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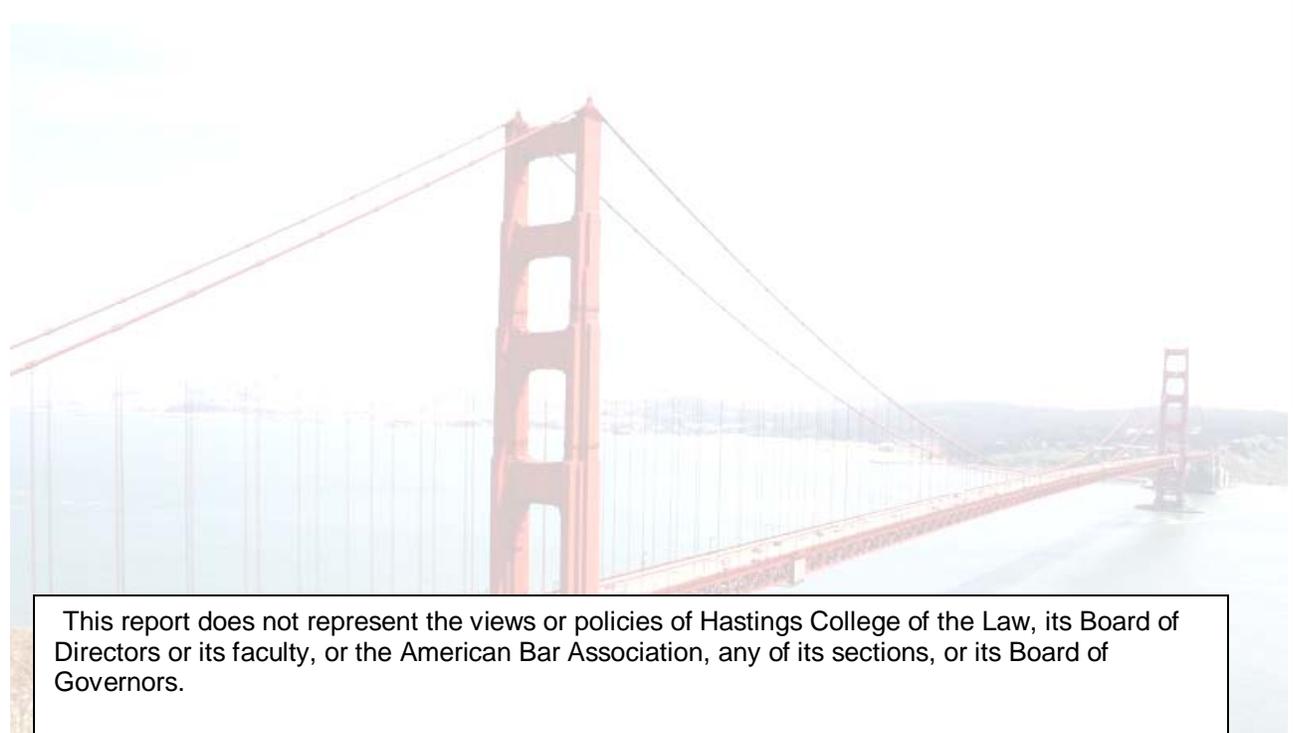
PUBLIC LAW RESEARCH INSTITUTE



## **Environmental Justice for All: A Fifty State Survey of Legislation, Policies and Cases**

*Fourth Edition*  
February 15, 2010

Written in association with the American Bar Association's Section of Individual Rights and Responsibilities  
and the Section of Environment, Energy and Resources



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*Environmental Justice for All:*  
*A Fifty State Survey of Legislation, Policies and Cases (fourth ed.)*  
Steven Bonorris, Editor

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This publication is dedicated to the memory of

Luke Cole  
Environmental Justice Advocate and Scholar  
(1962 - 2009)

## Preface

This study represents an ongoing collaboration between UC Hastings College of the Law and the American Bar Association, to maintain a comprehensive and up to date survey of state environmental justice laws, policies and cases. Our goal is to present community members, environmental law practitioners, industry leaders, regulators, academics and others with the breadth of regulatory and policy techniques that the fifty states and the District of Columbia have developed to pursue environmental justice. We do not hold out any initiative as a best practice, nor do we assess the success of any state's program. We believe, however, that this compilation of state responses can serve as a reference point as to which techniques have become customary, which innovations have newly entered the regulatory arena, and which practices are no longer in use.

## Trends

You will note that this study is lengthier than previous editions — states continue to innovate in tackling environmental justice issues and the range of approaches is growing, showing that this area of law and policy continues to mature. Community participation and education mechanisms, as in years past, represent the most prevalent techniques of addressing environmental justice concerns. Substantively, permitting and facility siting decisions remain a major focus for state rules and programs. However, in a departure from initiatives identified in our prior studies, a growing number of states, Maryland for example, are using land use planning techniques such as buffer zones, to improve environmental conditions, reduce potential health risks, and prevent environmental degradation in at-risk communities.

In addition, several states have begun addressing global climate change, and a few of those states — California, for example — specifically reference environmental justice concerns in their climate change initiatives. California's 2006 climate change bill (AB 32) established an environmental justice-climate change advisory committee, which has participated in the debate about how different implementation approaches will affect Environmental Justice (EJ) communities.<sup>1</sup>

We have noted an increase in the number of states pursuing positive collaborative, problem-solving approaches or economic incentives to address environmental justice. For example, several states account for environmental justice in brownfields grant programs and public private partnerships.

A final noteworthy thread is that many states have environmental enforcement policies that seek to address environmental justice issues. For example, we found at least seven states that incorporate environmental justice into Supplemental Environmental Projects

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<sup>1</sup> In this study, reflecting discrepant state nomenclature, we use a variety of terms to refer to the communities that may be disproportionately affected by environmental hazards. These terms include: environmental justice communities, EJ populations, environmentally burdened communities, marginalized communities, poor people, the urban poor, and poor communities of color.

policies. Moreover, some states focus on enforcement procedures in environmentally burdened communities, while other states rely upon grants and community education.

## **Methodology and Definitions**

This edition remains true to the definition of environmental justice used by our prior work — the principle that all people have the right to clean air, water and land, and that those potentially affected by environmental decisions should have a meaningful say in the decision making process, regardless of race, income or ethnicity.

The researchers used the 2007 edition of *Environmental Justice for All* as a base, testing the earlier material for its continued relevance, and reaching out to each state’s responsible officials to learn of new developments. Independently, the researchers canvassed legal and public databases to round out each state picture. Draft summaries were forwarded to the respective state officials for comments, suggestions, and peer review. A few states did not have environmental justice points of contact, and researchers worked to ensure that these write-ups represented fair characterizations. The research encompasses initiatives up to the end of 2009, although the contact information provided is current as of Spring 2010.

To identify authorities and programs that address environmental justice, researchers included those measures that explicitly reference “environmental justice” or “environmental equity.” These authorities and programs constitute the bulk of this report; however, selected state authorities and programs that address environmental justice issues, but which do not expressly reference the term “environmental justice” or “environmental equity,” have also been included.

In addition, please note that this study does not include federal law or policy, although it does include U.S. Environmental Protection Agency-State Performance Partnership Agreements (“PPAs”). These Federal-State coordination documents typically address environmental justice issues, but have no legal effect on private entities. Federal policies or practices are not included unless a state expressly references federal environmental justice policy or Title VI of the Civil Rights Act of 1964.

In a departure from previous editions of *Environmental Justice for All*, the state rules and programs are not organized along the formal axis of statute, regulation, executive order, guideline, program and cases, but are arrayed by substantive category (*e.g.*, “Improving Public Health,” “Community Participation”). In an attempt to make these initiatives readily searchable, we have “tagged” individual authorities and initiatives according to a list of descriptors (the list appears as an appendix to this report, together with explanations of how the tags were applied and an index built from the report’s survey). The purpose of the tags is to standardize the disparate nomenclature used by various states in order to bring together analytically similar concepts and goals. The tags are avowedly arbitrary, yet they have been applied as consistently as possible. Readers interested in specific issues, such as “asthma” or “refineries” are better off free text searching the document directly, and should not rely on the tagging, which is more

general in nature. We look forward to learning of readers' experiences with the tags, and hope to improve their hoped-for utility in future iterations of this work.

## **Acknowledgements**

We wish to thank the myriad state officials, as well as Professor Robert Bullard, who worked patiently with our researchers to make this study possible. And, without the extraordinary diligence and thought leadership of our Graduate Research Fellows, Armand Baboosian (Hastings College of the Law, '09), David Takacs ('08) and Kelly Corcoran ('08), this effort would have been nigh impossible. Our team of Hastings student Research Assistants, April K. Banerjee, Darcy C. Vaughn, Will McLennan, and Teresita J. Sablan, was relentless in ferreting out the latest innovations, spending hundreds of hours at their computers and on telephones. Nicole M. Martin ('09) and Annie Lo provided timely editorial comments. David Takacs and Robert Rathmell ('08) took the lead in identifying the emerging trends in environmental justice in the section immediately following, and Robert's keen editorial eye was essential in the final stage of the project.

In turn, their efforts built upon the strong foundation of previous editions executed by editors Chelsea Holloway, Annie Lo, Jodene Isaacs and Kara Brown, and researchers Maya Gesund, Jason Campbell, Kris Boney, Nick Gustafsson, Nic Pullin, Stephanie Stuart, John Yun, Paul Tokarz, Caitlin Crary, Hillary Gross, and Hannah Shafsky. And finally, Divina Morgan in Faculty Support provided her invaluable assistance as we reached the finishing strait.

If you have recommendations for future editions, or updates that should be included in the online version of this document, we would be delighted to hear from you. Please contact us at [plri@uchastings.edu](mailto:plri@uchastings.edu) or 415.565.4671.

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## **Highlights of the Report: Emerging Trends and Themes of Environmental Justice**

“Environmental Justice” encompasses both substantive and procedural rights. Substantively, all people have the right to enjoy a clean and healthy environment where they live, work, learn, and play. The environmental justice movement posits that the distribution of environmental harms and benefits should be fairly apportioned among all communities. Procedurally, people potentially affected by environmental decisions should have a meaningful say in the decision-making process regardless of race, income, ethnicity, age, or any other factor that might marginalize them. Robust community participation in environmental decision-making leads to policy decisions that reflect the whole polity, and contribute to a more vibrant democracy including and beyond the environmental context. Moreover, community participation is a value in its own right, independent of outcome.

While the report is organized geographically, we start by describing some of the themes that cut across these state-by-state programs and comprise the movement for environmental justice. After a description of a particular theme, we set out bullet point descriptions of state efforts to address a problem that we have usually observed since publication of the 2007 edition. For more details on these initiatives, consult the body of the report. Many of these themes have also received “tags” so they may be located readily in the report by consulting the index: for a listing of the “tags” and their definition, we have included a list of them as an appendix and provided a subject index for easy reference.

### **1. Emerging Themes**

Policymakers, activists and scholars are expanding the boundaries of the EJ movement. Here are some of the new trends we see in the states:

- **Children’s issues:** Poverty is correlated with race and ethnicity in the U.S., and poor children are more likely to suffer from inadequate food, housing, and health care. Minority and low income populations also tend to be more predominantly young, and more vulnerable to environmentally-based health problems such as asthma, which is exacerbated by allergens and pollutants disproportionately concentrated in poor, urban communities.<sup>1</sup> Latino and African-American children are 20% to 40% more likely to live in an area with unhealthy concentrations of ozone.<sup>2</sup>
  - District of Columbia: Child Health Action Plan — evaluation of child health indicators and plan for providing healthy foods and legal services for affected children.
  - Montana: 2009 environmental health summit addressed hazards/threats to children.

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<sup>1</sup> James D. Fine and Dave Owen, “Technocracy and Democracy: Conflicts between Models and Participation in Environmental Law and Planning,” 56 *Hastings L.J.* 901 at fns. 173 and 176 (2005) (citations omitted).

<sup>2</sup> *Id.* at fn. 173 (citation omitted). In technical terms the authors are referring to children living in ozone non-attainment areas, per the Clean Air Act.

- **Climate Change:** Global climate change will disproportionately hurt the world's poor, particularly in Southern nations. Domestically, poor people will also disproportionately suffer from climate change, heat waves, water shortages, increases in food and fuel prices, inundation of low-elevation neighborhoods and a host of predictable and episodic threats, as well as having less financial resources to adapt to these risks. California's landmark Global Warming Solutions Act (AB 32) requires that neither mandates nor market mechanisms (e.g. emissions trading, offsets) disproportionately impact EJ communities. To be sure, reductions in greenhouse gas (GHG) based emissions could reduce other forms of hazardous air pollution. Emissions trading and offsets, however, may allow entities to find cost-efficient ways to keep certain facilities on line, resulting in hot spots of hazardous pollutants.
  - Maryland: in cutting GHG emissions by 25% by 2020, the plan may not disproportionately impact an environmental justice community.
  - Delaware: Climate Change Action Plan was written in consultation with community groups.
  
- **Diet:** The urban poor may have limited access to fresh fruit and vegetables while being overserved with nutritionally deficient fast food restaurants. Communities of color and low-income communities may be disproportionately dependent on subsistence fishing, and the fish in urban areas in particular may contain unacceptable levels of harmful chemicals. California provides financial support to public health agencies for outreach and education activities about fish contamination to disadvantaged and at-risk communities.
  - Indiana: Obesity plan targeted to minority populations.
  - District of Columbia: Child Health Action Plan—evaluation of child health indicators and plan for providing healthy foods and legal services for affected children.
  
- **E-Waste:** “Clean technology” often is not so clean. The computer chip industry exposes mostly minority, mostly women workers in the Silicon Valley to highly toxic working conditions. Some computers and PED components can cause mining environmental harms at home and abroad. Solar technology is made of similarly hazardous materials. Furthermore, some of the materials used in manufacturing photovoltaics (e.g. silicon tetrachloride) greatly exacerbate greenhouse gas emissions. Disposal of these products can result in highly toxic conditions in domestic and foreign landfills.
  - Maryland: 2005-06 federal Performance Partnership Agreement requires e-waste recycling.
  - Montana: prohibits the sale of mercury-added thermostats and requires manufacturers to set up collection and recycling programs of out-of-service mercury-added thermostats.
  
- **Mapping/GIS:** Using computer based mapping databases can help decision-makers and affected communities track disproportionate concentrations of pollution. The

EPA's Toxic Release Inventory helps local leaders and decision makers assess threats to communities. Massachusetts maintains a database that allows users to determine if proposed projects might affect EJ populations and thus demand more rigorous reviews to avoid exacerbating disproportionate impact on already burdened communities.

- New York: the online "Environmental Navigator" allows affected communities and regulated industries to understand the potential EJ effects of proposed and ongoing facilities.
- Rhode Island: the office of strategic planning and policy has undertaken a mapping project.

➤ **Mining:** Mining industry practices often leave devastating environmental consequences behind in the form of sludge and rubble. Poor communities may consider themselves faced with accepting environmental degradation as the price for jobs. Some states have targeted mining operations and their aftermath for special attention.

- Missouri: cleanup efforts of mine-scarred lands or other contaminated sites.

➤ **Open Space/Recreation:** environmental justice also advocates for the fair distribution of environmental benefits. Poor people of color may be less likely to live and play near green, open spaces. To redress this, Rhode Island prioritizes communities with less access to open space when allocating recreational resources. New Jersey has a program to plant thousands of trees to improve the environmental quality of urban areas.

- Massachusetts: EJ policy encourages the creation of open space within areas inhabited by EJ populations.
- New Mexico: Memorandum of Understanding with Navajo Nation parks and recreation.

➤ **Schools:** Schools, particularly in poor areas, may be close to unhealthy environs. For instance, in agricultural areas, children may suffer from pesticide contamination from neighboring fields. Diesel school buses can be highly polluting and exacerbate childhood asthma, which is endemic in poor communities.

- Massachusetts and Ohio have programs to retrofit polluting school buses.
- Connecticut focuses on environmental contaminants (vermin, pesticides) that may harm children's health, but also helps schools acquire environmental amenities like gardens or nature trails.

➤ **Smart Growth:** Concern about suburban sprawl — and its attendant destruction of wild and agricultural land, and dependence on the personal vehicle — has prompted the "smart growth" movement. Usually smart growth means planning more densely populated neighborhoods, often in urban areas, that are less dependent on automobiles and more focused on creating vibrant, walkable or public transit friendly communities. But density may yield overcrowding and further deterioration of quality of life in urban areas, or, conversely, the phenomenon of gentrification,

pricing minority and low-income populations out of their neighborhoods. At the same time, smart growth can spur development in urban majority minority areas – which may result in cleaner, greener neighborhoods with more community services and more housing accessible to low-income or working families.

- Massachusetts: Smart Growth / Smart Energy Toolkit website provides “guidance to municipalities and developers on how to better engage EJ populations in the planning and development process.”
- **Transportation:** Highways or poorly planned roads may destroy neighborhood cohesion and aesthetics. Automobile and truck exhaust can be a serious source of pollution, and public transit may ill serve poor communities where households cannot afford cars. The Departments. of Transportation of California, Florida, and Maryland publish guides that address EJ-sensitive transportation planning.
  - Hawaii: Some municipalities identify minority community needs when planning new transportation projects.
  - Kentucky: promotes development of multi-modal transportation in an environmentally sensitive manner.
- **Water management, quality and delivery:** Receipt of an adequate supply of clean water to one’s residence is now widely considered a fundamental human right. Toxic plumes from industrial waste products pollute aboveground waterways and underground aquifers.
  - California: CALFED’s Bay-Delta program examines the environmental justice implications of its water management reforms on susceptible communities.
  - Texas’ drinking water funding programs require that projects comply with the federal EJ Executive Order 12898.
  - Idaho: state funds for water pollution control and drinking water.
- **Land Use Regulation:** Government regulation of land use can be a powerful tool for promoting environmental justice. Zoning regulations and general plans can control housing density, industrial development, placement of point source pollution sources, traffic, and green space — all environmental harms or amenities that may degrade or improve the quality of residential life. California, for example, requires local counties to evaluate environmental justice impacts when they prepare their 20-year general plan updates.
  - District of Columbia: comprehensive plan urges solutions to reduce the adverse effects of industrial uses in low-income neighborhoods through enhanced buffering, operational improvements, truck routing, increased monitoring of impacts, and zoning changes to reduce land use conflicts.

## **2. Participation and Process**

EJ speaks to not only the equitable distribution of environmental harms and benefits, but also to the process by which environmentally significant decisions are made -- who gets

to participate, what values must be considered, and how remedies are allocated. These process-based concerns have two effects: 1) increasing the likelihood of tilting substantive outcomes in the direction of more equitable distribution of environmental risks and rewards; and, 2) improving the functioning of democratic processes in affected communities, the breakdown of which contributed to the disproportionate degradation of those communities in the first place.

- **Compliance and enforcement:** Environmental pollution laws may be unevenly enforced in poorer communities with little political power. Some studies have found that higher penalties accrue and more rapid and thorough cleanups occur for environmental violations in non-minority communities.<sup>3</sup> Furthermore, some environmental laws (*e.g.*, the Clean Air Act) impose more stringent environmental standards on newer pollution sources, leaving older plants (often in poor, minority communities) to release more harmful pollutants in their communities.
  - Connecticut: three staff members investigate public EJ complaints and advocate on behalf of affected members of the public.
  - New Jersey: compliance with environmental regulations through multi-agency “enforcement strikes” in EJ communities.
  
- **Cumulative/Secondary Effects:** Even if a new project viewed in isolation appears to carry no EJ ramifications, it can have EJ implications down the line due to required new roads, building noise and pollution, degradation of water supplies, and interaction with the effects and effluents of other, similar projects.
  - North Carolina: project developers must anticipate and name potential cumulative impacts.
  - New Jersey: cumulative impact study (2009).
  
- **Democratic decision-making/Community participation:** Low income and minority citizens are likely to be underrepresented in environmental decision-making. According to the EPA, “meaningful involvement” in environmental decision making means that: “(1) potentially affected community residents have an appropriate opportunity to participate in decisions about a proposed activity that will affect their environment and/or health; (2) the public's contribution can influence the regulatory agency's decision; (3) the concerns of all participants involved will be considered in the decision making process; and (4) the decision makers seek out and facilitate the involvement of those potentially affected.”<sup>4</sup> However, members of affected communities may lack the technical resources, English language proficiency, access to quality legal representation, or simply the time to participate effectively. Some states have addressed these concerns, often through enhanced notice and comment requirements for projects affecting environmental justice communities.

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<sup>3</sup> See, *e.g.*, Marianne Lavelle & Marcia Coyle, “Unequal Protection: The Racial Divide in Environmental Law, A Special Investigation,” *Nat'l L.J.*, Sept. 21, 1992, at S2 (penalties substantially higher in communities with predominantly higher Caucasian demography).

<sup>4</sup> U.S. EPA, “Environmental Justice Program and Civil Rights,” <http://www.epa.gov/region01/ej/index.html> (last visited Nov. 22, 2009).

- Arizona: Community Advisory Boards advise the Department of Environmental Quality on Superfund cleanup issues, and provide feedback from government agencies to affected communities.
  - California: landfill developers must solicit low income and minority opinions when proposing new sites; hazardous waste facility developers must widely advertise and disseminate information about their proposals in local communities.
  - Delaware: Community Involvement Advisory Council (with local representatives) designed to ensure “that no community in the State is disparately affected by environmental impacts.”
  - Idaho: during negotiated rulemaking for environmental statutes, community groups are given a seat at the table.
  - West Virginia: Citizen’s Guide and Permits Guide aim at facilitating public understanding about the rulemaking process to maximize participation.
- **Languages and Participation/Notification:** Participation in environmental decision-making is stymied if affected individuals do not speak English. Several early environmental justice struggles (*e.g.* in Kettleman City, California) concerned hazardous waste facilities being placed in communities where the majority of residents had limited English proficiency, and officials offered no translations of crucial information. Several California statutes require that notices be in appropriate languages.
- New Mexico: 2007 Solid Waste Act regulations mandate publication of documents in language of affected community.
  - Washington: The Environmental Justice Checklist directs staff to consider whether minority groups with language and cultural barriers may need special accommodations, such as translation services, to create effective discussions around EJ issues.
- **NEPA/Mini-NEPAs:** The National Environmental Policy Act requires that federal decision makers consider the environmental effects of federal actions with significant impact upon the environment. The affected community is given a chance to comment on the process, and to suggest mitigation of such impacts. The Council on Environmental Quality has issued guidelines to ensure that marginalized, affected groups have maximum meaningful participation and that project evaluators consider effects on sensitive communities.<sup>5</sup> More than a dozen states have passed analogous laws or “Mini-NEPAs” such as the California Environmental Quality Act. A California court interpreted CEQA to require consideration of whether forecasted economic or social effects of a project could lead to physical changes in the environment.<sup>6</sup>

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<sup>5</sup> Council on Environmental Quality, *Environmental Justice: Guidance Under the National Environmental Policy Act* (1997), available at [http://www.epa.gov/compliance/resources/policies/ej/ej\\_guidance\\_nepa\\_ceq1297.pdf](http://www.epa.gov/compliance/resources/policies/ej/ej_guidance_nepa_ceq1297.pdf) (last visited Dec. 20, 2009).

<sup>6</sup> *Bakersfield Citizens for Local Control v. City of Bakersfield*, 22 Cal. Rptr. 3d 203 (Cal. Ct. App. 2004).

- Hawaii: environmental impact review process defines “significant impact” to include actions that “adversely affect the economic welfare, social welfare, or cultural practices of the community and State.”<sup>7</sup>
- Illinois: community impact assessments prepared before implementing transportation projects.

### **3. Original and Ongoing EJ Concerns**

- **Air pollutant emissions reductions:** Poor communities of color breathe some of the least healthy air in the nation. For example, the nation’s worst air quality is in the South Coast Air Basin in Southern California, where studies have shown that Latinos are twice as likely as Whites to live within one mile of an EPA Toxic Release Inventory listed facility, and Latinos, African Americans, and Asian populations in the region face 50% higher cancer risks than Anglo-Americans in the region.<sup>8</sup> Advocates nationwide argue that because poor people of color bear a disproportionate burden of air pollution, their communities should receive a disproportionate share of money and technology to reduce toxic emissions, and that laws like the Clean Air Act should close loopholes that allow older, polluting facilities to escape pollution control upgrades.
  - Arizona: Retrofitting of cross-border cargo trucks to improve air quality along US/Mexican border.
  - Minnesota: Community Air Improvement Project seeks to identify pollution sources and propose solutions.
- **Anti-concentration laws and policies:** Waste facilities and power generating stations – both sources of pollution – are often located together to share production materials, transportation and other infrastructure. Landfills “naturally” breed adjacent pollution-spewing incinerators. But given the original pattern of sitings (i.e. polluting enterprises are disproportionately located in poor communities of color), such co-location exacerbates the intensity of pollution hot spots. Thus some states, like Alabama, no longer allow more than one commercial hazardous waste treatment facility or disposal site to be located within a single county, and require that applicants to build such sites approve a written submission addressing social and economic impacts of the proposed facility on the affected community.
- **Brownfields:** Abandoned or underutilized industrial sites may be heavily polluted, and are often located in poor communities of color. Florida’s Brownfield Redevelopment Act recognizes 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

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<sup>7</sup> HAW. REV. STAT. § 343-2.

<sup>8</sup> Rachel Morello-Frosch, Manuel Pastor Jr., Carlos Porras, and James Sadd, “Environmental Justice and Regional Inequality in Southern California: Implications for Future Research” (2002), *available at* <http://www.ehponline.org/members/2002/suppl-2/149-154morello-frosch/morello-frosch-full.html> (last visited Dec. 20, 2009).

opportunities, and infrastructure decay.” Comprehensive clean-up and redevelopment of such sites can give poor communities an economic and environmental boost, improving employment opportunities and human health. At the same time, such redevelopment may also lead to gentrification that displaces poor people of color. Massachusetts, Wisconsin, and other states have programs that give financial incentives to municipalities and companies who redevelop brownfields in EJ priority communities.

- Alabama: environmental agency’s Redevelopment Section reaches out to rural areas to inform communities about brownfields.
- Delaware: wetlands restoration project hires residents at union wages.

➤ **Communities of Color and Environmental Racism:** A 2007 study reports, “race continues to be a significant and robust predictor of commercial hazardous waste facility locations when socioeconomic factors are taken into account.”<sup>9</sup> The EJ movement has termed this “environmental racism.” Whether this pattern results from deliberate intent to discriminate, or results from decisions related to economic status (pollution is concentrated in poor and thus less politically powerful areas, and race in the U.S. is statistically correlated with income), people of color bear a disproportionate burden of environmental pollution and face disproportionate obstacles in effective enforcement of environmental laws or cleanup of pollution that threatens their health.<sup>10</sup>

- New Jersey: Executive Order 131 found that minorities are disproportionately affected by asthma.

➤ **Housing:** EJ is about environmental harms and benefits where people live, work, play, and learn. Lack of decent, affordable housing can plague poor communities of color. Lead poisoning, asbestos contamination, mold, pesticides, formaldehyde, radon, dangerous or crumbling infrastructure, and vermin infestation are all EJ concerns in the built environment.

- Illinois: migrant labor camp regulations impose health and welfare standards for temporary quarters.

➤ **Landfills and Treatment, Storage, and Disposal Facilities:** Since the landmark, 1983 GAO report, “Siting of Hazardous Waste Landfills and Their Correlation with Racial and Economic Status of Surrounding Communities,” and the United Church of Christ’s study, “Toxic Wastes and Race in the United States,” poor communities of color have been demonstrated be the site of landfills and other polluting land uses — and may become even poorer as a result. While some of these studies have proven controversial in later analyses, they have put decision-makers on notice that they must consider equity issues when licensing new landfills and other environmentally hazardous land uses. North Carolina law requires that decision-makers consider demographics when choosing new landfill sites.

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<sup>9</sup> Michael Gerrard & Sheila Foster, eds., *The Law of Environmental Justice* at 605 (ABA, 2007).

<sup>10</sup> See, generally, Luke W. Cole & Sheila R. Foster, *From the Ground Up: Environmental Racism and the Rise of the Environmental Justice Movement*, Appendix A (NYU Press, 2001).

- Vermont: Solid Waste Management Plan to curtail the amount of refuse sent to landfills that may be in EJ communities.
  - New Mexico: recent Solid Waste Act regulations impose special procedural requirements on siting of landfills in “vulnerable areas,” including community impact assessments, notification obligations and opportunities to comment.<sup>11</sup>
- **Native American issues:** For Native Americans, destruction of place may be equivalent to destruction of cultural identity. Native American groups face threats from radioactive waste and other kinds of waste dumping, strip mining, fisheries loss, damming of traditional waterways, and land confiscation or invasion. Like other minority groups, Native Americans needing income may have little choice but to accept toxic industries that may provide jobs or a tax base.
- New York: cooperative agreement with native peoples to address EJ concerns.
  - California: Senate Bill 18 mandates consultation with Native American tribes before site development.
- **Pesticides/Agricultural chemicals:** Hired agricultural workers are predominantly foreign born, and from Latin America.<sup>12</sup> The EPA has estimated that pesticides poison about 300,000 farmworkers annually, while the U.S. Bureau of Labor Statistics estimates 800-1000 farmworker fatalities.<sup>13</sup> Poverty, ethnicity, lack of English language ability, and non-citizen status are all marginalizing factors that expose agricultural laborers to environmental injustice.
- Kansas: farmworker health program provides primary health care services through a voucher system.
- **Power Plant Emissions and Siting:** Power plants have traditionally been sited disproportionately in communities of color and low-income neighborhoods. In addition to being aesthetically unappealing, power plants emit a variety of toxic chemicals. California law requires the Public Utilities Commission to do a disproportionate impact assessment when choosing where to locate new power plants.
- California: energy commission includes EJ information under CEQA siting provisions.
  - Delaware: SB 263 directs some of the proceeds from the sale of CO<sub>2</sub> allowances to programs designed to help low income ratepayers.
- **Siting of facilities:** Numerous scholars have shown that hazardous and solid waste facilities, industrial plants, and low level radioactive waste facilities tend to be

<sup>11</sup> N.M. Admin. Code § 20.9.2.7(V)(3)(2007), available at <http://www.nmcpr.state.nm.us/nmac/title20/title20.htm> (last visited Dec. 20, 2009).

<sup>12</sup> Center for Disease Control, “Immigrant/Hispanic Agricultural Worker Safety and Health,” <http://www.cdc.gov/omhd/Populations/HL/HHP/Agri.htm> (last visited Dec. 20, 2009).

<sup>13</sup> Rebecca Clarren, “Harvesting Poison,” *High Country News* (Sept. 29, 2003), available at <http://www.hcn.org/issues/259/14268> (last visited Dec. 20, 2009).

disproportionately concentrated in low income communities and communities of color.<sup>14</sup> Low-income communities may lack the economic or political clout to fight these decisions, or be forced to pursue hazardous facilities for job creation and tax contributions. In California, solid waste facility owners making significant changes must hold a public hearing within 300 feet of the existing facility.

- **Toxic waste cleanup:** The U.S. Comprehensive Environmental Response, Compensation, and Liability Act requires that polluters clean up the worst toxic messes they have made, and provides a “Superfund” that will finance cleanups where polluters cannot be found. Because existing toxic waste sites outstrip the money and personnel to clean them up, becoming Superfund-eligible can require time, money and political savvy. Some studies have shown that toxic cleanups proceed more slowly, or are done less thoroughly in poor communities of color.
  - New York: Brownfield Cleanup Program amended in 2008 to boost tax incentives for site cleanup.

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<sup>14</sup> See *supra* note 10.

## Environmental Justice Beyond U.S. Borders

The Environmental Justice movement arose and defined itself in the United States. But elements of EJ — the disproportionate distribution of environmental harms and benefits, and the procedural guarantees that encourage all citizens to participate in environmental decisions that affect their lives and their communities — play out on the world stage, albeit sometimes under different labels.

The growing attention to “environmental human rights” closely resembles the U.S. EJ movement. Activists and policymakers promoting environmental human rights recognize that some citizens do not have access to a clean and healthy environment, to basic supplies of fresh water for drinking and sanitation, to clean air and to other environmental amenities. As in the U.S. EJ movement, promoters of environmental human rights seek equitable access to specific environmental resources, and they realize that process — the right to take part in crucial environmental decisions — is as crucial to ensuring fair distribution of environmental harms and amenities.

For example, in 2007, the U.N. High Commissioner for Human Rights for the first time declared that the right to a clean, basic supply of water is a fundamental human right. South Africa’s post-apartheid Constitution guarantees everyone an “environment that is not harmful to their health or well-being” and links this guarantee to procedural rights that guarantee access to justice to vindicate the rights; the Supreme Court of the nation found these rights justifiable, and ordered the government to provide basic water to all its citizens, which it is implementing through its resulting National Water Policy. A group of Canadian Inuit had a hearing before the Inter-American Commission on Human Rights to vindicate their rights to life, food, property, and culture that they alleged was violated by the United States’ contributions to global climate change; the European Court of Human Rights and African Court on Human and People’s Rights have heard similar cases and have promoted fundamental environmental human rights in their decisions. The Aarhus Convention of the United Nations Economic Commission for Europe is at the forefront of linking environmental substantive and procedural rights: ratified by 41 countries, it grants citizens of ratifying states the right to access information regarding environmental decisions, to participate in those decisions, and to access justice if such participation is denied. It has handled over twenty cases submitted by citizens and NGOs in member states. All of these efforts attempt to help marginalized communities share in an equitable balance of environmental assets and burdens.

Readers of this report who would like to consider a similar document that extends beyond U.S. borders might consult Earthjustice’s 2008 “Environmental Rights Report.” It is perhaps the most comprehensive compendium of current programs and case studies in environmental human rights.<sup>15</sup>

- New Mexico: Border environmental justice liaison works on EJ issues on the US/Mexican border.

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<sup>15</sup> Available at <http://www.earthjustice.org/news/press/2008/earthjustice-presents-2008-environmental-rights-report-to-un.html> (last visited Dec. 2, 2009).

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## ALABAMA

(tags: Air Pollution, Brownfields Redevelopment, Children’s Issues, Community Education, Community Participation, Compliance and Enforcement, Cumulative/Secondary Effects, Land Use – anti-concentration, Land Use – permitting, Mining, Outreach, Redressing Environmental Racism, Toxic Waste Cleanup, Transportation, Waste)

### **General Environmental Justice Activities**

Executive Order (tags: Air Pollution, Community Participation, Cumulative/Secondary Effects, Land Use – anti-concentration, Outreach)

The Alabama Commission on Environmental Initiatives (“the Commission”) was formed by executive order.<sup>1</sup> Composed of sixty-three individuals, including two members of community-based environmental justice (“EJ”) organizations, the Commission sought to develop “quality options and alternatives that encourage the long-term preservation of Alabama’s natural environment.”<sup>2</sup> After holding numerous public forums on EJ issues, the Commission issued forty recommendations for addressing EJ for the Governor’s consideration on December 6, 2000.<sup>3</sup>

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 is a “need to do cumulative emissions permitting for minor source permits in that area.”<sup>4</sup> The Commission also suggested improving community notification prior to reviewing hazardous waste siting permits in order to increase community input in the planning process.<sup>5</sup>

Environmental Justice Policy (tags: Community Participation, Cumulative/Secondary Effects, Land Use – permitting, Outreach)

Alabama is in the process of developing an EJ policy, although the Alabama Department of Environmental Management (“ADEM”) does not currently provide specific information on its website. In 2006, Alabama established an Environmental Justice unit within ADEM’s Office of the Director and appointed an EJ Coordinator to develop an EJ Program and Action Plan.<sup>6</sup> Current Environmental Justice Coordinator, Elvin D. Lang, created a checklist for constructing a viable Environmental Justice

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<sup>1</sup> Exec. Order No. 26, Ala. Commission on Environmental Initiatives (Apr. 26, 2000), *available at* <http://www.jsu.edu/depart/epic/executiveorder26.html> (last visited Feb. 6, 2009).

<sup>2</sup> Ala. Commission on Environmental Initiatives, *Report to the Governor* (Jan. 22, 2001), *available at* <http://www.jsu.edu/depart/epic/ACEIreport.htm> (last visited Feb. 6, 2009).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Telephone Interview with Elvin D. Lang, Environmental Justice Coordinator, Ala. Dep’t of Environmental Management (Feb. 6, 2009).

program. *Environmental Justice and ADEM – Eleven Steps to a Better Alabama* includes provisions for educating ADEM staff and the public about the EJ program, establishing an outreach and public participation program, integrating EJ concerns into environmental emergency response as well as siting and permitting, and conducting cumulative risk assessments.<sup>7</sup>

**Community Participation** (tags: Brownfields Redevelopment, Community Participation, Outreach, Toxic Waste Cleanup)

ADEM’s Redevelopment Section (housed within the Environmental Services Section) conducts outreach programs to inform residents of rural areas on the impact of brownfields and prior toxic contamination on their communities.<sup>8</sup> These outreach programs aim to increase residential awareness of opportunities and solutions for brownfields redevelopment and community revitalization.<sup>9</sup>

## **Equitable Development**

Transportation Planning (tags: Redressing Environmental Racism, Transportation)

The Alabama Department of Transportation (“ALDOT”) has recognized EJ as an issue in its Statewide Transportation Plan (“SWTP”), a long-range planning document.<sup>10</sup> The SWTP, published in June 2000, states that ALDOT is “cognizant of and sensitive to the evolving environmental justice guidance, including Executive Order 12898, which requires that states . . . consider the extent to which low-income and minority populations may be disproportionately impacted by transportation plans and projects.”<sup>11</sup> 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.”<sup>12</sup> ALDOT’s updated SWTP, published in June 2008, identifies Environmental Justice communities in each of the state’s four geographic areas, and considers the potential impacts on these communities from road and highway construction, as well as transit and passenger rail development.<sup>13</sup>

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<sup>7</sup> Document on file with authors.

<sup>8</sup> *Environmental Justice Action Plan*, Ala. Dep’t of Environmental Management (Dec. 2008) (on file with authors).

<sup>9</sup> *Id.*

<sup>10</sup> *Ala. Dep’t of Transportation Statewide Transportation Plan*, available at [www.dot.state.al.us/TransPlanning/stateplan.pdf](http://www.dot.state.al.us/TransPlanning/stateplan.pdf) (last visited Feb. 6, 2009).

<sup>11</sup> *Id.*; Exec. Order No. 12,898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-income Populations* (Feb. 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 grant making agencies).

<sup>12</sup> *Ala. Dep’t of Transportation Statewide Transportation Plan*, *supra* note 10.

<sup>13</sup> *Ala. Dep’t of Transportation Statewide Transportation Plan Update*, available at [www.dot.state.al.us/NR/rdonlyres/B5802971-FE12-4CDE-BB48-2682CA453AF4/0/ALDOTSWTPFINAL.pdf](http://www.dot.state.al.us/NR/rdonlyres/B5802971-FE12-4CDE-BB48-2682CA453AF4/0/ALDOTSWTPFINAL.pdf) (last visited Feb. 6, 2009).

Hazardous Waste Anti-Concentration Statute (tags: Community Participation, Land Use – anti-concentration)

The Hazardous Wastes Management and Minimization Act mandates that only one commercial hazardous waste treatment facility or disposal site may be situated within a single county.<sup>14</sup> Additionally, any new commercial hazardous waste treatment or disposal sites must address socioeconomic concerns and be approved by the legislature.<sup>15</sup> Among the socioeconomic impacts that a developer must address are the “social and economic impacts of the proposed facility on the affected community, including changes in property values, community perception, and other costs.”<sup>16</sup> Alabama’s siting law also provides for notice, opportunity for public comment, and the possibility of a public hearing before the issuance of any permit for a hazardous waste treatment, storage or disposal facility.<sup>17</sup>

The anti-concentration laws apply only to commercial hazardous waste sites. Thus, opponents of other undesirable land uses cannot rely upon this statute to challenge other types of projects. However, Alabama law allows residents to file EJ-related complaints with the state's seven-member Environmental Management Commission.<sup>18</sup>

Case Law

East Central Alabama Alliance for Quality Living (2003) (tags: Land Use – permitting, Mining, Redressing Environmental Racism)

A quarry permit was challenged on the basis that ADEM failed to consider the disparate impact of the proposed facility upon a poor community with a 70% minority population. The court held that ADEM is not required by statute to consider EJ issues, and in fact, ADEM was barred from considering disparate impact in permitting decisions.<sup>19</sup> The court rejected the argument that ADEM must follow U.S. EPA’s EJ principles, even though ADEM’s program should be the equivalent of the federal one. “On the contrary, it should be noted that ADEM administers state regulations—not [U.S.] EPA regulations. Only when [U.S.] EPA requirements are incorporated by reference into ADEM’s permitting regulations via rulemaking, is ADEM authorized to apply [U.S.] EPA requirements/regulations to the permit application process.”<sup>20</sup> The court relied on the *Alvin Holmes* case, as well, which stands for the proposition that “ADEM has no statutory authority to consider racial and economic demographics in the permit

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<sup>14</sup> ALA. CODE § 22-30-5.1(c) (2005).

<sup>15</sup> *Id.* at § 22-30-5.1(c),(d).

<sup>16</sup> *Id.* at § 22-30-5.1(d)(1).

<sup>17</sup> *Id.* at § 22-30-12(g).

<sup>18</sup> *See generally, id.* § 22-22A-6.

<sup>19</sup> *East Central Alabama Alliance for Quality Living, v. Alabama Dep’t of Env’tl. Mgmt.*, 2003 AL ENV LEXIS 6 (Ala. Dep’t of Env’tl. Mgmt. Mar. 13, 2003).

<sup>20</sup> *Id.* at 27, citing *Legal Environmental Assistance Foundation v. Ala. Dep’t of Env’tl. Mgmt.*, 832 So.2d 61, 64-65 (Ala. 2002) (federal law required ADEM to adopt statewide water policies, which constituted “rules,” and thus necessitated compliance with the rulemaking provisions of the Alabama Administrative Procedures Act).

application process.”<sup>21</sup> The court also found no evidence of discriminatory intent in the permitting decision.

## **Improving Public Health**

Asthma Programs (tags: Air Pollution, Children’s Issues, Community Education)

In partnership with the Alabama Department of Public Health (“ADPH”), ADEM has hosted a series of events to promote awareness of childhood and teen asthma, with an emphasis on monitoring the Air Quality Index for those who suffer from asthma.<sup>22</sup> ADEM also instituted an early notification program with the Alabama Development Office to promptly alert communities on the EPA Region 4 Prevention of Significant Deterioration action list of any major permit actions that may have a detrimental effect on air quality in these communities.<sup>23</sup>

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<sup>21</sup> *Alvin Holmes v. ADEM*, 1998 AL ENV LEXIS 1, 30-31 (Ala. Dep’t of Env’tl. Mgmt. Feb. 17, 1998) (although the US. EPA has a division dealing with “environmental justice” issues per the presidential Executive Order, ADEM “is not charged with administering this directive, which is not in the form of [ADEM] regulations”).

<sup>22</sup> *Environmental Justice Action Plan*, *supra* note 8.

<sup>23</sup> *Id.*

## ALASKA

(tags: Redressing Environmental Racism, Transportation)

**General Environmental Justice Activities** (tags: Redressing Environmental Racism, Transportation)

### Transportation Planning

Alaska, as per federal mandate, has an environmental justice program that deals with the administration of all federally funded transportation projects.<sup>24</sup> The stated mission of this program is to ensure “that no person in the State of Alaska shall, on the grounds of race, color, sex, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity” that receives federal transportation funding.<sup>25</sup> Alaska's Department of Transportation and Public Facilities (“ADOT/PF”) employs a Title VI specialist, who audits the Department of Transportation and Public Facilities programs based on Title VI of the Civil Rights Act of 1964 and Executive Order 12898 on Environmental Justice.<sup>26</sup> ADOT/PF also follows the 1997 “*DOT Order to Address Environmental Justice in Minority Populations and Low-Income Populations* to summarize and expand upon the requirements of Executive Order 12898.”<sup>27</sup> The Order was implemented by the U.S. DOT to develop “a process that integrates the existing statutory and regulatory requirements in a manner that helps ensure that the interests and well-being of minority populations and low-income populations are considered and addressed during transportation decision making.”<sup>28</sup> The Department is attempting to implement EJ principles at all stages of the planning process for its projects.<sup>29</sup> Areas of reporting for Title VI purposes include National Highway Institute Training Administration, Program Development, Environmental Design, Consulting Contracting, Right-of-Way Construction, Research, and Alaska Marine Highway System.<sup>30</sup>

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<sup>24</sup> Alaska Dep't of Transportation and Public Facilities, *Title VI Brochure*, available at <http://www.dot.state.ak.us/cvlrts/forms/pamp-tvi.pdf> (last visited June 25, 2009).

<sup>25</sup> *Id.*

<sup>26</sup> Telephone interview with Valerie Fletcher-Mitchell, Title VI Specialist, Alaska Dep't of Transportation and Public Facilities (Mar. 9, 2005).

<sup>27</sup> Alaska Dep't of Transportation and Public Facilities, *Civil Rights Office: Title VI of the Civil Rights Act of 1964 and Environmental Justice*, [www.dot.state.ak.us/cvlrts/tvi.shtml](http://www.dot.state.ak.us/cvlrts/tvi.shtml) (last visited June 25, 2009).

<sup>28</sup> US Dep't of Transportation, *Order on Environmental Justice*, available at [www.fhwa.dot.gov/environment/ejustice/dot\\_ord.htm](http://www.fhwa.dot.gov/environment/ejustice/dot_ord.htm) (last visited Aug. 6, 2009).

<sup>29</sup> Telephone interview with Valerie Fletcher-Mitchell, *supra* note 26.

<sup>30</sup> *Civil Rights Office: Title VI of the Civil Rights Act of 1964 and Environmental Justice*, *supra* note 27.

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## ARIZONA

(tags: Air Pollution, Children’s Issues, Community Education, Community Participation, Grants, Land Use – buffer zone, Outreach, Public Health, Study, Toxic Waste Cleanup, Waste, Water)

### **General Environmental Justice Activities**

While Arizona’s Department of Environmental Quality (“ADEQ”) has not established an environmental justice policy, ADEQ considers EJ issues through a variety of approaches, and its Office of Administrative Counsel has a full-time staff member who is dedicated to coordinating and responding to concerns and complaints about EJ issues.<sup>31</sup>

### **Community Participation**

Community Advisory Boards (tags: Community Education, Community Participation, Toxic Waste Cleanup)

As a component of ADEQ’s Superfund program, ADEQ 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 ADEQ in determining the best way to move forward with the remediation of [a] site.”<sup>32</sup> CABs range from five to twenty members, and consist of “a diversified cross-section of the community.”<sup>33</sup> A selection committee composed of an ADEQ representative, a local elected official, two community members, and an “interested party” (defined by the ADEQ as “an owner or operator of a facility within the site or an affected business or industry”) selects the members through an application and review process.<sup>34</sup> Once formed, CABs meet at least four times per year with ADEQ representatives to discuss project status. Duties of CABs include providing comments to ADEQ on cleanup goals, methods and other issues; representing the community located around the site; participating in community outreach with respect to the project; and making visits to the clean-up site. Rather than merely advising the state regarding community views and needs as most EJ-oriented advisory groups do, CABs serve a two-way function by also disseminating information about site progress and other developments to the community.<sup>35</sup>

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<sup>31</sup> E-mail from Bret Parke, Deputy Administrative Counsel, Ariz. Dept’ of Environmental Quality (Mar. 5, 2009).

<sup>32</sup> Ariz. Dep’t of Environmental Quality, *Waste Programs Division: Superfund Programs: Community Involvement*, available at <http://www.azdeq.gov/environ/waste/sps/community.html> (last visited Apr. 2, 2009).

<sup>33</sup> *Id.*; ARIZ. REV. STAT. § 49-289.03(E)(2008).

<sup>34</sup> ARIZ. REV. STAT. §§ 49-289.03(D)-(F)(2008); *Waste Programs Division: Superfund Programs: Community Involvement*, *supra* note 32.

