDEQ was later replaced by a program entitled Community Industry Relations (“CIR”). Still housed within LDEQ, CIR is primarily responsible for handling environmental justice for Louisiana. The purpose of CIR is to facilitate communication and ease tensions that may arise between industry and members of the community. CIR becomes involved in environmental justice issues when community residents express concern over the potential negative health effects caused by their close proximity to certain industries. Once a concern has been identified, “CIR will step into a situation when there is a need to establish dialogue between two or more parties. If the parties agree to talk, CIR establishes a community/industry Panel to get discussion moving forward.”¹⁹⁰

If the location or activities of the industry raise concerns for the neighboring community, CIR will arrange for representatives from the Department of Health and Hospitals to speak with community members regarding their concerns. In addition to dealing with community members,

¹⁸⁴ La. Dep't. of Env'tl. Quality, COMMUNITY-INDUSTRY RELATIONS GROUP, CHRONOLOGY AND ACCOMPLISHMENTS (Nov. 2000) (on file with authors).

¹⁸⁵ *Id.*

¹⁸⁶ Environmental Justice Group, National Conference of State Legislatures, ENVIRONMENTAL JUSTICE: A MATTER OF PERSPECTIVE (Sept. 1995) (on file with authors).

¹⁸⁷ Exec. Order MJF 98-1, Mississippi River Corridor Task Force (Jan. 7, 1998) *available at* <http://www.state.la.us/osr/other/mjf99-8.htm> (Last visited Oct. 10, 2003).

¹⁸⁸ See 1998 Louisiana Toxic Release Inventory Report, page 29, *available at* <http://www.deq.state.la.us/evaluation/tri/1998/TRI.pdf> (Last visited Oct. 10, 2003) (Toxic Release Inventories for other years *available at* <http://www.deq.state.la.us/evaluation/tri/>).

¹⁸⁹ Exec. Order MJF 98-1, Mississippi River Corridor Task Force.

¹⁹⁰ Louisiana Department of Environmental Quality, Environmental Update – Winter 2001, *Community/Industry Relations Section Finds Solutions*, at p. 4, www.deq.state.la.us/news/envupd/2001winter (Last visited Oct. 2, 2003).

CIR also “advises companies trying to locate in the state to have small meetings throughout the communities that they are trying to work in.”¹⁹¹

Statute

An environmental justice provision was added to Louisiana’s statutes in 1997.¹⁹² The statute required LDEQ to “examine and study the relationship between the emission of air pollutants and the discharge of wastes by facilities located in or near residential areas.”¹⁹³ Specifically, LDEQ must determine the amount of such emissions and discharges (including permitted and unpermitted emissions and discharges) in each residential area and set out any correlations that may exist.¹⁹⁴

However, the statute placed restrictions on the funding of the study, prohibiting LDEQ from commencing work on the study of potential environmental injustice until the legislature specifically allocates funds for such a purpose. Moreover, the statute admonishes LDEQ that it “shall not direct existing funds or fees from other budgeted programs to fund this study, but may provide in-kind services to match any federal grants received.”¹⁹⁵

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MAINE

Policies

Maine does not have a formal environmental justice program or policy. Maine’s Department of Environmental Protection increases awareness of environmental justice issues by conducting trainings for staff on the meaning of fairness and disparate impacts in the environmental regulatory process, and ensuring that its permitting and regulatory decision making are open and inclusive of all public interests.¹⁹⁶

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¹⁹¹ *Id.*

¹⁹² *See* LA. REV. STAT. ANN. § 30:2011.2 (West 2003).

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ Telephone interview with Brooke E. Barnes, former Deputy Commissioner, Maine Department of Environmental Protection (April 22, 2003).

MARYLAND

Statutes

In 1997, Maryland enacted House Bill 1350, establishing the Maryland Advisory Council on Environmental Justice (“MACEJ”).¹⁹⁷ MACEJ’s mission is to develop and examine recommendations on environmental justice policy and direction. Maryland has adopted a working model for decisionmaking from the National Conference of State Legislators, and MACEJ has created three subcommittees to provide general and expert assistance. The particular subcommittees focus on (1) public outreach, education and participation; (2) state and local interagency coordination; and (3) environmental health concerns and research.¹⁹⁸

In addition to HB 1350, Maryland also passed House Joint Resolution 6 in January 2000.¹⁹⁹ This legislation addressed environmental justice concerns within Anne Arundel County. The resolution requires the Department of the Environment, in consultation with the MACEJ, to develop a plan to promote environmental justice in Anne Arundel County because of its high cancer mortality rate.²⁰⁰ Further, the resolution states that additional industrial activity should not proceed in the county and no further environmental permits should be issued in designated areas of concern.²⁰¹

Children’s Environmental Health

Pursuant to the recommendation of the MACEJ Advisory Council, the Legislature created an Advisory Council to address the environmental health needs of children.²⁰² The Legislature recognized that “[h]igher rates of poverty are one of the factors that place children of ethnic and minority communities at disproportionate risk for environmental exposures, due to inadequate housing, poor nutrition, and limited access to health care.²⁰³ The Advisory Council was given the tasks of identifying environmental hazards that may affect children’s health and recommending solutions to those hazards through interdisciplinary problem solving and coalition building.²⁰⁴

EJ Programs and Services

Commission on Environmental Justice and Sustainable Communities

In March 2001, former Governor Paris Glendening created Maryland’s Commission on Environmental Justice and Sustainable Communities (“Commission”) by executive order.²⁰⁵ The Commission is comprised of fifteen members appointed by the governor from these several interest groups such as: affected communities concerned with environmental justice, business organizations, environmental organizations, health experts on environmental justice, local

¹⁹⁷ MD. CODE ANN., Art. 41, § 18-315 (2003).

¹⁹⁸ *Id.*

¹⁹⁹ H.R.J. Res. 6, 2000 Leg., 414th Sess. (Md. 2000).

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² MD. HEALTH GEN. CODE § 13-1502 (2003).

²⁰³ *Id.* at § 13-1502 (a)(3).

²⁰⁴ *Id.* at § 13-1502 (b)(2).

²⁰⁵ Exec. Order No. 01.01.2001.01, Commission on Environmental Justice and Sustainable Communities (Mar. 9, 2001), *reprinted in* 28-7 Md. Reg. 674 (April 6, 2001).

government, and the general public with interest or expertise in environmental justice.²⁰⁶ The Commission was authorized to operate for two and a half years and to facilitate environmentally safe and sustainable communities for all Maryland residents.

The Commission's mandate included: (1) advising state agencies on environmental justice and related community issues; (2) assessing the adequacy of State and local government laws and regulations to address the issue of environmental justice and sustainable communities; and (3) developing criteria to assess whether communities of the State may be experiencing environmental justice issues.²⁰⁷ In 2003, the legislature permanently extended the charter of Commission on Environmental Justice and Sustainable Communities, which will continue to make annual reports to the Governor's office.²⁰⁸ Other duties include assessing the impact of state laws and policies on environmental justice, as well as advising the Governor and state agencies about environmental justice issues.

Maryland Department of Transportation's Assessment Tool

The Maryland Department of Transportation has issued Environmental Justice Guidelines for the State's Highway Administration Projects ("Guidelines"). The Guidelines are meant to provide project teams with the framework to analyze environmental justice issues within the transportation decisionmaking framework. The Guidelines offer direction for project teams in areas such as public outreach, assessment of disproportionately high and adverse impacts, and identification of minority and low-income populations.

The Guidelines indicate that when an environmental justice issue has been identified and all of the options have been considered, "the No-Build alternative must be carefully considered . . . it's possible that not building transportation improvements could impact minority or low-income populations. A clearly written description of all EJ findings must be included in the environmental document."²⁰⁹

Public outreach is emphasized in the Guidelines as a critical part to decisionmaking process that should be integrated of every stage of the process. Accordingly, the Guidelines advise transportation planners "to be effective, your public involvement strategy should be tailored to use adaptive or innovative approaches that overcome linguistic, institutional, cultural, economic, historical, or other potential barriers to effective participation in decisionmaking process."²¹⁰ The Guidelines' focus on public outreach and emphasize that public participation is critical at every stage of the planning process. In particular, the Guidelines address the importance of breaking traditional communication barriers that might otherwise exclude certain populations from participating in the process.

²⁰⁶ *Id.*

²⁰⁷ Commission on Environmental Justice & Sustainable Communities, *Final Report and Recommendations* (December 2002), available at http://www.mde.state.md.us/assets/document/environmental_justice/ej_2002_Annual_Report.pdf#page=3 (Last visited Oct. 3, 2003).

²⁰⁸ MD. ENV. CODE ANN. § 1-701.

²⁰⁹ *Environmental Justice Guidelines for MD State Highway Administration Projects*, at p. 3, available at http://www.fhwa.dot.gov/mddiv/EJ_Guidelines.pdf (Last visited June 22, 2003).

²¹⁰ *Id.* at p. 4.

Finally, the Guidelines instruct transportation planners to consider and identify the disproportionately high and adverse impacts that their planning decisions may have. The Guidelines underscore that there is no “cookie-cutter” definition of a disproportionate or adverse impact to a community. Although the Guidelines offer several impacts that should be considered, it warns that the list is not dispositive. Included in the list of adverse effects are “human health, the natural and social environment, the economy, community function . . . [and] also includes the denial, reduction or delay in receiving benefits.”²¹¹

Community Participation and Processes

Community Index Workgroup

In an effort to reach out to members of communities that are affected by environmental injustice, the Commission has created a Community Index Workgroup. The main goal of the Community Index Workgroup is to develop a strategy to identify communities that are disproportionately affected by environmental conditions.²¹² To achieve this goal, the Commission will develop “sample criteria as a basis for determining if a community is disproportionately environmentally stressed and use[] the results of this analysis as a means to better understand and communicate potential health and environmental risk to stakeholders.”²¹³

According to the Commission’s most recent report, published in December 2002, community residents continue to express concerns about perceived environmental injustices within the state. The Commission conducted several public meetings throughout the state where community members “. . . raised several concerns about potential EJ issues such as lead poisoning, increasing asthmatic levels and other respiratory concerns, communication, infrastructure needs . . . limited regulatory protection [and] public involvement and outreach.”²¹⁴ In order to address the concerns expressed during the public meetings, the Commission made several recommendations to state and local agencies to incorporate environmental justice principles into their programs and public participation into their decisionmaking framework.²¹⁵

The Commission, in conjunction with the Maryland Department of Environment and the US EPA, has obtained funding to produce a series of Environmental Equity Hearings (“EE Hearings”). The EE Hearing will give individuals and interest groups within affected communities the opportunity to offer input on proposed environmental programs and policies that will affect their particular communities and localities. The Commission hopes that the EE Hearings will serve to “. . . identify critical environmental issues facing local communities and best practices for incorporating those concerns into State Agency decisionmaking.”²¹⁶

²¹¹ *Id.* at p. 12.