<sup>35</sup> E-mail from Maria Quintero for Ed Ranger, Office of the Administrative Counsel (Aug. 24, 2006);

Water Quality Assurance Revolving Fund (“WQARF”) Sites (tags: Community Education, Community Participation, Outreach, Water)

Arizona law provides a framework for involving the community in the remediation of WQARF sites.<sup>36</sup> These provisions “ensure that the public is informed of remedial action work that may be of interest to them and given an opportunity to be directly involved in the process that leads to the determination of the final cleanup for a site.”<sup>37</sup> Specifically, for sites where remediation cannot be achieved in fewer than 180 days, a number of community involvement requirements must be met, including the creation of a Community Involvement Plan (CIP) for the site, the formation of a CAB, publication of public notice, and statewide public meeting.<sup>38</sup>

### **Improving Public Health**

Air Quality and Emissions Statute (tags: Air Pollution, Outreach)

Although Arizona does not have any formal EJ laws, ADEQ addresses certain EJ concerns through an air quality and emissions statute.<sup>39</sup> This statute requires that, among other things, ADEQ provide notification of any major permit application to municipalities potentially affected by a licensing decision.<sup>40</sup>

South Phoenix Community Action Council (tags: Community Participation, Toxic Waste Cleanup)

In the community of South Phoenix community members formed an action council to advise ADEQ as part of a toxins reduction pilot project in a heavily industrialized area.<sup>41</sup> The council, in partnership with ADEQ and the U.S. EPA, developed a strategy to help lower toxic emissions and reduce public exposure to toxic pollutants in the community.<sup>42</sup>

Environmental Permits and Approvals near Learning Sites (tags: Children’s Issues, Land Use – buffer zone, Waste)

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*Waste Programs Division: Superfund Programs: Community Involvement, supra note 32.*

<sup>36</sup> ARIZ. REV. STAT. § 49-287.03 (2008) (specifying conditions triggering mandatory community involvement plans); ARIZ. REV. STAT. § 49-289.03 (2008) (rules for community involvement plans and community advisory boards); ARIZ. ADMIN. CODE § R18-16-301 (2005) (notification procedures).

<sup>37</sup> E-mail from Maria Quintero for Ed Ranger, *supra* note 35.

<sup>38</sup> *Id.*; ARIZ. REV. STAT. §§ 49-287.03(B) and (D), and § 49-289.03 (2008).

<sup>39</sup> ARIZ. REV. STAT. § 49-111 (2008).

<sup>40</sup> *Id.*

<sup>41</sup> Telephone interview with Ed Ranger, Administrative Counsel, Ariz. Dep’t of Environmental Quality (Mar. 18, 2005).

<sup>42</sup> Ariz. Dep’t of Environmental Quality, *South Phoenix Multi-Media Toxics Reduction Project, Key Milestones*, available at <http://www.azdeq.gov/function/news/2003/dec.html> (last visited Apr. 2, 2009).

In 2005, the ADEQ Director approved the Environmental Permits and Approvals Near Learning Sites Policy (“Learning Sites Policy”) “to ensure that protection of children is considered before a permit application or plan approval is granted by ADEQ.”<sup>43</sup> The term “learning site” is defined to include all “existing public schools, charter schools and private schools at the K-12 level, and all planned sites for schools approved by the Arizona School Facilities Board.”<sup>44</sup> The Learning Sites Policy is applied where a new or renewal permit application, plan approval or major modification increases the potential to emit pollutants or add new pollutants.”<sup>45</sup> In a typical case, where a learning site is located within a two-mile radius of a proposed operation, the Director may request that the applicant complete additional information describing how the facility is protective of the nearby learning site.<sup>46</sup> ADEQ permitting staff may also review, on a case-by-case basis and with the Director’s approval, the impact of other environmental stressors, including waste hauler transportation routes, for their impact on learning sites.<sup>47</sup>

Children’s Health Challenge Grant Project (tags: Children’s Issues, Grants, Public Health, Air Pollution, Study)

In 2006, ADEQ launched an effort in metropolitan Phoenix to assess the link between particulate matter pollution and childhood asthma, which is the most common chronic childhood disease in Arizona.<sup>48</sup> The result of the study showed a statistically significant positive correlation between days of increased particulate matter (poor air quality) and the incidence of asthma events in children.<sup>49</sup> The study, which analyzed over 5,000 childhood asthma events between January 1, 2005 and September 30, 2006, had a goal of highlighting and helping to reduce environmental risks to children’s respiratory health.<sup>50</sup> While Arizona already employs several programs (including a school bus anti-idling program) aimed at reducing children’s environmental risks, this study showed that there is a need for further collaborative efforts between ADEQ and the public to help protect children from these risks.<sup>51</sup>

Cargo Truck Retrofit Initiative (tags: Air Pollution, Grants, Public Health)

Between November 2008 and February 2009, ADEQ completed a major initiative to improve air quality along the Arizona-Mexico border. With funds from a U.S. EPA grant, fifty-five cargo trucks that cross the border several times a day were refitted with

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<sup>43</sup> Ariz. Dep’t of Environmental Quality, *Environmental Permits and Approvals Near Learning Sites*, at 2, available at <http://www.azdeq.gov/ceh/download/050713-1103.0.pdf> (last visited Apr. 2, 2009).

<sup>44</sup> *Id.* at 3.

<sup>45</sup> *Id.*

<sup>46</sup> E-mail from Bret Parke, *supra* note 31.

<sup>47</sup> *Environmental Permits and Approvals Near Learning Sites*, *supra* note 43, at 3-4.

<sup>48</sup> Ariz. Dep’t of Environmental Quality, *Protecting Our Children: Assessing the Link between PM10 Pollution and Childhood Asthma in Maricopa County*, at 1, available at [http://www.azdeq.gov/function/news/2008/download/1230\\_report.pdf](http://www.azdeq.gov/function/news/2008/download/1230_report.pdf) (last visited Mar. 23, 2009).

<sup>49</sup> *Id.* at 12.

<sup>50</sup> *Id.* at 2.

<sup>51</sup> *Id.* at 11.

devices reducing the particulate matter air pollution from diesel emissions.<sup>52</sup> The initiative is part of the Border 2012 program to improve the environment and protect the health of the nearly twelve million people living along the border, some of whom live in areas particularly susceptible to poor air quality.<sup>53</sup>

### **Coordination with Federal Government**

The Children’s Health Challenge Grant Project and the Cargo Truck Retrofit Initiative, described above, are two examples of ADEQ’s coordination efforts with U.S. EPA. Additionally, because ADEQ receives federal financial assistance from U.S. EPA, its facility licensing decisions are subject to Title VI of the Federal Civil Rights Act.<sup>54</sup> ADEQ also complies, to the extent permitted by law, with Code of Federal Regulations sections relating to nondiscrimination in programs receiving assistance from U.S. EPA.<sup>55</sup> ADEQ is committed to protecting low-income and minority communities from disparate impacts associated with permitting facilities that violate the Civil Rights Act.

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<sup>52</sup> Ariz. Dep’t of Environmental Quality, “ADEQ Improves Air Quality in Nogales by Completing 55 Truck Retrofits that Will Reduce Harmful Emission,” *available at* <http://www.azdeq.gov/function/news/2009/download/0220.pdf> (last visited Mar. 23, 2009).

<sup>53</sup> *Id.*

<sup>54</sup> Title VI of the Civil Rights Act of 1964, *as amended* 42 U.S.C. §§2000d to 2000d-7 (2005).

<sup>55</sup> *See generally* 40 CFR § 7.15 (Outlining the applicability of nondiscrimination policies).

# ARKANSAS

(tags: Community Education, Compliance and Enforcement, Grants, Land Use – anti-concentration, Land Use – siting, Mapping, Redressing Environmental Racism, Toxic Waste Cleanup, Waste)

## **General Environmental Justice Activities**

### Policy

While the Arkansas Department of Environmental Quality (“ADEQ”) has not established an environmental justice policy, it does have some staff dedicated to EJ issues (see, *infra*, Public Outreach Program). However, ADEQ’s Strategic Plan 2004-2014, which provides a high-level view of ADEQ’s vision for the future and its associated goals, objectives and priorities, does not address EJ issues.<sup>72</sup>

Environmental Equity Act (tags: Land Use – anti-concentration, Land Use – siting, Redressing Environmental Racism, Waste)

In 1993, the Arkansas legislature passed the Arkansas Environmental Equity Act, which addresses EJ issues in the siting of solid waste disposal facilities.<sup>73</sup> The Arkansas legislature explicitly recognized that high impact solid waste disposal facilities tended to be concentrated in lower-income or minority communities. The law’s stated intent was to “prevent communities from becoming involuntary hosts to a proliferation of high impact solid waste management facilities.”<sup>74</sup>

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.”<sup>75</sup> 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.<sup>76</sup> Possible incentives include increased employment opportunities, host fees, financial contributions to the community infrastructure, compensation for decreased property values, or subsidization of community services.<sup>77</sup> ADEQ may not process any application for a permit subject to Arkansas Code Annotated section 8-6-1504 until the

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<sup>72</sup> Ark. Dep’t of Environmental Quality Strategic Plan 2004-2014, Updated July 2007, available at [http://www.adeq.state.ar.us/diroffice/strategic\\_plan/pdfs/ADEQ\\_strategic\\_plan.pdf](http://www.adeq.state.ar.us/diroffice/strategic_plan/pdfs/ADEQ_strategic_plan.pdf) (last visited Feb. 26, 2009).

<sup>73</sup> ARK. CODE ANN. § 8-6-1501 (2008).

<sup>74</sup> *Id.* at § 8-6-1501(b).

<sup>75</sup> *Id.* at § 8-6-1504(a)(1).

<sup>76</sup> *Id.* at § 8-6-1504(b).

<sup>77</sup> *Id.*

affected local and regional authorities have issued definitive findings regarding the criteria required by this statute.<sup>78</sup>

## **Community Participation**

### Public Outreach Program

ADEQ's funding has decreased over the past few years, constraining the programmatic efforts to further environmental justice. Nonetheless, three staff members, including one attorney, are dedicated to EJ issues through ADEQ's public outreach program. A representative from ADEQ's public outreach program attends semiannual meetings in Dallas with representatives from every state in U.S. EPA's Region 6 to discuss issues including environmental justice.<sup>79</sup>

### Case Law

*Pine Bluff for Safe Disposal* (2003) (tags: Land Use – permitting, Redressing Environmental Racism)

In a challenge to ADEQ's issuance of permits for a chemical weapons destruction facility, appellants claimed that the facility would "create new, and exacerbate existing, disproportionate pollution impacts on minority and low-income populations."<sup>80</sup> Initially, appellants rested their claim on federal law, Title VI and the Executive Order on Environmental Justice, but on appeal reframed the EJ claim as being a part of the general challenge to the permit's lack of adequate conditions.<sup>81</sup> The Court noted that because there was substantial evidence that "the permits will adequately protect the public health and environment and that no adverse health effects to *any persons* will result from the Facility's emissions, it logically follows that there will be no adverse impact on minorities and low-income persons."<sup>82</sup>

## **Coordination with Federal Government**

Performance Partnership Agreement (tags: Community Education, Compliance and Enforcement, Mapping, Redressing Environmental Racism)

In 2001, Arkansas signed a Performance Partnership Agreement ("PPA") with the U.S. Environmental Protection Agency ("U.S. EPA"). The PPA includes a section on EJ listing the following goals: (1) to enhance effectiveness in complying with Title VI of the

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<sup>78</sup> *Id.* at § 8-6-1503.

<sup>79</sup> Telephone interview with Dan Etzkorn, Attorney, Ark. Dep't of Environmental Quality (May 26, 2005).

<sup>80</sup> *Pine Bluff for Safe Disposal v. Ark. Pollution Control & Ecology Comm'n*, 354 Ark. 563, 581 (Ark. S. Ct. 2003).

<sup>81</sup> At the level of the administrative hearing, the administrative law judge ruled that no statutory or regulatory authority authorizes the Commission to hear an environmental justice claim, and dismissed that claim for want of jurisdiction. *In re Pine Bluff Arsenal*, 1999 AR ENV LEXIS 97 (Ark. Pollution Control and Ecology Comm'n, Aug. 16, 1999).

<sup>82</sup> *Pine Bluff for Safe Disposal*, 354 Ark. at 581.

Civil Rights Act of 1964;<sup>83</sup> (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.<sup>84</sup>

In broad terms, U.S. EPA and ADEQ vowed to bridge the gap between regulatory agencies and the minority and low-income communities that they serve. The agencies agreed 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.<sup>85</sup> This PPA expired on June 30, 2002, and no subsequent PPA was entered into between U.S. EPA and ADEQ.

#### Grants (tags: Grants, Toxic Waste Cleanup)

While state EJ funding has decreased, U.S. EPA Region 6's EJ and brownfield grants fund certain EJ projects in the state. For example, a community group initiated the Koppers project in Rose City. The community was concerned about groundwater contamination and strong odors emanating from a site that had prepared railroad ties in creosote "soaking ponds" for over 100 years. Several low-income and minority neighborhoods were located near the site. Through a grant from U.S. EPA, the community was able to hire Louisiana State University to investigate the site and provide air monitoring.<sup>86</sup> This project is ongoing.<sup>87</sup>

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<sup>83</sup> Title VI of the Civil Rights Act of 1964, *supra* note 54 (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.").

<sup>84</sup> *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](http://www.adeq.state.ar.us/diroffice/strategic_plan/pdfs/ppa2001-2002.pdf) (last visited Feb. 26, 2009).

<sup>85</sup> *Id.* at 22-23.

<sup>86</sup> *Id.*

<sup>87</sup> Telephone interview with Jamie Ewing, Attorney Specialist, Ark. Dep't of Environmental Quality (Feb. 11, 2009).

# CALIFORNIA

(tags: Air Pollution, Brownfields Redevelopment, Children’s Issues, Climate Change, Community Education, Community Participation, Compliance and Enforcement, Cumulative/Secondary Effects, Diet, Equitable Development, Grants, Housing, Land Use – general plans, Land Use – permitting, Land Use – siting, Mapping, Native Americans, Open Space/Recreation, Outreach, Power Plants, Public Health, Redressing Environmental Racism, Smart Growth, Study, Toxic Waste Cleanup, Transportation, Waste, Water)

## **General Environmental Justice Activities**

General Environmental Justice Legislation (tags: Community Participation, Land Use – general plans, Native Americans, Smart Growth, Study)

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 EJ programs and several of the state’s environmental and state planning programs.<sup>88</sup> OPR duties include recommending and implementing state policies with regard to land-use and growth planning, and involve issuing periodic General Plan Guidelines to aid local jurisdictions in creating general plans in keeping with state requirements.<sup>89</sup> These guidelines must include guidelines for addressing EJ matters in city and county general plans.<sup>90</sup>

In 2001, OPR, in conjunction with the Public Law Research Institute at University of California Hastings College of the Law, conducted a survey of state agencies to determine how state agencies addressed environmental justice.<sup>91</sup> The survey prompted OPR, along with the California Environmental Protection Agency (“CalEPA”) and the U.S. EPA, to conduct workshops for state personnel to be educated about the issues of the EJ 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.”<sup>92</sup> In October 2003, OPR issued a report on EJ within state government.<sup>93</sup>

SB 115 also requires CalEPA to take specified actions in designing its mission for programs, policies, and standards within the agency and to develop a model EJ mission

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<sup>88</sup> CAL. GOV’T. CODE § 65040.12 (West 2006); Governor’s Office of Planning and Research, *About OPR*, <http://www.opr.ca.gov/index.php?a=about/about.html> (last visited July 27, 2009).

<sup>89</sup> CAL. GOV’T CODE § 65040.

<sup>90</sup> *Id.* at § 65040.2(d).

<sup>91</sup> Governor’s Office of Planning and Research, *Environmental Justice Overview*, formerly available at <http://www.opr.ca.gov/ejustice/Overview.html> (last visited Jan. 3, 2006).

<sup>92</sup> *Id.*

<sup>93</sup> California Governor’s Office of Planning and Resources, *Environmental Justice in State Government*, Oct. 2003, formerly available at <http://www.opr.ca.gov/index.php?a=planning/publications.html#pubs-E> (last visited July 27, 2009).

statement for boards, departments, and offices within the agency by January 1, 2001.<sup>94</sup> SB 115 directs CalEPA to comport its programs and enforce its regulations in accordance with the principles of environmental justice.<sup>95</sup>

In accordance with SB 89 (Escutia, 2000), CalEPA formed a Working Group on Environmental Justice to develop an interagency EJ strategy.<sup>96</sup> The Working Group “is charged with identifying gaps in environmental laws, regulations and policies as they relate to EJ and creating a strategy to address such gaps.”<sup>97</sup>

CalEPA also convened an Advisory Committee on Environmental Justice to assist the Interagency Working Group (IWG).<sup>98</sup> The Committee released its draft of *Recommendations to the Interagency Working Group on Environmental Justice* for public review. The document is “intended to provide a set of comprehensive recommendations to establish and implement an effective environmental justice program at CalEPA.”<sup>99</sup> The report seeks to provide guidance on (1) improving the public’s meaningful access and participation in hearings; (2) integrating EJ goals into the process of forming and implementing environmental policy; and (3) improving data collection efforts.<sup>100</sup>

The IWG endorsed the Advisory Committee’s report; the report’s recommendations were considered and incorporated into CalEPA’s *Intra-agency Environmental Justice Strategy* to the extent they were considered to be reasonable and feasible.<sup>101</sup> The Strategy is the product of the 2001-2004 collaboration between the IWG on Environmental Justice, the Advisory Committee on Environmental Justice, and other EJ stakeholders (including community, local government, business, industry, and Tribal representatives). The Strategy provides the foundation for addressing EJ issues.

In 2005, the IWG clarified the agency’s EJ goals. First, CalEPA adopted an EJ mission statement. The mission statement provides, “the California Environmental Protection Agency and our Boards, Departments, and Office shall accord the highest respect and value to every individual and community, by developing and conducting our public health and environmental protection programs, policies, and activities in a manner

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<sup>94</sup> See SB 115, 1999 Leg. 145th Sess. (Ca. 1999), *added as* CAL. PUB. RES. CODE § 72000-01 (later renumbered as §§ 71110-11 by SB 828 (Alarcón, 2001)).

<sup>95</sup> *Id.*

<sup>96</sup> CAL. PUB. RES. CODE § 71113.

<sup>97</sup> *Id.* For more information about the IWG, see California Environmental Protection Agency, *Interagency Working Group on Environmental Justice*, available at <http://www.calepa.ca.gov/EnvJustice/IWG/Default.htm> (last visited Aug. 10, 2009).

<sup>98</sup> As required by SB 89 (codified at CAL. PUB. RES. CODE § 71114); CalEPA, “Advisory Committee on Environmental Justice,” <http://www.calepa.ca.gov/EnvJustice/Committee> (last visited Aug. 8, 2009).

<sup>99</sup> California Environmental Protection Agency, 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](http://www.calepa.ca.gov/EnvJustice/Documents/2003/7_11Report.pdf) (last visited Aug. 8, 2009).

<sup>100</sup> *Id.*

<sup>101</sup> California Environmental Protection Agency, *Intra-agency Environmental Justice Strategy*, pg. 3 (2004), available at <http://www.calepa.ca.gov/EnvJustice/Documents/2004/Strategy/Final.pdf> (last visited Aug. 8, 2009).

that promotes equity and affords fair treatment, accessibility, and protection for all Californians, regardless of race, age, culture, income, or geographic location.”<sup>102</sup> CalEPA also developed an EJ Action Plan, which is designed to supplement the EJ Strategy and provide opportunities for CalEPA and the agency Boards, Departments, and Office to explore concepts and develop tools in addressing specific priorities – precautionary approaches, cumulative impacts, public participation, and community capacity-building.<sup>103</sup> The EJ Action Plan is geared towards more short term action focused projects. In 2005, the IWG approved six pilot projects proposed by CalEPA staff.<sup>104</sup>

CalEPA’s Environmental Justice Program is a “collaborative effort that includes CalEPA, and its Boards, Departments, and Office, and the Governor’s Office of Planning & Research.”<sup>105</sup> The objectives of the EJ Program will be accomplished through the coordinated efforts of these agencies alongside other EJ stakeholders such as community organizations and industry.<sup>106</sup> The agencies that fall under CalEPA include the Air Resources Board, the Integrated Waste Management Board (“IWMB”) (abolished July 2009, see “Environmental Education” section below), the State Water Resources Control Board, the Department of Pesticide Regulation, the Department of Toxic Substances Control, and the Office of Environmental Health Hazard Assessment.<sup>107</sup>

CalEPA’s Environmental Justice Program maintains a website in both English and Spanish.<sup>108</sup> In addition, several CalEPA agencies developed their own EJ programs, strategies, pilot projects and/or other activities and provide information about these programs on their websites. These agencies are the Air Resources Board,<sup>109</sup> State Water Resources Control Board,<sup>110</sup> Department of Pesticide Regulation,<sup>111</sup> Department of Toxic Substances Control,<sup>112</sup> and Office of Environmental Health Hazard Assessment.<sup>113</sup>

#### CalEPA Interagency Environmental Justice Strategy - SB 828<sup>114</sup>

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<sup>102</sup> E-mail from Malinda Hall, Special Assistant for Environmental Justice, California Environmental Protection Agency (Jan. 25, 2005). See e.g., “Advisory Committee on Environmental Justice,” *supra* note 82.

<sup>103</sup> California Environmental Protection Agency, *Environmental Justice Action Plan* (2004), available at, <http://www.calepa.ca.gov/EnvJustice/ActionPlan/Documents/October2004/ActionPlan.pdf> (last visited Aug. 8, 2009).

<sup>104</sup> California Environmental Protection Agency, *EJ Action Plan*, available at <http://www.calepa.ca.gov/EnvJustice/ActionPlan/> (last visited Aug. 8, 2009).

<sup>105</sup> California Environmental Protection Agency, <http://www.calepa.ca.gov/EnvJustice/Partners/> (last visited July 27, 2009).

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> California Environmental Protection Agency, *Environmental Justice Program Home Page*, available at <http://www.calepa.ca.gov/EnvJustice> (last visited Aug. 8, 2009).

<sup>109</sup> Available at <http://www.arb.ca.gov/ch/programs/ej/ej.htm> (last visited Aug. 9, 2009).

<sup>110</sup> Available at [http://www.waterboards.ca.gov/water\\_issues/programs/outreach/education/justice.shtml](http://www.waterboards.ca.gov/water_issues/programs/outreach/education/justice.shtml) (last visited Aug. 9, 2009).

<sup>111</sup> Available at <http://www.cdpr.ca.gov/docs/envjust> (last visited Aug. 9, 2009).

<sup>112</sup> Available at [http://www.dtsc.ca.gov/GetInvolved/env\\_justice\\_policies.cfm](http://www.dtsc.ca.gov/GetInvolved/env_justice_policies.cfm) (last visited Aug. 9, 2009).

<sup>113</sup> Available at <http://www.oehha.ca.gov/ej/> (last visited Aug. 9, 2009).

<sup>114</sup> CAL. PUB. RES. CODE §§ 71110 - 71115.

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

Local Agency General Plans - AB 1553<sup>115</sup> [tags: Land Use – general plans, Transportation)

AB 1553 requires OPR to adopt guidelines for local agencies when addressing EJ issues in its general plans. OPR covered EJ and transit-oriented development in the 2003 version of the General Plan Guidelines.<sup>116</sup> These guidelines may be “the most comprehensive in the United States,” and include a “host of issues forecasting the direction of the movement.”<sup>117</sup>

Local Agency General Plans - SB 1110<sup>118</sup> : [tags: Land Use – general plans)

SB 1110 requires OPR to develop advisory guidelines for addressing EJ matters in city and county general plans. It is a technical amendment, replicating the requirements of AB 1553.

Environmental Education (tags: Children’s Issues, Waste)

The Public Resources Code requires the Office of Education and the Environment to develop education principles in cooperation with several state agencies; these education principles include environmental justice.<sup>119</sup> The Office of Education and the Environment was previously located within the Integrated Waste Management Board, but in July 2009, SB 63 abolished the IWMB and transferred the Office of Education and the Environment to CalEPA, leaving the EJ education provision intact.<sup>120</sup>

Climate Change Proposed Scoping Plan, December 2008, Pursuant to AB 32, the California Global Warming Solutions Act of 2006 (tags: Air Pollution, Climate Change, Community Participation)

The California Global Warming Solutions Act of 2006 mandated that the state Air Resources Board (“ARB”) adopt regulations requiring the reporting and verification of greenhouse gas emissions and monitor and enforce this program. The bill required ARB

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<sup>115</sup> CAL. GOV’T CODE §§ 65040.2, 65040.12.

<sup>116</sup> Available at [http://www.opr.ca.gov/planning/publications/General\\_Plan\\_Guidelines\\_2003.pdf](http://www.opr.ca.gov/planning/publications/General_Plan_Guidelines_2003.pdf) (last visited Aug. 17, 2009).

<sup>117</sup> Telephone interview with Romel Pascual, former Assistant Secretary for Environmental Justice, CalEPA (July 29, 2003).

<sup>118</sup> CAL. GOV’T CODE § 65040.2.

<sup>119</sup> CAL. PUB. RES. CODE § 71301, *et seq.*

<sup>120</sup> *Id.*

to adopt a statewide greenhouse gas emissions limit equivalent to 1990 levels, to be achieved by 2020.<sup>121</sup>

California's Health and Safety Code section 38561 mandates the creation of a scoping plan that outlines strategies for implementing AB 32. Specifically, this section indicates that "[t]he state board shall prepare and approve a scoping plan, as that term is understood by the state board, for achieving the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions from sources or categories of sources of greenhouse gases by 2020 under this division."<sup>122</sup> This section further outlines the required content for the plan:

The plan shall identify and make recommendations on direct emission reduction measures, alternative compliance mechanisms, market-based compliance mechanisms, and potential monetary and nonmonetary incentives for sources and categories of sources that the state board finds are necessary or desirable to facilitate the achievement of the maximum feasible and cost-effective reductions of greenhouse gas emissions by 2020.<sup>123</sup>

In addition, ARB is required to provide opportunity for public comment on the development of the plan. Of particular interest here is the requirement that ARB conduct a portion of its public comment workshops in regions of the state that have the most significant exposure to air pollutants, including, but not limited to, communities with minority populations, low-income populations, or both.<sup>124</sup>

Other provisions of AB 32 require ARB to consider EJ objectives when implementing the statute. Section 38562(b)(2) requires that, to the extent feasible and in furtherance of reducing statewide greenhouse gas emissions, ARB must ensure that compliance activities do not disproportionately impact low-income communities.<sup>125</sup> Section 38570(b) further requires that, prior to implementation of a market-based system for greenhouse gas reduction compliance, ARB must consider the potential for direct, indirect, and cumulative emission impacts from these mechanisms, including localized impacts in communities that are already adversely impacted by air pollution.<sup>126</sup> It must also design any market-based compliance mechanism to prevent any increase in the emissions of toxic air contaminants or criteria air pollutants.<sup>127</sup> Finally, section 38565 directs ARB to ensure that the greenhouse gas emission reduction rules, regulations, programs, mechanisms, and incentives under its jurisdiction, where applicable and to the

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<sup>121</sup> California Global Warming Solutions Act of 2006, codified as CAL. HEALTH & SAFETY CODE §§ 38500 - 38599.

<sup>122</sup> *Id.* at § 38561(a).

<sup>123</sup> *Id.* at § 38561(b).

<sup>124</sup> *Id.* at § 38561(g).

<sup>125</sup> *Id.* at § 38562(b)(2).

<sup>126</sup> *Id.* at § 38570(b)(1).

<sup>127</sup> *Id.* at § 38570(b)(2).

extent feasible, direct public and private investment toward the most disadvantaged communities in California.<sup>128</sup>

In October 2008, ARB released its Scoping Plan of proposals for how to meet the Global Warming Solutions Act (AB 32)'s ambitious goals of cutting 15% of California's greenhouse gas emissions by 2020; this means reducing annual emissions of 14 tons of emitted carbon/capita in 2008 to around 10 tons/capita in 2020.<sup>129</sup> The ARB board adopted the Scoping Plan in December 2008 and ARB released the adopted Scoping Plan that same month.<sup>130</sup>

The Draft Plan<sup>131</sup> received comments from an Environmental Justice Advisory Committee ("EJAC"), convened specifically, as required by AB 32, to provide input on how to implement the Act without disproportionately impacting low-income communities.<sup>132</sup> The EJAC met twelve times between its formation in early 2007 and the initial publication of the Scoping Plan in October 2008.<sup>133</sup> The EJAC provided a set of recommendations to the ARB, most of which did not find their way into the Scoping Plan.<sup>134</sup> According to the Scoping Plan, in early 2009, the Climate Action Team, composed of members of 17 California state government agencies, is scheduled to issue its own complementary report that will include "a discussion of cross-cutting issues related to environmental justice concerns."<sup>135</sup>

The Scoping Plan suggests that the EJAC's comments were received the same month as the Plan was published, and thus "ARB will continue to work with The EJAC as AB 32 is implemented."<sup>136</sup> In other words, the current Plan is not well informed by EJAC's input and environmental justice concerns seem peripheral.<sup>137</sup>

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<sup>128</sup> *Id.* at § 38565.

<sup>129</sup> California Air Resources Board, *Climate Change Proposed Scoping Plan: a framework for Change ES-1* (Oct. 2008), available at <http://www.arb.ca.gov/cc/scopingplan/document/proposedscopingplan.htm> (last visited Sept. 7, 2009).

<sup>130</sup> California Air Resources Board, *Climate Change Scoping Plan: a framework for Change ES-1* (Dec. 2008) (hereinafter "Scoping Plan"), available at <http://www.arb.ca.gov/cc/scopingplan/document/scopingplandocument.htm> (last visited Aug. 7, 2009). The ARB adopted a slightly revised Scoping Plan in May of 2009; in June a coalition of environmental groups brought a lawsuit against ARB, alleging that the Scoping Plan violated AB 32, and the California Environmental Quality Act (complaint on file with authors).

<sup>131</sup> California Air Resources Board, *Climate Change Draft Scoping Plan: a framework for change*, June 2008 Discussion Draft, available at <http://www.arb.ca.gov/cc/scopingplan/document/draftscopingplan.htm> (last visited Sept. 7, 2009).

<sup>132</sup> CAL. HEALTH & SAFETY CODE § 38591 et. seq.

<sup>133</sup> Scoping Plan at 6.

<sup>134</sup> See *The EJAC's Recommendations for Implementing AB 32* *infra* for a detailed description of the EJAC's recommendations; see also, *Recommendations and Comments of the Environmental Justice Advisory Committee on the Implementation of the Global Warming Solution Act of 2006 (AB 32) on the Draft Scoping Plan*, letter to Mary Nichols, Oct. 1, 2008, available at [http://www.arb.ca.gov/cc/ejac/ejac\\_comments\\_final.pdf](http://www.arb.ca.gov/cc/ejac/ejac_comments_final.pdf) (last visited Aug. 17, 2009).

<sup>135</sup> Scoping Plan, *supra* note 114, at 6, 8.

<sup>136</sup> *Id.* at 6.

<sup>137</sup> EJAC letter, *supra* note 118, at 5.

The EJAC’s overarching recommendation was that California should establish a three-pronged approach for addressing greenhouse gases: (1) adopting standards and regulations; (2) providing incentives; and (3) putting a price on carbon via a carbon fee. The three pieces support one another and no single prong can work without equally robust support from the others.<sup>138</sup>

The Scoping Plan rejects the idea of a carbon fee, but applauds the need for “mutually supportive policies,”<sup>139</sup> particularly in implementing its proposed cap-and-trade program. ARB promises to examine “complementary measures” that will advance the goals of the cap-and-trade program.<sup>140</sup> The Plan discusses the *possibility* of using any revenues raised through carbon fees to fund EJ goals,<sup>141</sup> and in various places discusses further future consultations with the EJAC.<sup>142</sup> But the Plan is largely disengaged from EJ goals, at least when compared with the recommendations and analyses of the EJAC: See Box.

The EJAC’s Recommendations for Implementing AB 32 (tags: Climate Change, Redressing Environmental Racism)

As mentioned in the text, the Environmental Justice Advisory Committee (“EJAC”) sent the California Air Resources Board a set of recommendations for how best to implement the Global Warming Solutions Act of 2006 (AB 32) so as to honor the state’s commitments to environmental justice.<sup>143</sup> The EJAC notes that globally and in California, low-income communities of color are likely to bear disproportionate impacts of climate change, *e.g.* they are more likely to lack air conditioning or other means of cooling, work outside, live in low lying areas subject to flooding, lack access to health care, and suffer from asthma (which will be exacerbated by climate change).<sup>144</sup> The EJAC emphasizes that “low-income communities are being crushed under an impossible load of emissions from fossil fuel usage” and any sustainable plan must change how we make and use energy.<sup>145</sup>

As noted in the text, the EJAC recommends a three-pronged approach: (1) adopting standards and regulations; (2) providing incentives; and (3) instituting a carbon fee.<sup>146</sup>

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<sup>138</sup> Scoping Plan at 19, citing *Recommendations and Comments of the Environmental Justice Advisory Committee on the Implementation of the Global Warming Solution Act of 2006 (AB 32) on the Draft Scoping Plan*, *supra* note 118.

<sup>139</sup> Scoping Plan at 19.

<sup>140</sup> *Id.*

<sup>141</sup> *Id.* at 70.

<sup>142</sup> *Id.* at 87, 101, 106.

<sup>143</sup> *Recommendations and Comments of the Environmental Justice Advisory Committee on the Implementation of the Global Warming Solution Act of 2006 (AB 32) on the Draft Scoping Plan*, *supra* note 118.

<sup>144</sup> *Id.* at 8.

<sup>145</sup> *Id.* at 9.

<sup>146</sup> *Id.* at 1, 10-14.

The EJAC rejects the Scoping Plan’s proposed cap-and-trade emissions trading program.<sup>147</sup> The EJAC stresses that cap-and-trade schemes of this magnitude have never been successfully implemented.<sup>148</sup> Furthermore, the EJAC recommended that all clean energy infrastructure and actual reductions occur in California, to prevent environmental and economic co-benefits from leaving in-state communities.<sup>149</sup> The EJAC fears that linking California to a domestic or international carbon trading scheme “could result in leakage of California’s jobs, capital, and air quality benefits to other jurisdictions as California’s businesses choose to undertake reduction projects outside of California.”<sup>150</sup>

The EJAC also asserts that the public health and non-economic benefits and impacts of the Scoping Plan were not adequately analyzed or incorporated.<sup>151</sup> The EJAC presents a group of further recommendations currently not in the plan; in addition to the carbon fee, EJAC recommends: requiring local governments to meet carbon reduction targets, particularly through land-use decisions and required approved Carbon Reduction Plans;<sup>152</sup> increasing vehicle miles traveled (VMT) requirements for land use planning;<sup>153</sup> expanding the Renewable Portfolio Standard;<sup>154</sup> avoiding Carbon Capture and Storage projects whose technology is unproven and whose siting is likely to fall on already burdened EJ communities;<sup>155</sup> requiring greater water conservation;<sup>156</sup> committing to greener buildings, particularly in low-income communities;<sup>157</sup> requiring reductions of emissions from refineries, which were excluded from the Scoping Plan;<sup>158</sup> and imposing restrictions on agriculture, a sector that was completely omitted from the plan, and where pollution mitigation could benefit EJ communities.<sup>159</sup>

After the Board’s adoption of the Scoping Plan in December 2008, the EJAC reiterated its opposition to the proposed low carbon fuel standard (LCFS) as an early action measure.<sup>160</sup> The EJAC states that the proposed LCFS violates AB 32 because it “will disproportionately impact low-income and traditionally overburdened communities.”<sup>161</sup> The EJAC makes several specific contentions in its opposition to the LCFS:

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<sup>147</sup> *Id.* at 1, 2, 13.

<sup>148</sup> *Id.* at 18.

<sup>149</sup> *Id.* at 2, 17-18.

<sup>150</sup> *Id.* at 13.

<sup>151</sup> *Id.* at 1, 14-15.

<sup>152</sup> *Id.* at 23, 24.

<sup>153</sup> *Id.* at 25.

<sup>154</sup> *Id.* at 25-26.

<sup>155</sup> *Id.* at 27-30.

<sup>156</sup> *Id.* at 30-32.

<sup>157</sup> *Id.* at 32-34.

<sup>158</sup> *Id.* at 34-37.

<sup>159</sup> *Id.* at 38-42.

<sup>160</sup> California Air Resources Board, Global Warming Environmental Justice Advisory Committee, *Final EJAC Recommendations on Low Carbon Fuel Standard* (Apr. 21, 2009) available at [http://www.arb.ca.gov/cc/ejac/meetings/041309/ejac\\_lcfs\\_recs\\_4-21-09.pdf](http://www.arb.ca.gov/cc/ejac/meetings/041309/ejac_lcfs_recs_4-21-09.pdf) (last visited Aug. 9, 2009).

<sup>161</sup> *Id.* at 2.

1) [T]he siting of biorefineries will disproportionately impact communities already adversely impacted by air pollution. ARB staff did not address several potentially significant direct, localized, and cumulative impacts from biorefineries. 2) The siting of carbon capture & sequestration (CCS) technologies may disproportionately impact low-income or traditionally overburdened communities, while CCS incentivization may allow dirtier crudes into the market that will increase toxic and criteria pollutant emissions. We recommend that ARB thoroughly analyze the full lifecycle for each individual grade of feedstock including all dirtier crudes, and that the LCFS should not give any credit for use of CCS technologies. 3) ARB staff cannot claim that there will be no increase in toxic and criteria pollutant emissions as statutorily required because their analysis and testing is incomplete. We recommend that the ARB should delay adoption of the LCFS until 2015 or ARB staff can guarantee that there will be no disproportionate impacts on low-income communities and all analyses are complete. 4) Proposals to use municipal waste as a fuel threaten to increase toxics, criteria, and other pollutants. 5) A credit trading program will create disproportionate impacts in low-income and communities of color by allowing the export of LCFS credits to potentially create “hot-spots.” We recommend that the LCFS should be an entity-specific standard – not market based – with no default averaging of fuel values. 6) The promotion of biofuels made from food crops disproportionately impacts low-income communities and endangers food security. Therefore, we recommend that the ARB should exclude agrofuels from the LCFS – all food crops and corn-based ethanol in particular. Finally, in recognition that “maximizing technological feasibility” and “cost-effectiveness” requires guidance, specifications, and coordination, we recommend that the ARB should promote proven zero-carbon alternatives. If the ARB Board does approve of the LCFS regulation at this time, we recommend adding a minimum 20% GHG savings requirement for any fuel used to comply.<sup>162</sup>

Curbing California’s greenhouse gas emissions could potentially provide strong co-benefits to EJ communities, including greater green economic investment and less pollution. It remains to be seen to what extent the final AB 32 regulations will incorporate the EJAC’s or any other experts’ EJ concerns.

CALFED Bay-Delta Program (tags: Community Education, Diet, Redressing Environmental Racism, Water)

The California Bay-Delta Authority’s (“CALFED”) mission is “to improve California’s water supply and the ecological health of the San Francisco Bay/Sacramento

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<sup>162</sup> *Id.*

- San Joaquin Delta System.”<sup>163</sup> CALFED takes EJ 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.”<sup>164</sup> Through its two-tiered Environmental Justice Work Plan, CALFED seeks to develop long-term plans focused on EJ, while addressing short-term EJ goals.<sup>165</sup>

CALFED appointed an Environmental Justice Coordinator and formed a subcommittee to “work to achieve the goal of integration of environmental justice into all CALFED Program elements.”<sup>166</sup> CALFED’s website does not show any environmental justice subcommittee activity since 2005, however.<sup>167</sup>

CALFED’s Ecosystem Restoration Program (ERP) also uses EJ strategies. The ERP has provided financial support to public health agencies since 2000 to provide outreach and education activities about fish contamination to disadvantaged and at-risk communities.<sup>168</sup>

#### California Natural Resources Agency [tags: Community Participation]

The Natural Resources Agency’s mission includes restoring, protecting and managing the state’s natural resources “based on science, collaboration and respect for all the communities and interests involved.”<sup>169</sup> The agency’s policy directs all of its departments and boards to consider EJ in their decision-making process if their decisions have an impact on the environment, environmental laws, or policy.<sup>170</sup> Several of the agency’s boards and commissions, including the California Energy Commission, Delta Protection Commission, and State Lands Commission, have developed EJ policies.<sup>171</sup>

#### Air Contaminants - AB 1430 [tags: Air Pollution]

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<sup>163</sup> CALFED Bay-Delta Program, <http://calwater.ca.gov/calfed/about/index.html> (last visited Aug. 9, 2009).

<sup>164</sup> CALFED Bay-Delta Program, “Environmental Justice,” available at [http://calwater.ca.gov/calfed/Environmental\\_Justice.html](http://calwater.ca.gov/calfed/Environmental_Justice.html) (last visited Aug. 9, 2009).

<sup>165</sup> California Bay-Delta Authority, *Environmental Justice Fact Sheet*, available at [http://calwater.ca.gov/content/Documents/EJ%20Fact%20Sheet\\_061903\\_English.pdf](http://calwater.ca.gov/content/Documents/EJ%20Fact%20Sheet_061903_English.pdf) (last visited Aug. 9, 2009).

<sup>166</sup> *Id.*

<sup>167</sup> CALFED Bay-Delta Program, Archive EJS, [http://calwater.ca.gov/calfed/library/Archive\\_EJS.html](http://calwater.ca.gov/calfed/library/Archive_EJS.html) (last visited Aug. 9, 2009).

<sup>168</sup> CALFED Ecosystem Restoration Program, *Environmental Justice (EJ)*, <http://www.delta.dfg.ca.gov/erp/ej.asp> (last visited Aug. 10, 2009).

<sup>169</sup> California Natural Resources Agency, *About Us*, <http://resources.ca.gov/about.html> (last visited Aug. 10, 2009).

<sup>170</sup> California Resources Agency, *Environmental Justice Policy*, available at [http://www.resources.ca.gov/environmental\\_justice\\_policy\\_20031030.pdf](http://www.resources.ca.gov/environmental_justice_policy_20031030.pdf) (last visited Aug. 10, 2009).

<sup>171</sup> See [http://www.slc.ca.gov/Policy\\_Statements/Environmental\\_Justice\\_Home\\_Page.html](http://www.slc.ca.gov/Policy_Statements/Environmental_Justice_Home_Page.html), <http://www.delta.ca.gov/meetings/pdf/EnviroJusticePolicy.pdf>, and [http://www.energy.ca.gov/public\\_adviser/staff\\_env\\_justice\\_approach.html](http://www.energy.ca.gov/public_adviser/staff_env_justice_approach.html) (last visited Aug. 10, 2009).

AB 1430 (Goldberg, 2006) requires ARB’s EJAC to review each updated methodology to calculate the value of emission reduction credits from stationary, mobile, indirect and area-wide sources that ARB develops for use by local air pollution control districts and air quality management districts.<sup>172</sup>

Hydrogen Fuel Regulations (tags: Community Participation, Transportation)

No later than July 1, 2008 and after two public workshops, ARB is required to adopt regulations that accomplish a variety of statutory requirements related to the production and use of hydrogen fuels.<sup>173</sup> As part of this process, the Secretary for Environmental Protection shall convene the CalEPA EJAC at least once each year to solicit comments on the production and distribution of hydrogen fuel in the state.<sup>174</sup>

California Green Collar Jobs Act of 2008 - AB 3018<sup>175</sup> (tags: Community Education)

The California Green Collar Jobs Act of 2008 required the California Workforce Investment Board (CWIB) to establish a special committee called the “Green Collar Jobs Council” (“GCJC”). The GCJC is comprised of a mix of government officials, industry leaders, and labor organizers, and met as recently as July 2009.<sup>176</sup> Among other responsibilities, the GCJC shall “[p]rovide policy guidance for job training programs in the clean and green technology sectors to assist and prepare specific populations, such as at-risk youth, displaced workers, veterans, formerly incarcerated individuals, and others facing barriers to employment.”<sup>177</sup>

Local Government Organizations - SB 162

When considering a proposal for a change of organization or reorganization, this law requires a local agency formation commission to consider the extent to which the proposal will promote environmental justice.<sup>178</sup>

**Community Participation**

Environmental Justice Small Grant Program - AB 2312<sup>179</sup> [tags: Climate Change, Community Participation, Grants, Native Americans)

AB 2312 establishes an Environmental Justice Small Grant Program administered by CalEPA. The program provides grants of up to \$20,000 for eligible community-based

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<sup>172</sup> Codified as CAL. HEALTH & SAFETY CODE § 39607.5(c).

<sup>173</sup> *Id.* at §43869(a).

<sup>174</sup> *Id.* at §43869(f).

<sup>175</sup> Codified as CAL. UNEMP. INS. CODE §§ 15000 – 15003.

<sup>176</sup> See California Workforce Investment Board, *Green Collars Job Council*, [http://www.cwib.ca.gov/special\\_committees/green\\_collar\\_jobs\\_council](http://www.cwib.ca.gov/special_committees/green_collar_jobs_council) (last visited Sept. 6, 2009).

<sup>177</sup> CAL. UNEMP. INS. CODE § 15002(b)(3).

<sup>178</sup> CAL. GOV’T. CODE §56668(o).

<sup>179</sup> CAL. PUB. RES. CODE § 71116.

non-profit groups and federally recognized Tribal governments in areas adversely affected by environmental pollution and hazards and involved with EJ concerns. Grant applicants must demonstrate how their projects will achieve one or more of the 2009 program goals: (1) enhance meaningful public participation; (2) promote community capacity building; (3) collaborate with academia and/or other governmental agencies to document data related to exposures and health complaints; (4) promote community involvement in climate change emission reduction processes and programs; and (5) providing funds to continue and/or expand projects funded under the previous grant cycle that have proven effective with excellent progress and results.<sup>180</sup>

Landfill Siting - SB 1542<sup>181</sup> [tags: Community Participation, Land Use – siting, Native Americans, Redressing Environmental Racism)

SB 1542 ensures that state regulators include low-income and minority communities in the decision making for the siting of landfills. Specifically, the bill requires that the California Integrated Waste Management Board provide EJ 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 tribes, EJ organizations, and business.<sup>182</sup>

Solid Waste Facilities - AB 1497<sup>183</sup> (tags: Community Participation, Land Use – permitting, Outreach, Waste)

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.<sup>184</sup> Before granting a revised permit, the enforcement agency must hold at least one public hearing on the proposed permit decision, and notify property owners within 300 feet of the waste facility of the upcoming hearing.<sup>185</sup> 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.”<sup>186</sup>

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<sup>180</sup> California Environmental Protection Agency, *Small Grants and Funding Opportunities*, <http://www.calepa.ca.gov/EnvJustice/Funding/> (last visited Aug. 17, 2009).

<sup>181</sup> CAL. PUB. RES. CODE §§ 40912, 41701, and 71114. This law represented California's first attempt to incorporate minority and low-income populations in the landfill approval process.

<sup>182</sup> California Environmental Protection Agency, *Legislation: Environmental Justice Program*, <http://www.calepa.ca.gov/EnvJustice/Legislation/> (last visited Sept. 7, 2009).

<sup>183</sup> The relevant provisions are codified at CAL. PUB. RES. CODE § 44004.

<sup>184</sup> *Id.* at § 44004(a).

<sup>185</sup> *Id.* at § 44004(h)(1)(A).

<sup>186</sup> *Id.* at § 44004(h)(1)(C).

Hazardous Waste Facility Permit Requirements (tags: Community Participation, Land Use – permitting, Land Use – siting, Outreach, Waste)

California has created enhanced public participation mechanisms in its hazardous waste permit regime.<sup>187</sup> 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.”<sup>188</sup> 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.<sup>189</sup> 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.”<sup>190</sup> When an appeal is filed, a special appeal board is convened and an administrative review of the local agency findings ensues.<sup>191</sup>

California Air Resources Board (tags: Air Pollution, Community Education, Community Participation, Compliance and Enforcement, Land Use – siting, Outreach, Redressing Environmental Racism, Study)

In 2001, the California Air Resources Board (“ARB”) published its *Environmental Justice Policies and Actions* report, according to which it seeks to “integrate environmental justice into all of [its] programs, policies, and regulations.”<sup>192</sup> ARB works with local air quality management districts to improve air quality through the dissemination of information and promotion of pollution-control programs through improved siting, mitigation, and source control. ARB seeks to increase community engagement through improved access to information for low-income and minority communities so that community members can take “a more active role in decisions affecting air pollution in their communities.”<sup>193</sup> Greater outreach and the solicitation of community input will be promoted by translation services and community meetings.<sup>194</sup> With the local air districts, ARB will work “to strengthen enforcement activities at the community level across the State.”<sup>195</sup> Further support is given to the “research and data collection needed to reduce cumulative emissions, exposure, and health risks, as appropriate, in all communities, especially low-income and minority communities.”<sup>196</sup>

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<sup>187</sup> CAL. HEALTH & SAFETY CODE § 25199 *et seq.*

<sup>188</sup> *Id.* at § 25199(c).

<sup>189</sup> *Id.* at § 25199.7.

<sup>190</sup> *Id.* at § 25199.9.

<sup>191</sup> *Id.*

<sup>192</sup> California Environmental Protection Agency, California Air Resources Board, *Policies and Actions for Environmental Justice* (2001), at 3, available at <http://www.arb.ca.gov/ch/programs/ej/ejpolicies.pdf> (last visited Aug. 9, 2009).

<sup>193</sup> *Id.* at 2.

<sup>194</sup> *Id.* at 4.

<sup>195</sup> *Id.* at 8.

<sup>196</sup> *Id.* at 11.

CalEPA's Public Participation Programs (tags: Community Education, Community Participation)

CalEPA has a number of opportunities for public participation including public forums, an online discussion forum that provides for on-going feedback and dialogue, and a Listserv that emails participants with updates on EJ Action Plan implementation, announcements of upcoming EJ activities and public input opportunities, and new information on the CalEPA environmental justice website.<sup>197</sup>

San Diego County Regional Airport Authority Reform Act of 2007 - SB 10 (tags: Community Participation, Land Use – general plans, Smart Growth, Transportation)

The San Diego County Regional Airport Authority Reform Act of 2007 makes the San Diego County Regional Airport Authority (“SDCRAA”) responsible for preparing, adopting, and amending an airport land use compatibility plan for each airport in San Diego County and requires it to “engage in a public collaborative planning process when preparing and updating an airport land use compatibility plan.”<sup>198</sup> This Act also restructures the SDCRAA to expand the Audit Committee from four to seven, to include three voting members of the public. These three members of the public shall be selected from seven categories of persons; one of these seven categories includes a person with experience in EJ relating to land use.<sup>199</sup> SB 1510 (Kehoe, 2008) amended the Act to clarify several provisions, but did not modify these requirements.

## **Equitable Development**

Traditional Tribal Cultural Places - SB 18<sup>200</sup> (tags: Community Education, Community Participation, Land Use – general plans, Native Americans, Open Space/Recreation, Redressing Environmental Racism)

SB 18 (2004) requires that cities and counties contact and consult with California Native American tribes during the local planning process prior to amending or adopting a general plan for the purpose of preserving Native American prehistoric, archaeological, cultural, spiritual, and ceremonial places, features, and objects.<sup>201</sup> It includes provisions for the protection of California Native American historical, cultural, and sacred sites within the definition of “local open-space plan” as used in the preparation of the open-space element of a city and county general plan.<sup>202</sup> It also requires that cities and counties that designate or propose to designate such sites as open space consult with California Native American tribes to determine the level of confidentiality required to

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<sup>197</sup> California Environmental Protection Agency, *Public Participation in Cal/EPA's EJ Program*, <http://www.calepa.ca.gov/EnvJustice/Participation/> (last visited Aug. 8, 2009).

<sup>198</sup> CAL. PUBLIC UTILITIES CODE § 21670.3.

<sup>199</sup> *Id.* at § 170018.

<sup>200</sup> The relevant provisions are codified at CAL. GOV'T CODE §§ 65352.3, 65560, and 65562.5.

<sup>201</sup> *Id.* at § 65352.3.

<sup>202</sup> *Id.* at § 65560.

protect the identity, location, character and use of the place, feature or object.<sup>203</sup> OPR's website provides consultation guidelines, background information, and training session information.<sup>204</sup>

Other state law protections are afforded to Native American sites as well.<sup>205</sup> These include the ability for the Attorney General to maintain an action for equitable relief against any person, company, state or local government agency, and other organizations for the protection of state natural resources, including historic sites, from pollution.<sup>206</sup> Also, all state and local agencies are required to provide the state Native American Heritage Commission ("NAHC") with copies of all environmental impact reports relating to property the NAHC has identified as being of special religious significance to Native Americans or is reasonably foreseeable as being such property.<sup>207</sup>

Transportation Planning - SB 375 (tags: Air Pollution, Climate Change, Community Participation, Cumulative/Secondary Effects, Land Use – general plans, Housing, Smart Growth, Transportation)

SB 375 (Steinberg, 2007) requires that the 18 metropolitan planning regions in California demonstrate that their planning scenarios will result in carbon emission reductions.<sup>208</sup> It builds on the California Global Warming Solutions Act of 2006 (AB 32) by stipulating that curbing sprawl will be a mandatory part of curbing greenhouse gas emissions.

The regional transportation plans must include policy elements; those for plans of policy agencies serving areas with populations greater than 200,000 may quantify a set of indicators that include "[m]easures of equity and accessibility, including, but not limited to, percentage of the population served by frequent and reliable public transit, with a breakdown by income bracket, and percentage of all jobs accessible by frequent and reliable public transit service, with a breakdown by income bracket."<sup>209</sup>

Each of the 18 planning regions must prepare a 'Sustainable Community Strategy' ("SCS") that will reduce the amount of vehicle miles traveled (VMT) and thus reduce tailpipe emissions.<sup>210</sup> Currently cars and light trucks contribute 30% of emissions

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<sup>203</sup> *Id.* at § 65562.5.

<sup>204</sup> State of California Governor's Office of Planning and Research, *Local and Governmental Intertribal Consultation*, <http://www.opr.ca.gov/index.php?a=programs/tribal.html> (last visited Aug. 7, 2009).

<sup>205</sup> Also, CEQA requires that when a public agency proposes or approves a discretionary project, the lead agency must determine whether an environmental impact report (EIR) is required. When the lead agency determines whether an EIR is required, it must also determine whether the project may have a significant effect on unique archeological resources or substantial adverse change in an historical resource and, if so, the EIR must address the issue of those resources. *See* CAL. PUBLIC RESOURCES CODE §§21080(a), 21080.1, 21083.2, and 21084.1.

<sup>206</sup> CAL. GOV'T CODE §§ 12605, 12607.

<sup>207</sup> CAL. PUBLIC RESOURCE CODE § 5097.95.

<sup>208</sup> S.B. 375, 2007-2008 Sess. (Cal. 2007), available at [http://www.leginfo.ca.gov/pub/07-08/bill/sen/sb\\_0351-0400/sb\\_375\\_bill\\_20080822\\_amended\\_asm\\_v87.html](http://www.leginfo.ca.gov/pub/07-08/bill/sen/sb_0351-0400/sb_375_bill_20080822_amended_asm_v87.html) (last visited Sept. 7, 2009).

<sup>209</sup> CAL. GOVT CODE § 65080(b)(1)(E).

<sup>210</sup> *Id.* at § 65080(a).

in California, the largest source of emissions in the state.<sup>211</sup> The SCS must use up-to-date planning and scientific resources to forecast accurate development and quantify the amount of greenhouse gas emissions the plan will achieve.<sup>212</sup> SB 375 provides incentives for creating denser, walk/bike/public transit friendly communities, either new or revitalized. It is important to remember that attempts to curb greenhouse gases will also curb emissions of harmful pollutants (*e.g.*, nitrous oxide and ozone) that cause health problems in EJ communities.

SB 375 provides more streamlined reviews under CEQA if projects are built according to the guidelines of the Sustainable Community Strategy.<sup>213</sup> Such proposed projects need not discuss cumulative impacts from vehicle travel on global warming, or general growth-inducing impacts. Transportation Priority Projects that fall within certain density, affordability, public transit, energy efficiency, and water conservation criteria may be exempt from the CEQA process. Streamlining the CEQA process can streamline urban redevelopment projects that meet the needs of low-income communities. In addition, SB 375 extends “anti-NIMBY” law protection for housing development projects that allot at least 49% of units to lower-income households.<sup>214</sup>

The Bill requires that the state must establish a Regional Targets Advisory Committee to recommend factors and methodologies for setting greenhouse gas reduction targets. Representatives from “environmental justice organizations” must be included.<sup>215</sup>

Some outside observers believe that very few projects will benefit from the streamlined CEQA process because of the number of unfeasible criteria attached, worry that federal transportation funding will actually be shunted to rural areas or out of state, and fear that the anti-NIMBY policies may suffer from litigation pushback because streamlined projects may result in more opposing lawsuits.<sup>216</sup> Furthermore, it is possible that more dense inner city communities could exacerbate overcrowding or pollution in inner city neighborhoods. Thus, while SB 375 has the potential to create more affordable housing and improve urban air quality, its success in achieving these goals will bear watching in future years as the law is implemented.

California Department of Transportation (tags: Community Participation, Grants Redressing Environmental Racism, Transportation)

The California Department of Transportation (“CalTrans”) has an Environmental Justice and Title VI Program, whose responsibilities include promoting “policies and

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<sup>211</sup> SB 375 § 1(a), *supra* note 192.

<sup>212</sup> CAL. GOV'T CODE § 65080(b)(2)(F).

<sup>213</sup> *Id.* at § 65080(b)(2)(1).

<sup>214</sup> *Id.* at § 65583(g). “Anti-NIMBY” laws prohibit local governments from disapproving certain kinds of projects, such as affordable housing projects, subject to conditions, *e.g.* conflict with general plans.

<sup>215</sup> *Id.* at § 65080(b)(1)(F)(2)(A)(i).

<sup>216</sup> See Jennifer Hernandez & Christina M. Wolf, *Governor Signs Senate Bill 375, Designed to Connect Regional Planning to Reduction of Greenhouse Gas Emissions*, Holland + Knight, Nov. 25 2008, available at <http://www.hklaw.com/id24660/PublicationId2494/ReturnId31/contentid53162/> (last visited Aug. 17, 2009).

strategies to enhance the participation of low income and minority communities in transportation decision making,” managing its EJ grant program (see below), and ensuring that transportation planning in is compliance with the Civil Rights Act of 1964.<sup>217</sup> 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 Environmental Justice and Context-Sensitive Planning.”<sup>218</sup> The Guide is the first document of its kind to address EJ in California transportation planning.

CalTrans also provides grants to promote EJ context-sensitive planning. CalTrans has available \$3 million in grants and a maximum of \$250,000 per application, per year, budget permitting. These grants are used to “demonstrate different approaches to community involvement, land use transportation strategies, and planning activities in low-income and minority communities.”<sup>219</sup>

In addition, the Division of Environmental Analysis within CalTrans provides a Standard Environmental Reference (SER) tool to provide information about statutory and regulatory requirements for environmental documents and technical studies. This reference applies to all projects developed under the auspices of CalTrans, as well as to local road and highway projects funded or approved by the Federal Highway Administration.<sup>220</sup> The Environmental Handbook document within the SER tool provides an online chapter entitled “Environmental Justice,” which includes an overview of how EJ principles are incorporated into the environmental process and information about laws, regulations, and guidance pertaining to environmental justice.<sup>221</sup>

Power Plant Siting (tags: Community Participation, Land Use – siting, Mapping, Outreach, Power Plants, Redressing Environmental Racism)

The California Energy Commission provides EJ information as part of its CEQA analysis of applications for siting power plants and other facilities. The Energy Commission’s approach includes public outreach efforts to inform communities, including non-English speaking peoples; analysis of demographics to determine the percentage of minority and low-income residents in the potentially affected area; and “assessing the potential environmental and health impacts of the proposed project.”<sup>222</sup>

### Case Law

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<sup>217</sup> California Dep’t of Transportation, *Environmental Justice and Title VI Program*, <http://www.dot.ca.gov/hq/tpp/offices/epar/ejandtitlevi.html> (last visited Aug. 10, 2009).

<sup>218</sup> *Id.*

<sup>219</sup> *Id.*

<sup>220</sup> California Dep’t of Transportation Standard Environmental Reference, *Introduction*, available at <http://www.dot.ca.gov/ser/intro.htm> (last visited Aug. 10, 2009).

<sup>221</sup> California Dep’t of Transportation, *Environmental Handbook, Volume I: Guidance for Compliance*, available at <http://www.dot.ca.gov/ser/vol1/vol1.htm> (last visited Aug. 10, 2009).

<sup>222</sup> California Energy Commission, *Environmental Justice Frequently Asked Questions*, available at [http://www.energy.ca.gov/public\\_adviser/environmental\\_justice\\_faq.html](http://www.energy.ca.gov/public_adviser/environmental_justice_faq.html) (last visited Aug. 10, 2009).

*Bakersfield Citizens for Local Control v. Bakersfield*<sup>223</sup> (2004) (tags: Cumulative/Secondary Effects, Equitable Development)

A community group challenged the development of two large retail shopping centers, with a combined 1.1 million square feet of retail space, less than four miles apart. The plaintiffs alleged defects in the environmental impact reports (“EIRs”) required by the CEQA for all projects with direct and indirect “significant effects” on the environment. Specifically, plaintiffs argued that the EIRs failed to discuss whether the shopping centers could lead to urban decay, and were inadequate, as a matter of California law.

The court noted that ordinarily “economic and social effects of proposed projects are outside of CEQA’s purview.” Regarding the development of the two shopping centers, however, the court was persuaded that the economic and social effects individually and collectively caused by the proposed shopping center could result in significant, physical effects of urban decay or deterioration. “[I]f the forecasted economic or social effects of a proposed project directly or indirectly will lead to adverse physical changes in the environment, then CEQA requires disclosure and analysis of these resulting physical impacts.”<sup>224</sup>

California Land Reuse and Revitalization Act of 2004<sup>225</sup> (tags: Brownfields Redevelopment, Community Participation, Redressing Environmental Racism)

The legislature enacted the California Land Reuse and Revitalization Act of 2004 to “encourage the development and redevelopment of unused or underused properties in urban areas” while relieving “innocent owners, bona fide prospective purchasers, and owners of property adjacent to contaminated sites of liabilities and responsibilities that should be borne by those who caused or contributed to the contamination.”<sup>226</sup> Under certain conditions, these parties, when seeking immunity from liability for response costs or damage claims from sites in an urban infill area, must provide a response plan to the Department of Toxic Substances Control, the State Water Resources Control Board, or a California regional water quality control board, as appropriate. The response plan must provide for an opportunity for the public to participate in decisions regarding the response action; methods shall include public notice in factsheet format of the proposed response plan in English and any other language commonly spoken in the area of the site.<sup>227</sup> Before taking action on the response plan, the agency shall place a notice in a local, community-based newspaper.<sup>228</sup> The agency must consider EJ issues for the communities most impacted, including low income and racial minority populations.<sup>229</sup>

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<sup>223</sup> *Bakersfield Citizens for Local Control v. Bakersfield*, 124 Cal. App. 4th 1184 (Ct. App. Ca. 2004).

<sup>224</sup> *Id.* at 1205 (citations omitted).

<sup>225</sup> *Codified as* CAL. HEALTH & SAFETY CODE § 25395.60 *et seq.*

<sup>226</sup> *Id.* at § 25395.61.

<sup>227</sup> *Id.* at § 25395.96(a).

<sup>228</sup> *Id.*

<sup>229</sup> *Id.* at § 25395.96(a)(1)(E).

Integrated Regional Water Management Planning Act<sup>230</sup> (tags: Community Education, Community Participation, Grants, Native Americans, Redressing Environmental Racism, Water)

California law makes available \$1 billion to the state Department of Water Resources to provide grants for projects that help local water agencies meet long-term water needs, including safe drinking water and protection of water quality and the environment. To be eligible for a grant, a project must implement an integrated regional water management plan (“plan”).<sup>231</sup> The Integrated Regional Water Management Planning Act defines an “integrated regional water management plan” as a comprehensive plan that “describes the major water-related objectives and conflicts within a region, considers a broad variety of water management strategies, identifies the appropriate mix of water demand and supply management alternatives, water quality protections, and environmental stewardship actions to provide long-term, reliable, and high-quality water supply and protect the environment, and identifies disadvantaged communities in the region and takes the water-related needs of those communities into consideration.”<sup>232</sup> The Act requires that when regional water management groups prepare and adopt integrated regional water management plans in accordance with this law, the plans must address the “identification and consideration of the water-related needs of disadvantaged communities in the area within the boundaries of the plan.”<sup>233</sup>

The state Department of Water Resources is directed to develop guidelines for project solicitation and evaluation for the funds available through these grants; these guidelines are intended to enable broad and diverse participation in the development and refinement of the integrated regional water management plans.”<sup>234</sup> Toward this end, the department is required to hold two public meetings to consider public comments before finalizing the guidelines and, to the extent feasible, state agencies shall provide outreach to disadvantaged communities to promote their participation in the meetings.<sup>235</sup>

The guidelines must require that the integrated regional water management plans identify and consider the water-related needs of disadvantaged communities within the plan’s boundaries.<sup>236</sup> They also must require that the development and implementation of the plans include a public process that provides outreach to local stakeholders and an opportunity for them to participate in plan development and implementation. Among other potentially applicable stakeholders, outreach and the opportunity to participate in the plan development and implementation process must be provided to Native American tribes that have lands within the plan’s region and disadvantaged community members and representatives, including EJ organizations.<sup>237</sup> Additionally, the guidelines must require that the integrated regional water management plans are developed in a

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<sup>230</sup> *Codified as* CAL. WATER CODE §§ 10530 – 10550.

<sup>231</sup> CAL. PUBLIC RESOURCES CODE § 75026(a).

<sup>232</sup> CAL. WATER CODE at § 10534.

<sup>233</sup> *Id.* at § 10540(c)(7).

<sup>234</sup> *Id.* at § 10541(a).

<sup>235</sup> *Id.* at § 10541(b).

<sup>236</sup> *Id.* at § 10541(e)(6).

<sup>237</sup> *Id.* at § 10541(g).

collaborative process that makes public (1) how decisions are made in consultation with these stakeholders and (2) the manner in which these stakeholders have been or will be engaged in the decision-making process.<sup>238</sup>

Regional water management groups that propose to prepare integrated regional water management plans must publish notices of those intentions and make available to the public the documents that describe the process for stakeholder participation. Once an integrated regional water management plan is completed, the regional water management group must publish a notice that it intends to adopt the plan; when it adopts the plan, it must be during a public meeting of its governing board.<sup>239</sup>

In addition to being eligible for the project funding noted above, integrated regional water management plans prepared in accordance with the Integrated Regional Water Management Planning Act are eligible for “any funding authorized on or after January 1, 2009, that is allocated specifically for implementation of integrated regional water management.”<sup>240</sup>

### **Improving Public Health**

Diesel Emission Reduction Programs - AB 1390<sup>241</sup> (tags: Air Pollution, Grants, Transportation)

Extending until January 1, 2007, AB 1390 was enacted in the 2001-02 State Budget and directed air districts with populations of 1,000,000 or more to target at least 50 percent of the \$48 million General Fund appropriated for three diesel emission reduction programs to EJ communities. The law exempted small air districts from this requirement, but encouraged them to apply similar funding approaches. It also made federal agencies eligible to receive grants to purchase Zero Emission Vehicles that would be located in low income and minority communities. This law was amended in 2006 to delete the requirement that it be repealed in 2007 and to update references to the source of appropriations.<sup>242</sup>

Environmental Indicators - AB 1360<sup>243</sup> [(tags: Public Health, Redressing Environmental Racism)

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.”<sup>244</sup> AB 1360 requires OEHHA to develop and maintain the environmental indicator system to provide a means for evaluating the

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<sup>238</sup> *Id.* at § 10541(h).

<sup>239</sup> *Id.* at § 10543.

<sup>240</sup> *Id.* at § 10546.

<sup>241</sup> CAL. HEALTH & SAFETY CODE §§ 43023.5, 44260.

<sup>242</sup> A.B. 2843, 2005-2006 Sess. (Cal. 2006), available at [http://www.leginfo.ca.gov/pub/05-06/bill/asm/ab\\_2801-2850/ab\\_2843\\_bill\\_20060929\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/05-06/bill/asm/ab_2801-2850/ab_2843_bill_20060929_chaptered.pdf) (last visited Sept. 7, 2009).

<sup>243</sup> CAL. PUB. RES. CODE §§ 71080-02.

<sup>244</sup> *Id.* at § 71080(b).

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.”<sup>245</sup>

California Air Resources Board (tags: Air Pollution, Community Participation, Land Use – siting, Outreach, Study)

In April 2005, ARB issued the *Air Quality and Land Use Handbook: A Community Health Perspective*.<sup>246</sup> The Handbook advises air quality districts and local land use planning organizations on how to reduce community exposure to air pollution through siting. The document includes public health information and recommendations on siting sensitive land uses.<sup>247</sup> Specifically, the report sets out guidelines for the size of buffer zones around pollution sources, in order to protect sensitive land uses. In addition, ARB suggests tools to improve air quality assessments, and encourages greater community outreach to increase community involvement in the land use planning process.<sup>248</sup>

Regulation of Lead Contamination in Candy (tags: Children’s Issues, Diet, Public Health)

The Health and Safety Code requires the State Department of Health Services to regulate adulterated candy, specifically including lead contamination in excess of naturally occurring levels.<sup>249</sup> It also requires the department to convene an interagency collaborative to serve as an oversight committee; this committee may confer with EJ organizations.<sup>250</sup>

Biomonitoring<sup>251</sup> (tags: Community Education, Community Participation, Outreach, Public Health)

The Health and Safety Code requires the Department of Public Health, in collaboration with CalEPA, to establish the California Environmental Contaminant Monitoring Program to monitor the presence and concentrations of specified chemicals in Californians. Participants must reflect the “age, economic, racial and ethnic composition of the state.”<sup>252</sup> Program materials shall be culturally appropriate and translated as needed and program guidelines and model protocols shall “emphasize all aspects of the program in a culturally sensitive manner.”<sup>253</sup> Program administrators are required to

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<sup>245</sup> *Id.* at § 71081(a)(2).

<sup>246</sup> California Environmental Protection Agency, California Air Resources Board, *Air Quality and Land Use Handbook: A Community Health Perspective* (2005) available at <http://www.arb.ca.gov/ch/handbook.pdf> (last visited Aug. 17, 2009).

<sup>247</sup> *Id.* at 1.

<sup>248</sup> *Id.* at 53-54, 58-60.

<sup>249</sup> CAL. HEALTH AND SAFETY CODE § 110552.

<sup>250</sup> *Id.* at § 110552(h) - (i).

<sup>251</sup> *Id.* at § 105440-105459.

<sup>252</sup> *Id.* at § 105443(a).

<sup>253</sup> *Id.* at §§ 105443(c), 105444(a)(3).

receive training in how to administer the program in “an ethical, culturally sensitive, participatory, and community-based manner.”<sup>254</sup> The department must provide information about the findings to participants, communities, and the general public. The biomonitoring results cannot be used to discriminate against individuals or communities.

The department and CalEPA are required to establish a Scientific Guidance Panel to assist them with the implementation of the Program. The program shall use the principles of CalEPA’s Environmental Justice Strategy and Environmental Justice Action Plan as appropriate to ensure the panel’s activities and program implementation provide opportunities for public participation and community capacity building. The program shall develop a strategy and plan to integrate public participation in the program.

Healthy Heart and Lung Act - AB 233<sup>255</sup> (tags: Air Pollution, Children’s Issues, Community Education, Compliance and Enforcement, Outreach, Transportation)

The Healthy Heart and Lung Act requires ARB to review its enforcement of specified diesel emission regulations and anticipated enforcement needs to implement the Diesel Risk Reduction Plan and Emission Reduction Plan for Ports and Goods Movement every three years.<sup>256</sup> It also requires ARB every three years to develop a strategic plan for fair enforcement of these regulations. The strategic plan must include an “education and outreach component to increase public awareness and understanding of the diesel regulations.”<sup>257</sup> This education and outreach component must include signage in multiple languages where appropriate in locations with significant numbers of idling trucks and engines, especially near schools and residential areas.<sup>258</sup>

## **Pollution Cleanup**

Hazardous Waste Cleanup - SB 32<sup>259</sup> (tags: Community Education, Outreach, Toxic Waste Cleanup)

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 EJ implications.<sup>260</sup> Also, a local agency that proposes a remedial action must inform the community of its intended actions by several methods, including publishing a notice in a

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<sup>254</sup> *Id.* at § 105443(a).

<sup>255</sup> *Id.* at § 43011.5.

<sup>256</sup> *Id.* at § 43011.5(a).

<sup>257</sup> *Id.* at § 43011.5(c)(3).

<sup>258</sup> *Id.*

<sup>259</sup> *Id.* at §§ 57008, 57009, and 57010 and §§ 25401 *et seq.*

<sup>260</sup> *Id.* at § 57008(e).

newspaper of general circulation in the area of the property in English and in any other language spoken by a significant number of residents in the area of the property as identified by specified methods.<sup>261</sup>

### Case Law

*In re Spirito Family Trust*<sup>262</sup> (2005) (tags: Compliance and Enforcement, Toxic Waste Cleanup)

The California Department of Toxic Substances Control (DTSC) issued a determination of violation and imminent and substantial Endangerment against the landowner of an abandoned plating facility in Los Angeles. The corporation formerly doing business at the site had left drums, tanks and open baths of hazardous substances, including chromium, copper, cyanide, chromic acid and nickel, in a mixed residential/light industrial neighborhood of 6500 residents. DTSC ordered the landowner to cover all containers and tanks known to contain hazardous substances and as well as to create a workplan for the removal and disposal of the hazardous substances. Upon DTSC's acceptance of the workplan, implementation was to begin within ten days.

Methamphetamine Contaminated Property Cleanup Act of 2005<sup>263</sup> (tags: Community Education, Toxic Waste Cleanup)

The Methamphetamine Contaminated Property Cleanup Act of 2005 addresses the remediation of property contaminated with methamphetamine. It requires the Department of Toxic Substances Control to conduct two public workshops to discuss actions needed to further implement the goals of the act. Workshops may include a discussion of the "results of the Illegal Drug Lab Risk Reduction Project conducted by CalEPA pursuant to its adopted environmental justice action plan."<sup>264</sup>

California Alternative and Renewable Fuel, Vehicle Technology, Clean Air, and Carbon Reduction Act of 2007 - AB 118<sup>265</sup> (tags: Air Pollution, Climate Change, Community Participation, Grants, Redressing Environmental Racism, Transportation)

The California Alternative and Renewable Fuel, Vehicle Technology, Clean Air, and Carbon Reduction Act of 2007 created the Alternative and Renewable Fuel and Vehicle Technology Program. This program provides loans, grants, and other funding measures to "develop and deploy innovative technologies that transform California's fuel and vehicle types to help attain the state's climate change policies."<sup>266</sup> The Act also created the Alternative and Renewable Fuel and Vehicle Technology Fund. In the bill that enacted this law, the legislature declared that "[t]his act will be implemented in a

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<sup>261</sup> *Id.* at § 25401.8.

<sup>262</sup> *In re Spirito Family Trust* 2005 Cal. ENV LEXIS 71 (Cal. Dep't Toxic Substances Control Oct. 7, 2005).

<sup>263</sup> CAL. HEALTH AND SAFETY CODE §§ 25400.10 – 25400.47.

<sup>264</sup> *Id.* at § 25400.16(d).

<sup>265</sup> Codified in CAL. HEALTH & SAFETY CODE §§ 44270 – 44274.7.

<sup>266</sup> *Id.* at 44272(a).

manner to ensure the fair treatment of people of all races, cultures, and income levels, including minority populations and low-income populations of the state.”<sup>267</sup> Under this Act, the State Energy Resources Conservation and Development Commission must create an advisory body to help develop an investment plan to determine priorities and opportunities for the program. The advisory body shall include representatives of community-based justice and public health organizations.<sup>268</sup>

San Joaquin Valley Clean Air Attainment Program – AB 2522 (Arambula, 2008)<sup>269</sup> (tags: Air Pollution, Transportation)

In enacting this law, the Legislature found and declared that residents of the San Joaquin Valley suffer some of the worst air quality in the world.<sup>270</sup> To provide funding for air pollution control programs, the San Joaquin Valley Clean Air Attainment Program authorizes the San Joaquin Valley Unified Air Pollution Control District (“SJVUAPCD”) to increase fees on motor vehicles under specified conditions for incentive-based programs to achieve motor vehicle emissions reductions.<sup>271</sup> Of the fees adopted under this law, at least \$10 million must be used to mitigate air pollution impacts in disproportionately impacted EJ communities in the San Joaquin Valley. The SJVUAPCD board is directed to “convene an environmental justice advisory committee, selected from a list given to the board by environmental justice groups from the San Joaquin Valley, to recommend the neighborhoods in the district that constitute environmental justice communities, and how to expend funds within these communities.”<sup>272</sup>

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<sup>267</sup> A.B. 118 § 1(j), 2007-2008 Sess. (Cal. 2007) as chaptered.

<sup>268</sup> CAL. HEALTH & SAFETY CODE §§ 44272.5(a) - (b).

<sup>269</sup> *Codified as* CAL. HEALTH & SAFETY CODE § 40610 – 40613.

<sup>270</sup> *Id.* at § 40610(a).

<sup>271</sup> *Id.* at § 40612(a).

<sup>272</sup> *Id.* at § 40612(b).

## **COLORADO**

(tags: Community Education, Community Participation, Compliance and Enforcement, Native American, Outreach, Pollution cleanup, Public Health, Redressing Environmental Racism)

### **General Environmental Justice Activities**

Rather than create a separate environmental justice program, Colorado's Department of Public Health and Environment ("CDPHE") works to incorporate awareness of EJ issues into existing environmental programs at all levels. CDPHE works to increase sensitivity at the staff level on the issue of disproportionate exposure of minority and low-income communities to environmental risks so that it can better protect these communities from adverse public health and environmental impacts.<sup>273</sup>

**Community Participation** (tags: Community Participation, Outreach, Redressing Environmental Racism)

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.<sup>274</sup> These beneficial projects are formally known as Supplemental Environmental Projects ("SEPs") (*see* "Pollution Cleanup" section *infra*). In determining the parameters of a SEP, CDPHE inquires into the environmental priorities of the community or communities involved. CDPHE seeks out community members to facilitate public participation in their programs through outreach efforts such as newspaper notices and networking. SEPs promote environmental justice in two ways: (1) by building capacity in affected communities; and (2) by addressing historic patterns of environmental unfairness with new resources.<sup>275</sup>

Additionally, CDPHE's Office of Environmental Integration and Sustainability works on EJ issues through a variety of mechanisms, including supporting open and transparent stakeholder meetings, and encouraging the participation of broad stakeholder groups in the development of environmental laws, regulations, and policies.<sup>276</sup>

**Improving Public Health** (tags: Community Participation, Outreach, Public Health, Redressing Environmental Racism)

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<sup>273</sup> Colorado Dep't of Public Health and Environment and U.S. EPA Region 8, *Colorado Environmental Performance Partnership Agreement - FY2009-2010*, at 25, available at <http://www.cdphe.state.co.us/oe/ceppa/fy09PPAfinal.pdf>. (last visited Sept. 7, 2009).

<sup>274</sup> *Colorado Department of Public Health and Environment Final Agency-Wide Supplemental Environmental Projects Policy, Revised 5/5/08* ["CDPHE SEP Policy"], at 2, available at <http://www.cdphe.state.co.us/wq/enforcement/SEP-Policy.pdf> (last visited Mar. 3, 2009).

<sup>275</sup> *Id.*

<sup>276</sup> *Colorado Environmental Performance Partnership Agreement - FY2009-2010*, *supra* note 257, at 25.

## Strategic Plan

CDPHE has created a Strategic Plan that identifies six objectives to help it achieve its mission of protecting and improving the health of Colorado's people and the quality of its environment.<sup>277</sup> Objective 6 ("Eliminating health inequities in Colorado") has been identified as a potential EJ area.<sup>278</sup> CDPHE's Office of Health Disparities currently is drafting, with multiple internal and external stakeholders, a strategic plan to further address Objective 6. Among other things, this plan contains goals to establish policies and procedures which ensure meaningful minority community involvement and participation in all planning, monitoring and evaluation of CDPHE activities. Further, this plan includes goals of improving access to health and environmental data for racial and ethnic populations, and ensuring that all Limited English Proficiency individuals receive the same quality health services as those who are proficient in English.

**Pollution Cleanup** (tags: Community Education, Pollution Cleanup, Public Health, Redressing Environmental Racism)

## Supplemental Environmental Projects

The SEP program allows environmental violators an opportunity to compensate the community by addressing specific environmental concerns.<sup>279</sup> SEPs must not involve any action required by local, state or federal law, and approval of SEPs is at the discretion of the CDPHE.<sup>280</sup> The six categories of approvable SEPs are: (1) pollution prevention projects; (2) pollution reduction projects; (3) environmental restoration and protection projects; (4) environmental assessments projects; (5) environmental education and training projects; and (6) public health projects.<sup>281</sup> In addition, violators may propose other types of projects "as long as those projects meet all additional requirements of a SEP" as described in CDPHE's SEP policy.<sup>282</sup>

Upon approval of a SEP, the extent to which a SEP will mitigate a penalty is determined by multiple factors. Significantly, one factor accounts for EJ 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."<sup>283</sup> CDPHE accords these projects a considerable degree of penalty reduction.

CDPHE has approved a range of SEPs. For example, a SEP in Commerce City, which is heavily impacted by asthma, led to the distribution of inhalers and a program

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<sup>277</sup> Colorado Dep't of Public Health and Environment, *Strategic Plan FY 2008-2009*, at 5, available at <http://www.cdphe.state.co.us/ic/StrategicPlan.pdf> (last visited Sept. 7, 2009).

<sup>278</sup> E-mail from Elizabeth Sapio, Small Business Ombudsman and Environmental Agriculture Program, Office of Environmental Integration and Sustainability, Colorado Dep't of Public Health and Environment (Feb. 26, 2009).

<sup>279</sup> See, "Community Participation" section *supra*.

<sup>280</sup> CDPHE SEP Policy, *supra* note 258.

<sup>281</sup> *Id.* at 4-7.

<sup>282</sup> *Id.*

<sup>283</sup> *Id.* at 8.

called the “Betty Breathe Bus,” which provided education and nursing support to the community. A more recent SEP, in Pueblo County, helped to provide funding to retrofit all publicly-owned buses with devices to reduce diesel emissions and energy usage.<sup>284</sup>

Some of Colorado's energy efficiency SEPs have also targeted EJ communities and low-income homes. For example, a SEP in a migrant farm worker community provided funding to install photovoltaic technology at a community center, in order to reduce its operational costs. This project is consistent with CDPHE’s concern for areas predominately inhabited by migrant farm workers; where the CDPHE is also investigating water quality issues.<sup>285</sup>

## **Coordination with Federal Government**

Performance Partnership Agreement (tags: Community Participation, Compliance and Enforcement, Native Americans, Redressing Environmental Racism)

The 2001-2002 Colorado Environmental Performance Partnership Agreement (“PPA”) between U.S. EPA Region 8 and CDPHE specifically addressed community-based and EJ programs.<sup>286</sup> The plan recommended a “coordination and contact” process at the CDPHE, with the goal of developing cross-media coordination and integration. U.S. EPA and CDPHE also agreed to identify joint priorities, coordinate processes, pool resources, and continue to develop a “place driven” rather than a “program driven” approach. Furthermore, U.S. EPA and CDPHE 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.”<sup>287</sup>

Subsequent PPAs continue to emphasize the goal of EJ, with substantially similar language to the 2001-2002 PPA.<sup>288</sup> Notably, the definition of “environmental justice” is confirmed as meaning “the fair treatment and meaningful involvement of all people regardless of race and income with respect to the development, implementation, and enforcement of environmental laws, regulations and policies. Fair treatment implies that no group of people including a racial, ethnic, or socioeconomic group should bear a disproportionate share of negative environmental consequences resulting from industrial,

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<sup>284</sup> Telephone interview with Michael Wenstrom, Coordinator, Environmental Justice Team, U.S. Environmental Protection Agency, Region 8 (Feb. 10, 2009); *see also* <http://epa.gov/cleanschoolbus/index.htm>.

<sup>285</sup> Telephone interview with Jill Cooper, Sustainability Program Director and Senior Advisor to the Office of Environmental Programs, Colorado Dep’t of Public Health and Environment (Apr. 7, 2005).

<sup>286</sup> Colorado Dep’t of Public Health and Environment and U.S. EPA Region 8, *Colorado Environmental Performance Partnership Agreement - FY2002*, at 8-9, 20 (on file with authors).

<sup>287</sup> *Id.* at 8.

<sup>288</sup> Colorado Dep’t of Public Health and Environment and U.S. EPA Region 8, *Colorado Environmental Performance Partnership Agreement - FY2005* (on file with authors).

municipal, and commercial operations or the execution of federal, state, local and tribal programs and policies.”<sup>289</sup>

The 2009-10 PPA stresses that CDPHE’s Office of Environmental Integration and Sustainability will prioritize EJ issues, including community outreach and “encouraging the participation of broad stakeholder groups in the development of environmental laws, regulations, and policies.”<sup>290</sup>

In addition, the Northeast Denver Environmental Initiative, established by a coalition of individuals, citizen groups, and government agencies, is working with Region 8 of the U.S. EPA on EJ programs as part of the Performance Partnership Agreement with the U.S. EPA.<sup>291</sup>

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<sup>289</sup> *Id.* at 38-39.

<sup>290</sup> *Colorado Environmental Performance Partnership Agreement - FY2009-10*, *supra* note 257, at 26.

<sup>291</sup> Telephone interview with Jill Cooper, *supra* note 269.

# CONNECTICUT

(tags: Children’s Issues, Community Education, Community Participation, Compliance and Enforcement, Land Use – permitting, Land Use – siting, Outreach, Pollution Cleanup, Redressing Environmental Racism, Waste, Water)

## **General Environmental Justice Activities**

Environmental Equity Policy (tags: Community Participation, Redressing Environmental Racism)

In 1993, the Connecticut Department of Environmental Protection (“DEP”) 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 environmental pollution or be denied equal access to environmental benefits.”<sup>292</sup> The policy proposes several courses of action for DEP to take when incorporating environmental equity into its program development, policy making, and regulatory activities.<sup>293</sup> An 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.”<sup>294</sup> As part of this social justice initiative, Environmental Justice Community Advisory Boards were created in Hartford and New Haven in 1998.

Environmental Justice Program (tags: Community Participation, Outreach, Redressing Environmental Racism)

DEP’s website lists the various programs and services managed by the EJ Program, formerly called the Office of Urban and Community Ecology.<sup>295</sup> Among other things, DEP assesses and responds to environmental problems in low income and minority communities; develops strategies to increase public participation in the agency’s decisions making process and administrative proceedings; educates the public on DEP regulation, policies, and procedures; and works to decrease language barriers.<sup>296</sup> In 2005,

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<sup>292</sup> Connecticut Dep’t of Environmental Protection, *Environmental Equity Policy*, [http://www.ct.gov/dep/cwp/view.asp?a=2688&q=322376&depNav\\_GID=1511](http://www.ct.gov/dep/cwp/view.asp?a=2688&q=322376&depNav_GID=1511) (last visited Mar. 3, 2009); see also “The Environmental Equity Movement Fact Sheet,”

[http://www.ct.gov/dep/cwp/view.asp?a=2709&q=324148&depNav\\_GID=1643](http://www.ct.gov/dep/cwp/view.asp?a=2709&q=324148&depNav_GID=1643) (last visited Mar. 3, 2009).

<sup>293</sup> Environmental Equity Policy, *supra* note 276.

<sup>294</sup> Connecticut Dep’t of Environmental Protection, *Connecticut Recognized for Work in Environmental Justice and Will Serve on the National Environmental Justice Advisory Council*, (Sept. 28, 1998), formerly available at <http://www.dep.state.ct.us/whatshap/press/1998/cr092898.htm> (last visited Feb. 20, 2006).

<sup>295</sup> Connecticut Dep’t of Environmental Protection, *Environmental Justice*, [http://www.ct.gov/dep/cwp/view.asp?a=2688&q=322378&depNav\\_GID=1511](http://www.ct.gov/dep/cwp/view.asp?a=2688&q=322378&depNav_GID=1511) (last visited Mar. 3, 2009).

<sup>296</sup> Connecticut Dep’t of Environmental Protection, *Overview—Environmental Justice Program*, available at [http://www.ct.gov/dep/cwp/view.asp?a=2688&q=322380&depNav\\_GID=1511](http://www.ct.gov/dep/cwp/view.asp?a=2688&q=322380&depNav_GID=1511) (last visited Mar. 3, 2009).

DEP created a manual to help citizens understand the permitting process.<sup>297</sup> The *User's Guide to Environmental Permits* is available on the DEP website.<sup>298</sup>

Oil Drum Art (tags: Children's Issues, Community Education, Waste)

The EJ Program co-hosts a community education program, aimed at teaching children the values of recycling and pollution control by gathering artists, children, and community leaders for an oil drum painting event.<sup>299</sup> Fifty-five gallon oil drums are painted with scenic views, and then placed in the community, where the drum serves as a collection center for garbage and recycling.<sup>300</sup>

## **Community Participation**

Environmental Justice Complaint Contact and Investigator (tags: Community Participation, Compliance and Enforcement)

One of the most notable things about the Environmental Justice Program at DEP is its "EJ Complaint Investigator."<sup>301</sup> This investigator is one of three DEP staffers whose job is to answer and investigate complaints related to environmental justice. According to Edith Pestana, Connecticut's Environmental Justice Administrator, "nothing is out of [DEP] jurisdiction."<sup>302</sup> For instance, DEP could receive an EJ complaint that implicates the jurisdiction and services of four different states, local, and or federal agencies. Then the Environmental Justice Program will see to it that all agencies are notified about the complaint, and monitor the progress of the investigations.<sup>303</sup> To illustrate this point, Ms. Pestana described a hypothetical illegal auto body shop, which could include aerosol paint violations (possible Department of Public Health jurisdiction), chemical storage and dumping (DEP jurisdiction), parked cars lining the street (Department of Motor Vehicle jurisdiction), and 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.

Public Act 08-94 (tags: Community Participation, Land Use – siting, Outreach, Waste)

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<sup>297</sup> Telephone interview with Edith Pestana, Administrator of Environmental Justice Program, Connecticut Department of Environmental Protection (Nov. 2, 2005).

<sup>298</sup> Connecticut Dep't of Environmental Protection, *User's Guide to Environmental Permits*, [http://www.ct.gov/dep/cwp/view.asp?a=2709&q=324232&depNav\\_GID=1643](http://www.ct.gov/dep/cwp/view.asp?a=2709&q=324232&depNav_GID=1643) (last visited Mar. 3, 2009).

<sup>299</sup> Connecticut Dep't of Environmental Protection, "New London Youth Convert Oil Drums Into Colorful Trash Receptacles," <http://www.ct.gov/dep/cwp/view.asp?Q=434044&A=3605> (last visited July 27, 2009).

<sup>300</sup> E-mail from Edith Pestana, Administrator of Environmental Justice Program, Connecticut Department of Environmental Protection (July 27, 2009).

<sup>301</sup> Telephone interview with Edith Pestana, Administrator of Environmental Justice Program, Connecticut Department of Environmental Protection (Feb. 24, 2003).

<sup>302</sup> *Id.*

<sup>303</sup> *Id.*

Effective January 2009, Public Act 08-94 (the Act) allowed DEP to expand notice requirements to increase public participation opportunities for certain permit applications for new facilities and expanded facilities located in EJ communities.<sup>304</sup> Facilities covered under the Act include those already mentioned under DEP's EJ policy as well as electric generating facilities, sludge and solid waste incinerators, sewage treatment plants, land fills, and major sources of air pollution as defined by the federal Clean Air Act.<sup>305</sup>

Such facilities must file a meaningful Environmental Justice Public Participation Plan<sup>306</sup> and receive approval for the plan by the DEP or the state Siting Council prior to applying for a general siting permit.<sup>307</sup> A Public Participation Plan must also list a time and location for an informal public participation meeting that is convenient for the residents of the affected EJ community.<sup>308</sup> At this meeting, representatives from the facility are required to make a reasonable and good faith effort to provide clear, accurate and complete information about the proposed facility or expansion of a facility and the potential environmental and health impacts.<sup>309</sup>

Host Community Environmental Benefit Agreement Liaison (tags: Community Participation)

In addition to filing an Environmental Justice Public Participation Plan, the Act requires that applicants consult with officials in the town or towns in which the facility is to be located or expanded, in order to consider a community environmental benefit agreement,<sup>310</sup> as well as notify, in writing, local residents and environmental groups potentially affected by the facility's operations and activities.<sup>311</sup> The Environmental Justice Program provides assistance to these negotiations by facilitating amicable conversations between the local community, environmental advocacy groups and the permit applicants.<sup>312</sup>

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<sup>304</sup> Connecticut Dep't of Environmental Protection, *The Environmental Justice Public Participation Guidelines*, at 3, (Jan. 6, 2009) available at [http://www.ct.gov/dep/lib/dep/environmental\\_justice/EJ\\_Guid.pdf](http://www.ct.gov/dep/lib/dep/environmental_justice/EJ_Guid.pdf) (last visited June 30, 2009).

<sup>305</sup> 2008 Conn. Acts 08-94 (Reg. Sess.).

<sup>306</sup> "Meaningful public participation" means that residents of an environmental justice community have an opportunity to participate in decisions about a proposed facility or the expansion of an existing facility that may adversely affect such residents' environment or health; the public's participation may influence the regulatory agency's decision; and the applicant for a new or expanded permit, certificate or siting approval seeks out and facilitates the participation of those potentially affected during the regulatory process. 2008 Conn. Acts 08-94 (Reg. Sess.).

<sup>307</sup> *The Environmental Justice Public Participation Guidelines*, *supra* note 288, at 3.

<sup>308</sup> 2008 Conn. Acts 08-94 (Reg. Sess.).

<sup>309</sup> *Id.*

<sup>310</sup> "Community environmental benefit agreement" means a written agreement entered into by a municipality and an owner or developer of real property whereby the owner or developer agrees to develop real property that is to be used for any new or expanded affecting facility and to provide financial resources for the purpose of the mitigation, in whole or in part, of impacts reasonably related to the facility, including, but not limited to, impacts on the environment, traffic, parking and noise. 2008 Conn. Acts 08-94 (Reg. Sess.).

<sup>311</sup> *The Environmental Justice Public Participation Guidelines*, *supra* note 288, at 4.

<sup>312</sup> E-mail from Edith Pestana, *supra* note 284.

## Improving Public Health

### Special Environmental Justice Focus on Schools (tags: Children's Issues)

In apparent recognition that children are among the most vulnerable to environmental health problems, DEP focuses much of its EJ efforts towards schools. One element of its school program is DEP's school EJ inspections -- scanning for violations ranging from vermin infestations and faulty playground equipment, to the misuse of pesticides. The program also creates "outdoor classrooms" in urban areas. 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.<sup>313</sup>

### State and Local Government Joint Program (tags: Community Education, Community Participation, Public Health)

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.<sup>314</sup> These contacts were initially meant to help neighborhood block watch captains "become aware of the environmental and health related issues in their neighborhoods" and were later made available on the DEP website for all Hartford residents.<sup>315</sup> The chart includes both city and state contacts for 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.<sup>316</sup>

## Pollution Cleanup

### Supplemental Environmental Projects (tags: Compliance and Enforcement, Pollution Cleanup)

Connecticut's Supplemental Environmental Projects ("SEP") program allows DEP to reduce cash penalties as a result of environmental enforcement actions by including SEPs into consensual settlements reached with environmental offenders.<sup>317</sup> DEP's SEP policy states that after threshold concerns are met (*e.g.*, that the project does

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<sup>313</sup> Telephone interview with Edith Pestana, (Feb. 24, 2003), *supra* note 285.

<sup>314</sup> Connecticut Dep't of Environmental Protection, "Environmental Contacts for Hartford Neighborhoods," [http://www.ct.gov/dep/cwp/view.asp?a=2708&q=324104&depNav\\_GID=1763](http://www.ct.gov/dep/cwp/view.asp?a=2708&q=324104&depNav_GID=1763) (last visited July 26, 2009).