²¹² Commission on Environmental Justice and Sustainable Communities, *Annual Report*, Appendix C, at p. 2 (December 2001), available at http://www.mde.state.md.us/assets/document/environmental_justice/ejreport99/appendix_c.pdf (Last visited Oct. 15, 2003).

²¹³ *Id.*

²¹⁴ Commission on Environmental Justice and Sustainable Communities, *Annual Report*, at p. 6 (December 2002), available at http://www.mde.state.md.us/assets/document/environmental_justice/ej_2002_Annual_Report.pdf (Last visited Oct. 15, 2003).

²¹⁵ *Id.* at 9-10.

²¹⁶ *Id.*

Performance Partnership Agreement

Similar to US EPA PPAs with other states, Maryland's PPA states "[no] person or group of people should shoulder a disproportionate share of adverse environmental impacts as a result of the execution of environmental policies, programs, or initiatives. The Partners are committed to working together to develop programs, activities, and initiatives in the state of Maryland that are consistent with the principles of environmental justice, that build capacity within communities, and that enhance the level of cooperation and understanding with regard to environmental justice."²¹⁷

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MASSACHUSETTS

Policies

The Massachusetts Executive Office of Environmental Affairs ("MEOEA") Environmental Justice Coordinator estimates that 28% of the state's population is affected by environmental justice issues.²¹⁸ MEOEA adopted an Environmental Justice Policy that defines EJ populations as "those segments of the population that MEOEA has determined to be most at risk of being unaware of or unable to participate in environmental decisionmaking or to gain access to state environmental resources."²¹⁹ The Environmental Justice Policy prioritizes EJ communities: (1) to receive clean-up funds for hazardous waste sites; (2) to be the targets of environmental inspections and enforcement actions; and (3) to receive heightened scrutiny of industrial facilities and air emissions. The policy encourages the creation of open space within areas inhabited by EJ populations, and increases opportunities for community members to participate in environmental decisionmaking.²²⁰

In addition, the policy expedites the issuing of permits for companies intending to redevelop brownfields. Borrowing a technique from the "smart growth" movement, this policy also provides "bonus credit" to municipalities for grant programs, enforcement actions, "or any other resources prioritized or focused on neighborhoods where EJ populations reside."²²¹ The

²¹⁷ *Maryland's FY 2001 & 2002 Environmental Partnership Agreement*, at p. 4, available at <http://www.mde.state.md.us/assets/document/enpa/enpa2001-2002.pdf> (Last visited Aug. 20, 2003).

²¹⁸ Telephone interview with Tony Chaves, Environmental Justice Coordinator, Massachusetts Office of Environmental Affairs, (Feb. 25, 2003).

²¹⁹ For an area to be considered an environmental justice community, the median annual household income for that area must be at or below 65 percent of the statewide median income for Massachusetts; or 25 percent of the residents are minority; or 25 percent of the residents are foreign born, or 25 percent of the residents are lacking English language proficiency. *Environmental Justice Policy of the Executive Office of Environmental Affairs*, at p. 5, available at http://www.state.ma.us/envir/ej/EJ_Policy_English_Full_Version.pdf (issued Oct. 2002) (Last visited July 14, 2003).

²²⁰ *Id.*

²²¹ *Id.* at pp. 5-6.

EOEA has translated its environmental justice policy into seven languages, and made them available on its website.²²²

EJ Programs and Services

Alternative Media Outlets and EJ Mailing List

Since the policy was issued just last October, Massachusetts' environmental justice program is still being developed.²²³ However, the MEOEA's Environmental Justice Coordinator, Tony Chaves, points to some specific and immediate plans for EJ outreach efforts to implement the state's policy.²²⁴ In recognition of the fact that EJ populations may not have ready access to the Internet and MEOEA's website, MEOEA plans to compile an "EJ Mailing List" to reach interested members in EJ communities.²²⁵ In addition, the EOEA's policy requires that a list of "Alternative Media Outlets" be developed to alert environmental justice populations of their opportunity to speak out regarding projects that would affect their area.²²⁶ The distribution outlets for EJ literature will range from community based social service organizations to hairdressing salons.²²⁷

Environmental Justice Geographic Information System

MEOEA's website contains an interactive GIS mapping program that identifies all of the state's EJ populations and allows users to query the database with a standard web browser.²²⁸ The GIS database is expected to be used by the state's environmental justice populations, agencies charged with implementing the state's environmental justice program, and private parties whose projects may have environmental justice ramifications.

Programs for Tribal and Indigenous Communities

MEOEA recognizes the necessity of Native American-specific environmental justice outreach efforts because of the special challenges facing that group, such as their higher incidence of asthma as compared to the rest of the population.²²⁹ Joan Robes, the Director of Massachusetts Urban Self-Help Program spearheads the MEOEA outreach efforts towards the state's Native American population.²³⁰ Currently, the efforts are focused on identifying and building ties with Native American populations in the state.²³¹

²²² See Executive Office of Environmental Affairs, Environmental Justice, <http://www.state.ma.us/envir/ej/> (Last visited Oct. 2, 2003).

²²³ Telephone interview with Tony Chaves, *supra* note 218.

²²⁴ *Id.*

²²⁵ Executive Office of Environmental Affairs, *Full Environmental Justice Policy*, http://www.state.ma.us/envir/ej/EJ_Policy_English_Full_Version.pdf (Last visited Oct. 15, 2003).

²²⁶ *Id.*

²²⁷ Telephone interview with Tony Chaves, *supra* note 218.

²²⁸ *Environmental Justice Viewer*, <http://maps.massgis.state.ma.us/EJ/viewer.htm> (Last visited Oct. 3, 2003).

²²⁹ Telephone interview with Joan Robes, Director of Massachusetts Urban Self-Help Program (March 7, 2003).

²³⁰ *Id.*

²³¹ *Id.*

Transportation Planning

Massachusetts outlined its solid waste management strategy for the next decade in a policy document published in 2000.²³² The plan explicitly takes into account environmental justice and requires that “the impact of facilities’ operations relative to the cumulative impacts from all sources on health and the environment in the affected area” should be addressed.²³³ Furthermore, the plan indicates that the Massachusetts Department of Environmental Protection was to revise the solid waste facility site assignment regulations to include several criteria that will further protect the interests of communities near proposed solid waste facilities. The proposed regulations included “notification to communities with significant minority populations in their primary language, increased setbacks to provide larger buffers between the facilities and nearby residents, and evaluation of cumulative impacts associated with new or expanded solid waste facilities.”²³⁴

Supplemental Environmental Projects

In the settlement of environmental enforcement cases, MDEP may allow violators to reduce the magnitude of their penalties by the costs associated with an environmentally beneficial project, known as a Supplemental Environmental Project (“SEP”).²³⁵ MDEP defines SEPs as actions a regulated entity is not legally required to perform that will “improve, protect or reduce risks to public health, safety or welfare, or the environment at large.”²³⁶ In exercising its discretion to approve a SEP, MDEP will consider several factors such as whether the violator attempted to avoid non-compliance, how the violator responded to non-compliance, and the economic consequences of the non-compliance.²³⁷ MDEC’s policy indicates that environmental justice is one of the overarching goals of the SEP program, though the department does not list it as a category of SEP nor consider it a formal factor in determining whether to allow a SEP.²³⁸

Performance Partnership Agreement

In its 2002 PPA with US EPA, Massachusetts DEP promised to increase staff awareness of environmental equity, and further integrate environmental equity objectives into DEP’s programs and policies.²³⁹ In addition, environmental justice has been identified as a US EPA Region I strategic priority for Massachusetts in the draft 2004-2005 PPA currently under negotiation between DEP and US EPA.²⁴⁰

²³² Massachusetts Department of Environmental Protection, *Beyond 2000: Solid Waste Master Plan: Massachusetts Renews its Commitment to Waste Reduction, Recycling and Re-use* (Dec. 20, 2000), available at <http://www.state.ma.us/dep/bwp/dswm/files/swmp.doc> (Last visited Oct. 10, 2003).

²³³ *Id.* at pp. 1-5.

²³⁴ *Id.*

²³⁵ MDEP, *Interim Policy on Supplemental Environmental Projects*, at p. 1, available at www.state.ma.us/dep/enf/enf97005.pdf (Last visited Oct. 15, 2003).

²³⁶ *Id.* at p. 6.

²³⁷ *Id.* at p. 3.

²³⁸ *Id.* at p. 4 (language mirroring that used in US EPA, *Final EPA Supplemental Environmental Projects Policy Issued, supra* note 145).

²³⁹ *Massachusetts DEP Environmental Performance Partnership Agreement, 2002-2003*, available at <http://www.state.ma.us/dep/ppa/files/ppa0203a.pdf> (Last visited Oct. 16, 2003).

²⁴⁰ *The Environmental Performance Partnership Agreement 2004-2005* (draft), at p. 11, available at <http://www.state.ma.us/dep/ppa/files/ppa0405.pdf> (Last visited Oct. 16, 2003).