<sup>315</sup> *Id.*

<sup>316</sup> *Id.*

<sup>317</sup> Connecticut Dep't of Environmental Protection, *Policy on Supplemental Environmental Projects* (1996), at 1, available at <http://www.ct.gov/dep/lib/dep/enforcement/policies/seppolicy.pdf> (last visited Mar. 3, 2009).

not further degrade the environment), the SEP should fit into 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.”<sup>318</sup> DEP envisions its SEP policy as falling under its longstanding 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.”<sup>319</sup>

### Case law

*Organized N. Easterners v. Capital City Econ. Development Authority*<sup>320</sup>  
(2001) (tags: Land Use – permitting, Waste, Water)

Connecticut DEP approved a remediation plan that involved the construction and operation of diesel generators and the discharge of wastewater into the sanitary sewer. Plaintiffs claimed that “the traffic analysis in the [environmental impact evaluation] was inadequate and that the protection against hazardous waste at the site in the Remedial Action Plan was also inadequate.”<sup>321</sup> The court dismissed the complaint, for failure to show that any members of the citizen group bringing the action were directly injured by the permit approvals, and hence, did not have legal standing to sue: “[g]eneralized fear about increased traffic resulting from a zone change do[es] not establish that a resident’s property, personal or legal rights are specifically injured so as to constitute aggrievement.”<sup>322</sup>

The court nonetheless turned to the merits of the case, including plaintiff’s contention that Commissioner’s decision was made without adequate notice of an impending hearing, as required by Connecticut law.<sup>323</sup> The court held that under the “reasonable person” test, the notice published in a local newspaper “fairly and sufficiently” informed the public of the meeting.

### Asbestos Clean-up (tags: Pollution Cleanup)

In partnership with the State Department of Public Health, the EJ Program staff responds to complaints about the illegal removal and disposal of asbestos materials in residential, commercial, and industrial facilities that are being either renovated or demolished.<sup>324</sup> Illegal dumping of asbestos materials in inner-city areas is a chronic

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<sup>318</sup> *Id.* at 6.

<sup>319</sup> *Id.* at fn. 4.

<sup>320</sup> *Organized N. Easterners & Clay Hill & N. End v. Capital City Econ. Development Authority*, 2001 Conn. Super. Lexis 1665 (Sup. Ct. 2001).

<sup>321</sup> *Id.* at \*5.

<sup>322</sup> *Id.* at \*13 (citation omitted).

<sup>323</sup> CONN. GEN. STAT. § 32-664(g).

<sup>324</sup> E-mail from Edith Pestana, *supra* note 284.

problem.<sup>325</sup> Staff works with local municipality to both clean up asbestos containing materials and bring perpetrators to justice.<sup>326</sup>

#### Alternatives to Incarceration Program (tags: Pollution Cleanup)

As part of a multi-agency collaborative effort, criminal offenders in the “Alternatives to Incarceration Program” are given the opportunity to serve their time by working in communities around the state.<sup>327</sup> One such project involves the cleaning up of illegally dumped solid waste in residential communities where that is a chronic problem.<sup>328</sup> Additionally, after the initial clean-up, the second phase of the project involves a community beautification aspect, which usually involves the planting of trees and plants.<sup>329</sup>

#### Bottle Bill Enforcement (tags: Redressing Environmental Racism, Waste)

The EJ Program is in charge of enforcing the provisions of the Bottle Bill which make it illegal to discriminate against a recycler based on race.<sup>330</sup> Many people recycle bottles and cans as a way to generate income; and often, these recyclers are discriminated against based on their race or economic status.<sup>331</sup> The EJ Program investigates allegations that such discrimination has taken place, and when appropriate, reports the incident to the Attorney General’s Office for prosecution.<sup>332</sup>

### **Coordination With Federal Government**

#### Performance Partnership Agreement (tags: Compliance and Enforcement)

In Connecticut’s previous PPA, DEP identified Environmental Equity as an “umbrella priority” which, though not specifically listed in the state’s Environmental Quality (“EQ”) Strategic Plan, would be considered in all EQ Branch programs.<sup>333</sup> In the latest PPA, EJ is specifically mentioned as an umbrella priority for the DEP.<sup>334</sup> The PPA mandates that DEP will ensure that all members of the public “receive the highest levels

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<sup>325</sup> *Id.*

<sup>326</sup> *Id.*

<sup>327</sup> *Id.*

<sup>328</sup> *Id.*

<sup>329</sup> *Id.*

<sup>330</sup> *Id.*

<sup>331</sup> *Id.*

<sup>332</sup> *Id.*

<sup>333</sup> *Environmental Performance Partnership Agreement Between Connecticut Department of Environmental Protection and US Environmental Protection Agency, Region 1 for Federal Fiscal Years 2006 and 2007*, at III.B, available at <http://www.ct.gov/dep/lib/dep/ppa/ppa.pdf> (last visited Aug. 10, 2009).

<sup>334</sup> *Environmental Performance Partnership Agreement Between Connecticut Department of Environmental Protection and US Environmental Protection Agency, Region 1 for Federal Fiscal Years 2008 and 2009*, at 2, available at <http://www.ct.gov/dep/lib/dep/ppa/ppafy0809.pdf> (last visited July 26, 2009).

of environmental protection and access to all of the state's resources."<sup>335</sup> Community-based initiatives are to be targeted at enhanced federal RCRA activities within identified Environmental Equity communities in Connecticut.<sup>336</sup>

### Partnership with U.S. EPA's Office of Civil Rights

Staff from the Office of Civil Rights collaborates with the EJ Program staff to solve conflict between state, local government and community stakeholders.<sup>337</sup> For example, during the Howard Avenue Bridge construction project in New Haven, issues arose regarding vibrations, noise, and fugitive dust, which caused damage to local residential properties.<sup>338</sup> EJ staff collaborated with U.S. EPA to facilitate and address the community's complaints.<sup>339</sup> A sound barrier, which was a top priority for the community, was agreed to through a collaborative process.<sup>340</sup>

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<sup>335</sup> *Id.*

<sup>336</sup> Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq.* (1976).

<sup>337</sup> E-mail from Edith Pestana, *supra* note 284.

<sup>338</sup> *Id.*

<sup>339</sup> *Id.*

<sup>340</sup> *Id.*

## **DELAWARE**

(tags: Air Pollution, Brownfields Redevelopment, Children’s Issues, Climate Change, Community Education, Community Participation, Compliance and Enforcement, Grants, Housing, Mapping, Open Space/Recreation, Redressing Environmental Racism, Study, Transportation, Waste, Water)

### **General Environmental Justice Activities**

Community Involvement Advisory Council and Community Ombudsman (tags: Community Participation, Study)

In September 1999, the Delaware Department of Natural Resources and Environmental Control (“DNREC”) chartered an external advisory committee, the Community Involvement Advisory Council (“CIAC”), to address barriers to inclusion of under-served populations in environmental decision making.<sup>341</sup> Two years later, the legislature made the CIAC a permanent entity for the purpose of advising the Secretary of DNREC.<sup>342</sup> 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.”<sup>343</sup> The committee includes representatives from adversely affected communities, community-based nonprofit organizations, environmental organizations, health care providers, local government, academic institutions and business/industry.<sup>344</sup> The CIAC released a March 2001 report that contains several recommendations for facilitating and implementing community participation in environmental permitting and decision making.<sup>345</sup> As of March 2005, the CIAC continues to meet once every other month, and several of its recommendations have been implemented.<sup>346</sup>

The legislature also 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.”<sup>347</sup>

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<sup>341</sup> *Report of the Community Involvement Advisory Committee to the Delaware Department of Natural Resources and Environmental Control* [“Report of the Community Involvement Advisory Committee”], Mar. 22, 2001, available at <http://www.dnrec.state.de.us/dnrec2000/Admin/BusServ/CIACReport.pdf> (last visited Aug. 10, 2009).

<sup>342</sup> DEL. CODE ANN. tit. 29 § 8016A (2005).

<sup>343</sup> *Id.*

<sup>344</sup> *Id.*

<sup>345</sup> *Report of the Community Involvement Advisory Committee*, *supra* note 325.

<sup>346</sup> Telephone interview with Karen Garrison, Administrative Specialist, Delaware Dep’t of Natural Resources and Environmental Control (Mar. 18, 2005).

<sup>347</sup> *Id.*

Community Environmental Project Fund (House Bill 192, 2004)<sup>348</sup> (tags: Community Education, Community Participation, Grants, Open Space/Recreation, Waste)

The Community Environmental Project Fund (“CEPF”) consists of 25% of the civil and administrative penalties collected by DNREC under its general enforcement authority. These funds are dedicated to environmentally beneficial projects selected by the Secretary of DNREC in consultation with the CIAC. Proposed projects must meet two criteria: (1) the project must either mitigate or eliminate pollution; or remove risks to human health in the environment; or improve native habitats or recreational opportunities; and (2) the project must benefit the community in which the underlying violation occurred (geographic nexus). Eligible applicants include Delaware civic and community organizations, non-profit entities, educational institutions, counties, municipal governments, state agencies, and quasi-state agencies that represent the affected community. The Community Ombudsman manages the operation of the CEPF program and the CIAC reviews CEPF applications once each year.<sup>349</sup>

As of June 2009, over \$2,000,000 in CEPF funds have been spent or obligated. The largest single project as measured by funding is the Branch Canal Greenway Project, which is restoring an environmentally degraded wetland area and re-establishing the historic pathway link between Delaware City and the C & D Canal for recreational and educational purposes. This project is receiving nearly \$1.3 million in funding. The CEPF also funded a City of Wilmington project to establish single-stream curbside recycling. DNREC prefers projects that support DNREC’s primary environmental goals and those with demonstrated community participation and support (*e.g.*, volunteer hours, matching funds, donated in-kind services).<sup>350</sup>

In 2009, the CIAC will evaluate two capacity-building small grant pilot programs funded by the CEPF: the Collaborative Problem-Solving Partnership Grant and the Technical Assistance Small Grant. These programs will award a maximum of \$25,000 per approved application. Their purposes are to build the capacity of organizations eligible for CEPF grants to implement projects, and to “increase community involvement in support of the CIAC mission.”<sup>351</sup>

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<sup>348</sup> DEL. CODE ANN. tit. 7 § 6042.

<sup>349</sup> E-mail from James Brunswick, Community Ombudsman, Dep’t of Natural Resources and Environmental Control, (May 12, 2006) (on file with authors) and telephone interview with James Brunswick (June 26, 2009).

<sup>350</sup> Delaware Dep’t of Natural Resources and Environmental Control, *CIAC Seeks Applications for Community Environmental Projects*, formerly available at <http://www.dnrec.state.de.us/DNREC2000/Admin/Press/Story1.asp?PRID=2036> (last visited May 12, 2006).

<sup>351</sup> Delaware Dep’t of Natural Resources and Environmental Control, *DNREC Community Environmental Project Fund Application Booklet*, at 2, available at <http://www.dnrec.delaware.gov/CIAC/Documents/Final%202009%20CEPF%20Application.doc> (last visited Sept. 7, 2009).

Climate Change Action Plan (tags: Children’s Issues, Climate Change, Community Education, Community Participation)

The Center for Energy and Environmental Policy at the University of Delaware published a Climate Change Action Plan for the Delaware Climate Change Consortium (DCCC).<sup>352</sup> The DCCC, which included representatives from community-based organizations, provided guidance and advice in the development of the Action Plan.<sup>353</sup> The Action Plan recommended a policy agenda that called for cooperative efforts among government agencies, industry, and citizen organizations, including legislative initiatives, community input and support, and education and outreach.<sup>354</sup>

Education and outreach efforts were envisioned to target specialized audiences, including community organizations and the general public.<sup>355</sup> The Action Plan also envisioned targeting K-12 students, teachers, and administrators, with the aim of developing information about climate change that can be incorporated into school curricula.<sup>356</sup>

Regional Greenhouse Gas Initiative (tags: Air Pollution, Climate Change, Power Plants)

The state has joined the Regional Greenhouse Gas Initiative (RGGI), a 10-state collaborative cap and trade program for greenhouse gas emissions from power plants.<sup>357</sup> SB 263, which granted the legal authority for Delaware to participate in the RGGI, directs some of the proceeds from the sale of CO<sub>2</sub> allowances to programs designed to help low income ratepayers.<sup>358</sup>

Energy Action Plan (tags: Children’s Issues, Climate Change, Transportation)

The Delaware General Assembly established the Governor’s Energy Advisory Council (HB 434, 2004), tasking it with developing a state Energy Action Plan and updating it every 5 years.<sup>359</sup> The Delaware Energy Plan 2009 – 2014 provides recommendations for reducing energy use and shifting to renewable energy sources. Several recommendations would, if implemented, directly affect the low income, juvenile

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<sup>352</sup> University of Delaware Center for Energy and Environmental Policy, *Delaware Climate Change Action Plan* (2000), available at [http://ceep.udel.edu/publications/energy/reports/energy\\_delaware\\_climate\\_change\\_action\\_plan/deccap.htm](http://ceep.udel.edu/publications/energy/reports/energy_delaware_climate_change_action_plan/deccap.htm) (last visited June 27, 2009).

<sup>353</sup> *Id.* at 1.

<sup>354</sup> *Id.* at 3.

<sup>355</sup> *Id.* at 123.

<sup>356</sup> *Id.* at 124.

<sup>357</sup> State of Delaware, *Regional Greenhouse Gas Initiative*, available at <http://www.dnrec.delaware.gov/ClimateChange/Pages/ClimateChangeRGGI.aspx> (last visited June 27, 2009).

<sup>358</sup> The Governor’s Energy Advisory Council, *Delaware Energy Plan 2009-2014*, at 104, available at <http://www.dnrec.delaware.gov/energy/services/Pages/DelawareEnergyPlan.aspx> (last visited June 27, 2009).

<sup>359</sup> *Id.* at 5.

or other target populations, including expanding the Weatherization Assistance Program, which serves low-income households; conducting a demonstration project to design, build, and operate a school to Leadership in Energy and Environmental Design (LEED) silver or gold standards; evaluating options to improve energy-efficiency and cost-effective implementation of the State's policies regarding non-ADA paratransit service; and developing a Comprehensive Energy Workforce Training Strategy.<sup>360</sup>

## Community Participation

### Sustainable Energy Utility (SEU) (tags: Community Participation)

The nonprofit SEU operates and oversees programs that deliver energy efficiency and renewable energy services to Delaware's households and businesses. The SEU is also envisioned to develop affordable energy services for low-income families.<sup>361</sup> In 2008, the legislature directed the SEU Board of Directors to appoint an Advisory Committee that would provide diversified representation of the Delaware community, which may include organizations that represent low and moderate income energy or housing consumers.<sup>362</sup>

### South Wilmington Special Area Management Plan (tags: Brownfields Redevelopment, Community Participation, Grants, Open Space/Recreation, Study, Water)

DNREC's Delaware Coastal Programs section has been working with municipal and community partners to develop a Special Area Management Plan (SAMP) for the revitalization of the South Wilmington area.<sup>363</sup> Delaware may be the first coastal state creating a SAMP to help redevelop an inner-city neighborhood.<sup>364</sup> South Wilmington is a historically economically depressed area.<sup>365</sup> Within South Wilmington, is the Southbridge neighborhood, a mostly ethnic minority, underserved community that "suffers from classic inner-city woes," including lower income, high percentage of single-parent families, a 45% rental rate and deteriorating housing stock. The neighborhood is surrounded by many areas of with suspected or known soil contamination, poor drainage, and chronic flooding.<sup>366</sup>

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<sup>360</sup> *Id.* at 9, 10, 12.

<sup>361</sup> Delaware Energy Office, *Delaware Sustainable Energy Utility (SEU)*, available at <http://www.dnrec.delaware.gov/energy/services/Pages/SustainableEnergyUtility.aspx> (last visited June 27, 2009).

<sup>362</sup> DE CODE ANN. Tit. 29 § 8059(e)(2).

<sup>363</sup> Delaware Dep't of Natural & Environmental Resources, *South Wilmington Special Area Management Plan*, available at <http://www.dnrec.state.de.us/dnrec2000/Divisions/Soil/dcmp/WilmSAMP/SAMP.htm> (last visited June 27, 2009).

<sup>364</sup> Coastal Services, *Restoring Urban Habitat in Delaware*, Vol. 9, Issue 4, pg. 2 (July/Aug. 2006).

<sup>365</sup> Letter from City of Wilmington Mayor James M. Baker to U.S. National Oceanic and Atmospheric Administration (dated May 10, 2004).

<sup>366</sup> Coastal Services, *Restoring Urban Habitat in Delaware*, *supra* note 352.

Waterfront development has been delayed and complicated due to the presence of environmental contamination and important wetland habitat.<sup>367</sup> The SAMP is a cooperative effort to develop a master plan that coordinates government agencies and other stakeholders in “addressing social, economic and environmental issues in a way consistent with the long-term vision for South Wilmington.” This plan and an associated wetlands study were funded by a grant from the U.S. National Oceanic and Atmospheric Administration.<sup>368</sup>

SAMP activities include establishing a project office that houses a community liaison, developing a video documentary of the SAMP process, funding a pre-apprenticeship training program, implementing drainage improvements and stormwater pipe cleanouts, reporting of traffic issues and funding of traffic circulation studies, implementing pedestrian improvements, and tree planting and management. The project has also undertaken studies and plans, including a marsh restoration feasibility study, a drainage study, the *South Wilmington Neighborhood Plan*, a socio-economic study, an ecological characterization study, and an underutilized property inventory.<sup>369</sup> The SAMP project has negotiated community benefits agreements, one of which resulted in hiring of residents in union wage and benefits jobs.<sup>370</sup> The U.S. EPA recently awarded the SAMP project funding for the restoration of wetlands in the community.<sup>371</sup>

## **Equitable Development**

### Environmental Justice Activity Mapping (tags: Mapping)

One of the CIAC recommendations was to map the geographical locations of EJ activities around the state. This activity was in progress as of June 2009.<sup>372</sup>

### Climate Prosperity Initiative (tags: Climate Change)

As of June 2009, the Community Ombudsman was developing a Climate Prosperity Initiative, which uses a sectoral strategy approach to identify growth industries and work with employers to determine work force needs for jobs that have living wages and benefits, with the goal of benefiting unemployed and underemployed persons. The conceptual framework for this program is for the DNREC to lead several agencies, including the state Department of Labor, the University of Delaware, and others, to

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<sup>367</sup> Letter from James M. Baker to U.S. National Oceanic and Atmospheric Administration, *supra* note 353.

<sup>368</sup> Delaware Dep’t of Natural & Environmental Resources, *South Wilmington Special Area Management Plan*, *supra* note 351.

<sup>369</sup> *South Wilmington SAMP Activities*, Dec. 2007, provided by David B. Carter, Environmental Program Manager II Delaware Coastal Programs, Delaware Dep’t of Natural Resources and Environmental Control (provided July 2009).

<sup>370</sup> E-mail from James Brunswick, Community Ombudsman, Delaware Dep’t of Natural Resources and Environmental Control (June 26, 2009).

<sup>371</sup> *Id.*

<sup>372</sup> Telephone interview with James Brunswick, *supra* note 338.

collaborate in the development of a “virtual policy academy” to align agencies on state policies to encourage this initiative.<sup>373</sup>

Brownfield Job Training (tags: Brownfields Redevelopment, Community Education)

The state has developed a successful (on the order of 70% placement) brownfield job training program for brownfield remediation.<sup>374</sup>

### **Improving Public Health**

DNREC Programs (tags: Air Pollution, Children’s Issues, Community Education, Compliance and Enforcement, Transportation)

The DNREC has worked on several programs to improve public health in EJ areas. They funded two separate air quality monitoring projects, retrofitted diesel school buses, retrofitted inner-city transit buses, and are working with the Port of Wilmington to replace fleet engines.<sup>375</sup>

After residents near a steel foundry complained of dust problems, the DNREC took an enforcement action against the foundry, but residents still were not satisfied with the results. The DNREC then provided funding for the residents to monitor the air in their neighborhood. This project was on-going as of July 2009.<sup>376</sup> In the 2009 funding cycle, CEPF funded three community-based organizations (CBOs) to implement the Asthma Action Plan. This program provided training and monitoring equipment to civic organizations and residents in lower income neighborhoods near industry clusters and roadways to monitor air quality for asthma irritants from diesel-fired and other sources of pollutants.<sup>377</sup> When the residents submit the monitoring results, the state will evaluate the data to identify air quality “hot spots” and perform retrofits.<sup>378</sup>

The CEPF and the state Department of Health retrofitted school buses to reduce emissions.<sup>379</sup> The state has retrofitted the entire fleet for two school districts and hopes to use federal stimulus funds to retrofit more.<sup>380</sup> The DNREC has also retrofitted transit buses with diesel particulate filters to address particulate and diesel emissions in an inner-city area. The northern part of the county is a non-attainment area for particulates, with the highest concentrations in downtown Wilmington. The state specifically selected buses for retrofit that traveled routes that impacted EJ areas because of the high

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<sup>373</sup> *Id.*

<sup>374</sup> *Id.*

<sup>375</sup> Telephone interview with Ali Mirzakhilili, Delaware Dep’t of Natural Resources and Environmental Control (July 6, 2009).

<sup>376</sup> *Id.*

<sup>377</sup> Interview with James Brunswick, *supra* note 338, and Ali Mirzakhilili, *supra* note 362.

<sup>378</sup> Interview with Ali Mirzakhilili, *supra* note 362.

<sup>379</sup> Interview with James Brunswick, *supra* note 338.

<sup>380</sup> Interview with Ali Mirzakhilili, *supra* note 359.

concentrations of particulates in the inner city.<sup>381</sup> The DNREC is working with the Port of Wilmington, which is near an EJ area, to get the Port to replace fleet engines to reduce diesel emissions.<sup>382</sup>

Wilmapco Project (tags: Air Pollution, Transportation)

A CBO documented a 27% asthma rate in the South Bridge area of Wilmington, which was considered an EJ area. The Wilmapco project performed traffic studies of this area, which resulted in re-timing of traffic lights and re-routing of traffic to reduce emissions.<sup>383</sup>

**Pollution Cleanup** (tag: Housing, Study, Water)

Failing septic systems were found to contribute 11% of the nutrients in inland bays. When the state promulgated new regulations on inland bays, a pollution control strategy required residents to upgrade their septic systems; the upgraded systems can cost residents approximately \$25,000 to install. Under the Septic Financing Initiative, the state undertook a study of financing strategies for low and moderate income residents.<sup>384</sup>

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<sup>381</sup> *Id.*

<sup>382</sup> *Id.*

<sup>383</sup> *Id.*

<sup>384</sup> *Id.*

## **DISTRICT OF COLUMBIA**

(tags: Brownfields Redevelopment, Children’s Issues, Community Education, Community Participation, Compliance and Enforcement, Diet, Equitable Development, Land Use – general plans, Land Use – permitting, Public Health, Redressing Environmental Racism)

**General Environmental Justice Activities** (tags: Community Education, Community Participation, Compliance and Enforcement, Land Use – permitting)

The District of Columbia has an environmental justice program within the Department of Health (“Department”), in the Environmental Health Administration division.<sup>385</sup> 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. The program also seeks to reduce disparate impacts on low income and minority communities and focus public attention on environmental health issues through education and outreach.<sup>386</sup> The EJ program is normally staffed by an EJ Coordinator who responds to public concerns and educates communities on how to participate in environmental decision making.<sup>387</sup>

**Community Participation** (tags: Community Participation, Compliance and Enforcement)

One of the ways in which the Department promotes EJ is by monitoring the environmental review process. All new projects in the District costing over \$1.6 million must participate in an environmental review.<sup>388</sup> During the review process, the Department will examine at the demographics of the communities affected by the proposed development. If the project is environmentally burdensome, the EJ Coordinator will contact the Advisory Neighborhood Commission (ANC) representing the affected community.<sup>389</sup> With each of the eight wards having at least four ANCs, there are currently thirty-seven ANCs in the District.<sup>390</sup>

### **Equitable Development**

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<sup>385</sup> Telephone interview with Kendolyn Hodges-Simons, Environmental Justice Coordinator, District of Columbia Dep’t of Health (Oct. 16, 2003).

<sup>386</sup> *Id.*

<sup>387</sup> The position became vacant in early 2009, but the Department does intend to hire a new EJ Coordinator. Telephone interview with Kendolyn Hodges-Simons, Director, Office of Enforcement, Compliance & Environmental Justice (Feb. 4, 2009).

<sup>388</sup> *Id.*

<sup>389</sup> *Id.*

<sup>390</sup> District of Columbia, *Advisory Neighborhood Commissions*, <http://anc.dc.gov/anc/site/default.asp> (last visited Feb. 4, 2009).

Comprehensive Plan (tags: Brownfields Redevelopment, Community Participation, Land Use – general plans, Power Plants, Public Health, Redressing Environmental Racism)

In 2006 the Office of Planning revised its Comprehensive Plan for the development of the District.<sup>391</sup> The revision process included public meetings, meetings of a Council and Mayor-appointed Comprehensive Plan Revision Task Force, briefings with Advisory Neighborhood Commissions, a Mayor's hearing, and two District Council hearings.<sup>392</sup> The District Council adopted the Comprehensive Plan in 2007, and it is now a part of the District's Municipal Regulations.<sup>393</sup>

The Plan repeatedly describes the District's commitment to EJ, and acknowledges that some neighborhoods have been particularly impacted by pollution-generating activities and environmental decisions.<sup>394</sup> It states that "a greater effort must be made to repair the damage done . . . and to avoid their over concentrations in the future."<sup>395</sup> The Plan expresses the following goals for achieving EJ, including:

- Address the over-concentration of industrial uses in the District's lower income communities;
- Develop solutions to reduce the adverse effects of industrial uses, such as enhanced buffering, sound walls, operational improvements, truck routing, increased monitoring of impacts, and zoning changes to reduce land use conflicts;
- Expand local efforts to involve economically disadvantaged communities, particularly those communities that historically have been impacted by power plants, trash transfer stations, and other municipal or industrial uses, in the planning and development processes; and
- Continue to study the link between public health and the location of municipal and industrial uses such as power plants and waste treatment facilities and use these studies to inform public policy decisions and minimize future community health impacts.<sup>396</sup>

**Improving Public Health** (tags: Children's Issues, Diet, Public Health)

In 2008, the Department of Health published its Child Health Action Plan, which includes an action plan for addressing several childhood health indicators.<sup>397</sup> Certain health problems, such as obesity, asthma, and blood lead levels, can be particularly

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<sup>391</sup> District of Columbia, *Office of Planning Revised Comprehensive Plan (2006)*, at 6-1-, available at <http://www.planning.dc.gov/planning/cwp/view,a,1354,q,639789,PM,1.asp> (last visited Jan. 29, 2009).

<sup>392</sup> District of Columbia, *Office of Planning*, <http://www.planning.dc.gov/planning/cwp/view,a,1282,q,607547,planningNav,%7C32341%7C,..asp> (last visited Sept. 8, 2009).

<sup>393</sup> D.C. MUN. REGS. tit. 10 (2008).

<sup>394</sup> See, e.g., *Id.* at tit. 10, §§ 207.2, 600.6, 625.1, 625-2.

<sup>395</sup> *Id.* at tit. 10, § 625.2.

<sup>396</sup> *Id.* at tit. 10, §§ 625.2–625.5.

<sup>397</sup> Department of Health, *The Childhood Health Action Plan*, available at <http://planning.dc.gov/planning/frames.asp?doc=/planning/lib/planning/developmentreview/childhealthactionplan-final3-07.pdf> (last visited Feb. 4, 2009).

effective indicators of prior EJ problems. The strategies to address these involve multiple agencies, and include increasing neighborhood-based access to healthy foods and outreach to legal service providers of at-risk clients.<sup>398</sup>

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<sup>398</sup> *Id.*

# FLORIDA

(tags: Air Pollution, Brownfields Redevelopment, Childrens' Issues, Community Participation, Land Use – anti-concentration, Land Use – permitting, Land Use – siting, Outreach, Power Plants, Public Health, Redressing Environmental Racism, Study, Transportation, Waste)

## **General Environmental Justice Activities**

### Partnership with Academia (tags: Children's Issues)

Unlike the majority of states, which administer EJ programs within the environmental agency's jurisdiction, Florida has adopted a university-based approach. 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."<sup>399</sup> According to the statute, the Center is administered through the Environmental Sciences Institute at Florida Agricultural & Mechanical University ("A&M"). A&M also administratively houses the state's birth-defects registry in partnership with the University of Florida and the University of South Florida; the registry can be used to determine links between birth defects and environmental conditions.<sup>400</sup>

### Center for Urban Transportation Research (tags: Study, Transportation)

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 EJ and community impact assessment for the state's transit agencies.<sup>401</sup>

The objective of the project was to provide the state's transit agencies with information related to EJ and social equity using community impact assessment techniques. The ultimate goal of the project was to encourage transit planners to keep EJ concerns in mind when planning, and to use the community impact assessment data to better transportation in all communities.<sup>402</sup>

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<sup>399</sup> Center for Environmental Equity and Justice, *formerly available at* [www.famu.edu/acad/colleges/esi/CEEJ/mission.html](http://www.famu.edu/acad/colleges/esi/CEEJ/mission.html) (last visited Feb. 10, 2009); FLA. REV. STAT. § 760.854.

<sup>400</sup> Anne E. Goode, *State Approaches to Environmental Justice*, available at <http://www.abanet.org/irr/committees/environmental/newsletter/dec03/Goode.html> (last visited Feb. 10, 2009); E-mail from Richard Gragg, Director, Center for Environmental Equity and Justice, (Mar. 26, 2009).

<sup>401</sup> Beverly G. Ward, Center for Urban Transportation Research, University of South Florida, *Environmental Justice and Community Impact Statement for Transit Agencies (2002)* available at <http://www.cutr.usf.edu/pub/files/CIA%20%20EJ%20for%20Transit.pdf> (last visited Feb. 10, 2009).

<sup>402</sup> *Id.*

In order to facilitate their objectives, project researchers conducted both phone interviews and written surveys to determine the current awareness regarding EJ and social equity issues. The research results were compiled into a booklet entitled *Environmental Justice and Community Impact Statement for Transit Agencies*.<sup>403</sup>

## **Promoting Public Health**

### Community Environmental Health Program (tags: Public Health)

In 1999, the state legislature created the Community Environmental Health Program (“Program”).<sup>404</sup> 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.”<sup>405</sup> These services include measures to address the health effects associated with exposure to environmental contamination.<sup>406</sup>

### Community Environmental Health Advisory Board (tags: Community Participation, Public Health)

Florida law requires that the Department of Health (“DOH”) creates 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, health care professionals and providers, and elected officials.<sup>407</sup> The Board is required to “identify the community environmental health needs and types of services which should be provided.”<sup>408</sup> Though the Board had stopped meeting temporarily due to the loss of funding in 2002, meetings resumed when state funding became available in July 2006.<sup>409</sup>

## **Equitable Development**

### Siting of Hazardous Waste Facilities (tags: Land Use – anti-concentration, Land Use – siting, Outreach)

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<sup>403</sup> *Id.*

<sup>404</sup> FLA. REV. STAT. § 381.1015 (2003).

<sup>405</sup> *Id.* at § 381.1015(1).

<sup>406</sup> *Id.*

<sup>407</sup> *Id.* at § 381.1015(2).

<sup>408</sup> *Id.*

<sup>409</sup> National Academy of Public Administration, *Models for Change: Efforts by Four State to Address Environmental Justice* (2002), available at [http://71.4.192.38/NAPA/NAPAPubs.nsf/9172a14f9dd0c36685256967006510cd/95fffb0b62b4e26d85256be3004ff436/\\$FILE/Final+State+EJ+2002.pdf](http://71.4.192.38/NAPA/NAPAPubs.nsf/9172a14f9dd0c36685256967006510cd/95fffb0b62b4e26d85256be3004ff436/$FILE/Final+State+EJ+2002.pdf) (last visited Feb. 14, 2009); Florida Department of Health, *Notice of Availability of Funds*, available at <https://www.flrules.org/gateway/readFile.asp?sid=11&tid=396650&type=1&File=64.htm> ((last visited Feb. 14, 2009); E-mail from Richard Gragg, *supra* note 384.

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.<sup>410</sup> 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.<sup>411</sup>

### Case law

*Rowe v. Oleander Power Project, L.P.* (1999) (tags: Land Use – permitting, Power Plants)

Oleander proposed to build and operate an electrical power plant, and applied for an air construction permit from the Florida DEP. DEP issued the permit, against which the Petitioner filed an administrative challenge based on allegations of “environmental injustice” under federal law.<sup>412</sup> Because EJ was found to be beyond the scope of the state permit review proceedings, the administrative law judge rejected the claim.<sup>413</sup>

### **Pollution Cleanup**

*Brownfield Redevelopment Act* (tags: Brownfields Redevelopment, Community Participation, Redressing Environmental Racism)

Florida has an extensive brownfields program that addresses EJ concerns. The preamble of the brownfields statute states that minority and low-income communities are disproportionately impacted by environmentally hazardous sites, and “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.”<sup>414</sup> 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.<sup>415</sup>

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.”<sup>416</sup> The advisory panel should be drawn from residents from the area surrounding the brownfield area.<sup>417</sup>

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<sup>410</sup> FLA. REV. STAT. § 403.723(3).

<sup>411</sup> *Id.*

<sup>412</sup> Executive Order 12,898, *supra* note 11.

<sup>413</sup> *Rowe v. Oleander Power Project, L.P.*, 1999 Fla. ENV LEXIS 296 (Fla. Dep’t of Env’tl. Protection Nov. 10, 1999).

<sup>414</sup> FLA. REV. STAT. § 376.78(8).

<sup>415</sup> *Id.* at § 376.78(6)-(8).

<sup>416</sup> *Id.* at § 376.80(4).

<sup>417</sup> *Id.*

Accidental Release Prevention and Risk Management Planning Act (tags: Air Pollution)

In 1998, Florida’s legislature passed the Accidental Release Prevention and Risk Management Planning Act, providing a framework for the delegation of authority from U.S. 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.<sup>418</sup>

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,”<sup>419</sup> in the exercise of DCA’s enforcement authority. In furtherance of the “overarching goal” of EJ, the U.S. EPA’s SEP guidelines encourage the targeting of “SEPs in communities where environmental justice concerns are present.”<sup>420</sup> Accordingly, the Florida SEP program incorporates EJ principles by reference.

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<sup>418</sup> *Id.* at § 252.934 *et seq.* (2005).

<sup>419</sup> *Id.* at § 252.940(d)(3).

<sup>420</sup> U.S. EPA, *Final EPA Supplemental Environmental Projects Policy Issued*, 63 Fed. Reg. 24796 (May 5, 1998).

# GEORGIA

(tags: Air Pollution, Brownfields Redevelopment, Community Education, Community Participation, Land Use – anti-concentration, Land Use - siting, Outreach, Redressing Environmental Racism, Study, Transportation)

## **General Environmental Justice Activities**

Legislation (tags: Brownfields Redevelopment, Redressing Environmental Racism)

Georgia legislators have proposed environmental justice bills at least three times, but none of these has been passed and become law. The “Environmental Justice Act of 1995” would have created an Environmental Justice Commission and required government agencies to consider disproportionate impact on persons of color or low income when implementing some environmental policies.<sup>421</sup> The “Environmental Justice Act of 1997” would have addressed toxic release inventory reporting, performance of risk assessments, monitoring, and publication of risk assessment reports.<sup>422</sup>

The “Georgia Brownfields Rescue, Redevelopment, Community Revitalization, and Environmental Justice Act” stated that “[a]n unacceptably high percentage of these brownfields properties are in, or close by, minority and low income communities where their presence and continued neglect invite crime, contribute to creeping blight, and discourage efforts by low income and disadvantaged people to clean up, stabilize, and revitalize their neighborhoods.”<sup>423</sup> The Act sought to promote the revitalization of brownfields by establishing a Georgia Brownfields Program. The statute also would have provided for the creation of a Brownfields Interagency Task Force and a Brownfields Revitalization Fund.<sup>424</sup>

In addition, the legislature also proposed, but the State did not enact, a bill that would provide for a community loan program to lend funds to communities for the purpose of monitoring and reducing their hazardous waste.<sup>425</sup>

Transportation (tags: Air Pollution, Community Participation, Redressing Environmental Racism, Study, Transportation)

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<sup>421</sup> GA H.B. 204 (1995-96), available at [http://www.legis.ga.gov/legis/1995\\_96/leg/fulltext/hb204.htm](http://www.legis.ga.gov/legis/1995_96/leg/fulltext/hb204.htm) (last visited July 9, 2009).

<sup>422</sup> GA H.B. 385 (1997-98), available at [http://www.legis.ga.gov/legis/1997\\_98/leg/fulltext/hb385.htm](http://www.legis.ga.gov/legis/1997_98/leg/fulltext/hb385.htm) (last visited July 9, 2009).

<sup>423</sup> GA. S.B. 646 (2006), available at [http://www.legis.state.ga.us/legis/2005\\_06//versions/sb646\\_As\\_introduced/LC\\_14\\_9428\\_2.htm](http://www.legis.state.ga.us/legis/2005_06//versions/sb646_As_introduced/LC_14_9428_2.htm) (last visited July 9, 2009).

<sup>424</sup> *Id.*

<sup>425</sup> GA H.B. 388 (1995-96), available at [http://www.legis.ga.gov/legis/1995\\_96/leg/fulltext/hb388.htm](http://www.legis.ga.gov/legis/1995_96/leg/fulltext/hb388.htm) (last visited July 9, 2009).

The Georgia Assembly created the Georgia Regional Transportation Authority (“GRTA”) in 1999.<sup>426</sup> The agency is tasked with combating air pollution, traffic congestion and poorly planned development in the metropolitan Atlanta region, which is currently designated nonattainment under the federal Clean Air Act.<sup>427</sup> As part of “Transit Share,” the Transportation Improvement Program (“TIP”), administered by GRTA, includes fiscal, land use, and environmental considerations as part of its agenda. GRTA seeks to incorporate EJ considerations in the early stages of its planning process. For example, the GRTA Board passed a resolution approving the FY 2001- 2003 TIP and included a Benefits and Burden analysis relating to Environmental Justice by the Atlanta Regional Commission.<sup>428</sup>

The GRTA developed a draft “Regional Transit Action Plan,” which considered EJ issues.<sup>429</sup> The Plan identified geographical areas with significant low income and minority populations, to be considered as one factor in determining need for transit services.<sup>430</sup> The Plan’s Transit Needs Assessment considered EJ concerns.<sup>431</sup> As part of the Regional Transit Action Plan, one of GRTA’s fare policy goals is to maximize social equity by ensuring that those who need the service the most but who have the least ability to pay for it are not adversely affected by the fare structure.<sup>432</sup>

The Georgia Department of Transportation (“DOT”) State Transportation Improvement Program (“STIP”) lists federally funded transportation projects outside of Metropolitan Planning Organization (“MPO”) boundaries; a major component of the STIP process includes public involvement. The public involvement process includes advertised public meetings in rural areas, dissemination of public notices and brochures, and meetings with local officials in non-urban areas.<sup>433</sup> This public involvement process includes identifying EJ populations.<sup>434</sup>

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<sup>426</sup> Georgia Regional Transportation Authority, *Background and History*, available at [http://www.grta.org/about\\_us/about\\_us\\_background.htm](http://www.grta.org/about_us/about_us_background.htm) (last visited July 9, 2009).

<sup>427</sup> *Id.*

<sup>428</sup> 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](http://www.grta.org/news_section/board_minutes/pdf_files_2000_2001/2000/Bd_Minutes_061400.pdf) (last visited Sept. 8, 2009).

<sup>429</sup> Georgia Regional Transportation Authority, *Regional Transit Action Plan* (June 30, 2003), available at [http://www.grta.org/rtap/pubs.htm#rtap\\_plan](http://www.grta.org/rtap/pubs.htm#rtap_plan) (last visited July 9, 2009).

<sup>430</sup> *Id.* at 3-5.

<sup>431</sup> *Id.* at 4-3.

<sup>432</sup> Georgia Regional Transportation Authority, *Regional Transit Action Plan, Regional Fare Policy White Paper (Draft)* (July 25, 2003), available at [http://www.grta.org/rtap/pdf\\_files/Regional\\_Fare\\_Policy\\_report2.pdf](http://www.grta.org/rtap/pdf_files/Regional_Fare_Policy_report2.pdf) (last visited July 9, 2009).

<sup>433</sup> Georgia Department of Transportation, *STIP, Public Involvement Process*, available at [http://www.dot.state.ga.us/localgovernment/Documents/stip0811\\_public\\_involvement.pdf](http://www.dot.state.ga.us/localgovernment/Documents/stip0811_public_involvement.pdf) (last visited July 10, 2009).

<sup>434</sup> Sycamore Consulting, Inc., *Environmental Justice Identification and Proposed Outreach Report, Georgia State Transportation Improvement Program Fiscal Year 2007 – 2009 & Fiscal Year 2008-2011* (Dec. 2006), prepared for the Georgia Department of Transportation, pg. 4, available at <http://www.dot.state.ga.us/informationcenter/programs/transportation/Pages/stip.aspx> (last visited July 9, 2009).

A consultant for the DOT conducted an EJ outreach study, which included a quantitative analysis of racial, ethnic, income, and age demographics in the rural STIP communities and census data to identify “EJ population” areas.<sup>435</sup> The study also included interviews of local DOT representatives to determine previous outreach to EJ populations.<sup>436</sup> The study included surveys of transportation corridors to identify areas with safety, air pollution, and noise problems, the data from which were then combined with the demographic data to identify areas that might contain a particularly sensitive population.<sup>437</sup> The study provided an outreach plan and strategies for each locality.<sup>438</sup> The DOT STIP website also provides annual public involvement reports.<sup>439</sup>

**Community Participation** (tags: Community Participation, Land Use – anti-concentration, Land Use – siting, Outreach)

#### Anti-Concentration Law for Solid Waste Facilities

Georgia prohibits municipal solid waste disposal facilities from being located within a city or county, or within one half mile of a city or county’s border without that entity’s permission.<sup>440</sup> The state also limits the number of solid waste facilities that may be sited within a given area.<sup>441</sup> 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.”<sup>442</sup> The statute also requires the permitting agency to notify the general public via newspaper publication of the place and time for meetings where siting decisions will occur.<sup>443</sup>

**Pollution Cleanup** (tags: Community Education)

The Georgia Department of Natural Resources Sustainability Division website provides links (mostly to U.S. EPA programs) that provide recycling and water pollution information for students and teachers. It also provides information about sources of grants related to environmental education for teachers.<sup>444</sup>

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<sup>435</sup> *Id.* at 5.

<sup>436</sup> *Id.*

<sup>437</sup> *Id.* at 6.

<sup>438</sup> *Id.* at 27.

<sup>439</sup> Georgia Department of Transportation, *STIP*,

<http://www.dot.state.ga.us/informationcenter/programs/transportation/Pages/stip.aspx> (last visited July 10, 2009).

<sup>440</sup> GA. CODE ANN. § 12-8-25 (2004).

<sup>441</sup> *Id.* at § 12-8-25.4.

<sup>442</sup> *Id.* at § 12-8-26(a).

<sup>443</sup> *Id.*

<sup>444</sup> Georgia Department of Natural Resources Sustainability Division, *Students and Teachers*, available at [http://www.p2ad.org/documents/gp\\_students.html](http://www.p2ad.org/documents/gp_students.html) (last visited July 9, 2009)

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## **HAWAII**

(tags: Community Education, Community Participation, Land Use – permitting, Redressing Environmental Racism, Smart Growth, Study, Transportation)

### **General Environmental Justice Activities** (tags: Community Participation)

In 2005, the Hawaii legislature resolved that the Environmental Council create a guidance document on how EJ principles may be incorporated in all phases of state’s environmental review procedures, drawing upon broad public input.<sup>445</sup>

#### Environmental Justice Study (tags: Community Education, Redressing Environmental Racism, Study)

In 2006, the Hawaii legislature passed a law funding the study of environmental justice in the Hawaiian context.<sup>446</sup> The law invests the University of Hawaii with the responsibility to review the state environmental impact statement system, particularly whether existing law adequately addresses the effects of proposed actions on cultural practices of native communities. This review would further assess whether each state agency is fulfilling its duty to identify and address “any disproportionately adverse human health, environmental, or cultural effects on minority populations, Native Hawaiian, and low-income populations” resulting from agency actions.

The law also funded a consultant, responsible for education and outreach activities, including gathering input for defining “environmental justice” in the context of Hawaii’s unique ethnic heritage. Debate has centered on whether “Native Hawaiian” encompasses only indigenous Hawaiians or includes other (mostly Asian) groups that lived in the islands prior to U.S. annexation.<sup>447</sup> In 2007, a consultant was hired to develop a high school curriculum that addresses environmental justice.<sup>448</sup>

The law further directed the consultant to develop a guidance document, articulating the role of EJ analysis through all phases of the environmental impact statement (“EIS”) process.<sup>449</sup> The report, entitled *Hawai’i Environmental Justice Initiative Report* was published in January 2008. The report defined EJ in the Hawaiian context through community participation in the definition process, developed guidelines for considering EJ in the various phases of the EIS process (including an EJ screening

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<sup>445</sup> H.I. S.C.R. 140, HD 1 (2005).

<sup>446</sup> H.I. S.B. 2145, HD 2 (2006).

<sup>447</sup> Telephone interview with Genevieve Salmonson, Director, Hawaii Health Dep’t, Office of Environmental Quality Control (Mar. 21, 2003).

<sup>448</sup> State of Hawai’i Environmental Council *Hawai’i Environmental Justice Initiative Report*, (Jan. 9, 2008), at 2-4, available through link at <http://hawaii.gov/health/environmental/oeqc/index.html> (last visited June 20, 2009).

<sup>449</sup> E-mail from Genevieve Salmonson, Director, Hawaii Health Dep’t, Office of Environmental Quality Control (Mar. 21, 2007).

analyses to use in the evaluation of an EIS), and made recommendations for future EJ efforts.<sup>450</sup>

The report included an entire chapter devoted to the legal foundation for EJ law and policy in Hawaii.<sup>451</sup> It noted that the 1978 Hawaii Constitutional Convention intended to provide a legal means to reaffirm native Hawaiian rights in order to preserve the culture.<sup>452</sup> As a result, the state Constitution (Art. 12 §7) contains provisions for protecting traditional rights exercised for subsistence, cultural, and purposes by Ahupua'a tenants descended from pre-1778 native Hawaiian inhabitants.<sup>453</sup> Similar types of protections are provided in the Hawaii Revised Statutes, which provides that tenants have the right to take firewood, house-timber, aho cord, thatch, or ki leaf for their own private use.<sup>454</sup> The report also noted that EJ concepts have also been included in the State Planning Act, environmental impact statement law and policy, the Coastal Zone Management Act, the water code, burial law, and historic preservation.<sup>455</sup>

#### Environmental Impact Statement Statute (tags: Land Use – permitting)

Environmental justice concepts are also included in the EIS statute. The Hawaii EIS process includes in the definition of an EIS that it disclose the “effects of a proposed action on the economic welfare, social welfare, and cultural practices of the community and State.”<sup>456</sup> It defines “significant impact” to include actions that “adversely affect the economic welfare, social welfare, or cultural practices of the community and State.”<sup>457</sup>

One of the recommendations in the *Hawai'i Environmental Justice Initiative Report* is that the State of Hawaii Health Department, Office of Environmental Quality Control adopt the report as agency policy for use in the environmental review process.<sup>458</sup> The department has adopted it as a guideline: when the department reviews environmental assessment (EA) or EIS documents, the staff looks for whether EJ issues have been considered in the EA or EIS.<sup>459</sup>

Another recommendation is that the legislature amend Hawaii EIS law to incorporate the successful aspects of the report by revising Hawaii Revised Statutes, Chapter 343, which dictates the environmental review process.<sup>460</sup>

### **Equitable Development**

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<sup>450</sup> *Hawai'i Environmental Justice Initiative Report*, *supra* note 432, at ES-1 and 6-5.

<sup>451</sup> *Id.* at 7-1 – 7-9.

<sup>452</sup> *Id.* at 7-1.

<sup>453</sup> *Id.* at 7-2.

<sup>454</sup> HAW. REV. STAT. § 7-1.

<sup>455</sup> *Hawai'i Environmental Justice Initiative Report*, *supra* note 432, at 7-3 and 7-6.

<sup>456</sup> HAW. REV. STAT. § 343-2.

<sup>457</sup> *Id.*

<sup>458</sup> *Hawai'i Environmental Justice Initiative Report*, *supra* note 432, at 8-1.

<sup>459</sup> Telephone interview with Herman Tuiolosega, Hawaii Health Dep't, Office of Environmental Quality Control (June 19, 2009).

<sup>460</sup> *Hawai'i Environmental Justice Initiative Report*, *supra* note 432, at 8-2.

Oahu Transportation Planning (tags: Community Participation, Redressing Environmental Racism, Study, Transportation)

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 about transportation planning on the island of Oahu.<sup>461</sup> OMPO continues to perform this advisory role by developing integrated plans to assist several transportation agencies in the state.<sup>462</sup> OMPO seeks to conform its transportation plans to principles of EJ, and in 2001, issued its twenty-five year Oahu Regional Transportation Plan.<sup>463</sup> The plan identifies communities with concentrations of minority populations to enable agencies to devise services that adequately serve those communities’ needs. In preparation for the report, OMPO surveyed 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.<sup>464</sup>

In addition to the Oahu Regional Transportation Plan, OMPO issued a report entitled *Environmental Justice in the OMPO Planning Process* that “evaluated the effectiveness of the metropolitan planning process in meeting Title VI and EJ requirements and implemented a process to analyze the distribution of benefits and disproportionate impacts of planned investments.”<sup>465</sup> This report was updated in 2004 after an examination of the implications of the federal definition of “environmental justice” on the unique nature of Hawaii’s ethnic and socioeconomic makeup. OMPO employs a methodology for identifying EJ communities that it believes is “particularly appropriate for racially diverse areas whose population is a majority minority.”<sup>466</sup> The report describes the methodology and concludes that around 18% of Oahu “block groups” are EJ areas.<sup>467</sup>

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<sup>461</sup> Oahu Metropolitan Planning Organization, *What is OMPO?*, formerly available at <http://oahumpo.org/Home/about.html> (last visited May 28, 2005).

<sup>462</sup> *Id.*

<sup>463</sup> Oahu Metropolitan Planning Organization, *Environmental Justice in the OMPO Planning Process: Defining Environmental Justice Populations*, 2004 update available at <http://oahumpo.org/reports-docs/2004Update.pdf> (last visited June 20, 2009).

<sup>464</sup> *Id.* at 5-18.

<sup>465</sup> *Id.*

<sup>466</sup> *Environmental Justice in the OMPO Planning Process*, *supra* note 447, at 4.

<sup>467</sup> *Id.*

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# IDAHO

(tags: Air Pollution, Community Participation, Native Americans, Redressing Environmental Racism, Waste, Water)

**General Environmental Justice Activities** (tags: Community Participation, Waste, Water)

The Idaho Department of Environmental Quality (“DEQ”) does not have a formal environmental justice policy. However, DEQ provides structured opportunities for public input and considers EJ issues in at least two other respects: waste collection and water. With regard to the former, reduced payment rates and additional trash and recycling services are offered to low income families and persons with disabilities in the City of Boise.<sup>468</sup> With regard to the latter, EJ issues must be considered for programs falling under either of two state funds: the Water Pollution Control State Revolving Fund<sup>469</sup> and the Drinking Water State Revolving Fund.<sup>470</sup>

**Community Participation** (tags: Community Participation)

Interested citizens may serve on committees to advise DEQ on issues which may include environmental justice. Some committees require a long-term time commitment and have frequent meetings, while others have more intermittent meetings. Committee meetings are open to the public.<sup>471</sup>

Airshed Advisory Groups (tags: Air Pollution, Community Participation)

Parts of Idaho have been classified as nonattainment areas by the U.S. EPA, and DEQ, together with local governments, is developing site-specific plans to bring pollutant

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<sup>468</sup> Idaho Dep’t of Environmental Quality, *Recycling in Idaho: Profiles of Community Recycling Programs*, at 4, available at [http://www.deq.idaho.gov/waste/recycling/community\\_recycling\\_study\\_0903.pdf](http://www.deq.idaho.gov/waste/recycling/community_recycling_study_0903.pdf) (last visited Apr. 23, 2009).

<sup>469</sup> Idaho Dep’t of Environmental Quality, *Water Pollution Control State Revolving Fund, Fiscal Year 2009, Intended Use Plan*, at 4, available at [http://www.deq.idaho.gov/water/assist\\_business/pwvs/ww\\_construction\\_loans\\_iup\\_fy09\\_final.pdf](http://www.deq.idaho.gov/water/assist_business/pwvs/ww_construction_loans_iup_fy09_final.pdf) (last visited Apr. 23, 2009).

<sup>470</sup> Idaho Dep’t of Environmental Quality, *Form 5-B Outline and Checklist for Environmental Information Documents (EIDs)*, at 6, available at [http://www.deq.idaho.gov/water/assist\\_business/pws/handbook/Form%205-B.pdf](http://www.deq.idaho.gov/water/assist_business/pws/handbook/Form%205-B.pdf) (last visited Apr. 23, 2009); see also Idaho Dep’t of Environmental Quality, *Idaho’s Drinking Water Revolving Loan Fund and Planning Grant Program*, at 2, available at [http://www.deq.state.id.us/WATER/assist\\_business/pws/dw\\_funding\\_brochure\\_0705.pdf](http://www.deq.state.id.us/WATER/assist_business/pws/dw_funding_brochure_0705.pdf) (last visited Apr. 23, 2009).

<sup>471</sup> Idaho Dep’t of Environmental Quality, *Public Info. and Input: Committees*, available at <http://www.deq.state.id.us/public/participate.cfm#committee> (last visited Apr. 23, 2009).

levels back in line with U.S. EPA's National Ambient Air Quality Standards.<sup>472</sup> A nonattainment area is “[a]n area with persistent air quality problems” that “violates federal health-based standards for outdoor air pollution.”<sup>473</sup> Airshed Advisory Groups are formed to provide citizen input during the development of site-specific plans.<sup>474</sup>

Watershed Advisory Groups and Basin Advisory Groups (tags: Community Participation, Native Americans, Redressing Environmental Racism, Water)

Watershed advisory groups (“WAGs”) and basin advisory groups (“BAGs”) coordinate planning, advise on water quality, and make recommendations regarding sources of pollution in assigned areas of the state.<sup>475</sup> BAG members, who are appointed by the DEQ Director, represent a cross-section of interests in each basin.<sup>476</sup> These interests include agriculture, forestry, municipalities, industry, recreation, Native American tribes, and environmental interests.<sup>477</sup> Members of BAGs recommend citizens for the DEQ Director to appoint to WAGs.<sup>478</sup> Whereas BAGs provide guidance on much larger basins, WAGs provide guidance on specific watersheds,<sup>479</sup> WAGs also provide local public input and guidance to DEQ when developing water quality improvement plans.<sup>480</sup>

Negotiated Rulemaking (tags: Community Participation)

Perhaps most significantly, members of the public have the ability to be included on an advisory committee to provide input during negotiated rulemaking. Negotiated rulemaking is an “optional process in which all interested parties and DEQ seek a consensus on the content of a rule.”<sup>481</sup> However, DEQ uses negotiated rulemaking whenever feasible in devising regulations to implement environmental statutes.<sup>482</sup> Where members of an EJ community are included on these committees there is the opportunity for this community to provide its perspective at the critical stage of shaping environmental regulations, and to represent a counterweight to that supplied by industry groups.

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<sup>472</sup> Idaho Dep’t of Environmental Quality, *Air Monitoring Overview: How DEQ Assesses Air Quality*, available at [http://www.deq.state.id.us/air/data\\_reports/monitoring/overview.cfm#AttvNon](http://www.deq.state.id.us/air/data_reports/monitoring/overview.cfm#AttvNon) (last visited Apr. 23, 2009).

<sup>473</sup> *Id.*

<sup>474</sup> *Public Info. and Input: Committees*, *supra* note 455.

<sup>475</sup> *Id.*; IDAHO CODE §§ 39-3613, 39-3616 (West 2009).

<sup>476</sup> *Public Info. and Input: Committees*, *supra* note 455.

<sup>477</sup> *Id.*

<sup>478</sup> *Id.*

<sup>479</sup> *Id.*

<sup>480</sup> Idaho Dep’t of Environmental Quality, *Surface Water: Water Quality Improvement Plans (TMDLs)*, available at [http://www.deq.state.id.us/water/data\\_reports/surface\\_water/tmdls/overview.cfm#BAGs](http://www.deq.state.id.us/water/data_reports/surface_water/tmdls/overview.cfm#BAGs) (last visited Apr. 23, 2009).

<sup>481</sup> Idaho Dep’t of Environmental Quality, *Public Info. and Input: Get Involved/Participate*, available at <http://www.deq.idaho.gov/public/participate.cfm#negotiated> (last visited Apr. 23, 2009); see also Idaho Code § 67-5221, *et seq.*

<sup>482</sup> *Public Info. and Input: Get Involved/Participate*, *supra* note 465.

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## ILLINOIS

(tags: Agricultural Chemicals, Air Pollution, Brownfield's Redevelopment, Community Education, Community Participation, Compliance and Enforcement, Diet, Housing, Land Use – permitting, Mapping, Outreach, Pollution Cleanup, Public Health, Redressing Environmental Racism, Toxic Waste Cleanup, Transportation, Waste, Water)

**General Environmental Justice Activities** (tags: Community Education, Community Participation, Outreach)

Illinois EPA (“IEPA”) finalized its environmental justice policy in 2008.<sup>483</sup> The policy, which is intended to be “evolutionary,” outlines the various strategies that IEPA utilizes to promote environmental justice.<sup>484</sup> First is the designation of an EJ Officer, who facilitates public participation in environmental decisions, oversees responses to EJ complaints regarding enforcement, permitting, or other situations, and works with the Advisory Council on the continued development of EJ activities. Particular strategies for addressing EJ are (1) facilitating public participation, (2) responding to EJ complaints, (3) engaging citizens in permitting, and (4) educating IEPA staff about responding to EJ concerns and developments in EJ. The EJ policy and other EJ documents are printed in English and Spanish.

Environmental Justice Advisory Group (tags: Community Education, Community Participation, Land Use – permitting)

In 2005, the IEPA created an EJ advisory group.<sup>485</sup> IEPA attempted to create a diverse group of individuals, including representatives from both local and national EJ groups, business associations, the city of Chicago Environment Department, different bureaus of IEPA, and U.S. EPA Region 5.<sup>486</sup> The Group meets quarterly, and brainstorms strategies for integrating EJ into business, government, and community consciousness.<sup>487</sup>

The Advisory Group held an EJ Forum on November 19, 2008. One topic of discussion was methods for incorporating EJ concerns into the various permitting processes within each IEPA bureau. Other discussions at the forum were making the Freedom of Information Act (FOIA) process more user-friendly and the development of an EJ database. To this end, IEPA is preparing a fact sheet that will outline what is

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<sup>483</sup> Telephone interview with Ken Page, Environmental Justice Officer, Illinois EPA (Feb. 25, 2009).

<sup>484</sup> IEPA, “Environmental Justice Policy,” <http://www.epa.state.il.us/environmental-justice/policy.html> (last visited Feb. 25, 2009).

<sup>485</sup> IEPA, “Environmental Justice Advisory Group,” <http://www.epa.state.il.us/environmental-justice/advisory-group.html> (last visited Feb. 11, 2009).

<sup>486</sup> Telephone interview with Ken Page, *supra* note 467.

<sup>487</sup> *Id.*

contained in each bureau file category and the EJ database is in the second stage of development.<sup>488</sup>

## Community Participation

### Public Participation Policy (tags: Community Education, Community Participation, Mapping)

IEPA's Public Participation Policy provides direction to staff, and information to the public, regarding steps that IEPA should take to ensure that communities are adequately informed and involved. The document instructs staff of IEPA Bureaus (Air, Land, or Water) to analyze permit applications to determine if the proposed activities may affect an EJ community.<sup>489</sup> The Bureau staff currently use maps provided by U.S. EPA, based on the 2000 census, to determine if the activity may affect an EJ community.<sup>490</sup> When a proposed action has the potential to affect an EJ community, the Office of Community Relations may become involved.<sup>491</sup>

### Office of Community Relations (tags: Community Education, Community Participation, Land Use – permitting, Outreach)

Within IEPA, the Office of Community Relations was created to “to facilitate the Agency's goal of open communication and informed public participation in the decisions and programs of the Illinois EPA.”<sup>492</sup> The Community Relations Coordinators are assigned to all the major program areas within IEPA, and their primary function is to serve as a “trusted liaison” with the public. Examples of their duties includes: (1) identifying communities that may be affected by IEPA actions; (2) actively listening to community perspectives; (3) conveying community concerns to IEPA staff; (4) facilitating information flows within IEPA; and (5) integrating geographical, social, political and economic factors into IEPA decisions.<sup>493</sup>

When Community Relations becomes involved in the permitting process, because of the proposed permit's relationship to an EJ community, it will engage in a variety of tactics to encourage public participation. Even before the public notice period, Community Relations may reach out to community groups, initiating small group meetings between community members, IEPA, and the applicant.<sup>494</sup> Additionally, they may make the permit application and other relevant information more accessible by

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<sup>488</sup> *Id.*

<sup>489</sup> IEPA, *Public Participation Policy*, at 4, <http://www.epa.state.il.us/environmental-justice/public-participation-policy.pdf> (last visited Feb. 25, 2009). The Policy is available online, in IEPA's regional offices, and was distributed to various EJ organizations by the EJ Advisory Group. Telephone interview with Ken Page, *supra* note 467.

<sup>490</sup> Telephone interview with Ken Page, *supra* note 467.

<sup>491</sup> *Id.*

<sup>492</sup> IEPA, “Office of Community Relations,” <http://www.epa.state.il.us/community-relations/about.html> (last visited Feb. 11, 2009).

<sup>493</sup> *Id.*

<sup>494</sup> Telephone interview with Ken Page, *supra* note 467.

posting it at the local public library, allowing the public to become informed without the time and expense of a Freedom of Information Act request.<sup>495</sup> Community Relations can prepare bilingual documents to reflect the second language spoken in a community, if necessary, and may also encourage members of the community to request a public hearing, when one is not required by law.<sup>496</sup>

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.”<sup>497</sup>

#### Environmental Justice Complaint Process (tags: Community Participation, Compliance and Enforcement)

In order to more efficiently respond to EJ Complaints, IEPA developed an EJ Grievance Procedure.<sup>498</sup> Individuals may submit a written complaint to the EJ Officer, who will provide notification that the complaint has been received, determine if it warrants further investigation, and provide notice to the complainant of the resolution of the matter.<sup>499</sup> IEPA staff is provided with guidelines for dealing with EJ complaints made outside of the grievance procedure.<sup>500</sup>

#### Transportation Planning (tags: Transportation)

The Illinois Department of Transportation (IDOT) makes community impact assessments before implementing transportation projects. Its Community Impact Assessment Manual directs IDOT analysts to, consistent with federal law, specifically consider and report on the effects of a proposed project on “special” communities, including EJ communities.<sup>501</sup> The Manual explains methods for determining the extent of impacts on special groups, and suggestions for minimizing such impacts.<sup>502</sup> Additionally, IDOT will contact IEPA for consultation if its projects receive opposition from EJ communities.<sup>503</sup>

## **Improving Public Health**

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<sup>495</sup> *Id.*

<sup>496</sup> E-mail from Ken Page, Environmental Justice Officer, IEPA (Mar. 4, 2009) (on file with author); *Id.*

<sup>497</sup> Illinois Environmental Protection Agency, *Interim Environmental Justice Policy*, available at <http://www.epa.state.il.us/environmental-justice/policy.html> (last visited Sept. 8, 2009).

<sup>498</sup> IEPA, “Grievance Procedure,” <http://www.epa.state.il.us/environmental-justice/grievance-procedure.html> (last visited Feb. 26, 2009).

<sup>499</sup> *Id.*

<sup>500</sup> Telephone interview with Ken Page, *supra* note 467.

<sup>501</sup> Illinois Dep’t of Transportation, *Community Impact Assessments Manual*, section 2.4, available at <http://www.dot.state.il.us/desenv/CIAManual.pdf> (last visited Feb. 11, 2009).

<sup>502</sup> *Id.*

<sup>503</sup> Telephone interview with Ken Page, *supra* note 467.

Health and Diet Programs (tags: Diet, Public Health, Redressing Environmental Racism)

Like many other states, Illinois has developed programs to combat obesity, asthma, and lead-poisoning, public health issues which often affect low-income and minority populations in greater numbers.<sup>504</sup> Their obesity plan, for example, outlines various methods for increasing access and affordability of fruits and vegetables to low-income and minority populations.<sup>505</sup>

Migrant Labor Camp Regulations (tags: Agricultural Chemicals, Housing, Redressing Environmental Racism)

For many years Illinois has regulated Migrant Labor Camps, or living quarters for agricultural workers.<sup>506</sup> The regulations affecting Migrant Labor Camps address the unique environmental and economic situation faced by agricultural workers. They set building, water supply, waste disposal, and other environmental health standards.<sup>507</sup>

## **Pollution Cleanup**

Illinois Removes Illegal Dumping (“I-RID”) Program (tags: Pollution Cleanup, Waste, Water)

Open dumping frequently occurs in low income and minority communities.<sup>508</sup> The Bureau of Land administers the I-RID program in order to clean up and prevent development of open dumps.<sup>509</sup> Designation of a site as an open dumping area unlocks special preventative and corrective powers for IEPA, including removal, groundwater monitoring and consensual no-cost removal of waste, under certain circumstances, from private property.<sup>510</sup> In making the finding that a site is an “open dumping area,” the Illinois legislature has directed IEPA to consider, among other things, whether the site is in an EJ area.

SEPs (tags: Compliance and Enforcement, Public Health)

IEPA may negotiate a Supplemental Environmental Project (SEP) when settling an enforcement action. The SEP must improve, restore, protect, or reduce risks to public

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<sup>504</sup> See, e.g., Illinois Dep’t of Public Health, *Illinois Strategic Plan: Promoting Healthy Eating and Physical Activity to Prevent and Control Obesity 2007 – 2013*, at 7, available at [http://www.idph.state.il.us/HealthWellness/IL\\_Existing\\_State\\_Plan.pdf](http://www.idph.state.il.us/HealthWellness/IL_Existing_State_Plan.pdf) (last visited Feb. 11, 2009); Illinois Dep’t of Public Health, *Strategic Plan for the Elimination of Childhood Lead Poisoning*, at 14, available at <http://www.idph.state.il.us/HealthWellness/StrategicLeadPlan.pdf> (last visited Feb. 11, 2009).

<sup>505</sup> *Illinois Strategic Plan: Promoting Healthy Eating*, *supra* note 488.

<sup>506</sup> See 210 ILL. COMP. STAT. 110/2, *et. seq.* (2008).

<sup>507</sup> See ILL. ADMIN. CODE § 77-I-935, *et. seq.* (2008).

<sup>508</sup> Telephone interview with Ken Page, *supra* note 467.

<sup>509</sup> IEPA, *Illinois Removes Illegal Dumps Brochure*, available at <http://www.epa.state.il.us/land/open-dumps/brochure.pdf> (last visited Feb. 26, 2009).

<sup>510</sup> 415 ILL. COMP. STAT.5/22.15a (2006).

health and/or the environment beyond what is achieved by compliance with applicable laws.<sup>511</sup> IEPA created the Idea Bank to get ideas from the public for potential SEPs, and it encourages EJ communities to submit SEP ideas.<sup>512</sup> The largest SEPs have been in EJ communities.<sup>513</sup>

Team Illinois (tags: Housing, Pollution Cleanup, Public Health, Waste, Water)

Team Illinois is a program coordinated by the Governor's office which focuses resources on disadvantaged communities.<sup>514</sup> Currently six communities are involved with the program.<sup>515</sup> Different state agencies, including IEPA, and the departments of public health and social services engage in improvement projects in the community.<sup>516</sup> Among other services, Team Illinois provides clean-up of tire-dumps, running residential water, and health screenings in the poorest areas of the state.<sup>517</sup>

## Coordination with Federal Government

Performance Partnership Agreement (tags: Air Pollution, Brownfields Redevelopment, Community Education, Toxic Waste Cleanup)

Each year since 2000, IEPA has entered into a PPA with U.S. EPA.<sup>518</sup> The earlier PPAs contained extensive, but general, language regarding protecting EJ communities. As IEPA established an Interim EJ Policy and other mechanisms for increasing public participation, the PPAs started containing less explicit language about environmental justice. The most recent PPAs, for fiscal years 2006/2007 and 2008/2009, explain a few particular ways in which IEPA and U.S. EPA continue to collaborate regarding environmental justice. Joint IEPA and U.S. EPA goals regarding air permitting and hazardous waste management, including Superfund sites, continue to reflect EJ concerns.<sup>519</sup>

Additionally, in 2003, U.S. EPA designated the Waukegan Harbor Cleanup and Revitalization Project as an EJ Demonstration Project, thereby making Waukegan Harbor an EJ community.<sup>520</sup> The project has continued, with IEPA engaging in meetings with

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<sup>511</sup> IEPA, "Supplemental Environmental Projects," <http://www.epa.state.il.us/enforcement/sep/> (last visited Feb. 26, 2009).

<sup>512</sup> Telephone interview with Ken Page, *supra* note 467.

<sup>513</sup> E-mail from Ken Page, *supra* note 480.

<sup>514</sup> *Id.*

<sup>515</sup> *Id.*

<sup>516</sup> *Id.*

<sup>517</sup> Office of the Governor Press Release from 7/21/2003, "Governor launches Team Illinois in Pembroke," available at <http://www.illinois.gov/pressreleases/ShowPressRelease.cfm?SubjectID=1&RecNum=2189> (last visited June 25, 2009).

<sup>518</sup> IEPA, "Performance Partnership Agreement," <http://www.epa.state.il.us/ppa/> (last visited Feb. 11, 2009).

<sup>519</sup> See IEPA, *Performance Partnership Agreement, Fiscal Year 2008/2009*, at 17, 23, 34, available at <http://www.epa.state.il.us/ppa/ppa-fy2008-2009.pdf> (last visited June 25, 2009).

<sup>520</sup> IEPA, *Performance Partnership Agreement, Fiscal Year 2006/2007*, at 8, available at <http://www.epa.state.il.us/ppa/ppa-fy2006.pdf> (last visited Feb. 11, 2009).

the Waukegan Harbor Citizen Advisory Group and community relations staff preparing educational materials for the Advisory Group to distribute.<sup>521</sup> However, the governments involved (local, state, and federal) have not yet approved a remediation plan.<sup>522</sup>

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<sup>521</sup> *Id.*

<sup>522</sup> *Performance Partnership Agreement, Fiscal Year 2008/2009, supra note 503, at 6-7.*

## INDIANA

(tags: Brownfields Redevelopment, Community Education, Community Participation, Land Use – permitting, Land Use – siting, Mapping, Outreach, Redressing Environmental Racism, Waste)

### **General Environmental Justice Activities** (tags: Community Education, Community Participation)

Environmental justice efforts in Indiana are coordinated through the Indiana Department of Environmental Management (“IDEM”). IDEM’s 2001 *Environmental Justice Strategic Plan* sets out various goals, including (1) identifying geographic areas of EJ concern, (2) educating the public and IDEM staff about EJ issues, (3) ensuring that all affected communities have the opportunity to communicate their concerns, (4) evaluating the effectiveness and appropriateness of public processes for environmental decision-making, and (5) creating an interagency approach to ensure meaningful and active public participation.<sup>523</sup> In 2005, a change in state administration resulted in a “moratorium”<sup>524</sup> on former EJ programs while IDEM reevaluated past objectives for potential alignment with the new Governor’s position.<sup>525</sup>

### Environmental Justice Policy – 2006 (tags: Community Participation, Outreach)

In January 2006, after weighing whether IDEM would maintain separate Environmental Justice staff or whether Environmental Justice issues would be rolled into other IDEM employees’ job descriptions,<sup>526</sup> IDEM issued its first Environmental Justice Policy (“2006 Policy”).<sup>527</sup> The 2006 Policy affirmed the importance of having dedicated EJ staff and procedures that would ensure the meaningful participation of affected populations, particularly those without technical expertise or fluent English language skills.<sup>528</sup>

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<sup>523</sup> National Academy of Public Administration, *Models for Change: Efforts by Four States to Address Environmental Justice* (2002), at 39-41, available at [http://71.4.192.38/NAPA/NAPAPubs.nsf/9172a14f9dd0c36685256967006510cd/95fffb0b62b4e26d85256be3004ff436/\\$FILE/Final+State+EJ+2002.pdf](http://71.4.192.38/NAPA/NAPAPubs.nsf/9172a14f9dd0c36685256967006510cd/95fffb0b62b4e26d85256be3004ff436/$FILE/Final+State+EJ+2002.pdf) (last visited Apr. 27, 2009).

<sup>524</sup> Telephone interview with Dana Wise, Former Environmental Justice Coordinator, Indiana Dep’t of Environmental Management (Mar. 23, 2005).

<sup>525</sup> Telephone interview with Tanya McDonald, Complaint Coordinator, Indiana Dep’t of Environmental Management (May 5, 2005).

<sup>526</sup> *Id.*

<sup>527</sup> Indiana Dep’t of Environmental Management, *Environmental Justice Policy* (2006), available at <http://www.state.in.us/idem/files/ejintpolicy.pdf> (last visited Apr. 27, 2009).

<sup>528</sup> *Id.* at 3; 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.” *Models for Change, supra* note 507, at 38.

The 2006 Policy represents a slight shift away from special solicitude for minority and low income populations; rather, it promotes the idea of participatory democracy by all affected populations. However, of special note in the 2006 Policy is IDEM's acknowledgement that it will "establish methods to consider communications in languages other than English" and "have comments reviewed by staff who are knowledgeable about and sensitive to local conditions in the area affected by the activity under consideration."<sup>529</sup> IDEM staff also must respond to comments in the same language in which they are received.<sup>530</sup> Finally, the 2006 policy dictates that IDEM must provide "the opportunity for members of the public to obtain expertise on technical issues before commenting."<sup>531</sup>

Environmental Justice Policy – 2008 (Current) (tags: Community Education, Community Participation)

IDEM updated its Environmental Justice Policy in October 2008 ("2008 Policy").<sup>532</sup> The 2008 Policy is essentially the same as the 2006 Policy except for one structural aspect: IDEM eliminated the role of "Environmental Justice Education Coordinator" in the 2008 Policy. To compensate for this elimination, IDEM expanded the role of the "Environmental Justice Manager," which, in the 2006 Policy, was a liaison position in IDEM's Office of External Affairs but which now falls under the purview of the Assistant Commissioner in IDEM's Office of Legal Affairs.<sup>533</sup>

The 2008 Policy, like the 2006 Policy, "applies to all Agency public outreach, educational and decision-making activities."<sup>534</sup> The purpose of IDEM's 2008 Policy "is to ensure that Agency and Agency staff treat all members of the public equally and fairly in the conduct of activities and decision-making processes within the Agency's jurisdiction."<sup>535</sup> Further, the objectives of 2008 Policy are to ensure that the public has (1) equal access to pertinent information, (2) adequate notice regarding IDEM's processes, and (3) the opportunity to give comments and information to IDEM staff.<sup>536</sup> Significantly, the 2008 Policy requires that IDEM staff "attend Agency training regarding Public notification and Environmental Justice," and that the Environmental Justice Manager identify "potential Environmental Justice issues in the State and communicate with persons working on environmental justice concerns."<sup>537</sup>

## Community Participation

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<sup>529</sup> 2006 Environmental Justice Policy, *supra* note 511, at 3.

<sup>530</sup> *Id.*

<sup>531</sup> *Id.*

<sup>532</sup> Indiana Dep't of Environmental Management, *Environmental Justice Policy* (2008), available at <http://www.in.gov/idem/files/A-008-OEA-08-P-R2.pdf> (last visited Apr. 27, 2009).

<sup>533</sup> *Id.* at 1; 2006 Environmental Justice Policy, *supra* note 511, at 1.

<sup>534</sup> 2008 Environmental Justice Policy, *supra* note 516.

<sup>535</sup> *Id.*

<sup>536</sup> *Id.*

<sup>537</sup> *Id.* at 2.

Guide for Citizen Participation (tags: Community Education, Community Participation, Outreach)

In order to more effectively address EJ concerns, IDEM developed and later revised a *Guide for Citizen Participation* (“Guide”).<sup>538</sup> The purpose of the Guide is to provide residents with information about IDEM’s role as the state’s environmental agency and to help residents learn how to take part in decision-making processes.<sup>539</sup> The Guide initially was published in Spanish as well as English.<sup>540</sup> The Guide does not, however, expressly refer to Environmental Justice.

Mapping: Potential Areas of Environmental Justice Concern (tags: Mapping, Redressing Environmental Racism)

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.<sup>541</sup> 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.<sup>542</sup> 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 Environmental Justice issues faced by particular communities.

## Equitable Development

### Case Law

*Bd. of Commissioners v. Great Lakes Transfer, LLC*<sup>543</sup> (2008) (tags: Land Use – permitting, Outreach, Waste)

A solid waste transfer company applied to the Indiana Department of Environmental Management (“IDEM”) for a permit to operate a solid waste transfer facility. IDEM granted the permit. Shortly thereafter, three local governments, a county and two towns, challenged IDEM’s issuance of the permit to the state Office of Environmental Adjudication (“OEA”). A second county later intervened. The two towns argued, among other things, that the permit violated IDEM’s Environmental Justice Strategic Plan (“Plan”). The court ruled that the OEA’s decision that there was no

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<sup>538</sup> Indiana Dep’t of Environmental Management, *Guide for Citizen Participation*, available at <http://www.in.gov/idem/5803.htm> (last visited Apr. 27, 2009).

<sup>539</sup> *Id.*

<sup>540</sup> The Environmental Council of the States, *Guide to Public Participation: How to Make Your Voice Heard on Community Environmental Issues*, available at <http://www.ecos.org/content/innovations/detail/2012/> (last visited Apr. 27, 2009).

<sup>541</sup> Indiana Dep’t of Environmental Management, *Environmental Justice*, <http://www.in.gov/idem/4429.htm> (last visited Apr. 27, 2009).

<sup>542</sup> *Id.*; see also Indiana Dep’t of Environmental Management, *Maps*, <http://www.in.gov/idem/4098.htm> (last visited Apr. 27, 2009).

<sup>543</sup> 888 N.E.2d 784 (Ind. Ct. App. 2008).

violation of the Plan was not arbitrary and capricious because IDEM gave proper notice of the issuance of the permit, provided the public with adequate opportunity to comment, and implemented proper controls to guard against waste discharge. Furthermore, the towns introduced no evidence that there would be any pollution because of the operation of the transfer facility.

## **Pollution Cleanup**

### Brownfields (tags: Brownfields Redevelopment)

In May 2003, IDEM updated its *Brownfield Redevelopment Resource Guide*.<sup>544</sup> While most states' Brownfields programs make little effort to ensure that redevelopment efforts do not adversely affect EJ populations, the Indiana guide mentions EJ as a key concern.<sup>545</sup> The guide, however, does not make any substantive recommendations for incorporating EJ techniques or practices into the program.

## **Coordination with Federal Government** (tags: Community Participation, Redressing Environmental Racism)

### Performance Partnership Agreement

The two most recent Performance Partnership Agreements ("PPA") between IDEM and U.S. EPA Region 5 do not expressly mention Environmental Justice,<sup>546</sup> possibly as a result of IDEM's successful implementation of its agreements in a prior PPA. In its 2003 PPA, IDEM agreed to undertake the formation of an advisory committee and processes to inform agency staff of EJ issues.<sup>547</sup> In addition, IDEM promised in that PPA to familiarize its staff with environmental burdens on minority and low-income populations; increase meaningful public input on environmental decisions; and facilitate dispute resolution among parties to environmental decisions.<sup>548</sup>

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<sup>544</sup> *Indiana Brownfields Redevelopment Resource Guide 2003*, previously available at <http://www.in.gov/idem/land/brownfields/pdffiles/guidance/resourceguide.pdf> (last visited Feb. 6, 2006); see also Indiana Finance Authority, *Indiana Brownfields Program*, available at <http://www.in.gov/ifa/2334.htm> (last visited Apr. 27, 2009).

<sup>545</sup> *Indiana Brownfields Redevelopment Resource Guide 2003*, *supra* note 528, at 15.

<sup>546</sup> Indiana Dep't of Environmental Management, *Environmental Performance Partnership Agreement*, available at <http://www.in.gov/idem/5476.htm> (last visited Apr. 27, 2009).

<sup>547</sup> *Indiana Environmental Performance Partnership Agreement, Section 2: State/Federal Relationship, Part III: Environmental Justice*, at 253, previously available at <http://www.in.gov/idem/enppa/enppa.pdf> (last visited Aug. 10, 2003).

<sup>548</sup> *Id.*

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The authors did not find any relevant environmental justice programs, policies, or statutes for the state of Iowa as of February 2009.

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# KANSAS

(tags: Agricultural Chemicals, Brownfields Redevelopment, Outreach, Public Health, Redressing Environmental Racism)

## **General Environmental Justice Activities**

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

**Improving Public Health** (tags: Agricultural Chemicals, Outreach, Public Health, Redressing Environmental Racism)

The Kansas Department of Health and Environment (“KDHE”), Office of Local and Rural Health, has a Farmworker Health Program.<sup>549</sup> Various factors, including low wages, substandard housing, agricultural chemicals in workplaces, homes, and water supplies, and lack of English language proficiency may contribute to poor farmworker health. Through the program, certain farmworkers are able to obtain primary health care services through a voucher system.<sup>550</sup>

## **Pollution Cleanup**

Brownfields Redevelopment (tags: Brownfields Redevelopment)

KDHE has a Brownfields Targeted Assessment program, which prioritizes properties that have EJ issues.<sup>551</sup> The assessments consist of investigations and site inspections to quantify environmental hazards, the effect of which is the encouragement potential purchasers to redevelop abandoned and Brownfields sites.

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<sup>549</sup> Kansas Dep’t of Health and the Environment, Office of Local and Rural Health, *Farmworker Program Overview*, <http://www.kdheks.gov/olrh/FWOverview.htm> (last visited June 25, 2009).

<sup>550</sup> *Id.*

<sup>551</sup> Kansas Dep’t of Health and the Environment, *Kansas Brownfields Program*, [http://www.kdheks.gov/brownfields/targeted\\_assess\\_prog.html](http://www.kdheks.gov/brownfields/targeted_assess_prog.html) (last visited Feb. 6, 2009).

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# **KENTUCKY**

(tags: Air Pollution, Children’s Issues, Community Education, Community Participation, Compliance and Enforcement, Cumulative/Secondary Effects, Equitable Development, Grants, Land Use – permitting, Mapping, Public Health, Redressing Environmental Racism, Study, Toxic Waste Cleanup, Transportation, Water)

## **General Environmental Justice Activities**

The Kentucky Department for Environmental Protection (“DEP”) is responsible for environmental justice activities in the Commonwealth of Kentucky.<sup>552</sup> While DEP has not established a formal EJ policy, it does have an EJ coordinator.<sup>553</sup> The Commonwealth manages issues related to EJ through various approaches.

Proposal to create a Department of Environmental Accountability, Equity and Justice (tags: Community Education, Community Participation, Cumulative/Secondary Effects, Equitable Development)

Prior to her appointment as the Executive Director of the Kentucky Environmental Quality Commission (“EQC”), the current EQC Director, who was then a member of the Governor’s Transition Team and Executive Director of the West Jefferson County Community Task Force, outlined a proposal to create a Department of Environmental Accountability, Equity and Justice.<sup>554</sup> The proposal, which is currently being considered, mandates that in order to avoid political infighting over “delicate and compromising” EJ policies, the Department, if created, must directly report to the Cabinet Secretary in charge of environmental policy.<sup>555</sup> Among other EJ related activities, the Department will be responsible for: assessing EJ issues in each individual county; addressing cumulative impacts of proposed developments; creating new venues of “community participation;” participating in “growth planning;” and educating state officials and community members on EJ issues.<sup>556</sup>

## **Community Participation**

Environmental Quality Commission<sup>557</sup> (tags: Community Participation)

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<sup>552</sup> The Kentucky Dep’t for Environmental Protection is a state executive branch department within the Governor’s Energy and Environment Cabinet (formerly Environmental and Public Protection Cabinet); see KY. REV. STAT. ANN. § 12.020(II)(3)(b)(2009).

<sup>553</sup> The Environmental Justice Coordinator for the Kentucky Dep’t for Environmental Protection is Larry C. Taylor; see *infra* *Contacts*.

<sup>554</sup> E-mail from Arnita Gadson, Executive Director, Environmental Quality Commission, former Environmental Justice Coordinator, University of Louisville (May 26, 2009).

<sup>555</sup> *Id.*

<sup>556</sup> *Id.*

<sup>557</sup> KY. REV. STAT. ANN. § 224.01-100(1)(2009).

The EQC is a citizen advisory board consisting of seven members appointed by the Governor. The mission of the EQC is to “work together collectively for the benefit of the state and the environment.”<sup>558</sup> The EQC is a useful tool to bring members of the community together to address EJ concerns.

## **Equitable Development**

Kentucky Transportation Cabinet (tags: Equitable Development, Transportation, Redressing Environmental Racism, Community Participation)

The Kentucky Transportation Cabinet (“KTC”) is “an executive branch agency responsible for overseeing the development and maintenance of a safe, efficient multi-modal transportation system throughout the Commonwealth.”<sup>559</sup> As part of its mission, the KTC is required to develop projects in an environmentally sensitive manner,<sup>560</sup> taking into account, among other factors, “socioeconomic concerns and environmental justice.”<sup>561</sup> The KTC describes EJ as “a concept to ensure avoidance, minimization, or mitigation of disproportionately high adverse effects on minority or low income populations” and it notes that “efforts should be made to encourage the full and fair participation by all potentially affected communities in the transportation decision-making process.”<sup>562</sup>

Hazardous Waste Permit Statute<sup>563</sup> (tags: Waste, Land Use – permitting)

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 a minimum, changes in property values, community perception and other psychic costs.”<sup>564</sup> These same factors must also be considered by the Board when approving the construction or operation of a regional integrated waste treatment and disposal demonstration facility.<sup>565</sup>

## **Improving Public Health**

Air Toxics Workgroup (tags: Air Pollution, Community Participation)

In 2004, DEP’s Division for Air Quality (“DAQ”) began to develop a regulatory program to establish clear-cut implementation procedures to identify and control toxic air

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<sup>558</sup> Kentucky Environmental Quality Commission, [www.eqc.ky.gov/](http://www.eqc.ky.gov/) (last visited May 29, 2009).

<sup>559</sup> Kentucky Transportation Cabinet, <http://transportation.ky.gov/> (last visited Apr. 22, 2009).

<sup>560</sup> Kentucky Transportation Cabinet, *Kentucky Highway Design Manual*, at HD-402, available at <http://transportation.ky.gov/design/designmanual/chapters/07chapter%20400%20as%20printed%202006.pdf> (last visited Apr. 22, 2009).

<sup>561</sup> *Id.*

<sup>562</sup> *Id.*

<sup>563</sup> KY. REV. STAT. ANN. §§ 224.46-505, et seq.

<sup>564</sup> *Id.* at § 224.46-520(1)(c)(2009).

<sup>565</sup> *Id.* at § 224.46-830(2)(a)(2009).

pollutants statewide.<sup>566</sup> To accomplish this objective, DAQ established a workgroup consisting of various experts in the fields of toxicology, air quality environment protection and risk assessment.<sup>567</sup> The workgroup made presentations, met with the public, and submitted comments to assist in formulating the desired air quality regulatory program.<sup>568</sup> Among other things, DAQ expected that this process would lead to a substantial overhaul of DEP's air permitting and risk assessment regulation.<sup>569</sup> Though this overhaul has not yet occurred, DAQ continues to work toward a detailed regulatory program for air toxic risk assessment and air pollutant control.<sup>570</sup>

Community Health Screenings (Supplemental Environmental Project)<sup>571</sup> (tags: Redressing Environmental Racism, Water)

In 2007 and 2008, close to 2,500 mostly low-income and minority residents of an industrialized area of the City of Louisville received free health screenings<sup>572</sup> as the result of a 2005 settlement between the Kentucky Environmental and Public Protection Cabinet,<sup>573</sup> the U.S. EPA and the U.S. Department of Justice, and the Louisville and Jefferson County Metropolitan Sewer District ("MSD"). The settlement, which required the MSD to take corrective actions to bring its system into compliance with state and federal water quality standards, included an agreement to perform certain supplemental environmental projects, one of which was the Community Health Screenings Project.<sup>574</sup>

Mercury Task Force<sup>575</sup> (tags: Community Education, Public Health, Study)

In 2004, the Kentucky Environmental Quality Commission ("EQC") made five recommendations to the Governor regarding public health risks of mercury exposure in Kentucky.<sup>576</sup> In response to these recommendations, a number of state-level cabinets convened to form an internal Mercury Task Force to study and respond to these

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<sup>566</sup> Kentucky Dep't for Environmental Protection, Division for Air Quality, *Air Toxics*, <http://www.air.ky.gov/programs/airtoxics/> (last visited Apr. 29, 2009).

<sup>567</sup> *Id.*

<sup>568</sup> *Id.*

<sup>569</sup> Telephone interview with Larry Taylor, Environmental Justice Coordinator and Environmental Scientist, Kentucky Dep't for Environmental Protection (Apr. 27, 2009); *see* 401 KY. ADMIN. REG. § 63:020.

<sup>570</sup> Telephone interview with Larry Taylor, *supra* note 553.

<sup>571</sup> Louisville Metro Department of Public Health and Wellness, *Community Health Screenings Project Report* (2008), available at <http://www.louisvilleky.gov/NR/rdonlyres/5CF80D37-408D-4F66-91E0-64E7CCE6E5D7/0/ApprovedFinalReport.pdf> (last visited Apr. 29, 2009).

<sup>572</sup> *Id.* at 15, 17, 24-25.

<sup>573</sup> *See, supra*, note 536.

<sup>574</sup> *Governor Ernie Fletcher Announces Free Health Screenings for West Louisville Residents*, available at <http://migration.kentucky.gov/Newsroom/agovernor/20070307health.htm> (last visited Apr. 28, 2009).

<sup>575</sup> Environmental and Public Protection Cabinet, Office of the Secretary, *Mercury Task Force Report to the Environmental Quality Commission* (2006), at 2, available at <http://www.eqc.ky.gov/NR/rdonlyres/D15EAAE0-901B-4B91-838B-6BD175894F97/0/MercuryReport.pdf> (last visited Apr. 29, 2009).

<sup>576</sup> *Id.*

recommendations.<sup>577</sup> In 2006, the Mercury Task Force issued a report addressing each of the five recommendations made by the EQC.<sup>578</sup> The recommendations primarily focused on communicating the risks of mercury exposure to the public, especially to high-risk populations such as pregnant and nursing women, young children, subsistence fishermen, and other sensitive populations.<sup>579</sup>

## **Pollution Cleanup**

Environmental Remediation and Restoration Statute<sup>580</sup> (tags: Compliance and Enforcement, Toxic Waste Cleanup)

The environmental remediation and restoration statute identifies the processes by which the Commonwealth must respond to a release of a hazardous substance into the environment. To clarify the requirements of the statute, DEP promulgated an administrative regulation which allows certain violators to enter into a supervised Voluntary Environmental Remediation Program with DEP.<sup>581</sup> While neither the statute nor the regulation refers expressly to EJ concerns, DEP takes into account sensitive subpopulations, such as the elderly, children, and those living in industrialized areas, when performing risk assessment and identifying potential remediation options.<sup>582</sup>

## **Coordination with Federal Government**

Mapping of hazardous waste sites (tags: Mapping)

DEP has worked with U.S. EPA Region 4 to create demographic maps of hazardous waste sites and permit areas. The maps focus largely on the economic, rather than racial, characteristics of communities, and are intended to track the relationship between hazardous waste sites and areas of low or modest income.<sup>583</sup>

U.S. EPA Environmental Justice Small Grants Program<sup>584</sup> (tags: Children's Issues, Grants, Public Health)

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<sup>577</sup> *Id.*; the Cabinets involved in the Mercury Task Force were: (1) the Environmental and Public Protection Cabinet (EPPC), (2) the Cabinet for Health and Family Services - Department for Public Health (CHFS-DPH); and (3) the Department of Fish and Wildlife Resources (KDFWR).

<sup>578</sup> *Id.*

<sup>579</sup> *Id.*; Telephone interview with Larry Taylor, *supra* note 553.

<sup>580</sup> KY. REV. STAT. ANN. § 224.01-400 (2009).

<sup>581</sup> 401 KY. ADMIN. REG. § 100:030.

<sup>582</sup> Telephone interview with Larry Taylor, *supra* note 553.

<sup>583</sup> Telephone interview with Michael Welch, Kentucky Dep't of Environmental Protection, Waste Permitting (Feb. 24, 2005).

<sup>584</sup> The EPA's Small Grants program provides financial assistance to eligible organizations to build collaborative partnerships, to identify the local environmental and/or public health issues, and to envision solutions and empower the community through education, training, and outreach (*see* U.S. EPA Environmental Justice Grants, *available at* <http://www.epa.gov/compliance/environmentaljustice/grants/index.html>).

On April 2, 2009, U.S. EPA announced that the Lexington-Fayette Urban County Government (“LFUCG”) in Lexington, Kentucky, was the recipient of a \$20,000 Environmental Justice Small Grant.<sup>585</sup> The grant money will be used to reduce pediatric lead exposure among children in central Kentucky.<sup>586</sup>

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<sup>585</sup> U.S. EPA, *Environmental Justice Grant Will Aid Central Kentucky Communities*, available at <http://yosemite.epa.gov/opa/admpress.nsf/0/A2F8E0E5338ADC9F8525758C0072F0F7> (last visited Apr. 22, 2009).

<sup>586</sup> *Id.*

# LOUISIANA

(tags: Air Pollution, Brownfields Redevelopment, Community Education, Community Participation, Land Use – permitting, Land Use – siting, Public Health, Study, Redressing Environmental Racism, Waste)

## **General Environmental Justice Activities**

### Environmental Equity Study (tags: Study)

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.<sup>587</sup> Between 1994 and 1996, Louisiana created an Environmental Justice Panel Process in several communities.<sup>588</sup> The Environmental Justice Panels were designed to facilitate communication between industries and communities.<sup>589</sup>

### Environmental Justice Study - Air Pollution (tags: Air Pollution, Study)

An EJ provision was added to Louisiana’s statutes in 1997.<sup>590</sup> 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.”<sup>591</sup> Specifically, LDEQ was asked to 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.<sup>592</sup>

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 admonished 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.”<sup>593</sup>

### Mississippi River Corridor Task Force (tags: Community Participation, Land Use – permitting, Public Health)

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<sup>587</sup> Louisiana Dep’t of Environmental Quality, Community-Industry Relations Group, “Chronology and Accomplishments” (Nov. 2000) (on file with authors).

<sup>588</sup> *Id.*

<sup>589</sup> National Conference of State Legislatures, Environmental Justice Group, *Environmental Justice: A Matter of Perspective* (Sept. 1995) (on file with authors).

<sup>590</sup> See LA. REV. STAT. ANN. § 30:2011.2 (West 2003).

<sup>591</sup> *Id.*

<sup>592</sup> *Id.*

<sup>593</sup> *Id.*

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.<sup>594</sup> At that time, the area had the highest level of permitted releases in the State.<sup>595</sup> 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.”<sup>596</sup> The Task Force was also charged with making recommendations to the governor and submitting two written reports.

## Community Participation

Enviroschool for Communities (tags: Air Pollution, Community Education, Community Participation, Waste)

In 2008, the DEQ developed and initiated the Enviroschool for Communities program, a series of community training sessions designed to encourage meaningful participation in the regulatory process.<sup>597</sup> Sessions are scheduled on a monthly basis, and include classes on understanding the permitting process and regulations governing waste siting and emissions.<sup>598</sup>

## Equitable Development

Community Industry Relations (tags: Community Participation, Public Health)

The Community Industry Relations program (“CIR”) has replaced the EJ program at LDEQ. Still housed within LDEQ, CIR is primarily responsible for handling EJ 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 EJ 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.”<sup>599</sup>

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<sup>594</sup> Exec. Order MJF 98-1, Mississippi River Corridor Task Force (Jan. 7, 1998) *available at* <http://doa.louisiana.gov/osr/other/mjf99-8.htm> (last visited Feb. 27, 2009).

<sup>595</sup> See 1998 Louisiana Toxic Release Inventory Report, at 29, *available at* <http://www.deq.louisiana.gov/portal/Portals/0/evaluation/TRI/1998/TRI.pdf> (last visited Feb. 28, 2009) (Toxic Release Inventories for other years *available at* <http://www.deq.louisiana.gov/portal/tabid/105/Default.aspx>).

<sup>596</sup> Exec. Order MJF 98-1, *supra* note 578.