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MICHIGAN

In 1999, the Michigan Department of Environmental Quality (“MDEQ”) sponsored an Environmental Justice Workgroup, which issued a report setting out four recommendations, including that MDEQ and the permit applicant consider a one mile radius around the proposed site to determine whether additional community outreach efforts “would be prudent so as to address potential environmental justice issues.”²⁴¹

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MINNESOTA

EJ Policies and Programs

Minnesota does not have a formal EJ policy in effect, but the state recognizes and has programs to help facilitate EJ discussions. For example, the Minnesota Office of Environmental Assistance (“MOEA”) created the ‘good neighbor agreement’ program, which is a “voluntary mediation process by which neighbors to a business and that business work towards improving the environmental performance of the business.”²⁴² Although good neighbor agreements are not legally binding,²⁴³ they help to facilitate a dialogue between industry and the affected communities and avoid court action. Recently a good neighbor agreement was signed between a manufacturer emitting high levels of toluene and several representatives of a southeast Minneapolis, which is home to some of the state’s largest reporters of toxic releases.²⁴⁴

²⁴¹ *Michigan Environmental Justice Workgroup Recommendations* (Oct. 1999) (on file with the authors).

²⁴² See MOEA’s NextStep website http://www.nextstep.state.mn.us/res_detail.cfm?id=629&xx=good%20neighbor (Last visited Sept. 25, 2003).

²⁴³ Joe Mahon, *The Minnesota Daily, Neighborhood Associations Sign Pact with Polluter*, April 3, 2003, <http://www.mndaily.com/article.php?id=5680> (Last visited Oct. 7, 2003).

²⁴⁴ *Id.*

MOEA also sponsors the Minnesota Sustainable Communities Network (“MnSCN”), a web portal that promotes discussions and information sharing about sustainable communities among interested groups and individuals.²⁴⁵ The website links users to information on sustainability and specific projects hosted by member groups. One of the member groups makes small grants available to empower local Environmental Justice efforts.²⁴⁶

Performance Partnership Agreement

In October 2001, the Minnesota Pollution Control Agency (MPCA) and US EPA entered into a PPA.²⁴⁷ The Environmental Justice section defines “environmental justice” as ensuring that environmental laws, policies and enforcement fairly treat “people of all races and incomes” and elicit their “meaningful involvement in the decisionmaking process of the government.”²⁴⁸ In furtherance of these goals, the PPA sets out MPCA’s plan for an advisory task force charged with fact-finding and the development of environmental justice-influenced procedures to be integrated into MPCA’s programs and decisionmaking process.²⁴⁹

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MISSISSIPPI

Statute

Mississippi’s Hazardous Waste Facility statute carries an anti-concentration provision.²⁵⁰ The provision states: “based on the needs of the State of Mississippi, it is the intent of the Legislature that there shall not be a proliferation of unnecessary facilities in any one (1) county of the state.”²⁵¹ The wording of this statute is broad, however, because “the needs of the State of Mississippi” could change at any time whereas the proliferation of industry in a particular area could be deemed necessary. Nevertheless, the statute may serve to protect communities from suffering disproportionate impacts.

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²⁴⁵ See generally Minnesota Sustainable Communities Network website, <http://www.nextstep.state.mn.us/index.htm> (Last visited Sept. 25, 2003).

²⁴⁶ Minnesota Sustainable Communities Network, *Good Neighborhood Agreements*, available at http://www.nextstep.state.mn.us/res_detail.cfm?id=1020&xx=environmental%20justice (Last visited Sept. 25, 2003).

²⁴⁷ Minnesota Pollution Control Agency, *Environmental Performance Partnership Agreement*, available at <http://www.pca.state.mn.us/programs/enppa.html> (Last visited June 22, 2003).

²⁴⁸ *Environmental Performance Partnership Agreement*, <http://www.pca.state.mn.us/publications/reports/enppa-2002-2004.pdf>, at p. 12 (Last visited Sept. 22, 2003).

²⁴⁹ *Id.*

²⁵⁰ MISS. CODE ANN. § 17-17-151 (2003).

²⁵¹ *Id.* at § 17-17-151 (e)(4).

Website: <http://opc.deq.state.ms.us/epd/forms.asp>

MISSOURI

Policy

The Missouri Department of Natural Resources (“MDNR”) Fiscal Year 2000 Plan contains a comprehensive approach to environmental justice. The Integrated Strategic Plan’s goal is to “strengthen resource understanding and informed decisionmaking of natural, cultural and energy issues.”²⁵² MDNR suggested two outcomes and proposed the measures to be taken to ensure that those outcomes are achieved. First, MDNR seeks to create “improved understanding of resource issues resulting in informed decisionmaking.”²⁵³ MDNR’s strategies include studying information access points and “develop[ing] a plan to better coordinate access to information and the appropriate medium for that information.”²⁵⁴ MDNR reported it would increase the number of environmental permits issued, “which include consideration of the impact on minority and low income populations.”²⁵⁵ In order to accomplish this goal, MDNR will develop a strategy for addressing environmental justice in the decisionmaking process.²⁵⁶

MONTANA

Montana does not have a formal EJ policy or program. An official at the Montana Department of Environmental Quality attributes this to the demographics of Montana: there are only small African-American and Latino populations, while the US EPA has primary responsibility for EJ and Native Americans. The one group “falling between the cracks” would be the retired, elderly poor clustered in rural areas, but they do not fall under the US EPA’s EJ criteria.²⁵⁷

Statute

Major Facility Siting

The preamble to the Montana Major Facility Siting Act (“Act”) indicates the legislature’s purpose in passing the statute was to “ensure consideration of socioeconomic impacts” and “provide citizens with the opportunity to participate in facility siting decisions.”²⁵⁸ The Act requires a cumulative impacts analysis for determining if a proposed “Major Facility” is eligible for expedited review.²⁵⁹ Major facilities include electric transmission facilities, pipeline facilities, or geothermal facilities.²⁶⁰ Among the factors to be assessed in the cumulative review is include the severity, duration, geographic extent, and frequency of occurrence of the impact as

²⁵² Missouri Department of Natural Resources, *FISCAL YEAR 2000 INTEGRATED STRATEGIC PLAN* (revised Jan. 22, 2001), available at http://www.dnr.state.mo.us/s_plan/fy2000/issue_4.htm (Last visited Oct. 10, 2003).

²⁵³ *Id.*

²⁵⁴ *Id.*

²⁵⁵ *Id.*

²⁵⁶ *Id.*

²⁵⁷ Telephone interview with Tom Ellerhoff, Director’s Office, Montana Department of Environmental Quality (Oct. 10, 2003).

²⁵⁸ MONT. CODE ANN. § 75-20-102.

²⁵⁹ *Id.* at § 75-20-232.

²⁶⁰ *Id.* at § 75-20-104.

well as whether the degree to which the impacts on the human environment are likely to create a high level of public concern.²⁶¹

Performance Partnership Agreement

The state of Montana has agreed to support US EPA's environmental justice efforts, and to work with US EPA to meet its goals. In general, Montana has agreed to further the "EPA's policies, programs and activities, including public meetings, address minority and low income community issues so that no segment of the population suffers disproportionately from adverse health or environmental effects, and that all people live in clean, healthy and sustainable communities, consistent with Executive Order 12,898."²⁶²

Some of the specific EPA efforts that Montana has agreed to support include allowing the public to gain access to "compliance and enforcement documents and data, particularly to high risk communities, through multimedia data integration projects and other studies, analyses and communication/outreach activities." Montana further agrees that noncompliance can be deterred and environmental and human health improvements may be achieved by maintaining a strong, timely and active enforcement presence.²⁶³

NEBRASKA

The authors did not find any relevant environmental justice programs, policies, or statutes for the state of Nebraska.

NEVADA

The authors did not find any relevant environmental justice programs, policies, or statutes for the state of Nevada.

NEW HAMPSHIRE

Policy

In September 1994, the New Hampshire Department of Environmental Services ("NH DES") incorporated an Environmental Equity Policy and Implementation Strategy into its platform. The policy states that, "The NH Department of Environmental Services will, within its authority, ensure fair and equitable treatment of all New Hampshire citizens in the implementation of federal and state environmental laws, rules, programs and policies."²⁶⁴

NH DES's overall approach is to incorporate environmental equity considerations into every applicable decision or action by developing policies and guidance for NH DES staff to

²⁶¹ *Id.* at § 75-20-232(2)(a)-(h).

²⁶² Montana Environmental Performance Partnership Agreement (2001-2003), *available at* <http://www.deq.state.mt.us/about/PerfPartA/DEQEPA2001-03.htm> (Last visited Aug. 20, 2003); Exec. Order 12,898, *supra* note 5.

²⁶³ *Id.*

²⁶⁴ New Hampshire Department of Environmental Services, *Environmental Equity Policy and Implementation Strategy*, <http://www.des.state.nh.us/equitypolicy.htm> (Last visited Sept. 15, 2003).

incorporate into the department's daily decisions or actions.²⁶⁵ Currently, NH DES is in the process of reviewing ways to improve its environmental equity efforts, including re-distributing its policy to staff, providing new training opportunities, updating written guidance, incorporating Environmental Equity Policy in appropriate work plans and grant applications, and reviewing elements of US EPA's Equity Guidance documents.²⁶⁶

Performance Partnership Agreement

The 2003-2004 PPA between NH DES and US EPA states that the NH DES is participating in US EPA's EJ/Title VI Workgroup, thereby receiving EPA's technical assistance in EJ training, mapping and policy support.²⁶⁷ US EPA has prepared and made available its EJ Action Plans to the state.²⁶⁸ NH DES does not undertake any affirmative obligations regarding EJ in the PPA, however.