<sup>597</sup> Louisiana Dep’t of Environmental Quality, Community-Industry Relations Group, *Enviroschool for Communities*, <http://www.deq.louisiana.gov/portal/tabid/2601/Default.aspx> (last visited Mar. 27, 2009).

<sup>598</sup> *Id.*

<sup>599</sup> Louisiana Dep’t of Environmental Quality, Environmental Update – Winter 2001, *Community/Industry Relations Section Finds Solutions*, at 4, *formerly available at* <http://www.deq.state.la.us/news/envupd/2001winter> (last visited Oct. 2, 2003).

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, CIR also “advises companies trying to locate in the state to have small meetings throughout the communities that they are trying to work in.”<sup>600</sup>

### Case Law

#### *N. Baton Rouge Environmental Association* (2001) (tags: Community Participation, Land Use – siting, Redressing Environmental Racism)

Plaintiffs challenged the permit issued for a new polypropylene facility at the site of an old Exxon plant, claiming “environmental racism” in the plant’s location next to the city of Alsen.<sup>601</sup> The court held that the area was zoned as industrial long ago, and there was no evidence of intentional discrimination. The court found it relevant that the new plan would produce less pollution than the older facility. Plaintiffs further charged that the LDEQ failed to comply with state common law rule requiring the agency “to respond to all reasonable public comments” regarding a proposed Exxon facility; the court disagreed, holding that LDEQ’s solicitation of a response by Exxon to environmental racism claims was sufficient.

#### *Dow Chemical* (2004) (tags: Land Use – permitting)

The court affirmed LDEQ’s grant of a corporation’s air permit modifications and the emission credit application, over plaintiffs’ challenge.<sup>602</sup> Under Louisiana law, established by the seminal case of *Save Ourselves, Inc. v. Louisiana Environmental Control Commission*, the Supreme Court of Louisiana found a constitutional duty to consider the effects of permitting actions on the environment, and whether “adverse effects have been minimized or avoided as much as possible consistent with the public welfare.”<sup>603</sup> The court found that LDEQ’s analysis of effect, mitigating measures, and environmental justice/civil rights issues as meeting the constitutional mandate.

### **Pollution Cleanup**

#### *Brownfields Redevelopment Initiatives* (tags: Brownfields Redevelopment)

Although the Louisiana brownfields redevelopment initiative does not directly address EJ, the initiative does promote the cleanup and redevelopment of inactive or underutilized properties which tend to most often be in economically depressed areas and

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<sup>600</sup> *Id.*

<sup>601</sup> *N. Baton Rouge Env'tl. Ass'n v. La. Dep't of Env'tl. Quality*, 805 So. 2d 255, 262-63 (La. Ct. App. 2001).

<sup>602</sup> *Dow Chem. Co. v. Reduction Credits*, 885 So. 2d 5, 23 (La. Ct. App. 2004).

<sup>603</sup> *Id.*, citing *Save Ourselves, Inc. v. Louisiana Environmental Control Commission*, 452 So. 2d 1152 (La. 1984).

inner-cities, or older urban neighborhoods which often have higher proportions of minority, low-income, and economically depressed citizens. Through its Voluntary Remediation, Targeted Brownfields Assessment, and Revolving Loan Fund Programs, as well as its technical and educational assistance to local brownfields redevelopment programs, LDEQ seeks to facilitate economic development, new jobs, and increased tax base by promoting the cleanup and reuse of idle brownfields properties.<sup>604</sup>

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<sup>604</sup> Telephone interview with Nathan Levy, Ombudsman, Louisiana Dep't of Environmental Quality (Apr. 6, 2005).

# MAINE

(tags: Community Participation)

## **General Environmental Justice Activities** (tags: Community Participation)

Maine does not have a formal EJ program or policy, due in large part to the fact that U.S. EPA's stated definition of Environmental Justice does not necessarily reflect demographic trends in the state.<sup>605</sup> The Maine Department of Environmental Protection increases awareness of EJ 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.<sup>606</sup>

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<sup>605</sup> Telephone interview with Malcolm Burson, Environmental Justice Coordinator, Maine Dep't of Environmental Protection (Feb. 23, 2009).

<sup>606</sup> *Id.*

## MARYLAND

(tags: Air Pollution, Children’s Issues, Climate Change, Community Education, Community Participation, Cumulative/Secondary Effects, Housing, Inter-agency Collaboration, Land Use – anti-concentration, Land Use – general plans, Land Use – permitting, Land Use - siting, Mapping, Outreach, Pollution Cleanup, Power Plants, Public Health, Redressing Environmental Racism, Study, Transportation, Water)

### **General Environmental Justice Activities**

Maryland Advisory Council on Environmental Justice, HB 1350 (tags: Community Education, Community Participation, Outreach, Public Health)

In 1997, Maryland enacted House Bill 1350, establishing the Maryland Advisory Council on Environmental Justice (“MACEJ”).<sup>607</sup> MACEJ's mission was to develop and examine recommendations on EJ policy and direction. MACEJ created three subcommittees to provide general and expert assistance. The particular subcommittees focused on (1) public outreach, education and participation; (2) state and local interagency coordination; and (3) environmental health concerns and research.<sup>608</sup> While MACEJ was a temporary council, its recommendation to create a permanent council to advance EJ policies was implemented by Governor Parris Glendening.<sup>609</sup>

Commission on Environmental Justice and Sustainable Communities (tags: Community Education, Community Participation, Outreach, Public Health, Study)

In March 2001, former Governor Parris Glendening created Maryland’s Commission of Environmental Justice and Sustainable Communities (“EJ Commission”) by executive order.<sup>610</sup> The EJ Commission is comprised of fifteen members from the following: affected communities concerned with EJ, business organizations; environmental organizations; health experts on EJ, local government; and the general public with interest or expertise in environmental justice.<sup>611</sup>

The EJ Commission’s mandate includes: (1) advising state agencies on EJ and related community issues; (2) assessing the adequacy of State and local government laws and regulations to address the issue of EJ and sustainable communities; and (3) developing criteria to assess whether communities in the State may be experiencing EJ

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<sup>607</sup> MD. CODE ANN., Art. 41, § 18-315 (2003).

<sup>608</sup> *Id.*

<sup>609</sup> E-mail from Lisa Nissley, Legislative Liaison & Environmental Justice Coordinator Maryland Dep’t of the Environment (June 29, 2009).

<sup>610</sup> Exec. Order No. 01.01.2001.01, “Commission on Environmental Justice and Sustainable Communities” (Mar. 9, 2001), *reprinted in* 28-7 Md. Reg. 674 (Apr. 6, 2001).

<sup>611</sup> *Id.*

issues.<sup>612</sup> Other duties include assessing the impact of state laws and policies on EJ, as well as advising the Governor and state agencies about EJ issues.<sup>613</sup> In 2003, with HB 970, the legislature permanently extended the charter of EJ Commission.<sup>614</sup>

The 2006 Annual Report of the EJ Commission, the latest one available online, outlines the community outreach efforts of the Community Involvement subcommittee.<sup>615</sup> The subcommittee attempts to bring all stakeholders together to address “environmental, health, and economic disparities” that may exist in specific communities.<sup>616</sup> Additionally, the EJ Commission has researched and developed a community profile tool that will help stakeholders identify EJ communities and issues.<sup>617</sup> “The Community Profile Tool is meant to give a snapshot of a community, to offer a picture of the current health and environmental quality of a community, and to offer some guidance to planners and community members” in their attempts to create new developments.<sup>618</sup>

Climate Change (tags: Climate Change, Community Participation, Redressing Environmental Racism)

In 2008, the Maryland Senate passed a bill intended to address global warming and reduce greenhouse gases, which would have facilitated MDE’s creation of an Environmental Justice Advisory Committee (“the Committee”).<sup>619</sup> The bill, however, was not enacted into law. The bill would have required that the Committee include “stakeholders from the application communities and industry sectors.”<sup>620</sup> Acceptable stakeholders included nonprofit organizations that represent the communities or interests of the parties; local community groups or affiliations; labor unions from affected industries; industry and business representatives; and local governments that have the affected communities in their jurisdictions.<sup>621</sup>

In 2009, a similar measure was signed into law by the Governor.<sup>622</sup> The new law requires that MDE, after holding public forums, formulate a plan to cut greenhouse gas emissions by 25% from 2006 levels by 2020, and a total of 80 to 95% from 1996 levels

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<sup>612</sup> Commission on Environmental Justice & Sustainable Communities, *Final Report and Recommendations* (Dec. 2002) [“*Annual Report (2002)*”], available at [http://www.mde.state.md.us/assets/document/environmental\\_justice/ej\\_2002\\_Annual\\_Report.pdf#page=3](http://www.mde.state.md.us/assets/document/environmental_justice/ej_2002_Annual_Report.pdf#page=3) (last visited Feb. 11, 2009).

<sup>613</sup> 2003 Md. Laws 460, codified at MD. CODE ANN., ENVIR. § 1-701.

<sup>614</sup> MD. CODE ANN., ENVIR. § 1-701 (2003).

<sup>615</sup> Commission on Environmental Justice and Sustainable Communities, *2006 Annual Report*, [http://www.mde.state.md.us/assets/document/environmental\\_justice/ej\\_2006\\_Annual\\_Report.pdf](http://www.mde.state.md.us/assets/document/environmental_justice/ej_2006_Annual_Report.pdf) (last visited June 26, 2009).

<sup>616</sup> *Id.*

<sup>617</sup> *Id.*

<sup>618</sup> *Id.*

<sup>619</sup> S.B. 309, 2008 Sess. (Md. 2008), draft available at <http://mlis.state.md.us/2008rs/bills/sb/sb0309t.pdf> (last visited Feb. 19, 2009).

<sup>620</sup> MD. CODE ANN., ENVIR. § 2-1208(B)(1)

<sup>621</sup> *Id.* at 2-1208(B)(2).

<sup>622</sup> See *Id.* at §§ 2-1202, *et seq.*

by 2050.<sup>623</sup> In implementing the plan, MDE is required to ensure that the plan does not disproportionately impact any specific subset of the population, including the rural, low-income, low to moderate-income, and minority communities.<sup>624</sup>

## Bills

*SB 529 and SB 4/HR 1054 (2009)* (tags: Land Use – siting, Mapping, Public Health)

In 2009, Senator David Harrington introduced two similar bills focused almost entirely on EJ issues; as of publication these bills have not been enacted into law.<sup>625</sup> The bills require the Maryland Department of Environment (“MDE”), in consultation with the EJ Commission and the Department of Planning, to develop maps that identify “environmentally stressed communities within the state.” An “environmentally stressed community” is defined as a “minority or low-income community that bears a disproportionate share of the negative environmental consequences resulting from industrial, municipal, or commercial operations or the execution of federal, state, or local programs and policies.”<sup>626</sup>

In addition, the bills require a public service company seeking to construct or expand an electric, gas, liquefied natural gas, or water plant within one mile of an “environmentally stressed community” to perform an “environmental justice review.”<sup>627</sup> The written review must include a description of the historic use of the property and the proposed use, a demographic profile of the surrounding community, a description of the potential environmental, public health, and economic impacts on the surrounding community, specifying impacts on environmentally stressed communities, and an explanation of any public education or outreach plans.<sup>628</sup>

## **Community Participation**

Public Participation Citizen Handbook (tags: Community Education, Community Participation)

MDE published a citizen guide with the stated purpose of assisting the public in understanding how MDE works and to encourage participation in environmental

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<sup>623</sup> *Id.* at § 2-1205.

<sup>624</sup> *Id.* at § 2-1206.

<sup>625</sup> See S.B. 529, 2009 Sess. (Md. 2009), available at <http://mlis.state.md.us/2009rs/bills/sb/sb0529f.pdf> (last visited June 28, 2009); S.B. 4, 2009 Sess. (Md. 2009), available at <http://mlis.state.md.us/2009rs/billfile/sb0004.htm> (last visited June 29, 2009).

<sup>626</sup> S.B. 4, *supra* note 609, at §§ 1-701, 1-702.

<sup>627</sup> *Id.*

<sup>628</sup> *Id.* at §§ 11-101.1, 1-701.

decisions.<sup>629</sup> The guide describes the federal environmental laws, outlines the ways in which MDE attempts to involve the public in different environmental decisions, lists ways in which individuals can participate effectively in decision-making, and provides information for contacting the appropriate sections of MDE.

Minority Participation Task Force Report (tags: Community Participation, Inter-agency Collaboration, Redressing Environmental Racism, Study)

Senate Bill 350 (2006) created a Task Force to evaluate and make recommendations regarding minority participation in the environmental community.<sup>630</sup> In 2007, the Task Force produced its report, which made the following recommendations: (1) creation and funding of the Maryland Minority & Environmental Land Trust;(2) establishment of an Inter-Agency Work group and Steering Committee; and (3) development of a virtual environmental center connecting historically black colleges, other universities, and minority communities.<sup>631</sup>

In 2008, legislators introduced Minority Environmental Land Trust bills.<sup>632</sup> However, the bills received unfavorable reports from the relevant committees in March, 2008.<sup>633</sup>

Electronic Posting of Permit Applications (tags: Community Education, Land Use – permitting, Outreach)

A recent law requires that, whenever MDE requires a publication of a notice for permit application, the notice also be made available on MDE's website.<sup>634</sup> In addition to posting a notice of the application on its website, MDE must also allow interested parties to electronically request additional notices related to the application.<sup>635</sup>

## Equitable Development

### Case law

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<sup>629</sup> Maryland Dep't of the Environment, *Public Participation Handbook (2006)*, available at <http://www.mde.state.md.us/assets/document/MDEPublicParticipationGuide2006.pdf> (last visited Feb. 19, 2009).

<sup>630</sup> S.B. 350, 2006 Sess. (Md. 2006), available at <http://mlis.state.md.us/2006rs/bills/sb/sb0350e.pdf> (last visited June 28, 2009).

<sup>631</sup> Final Report to the Governor and Maryland General Assembly, *Task Force on Minority Participation in the Environmental Community (2007)*, available at <http://www.dnr.state.md.us/education/download/MinorityParticipationTaskForceReport.pdf> (last visited June 28, 2009).

<sup>632</sup> S.B. 100, 2008 Sess. (Md. 2006) and H.B. 451, 2008 Sess. (Md. 2006), available at <http://mlis.state.md.us/2008rs/billfile/sb0100.htm> (last visited Feb. 19, 2009).

<sup>633</sup> In general, the authors have only selectively included bills that have not been enacted into law; states such as Maryland and California, however, are notable for their legislative experimentation.

<sup>634</sup> MD. CODE ANN., ENVIR. § 1-602(B)(2009).

<sup>635</sup> *Id.*

Ramblewood Homeowner's Association (2007) (tags: Cumulative/Secondary Effects, Land Use – siting)

A homeowner's association contested the proposed placement of a rubble fill in their neighborhood based in part on the cumulative adverse impacts that they claimed would result, and relied on expert testimony regarding the EJ impacts of the rubble fill.<sup>636</sup> After the permit for the rubble fill was denied by the Maryland courts, the rubble fill operator pursued the case to the United States Supreme Court, although not on the cumulative impacts theory. The Court denied review.<sup>637</sup>

**Improving Public Health** (tags: Land Use – anti-concentration, Public Health, Water)

In 2000, the Maryland legislature passed House Joint Resolution 6, which addressed EJ concerns within Anne Arundel County.<sup>638</sup> The resolution required the Department of the Environment, in consultation with the MACEJ, to develop a plan to promote EJ in Anne Arundel County because of its high cancer mortality rate. The resolution also mandated that no additional industrial activity be allowed to proceed in the county, and that no further environmental permits be issued in designated areas of concern.<sup>639</sup> MDE entered into a settlement regarding cleanup of groundwater contamination in Anne Arundel County in late 2007.<sup>640</sup>

Environmental Public Health Tracking (tags: Mapping, Public Health)

Past and present members of the EJ Commission, jointly with the Maryland Department of Health and Mental Hygiene (“MDHD”) and the Center for Disease Control, are trying to further develop environmental community public health tracking tools that can be used to monitor environmental public health data.<sup>641</sup> MDHD already has a program to compile data about environmental indicators of public health from around the state.<sup>642</sup>

Children's Environmental Health (tags: Children's Issues, Housing, Public Health, Redressing Environmental Racism)

Pursuant to the recommendation of the MACEJ, the Legislature created an Advisory Council to address the environmental health needs of children.<sup>643</sup> The

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<sup>636</sup> Brief for Appellant Ramblewood Homeowner's Assoc., Maryland Special Court of Appeals, *Ramblewood Homeowner's Assoc. v. Maryland Reclamation*, 2005 WL 3737269, at \*2-3.

<sup>637</sup> Petition for Writ of Certiorari, Petitioner Maryland Reclamation, *Maryland Reclamation v. Ramblewood Homeowner's Assoc.*, 2007 WL 1552223; *Maryland Reclamation v. Ramblewood Homeowner's Assoc.*, 128 S. Ct. 108 (2007).

<sup>638</sup> H.R.J. Res. 6, 2000 Leg., 414th Sess. (Md. 2000).

<sup>639</sup> *Id.*

<sup>640</sup> MDE, Letter to Citizens of Anne Arundel County (Oct. 1, 2007), available at [http://www.mde.maryland.gov/assets/document/Letter\\_to\\_AACo\\_Citizens.pdf](http://www.mde.maryland.gov/assets/document/Letter_to_AACo_Citizens.pdf) (last visited Feb. 24, 2009).

<sup>641</sup> EJ Commission, 2006 Annual Report, supra note 599.

<sup>642</sup> See Maryland Department of Health and Mental Hygiene, *Environmental Health Coordination Program*, <http://eh.dhmh.md.gov/> (last visited June 29, 2009).

<sup>643</sup> MD. CODE ANN., HEALTH-GEN. § 13-1502 (2005).

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.<sup>644</sup> 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.<sup>645</sup>

Environmental Benefit Districts (tags: Community Participation, Land Use – general plans, Mapping, Transportation)

In 2003, MDE established environmental benefit districts (“EBDs”). EBDs are communities identified as disadvantaged based on environmental, health, or economic factors.<sup>646</sup> The MDE website explains that the EBD concept “acknowledges that many of the needed programs to protect and revitalize communities are in existence, albeit not focused or coordinated in some cases.<sup>647</sup> EBDs provide the geographic focus and needs identification to make some existing programs more successful.”<sup>648</sup> Communities designated as EBDs may be entitled to some MDE resources and other state resources. The retrofitting and installation of pollution control devices on buses and trucks in Montgomery and Prince George’s counties are EBD projects.<sup>649</sup> The EJ Commission is actively trying to promote EBDs, and foster community involvement in the projects by increasing dialogue between community members and state agencies.<sup>650</sup>

## Coordination with Federal Government

Performance Partnership Agreement (tags: Air Pollution, Children’s Issues, Community Education, Pollution Cleanup, Power Plants, Water)

Maryland is working closely with the U.S. Environmental Protection Agency to develop joint plans to tackle environmental issues within Maryland.<sup>651</sup> The 2001-02 PPA stated that “[no] person or group of people should shoulder a disproportionate share of adverse environmental impacts as a result of the execution of environmental policies,

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<sup>644</sup> *Id.* at § 13-1502 (a)(3).

<sup>645</sup> *Id.* at § 13-1502 (b)(2).

<sup>646</sup> *Id.*; students of Smart Growth will likely recognize the model for EBDs in Maryland’s Priority Funding Areas, which receive the bulk of state infrastructure spending, in exchange for their meeting smart growth targets for population density and repurposing of existing infrastructure.

<sup>647</sup> *Id.*

<sup>648</sup> Maryland Dep’t of the Environment, “Environmental Justice in Maryland,” [http://www.mde.state.md.us/Programs/MultimediaPrograms/Environmental\\_Justice/implementation/details.asp#calendar](http://www.mde.state.md.us/Programs/MultimediaPrograms/Environmental_Justice/implementation/details.asp#calendar) (last visited Feb. 11, 2009).

<sup>649</sup> “Environmental Initiative Will Reduce School Bus Emissions In Prince George's and Montgomery Counties,” (Nov. 6, 2003), available at <http://www.mde.state.md.us/PressReleases/574.html> (last visited Feb. 11, 2009); Maryland Dep’t of Environment, “Enviromatters” (June 23, 2006), available at [http://www.mde.maryland.gov/assets/document/Enviromatters\\_062306.pdf](http://www.mde.maryland.gov/assets/document/Enviromatters_062306.pdf) (last visited Feb. 24, 2009).

<sup>650</sup> EJ Commission, 2006 Annual Report, *supra* note 599.

<sup>651</sup> *See*, Maryland Dep’t of Environment, *Environmental Performance Partnership Agreement*, <http://www.mde.state.md.us/AboutMDE/Reports/partnershipAgree.asp> (last visited June 28, 2009).

programs, or initiatives.<sup>652</sup> 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.”<sup>653</sup> The most recent PPA available online is from fiscal year 2005-06, which focused on water quality, pollution cleanup, air pollution from power plants, environmental health in schools, e-waste recycling, and EPA assistance with EBDs.<sup>654</sup>

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<sup>652</sup> *Id.*

<sup>653</sup> Maryland Dep’t of Environment, *Maryland’s FFY 2001/02 Environmental Performance Partnership Agreement*, at 4, available at <http://www.mde.state.md.us/assets/document/enpa/enpa2001-2002.pdf> (last visited Feb. 11, 2009).

<sup>654</sup> Maryland Dep’t of Environment, *Maryland’s FY 2005/06 Environmental Performance Partnership Agreement*, available at [http://www.epa.gov/ocir/nepps/pdf/md\\_ppa\\_fy2006-2007\\_final.pdf](http://www.epa.gov/ocir/nepps/pdf/md_ppa_fy2006-2007_final.pdf) (last visited June 28, 2009).

# MASSACHUSETTS

(tags: Air Pollution, Brownfields Redevelopment, Climate Change, Community Education, Community Participation, Compliance and Enforcement, Cumulative/Secondary Effects, Equitable Development, Grants, Land Use – permitting, Land Use – siting, Mapping, Open Space/Recreation, Outreach, Redressing Environmental Racism, Transportation, Waste, Water)

## **General Environmental Justice Activities**

Environmental Justice Policy (tags: Brownfields Redevelopment, Community Participation, Compliance and Enforcement, Grants, Open Space/Recreation)

In 2002, the Massachusetts Executive Office of Energy and Environmental Affairs (“EOEEA”)<sup>655</sup> adopted an Environmental Justice Policy that “shall be an integral consideration . . . in the implementation of all EOEAA programs.”<sup>656</sup> The EJ Policy defines EJ populations as “those segments of the population that EOEEA has determined to be most at risk of being unaware of or unable to participate in environmental decision making or to gain access to state environmental resources.”<sup>657</sup> (EOEEA estimates that 5% of the land in the Commonwealth of Massachusetts and 29% of the Commonwealth’s population is affected by EJ issues).<sup>658</sup> The EJ Policy identifies a number of specific services to be provided to EJ populations. These services are designed to: (1) enhance public participation; (2) target compliance and enforcement; (3) enhance the review of new large air sources and regional waste facilities; and (4) encourage economic growth through the cleanup and redevelopment of brownfields sites.<sup>659</sup>

The EJ Policy also encourages the creation of open space within areas inhabited by EJ populations, and increases opportunities for community members to participate in environmental decision making.<sup>660</sup> The EJ Policy also requires EJ training for certain Commonwealth employees and for municipalities that seek an EJ “bonus credit” for grant programs, enforcement actions, “or any other resources prioritized or focused on

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<sup>655</sup> EOEEA is the umbrella entity controlling the Departments of Agricultural Resources, Conservation and Recreation, Environmental Protection, and Fish & Game; as a result, EOEEA’s EJ policy is one of the nation’s most comprehensive in terms of jurisdictional sweep, aside from the handful of state executive orders and comprehensive EJ statutes (California, for example).

<sup>656</sup> See *Environmental Justice Policy of the Executive Office of Environmental Affairs* (issued Oct. 9, 2002), at 4, available at [http://www.mass.gov/Eoeaa/docs/eea/ej/ej\\_policy\\_english.pdf](http://www.mass.gov/Eoeaa/docs/eea/ej/ej_policy_english.pdf) (last visited Apr. 21, 2009).

<sup>657</sup> *Id.* at 5; For an area to be considered an environmental justice community, the median annual household income for that area must be at or below 65% of the statewide median income for Massachusetts; *or* 25% of the residents are minority; *or* 25% of the residents are foreign born, *or* 25% of the residents are lacking English language proficiency.

<sup>658</sup> See *Environmental Justice Policy of the Executive Office of Environmental Affairs*, *supra* note 640 at 5.

<sup>659</sup> *Id.*

<sup>660</sup> *Id.*

neighborhoods where EJ populations reside.”<sup>661</sup> Additionally, the EJ Policy provides for potential expedited review of proposals by entities intending to redevelop brownfields.<sup>662</sup>

The Secretary of EOEEA is authorized to review the policy every three years, and may, after soliciting public comment, “amend the policy to more effectively serve its purposes.”<sup>663</sup> In 2005, the policy underwent public comment, and recommendations were made for an update. However, the policy has not been updated since its adoption in 2002.<sup>664</sup>

## **Community Participation**

Environmental Justice Mailing List, Alternative Media Outlets, and Regional Agency Environmental Justice Outreach Teams (tags: Community Education, Outreach)

Massachusetts’ environmental justice program continues to be developed in light of EOEEA’s EJ policy. In recognition of the fact that EJ populations may not have ready access to the Internet, EOEEA plans to compile an “EJ Mailing List” to reach interested members in EJ communities.<sup>665</sup> EOEEA also plans to develop a list of “Alternative Media Outlets” to be made available to EOEEA agencies seeking public comment and to project proponents whose projects are or may affect EJ populations.<sup>666</sup> Additionally, EOEEA plans to establish outreach teams from each agency and region to serve as liaisons between the Commonwealth and EJ populations to achieve a number of goals specific to unique neighborhoods and communities.<sup>667</sup>

Environmental Justice Geographic Information System (tags: Mapping)

EOEEA’s website contains an interactive Geographic Information Systems (“GIS”) mapping program that identifies all of the Commonwealth’s EJ populations and allows users to search the database with a standard web browser.<sup>668</sup> The Commonwealth’s environmental justice populations, agencies charged with implementing the Commonwealth’s EJ program, and private parties whose projects may have EJ ramifications all use the GIS database. Users can pinpoint and review projects submitted to EOEEA to determine if they involve an EJ population, and consequently, trigger enhanced standards of review.<sup>669</sup>

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<sup>661</sup> *Id.* at 5-6.

<sup>662</sup> *Id.* at 9.

<sup>663</sup> *Id.* at 12.

<sup>664</sup> Telephone interview with Janet Curtis, former Environmental Justice Program Coordinator, EOEEA (Jan. 29, 2009); EOEEA currently does not have an EJ Coordinator due to budget constraints.

<sup>665</sup> *EOEEA EJ Policy*, *supra* note 640, at 6.

<sup>666</sup> *Id.*

<sup>667</sup> *Id.*

<sup>668</sup> Massachusetts Office of Geographic and Environmental Information, *MassGIS News Item*, available at <http://www.mass.gov/mgis/ej.htm> (last visited Apr. 21, 2009).

<sup>669</sup> Telephone interview with Tony Chaves, former Environmental Justice Coordinator, Massachusetts Office of Environmental Affairs (Mar. 21, 2006).

## Equitable Development / Smart Growth

Solid Waste (tags: Community Participation, Cumulative/Secondary Effects, Equitable Development, Land Use – siting, Outreach, Waste)

In 2000, Massachusetts outlined its solid waste management strategy for the next decade in a policy document titled *Beyond 2000 Solid Waste Master Plan* (“Beyond 2000 Plan”), which aimed to reduce waste and promote sustainable solid waste management.<sup>670</sup> The Beyond 2000 Plan explicitly takes into account EJ 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 be addressed. Furthermore, the plan indicates that the Massachusetts Department of Environmental Protection (“MassDEP”) would 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.<sup>671</sup> 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.”<sup>672</sup>

The *Beyond 2000 Plan*’s accomplishments have included “increasing Massachusetts’ waste reduction rate to 55% as of 2002,” and “promulgating revised Site Assignment regulations and revised Solid Waste Permitting regulations to improve facility operations and oversight.”<sup>673</sup> MassDEP revised the *Beyond 2000 Plan* after a public comments period in November 2005. The Massachusetts Solid Waste Master Plan: 2006 Revision updated the Commonwealth’s policies and strategies for managing solid waste through 2010.<sup>674</sup> After holding six meetings with interested parties and community members in late 2008, MassDEP has established seven workgroups that are scheduled to meet in 2009, with the ultimate goal of updating the Solid Waste Master Plan.<sup>675</sup>

Smart Growth / Smart Energy (tags: Smart Growth)

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<sup>670</sup> Massachusetts Dep’t of Environmental Protection, *Beyond 2000: Solid Waste Master Plan* (Dec. 20, 2000), available at <http://www.mass.gov/dep/recycle/priorities/dswmpu01.htm> (last visited Apr. 21, 2009).

<sup>671</sup> *Id.* at 1-5; revisions to the facility site assignment regulations were implemented on Jun 8, 2001 (see Massachusetts Dep’t of Environmental Protection, Final Amendments to 310 CMR 16.00: Site Assignment Regulations, available at <http://www.mass.gov/dep/recycle/laws/16cover.htm>).

<sup>672</sup> *Beyond 2000: Solid Waste Master Plan*, *supra* note 654 at 1-5.

<sup>673</sup> *Solid Waste Master Plan: 2006 Revision (June 2006)*, at 2, available at <http://www.mass.gov/dep/recycle/priorities/swmprev.doc> (last visited Sept. 8, 2009).

<sup>674</sup> *Id.*; see also Massachusetts Dep’t of Environmental Protection, *Priorities and Results*, available at <http://www.mass.gov/dep/recycle/priorities/dswmpu01.htm> (last visited July 27, 2009).

<sup>675</sup> Massachusetts Dep’t of Environmental Protection, “Massachusetts Solid Waste Master Plan (SWMP) Workgroups,” <http://www.mass.gov/dep/public/committee/swmpwkgp.htm> (last visited July 27, 2009).

In 2007, Massachusetts Governor Deval Patrick's administration created an online Smart Growth / Smart Energy Toolkit to help promote smart growth and energy.<sup>676</sup> The Toolkit aims to provide access to information to help make smart growth and smart energy possible in communities throughout the Commonwealth. The Commonwealth actively encourages communities to adopt and implement the available smart growth/smart energy measures "in order to realize the many environmental, fiscal, and social benefits of smarter energy and smarter land use."<sup>677</sup> One of the modules on the website specifically addresses environmental justice concerns in the Commonwealth, providing "guidance to municipalities and developers on how to better engage EJ populations in the planning and development process."<sup>678</sup>

### Case Law

*King v. Office for Civ. Rights of the U.S. HHS*<sup>679</sup> (2008) (tags: Land Use – siting, Redressing Environmental Racism)

Plaintiffs, residents of two EJ neighborhoods in Boston, where a controversial federally-funded biological laboratory was being built, filed a discrimination complaint with the Office for Civil Rights ("OCR") alleging that the siting of the laboratory had the effect of subjecting them to discrimination because of their race and national origin in violation of Title VI of the Federal Civil Rights and its implementing regulations. A separate complaint in federal court was also filed. The laboratory, when completed, would have been the only Level 4 (*i.e.* housing the most dangerous biological agents) facility in the United States located in a densely populated urban area. The issue was whether OCR's statutory mandate to investigate the discrimination complaint was unreasonably delayed. The court held that while OCR's decision to delay investigation until the conclusion of appellate review in federal court was reasonable, this decision was troublesome because the standards that the district court would apply under the National Environmental Policy Act were not the same as those that OCR would apply.

### **Improving Public Health**

Air Quality (tags: Air Pollution, Transportation)

EOEEA has placed a strong emphasis on air-related issues in the past few years, primarily in urban areas, which also tend to have EJ populations. Enforcement of air quality standards is handled by MassDEP. Recent air quality initiatives include diesel retrofit programs and an anti-idling program for school buses.<sup>680</sup>

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<sup>676</sup> See Smart Growth / Smart Energy Toolkit, [http://www.mass.gov/envir/smart\\_growth\\_toolkit/](http://www.mass.gov/envir/smart_growth_toolkit/) (last visited July 27, 2009).

<sup>677</sup> *Id.*

<sup>678</sup> See Smart Growth / Smart Energy Toolkit, *Advancing Environmental Justice in the Commonwealth*, available at [http://www.mass.gov/envir/smart\\_growth\\_toolkit/pages/mod-ej.html](http://www.mass.gov/envir/smart_growth_toolkit/pages/mod-ej.html) (last visited July 27, 2009).

<sup>679</sup> 573 F. Supp. 2d 425 (D. Mass. 2008).

<sup>680</sup> Telephone interview with Tony Chaves (2006), *supra* note 653; see also *Massachusetts Dep't of Environmental Protection Program Plan/Environmental Performance Partnership Agreement 2005-06*

## Case

*Mass Port Auth. v. City of Boston*<sup>681</sup> (2003) (tags: Land Use – permitting)

The City of Chelsea challenged the final environmental impact report (“FEIR”) assessing a proposed airport expansion and runway construction project under the Massachusetts Environmental Policy Act. The city contended that the project would cause a significant adverse impact disproportionately affecting low-income or minority populations. The court held that the FEIR was adequate, refusing to second-guess the Mass Port Authority’s methodology, which favorably compared the demographics of the areas within and without a 65 (daytime)/60 (nighttime) decibel noise contour. The court observed that no regulation exists that requires each affected community “be considered individually in relation to all the affected communities or to the political jurisdictions of which the affected communities are a part.”

## **Pollution Cleanup**

### Supplemental Environmental Projects

In the settlement of environmental enforcement cases, MassDEP may, at its discretion, allow violators to mitigate the magnitude of their penalties through an environmentally beneficial project, known as a Supplemental Environmental Project (“SEP”).<sup>682</sup> MassDEP defines SEPs as actions a regulated entity is not legally required to perform, and that will “improve, protect or reduce risks to public health, safety or welfare, or the environment at large.”<sup>683</sup> MassDEP’s policy indicates that EJ is one of its overarching goals. While EJ does not fall within a SEP category, MassDEP considers it “a compelling reason for the approval and implementation of SEPs in communities where environmental justice may be an issue.”<sup>684</sup>

## **Coordination with Federal Government**

### Performance Partnership Agreement (tags: Brownfields Redevelopment, Climate Change, Grants, Water)

Since at least 2001, MassDEP has joined with U.S. EPA Region 1 to establish regular Performance Partnership Agreements (“PPAs”). The most recent PPA spans the

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[“Performance Partnership Agreement”], at 16, 57, available at <http://www.mass.gov/dep/about/priorities/ppa0506f.pdf> (last visited Apr. 21, 2009).

<sup>681</sup> 17 Mass. L. Rep. 158 (Mass. Super. Ct. 2003).

<sup>682</sup> Massachusetts Dep’t of Environmental Protection, *Policy on Supplemental Environmental Projects* (Revised Mar. 12, 2009), at 1, 3, available at <http://www.mass.gov/dep/service/seppol07.pdf> (last visited Apr. 21, 2009).

<sup>683</sup> Massachusetts Dep’t of Environmental Protection, *Enforcement Response Guidance* (Revised June 18, 2008), at 9, available at <http://www.mass.gov/dep/service/enf97001.pdf> (last visited Apr. 21, 2009).

<sup>684</sup> *Policy on Supplemental Environmental Projects*, *supra* note 666, at 3.

fiscal years 2007-09<sup>685</sup>, and is supplemented by a PPA Work Plan for the 2009 fiscal year.<sup>686</sup> Both of these PPAs outline strategies for joint goals of: (1) Clean Air and Global Climate Change; (2) Clean and Safe Water; (3) Land Preservation and Restoration including Brownfields and Waste Site Cleanups; (4) Healthy Communities and Ecosystem including Waste Management; and (5) Compliance and Environmental Stewardship.<sup>687</sup> To ensure healthier communities, both PPAs contain a series of EJ objectives, including brownfields redevelopment, diesel strategy, illegal dumping video surveillance, grants, and SEP opportunities.<sup>688</sup>

Urban Forestry Environmental Justice Pilot Grant Program (tags: Grants, Open Space/Recreation)

With the support of the USDA Forest Service, the Massachusetts Department of Conservation and Recreation's Urban and Community Forestry Program, in collaboration with EOEEA, offers 75%/25% matching grants to municipalities and non-profit organizations working in EJ communities in Massachusetts.<sup>689</sup> The purpose of these grants is to advance environmental equity, improve environmental quality, and build local capacity for urban and community forestry, which refers to professional management (planting, protection and maintenances) of a municipality's public tree resources in partnership with residents and community institutions.<sup>690</sup>

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<sup>685</sup> Massachusetts Dep't of Environmental Protection Program Plan / Environmental Performance Partnership Agreement 2007-2009, available at <http://www.mass.gov/dep/about/priorities/ppa0709.pdf> (last visited Apr. 21, 2009).

<sup>686</sup> Massachusetts Dep't of Environmental Protection Program Plan/ Performance Partnership Agreement Work Plan Fiscal Year 2009, available at <http://www.mass.gov/dep/about/priorities/09ppa.pdf> (last visited Apr. 21, 2009).

<sup>687</sup> See, e.g., Performance Partnership Agreement 2007-2009, *supra* note 669, at 3.

<sup>688</sup> See, e.g., Performance Partnership Agreement Work Plan Fiscal Year 2009, *supra* note 670, at 14.

<sup>689</sup> Massachusetts Dep't of Conservation and Recreation, *Urban Forestry Environmental Justice Pilot Grant Program, Application Guidelines*, available at <http://www.mass.gov/dcr/stewardship/forestry/urban/urbanGrants.htm> (last visited Apr. 21, 2009).

<sup>690</sup> *Id.*

# MICHIGAN

(tags: Children’s Issues, Community Participation, Compliance and Enforcement, Inter-agency Collaboration, Land Use - siting, Outreach, Redressing Environmental Racism, Pollution Cleanup, Public Health)

**General Environmental Justice Activities** (tags: Community Participation, Compliance and Enforcement, Inter-agency Collaboration, Public Health)

In 2006, the Michigan Department of Environmental Quality’s (“MDEQ”) Environmental Advisory Council (“EAC”), issued recommendations to Governor Jennifer Granholm regarding a state EJ policy.<sup>691</sup> It recommended the state create an inter-agency working group to coordinate the actions of different departments, assist with the creation and revision of EJ plans, develop performance goals and evaluate each department’s progress toward the goals, and prepare an annual EJ report. The EAC recommended that the working group establish a citizen advisory panel to assist it in these tasks.<sup>692</sup>

Following these recommendations Governor Granholm issued Executive Directive 2007 - 23 on November 21, 2007.<sup>693</sup> The Directive instructs MDEQ to establish an interagency working group which will, among other things, create an EJ plan that (1) identifies both discriminatory effects of state public health or environmental action, and measures to prevent such effects, (2) provides policies and procedures for state agencies to ensure that EJ principles are incorporated into departmental decisions and practices, and (3) recommends mechanisms for the public to “assert adverse or disproportionate social, economic, or environmental impact,” and request responsive state action.<sup>694</sup> The Working Group is made up of representatives of various state and local agencies, non-profit organizations, and business groups. It has met regularly since 2008.<sup>695</sup>

## **Equitable Development**

### Case Law

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<sup>691</sup> Michigan Department of Environmental Quality, Environmental Justice Working Group, *Recommendations of DEQ Environmental Advisory Council on State Environmental Justice Policy*, available at [http://www.michigan.gov/documents/deq/deq-ej-EAC-Rec\\_248347\\_7.pdf](http://www.michigan.gov/documents/deq/deq-ej-EAC-Rec_248347_7.pdf) (last visited Feb. 6, 2009).

<sup>692</sup> *Id.*

<sup>693</sup> Michigan Department of Environmental Quality, Environmental Justice Working Group, *Executive Directive 2007-23*, available at [http://www.michigan.gov/documents/deq/deq-ej-ExecDirective-2007-23\\_248346\\_7.pdf](http://www.michigan.gov/documents/deq/deq-ej-ExecDirective-2007-23_248346_7.pdf) (last visited Feb. 6, 2009).

<sup>694</sup> *Id.* at 2-3.

<sup>695</sup> Michigan Department of Environmental Quality, *Environmental Justice Working Group*, available at [http://www.michigan.gov/deq/0,1607,7-135-3306\\_51662---,00.html](http://www.michigan.gov/deq/0,1607,7-135-3306_51662---,00.html) (last visited June 28, 2009).

*Lucero v. Detroit Public Schools*<sup>696</sup> (2004) (tags: Children’s Issues, Community Participation, Compliance and Enforcement, Land Use – siting, Outreach, Redressing Environmental Racism)

Parents brought a class action under Title VI of the Civil Rights Act to block the opening of a school that would serve mostly minority students because the school was built on a former industrial site. The parties settled and the settlement established a safety committee and maintenance requirements. Detroit Public Schools agreed to keep easily accessible records of maintenance and testing of the barrier, in both English and Spanish. The agreement set up a system for parents to seek enforcement and compliance with the settlement, and created a protocol for making any repairs to the barrier.

**Pollution Cleanup** (tags: Outreach, Pollution Cleanup)

In 2007, a bill was introduced in the house to amend the Natural Resources and Environmental Protection Act to require that notices of certain cleanup activities and related public hearings to be published in at least one “ethnic-minority-owned media.”<sup>697</sup> The bill, however, has not passed.

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<sup>696</sup> Case No. 01-CV-72792-DT (E.D. Mich. Oct. 7, 2004).

<sup>697</sup> H.B. 5247, 2007-2008 Sess. (Mich. 2007), available at <https://legislature.mi.gov/documents/2007-2008/billintroduced/House/pdf/2007-HIB-5247.pdf> (last visited June 28, 2009).

# MINNESOTA

(tags: Air Pollution, Children’s Issues, Community Education, Community Participation, Cumulative/Secondary Effects, Grants, Land Use – permitting, Mapping, Native Americans, Redressing Environmental Racism)

**General Environmental Justice Activities** (tags: Community Education, Grants, Redressing Environmental Racism)

The Minnesota Pollution Control Agency (“MPCA”) updated its EJ policy in 2008. The policy seeks to ensure that those in minority and economically disadvantaged communities: (1) do not disproportionately bear environmental burdens; (2) are not denied equal access to environmental benefits; and (3) have opportunities for meaningful input in the development and implementation of environmental policies.<sup>698</sup> The policy broadly calls for the development of environmental justice components in “appropriate MPCA programs,” development and implementation of additional public participation strategies, and the creation of alliances with EJ community organizations.<sup>699</sup>

In July 2005, MPCA absorbed the state’s other environmental agency, the Minnesota Office of Environmental Assistance (“MOEA”).<sup>700</sup> MPCA continues to sponsor MOEA programs as part of the Minnesota Sustainable Communities Network (“MnSCN”), a web portal that promotes discussions and information sharing about sustainable communities among interested groups and individuals.<sup>701</sup> 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.<sup>702</sup>

## **Equitable Development**

Environmental Justice in Permitting (tags: Air Pollution, Children’s Issues, Cumulative/Secondary Effects, Land Use – permitting, Native Americans, Redressing Environmental Racism)

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<sup>698</sup> Minnesota Pollution Control Agency, *Incorporating Environmental Justice Principles and Practices into Minnesota Pollution Control Agency Operations* (Apr. 30, 2008) at 1, available at <http://www.pca.state.mn.us/publications/p-gen5-01.pdf> (last visited Feb. 19, 2009).

<sup>699</sup> *Id.* at 2.

<sup>700</sup> See Minnesota Pollution Control Agency, <http://www.pca.state.mn.us/about/newagency.html> (last visited Feb. 18, 2009).

<sup>701</sup> See generally Minnesota Sustainable Communities Network website, <http://www.nextstep.state.mn.us/article.cfm?articleid=3> (last visited Feb. 18, 2009).

<sup>702</sup> Minnesota Sustainable Communities Network, *Good Neighborhood Agreements*, available at [http://www.nextstep.state.mn.us/res\\_detail.cfm?id=1020&xx=environmental%20justice](http://www.nextstep.state.mn.us/res_detail.cfm?id=1020&xx=environmental%20justice) (last visited Feb. 18, 2009).

In 2008, MPCA's authorizing statute was amended to introduce EJ considerations into the permitting process for any facility in Minneapolis that emits air contaminants.<sup>703</sup> If the facility requesting a permit will affect a community that (1) is located within half mile of an EPA superfund site, (2) has a majority population of low-income persons of color or American Indians, (3) has a disproportionate number of children with environmentally related health problems such as asthma, (4) has experienced numerous air quality alert days, and (5) is located near heavily trafficked streets or highways that carry both auto and truck traffic, MPCA must first analyze and consider the cumulative effects of past pollution on the environment and residents of the community.<sup>704</sup>

### **Improving Public Health** (tags: Air Pollution, Community Participation, Mapping)

In 2009, MPCA established the Community Air Improvement Project ("CAIR"), a pilot project that aims to improve the air quality in the heavily polluted Phillips community of Minneapolis.<sup>705</sup> CAIR is a partnership between MPCA, the City of Minneapolis, Clean Air Minnesota, MN Technical Assistance Program, MN Department of Health and Phillips community leaders. The project will pinpoint sources of air pollution in the urban core in and near the Phillips community, identify means of reducing air pollution and associated health risks, and create and implement an action plan.<sup>706</sup>

MPCA continues to sponsor 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."<sup>707</sup> Although good neighbor agreements are not legally binding, they reduce the need for court action by facilitating a dialogue between industry and the affected communities. One such agreement was signed between a manufacturer emitting high levels of toluene and representatives of neighborhoods in southeast Minneapolis.<sup>708</sup>

HF No. 1078, enacted as Chapter 147 of the state's 2007 legislative session, announced that the Commissioner of Health and Commissioner of Pollution will seek federal funding to renew and expand the state's EJ mapping capacity. If a tracking program is implemented, the project will create a system for environmental public health tracking, and explore possible links between environmental health and toxic exposures.<sup>709</sup>

### **Coordination With Federal Government**

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<sup>703</sup> MINN. STAT. § 116.07 (2008).

<sup>704</sup> *Id.*

<sup>705</sup> See MPCA, *Community Air Improvement Project*, <http://www.pca.state.mn.us/air/caip.html> (last visited Feb. 18, 2009).

<sup>706</sup> *Id.*

<sup>707</sup> See MnSCN's NextStep, [http://www.nextstep.state.mn.us/res\\_detail.cfm?id=629&xx=good%20neighbor](http://www.nextstep.state.mn.us/res_detail.cfm?id=629&xx=good%20neighbor) (last visited Feb. 18, 2009).

<sup>708</sup> Joe Mahon, The Minnesota Daily, *Neighborhood Associations Sign Pact with Polluter*, Apr. 3, 2003, available at <http://www.mndaily.com/2009/02/11/neighborhood-associations-sign-pact-polluter> (last visited Feb. 18, 2009).

<sup>709</sup> *Id.*

Performance Partnership Agreement (tags: Community Participation, Redressing Environmental Racism)

In October 2001, the MPCA and U.S. EPA entered into an Environmental Performance Partnership Agreement (“EnPPA”).<sup>710</sup> The EnPPA defines “environmental justice” as ensuring that environmental laws, policies, and enforcements fairly treat “people of all races and incomes” and elicit their “meaningful involvement in the decision making process of the government.”<sup>711</sup> In furtherance of these goals, the EnPPA, as drafted in 2002, set out MPCA’s plans for integrating EJ into the agency’s programs and decision-making processes, and for creating an advisory task force charged with fact-finding.<sup>712</sup> The current EnPPA does not specifically reference EJ, but according to the MPCA, this omission doesn’t reflect a change in MPCA’s plan.<sup>713</sup>

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<sup>710</sup> Minnesota Pollution Control Agency, *Environmental Performance Partnership Agreement*, available at <http://www.pca.state.mn.us/programs/enppa.html> (last visited Feb. 18, 2009).

<sup>711</sup> *Id.* at 12 (last visited Feb 18, 2009).

<sup>712</sup> *Id.*

<sup>713</sup> Minnesota Pollution Control Agency, *Environmental Performance Partnership Agreement* (2006-08), <http://www.pca.state.mn.us/publications/reports/enppa-2007.pdf> (last visited Feb. 18, 2009); E-mail from Yolanda Letnes, Environmental Justice Team Member, Minnesota Pollution Control Agency, (Feb. 25, 2009)(according to MCPA, the omission is simply in the interests of streamlining reporting to U.S. EPA pursuant to the EnPPA).