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NEW JERSEY

Policy

In 1998, New Jersey's "Environmental Equity Task Force/Advisory Council" was created by the New Jersey Department of Environmental Protection ("NJ DEP") to develop a "policy and process for incorporating environmental justice concerns into [the NJ DEP] permitting process."²⁶⁹ The Advisory Council developed recommendations for implementing regulations that were submitted to NJ DEP for the agency's consideration.²⁷⁰ However, in 2002, the NJ DEP, announced that it would not adopt the proposed environmental justice regulations, partly due to NJ DEP's view that the Council's Environmental Equity Screening model was too "process heavy."²⁷¹

²⁶⁵ *Id.*

²⁶⁶ *Id.*

²⁶⁷ *Performance Partnership Agreement for Federal Fiscal Years 2003 – 2004 Between the New Hampshire Department of Environmental Services and the U.S. Environmental Protection Agency*, at p. 42, available at http://www.des.state.nh.us/ppa/2003_2004PPA.pdf, (Last visited Oct. 6, 2003).

²⁶⁸ *Id.*

²⁶⁹ *Environmental Equity in New Jersey: A Community Partnership Approach* <http://www.state.nj.us/dep/seeds/equity.htm> (Last visited Oct. 6, 2003).

²⁷⁰ *ABA Section of Environment Energy and Resources*, *The Law of Environmental Justice: Update Service*, <http://www.abanet.org/environ/committees/envtab/ejweb.html> (Last visited Oct. 6, 2003).

²⁷¹ *Id.*; see also Michael David Lichtenstein, *The New Jersey Department of Environmental Protection Pulls Environmental Justice Regulations*, <http://www.lowenstein.com/new/NJDEP04-02.pdf> (Last visited Oct. 6, 2003); Telephone interview with Michelle DePass, former Senior Policy Advisor to the Commissioner, New Jersey Department of Environmental Protection (Feb. 25, 2003).

EJ Programs & Services

NJ DEP City-Focused Enforcement Initiatives

Nevertheless, according to Michelle DePass, the former Senior Policy Advisor to the Commissioner for the NJ DEP who coordinated New Jersey's environmental equity program, New Jersey's desire to promote environmental justice is as strong as ever.²⁷² NJ DEP's current environmental justice efforts are channeled mainly through "enforcement strikes."²⁷³

The "enforcement strikes" marshal a large NJ DEP enforcement team from nearly all of its units (e.g. the Bureau of Air Monitoring; Pesticide Control Program) and send them into urban areas with large environmental justice populations.²⁷⁴ In these areas, the NJ DEP conducts broad inspections, and uses the power of its permitting authority to force violators to clean up and comply with environmental regulations already on the books.²⁷⁵ Sites chosen for inspection range anywhere from auto body repair shops to public schools.²⁷⁶ Examples of such violations include a dumpster filled with seven year old trash²⁷⁷ and numerous failures to comply with pesticide application permits.²⁷⁸ Currently, due to the depth and breadth of the enforcement strikes, the NJ DEP has the available resources to conduct about two such strikes per year.²⁷⁹

Community Participation and Process

EJ Advisory Council

NJ DEP continues to hold quarterly meetings of the EJ Advisory Council to discuss incorporating environmental justice concerns into the NJ DEP permitting process.²⁸⁰ These meetings are meant to not only bring the NJ DEP to the community and environmental justice stakeholders, but also to introduce those stakeholders to the workings of the NJ DEP and the state government itself.²⁸¹ In particular, the meetings reinforce the central role the permitting process plays in New Jersey's EJ efforts.²⁸² These meetings also better NJ DEP staff's understanding of the environmental justice population and the issues that affect them.²⁸³

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²⁷² *Id.*, telephone Interview with Michelle DePass, *supra* note 271.

²⁷³ *Id.*

²⁷⁴ *Id.*

²⁷⁵ *Id.*

²⁷⁶ To view a sample of an enforcement strike report, go to <http://www.state.nj.us/dep/opra/online.html>, login using "dep", click on "Initiatives" under "Compliance & Enforcement", then click on "Violations Found During The 2002 Camden City Initiative." *Online Public Records Act* (Last visited July 1, 2003).

²⁷⁷ *Id.* (violation by the Camden City Board Of Education).

²⁷⁸ *Id.* (violation by the Camden Housing Authority).

²⁷⁹ Telephone interview with Michelle DePass, *supra* note 271.

²⁸⁰ *Id.*

²⁸¹ *Id.*

²⁸² *Id.*

²⁸³ *Id.*

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NEW MEXICO

Policy

Recognition of Disparate Environmental Impacts

Although New Mexico does not have an environmental justice policy, the state recognizes that there is a need to address the issue.²⁸⁴ According to the current Secretary of New Mexico's Environment Department ("NMED"), "[the NMED] needs to look at issues of environmental justice--why pollution-creating facilities are too often put in poor, minority communities . . ." ²⁸⁵ While the state does not appear to have any concrete plans to implement a formal environmental justice program, leaders from NMED have held a series of environmental and economic justice-oriented meetings with environmental activist groups to "find ways to connect on issues of shared importance."²⁸⁶ Furthermore, in a current state press release, the NMED Secretary pledges to "enforce the environmental laws that are on the books [to promote environmental justice]."²⁸⁷

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NEW YORK

Policies

Environmental Justice Advisory Group

In October 1999, the New York State Department of Environmental Conservation ("NY DEC") created the Office of Environmental Justice to address environmental justice concerns and ensure community participation in the state's permitting process.²⁸⁸ The Environmental Justice Advisory Group was also created at that time, and is responsible for developing recommendations for an Environmental Justice Permit Policy for the state, prioritizing environmental justice issues, and recommending procedures that can be used to address these priorities.²⁸⁹

²⁸⁴ State of New Mexico, Environment Department, *Environment Department Leaders Meet With Activists to Discuss Environmental, Economic Justice*, <http://www.nmenv.state.nm.us/OOTS/PR/SWOP%20meet%20PR.pdf> (Last visited Oct. 6, 2003).

²⁸⁵ *Id.*

²⁸⁶ *Id.*

²⁸⁷ *Id.*

²⁸⁸ New York State Office of Environmental Justice, <http://www.dec.state.ny.us/website/ej/mlacbio.html> (Last visited June 26, 2003).

²⁸⁹ *Id.*

The Advisory Group is noteworthy for its efforts to draw its membership from a broad cross-section of stakeholders as well as for the level of involvement of non-governmental community organizations. The EJ Advisory Group is comprised of environmental justice advocates, environmental advocates, tribal representatives, academics, business representatives, as well as federal, state, and local representatives.²⁹⁰

In early 2002, the Advisory Group issued a report entitled “Recommendations for the New York State Department of Environmental Conservation Environmental Justice Program,” which advised NY DEC on incorporating environmental justice principles into the State Environmental Quality Review Act (“SEQR”) permit review process.²⁹¹ Recommendations for the SEQR process included: conducting a preliminary screening in NY DEC's SEQR review to identify minority and low-income communities that may be affected by the proposed action; using a full environmental assessment form for unlisted actions in these communities; and providing an extended public comment period and public hearing for proposed projects that would have a significant adverse impact on a minority or low-income community.²⁹²

2003 EJ Policy Update

On March 19, 2003, NY DEC issued a new policy for incorporating environmental justice concerns into its permit process, following the Advisory Group's initial recommendations and the public's comments.²⁹³ The policy modifies NY DEC's environmental permit process by providing that DEC will identify minority or low-income communities through census block data and GIS technology, resulting in EJ communities being defined for areas with as few as 250 to 500 housing units.²⁹⁴ The policy sets the threshold for an “EJ impact” low: a project in a minority or low-income community with the potential for at least one significant, adverse environmental impact triggers its provisions. Significantly, the policy creates a new “enhanced” public participation requirement binding upon permit applicants. If a project has a potential impact on an EJ community, the permit applicant must submit a written public participation plan describing how the applicant will identify stakeholders, produce easily understood project information, schedule public meetings and establish document repositories.²⁹⁵ NY DEC EJ program is currently developing a technical assistance program pursuant to the policy.

EJ Programs and Services

NY DEC runs a toll-free “Environmental Justice Hotline” that provides callers with information on the state's EJ Program, environmental issues in minority or low-income communities, environmental laws, regulations, policies, permitting and enforcement related to EJ in the state, and grant opportunities.²⁹⁶ NY DEC's website also features an “Environmental

²⁹⁰ Environmental Justice Advisory Group: Members, <http://www.dec.state.ny.us/website/ej/memberlist.html> (Last visited June 26, 2003).

²⁹¹ New York State Department of Environmental Conservation Announces Completion of Report, <http://www.dec.state.ny.us/website/ej/ejfinalreport.pdf> (Last visited Aug. 20, 2003).

²⁹² Office of Environmental Justice, <http://www.dec.state.ny.us/website/ej/index.html> (Last visited June 26, 2003).

²⁹³ New York State Department of Environmental Conservation, *Environmental Justice and Permitting*, <http://www.dec.state.ny.us/website/ej/ejpolicy.pdf> (Last visited Aug. 20, 2003).

²⁹⁴ *Id.* at pp. 3, 7.

²⁹⁵ *Id.* at p. 8.

²⁹⁶ New York Office of Environmental Conservation, Environmental Justice Program, <http://www.dec.state.ny.us/website/ej/ejprogram.html> (Last visited Oct. 13, 2003).

Navigator” which is NY DEC's GIS interface for interactive mapping of facilities of environmental interest.²⁹⁷

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NORTH CAROLINA

Statute

Solid Waste Permits

In the state’s solid waste permitting program, a statute requires that demographics be considered in the selection or approval of landfills. When an application is made for a new landfill to be located within one mile of an existing sanitary landfill, “the governing board of a city shall consider alternative sites and socioeconomic and demographic data and shall hold a public hearing prior to selecting or approving” the landfill.²⁹⁸ This statute requires the permitting authority to consider the most recent census data for the area before approval, but there are no additional guidelines in the statute as to how the data should be analyzed in making the decision. Nevertheless, the socioeconomic data must be disclosed at public hearing prior to any decisions.²⁹⁹

EJ Policies and Procedures

Environmental Equity Initiative

In 2000, the North Carolina Department of Natural Resources (“NC DENR”) issued its Environmental Equity Initiative. The focus of the initiative is to facilitate communication between industries and affected communities, primarily by providing information to communities to facilitate meaningful participation in the regulatory process.³⁰⁰

The NC DENR posits its role as that of mediator, rather than pro-active agent for environmental justice. According to the Environmental Equity Initiative, “low income and minority communities often believe that they are burdened with a disproportionate share of [the] state’s environmental risks. This belief in some instances may be well founded. However, these

²⁹⁷ New York State Department of Environmental Conservation, *DEC’s Environmental Navigator*, <http://www.dec.state.ny.us/website/imsmaps/navigator/index.html> (Last visited Aug. 20, 2003).

²⁹⁸ N.C. GEN. STAT. § 153A-136(c) (2003).

²⁹⁹ *Id.*

³⁰⁰ *Environmental Equity Initiative*, available at <http://www.enr.state.nc.us/admin/pdf/Envequin.pdf> (Last visited June 26, 2003).

beliefs can also create a hostile environment in which good faith efforts to resolve disputes address concerns, and seek consensus solutions are nearly certain to fail.”³⁰¹

Environmental Review of Cumulative Impact

NC DENR has a component in its permit review process relevant to environmental justice. The review procedures require the evaluation of the “cumulative and or secondary impacts as part of the State Environmental Protection Act or environmental permit process.”³⁰² While not specifically targeting EJ populations, the cumulative impacts assessment has implications for achieving environmental justice for disproportionately affected communities, recognizing that while an individual permitting decisions may not have an adverse effect on the local community, the cumulative effect of permitting decisions over time may result in environmental hazards. Moreover, examining the potential secondary impacts of a project requires permitting authorities to take a forward-looking view of the consequences of a present permitting decision. For example, “secondary impacts may be of concern when building a new reservoir which can lead to requirements for new drinking water treatment plants, wastewater treatment facilities, condemnation of privately owned lands, and other infrastructure requirements, all which may create significant environmental impacts. In some cases, these secondary and cumulative impacts can then be responsible for increased air pollution, sedimentation, non-point-source pollution, degraded water quality, and loss of . . . natural resources.”³⁰³

NORTH DAKOTA

The authors did not find any relevant environmental justice programs, policies, or statutes for the state of North Dakota.

OHIO

Statute

Although Ohio does not have a formal environmental justice policy or program, in order to receive a permit to open a new or modify an existing solid waste facility, Ohio law requires a “public information session and a public hearing on the application within the county in which the new or modified solid waste facility is or is proposed to be located or within a contiguous county.”³⁰⁴ The proponent must publish a notice of the project and hearing in local newspapers.³⁰⁵ Similar requirements are described for hazardous waste facilities.³⁰⁶

Contact

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³⁰¹ *Environmental Equity Initiative*, <http://www.enr.state.nc.us/admin/pdf/Envequin.pdf> (Last visited Oct. 15, 2003).

³⁰² *Cumulative and/or Secondary Impacts Evaluation Process for Department Level Projects*, <http://www.enr.state.nc.us/admin/pdf/CSIpol.pdf> (Last visited June 26, 2003).

³⁰³ *Id.*

³⁰⁴ OHIO REV. CODE ANN. § 3734.05(A)(2)(e) (Page 2003).

³⁰⁵ *Id.*

³⁰⁶ *Id.* at § 3734.05(D)(3)(b).

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OKLAHOMA

The authors did not find any relevant environmental justice programs, policies, or statutes for the state of Oklahoma.

OREGON

Policy

Environmental Justice Advisory Board

On August 1, 1997, Oregon Governor John Kitzhaber issued Executive Order 97-16 creating the Governor's Environmental Justice Advisory Board (Advisory Board).³⁰⁷ This Board was created to supplement and add to the recommendations issued by the Oregon Environmental Equity Citizen Advisory Committee in 1994.³⁰⁸ In early 1999, the Advisory Board issued a report containing policy recommendations for the state.

The Advisory Board defines environmental discrimination as any policy, practice, or directive that generates environmental impacts that disadvantage groups or communities based on race, color, national origin or economic background. This discrimination includes lesser enforcement of environmental standards and practices that limit participation by these same people in decisionmaking.³⁰⁹ The report made several recommendations for state agencies including:

1. Encourage partnerships between communities, industries and government agencies.
2. Correlate data on pollution, permitting, compliance and violations with information on race and socioeconomic status to determine whether patterns of bias exist.
3. Make cumulative impacts of siting and other permitting activities an important factor in environmental regulation and decisionmaking.
4. Form a citizen position within state environmental and natural resource agencies. The individual in this position would be responsible for providing access to citizens of the permitting process and will advocate for communities in the process.³¹⁰

In June 2000, Governor Kitzhaber appointed new members to the twelve person Advisory Board. The Advisory Board now includes individuals representing minority and low-income communities, environmental interests, industry, and members representing the different

³⁰⁷ Oregon Executive Order 97-16, Aug. 1, 1997, available at http://arcweb.sos.state.or.us/governors/Kitzhaber/web_pages/governor/legal/execords/eo97-16.pdf (Last visited Oct. 13, 2003).

³⁰⁸ Governor's Environmental Justice Advisory Board, *Implementation of Environmental Justice in Oregon Natural Resource and Environmental Agencies: 1998 Annual Report* (Feb. 1999) at p. 1 (on file with authors).

³⁰⁹ *Id.*

³¹⁰ *Id.*

geographic regions of the State.³¹¹ The Advisory Board will continue to define environmental justice issues and advise state agencies as well as address developments since the issuance of the 1999 Report.³¹²

Supplemental Environmental Projects

In settling an environmental enforcement case, Oregon Department of Environmental Quality (“ODEQ”) may allow violators to mitigate their penalties by completing a Supplemental Environmental Project (“SEP”).³¹³ In considering whether to approve a SEP, ODEQ encourages several types of projects, including those that result in “environmental enhancement or restoration, environmental justice (addressing any undue burden of environmental hazards historically placed on minority and low income groups), and increased public awareness and education.”³¹⁴

Contact

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PENNSYLVANIA

EJ Programs & Services

Pennsylvania established the Environmental Justice Work Group in 1999 to review Pennsylvania Department of Environmental Protection’s (“PA DEP”) programs and ensure equity in PA DEP’s environmental protection efforts. The Work Group completed a report in June 2001 recommending that the PA DEP: (1) implement a 10-step procedure for the permitting of certain activities in minority and low-income communities that would require enhanced public participation and assessments of cumulative and disparate impacts; (2) require greater community involvement in the monitoring of facilities; (3) create additional means to ensure the adequate enforcement and appropriate assessment of penalties; and (4) establish the Environmental Justice Advisory Board in order to facilitate communication with communities.³¹⁵

³¹¹ Oregon Executive Order EE-00-05 (April 2000), available at http://arcweb.sos.state.or.us/governors/Kitzhaber/web_pages/governor/legal/execords/eo00-05.pdf (Last visited Oct. 6, 2003).

³¹² *Id.*

³¹³ Oregon Dept of Environmental Quality, *Civil Penalty Mitigation for Supplemental Environmental Projects* (Sept. 23, 2000), available at www.deq.state.or.us/programs/enforcement/enforcementSEPDDir.pdf (Last visited Oct. 15, 2003).

³¹⁴ *Id.* at p. 2.

³¹⁵ Pennsylvania Department of Environmental Protection, *Environmental Justice Work Group Report to the Pennsylvania Department of Environmental Protection* (June 2001), available at <http://www.dep.state.pa.us/hosting/environmentaladvocate/docs/EJFinalReport2001/EJReportFinal.doc> (Last visited Oct. 10, 2003).

Environmental Justice Advisory Board

The Environmental Justice Advisory Board was created in response to the recommendations made by the Environmental Justice Work Group Report.³¹⁶ The Advisory Board will make suggestions on implementing the recommendations made in the Environmental Justice Work Group Report. The Advisory Board has completed an action plan that details how the agency will phase in the recommendations from the 2001 report.³¹⁷ The Advisory Board is active and further refining and implementing the goals of the 2001 Report.³¹⁸

On-Line EJ Discussion Areas

PA DEP's commitment to encouraging public participation is seen in its Environmental Justice Advisory Board ("EJAB") on-line discussion area.³¹⁹ Like that of many states, the PA DEP's EJAB is responsible for advising the PA DEP on how to implement its environmental justice policy.³²⁰ The on-line discussion area allows citizens to post comments related to four of its subcommittees.³²¹ However, as of this writing, there are only two messages posted to any of the subcommittee discussion areas.³²² It is not clear whether this lack of use is attributable to lack of interest or a lack of awareness of its existence.

Office of Environmental Advocate

The Pennsylvania Office of Environmental Advocate ("POEA") was also created as a result of the Environmental Justice Work Group Report.³²³ The office was set up "as a point of contact for Pennsylvania's residents."³²⁴ Its goal is to "increase communities' environmental awareness and involvement."³²⁵ The POEA staff includes Regional Advocates charged with ensuring environmental justice compliance in certain regions of Pennsylvania.³²⁶

³¹⁶ Pennsylvania Department of Environmental Protection, *New Environmental Justice Advisory Board Holds First Meeting*, <http://www.dep.state.pa.us/dep/deputate/polycomm/update/05-03-02/0503026089.htm> (Last visited Oct. 10, 2003).

³¹⁷ Pennsylvania Department of Environmental Protection, *Environmental Justice Work Group Report Action Plan* – (June 2002), available at <http://www.dep.state.pa.us/hosting/environmentaladvocate/docs/EJABActionPlanJune2002.htm> (Last visited Oct. 10, 2003).

³¹⁸ See generally Pennsylvania Department of Environmental Protection, *Environmental Justice Advisory Board Meeting Schedule*, http://www.dep.state.pa.us/dep/subject/advoun/EnvJustice/ej_board.htm (Last visited Oct. 10, 2003).

³¹⁹ Environmental Justice Advisory Board Discussion Forum, <http://www.dep.state.pa.us/discussion.environmentaladvocate/> (Last visited June 26, 2003).

³²⁰ See Office of Environmental Advocate, *Frequently Asked Questions*, <http://www.dep.state.pa.us/hosting/environmentaladvocate/faq.htm> (Last visited June 26, 2003).