# MISSISSIPPI

(tags: Compliance and Enforcement, Community Participation, Land Use – anti-concentration, Land Use – siting, Waste)

## **General Environmental Justice Activities**

While the Mississippi Department of Environmental Quality (“MDEQ”) has not established an EJ policy, it does incorporate EJ considerations into staff decisions, particularly in regard to permitting and siting.<sup>714</sup> In 2006, MDEQ’s Coordinator of Environmental Justice retired, but the Coordinator was subsequently re-hired on a contract basis to help ensure that MDEQ staff continues to utilize EJ practices daily.<sup>715</sup>

Environmental Justice Bill (tags: Compliance and Enforcement, Land Use – siting)

In January 2009, State Senator Deborah Jeanne Dawkins introduced an EJ bill in the State Senate.<sup>716</sup> Senator Dawkins’ bill would have required the fair treatment and meaningful involvement of residents of EJ communities affected by the development and enforcement of environmental laws and the siting of certain facilities.<sup>717</sup> The bill died in committee.<sup>718</sup>

## **Community Participation**

### Case Law

*In re Amendment to Madison County Solid Waste Management Plan* (2005) (tags: Community Participation, Land Use – anti-concentration, Waste)

Petitioners contested the Mississippi Commission on Environmental Quality’s approval of an amendment to a county Solid Waste Management Plan to include the addition of a new municipal solid waste landfill, where the county already has two nearby landfills.<sup>719</sup> Among other arguments, petitioners contended that the facility would

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<sup>714</sup> Telephone interview with Lisa Thompson Ouzts, Senior Attorney, Mississippi Department of Environmental Quality (Feb. 27, 2009).

<sup>715</sup> E-mail from Gloria Tatum, Coordinator of Environmental Justice, Mississippi Department of Environmental Quality (Mar. 2, 2009).

<sup>716</sup> S.B. 3086, 2009 Leg., Reg. Sess. (Miss. 2009), available at <http://billstatus.ls.state.ms.us/documents/2009/pdf/SB/3000-3099/SB3086IN.pdf> (last visited Sept. 20, 2009).

<sup>717</sup> *Id.*

<sup>718</sup> Telephone interview with Lisa Thompson Ouzts, *supra* note 698; *see also* [http://billstatus.ls.state.ms.us/2009/pdf/senate\\_authors/dawkins.xml](http://billstatus.ls.state.ms.us/2009/pdf/senate_authors/dawkins.xml) (last visited Sept. 20, 2009).

<sup>719</sup> *In re Amendment to Madison County Solid Waste Management Plan*, 2005 Miss. ENV LEXIS 65 (Miss. Comm’n on Env’tl. Quality, Aug. 25, 2005).

disproportionately affect the EJ community and that no notice was provided affected residents. The Commission found that the county adequately considered EJ issues (in ruling out discriminatory correlation of existing facilities and minority and low-income populations) and provided for meaningful public involvement, through local public hearings and a community meeting.<sup>720</sup> Petitioners appealed the Commission's findings and are awaiting a decision by the County Chancery Court.<sup>721</sup>

## **Equitable Development**

### Hazardous Waste Anti-Concentration Law (tags: Land Use – anti-concentration)

In 1991, Mississippi enacted a Hazardous Waste Facility statute that carries an anti-concentration provision.<sup>722</sup> 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.”<sup>723</sup>

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<sup>720</sup> *Id.* at \*23-25.

<sup>721</sup> *Hinds Co. Bd. of Supervisors, et al. v. Miss. Comm'n on Env'tl. Quality*, No. G-2005-1947 S-2 (Hinds Co. Ch. Ct. filed Oct. 6, 2005)

<sup>722</sup> MISS. CODE ANN. § 17-17-151 (2008).

<sup>723</sup> *Id.* at § 17-17-151(4).

# MISSOURI

(tags: Brownfields Redevelopment, Community Participation, Compliance and Enforcement, Grants, Mining, Pollution Cleanup, Redressing Environmental Racism, Toxic Waste Cleanup)

## **General Environmental Justice Activities**

The Missouri Department of Natural Resources (“MDNR”) Fiscal Year 2000 Integrated Strategic Plan included an element aimed at developing “a strategy for addressing environmental justice in the decision-making process.”<sup>724</sup> The plan sought to improve “understanding of resource issues resulting in informed decision making,” study information access points and “develop a plan to better coordinate access to information and the appropriate medium for that information.”<sup>725</sup> Significantly, MDNR’s Fiscal Year 2000 Plan set out a variety of performance measures, to assess the efficacy of its informational tactics. MDNR sought to measure progress in reaching its environmental justice objectives by finding an increase in the number of environmental permits issued “which include[d] consideration of the impact on minority and low income populations” as well as captured the “[d]emographics of groups involved in policy and operational decisions.”<sup>726</sup> However, subsequent MDNR Strategic Plans do not refer expressly to “environmental justice.”<sup>727</sup>

## **Pollution Cleanup**

Brownfields Redevelopment Loan Fund (tags: Brownfields Redevelopment, Grants, Mining, Pollution Cleanup, Toxic Waste Cleanup)

In 2005, the Environmental Improvement and Energy Resources Authority (“EI ERA”) received a million dollar grant to establish a revolving loan fund, which will grant loans and small sub-grants to clean up contaminated sites.<sup>728</sup> The EI ERA, in conjunction with the Missouri Department of Natural Resources Brownfields Voluntary Cleanup Program, will support cleanup efforts of mine-scarred lands or sites contaminated with petroleum, hazardous materials, or controlled substances.<sup>729</sup> In evaluating proposed plans, the EI ERA is to look at, among other factors, “environmental justice issues and/or... that the project meets the needs of a community unable to draw on other resources.”<sup>730</sup>

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<sup>724</sup> Missouri Dep’t of Natural Resources, *Fiscal Year 2000 Integrated Strategic Plan*, available at [http://www.dnr.mo.gov/s\\_plan/fy2000/issue\\_4.htm](http://www.dnr.mo.gov/s_plan/fy2000/issue_4.htm) (last visited Feb. 19, 2009).

<sup>725</sup> *Id.*

<sup>726</sup> *Id.*

<sup>727</sup> See [http://www.dnr.mo.gov/s\\_plan/index.html](http://www.dnr.mo.gov/s_plan/index.html) (last visited Feb. 19, 2009).

<sup>728</sup> Environmental Improvement and Energy Resources Authority website, *Missouri Brownfields Revolving Loan Fund*, <http://www.dnr.mo.gov/eiera/brownfieldsRLF.htm> (last visited July 27, 2009).

<sup>729</sup> *Id.*

<sup>730</sup> *Id.*

Supplemental Environmental Projects (tags: Compliance and Enforcement, Pollution Cleanup)

In the settlement of environmental enforcement actions, MDNR may, at its discretion, allow violators to mitigate the magnitude of their penalties through an environmentally beneficial project, known as a Supplemental Environmental Project (“SEP”).<sup>731</sup> The proposed SEP must have a nexus to the original offense, and it cannot be an act already required by law.<sup>732</sup> In its letter to violators, informing them of the SEP option, MDNR explicitly lists EJ as a potential aim of a proposal.<sup>733</sup>

**Coordination with Federal Government** (tags: Community Participation, Compliance and Enforcement, Redressing Environmental Racism)

There is no express reference to the term “environmental justice” in MDNR’s current Performance Partnership Agreement (“PPA”). However, EJ concepts are referred to in at least two places.<sup>734</sup> At one point, the PPA refers to a governing principle that MDNR and U.S. EPA conduct “permitting, enforcement, public participation and other work so that everyone in Missouri has protection from environmental and health hazards, and equal access to the environmental decision-making process.”<sup>735</sup> Elsewhere, the PPA refers to a joint agreement that MDNR and U.S. EPA “support and encourage community based environmental protection, particularly in communities that may have disproportionate impacts from environmental contaminants, or that have minority or low income populations.”<sup>736</sup>

Additionally, MDNR does EJ work at sites covered by the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6901, *et seq.*, but the source of that work is the federal program and not initiated by the state.<sup>737</sup>

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<sup>731</sup> Missouri Dep’t of Natural Resources, *Supplemental Environmental Projects*, available at <http://www.dnr.mo.gov/compliancemanual/chapters/10supenviroprojects.pdf> (last visited July 28, 2009).

<sup>732</sup> *Id.*

<sup>733</sup> *Id.*

<sup>734</sup> *Performance Partnership Agreement between U.S. EPA Region 7 and MDNR for Oct. 1, 2007, to Sept. 30, 2009*, at 4, 8 (not available online).

<sup>735</sup> *Id.* at 4.

<sup>736</sup> *Id.* at 8.

<sup>737</sup> E-mail from John Madras, Environmental Policy Director, Missouri Dep’t of Natural Resources (Feb.10-19).

## MONTANA

(tags: Air Pollution, Land Use - siting, Children's Issues, Community Education, Community Participation, Compliance and Enforcement, Cumulative/Secondary Effects, Redressing Environmental Racism, Waste)

### **General Environmental Justice Activities** (tags: Native Americans)

Montana does not have a formal EJ policy or program. An official at the Montana Department of Environmental Quality attributed this to the demographics of Montana: there are only small African-American and Latino populations, while the U.S. EPA has primary responsibility for EJ as it pertains to Native Americans. The one group "falling between the cracks" would be the retired, elderly poor clustered in rural areas, but that demographic is not captured by U.S. EPA's EJ criteria.<sup>738</sup>

### Major Facility Siting (tags: Community Participation, Cumulative/Secondary Effects, Land Use – 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."<sup>739</sup> The Act requires a cumulative impacts analysis for determining if a proposed "Major Facility" is eligible for expedited review.<sup>740</sup> Major facilities include electric transmission facilities, pipeline facilities, and geothermal facilities.<sup>741</sup> Several factors must be assessed in the cumulative review, including the severity, duration, geographic extent, and frequency of occurrence of the impact, as well as whether the degree to which the impacts on the human environment are likely to create a high level of public concern and the economic importance and benefits to the state and local community.<sup>742</sup>

### School Programs (tags: Air Pollution, Children's Issues, Waste)

The state provides student curricula and other information about recycling for teachers.<sup>743</sup> It also has a program (Clean Air Zone Montana) to reduce children's exposure to school bus diesel exhaust.<sup>744</sup>

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<sup>738</sup> Telephone interview with Tom Ellerhoff, Director's Office, Montana Dep't of Environmental Quality (Oct. 10, 2003, confirmed June 29, 2009).

<sup>739</sup> MONT. CODE ANN. § 75-20-102.

<sup>740</sup> *Id.* at § 75-20-232.

<sup>741</sup> *Id.* at § 75-20-104.

<sup>742</sup> *Id.* at § 75-20-232(2)(a)-(i).

<sup>743</sup> Montana Department of Environmental Quality, *Waste Reduction and Recycling, Schools* available at <http://www.deq.state.mt.us/Recycle/Schools-mainpage.asp> (last visited July 6, 2009).

<sup>744</sup> Montana Department of Environmental Quality, *Clean Air Zone Montana* available at <http://deq.mt.gov/Recycle/CleanAirZone.asp> (last visited July 6, 2009).

## **Community Participation** (tags: Waste)

Montana enacted legislation for the collection and safe disposal of mercury-added thermostats. This bill addresses thermostats used in heating, ventilating, and air conditioning systems. It prohibits the sale of mercury-added thermostats in the state, requires manufacturers to set up collection and recycling programs of out-of-service mercury-added thermostats, requires manufacturers to establish education and outreach programs for homeowners and contractors through various methods, and requires manufacturers annually to provide a quantitative and qualitative report about the program.<sup>745</sup> Several organizations worked on drafting this legislation, including Women's Voices for the Earth (Missoula, MT).<sup>746</sup> Women's Voices for the Earth is a national organization that engages women to advocate for the right to live in a healthy environment and "seeks to reduce and ultimately eliminate environmental pollutants that cause health problems for women, their families and communities."<sup>747</sup>

## **Coordination with Federal Government** (tags: Children's Issues, Community Participation, Compliance and Enforcement, Redressing Environmental Racism)

The state of Montana has agreed to support U.S. EPA's EJ efforts, and to work with U.S. EPA to meet its goals. In general, Montana has agreed to further "[U.S.] 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 12898."<sup>748</sup>

Some of the specific U.S. 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."<sup>749</sup> Montana further agrees that noncompliance can be deterred and environmental and human health improvements achieved "by maintaining a strong, timely and active enforcement presence."<sup>750</sup> The Montana Department of Environmental Quality also agreed to notify its employees of EJ training available from the EPA and encourage them to attend.<sup>751</sup>

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<sup>745</sup> S.B. 424, 2009 Session (Mont. 2009), available at <http://data.opi.mt.gov/bills/2009/billhtml/SB0424.htm> (last visited Sept. 8, 2009).

<sup>746</sup> Women's Voices for the Earth (Missoula, MT), *Montana Governor Signs Mercury Reduction Bill*, available at [www.womenandenvironment.org](http://www.womenandenvironment.org) (last visited July 6, 2009).

<sup>747</sup> Women's Voices for the Earth (Missoula, MT), *About WVE*, <http://www.womenandenvironment.org/aboutwve> (last visited July 6, 2009).

<sup>748</sup> *Montana Environmental Performance Partnership Agreement (2004-2006)*, available at [http://deq.mt.gov/about/Final\\_PPA\\_2004-06.pdf](http://deq.mt.gov/about/Final_PPA_2004-06.pdf) (last visited July 6, 2009); Exec. Order 12898, *supra* note 11.

<sup>749</sup> *Montana Environmental Performance Partnership Agreement (2004-2006)*, *supra* note 732, at 3.

<sup>750</sup> *Id.* at 4.

<sup>751</sup> *Id.*

In partnership with U.S. EPA, the Montana Department of Environmental Quality is sponsoring a children's environmental health summit in August 2009. Goals are to increase the ability to identify, prevent, and reduce environmental health threats to children, share information about protecting children from environmental hazards in schools and childcare facilities, encourage cooperation among state agencies and other stakeholders, and provide tools and resources for creating healthy and safe learning environments.<sup>752</sup>

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<sup>752</sup> Region 8 Children's Environmental Health Summit, *Greening Our Schools and Childcare Facilities*, available at <http://www.deq.state.mt.us/SBAP/CEH/CEHS.asp> (last visited July 6, 2009).

## **NEBRASKA**

(Tags: Land Use – permitting, Outreach)

The Nebraska Department of Environmental Quality (“NDEQ”) does not have a formal EJ policy.<sup>753</sup> However, the agency has been proactive in making low income, minority and non-English speaking communities more aware of environmental permitting activities that exist in their areas. NDEQ is also working with the U.S. EPA to develop a protocol to address any EJ issues that arise.<sup>754</sup>

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<sup>753</sup> E-mail from Annette Kovar, Legal Counsel, Nebraska Dep’t of Environmental Quality (Mar. 23, 2005).

<sup>754</sup> *Id.*

## **NEVADA**

(tags: Air Pollution, Children’s Issues, Community Education, Community Participation, Grants, Native Americans, Study, Transportation, Waste, Water)

### **General Environmental Justice Activities** (tags: Community Education, Study, Waste)

Nevada has no formal EJ programs, but tries to consider potential EJ issues in its permitting actions.<sup>755</sup>

The Nevada legislature requires the Director of the Department of Conservation and Natural Resources to report biennially the status of “current and proposed programs for recycling and reuse of materials and on any other matter relating to recycling and reuse which he deems appropriate.”<sup>756</sup> The most recent study reported that the Nevada Division of Environmental Protection developed a twelve week Recycling Education curriculum and lesson plans adaptable to grades 4-12.<sup>757</sup>

### **Community Participation** (tags: Community Participation, Grants, Native Americans)

The state has a Tribal Liaison Program, which aims to improve relations with Nevada tribes and provide a better vehicle of communication on the issues.<sup>758</sup> This program was funded in 2003 by a grant from the U.S. EPA. In 2004, the Nevada Division of Environmental Protection (“NDEP”) and the Inter-tribal Council of Nevada signed a memorandum of understanding (“MOU”) that “Tribes through ITCN will work with NDEP on environmental issues that have impacts to tribes.” The program provides a Tribal Liaison Position that is housed in the NDEP office. The MOU requires that NDEP provides the Tribal Liaison position office space.<sup>759</sup>

### **Improving Public Health** (tags: Air Pollution, Children’s Issues, Grants, Transportation, Water)

As part of the 2009 America Recovery and Reinvestment Act, the state received \$1,730,000 from U.S. EPA’s State Clean Diesel grants program to replace model year

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<sup>755</sup> Telephone interview with Jill Lufrano, Public Information Officer, Nevada Dep’t of Conservation & Natural Resources, Division of Environmental Protection (June 26, 2009).

<sup>756</sup> NEV. REV. STAT. § 444A.070 (2009).

<sup>757</sup> Nevada Dep’t of Conservation and Natural Resources, Division of Environmental Protection, Bureau of Waste Management, *2009 Recycling and Waste Reduction Report*, available at [http://nevadarecycles.gov/doc/2009\\_Recycling\\_and\\_Waste\\_Reduction\\_Report.pdf](http://nevadarecycles.gov/doc/2009_Recycling_and_Waste_Reduction_Report.pdf) (last visited June 29, 2009).

<sup>758</sup> Telephone interview with Jill Lufrano, *supra* note 739.

<sup>759</sup> Nevada Division of Environmental Protection and Inter-tribal Council of Nevada, *Tribal Liaison Program* available at [http://ndep.nv.gov/tribe/tlp\\_1.htm](http://ndep.nv.gov/tribe/tlp_1.htm) (last visited June 29, 2009).

1993 or older school buses with new and cleaner operating buses. The state anticipates replacing sixteen buses statewide.<sup>760</sup>

Many of the 2009 America Recovery and Reinvestment Act stimulus funds Nevada has received will target clean drinking water and improved sanitation projects for rural, lower income communities; this will benefit some of the most disadvantaged communities in Nevada.<sup>761</sup>

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<sup>760</sup> Nevada Division of Environmental Protection, Recovery Act – *State Clean Diesel Grants Program*, available at <http://ndep.nv.gov/recovery/diesel.html> (last visited June 29, 2009).

<sup>761</sup> Telephone interview with Jill Lufrano, *supra* note 739.

## **NEW HAMPSHIRE**

(tags: Climate Change, Community Participation, Compliance and Enforcement, Mapping, Public Health)

### **General Environmental Justice Activities**

In September 1994, the New Hampshire Department of Environmental Services (“NH DES”) incorporated an Environmental Equity Policy and Implementation Strategy into its agenda. 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.”<sup>762</sup> NH DES aims to bring the concepts of EJ into staff decisions and actions through the development of policies and guidance.

In 2008, NH DES reviewed ways to improve its EJ efforts. This process included: (1) working with EPA to plan and execute staff EJ training, which involved discussion of potential EJ activities in which to engage within the framework of existing programs; (2) making a work plan to revise and update its Environmental Equity Policy, which it will rename an Environmental Justice Policy and re-post on its website; (3) updating written guidance; and (4) making assurances that its new Environmental Justice Policy will be incorporated into all appropriate work plans and grant applications.<sup>763</sup> Though NH DES’ new Environmental Justice Policy will be considered by all staff in their daily work, it is not considered enforceable.<sup>764</sup>

NH DES is also actively participating in EPA Region 1 all-states EJ meetings. Staff present at the regional meetings, as well as assist in the agenda development. Staff also provides feedback regarding the different needs and approaches to EJ work in urban and rural states in New England.<sup>765</sup>

### **Improving Public Health** (tags: Climate Change, Public Health)

In December 2007, New Hampshire Governor John Lynch signed an executive order to create a Climate Change Policy Task Force charged with creating a Climate Action Plan for the State of New Hampshire.<sup>766</sup> The Task Force’s goals include:

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<sup>762</sup> *Performance Partnership Agreement for Federal Fiscal Years 2008 – 2010 Between the New Hampshire Department of Environmental Services and the U.S. Environmental Protection Agency*, at II-5, available at <http://des.nh.gov/organization/commissioner/p2au/pis/ppap/documents/ffy08-10.pdf> (last visited Feb. 4, 2009).

<sup>763</sup> Telephone interview with and e-mail from Sherry Godlewski, Environmental Program Manager, New Hampshire Department of Environmental Services (Feb. 3-4, 2009).

<sup>764</sup> *Id.*

<sup>765</sup> *Id.*

<sup>766</sup> New Hampshire Dep’t of Environmental Services, *Climate Change Policy Task Force*, available at [http://des.nh.gov/organization/divisions/air/tsb/tps/climate/action\\_plan/index.htm](http://des.nh.gov/organization/divisions/air/tsb/tps/climate/action_plan/index.htm) (last visited Feb. 4, 2009).

- Establishment of quantified greenhouse reduction goals considering regional and international goals
- Recommendations on specific regulatory, voluntary and policy actions that the state should consider to achieve its greenhouse gas reduction goals.

The Task Force is also focused on adaptation to New Hampshire's changing climate and has suggested seven actions specific to adaptation. Two of these actions include efforts to protect the public health and, more specifically, the public health of New Hampshire EJ communities.<sup>767</sup>

**Coordination with Federal Government** (tags: Community Participation, Compliance and Enforcement, Mapping, Public Health)

NH DES receives U.S. EPA's technical assistance in EJ training, mapping, and policy support. U.S. EPA has prepared and made available its EJ Action Plans to the state. NH DES, in its most recent PPA, has taken on affirmative obligations regarding environmental justice.<sup>768</sup> The PPA states that NH DES agrees to: "In coordination with [U.S.] EPA New England, identify any ongoing and implement new activities that will advance environmental justice within state programs."<sup>769</sup> NH DES will refer to "[U.S.] EPA New England's EJ Functional Guidance Compendium, Chapter 9: Performance Partnership Agreements with States for a list of potential activities that should be considered."<sup>770</sup> The PPA also contains an objective that U.S. EPA New England will, by 2011, achieve significant measurable environmental or public health improvement through collaborative problem solving strategies in thirty communities with potential EJ concerns.<sup>771</sup> As part of their joint commitment to working together, U.S. EPA New England and NH DES joined together in November 2008 to provide in-house training to staff with programs that interact with EJ communities.<sup>772</sup>

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<sup>767</sup>Telephone interview and e-mail correspondence with Sherry Godlewski, *supra* note 747.

<sup>768</sup> *Performance Partnership Agreement for Federal Fiscal Years 2008 – 2010 Between the New Hampshire Department of Environmental Services and the U.S. Environmental Protection Agency*, *supra* note 746, at Appendix A, Items 132-133.

<sup>769</sup> *Id.* at Item 133.

<sup>770</sup> *Id.*

<sup>771</sup> *Id.*

<sup>772</sup> E-mail from Sherry Godlewski, Environmental Program Manager, New Hampshire Dep't of Environmental Services (July 28, 2009).

## **NEW JERSEY**

(tags: Air Pollution, Brownfields Redevelopment, Climate Change, Community Education, Community Participation, Compliance and Enforcement, Cumulative/Secondary Effects, Housing, Land Use – anti-concentration, Land Use – permitting, Land Use – siting, Native Americans, Outreach, Public Health, Redressing Environmental Racism, Study, Toxic Waste Cleanup, Transportation, Waste, Water)

### **General Environmental Justice Activities**

Executive Order 96 (rescinded) (tags: Air Pollution, Community Education, Community Participation, Outreach, Public Health, Redressing Environmental Racism)

On February 19, 2004, then-Governor Jim McGreevey signed Executive Order 96 (EO 96), outlining the State’s EJ policy.<sup>773</sup> The statewide policy applied to all state agencies, rather than being restricted to New Jersey’s environmental agency. Under the order, “all Executive Branch departments, agencies, boards, commissions and other bodies involved in decisions that may affect environmental quality and public health” must “provide meaningful opportunities for involvement.”<sup>774</sup> “Programs and policies to protect and promote protection of human health and the environment shall be reviewed periodically to ensure that program implementation and dissemination of information meet the needs of low-income and communities of color, and seek to address disproportionate exposure to environmental hazards.”<sup>775</sup> In addition, the New Jersey Department of Environmental Protection (“DEP”) and the Department of Health and Senior Services (“DHSS”) were to provide greater access to public health and environmental information through Spanish-language websites.<sup>776</sup> Furthermore, the use of “available environmental and public health data to identify existing and proposed industrial and commercial facilities and areas in communities of color and low-income communities” would allow DEP to “address impacts from these facilities.”<sup>777</sup>

Due to the “greater reliance on subsistence fishing among communities of color and low-income communities, DEP, DHSS, and the Department of Agriculture, were required to work together to develop and issue appropriately protective fish consumption advisories and provide effective risk communications, education programs and public information services.”<sup>778</sup> In addition, DEP and the Department of Transportation were to work together to reduce fine particulate pollution, which has been recognized as having

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<sup>773</sup> James E. McGreevey, former Governor of New Jersey, “Environmental Justice Executive Order” (Feb. 19, 2004) available at <http://www.nj.gov/dep/ej/eo.html> (last visited Feb. 6, 2009).

<sup>774</sup> *Id.*

<sup>775</sup> *Id.*

<sup>776</sup> *Id.*

<sup>777</sup> *Id.*

<sup>778</sup> *Id.*

significant health implications for urban communities.<sup>779</sup> A later executive order supersedes EO 96.

### Environmental Justice Task Force

Created by Governor McGreevey's Environmental Justice EO 96 and convened by the DEP Commissioner and the Commissioner of DHSS, the EJ Task Force included senior management designees from the Office of Counsel to the Governor, the Attorney General's office, the Departments of Environmental Protection, Human Services, Community Affairs, Health and Senior Services, Agriculture, Transportation, and Education.<sup>780</sup> This approach was notable as it involved multiple agencies within the state, in recognition that the issue of EJ is not confined to the jurisdiction of the environmental agencies. The EJ Task Force was charged with "mak[ing] recommendations to State Agency heads regarding actions to be taken to address EJ issues consistent with agencies' existing statutory and regulatory authority."<sup>781</sup> The Task Force stopped meeting after its authorizing Executive Order expired, and the new Environmental Justice Executive Order 131 did not extend the term of the Task Force.<sup>782</sup>

### Environmental Justice Advisory Council (tags: Community Education, Community Participation, Compliance and Enforcement)

In 2004, under the authority of the Governor's EJ EO 96, the Commissioner of DEP reestablished the Environmental Justice Advisory Council.<sup>783</sup> The Advisory Council consisted of fifteen individuals from the community, with a minimum of one-third membership from grassroots or faith-based community organizations.<sup>784</sup> Additional members were from the following communities: academic, public health, statewide environmental civil rights and public health organizations; large and small business and industry; municipal and county officials; and organized labor.<sup>785</sup> Charged with making strategic recommendations to the DEP Commissioner, the Advisory Council sought to ensure that DEP developed effective communication programs and implemented and enforced environmental laws, regulations, and policies so that such actions did not unfairly burden any New Jersey population of people with a disproportionate share of environmental pollution. Furthermore, the Advisory Council was directed to encourage DEP to provide an outreach mechanism to direct community participation in environmental decision making.<sup>786</sup>

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<sup>779</sup> *Id.*

<sup>780</sup> *Id.*

<sup>781</sup> *Id.*

<sup>782</sup> Telephone interview with Maria Franco-Speram, Environmental Justice Coordinator, New Jersey Department of Environmental Protection (Sept. 11, 2009).

<sup>783</sup> Environmental Justice Advisory Council, *Annual Report 2004-2005*, available at <http://www.state.nj.us/dep/ej/docs/ejacannualreport20042005.pdf> (last visited June 28, 2009).

<sup>784</sup> *Id.*

<sup>785</sup> *Id.*

<sup>786</sup> New Jersey Dep't of Environmental Protection, *Environmental Justice Advisory Council*, <http://www.state.nj.us/dep/ej/ejcouncil.html> (last visited Mar. 6, 2009).

New Jersey Committee on Native American Community Affairs (tags: Native Americans, Redressing Environmental Racism, Study)

In 2006, Governor Corzine signed Executive Order 24, which found that it was important to review a variety of aspects of the “current status of the Ramapough Lenape Nation as well as the greater Native American community in New Jersey.”<sup>787</sup> Areas of examination include environmental protections. This EO also established the New Jersey Committee on Native American Community Affairs and directed it to conduct this study.<sup>788</sup> The Committee submitted the report to the governor in 2007; the report provided 28 key recommendations, including those addressing EJ.<sup>789</sup>

Executive Order 131 (tags: Air Pollution, Community Education, Community Participation, Public Health, Redressing Environmental Racism)

New Jersey Governor Jon Corzine signed a new EJ Executive Order (EO 131) on February 5, 2009. This Executive Order rescinded the prior EJ Executive Order (McGreevey EO 96). EO 131 found that “some communities whose residents are predominantly of persons of low-income and persons of color bear a disproportionate share of the impact of pollution and other threats to public health and the quality of life.”<sup>790</sup> It also found that “childhood asthma is found disproportionately in Black and Latino/Hispanic communities.” It found that “the cumulative exposure to pollution and other hazards from multiple sources in communities whose residents are predominantly low-income and persons of color creates a disproportionate impact on the health, well-being, and quality of life of persons living in those communities and addressing those impacts requires a coordinated response across multiple governmental agencies and a more inclusive process of decision-making.”<sup>791</sup>

EO 131 directs that all New Jersey state executive branch agencies that are involved in decisions that affect environmental quality and the public health shall provide appropriate opportunities for all persons to participate in decision-making. It specifically requires that the agencies shall periodically review programs that promote and protect the public health and the environment to ensure that they meet the needs of persons living in low-income communities and communities of color and “address disproportionate exposure to environmental hazards.”<sup>792</sup>

Environmental Justice Advisory Council (tags: Air Pollution, Community Participation, Cumulative/Secondary Effects, Study)

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<sup>787</sup> Governor Jon S. Corzine, Governor of New Jersey, *Executive Order 24*, available at <http://www.state.nj.us/infobank/circular/eojsc24.htm> (last visited Aug. 24, 2009).

<sup>788</sup> *Id.*

<sup>789</sup> Office of the Governor, *Committee on Native American Community Affairs Presents Report to Governor Corzine*, available at <http://www.state.nj.us/governor/news/news/2007/approved/20071219b.html> (last visited Aug. 24, 2009).

<sup>790</sup> Governor Jon S. Corzine, Governor of New Jersey, *Executive Order 131*, available at <http://www.state.nj.us/infobank/circular/eojsc131.htm> (last visited July 14, 2009).

<sup>791</sup> *Id.*

<sup>792</sup> *Id.*

EO 131 also re-created an Environmental Justice Advisory Council (EJAC) within the DEP. This EJAC is required to have 15 members, of which one-third shall come from grassroots or faith-based community organizations. Among other required members, it also states that members shall come from civil rights organizations. The EJAC is charged with making recommendations to DEP about EJ issues in New Jersey and DEP is ordered to review and consider those recommendations. The EJAC is in effect until December 31, 2013.<sup>793</sup>

In March 2009, the Cumulative Impacts Subcommittee of the EJAC issued a report on a study of strategies for addressing cumulative impacts of exposure to multiple environmental burdens in environmental justice communities.<sup>794</sup> During the course of the study, the subcommittee investigated “methods for defining, assessing and addressing cumulative impacts.”<sup>795</sup> They then made both short- and long-term recommendations to reduce the cumulative impacts of air pollution. They also recommended a method for assessing cumulative impacts and looked at legal mandates that “could empower the State of New Jersey to undertake greater efforts to reduce and prevent cumulative impacts.”<sup>796</sup>

DEP Environmental Justice Program (tags: Community Education, Community Participation)

The DEP maintains an Environmental Justice Program website, which provides information about EJ, DEP programs, DEP activities, and how to participate in DEP processes. It also provides links to additional EJ information sources.<sup>797</sup>

Funding for Energy Assistance (tags: Housing)

Under the Universal Service Fund (USF) Program, New Jersey provides funds from utility ratepayer surcharges to lower the amount low income households pay for their natural gas and electricity bills. The USF is in addition to the federal funds available to low income utility customers under the federal Low Income Home Energy Assistance Program (LIHEAP). Households apply for both programs with one application.<sup>798</sup>

## Community Participation

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<sup>793</sup> *Id.*

<sup>794</sup> Environmental Justice Advisory Council to the New Jersey Dep’t. of Environmental Protection, Cumulative Impacts Subcommittee, *Strategies for Addressing Cumulative Impacts in Environmental Justice Communities* (2009), available at [http://www.nj.gov/dep/ej/docs/ejac\\_impacts\\_report200903.pdf](http://www.nj.gov/dep/ej/docs/ejac_impacts_report200903.pdf) (last visited Aug. 24, 2009).

<sup>795</sup> *Id.* at 4.

<sup>796</sup> *Id.*

<sup>797</sup> New Jersey Dep’t. of Environmental Protection, *Environmental Justice Programs*, <http://www.nj.gov/dep/ej/> (last visited Aug. 24, 2009).

<sup>798</sup> State of New Jersey Dep’t of Community Affairs, *Low Income Home Energy Assistance Program (LIHEAP)*, available at <http://www.state.nj.us/dca/divisions/dhcr/offices/hausfincomefact.html> (last visited Sept. 4, 2009).

### Online Permitting, Enforcement and Inspection Information

NJDEP provides online access to air permitting, enforcement, and inspection actions.<sup>799</sup> Individuals can search for air permitting information by county, facility, municipality, or zip code. Enforcement actions and inspections are searchable by county and date, and zip code and date, respectively.<sup>800</sup>

Environmental Justice Petitions and Action Plans (tags: Community Participation, Toxic Waste Cleanup)

Groups of “residents and workers can file petitions for review by the Task Force when they believe they are subject to disproportionate, adverse exposure to environmental health risks or other forms of environmental injustices.”<sup>801</sup> The DEP website provides guidance on filing petitions.<sup>802</sup>

After petitions have been filed, NJDEP staff contact petitioners for a site visit and interview.<sup>803</sup> The Task Force selects five petitions during the open round and then works with communities, local governments, and the EJAC to develop action plans to address the petitioned concerns.<sup>804</sup> Past petitions have concerned, among other things, health effects from an incomplete assessment and cleanup of contamination by the U.S. EPA at a former Superfund site; “potential exposure to airborne asbestos and lead from demolition activities at the former Pabst Brewery site in Newark, New Jersey”; and the “protection and preservation of area wetlands, the lack of public participation and rising asthma rates in the city of Linden.”<sup>805</sup>

Self-Identification (tags: Community Participation)

In New Jersey communities were previously allowed to self-identify themselves as EJ communities based on census data, permitting, Toxic Release Inventory, and National Air Toxic Assessment data. While no new communities are allowed to self-

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<sup>799</sup> New Jersey Dep’t of Environmental Protection, Open Public Records Act, *Community Access*, [http://datamine2.state.nj.us/DEP\\_OPRA/OpraMain/categories?category=Community+Access](http://datamine2.state.nj.us/DEP_OPRA/OpraMain/categories?category=Community+Access) (last visited Mar. 6, 2009).

<sup>800</sup> *Id.*

<sup>801</sup> New Jersey Dep’t of Environmental Protection, *Environmental Justice Task Force Advances Petitions to Address Community Environmental and Public Health Concerns*, [http://www.state.nj.us/dep/newsrel/2005/05\\_0083.htm](http://www.state.nj.us/dep/newsrel/2005/05_0083.htm) (last visited Mar. 4, 2009).

<sup>802</sup> New Jersey Dep’t of Environmental Protection, “About the Environmental Justice Petition Process,” <http://www.nj.gov/ejtaskforce/tfpetition.html> (last visited June 28, 2009).

<sup>803</sup> *Id.*

<sup>804</sup> *Id.*

<sup>805</sup> *Environmental Justice Task Force Advances Petitions to Address Community Environmental and Public Health Concerns*, *supra* note 785.

identify themselves as EJ communities, existing self-identified communities are grandfathered.<sup>806</sup>

## Equitable Development

Department of Transportation Context Sensitive Design (tags: Community Participation, Transportation)

The New Jersey Department of Transportation (“NJDOT”) formally incorporated context sensitive design (CSD) into its procedures in 1999. CSD uses active and early partnerships with communities in the design and development of transportation projects. The CSD process encourages transportation officials “to collaborate with community stakeholders so the design of the project reflects the goals of the people who live, work and travel in the area.”<sup>807</sup> NJDOT has EJ guidelines that were developed in support of the department’s CSD philosophy. These guidelines state that they should be used for all Division of Project Planning and Development (“DPPD”) planning and scoping projects.<sup>808</sup>

Department of Transportation Title VI/Environmental Justice Program (tags: Community Education, Community Participation, Outreach, Redressing Environmental Racism, Study, Transportation)

A designated Task Force advises and facilitates NJDOT in the implementation of Title VI, Executive Order 12898, and other EJ activities.<sup>809</sup>

The NJDOT website lists the following as having resulted from its EJ programs:

- improved transportation decisions to meet the needs of all people;
- redesigned transportation facilities to fit more harmoniously into communities;
- improved data collection, monitoring and analysis tools to assess the needs of and analyze the potential impacts on minority and low-income populations;
- collaboration with other public and private programs to leverage transportation agency resources to achieve a common vision for communities;
- avoidance of disproportionate and adverse impacts with early identification of concerns in the planning process; and
- increased initiatives and enhancement measures to benefit affected communities and neighborhoods.<sup>810</sup>

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<sup>806</sup> Telephone interview with Maria Franco-Speram, *supra* note 766; *see also* New Jersey Dep’t of Environmental Protection, Environmental Justice Program website, *Participate*, <http://www.state.nj.us/dep/ej/participate.html> (last visited Mar. 6, 2009)

<sup>807</sup> State of New Jersey Dep’t of Transportation, *Context Sensitive Design, A community-based approach to transportation*, available at <http://www.nj.gov/transportation/eng/CSD/> (last visited Sept. 4, 2009).

<sup>808</sup> New Jersey Dep’t of Transportation, *Environmental Justice Guidelines*, available at [http://www.state.nj.us/transportation/eng/documents/DPPD/pdf/Environmental\\_Justice\\_Assesment\\_Guideline.pdf](http://www.state.nj.us/transportation/eng/documents/DPPD/pdf/Environmental_Justice_Assesment_Guideline.pdf) (last visited Sept. 4, 2009).

<sup>809</sup> New Jersey Dep’t of Transportation, *Civil Rights/Affirmative Action*, <http://www.state.nj.us/transportation/business/civilrights/ej.shtm> (last visited June 28, 2009).

<sup>810</sup> *Id.*

In 2007, NJDOT developed Limited English Proficiency (“LEP”) Guidelines to ensure meaningful access to agency programs and services for persons with LEP.<sup>811</sup> In 2008, NJDOT issued a report on effective EJ and LEP practices implemented by various transportation agencies nationwide.<sup>812</sup> This report was prepared as part of a review of NJDOT policies and procedures “to ensure that the promise and vision as well as the obligations created by Title VI of the Civil Rights Act and the Executive Orders on Environmental Justice and LEP are appropriately recognized with each agency activity and at each stage of transportation decision-making.”<sup>813</sup>

Department of Transportation 2030 Long-range Transportation Plan (tags: Community Education, Community Participation, Outreach, Redressing Environmental Racism, Study, Transportation)

NJDOT has incorporated EJ principles in the development of its 2030 long-range transportation plan. In 2005, it listed the incorporation of context sensitive solutions in transportation design as one of its potential 2030 long-range transportation plan goals, with the percentage of NJDOT personnel who are trained in context sensitive solutions as a performance indicator.<sup>814</sup> It also listed the involvement of customers in the decision-making process as a goal.<sup>815</sup> In 2006, a demographic analysis was performed as part of the 2030 long-range transportation plan. This study collected and evaluated data about a variety of demographic characteristics, including race, ethnicity, immigrant population, English as a second language, population, age distribution, income, and employment status, among others.<sup>816</sup>

NJDOT provides plan development documents for the 2030 long-range transportation plan on its website; these include agendas and/or meeting summaries for several advisory panels, including the Environmental Justice Advisory Panel, Mobility of Aging and Disabled Populations Advisory Panel, and Engaging the Public Advisory

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<sup>811</sup> New Jersey Dep’t of Transportation, *Civil Rights/Affirmative Action, Limited English Proficiency*, <http://www.state.nj.us/transportation/business/civilrights/lep.shtml> (last visited Sept. 8, 2009).

<sup>812</sup> See generally, New Jersey Dep’t of Transportation, *Policies and Procedures Development Study: Title VI, Environmental Justice, and LEP; Effective Practices* (2008), available at <http://www.state.nj.us/transportation/business/civilrights/pdf/effectivepractices.pdf> (last visited Sept. 4, 2009).

<sup>813</sup> *Id.* at 1-2.

<sup>814</sup> New Jersey Dep’t of Transportation, *2030 New Jersey Statewide Long-Range Transportation Plan, Potential 2030 Goals, Objectives, and Performance Indicators* (2005), at 7, available at <http://www.state.nj.us/transportation/works/njchoices/pdf/GoalsObjectivesIndicators.pdf> (last visited Sept. 5, 2009).

<sup>815</sup> *Id.* at 9.

<sup>816</sup> See generally, DMJM Harris, Inc., *New Jersey Long-Range Transportation Plan 2030, Task 7.3 – Demographic Analysis Technical Memorandum* (2006), prepared for New Jersey Dep’t of Transportation, available at [http://www.state.nj.us/transportation/works/njchoices/pdf/demographic\\_memo.pdf](http://www.state.nj.us/transportation/works/njchoices/pdf/demographic_memo.pdf) (last visited Sept. 5, 2009).

Panel.<sup>817</sup> The website also provides information about public participation and education activities, which included a statewide public opinion survey.<sup>818</sup>

*New Jersey's Long-Range Transportation Plan For Public Discussion* includes a discussion of shifting demographics, including changes in income, ethnic diversity, and age in the New Jersey population.<sup>819</sup> It includes the Environmental Justice Advisory Panel's recommendations for better serving EJ populations.<sup>820</sup> It also includes recommendations from Mobility of Aging and Disabled Populations Advisory Panel.<sup>821</sup>

Department of Transportation 2006 – 2008 State Transportation Improvement Plan (tags: Redressing Environmental Racism, Transportation)

In 2007, NJDOT DPPD developed a map for the State Transportation Improvement Plan that shows the locations of highway projects, EJ population distribution by ethnicity and census block, and low income populations by census tract.<sup>822</sup>

Case law

*In the Matter of Gaeta Recycling Co, Inc.*<sup>823</sup> (2007) (tags: Community Participation, Land Use – permitting, Outreach, Waste)

A city and community organization argued, among other things, that NJDEP violated the state's principles of EJ when it issued a permit for expanded operations to a solid waste facility. The court held that New Jersey's Executive Order regarding EJ did not create a private right of action, and that the parties should pursue relief through petition to the Environmental Justice Task Force. In addition, the court held that NJDEP satisfied principles of EJ by providing notice of the expansion, engaging in public comment and hearing, responding in writing to public comments, and incorporating residents' concerns into the permit as conditions.

*In re Marcal Paper Mills, Inc.*<sup>824</sup> (2007) (tags: Air Pollution, Land Use – permitting, Redressing Environmental Racism)

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<sup>817</sup> New Jersey Dep't of Transportation, *New Jersey Long Range Transportation Plan; Plan Development Documents*, available at <http://www.state.nj.us/transportation/works/njchoices/information.shtml> (last visited Sept. 5, 2009).

<sup>818</sup> *Id.*

<sup>819</sup> New Jersey Dep't of Transportation, *New Jersey's Long-Range Transportation Plan, For Public Discussion*, Oct. 2008, available at <http://www.state.nj.us/transportation/works/njchoices/documents.shtml> (last visited Sept. 5, 2009).

<sup>820</sup> *Id.* at 18.

<sup>821</sup> *Id.* at 16.

<sup>822</sup> New Jersey Dep't of Transportation, *State Transportation Improvement Plan, 2006-2008 EJ Populations by Census Block, HHS Poverty 4 Member Household Below \$25,000 By Census Tract (2007)*, available at <http://www.state.nj.us/transportation/business/civilrights/pdf/stipejpopulation.pdf> (last visited Sept. 5, 2009).

<sup>823</sup> 2007 WL 609161 (N.J. Super. A.D. 2007).

<sup>824</sup> *In re Marcal Paper Mills, Inc.*, Petition No. II-2006-01, 2006 EPA CAA Title V LEXIS 8 (Nov. 30, 2006).

The Rutgers Environmental Law Clinic petitioned EPA to object to NJDEP's issuance of a state operating permit pursuant to Title V of the Clean Air Act. The Clinic argued that NJDEP did not adequately address the EJ issues raised, specifically that the company was in an area which was primarily low-income and minority with a disproportionately high percentage of residents with asthma. EPA denied the petition on the basis that the petitioners failed to demonstrate that the company's Title V permit did not identify and comply with the applicable Clean Air Act requirements.

*In re G-P Gypsum Corp.*<sup>825</sup> (2006) (tags: Air Pollution, Land Use – permitting)

The South Jersey Environmental Justice Alliance (“SJEJA”) petitioned EPA to object to a Title V permit issued in New Jersey. SJEJA claimed that the applicant facility was located in an EJ community with a disproportionately high incidence of asthma and other lung diseases, and that EJ issues were not adequately considered in the permit. EPA denied the petition on the basis that Title V does not require new emission controls only that the applicant complies with applicable Clean Air Act requirements. It said a Title VI civil rights action could be brought if SJEJA believed it was discriminated against.

*South Camden Citizens in Action v. NJDEP*<sup>826</sup> (2006) (tags: Land Use – anti-concentration, Redressing Environmental Racism)

Individuals and a citizens group claimed NJDEP discriminated against minority citizens in violation of Title VI of the Civil Rights Act by granting a slag grinding facility a permit in minority and low-income neighborhood near where numerous other industrial facilities already existed. The court found no evidence that NJDEP issued the permit *because of* the adverse effects it would have on the minority community and granted summary judgment against the plaintiffs.

*In the matter of Camden County Energy Recovery Associates Facility*<sup>827</sup> (2006) (tags: Community Participation, Land Use – permitting)

Various environmental groups petitioned EPA to object to New Jersey's issuance of a Title V Clean Air Act permit to a municipal solid waste combustion facility on the basis that NJDEP violated federal Executive Order 12898. The petitioners claimed the Title V permitting process failed to allow public participation and that renewing a permit for a habitually violating facility in an EJ community violated the executive order. EPA concluded that the petitioners failed to show how the Title V permit violated the Clean Air Act and refused to object to the permit issuance.

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<sup>825</sup> In re: *G-P Gypsum Corp.*, No. II-2005-05, 2006 EPA CAA Title V LEXIS 5 (Apr. 4, 2006).

<sup>826</sup> *South Camden Citizens in Action v. New Jersey Department of Environmental Protection*, No. Civ. A 01-702(FLW), 2006 WL 1097498 (D.N.J. Mar. 31, 2006).

<sup>827</sup> *In the matter of Camden County Energy Recovery Associates Facility* Permit Activity No. BOP990001, petition No. II-2005-01, 2006 EPA CAA Title V LEXIS 2 (Jan. 20, 2006).

## Improving Public Health

Compliance and Enforcement Measures (tags: Community Education, Compliance and Enforcement, Water)

While the number of investigations and site inspections has decreased since 2005, the number of enforcement actions has increased, particularly addressing community right to know and water supply issues.<sup>828</sup>

Camden Waterford South Air Toxics Pilot Project (tags: Air Pollution, Community Participation, Cumulative/Secondary Effects, Study)

In 2005, the DEP conducted a special study to learn more about sources of air pollution in the Camden Waterfront South neighborhood, an EJ community.<sup>829</sup> This is the first study of its kind in New Jersey that looks at the cumulative impacts of air pollution.<sup>830</sup> A community advisory committee of neighborhood residents, nonprofit organizations, and clergy members played an important role in this project. Members of the advisory committee helped to identify new sources of air pollution of concern in the neighborhood, and worked with DEP staff to find ways to protect citizens from air toxics and particulates that pose the greatest health risks.<sup>831</sup>

DEP City-Focused Enforcement Initiatives (tags: Community Education, Compliance and Enforcement)

An older, but notable, EJ program is DEP's use of multi-media "enforcement sweeps," underscoring the importance of environmental enforcement in EJ communities. These enforcement sweeps marshal a large DEP enforcement team from nearly all of its units (*e.g.*, the Bureau of Air Monitoring and the Pesticide Control Program) and send them into urban areas with large EJ populations.<sup>832</sup> In these areas, the DEP conducts outreach and compliance education programs, followed by broad inspections, while using the power of its permitting authority to force violators to clean up and comply with environmental regulations already on the books.<sup>833</sup>

DEP enforcement sweeps are listed on its website and have included diesel engine idling, regulated medical waste, a waterway enforcement team, school integrated pest

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<sup>828</sup> New Jersey Dept' of Environmental Protection, *Compliance and Enforcement Fiscal Year 2008 Highlights*, at iv-v, available at <http://www.nj.gov/dep/enforcement/cehighlightsfy2008.pdf> (last visited Mar. 6, 2009).