³²¹ Office of Environmental Advocate, *Message Boards*, <http://www.dep.state.pa.us/hosting/environmentaladvocate/discussion> (Last visited June 26, 2003).

³²² As of September 30, 2003 there are two messages on the Public Participation Subcommittee Board: one dated October 2002, the other dated June 2003.

³²³ Office of Environmental Advocate, <http://www.dep.state.pa.us/hosting/environmentaladvocate/default.htm> (Last visited June 26, 2003).

³²⁴ *Id.*

³²⁵ *Id.*

³²⁶ Office of Environmental Advocate, <http://www.dep.state.pa.us/hosting/environmentaladvocate/advocates.htm> (Last visited June 26, 2003).

To achieve this goal, POEA notifies citizens of proposed permits affecting their community, reviews existing PA DEP programs and policies “to ensure equal protection,” and ensures that citizen environmental justice concerns are responded to in a timely manner.³²⁷ POEA has set up several processes to promote community involvement including an e-mail notification system to apprise interested parties of the status of specific permit applications as they move through the PA DEP permitting process.³²⁸ POEA also e-mail notices when PA DEP Draft Technical Documents are open for public comment.³²⁹

Open Access to Permit Applications and Violations

PA DEP’s “Environmental Facility Application Compliance Tracking System,” or “eFacts” was “the country’s only on-line environmental compliance reporting system” when it was introduced two years ago.³³⁰ Formerly called the “DEP Compliance Reporting System,” the new and improved eFacts system integrated a number of improvements suggested by citizens, local officials, business representatives, and environmentalists at seven “Compliance Roundtables.”³³¹ The resulting eFacts system includes a list of regulated sites and their owners, links to information on existing permitted facilities, pending permit application status, and links between inspection violations and their regulatory citations.³³² The eFacts website is very user friendly because it allows permit and inspection result searches via municipality or county, company name by permit identification number, or even ZIP code search, which allows a user to locate all the regulated sites in any given zip code.³³³

Performance Partnership Agreement

In September 2002, US EPA and Pennsylvania DEP signed a performance partnership agreement. The agencies agreed to work to implement the recommendations of the Pennsylvania Environmental Justice Work Group.³³⁴ Specifically, a main priority was reducing environmental exposure to citizens, including sensitive populations. DEP agreed to work with US EPA to identify areas of the state where there may be elevated occurrences of infectious and chronic disease related to environmental exposures.³³⁵

Contact

Office of Environmental Advocate
Pennsylvania Department of Environmental Protection

³²⁷ Office of Environmental Advocate, *Brochure* <http://www.dep.state.pa.us/eps/docs/cab200149b1126000/fldr200149d1642109/fldr20021b92521000/doc200336a2436005/0130-PA-DEP2730.pdf> (Last visited Aug. 20, 2003).

³²⁸ See e.g., *E-notice Pennsylvania*, <http://www.dep.state.pa.us/enotice/>; *Environmental Justice Advisory Board* <http://www.dep.state.pa.us/discussion.environmentaladvocate/>; and *DEP Fact Sheet* <http://www.dep.state.pa.us/dep/hess/legacy/FS3016PromotingEffectivePubPartic.htm> (All sites last visited June 26, 2003).

³²⁹ *Id.*

³³⁰ Department of Environmental Protection, *E-facts*, <http://www.dep.state.pa.us/efacts/welcome.asp> (Last visited June 26, 2003).

³³¹ *Id.*

³³² *Id.*

³³³ Department of Environmental Protection, *E-facts*, <http://www.dep.state.pa.us/efacts/>

³³⁴ *PACD News*, <http://www.pacd.org/news/october%2002/p3.htm> (Last visited Oct. 16, 2003).

³³⁵ *Id.*

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RHODE ISLAND

Statute

Environmental Remediation Processes

The statute mandates that the Rhode Island Department of Environmental Management (“RI DEM”) consider the effects of environmental remediation on the populations surrounding each site.³³⁶ RI DEM must develop and implement a process to “ensure community involvement throughout the investigation and remediation of contaminated sites. The process is to include, but is not limited to, the following components: (1) notification to abutting residents when a work plan for a site investigation is proposed; (2) adequate availability of all public records concerning the investigation and clean-up of the site, including, where necessary, the establishment of informational repositories in the impacted community; and (3) notification to abutting residents, and other interested parties, when the investigation of the site is deemed complete by the department of environmental management.”³³⁷

Policy

RI DEM has created a Strategic Planning and Policy Section to carry out “important functions related to integrating, prioritizing and measuring efforts to achieve the Department's ten vision goals.”³³⁸ The Section is coordinating the implementation of the policy document, “Goals for Environmental Equity.”³³⁹ The environmental equity policy is currently in its draft form, and the RI DEM is requesting public input regarding both the draft policy statement and specific implementation guidelines.³⁴⁰

Department-Wide Policy and Regulation Review

In the meantime, RI DEM has addressed environmental equity in the 2002 *Environmental Equity in Rhode Island Progress Report*.³⁴¹ According to the Progress Report, the Office of Legal Services is to undertake a review of all RI DEM policies and regulations to evaluate their effect on environmental equity.³⁴² The study is meant to generate specific recommendations regarding how environmental equity “can be considered as early and effective as possible in planning and decision making process,” and which regulations and policies should incorporate

³³⁶ R.I. GEN. LAW § 23-19.14-5 (2003).

³³⁷ *Id.*, see also § 23-19-13.4 (describing host community assessment committees and their role in siting decisions).

³³⁸ Rhode Island Department of Environmental Management, Office of Strategic Planning & Policy, at <http://www.state.ri.us/dem/programs/bpoladm/stratpp/index.htm> (Last visited Sept. 16, 2003); see also Draft Environmental Equity Policy (2002), at <http://www.state.ri.us/dem/pubs/eequity.htm> (Last visited Sept. 16, 2003).

³³⁹ *Id.*

³⁴⁰ *Id.*

³⁴¹ *Id.*

³⁴² *Id.* at p. 20.

environmental equity provisions.³⁴³ The study will focus on public notice, interagency issues, cumulative impacts, and “opportunities for proactive and community-based decisionmaking.”³⁴⁴

EJ Programs & Services

Outdoor Recreation and Community Farming Programs

One aspect of RI DEM’s environmental equity focus is on “Open Space and Recreation Opportunities.”³⁴⁵ RI DEM recognizes that “[e]ven small pockets of greenspace/openspace in urban areas have many positive environmental, quality of life and public health impacts including environmental revitalization, air quality improvements, energy savings, etc.”³⁴⁶ In addition to making urban, disadvantaged communities healthy and environmentally sound, RI DEM also seeks to make those areas desirable places to live.³⁴⁷ One way that RI DEM encourages more recreational resource development in disadvantaged communities is to consider the “geographic disparities in the allocation of recreational resources throughout the state when considering grant applications.”³⁴⁸

Partnership with Academia

Potential Exposure Analysis

In 2001, the Rhode Island Office of Strategic Planning and Policy hired two graduate students from Brown University to conduct a GIS analysis “to consider the size and significance of separate and aggregated environmental impacts, geographic and demographic information.”³⁴⁹ This study analyzed the proximity of populations to environmental risks including, among other things, air emissions, wastewater treatment facilities, and power plants.³⁵⁰ The students mapped demographic, racial, and income census data and compared it to pollution source data.³⁵¹ The study provided the state with a quantifiable method for identifying populations that are exposed to a disproportionate amount of environmental hazards.³⁵² After completing the study,³⁵³ the students conducted a similar study on a finer scale, focusing on the city of Providence.³⁵⁴

Performance Partnership Agreement

RI DEM’s PPA with US EPA incorporates RI DEM’s 2002-2003 Strategic Workplan; RI DEM has identified environmental equity (defined as “the equal rights to environmental quality and protection from environmental degradation”) as a strategic priority.³⁵⁵ RI DEM noted its

³⁴³ *Id.*

³⁴⁴ *Id.* at p. 20.

³⁴⁵ *Id.*

³⁴⁶ *Id.* at p. 13.

³⁴⁷ *Id.*

³⁴⁸ *Id.*

³⁴⁹ See *Environmental Equity in Rhode Island, Progress Report*, *supra* note 341.

³⁵⁰ *Id.* at p. 8.

³⁵¹ *Id.* at pp. 8-12. The pollution source data included, among other things, locations of power plants, hazardous waste generators, and auto body shops.

³⁵² *Id.* at p. 8.

³⁵³ Amanda B. Aretz and Rachael E. Moeller, *Air Quality and Comparative Exposure* http://envstudies.brown.edu/thesis/2002/moeller/title_page.htm (Last visited June 23, 2003).

³⁵⁴ *Environmental Equity in Rhode Island, Progress Report*, *supra* note 341.

³⁵⁵ Rhode Island Dept. of Environmental Mgmt and US EPA, *Performance Partnership Agreement* (FY 2002-2003), at p. 5, available at <http://www.state.ri.us/dem/pubs/plan2002/ppa0203.pdf> (Last visited Oct. 22, 2003).

intention to address environmental equity in the “early stages of planning and decision-making, rather than through after-the-fact challenges to...individual permit decisions.”³⁵⁶ The policy requires RI DEM “to report on and publicly evaluate its efforts on an annual basis.”³⁵⁷

In addition, RI DEM and US EPA have identified the joint target of “ensur[ing] environmental equity for all Rhode Islanders,” with an indicator of success in this goal the amendment of RI DEM’s “policies and regulations ... to incorporate environmental equity considerations by 2003.”³⁵⁸

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SOUTH CAROLINA

EJ Programs & Services

The Department of Health and Environmental Control (“DHEC”) does not have a formal environmental justice policy, but it has previously studied environmental justice issues. In 1995, Ms. Lill Mood, a registered nurse formerly with DHEC, organized a Future Search Conference where she brought together a balanced group of stakeholders to find common ground on environmental justice issues.³⁵⁹ Under the direction of DHEC, Ms. Mood conducted two studies: one on siting and one on enforcement in order to identify gaps or weaknesses in the process.³⁶⁰ The studies helped the DHEC focus on what areas are particularly vulnerable, and as a result, DHEC collaborated with US EPA on a Community Based Environmental Protection Project in one of those areas.³⁶¹ The studies also made several recommendations to DHEC with respect to implementing public participation into the permitting process, though these were never formally acted upon.³⁶²

The Office of Environmental Quality Control (“EQC”), the environmental regulatory arm of DHEC, currently has an EJ Coordinator who addresses community concerns with respect to EQC permitting and other activities.³⁶³ The EJ Coordinator has participated in the EQC

³⁵⁶ *Id.* at 6.

³⁵⁷ *Id.*

³⁵⁸ *Id.* at Appendix C.

³⁵⁹ Electronic mail from Lill Mood, Dept. of Health and Env. Control (Nov. 4, 2000) (on file with authors).

³⁶⁰ *Id.*

³⁶¹ *Id.*

³⁶² Telephone interview with Nancy Whittle, EJ Coordinator at DHEC (Oct. 15, 2003).

³⁶³ *Id.*

Public Participation Plain Language Taskforce, which is developing ways for EQC to disseminate information to the public about permitting and other agency actions.³⁶⁴ The goal of the program is to encourage greater public participation by providing information in non-technical terms.³⁶⁵

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SOUTH DAKOTA

The authors did not find any relevant environmental justice programs, policies, or statutes for the state of South Dakota.

Performance Partnership Agreement

The South Dakota Department of Environment and Natural Resources, South Dakota Department of Agriculture and US EPA entered into a performance partnership agreement in 2003.³⁶⁶ The Department of Agriculture identified environmental justice as one of its top fifteen priorities, along with community-based environmental protection.³⁶⁷

TENNESSEE

EJ Programs & Services

Tennessee Department of Environment and Conservation (“TDEC”) completed a draft Strategic Plan for environmental justice in 2000.³⁶⁸ The draft plan included the following recommendations, directed to TDEC:

1. Establish a framework for implementation within the Department and incorporate environmental justice into Department policies and programs.³⁶⁹
2. Develop an outreach program that works to "empower" communities with the tools needed to understand environmental issues important to their respective communities and to participate in the decisionmaking process.³⁷⁰

³⁶⁴ *Id.*

³⁶⁵ *Id.*

³⁶⁶ *Performance Partnership Grant abstract*, <http://www.state.sd.us/denr/Documents/ppg.htm> (Last visited Oct. 16, 2003).

³⁶⁷ *Id.*

³⁶⁸ Tennessee Department of Environment and Conservation, *Draft Environmental Justice in the State of Tennessee: A Strategic Plan for the Tennessee Department of Environment and Conservation* (formerly available at www.state.tn.us/environment/epo/ej/plan/index.html).

³⁶⁹ *Id.* at section 2.4.

³⁷⁰ *Id.*

3. Establish a statewide Environmental Justice Committee consisting of community members and Department representatives to be in charge of implementing the state's environmental justice plan.³⁷¹
4. Collaborate with local government and industry representatives in addressing environmental justice concerns.³⁷²

Recently, there have been several staff trainings on Title VI and environmental justice issues.³⁷³ However, the current status of Tennessee's environmental justice efforts is in flux, as the Policy Office at TDEC is currently being reorganized.³⁷⁴

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TEXAS

Regulations

In distributing funds under the Clean Water Revolving Fund³⁷⁵ and the Drinking Water Revolving Fund,³⁷⁶ Texas requires that a project must comply with federal Executive Order 12,898, which requires federal agencies to incorporate environmental justice principles into their missions.³⁷⁷

EJ Programs & Services

Environmental Equity Program

In 1993, the Texas Natural Resource Conservation Commission (“TNRCC”) created an Environmental Equity Program (“Program”) to improve communications between government, local communities, and neighboring industries.³⁷⁸ As part of the Program, TNRCC established an Environmental Equity Office to address complaints and citizens' actions relating to TNRCC activities.³⁷⁹ The goals of the Program are to:

1. Help citizens and neighborhood groups participate in the regulatory process;
2. Serve as the agency contact to address allegations of environmental injustice;
3. Ensure that agency programs that substantially affect human health or the environment operate without discrimination;

³⁷¹ *Id.*

³⁷² *Id.*

³⁷³ Telephone interview with Linda Sadler, Environmental Assistance Program Manager at TDEC (Oct. 14, 2003).

³⁷⁴ *Id.*

³⁷⁵ Clean Water State Revolving Fund, 31 Tex. Admin. Code § 375.212 (West 2003).

³⁷⁶ Drinking Water State Revolving Fund, 31 Tex. Admin. Code § 371.18 (West 2003).

³⁷⁷ Exec. Order No. 12,898, *supra* note 5.

³⁷⁸ Texas Natural Resource Conservation Commission, *Environmental Equity: Program Overview*, <http://www.tnrcc.state.tx.us/comm/opa/envequ.html> (Last visited July 1, 2003).

³⁷⁹ *Id.*

4. Promote greater use and analysis of demographic information for areas surrounding proposed facilities or sites;
5. Give greater attention to the environmental and human health conditions affecting minority and low-income communities; and thoroughly consider all citizens' concerns and handle them fairly.

To help facilitate these goals, TNRCC has set up a toll-free number to enable individuals to raise environmental equity concerns.³⁸⁰

State and Tribal Environmental Advisory Panel

In 1999, TNRCC created the State and Tribal Environmental Justice Advisory Panel, which meets quarterly in various communities to exchange information and develop solutions to local concerns.³⁸¹

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Jimmie Fernandez
Office of Public Assistance
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UTAH

Performance Partnership Agreement

The PPA between the Utah Department of Environmental Quality (“UDEQ”) and US EPA declares that there will be fair treatment of people of all races, incomes, and cultures with respect to the management of environmental programs.³⁸² In the PPA, “[f]air treatment implies that no person or group of people should shoulder a disproportionate share of negative environmental impacts resulting from the execution of environmental programs.” UDEQ and EPA agreed “to conduct all of their base regulatory programs within the framework and spirit of this EJ principle” and “to communicate about EJ issues, grant outreach, and Grantee activities in Utah and [to] continue to assist, upon request, EJ grant funded activities in the state.”³⁸³

³⁸⁰ *Id.*

³⁸¹ The advisory panel met five times in various Texas cities before the EPA grant ran out in December 2001. *See* Texas Natural Resource Conservation Commission, *Environmental Equity*, <http://www.tnrcc.state.tx.us/comm/opa/envequ.html> (Last visited Oct. 16, 2003).

³⁸² *Utah Department of Environmental Quality Performance Partnership Agreement* (FY 2003), at III-4, available at http://www.eq.state.ut.us/EQOAS/docs_and_rules/PPA/2003%20Final%20PPA.pdf (Last visited Sept. 30, 2003) (the agreement defining “Environmental Justice” as “the fair treatment and meaningful involvement of people of all races, income, and cultures with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies”).

³⁸³ *Id.*

Contact

Utah Department of Environmental Quality
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VERMONT

The authors did not find any relevant environmental justice programs, policies, or statutes for the state of Vermont.

VIRGINIA

Policy

Virginia began addressing environmental justice concerns in 1993. The resolution required the Joint Legislative Audit Review Commission (“JLARC”) to study the siting, monitoring, and cleanup of solid and hazardous waste facilities, with an emphasis on how waste facilities affect minority communities.³⁸⁴ In a report to the General Assembly in 1995, the JLARC stated Virginia is home to more than 240 non-hazardous waste facilities, and though there was no evidence of intent, “the analysis revealed that in some cases, siting and monitoring practices have had a disproportionate impact on minority communities.”³⁸⁵ The JLARC also discovered there are more inspections at waste facilities located in white areas than those located in minority areas.³⁸⁶

As a result of the study, JLARC recommended that the Virginia Department of Environmental Quality should develop regulations for local governments regarding the process of siting solid waste management facilities; develop a computer mapping database to assist in identifying the racial characteristics of residents affected by permit violations; develop a reporting and inspection system for its waste facilities; and suggested that the General Assembly consider authorizing penalties for violators of the reporting or inspection systems.³⁸⁷

Statute

Virginia Waste Management Act

The Virginia Waste Management Act (“Act”) requires that “before promulgating any regulations under consideration or granting any variance to an existing regulation, or issuing any treatment, storage, or disposal permit, except for an emergency permit, if the Board finds that there are localities particularly affected,” the Board must publish a “notice in a local paper of general circulation at least thirty days prior to the close of any public comment

³⁸⁴ See Virginia Waste Management Act, VA. CODE ANN. § 10.1 – 1408.1 (Michie 2003) (requiring public participation for permit approval of solid and hazardous waste siting facilities).

³⁸⁵ Executive Summary, *Joint Legislative Audit and Review Commission of the Virginia General Assembly, Solid Waste Facility Management in Virginia: Impact on Minority Communities* (Jan. 1995), available at Virginia General Assembly, Legislative Information System, Reports to the General Assembly, <http://leg2.state.va.us/dls/h&sdocs.nsf/Doc%20by%20Year> (Last visited Oct. 15, 2003).

³⁸⁶ *Id.*

³⁸⁷ Telephone interview with Bob Rotz, JLARC (Nov. 20, 2000).

period.”³⁸⁸ The notice “shall contain a statement of the estimated local impact of the proposed action, which at a minimum shall include information on the location and type of waste treated, stored or disposed.”³⁸⁹

The Act also requires public entities and non-public entities applying for a solid waste facility permit to “seek the comments of the residents of the area where the sanitary landfill or transfer station is proposed to be located.”³⁹⁰ In addition, public entities applying for a permit must form a citizens' advisory group to assist the entity with the selection of a proposed facility.³⁹¹ The locality or public authority proposing the new solid waste facility must also hold “at least one public meeting within the locality to identify issues of concern, to facilitate communication and to establish a dialogue between the applicant and persons who may be affected by the issuance of a permit for the sanitary landfill or transfer station.”³⁹²

Supplemental Environmental Projects

Virginia law authorizes the Virginia Department of Environmental Quality (“VDEQ”) to allow environmental permit violators to abate their penalties by completing a Supplemental Environmental Project (“SEP”), defined as “an environmentally beneficial project undertaken as partial settlement of a civil enforcement action and not otherwise required by law.”³⁹³ SEPs are authorized for use in administrative and judicial orders.³⁹⁴ In order for a SEP to be approved, it is necessary that the “appropriateness and value” of the project be taken into account, and in doing so, the code requires that the impact on “minority or low income populations” be taken into consideration.³⁹⁵

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WASHINGTON

EJ Programs & Services

The State of Washington’s Environmental Justice Program is organized within the Sustainability Team of the Department of Ecology (“DOE”), the state’s principal environmental management agency.³⁹⁶ The Environmental Justice Coordinator and an EJ Committee are both located within the DOE. Along with the common aspirations of pollution prevention and remediation, the DOE also supports sustainable communities and natural resources.³⁹⁷

³⁸⁸ *Virginia Waste Management Act*, VA. CODE ANN. § 10.1-1402.01 (Michie 2003).

³⁸⁹ *Id.*

³⁹⁰ *Id.* at § 10.1-1408.1(B)(4).

³⁹¹ *Id.* at § 10.1-1408.1(B)(5).

³⁹² *Id.*

³⁹³ *Id.*

³⁹⁴ *Id.* at § 10.1-1186.2

³⁹⁵ *Id.*

³⁹⁶ Washington Department of Ecology, *Sustainability Team*, <http://www.ecy.wa.gov/sustainability>; *Environmental Justice Committee*, <http://www.ecy.wa.gov/quality/archive/Year2002/2002.html> (Both sites last visited Aug. 20, 2003).

³⁹⁷ Washington Department of Ecology, *Home Page*, <http://www.ecy.wa.gov> (Last visited Aug. 20, 2003).

The Environmental Justice Checklist

John Ridgway, the Environmental Justice Coordinator at the state of Washington, authored the *Environmental Justice Checklist and Resources for Ecology Staff and Management* for the DOE.³⁹⁸ DOE staffers use the checklist to assess and guide their daily activities, helping them to determine whether their acts implicate EJ issues.

The checklist encourages DOE staff to think broadly about what communities might be affected by the agency's actions. Staff should consider the "cumulative effects" of possible environmental pollution and work with other officials such as experts in public health and mapping. The checklist also directs staff to consider whether minority groups with language and cultural barriers may need special accommodations -- e.g., translation services -- to create effective discussion around environmental justice issues.

Washington State Board of Health

The Washington State Board of Health ("WSBH") designated environmental justice as one of its five priority focus areas between 1999 and 2001, culminating in the adoption of a report on environmental justice.³⁹⁹ The report contained three broad recommendations including that (1) WSBH and DOE conduct better coordination on EJ issues; (2) state and local agencies improve their capacity to address environmental justice issues by providing educational opportunities for their staff; and (3) state and local agencies consider adopting environmental justice guidelines.⁴⁰⁰ The report suggested various strategies to implement these recommendations.⁴⁰¹ In addition, WSBH's website provides the public with general information about EJ as well as links to Washington state and federal agencies with EJ policies or programs.⁴⁰²

Performance Partnership Agreement

The PPA between Washington state and US EPA includes the general language defining environmental equity/justice as "the fair treatment and meaningful involvement of all people regardless of race, age, gender, national origin, education, or income level in the development, implementation, and enforcement of environmental laws, regulations, and policies."⁴⁰³ US EPA and Washington state agreed to monthly telephone calls to identify current environmental justice issues and events in Washington, with the goal of increasing "both agencies' knowledge of Environmental Justice issues and identify[ing] areas for collaboration on these issues."⁴⁰⁴ Further, the agencies agreed to participate in the Washington State Interagency

³⁹⁸ The checklist is on file with the authors.

³⁹⁹ Washington State Board of Health, *Environmental Justice*, <http://www.doh.wa.gov/sboh/Priorities/EJustice/default.htm> (Last visited Oct. 13, 2003).

⁴⁰⁰ Washington State Board of Health Environmental Justice Committee, *Final Report State Board of Health Priority: Environmental Justice*, at pp 5-6, <http://www.doh.wa.gov/sboh/Pubs/2001EJReport.pdf> (Last visited Oct. 13, 2003).

⁴⁰¹ *Id.*

⁴⁰² See Washington State Board of Health, *Environmental Justice*, <http://www.doh.wa.gov/sboh/Priorities/EJustice/default.htm> (Last visited Oct. 13, 2003).

⁴⁰³ *Environmental Performance Partnership Agreement for July 1, 2002 to June 30, 2003*, at p. 9, available at <http://www.ecy.wa.gov/pubs/0101002.pdf> (Last visited Aug. 20, 2003).

⁴⁰⁴ *Id.* at p. 17

Environmental Justice Work Group, to host an EJ networking meeting, and to participate in National Environmental Justice Advisory Council meetings.⁴⁰⁵

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WEST VIRGINIA

Program

The West Virginia Division of Environmental Protection (“WV DEP”) does not have a formal environmental justice program, but within WV DEP is the quasi-independent Office of the Environmental Advocate, established in 1994.⁴⁰⁶ The Environmental Advocate works on behalf of West Virginia residents requesting help with WV DEP processes. For example, the advocate may help explain the public comment process, how to appeal agency decisions, how to file a Freedom of Information Act request, and explicate the best method for getting agency attention for a community problem.⁴⁰⁷ Pam Nixon, the current Environmental Advocate, is formulating an environmental justice policy and would like to increase the level of citizen participation during not only the permitting process but also at the informational meeting stage.⁴⁰⁸

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WISCONSIN

EJ Programs & Services

Land Recycling Loan Program

Wisconsin Department of Natural Resources (“WDNR”) provides low cost loans for brownfield remediation projects at “landfills, sites or facilities where contamination has affected

⁴⁰⁵ *Id.*

⁴⁰⁶ WEST VIRGINIA CODE § 22-20-1 (2003).

⁴⁰⁷ *Office of Environmental Advocate*, <http://www.dep.state.wv.us/item.cfm?ssid=17&sslid=162> (Last visited July 1, 2003).

⁴⁰⁸ Telephone interview with Pam Nixon, Environmental Advocate, West Virginia Department of Environmental Protection (April 10, 2003).

or threatens to affect groundwater or surface water.”⁴⁰⁹ WDNR scores loan applications according to its regulations, prioritizing the higher scoring projects in times of tight funding.⁴¹⁰ Significantly, the scoring system provides that “[a] site where remediation of environmental contamination will improve environmental justice shall be assigned one point.”⁴¹¹ “Environmental justice” is defined as “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.”⁴¹²

Wisconsin Department of Transportation

The state’s first Environmental Justice Conference was held in February 2003, sponsored by the Wisconsin Department of Transportation.⁴¹³ The conference's goal was to reach out to members of the community and allow them to give their input regarding transportation decisions and planning.

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WYOMING

The authors did not find any relevant environmental justice programs, policies, or statutes for the state of Wyoming.

⁴⁰⁹ Wisconsin Department of Natural Resources, *Land Recycling Loan Program*, <http://www.dnr.state.wi.us/org/caer/cfa/EL/Section/brownfield.html> (Last visited Oct. 13, 2003).

⁴¹⁰ WIS. ADM. CODE § NR 167 *et seq.* (2003).

⁴¹¹ *Id.* at § NR 167.07 (2)(j).

⁴¹² *Id.* at § NR 167.03 (4).

⁴¹³ See Washington Department of Transportation, *Environmental Justice: All voices build better transportation solutions*, <http://www.dot.wisconsin.gov/projects/env/justice/conference.htm> (Last visited Aug. 29, 2003).

Praise for Environmental Justice For All: A Fifty-State Survey Of Legislation, Policies, and Initiatives

This survey will empower communities by giving them the tools they need to protect the health and well-being of their families.

-- Congresswoman Hilda L. Solis (CA-32), authored the first environmental justice legislation in the United States during her time as a California State Senator.

This survey, a comprehensive look at various legislative and agency initiatives, is a timely and important contribution to the environmental justice literature. It provides an easily discernible baseline from which to measure progress in this rapidly developing area and, as such, is an invaluable tool for the many individuals and institutions working to promote environmental justice.

-- Eileen Gauna, Professor of Law, Southwestern University and author of Environmental Justice: Law, Policy and Regulation

Environmental Justice for All is an important new resource for local government officials and community leaders alike who need to know where to turn for assistance in addressing the challenges of environment justice (EJ). The short and easy-to-read summaries of state legislation, policies and initiatives for EJ make it possible for the layperson to quickly understand the pressing concerns within his/her home state. More importantly, it answers the question, "Who can help us?"

-- Mosi Kitwana, Director of Research & Development, International City/County Management Association

I needed this information yesterday, but it makes a great difference for tomorrow. I am excited and surprised to know that the range of policies and legislation that many of us have worked toward is being realized. Information is power and an important impetus for community organizing and government accountability. This important summary enhances the capacity locally and globally of communities to develop campaigns and to achieve policies that improve the health and quality of life in communities of color and low income."

-- Peggy M. Shepard, Co-founder, Executive Director, West Harlem Environmental Action (WE ACT)

Environmental Justice For All presents an excellent summary of the status of existing and pending legislation pertaining to Environmental Justice for every state and the District of Columbia. It also provides invaluable contact information with the person(s) and/or office responsible for environmental justice enforcement for each state. It is a tool I expect to use in my practice for the benefit of my clients.

-- Benjamin Wilson, Director, Beveridge & Diamond, P.C.

This project provides just what the business practitioner needs to assure compliance with environmental justice obligations throughout the states. The survey is particularly helpful because it provides links to source documents and contact information if follow-up will be required.

-- Sue Briggum, Director, Environmental Affairs, Waste Management, Inc.