<sup>829</sup> New Jersey Dep't of Environmental Protection, *Camden Waterford South Air Toxics Pilot Project*, available at <http://www.state.nj.us/dep/ej/camden/> (last visited Mar. 6, 2009).

<sup>830</sup> Telephone Interview with Jereme Johnson, Environmental Justice Coordinator, New Jersey Dep't of Environmental Protection (Nov. 7, 2005).

<sup>831</sup> *Id.*; *Camden Waterford South Air Toxics Pilot Project*, *supra* note 813.

<sup>832</sup> Telephone interview with Michelle DePass, former Senior Policy Advisor to the Commissioner, New Jersey Dep't of Environmental Protection (Feb. 25, 2003).

<sup>833</sup> *Id.*

management, agricultural worker safety, wetlands restoration, truck inspections.<sup>834</sup> DEP has focused on specific communities, as well: Camden City and Paterson are two examples.<sup>835</sup>

#### Lead Hazard Control Assistance (LHCA) Fund (tags: Housing)

While the fund has many aspects, it provides certain owner-occupants with the opportunity to qualify for deferred payment loans with provisions for forgiveness, if their total household income does not exceed 80% of the median income for the area.<sup>836</sup>

### **Pollution Cleanup**

#### DEP Site Remediation Program (tags: Brownfields Redevelopment, Community Participation)

The Office of Community Relations (OCR) supports the DEP's Site Remediation Program by providing outreach to the public, answering questions, and providing links to information.<sup>837</sup> Staff members from the OCR are part of the case team for the Environmental Justice Petition sites that involve the Site Remediation Program.<sup>838</sup>

The Site Remediation Program includes the Brownfield Development Area Initiative. "NJ DEP works with selected communities affected by multiple brownfields to design and implement remediation and reuse plans for these properties simultaneously, so that remediation and reuse can occur in a coordinated fashion."<sup>839</sup> All stakeholders, including owners of contaminated properties, potentially responsible parties, developers, community groups, technical experts for the local government and residents, and residents themselves, [are] invited to the table to participate in this cleanup and revitalization approach."<sup>840</sup>

#### Global Warming Solutions Fund (tags: Climate Change)

The state established the Global Warming Solutions Fund, to be credited with moneys obtained from the sale or other conveyance of greenhouse gas emissions

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<sup>834</sup> New Jersey Dep't of Environmental Protection, *Enforcement in Action-Special Projects*, <http://www.nj.gov/dep/enforcement/specialprojects.html> (last visited Mar. 6, 2009).

<sup>835</sup> New Jersey Dep't of Environmental Protection, *Paterson City – Compliance and Enforcement Sweep*, <http://www.state.nj.us/dep/enforcement/paterson/paterson.html> (last visited Mar. 6, 2009); and *Camden City Initiative*, <http://www.nj.gov/dep/enforcement/camden.html> (last visited Mar. 6, 2009).

<sup>836</sup> New Jersey Dep't of Community Affairs, *Lead Safe NJ Program*, [http://www.nj.gov/dca/dcr/leadsafe/finan\\_assist.html](http://www.nj.gov/dca/dcr/leadsafe/finan_assist.html) (last visited Feb. 6, 2009).

<sup>837</sup> New Jersey Dep't of Environmental Protection, *Site Remediation Program, Top 10 Links from the Site Remediation Program*, available at <http://www.nj.gov/dep/srp/top10links.htm> (last visited Sept. 4, 2009).

<sup>838</sup> New Jersey Dep't of Environmental Protection, *Site Remediation Program, SRP-Connected Environmental Justice Petition Sites*, available at <http://www.state.nj.us/dep/srp/community/ej/> (last visited Sept. 4, 2009).

<sup>839</sup> New Jersey Dep't of Environmental Protection, *Brownfield Development Area Initiative*, [http://www.nj.gov/dep/srp/brownfields/bda/bda\\_synopsis.htm](http://www.nj.gov/dep/srp/brownfields/bda/bda_synopsis.htm) (last visited Mar. 6, 2009).

<sup>840</sup> *Id.*

allowances, appropriations from the legislature, and return on investment of moneys in the fund.<sup>841</sup> The legislature has directed that, after accounting for administrative costs, 20% of the funds shall be allocated to support programs that are designed to reduce electricity demand or costs for low- and moderate-income residential electricity customers.<sup>842</sup>

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<sup>841</sup> N.J. STAT. ANN. § 26:2C-50 (West 2009).

<sup>842</sup> *Id.* at § 26:2C-51.

## **NEW MEXICO**

(tags: Air Pollution, Community Education, Community Participation, Compliance and Enforcement, Cumulative/Secondary Effects, Land Use – anti-concentration, Land Use – permitting, Land Use - siting, Native Americans, Open Space/Recreation, Outreach, Redressing Environmental Racism, Study, Waste, Water)

**General Environmental Justice Activities** (tags: Air Pollution, Native Americans, Waste, Water)

In addition to the activity profiled below, the New Mexico Environment Department (“NMED”) has two full time EJ Coordinators in the Office of the Secretary.<sup>843</sup> The Border Environmental Justice Liaison works with border communities in southern New Mexico and with Mexican environmental officials on border EJ issues including Border 2012, the U.S.-Mexico Environmental Program focusing on reducing air pollution, providing safe drinking water, reducing the risk of exposure to hazardous waste, and ensuring emergency preparedness along the U.S.-Mexico border.<sup>844</sup> The Environmental Justice Tribal Liaison works with New Mexico’s twenty-two Indian Nations, Pueblos and Tribes on statewide EJ issues such as air quality, ground, surface and drinking water quality, solid waste, hazardous waste, training, and outreach.<sup>845</sup>

Environmental Justice Executive Order (tags: Community Education, Community Participation, Compliance and Enforcement, Land Use – permitting, Land Use – siting, Native Americans, Outreach, Redressing Environmental Racism)

On November 18, 2005, New Mexico Governor Bill Richardson issued an Environmental Justice Executive Order. The Order directs all cabinet level departments and boards and commissions to: (1) “provide meaningful opportunities” for public involvement in decisions that affect environmental quality and public health; (2) consider impacts to low-income communities and communities of color when making siting, permitting, compliance, enforcement, and remediation decisions; and (3) disseminate information regarding public health and environmental issues in English and Spanish, and when appropriate, various tribal languages and dialects as well.

The Order also created an Environmental Justice Task Force to serve as an advisory body to make recommendations “for actions to be taken to address environmental justice issues.”<sup>846</sup> The Task Force met for the first time on March 30, 2006, with the stated goals of issuing a report by year’s end and “to get all state agencies

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<sup>843</sup> Telephone interview with Milton Bluehouse, Environmental Justice Tribal Liaison, New Mexico Environment Dep’t, (Feb. 23, 2009); New Mexico Environment Dep’t, “Environmental Justice,” <http://www.nmenv.state.nm.us/justice> (last visited Feb. 23, 2009).

<sup>844</sup> NMED, “Environmental Justice,” *supra* note 827.

<sup>845</sup> *Id.*

<sup>846</sup> “Environmental Justice Executive Order, Executive Order 2005-056” (Nov. 18, 2005), *available at* [http://www.nmenv.state.nm.us/Justice/EO\\_2005\\_056.pdf](http://www.nmenv.state.nm.us/Justice/EO_2005_056.pdf) (last visited Feb. 23, 2009).

thinking about the fairness of environmental impacts as they develop their own rules and regulations and to give residents a place to have their complaints addressed.”<sup>847</sup> The Task Force has continued to meet since, including holding a meeting as recently as May 2009.<sup>848</sup>

Environmental Justice Report (tags: Community Education, Community Participation, Study)

In November 2004, the NMED released *A Report on Environmental Justice in New Mexico*. The report contained a compilation of the four “Listening Sessions” conducted by the NMED as well as recommendations for the new EJ policy program to be implemented by the state. NMED’s first steps towards formulating its EJ policy included this statement of its goals:

The key to making good things happen is to empower EJ individuals and communities through right-to-know strategies, education, capacity-building, true public input processes and enforcement of environmental laws to prevent disproportionate impacts to a select group of EJ minorities and low-income people.<sup>849</sup>

The “Listening Sessions” (tags: Community Education, Community Participation, Native Americans, Study)

In response to EJ concerns in New Mexico, NMED conducted four “Listening Sessions” which incorporated a history of the EJ movement, panel issues, and public comment sessions. The ultimate goal of the sessions was to “elicit information and recommendations from stakeholders in minority and low-income communities.”<sup>850</sup>

The sessions were held in four locations: Deming (southwest/US-Mexico border); Las Vegas (northeast); Pueblo of Acoma (northwest); and Albuquerque (central and statewide); and were chosen for their relation to the following considerations: regional EJ issues; proximity to EJ communities; ability of the host city to accommodate the convention; and the willingness of the communities and municipalities to address EJ issues.<sup>851</sup> Pamphlets were distributed to the public explaining how to better formulate their concerns and offer recommendations more effectively. A record of the sessions was then published along with recommendations for the new EJ policy in *A Report on Environmental Justice in New Mexico*.

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<sup>847</sup> “State Looks at Environmental Impacts on Residents,” *Las Cruces Sun-News* (Mar. 31, 2006) at 8A.

<sup>848</sup> NMED Environmental Justice website, *supra* note 827.

<sup>849</sup> New Mexico Environment Dep’t, *Environmental Justice Listening Sessions Final Report* (2004), at 8, available at <http://www.nmenv.state.nm.us/Justice/Reports/NMEDFinalReport-Dec07-04.pdf> (last visited Feb. 23, 2009).

<sup>850</sup> *Id.* at 3.

<sup>851</sup> *Id.* at 2.

The public comments identified seven primary issues: (1) an interagency mechanism to address EJ (create an agency that includes federal, state, local, and tribal representatives to address issues by interactive policy development); (2) permitting reform; (3) enforcement enhancement (develop stricter standards and do not rely on self-reporting); (4) training programs (educate communities about permit proceedings and how to report environmental problems); (5) procedural issues (such as information disclosure, public participation and transparency); (6) data collection (aiding in the identification of EJ communities); and (7) issues specific to Native Americans and tribal governments.<sup>852</sup> These cross-cutting themes appear in the topics set out below.

Recommendations for Communication Strategies (tags: Community Participation, Study)

The report notes that NMED has designated communication between the State of New Mexico and EJ communities as one of its primary concerns and has adopted a “relationship-building” approach to encourage it.<sup>853</sup> This approach is based on the idea of “social trust,” which is attained through seven key elements used in “good two-way communication”: 1) Disclosure (the NMED should be open about its activities); 2) Accuracy/Understanding (NMED and EJ communities should share an understanding about the nature of the programs implemented); 3) Agreement; 4) Symbiotic Behavior (NMED should act to make the state a better place for all of its citizens); 5) Accountability (NMED should not only be open about its policies, but it should also provide the rationale for its decisions); 6) Assurances of Legitimacy (each party should demonstrate its commitment to maintaining the relationship); and 7) Networking.<sup>854</sup>

A Possible Model for Collaboration (tags: Community Participation, Native Americans, Study)

In order to build a long-term relationship with EJ communities, the report recommends that the state organize a State EJ External Coordination Working Group that would foster open dialogue between various community representatives such as federal, tribal, EJ and local government organizations, labor, industry, and other professional groups. Members would serve the group in three broad capacities: (1) represent their constituent organizations; (2) participate actively and consistently in the State’s EJ activities; and (3) communicate the findings and recommendations of the group back to their organizations for further input.

Definition of an Environmental Justice Community (tags: Cumulative/Secondary Effects, Land Use – permitting, Native Americans, Study)

The report suggests that NMED keeps its definition of “environmental justice community” confined to a case-by-case decision because of the difficulty in assessing collective data from the sparsely populated Native American reservations to the more

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<sup>852</sup> *Id.* at 17-21.

<sup>853</sup> *Id.* at 15.

<sup>854</sup> *Id.* at 7-8.

congested urban areas.<sup>855</sup> The main concern is that without case-by-case determinations, some decisions could adversely affect native populations. The report suggests that during a permit review process, NMED should, in addition to considering the expected impact of the new facility, also look at other regional indicators, such as additional safety risks or risks of accidents, the compliance record of the permit applicant at other locations, non-emission related impacts such as noise, traffic, odor, and foreseeable injury to nontraditional cultural practices.<sup>856</sup> Thus, the decision should be based on the totality of the circumstances. If the permit under consideration will negatively impact the region, more protective measures should be taken before issuance.<sup>857</sup>

Practical Alternative Standard (tags: Land Use – permitting)

Further recommendations suggest that once an EJ community is defined, and a permit has been determined to affect the EJ community, the “practical alternative” standard is used to decide upon the appropriate measures to be taken. A practical alternative exists if another location would not be highly impacted by the existence of the facility. If no suitable alternative is found, then the permitting officials are requested to adopt an approach which would otherwise “avoid, minimize or compensate, in that order.”<sup>858</sup> This provides for the greatest amount of protection to be utilized. Compensation should be considered only as a last resort.

Memorandum of Understanding (“MOU”) (tags: Native Americans, Open Space/Recreation)

“Listening session” comments highlighted “the need to establish a Tribal-State Government-to-Government relationship” in regards to EJ issues.<sup>859</sup> In response, Governor Bill Richardson signed an MOU establishing a partnership between the State Parks Division and the Navajo Nation Parks & Recreation Department.<sup>860</sup> The MOU states that the two parties will collaborate on the planning and design of parks and recreation projects and park management.<sup>861</sup>

## **Equitable Development**

Solid Waste Regulation (tags: Community Participation, Land Use – anti-concentration, Land Use – siting, Outreach, Waste)

NMED revised its Solid Waste Act regulations (effective August 2007), which imposing special requirements upon permit seekers where the new or changed facility is

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<sup>855</sup> *Id.* at 23.

<sup>856</sup> *Id.*

<sup>857</sup> *Id.*

<sup>858</sup> *Id.* at 24.

<sup>859</sup> *Id.* at 27.

<sup>860</sup> State of New Mexico, Office of the Governor, *New Mexico Governor Bill Richardson Signs Historic Executive Orders and Enters MOU with Navajo Nation*, (Feb. 1, 2005) available at [http://www.nmenv.state.nm.us/oots/Tribal\\_Liaison/press\\_rel.pdf](http://www.nmenv.state.nm.us/oots/Tribal_Liaison/press_rel.pdf) (last visited Feb. 23, 2009).

<sup>861</sup> *Id.*

within a “vulnerable area.” “Vulnerable areas” are defined as being “within a four-mile radius of the geographic center of a proposed facility; have a proportion of economically-stressed households higher than the state average; have a population of fifty or more people within any square mile; and contain three or more regulated facilities, which might include a solid waste, a hazardous waste or a Superfund site, or a facility with a large source air quality permit.”<sup>862</sup>

The regulations, significantly, change the burden of proof for determining disproportionate impact. The permit seeker must provide public notice of the proposal, including “a description of the facility, its location, proposed transportation routes, anticipated hours of operation,” and inform affected residents about how to participate in the decision making process. Further, if NMED believes a significant amount of community opposition to the proposed facility exists, it can require the applicant to prepare a community impact assessment, complete with an executive summary in the predominant language of the community.<sup>863</sup>

### Case Law

*Colonias Dev. Council v. Rhino Env'tl. Services, Inc.*<sup>864</sup> (2005) (tags: Community Participation, Cumulative/Secondary Effects, Land Use – anti-concentration, Land Use – permitting, Waste)

A company sought a landfill permit in Chaparral, a low-income, minority community already the site of four waste disposal facilities and three industrial sites within a sixty mile radius. NMED held a public hearing, as required by the Solid Waste Act.<sup>865</sup> NMED subsequently granted the permit and a community group brought suit to challenge the permit.

The Supreme Court of New Mexico agreed with the plaintiff’s contention that NMED improperly limited the scope of the public hearing to technical issues, in that the hearing examiner would not allow testimony regarding the impact of the landfill on the community’s quality of life or the cumulative impact of the landfill. Referencing the Legislature’s recognition of the importance of meaningful public participation, the Court rejected the defendant’s argument that once siting criteria are met, NMED has no discretion to deny a permit.<sup>866</sup> The Court found that the concern for “public health, safety and welfare” in the Solid Waste Act was broad enough to encompass non-technical input.<sup>867</sup>

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<sup>862</sup> N.M. Admin. Code § 20.9.2.7 (2007); New Mexico Environment Dep’t, *NMED releases Solid Waste Regulation Revisions with Historic Environmental Justice Provisions*, (Apr. 5, 2006), available at <http://www.nmenv.state.nm.us/OOTS/PR/SW%20EJ%20Provisions%20PR.pdf> (last visited Feb. 23, 2009).

<sup>863</sup> N.M. Admin. Code § 20.9.3.8 (D)(2)(2007).

<sup>864</sup> 117 P.3d 939 (2005).

<sup>865</sup> N.M. STAT. ANN. §74-9-1, *et seq.* (West 2008).

<sup>866</sup> *Rhino*, 117 P.3d at 945.

<sup>867</sup> *Rhino*, 117 P.3d at 948; N.M. STAT. ANN. § 74-9-2(C)(West 2008).

The case was remanded with instructions for another public hearing, focused on the issues of the impact of a landfill on the community's quality of life, as well as the cumulative impacts of the proposed landfill.

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## NEW YORK

(tags: Air Pollution, Brownfields Redevelopment, Children’s Issues, Community Education, Community Participation, Compliance and Enforcement, Diet, Grants, Housing, Land Use – anti-concentration, Land Use – permitting, Land Use – siting, Mapping, Native Americans, Outreach, Public Health, Redressing Environmental Racism, Study, Toxic Waste Cleanup, Waste, Water)

### **General Environmental Justice Activities**

Environmental Justice Advisory Group (tags: Community Participation, Land Use – permitting, Native Americans, Redressing Environmental Racism, Study)

In October 1999, the Department of Environmental Conservation (“DEC”) created the Office of Environmental Justice to address EJ concerns and ensure community participation in the state’s permitting process.<sup>868</sup> 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 EJ issues, and recommending procedures that can be used to address these priorities.<sup>869</sup>

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 EJ advocates, environmental advocates, tribal representatives, academics, business representatives, as well as federal, state, and local representatives.<sup>870</sup>

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 DEC on incorporating EJ principles into the State Environmental Quality Review Act (“SEQR”) permit review process.<sup>871</sup> Recommendations for the SEQR process included: conducting a preliminary screening in 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

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<sup>868</sup> New York State Dep’t of Environmental Conservation, Office of Environmental Justice, *DEC to Implement Environmental Justice Program, formerly available at <http://www.dec.state.ny.us/website/press/pressrel/1999/99x146.html>* (last visited Mar. 17, 2006).

<sup>869</sup> *Id.*

<sup>870</sup> New York State Dep’t of Environmental Conservation, Office of Environmental Justice, *Environmental Justice Advisory Group: Members*, <http://www.dec.ny.gov/public/963.html> (last visited Mar. 27, 2009).

<sup>871</sup> New York State Dep’t of Environmental Conservation, *Recommendations for the New York State Dep’t of Environmental Conservation Environmental Justice Program, available at [http://www.dec.ny.gov/docs/permits\\_ej\\_operations\\_pdf/ejfinalrpt.pdf](http://www.dec.ny.gov/docs/permits_ej_operations_pdf/ejfinalrpt.pdf)* (last visited Mar. 27, 2009).

public hearing for proposed projects that would have a significant adverse impact on a minority or low-income community.<sup>872</sup>

New members have been added to the EJ Advisory Group and new projects have been implemented to make routine use of the group, which has a regular meeting schedule.<sup>873</sup>

#### Environmental Justice Hotline (Tag: Community Education)

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.<sup>874</sup>

#### DEC Multilingual Activities (Tag: Outreach)

DEC has translated many of its pamphlets and much of its signage into Spanish.<sup>875</sup>

#### Additions to the Website (tags: Community Education, Community Participation, Land Use – permitting, Mapping)

DEC’s website has a new search feature that allows the public to search permit applications before the application is released as complete. This gives the public enough time to respond to the permit in a more meaningful manner.<sup>876</sup> The new feature specifies the project manager, the applicant, and other permit related resources.

DEC's website also features an “Environmental Navigator” which is DEC's GIS interface for interactive mapping of facilities of environmental interest.<sup>877</sup> This tool permits affected communities and regulated industries to understand the potential EJ effects of proposed and ongoing facilities.

#### Funding (tags: Grants)

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<sup>872</sup> *Id.* at 9-17.

<sup>873</sup> New York State Dep’t of Environmental Conservation, *Environmental Justice Advisory Group*, <http://www.dec.ny.gov/public/907.html> (last visited Mar. 27, 2009).

<sup>874</sup> New York Office of Environmental Conservation, *Environmental Justice Hotline*, <http://www.dec.ny.gov/public/917.html> (last visited Mar. 27, 2009).

<sup>875</sup> *See, e.g.*, New York State Dep’t of Environmental Conservation, *Publicaciones en Español*, <http://www.dec.ny.gov/pubs/4778.html> (last visited Mar. 27, 2009).

<sup>876</sup> New York State Dep’t of Environmental Conservation, *DEC Permit Applications*, <http://www.dec.ny.gov/cfm/xtapps/envapps/> (last visited Mar. 27, 2009).

<sup>877</sup> New York State Dep’t of Environmental Conservation, *DEC’s Environmental Navigator*, <http://www.dec.ny.gov/imsmaps/navigator/index.html> (last visited Mar. 27, 2009).

DEC received a \$500,000 appropriation to start a new grant program that will give community groups up to \$25,000 for research and actions related to multiple environmental harms and risks.<sup>878</sup>

2003 Environmental Justice Policy (tags: Community Participation, Land Use – permitting, Redressing Environmental Racism)

On March 19, 2003, DEC issued a new policy for incorporating EJ concerns into its permit process, following the Advisory Group's initial recommendations and the public's comments.<sup>879</sup> The policy modifies DEC's environmental permit process by providing that DEC will identify minority or low-income communities through census block data and GIS technology, allowing EJ communities to be defined for areas with as few as 250 to 500 housing units.<sup>880</sup> The policy sets a low threshold for an "EJ impact": 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.<sup>881</sup> DEC's EJ program is currently developing a technical assistance program pursuant to the policy.

Environmental Justice Interagency Task Force (tags: Air Pollution, Community Participation, Compliance and Enforcement, Diet, Grants, Housing, Land Use – permitting, Mapping, Public Health, Redressing Environmental Racism, Study, Water)

In June 2008, Governor David Patterson established and convened a meeting of the Environmental Justice Interagency Task Force ("Task Force"), which issued a draft report on policy recommendations, legislation, and budget initiatives on June 10, 2009.<sup>882</sup> The Task Force includes representatives from fourteen state agencies including the DEC, Agriculture and Markets, the Department of Health, and the Department of Labor.<sup>883</sup> Agency representatives are organized into five working groups – air, food, land, toxics,

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<sup>878</sup> Telephone interview with Monica L. Kreshik, Environmental Justice Coordinator, New York State Dep't of Environmental Conservation, (Aug. 11, 2005).

<sup>879</sup> New York State Dep't of Environmental Conservation, *Environmental Justice and Permitting, DEC Policy*, available at [http://www.dec.ny.gov/docs/permits\\_ej\\_operations\\_pdf/ejpolicy.pdf](http://www.dec.ny.gov/docs/permits_ej_operations_pdf/ejpolicy.pdf) (last visited Mar. 27, 2009).

<sup>880</sup> *Id.* at 3, 7.

<sup>881</sup> *Id.* at 8.

<sup>882</sup> New York State Dep't of Environmental Conservation, *Environmental Justice Interagency Task Force: Draft Recommendations* (June 10, 2009), available at [http://www.dec.ny.gov/docs/permits\\_ej\\_operations\\_pdf/drftplnejintertskfrce.pdf](http://www.dec.ny.gov/docs/permits_ej_operations_pdf/drftplnejintertskfrce.pdf) (last visited Aug. 20, 2009); E-mail from Lisa Garcia, Chief Advocate for Environmental Justice and Equity, New York State Dep't of Environmental Conservation (Feb. 26, 2009).

<sup>883</sup> New York State Dep't of Environmental Conservation, *Environmental Justice Interagency Task Force*, <http://www.dec.ny.gov/public/47153.html> (last visited Mar. 27, 2009).

and water - to address agency specific EJ issues and recommendations.<sup>884</sup> After receiving comments and recommendations from stakeholders representing community groups, environmental groups, and business associations, the Task Force issued nine core recommendations, some of which serve as guidelines for state government in developing plans to address EJ concerns, and others which are directed towards particular agencies.<sup>885</sup>

1. Provide for increased community representation and access to the decision-making process
2. Continue collaboration with the EJ community.
3. Create a NY State EJ database and map.
4. Offer technical assistance grants programs.
5. Develop EJ and sustainability provisions in permitting.
6. Give priority to EJ communities in relevant request for proposal requirements, scoring systems for funding, assistance, and training programs.
7. Prioritize enforcement actions and pollution reduction programs and resources in EJ communities.
8. Diversify and green the workforce.
9. Provide EJ training for agency staff.

In the June 10 Draft Recommendations and Report, the Task Force lists a tenth recommendation to formalize and continue its work, to be co-chaired by the Department of Environmental Conservation and the Department of Labor.<sup>886</sup> Recommendations specific to an agency charge each agency with developing an Action Agenda to detail the ways each plans to address environmental justice concerns.<sup>887</sup> Highlights from the Action Agenda listed in the Report are the Department of Health's formation of an Office of Minority Health to develop a plan to eliminate minority health disparities, the Department of Housing and Urban Renewal's Green Building initiative to provide low-income citizens with incentives for green and sustainable housing, and the New York Power Authority's designation of an environmental justice liaison.<sup>888</sup>

#### 2005 Reports (tags: Study)

On January 1, 2005, DEC announced the availability of two reports relating to environmental justice, *Report of the Disproportionate Adverse Environmental Impact Analysis Work Group* and *Report of the Health Outcome Data Work Group*, and allowed a 90-day written public comment period. Convened by DEC's Environmental Justice Advisory Group to improve DEC's environmental review process, the Disproportionate Adverse Environmental Impact Work Group (DAEI) and the Health Outcome Data Work

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<sup>884</sup> *Id.*

<sup>885</sup> *Environmental Justice Interagency Task Force: Draft Recommendations*, *supra* note 865, at 4.

<sup>886</sup> *Id.* at 5.

<sup>887</sup> *Id.* at 5.

<sup>888</sup> *Id.* at 5-6.

Group (HOD) issued the reports recommending improved data collection methods for the DEC.<sup>889</sup>

Report of the Disproportionate Adverse Environmental Impact Analysis Work Group<sup>890</sup> (tags: Redressing Environmental Racism, Study)

The *Report of the Disproportionate Adverse Environmental Impact Analysis Work Group* describes how state agencies should assess disproportionate environmental impacts on minority and/or low income areas that are identified as a potentially impacted area. The work group was unable to reach a consensus upon an appropriate method for conducting a disproportionate adverse environmental impact analysis and consequently summarized the six methods that were discussed. The methods include: Comparative Community of Concern Analysis (a comparison between the project's impact on the community of concern and its surrounding area); Proportional Impact Analysis by Demographics (compares impacts within the community of concern); Proportional Impact Analysis by Project Impact (compares impact zones by their demographics thereby revealing disproportionate impacts when the most adversely affected zone contains a minority/low income area); Alternative Site Analysis (comparison of the proposed project's preferred site with alternate sites); Geographic Information System Burden Analysis (uses a GIS tool to compare the existing environmental burdens, along with the project impacts, on a community of concern to those of a reference community); and Burdened Area Analysis (uses a GIS tool to determine whether an area is currently burdened).<sup>891</sup>

In spite of the committee's inability to generate a consensus, the work group did publish the six methods discussed as a list of recommendations to ensure that DEC's review process is responsive to EJ concerns. The recommendations offer direction and discretion to DEC while "expand[ing] upon the field of readily available indicators that are descriptive of media impacts and burdens."<sup>892</sup>

**Community Participation** (tags: Native Americans)

DEC Policy CP-42; Contact, Cooperation, and Consultation with Indian Nations

In 2008, the state of New York implemented an official policy recognizing relations with and implementing a protocol for working with the state's Indian Nations to develop cooperative agreements addressing environmental and cultural concerns.<sup>893</sup> The

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<sup>889</sup> New York State Dep't of Environmental Conservation, *Environmental Justice Work Group Reports*, <http://www.dec.ny.gov/public/905.html> (last visited Mar. 27, 2009).

<sup>890</sup> New York State Dep't of Environmental Conservation, *Report of the Disproportionate Adverse Environmental Impact Analysis Work Group*, available at [http://www.dec.ny.gov/docs/permits\\_ej\\_operations\\_pdf/daeireport.pdf](http://www.dec.ny.gov/docs/permits_ej_operations_pdf/daeireport.pdf) (last visited Mar. 27, 2009).

<sup>891</sup> *Id.* at 12-16.

<sup>892</sup> *Id.* at 19.

<sup>893</sup> New York State Dep't of Environmental Conservation, *CP-42; Contact, Cooperation, and Consultation with Indian Nations*, available at [http://www.dec.ny.gov/docs/permits\\_ej\\_operations\\_pdf/cp42.pdf](http://www.dec.ny.gov/docs/permits_ej_operations_pdf/cp42.pdf) (last visited Mar. 27, 2009).

Office of Environmental Justice provides compliance oversight and appoints an Indian Nations Affairs Coordinator to assess the policy's effectiveness and initiate changes as needed.<sup>894</sup> According to the protocol outlined in the policy statement, the DEC shall consult with Indian Nations as early as possible when taking an action that may affect environmental resources located on or outside Indian Nation territory.<sup>895</sup>

## Equitable Development

### Case Law

*American Marine Rail*<sup>896</sup> (2001) (tags: Land Use – permitting, Waste)

An administrative law judge held that New York's version of the federal National Environmental Policy Act ("NEPA") required DEC to consider and perform analysis of the EJ issues. The case concerned a permit application for a barge-to-rail solid waste transfer station in the Bronx.<sup>897</sup> New York's State Environmental Quality Review Act ("SEQRA") requires that agencies consider impacts to the environment including "land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance, existing patterns of population concentration, distribution, or growth, and existing community or neighborhood character."<sup>898</sup> The administrative law judge was persuaded that SEQRA's "broad mandate" encompassed the concerns of EJ prompted by the permit application: "[b]y doing a proper analysis under SEQRA, the lead agencies will determine what impacts are to be expected from the project, whom they will affect and what measures must be taken to ensure that these effects are mitigated to the maximum extent practicable. These steps will ensure that environmental justice considerations are addressed."<sup>899</sup>

Petitioners argued that by failing to have a question and answer session, DEP did not adequately solicit public input. The court held that an EJ analysis is only required when a permit is sought from the state DEC, hence, the request for review was premature.

*Bronx Env'tl. Health & Justice, Inc. v. N.Y. City Dep't of Env'tl. Protection*<sup>900</sup> (2005) (tags: Community Participation, Land Use – siting, Water)

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<sup>894</sup> *Id.*

<sup>895</sup> *Id.*

<sup>896</sup> 2000 N.Y. Env. LEXIS 63 (Aug. 25, 2000), *rev'd in part on other grounds* in Final Decision by Commissioner Cahill, 2001 N.Y. Env. LEXIS 6 (Feb. 14, 2001).

<sup>897</sup> *Id.*

<sup>898</sup> *Id. at \*195, citing* SEQRA, ECL §§ 8-0105(6), 8-0109.

<sup>899</sup> The opinion also relied on the penumbra of federal law, specifically Title VI of the Civil Rights Act of 1964, *supra* note 54 ("No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance") and Executive Order 12,898, *supra* note 11 (requiring Federal agencies to ensure compliance with Title VI for all Federally-funded programs that affect human health or the environment).

<sup>900</sup> 2005 N.Y. Misc. LEXIS 1177 (Sup. Ct. Queens County May 11, 2005).

A community organization challenged the decision of the New York City Department of Environmental Protection (“DEP”) in siting a water treatment plant in a park in the Bronx, adjacent to a low-income, minority neighborhood. The plaintiff claimed that “DEP acted arbitrarily and capriciously” and failed to involve the public in the State Environmental Quality Review Act (“SEQRA”) process. Plaintiffs alleged that siting decision was discriminatory and that a site in Westchester County was more appropriate. The plaintiffs also sought review of the EJ component of DEP’s environmental impact statement. DEP countered that it complied with all of SEQRA’s requirements and that it considered all potential environmental impacts of the plant. The court held that there was sufficient public involvement in the review process as provided by three public hearings and a written comment period. Furthermore, the court ruled that the request for an EJ analysis was premature as no permit application for the water treatment plant had been filed with the state agency, DEC. An EJ review is only required when an applicant is seeking a permit from the state, hence, no EJ review was required yet.<sup>901</sup> The court also denied the claim that selection of the site violated civil rights including the “basic right to health and environment,” observing that the equal protection clause of the state Constitution did not provide any legal rights.<sup>902</sup>

*Friends of Van Cortlandt Park v. City of New York*<sup>903</sup> (2004) (tags: Land Use – siting, Redressing Environmental Racism, Water)

A community group filed a claim against the City over the construction of a water filtration plant in Van Cortlandt Park. Plaintiffs argued that the City did not take a “hard look” at the environmental effects as required under SEQRA, and also “failed to conduct an environmental justice analysis to identify and evaluate any potential adverse impacts of the project on minority communities in the area.” Dismissing the case, the court held that “an environmental justice review was not legally required, but that the City, in fact, had made such a socio-economic review in the final EIS.”<sup>904</sup>

*Jamaica Recycling Corp v. City of New York*<sup>905</sup> (2006) (tags: Children’s Issues, Land Use – anti-concentration, Land Use – siting, Waste)

Solid waste companies challenged the New York City Department of Sanitation’s (“DOS”) new anti-concentration siting rules for solid waste transfer stations. The revised rules prohibited new transfer stations in areas that already have three existing stations; in addition, they specified that at least 400 to 700 feet must separate any transfer station and residential districts, parks, schools, hospitals and other transfer stations, depending on the concentration of pre-existing facilities.<sup>906</sup>

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<sup>901</sup> *Id.* at \*8.

<sup>902</sup> *Id.* at \*9-10; NY CLS Const Art I, § 11.

<sup>903</sup> 2004 N.Y. ENV LEXIS 59 (Sup. Ct. New York Co. Dec. 3, 2004) (litigation challenging this project on environmental justice grounds is pending in New York State Supreme Court, Queens County).

<sup>904</sup> *Id.*

<sup>905</sup> 816 N.Y.S.2d 282; 2006 N.Y. Misc. LEXIS 50 (2006).

<sup>906</sup> 816 N.Y.S. 2d at 288.

The court upheld the rules, finding them a reasonable exercise of DOS's police power to protect public health and welfare, observing, "transfer stations can create odors, dust and noise and thus are a potential nuisance to neighboring communities."<sup>907</sup> The court noted that the new laws addressed the problem of waste station "clustering" that other courts had criticized as failing to meet the DOS's legislative mandate to regulate the proximity of waste stations to residences, schools and parks.

## **Improving Public Health**

### Report of the Health Outcome Data Work Group<sup>908</sup> (tags: Public Health, Study)

Charged with the task of finding existing reliable sources of health data and recommending a means with which to incorporate such data into the environmental permit review process, HOD determined that the numerous variables that contribute to the health data outcome make the strength of the correlation between effects of environmental exposures and health unreliable. However, when compared to the health of other geographic areas it is hypothesized that observable correlations will increase.<sup>909</sup>

## **Pollution Cleanup**

### Brownfields Cleanup Program (BCP) (tags: Brownfields Redevelopment, Toxic Waste Cleanup)

A New York statute governs the implementation of remedial programs for brownfields sites. In determining the proper approach for soil remediation, DEC must consider the site's potential land uses, with the further requirement that DEC consider EJ concerns, and "the extent to which the proposed use may reasonably be expected to cause or increase a disproportionate burden on the community in which the site is located, including low-income minority communities, or to result in a disproportionate concentration of commercial or industrial uses in what has historically been a mixed use or residential community."<sup>910</sup>

In 2008, Governor Patterson amended the BCP, to significantly increase tax incentives for site cleanup and on-site groundwater cleanup and to increase redevelopment credits where said redevelopment conforms to the goals of the state's Brownfield Opportunity Area Program.<sup>911</sup> The revised statute transfers administrative responsibility of the BCP to the Department of State, though the DEC retains oversight of

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<sup>907</sup> *Id.* at 291.

<sup>908</sup> New York State Dep't of Environmental Conservation, *Report of the Health Outcome Data Work Group*, available at [http://www.dec.ny.gov/docs/permits\\_ej\\_operations\\_pdf/hodreport.pdf](http://www.dec.ny.gov/docs/permits_ej_operations_pdf/hodreport.pdf) (last visited Mar. 27, 2009).

<sup>909</sup> *Id.* at 27-30.

<sup>910</sup> NY CLS ECL § 27-1415(2)(i)(vii)(2008).

<sup>911</sup> New York State Dep't of Environmental Conservation, *2008 Brownfields Legislation Summary*, available at [http://www.dec.ny.gov/docs/remediation\\_hudson\\_pdf/08bfsummary.pdf](http://www.dec.ny.gov/docs/remediation_hudson_pdf/08bfsummary.pdf) (last visited Mar. 27, 2009); NY CLS ECL § 27-1435 (2009).

brownfield site assessments.<sup>912</sup> In addition, a newly created Brownfields Advisory Board will monitor and evaluate the BCP, reporting to both the governor and the legislature on the progress of ongoing and potential sites, as well as on the need for funding and resources for future BCP actions.<sup>913</sup>

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<sup>912</sup> 2008 *Brownfields Legislation Summary*, *supra* note 894.

<sup>913</sup> NY CLS ECL § 27-1419(3)(2009).

# **NORTH CAROLINA**

(tags: Community Participation, Compliance and Enforcement, Cumulative/Secondary Effects, Land Use – anti-concentration, Land Use – permitting, Land Use - siting, Outreach, Redressing Environmental Racism, Waste)

## **General Environmental Justice Activities**

### Environmental Justice Coordinator

While North Carolina does have an Environmental Justice Coordinator position, the General Counsel of the North Carolina Department of Natural Resources (“NC DENR”) serves in that position. Due to a lack of funding, one person cannot be assigned to concentrate on EJ issues.<sup>914</sup> Also due to a lack of funding, NC DENR has not had the opportunity to build upon their policies and programs to promote environmental justice.<sup>915</sup>

## **Community Participation**

### Environmental Equity Initiative (tags: Community Participation, Redressing Environmental Racism)

In 2000, the NC DENR issued its Environmental Equity Initiative. The initiative sought to facilitate communication between industries and affected communities, primarily by providing information to communities, and thereby making it possible for those communities to meaningfully participate in the regulatory process.<sup>916</sup>

The NC DENR posits its role as that of mediator, rather than proactive agent for environmental justice.<sup>917</sup> 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 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.”<sup>918</sup>

## **Equitable Development**

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<sup>914</sup> Telephone Interview with Nancy Pate, Rulemaking Coordinator, North Carolina Dep’t of Natural Resources (Mar. 30, 2009).

<sup>915</sup> *Id.*

<sup>916</sup> North Carolina Dep’t of Natural Resources, *Environmental Equity Initiative*, available at <http://www.enr.state.nc.us/admin/pdf/Envequin.pdf> (last visited Aug. 10, 2009).

<sup>917</sup> This mediation approach resembles the Louisiana model of the Community Industry Relations program, where the state regulators view their roles as bringing all parties to the table and getting a dialogue underway.

<sup>918</sup> *Environmental Equity Initiative*, *supra* note 899.

Solid Waste Permits (tags: Community Participation, Land Use – anti-concentration, Waste)

The state’s solid waste permitting statute requires that local demographics be considered in the selection or approval of landfills.<sup>919</sup> 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.<sup>920</sup> The permitting authority must 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.<sup>921</sup>

Community Involvement and Complaint Procedures (tags: Compliance and Enforcement)

Complaints about all NC DENR processes, EJ or otherwise, may be submitted to NC DENR’s Customer Service Center, either through its web page or via a toll-free phone number.<sup>922</sup> The complaint is then routed to the appropriate divisional contact. The NC DENR Environmental Justice Coordinator is developing materials providing specific guidance on making EJ complaints and structuring a process of responding to such complaints.<sup>923</sup>

Environmental Review of Cumulative Impact (tags: Cumulative/Secondary Effects, Land Use – permitting)

NC DENR’s permit review procedures require the evaluation of the cumulative and/or secondary impact information “as part of the State Environmental Protection Act or environmental permit process.”<sup>924</sup> While not specifically targeting EJ populations, the cumulative impacts assessment has implications for achieving EJ for disproportionately affected communities by recognizing that while an individual permitting decision may not have an adverse effect on the local community, the cumulative effects of permitting decisions, over time, may result in environmental hazards. In view of the correlation between historic patterns of environmental degradation and at-risk communities, cumulative impact assessment tilts regulators against bringing new environmental and health risks into those communities. Moreover, examining the potential secondary impacts of a project requires permitting authorities to take a forward-looking view of the

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<sup>919</sup> N.C. GEN. STAT. § 153A-136(c)(2005).

<sup>920</sup> *Id.*

<sup>921</sup> *Id.*

<sup>922</sup> E-mail from Mary Penny Thompson, Assistant General Counsel, North Carolina Dep’t of Natural Resources (May 10, 2005).

<sup>923</sup> *Id.*

<sup>924</sup> North Carolina Dep’t of Natural Resources, *Cumulative and/or Secondary Impacts Evaluation Process for Department Level Projects*, at 1, available at <http://www.enr.state.nc.us/admin/pdf/CSIpol.pdf> (last visited Aug. 10, 2009).

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.”<sup>925</sup>

Other programs (tags: Compliance and Enforcement, Outreach)

An official at the NC DENR explained that most of DENR's socioeconomic review currently occurs within the permitting and compliance assistance processes.<sup>926</sup> For example, changes to NC DENR's dry cleaning regulations were translated into Korean and circulated amongst the Korean-speaking population so that the regulated community would be aware and understand the impacts of the new environmental regulations.<sup>927</sup>

Case Law

Washington County v. U.S. Dep't of the Navy<sup>928</sup> (2004) (tags: Land Use – siting)

The plaintiffs, Washington County and an environmental group, sought to enjoin the U.S. Department of the Navy's decision to construct an Outlying Landing Field in Washington and Beaufort Counties.<sup>929</sup> Plaintiffs alleged that proceeding with the construction of the Landing Field would violate several federal and state laws, including the mandate to comply with EJ obligations under the Administrative Procedure Act.<sup>930</sup> The court issued the preliminary injunction, but did not rely on the plaintiffs' EJ contention in doing so.<sup>931</sup>

Goshen Road Environmental Action Team v. U.S. Dept. of Agriculture<sup>932</sup> (1999) (tags: –Land Use – siting, Water)

Plaintiffs filed a complaint alleging that the siting of a wastewater treatment facility in Pollocksville resulted in a disparate racial impact and thus violated Title VI of the Civil Rights Act of 1964.<sup>933</sup> In an unpublished Fourth Circuit opinion, the Court

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<sup>925</sup> *Id.*

<sup>926</sup> E-mail from Mary Penny Thompson, *supra* note 905.

<sup>927</sup> *Id.*

<sup>928</sup> 317 F.Supp.2d 626 (E.D.N.C. 2004).

<sup>929</sup> *Id.* at 628.

<sup>930</sup> *Id.* at 629.

<sup>931</sup> *Id.* at 631-38.

<sup>932</sup> 176 F.3d 475 (4th Cir. 1999).

<sup>933</sup> *Id.*

found that the Town had a substantially legitimate nondiscriminatory basis for the site and affirmed the dismissal of plaintiff's complaints.<sup>934</sup>

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<sup>934</sup> *Id.*

## **NORTH DAKOTA**

The authors did not find any relevant EJ programs, policies, or statutes for the state of North Dakota. In 2005, an attorney at the North Dakota Attorney General's Office confirmed that North Dakota does not have any formal EJ policy.<sup>935</sup>

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<sup>935</sup> Telephone interview with Lyle Witham, Deputy Assistant Attorney General, North Dakota Attorney General's Office (Mar. 3, 2005).

# **OHIO**

(tags: Air Pollution, Children’s Issues, Community Education, Community Participation, Compliance and Enforcement, Land Use – permitting, Land Use – siting, Outreach, Waste)

## **General Environmental Justice Activities**

Although there is no corresponding state law or policy regarding environmental justice, the Ohio Environmental Protection Agency (“Ohio EPA”) evaluates EJ issues as part of its normal processes, whether it be permitting or grant review, on a case-by-case basis. For instance, the Ohio EPA considers all comments regarding EJ to ensure that the agency is in compliance with Title VI.<sup>936</sup>

## **Community Participation**

Solid Waste Siting Statute (tags: Community Education, Community Participation, Land Use – siting, Outreach, Waste)

In order to receive a permit to open a new solid waste facility or modify an existing one, 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.”<sup>937</sup> The proponent must publish a notice of the project and hearing in local newspapers. Similar requirements are described for hazardous waste facilities.<sup>938</sup> Depending on the amount of public concern about a facility, Ohio EPA may establish public repositories for public records at local libraries or publish a web page for a particular facility so that citizens interested in the matter can readily obtain public information.<sup>939</sup>

St. Clair Superior Neighborhood Development Association (tags: Community Participation, Compliance and Enforcement)

Ohio EPA seeks to increase the involvement of community groups that represent historically underprivileged areas.<sup>940</sup> For example, Ohio EPA works closely with the St. Clair Superior Neighborhood Development Association (SCSNDA) Environmental Workgroup to increase environmental awareness and compliance in the community. The result has been increased public participation and input in the development of Title V Air Permits, increased inspections of companies and resolution of neighborhood concerns,

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<sup>936</sup> E-mail from Bill Fischbein, Deputy Director for Legal Affairs, Ohio EPA (Jan. 31, 2005).

<sup>937</sup> OHIO REV. CODE ANN. § 3734.05(A)(2)(e)(West 2009).

<sup>938</sup> *Id.* at § 3734.05(D)(3)(b).

<sup>939</sup> E-mail from Bill Fischbein, Deputy Director for Legal Affairs, Ohio EPA (July 10, 2009).

<sup>940</sup> OHIO REV. CODE ANN. § 3734.05(D)(3)(b)(West 2009).

and better assurance to the neighborhood that companies are in compliance with their environmental permits.<sup>941</sup>

Sustainable Cleveland Partnership (tags: Children’s Issues, Community Education, Community Participation)

Ohio EPA has also partnered with the Earth Day Coalition's Sustainable Cleveland Partnership (“SCP”), a local initiative in neighborhood-based environmental protection for low-income and/or minority communities. “SCP organizes tours of industrial parks, participates in public hearings and media events, leads citizen campaigns on pollution prevention for large stationary sources, and builds capacity in a variety of minority constituent groups including citizens’ councils, street and block clubs, community centers and development associations, and schools and churches.”<sup>942</sup> Subjects of SCP training workshops have included right-to-know laws, environmental risk regulation and reduction, and environmental audits of specific neighborhoods.<sup>943</sup>

**Equitable Development / Smart Growth** (tags: Land Use – permitting, Waste)

Case Law

Waste Management of Ohio, Inc. v. Bd. of Health of City of Cincinnati<sup>944</sup>  
(2004) (tags: Land Use – permitting, Waste)

The Board of Health of the City of Cincinnati denied an application for a license to operate a solid waste transfer station. On appeal, the Ohio Environmental Review Appeals Commission reversed the Board of Health's decision. The Commission noted that as “[t]here is no specific environmental justice law in Ohio . . . environmental justice concerns could not form a basis for a lawful denial of a license for a transfer station.” Accordingly, the Commission refused to hear evidence relating to EJ claims and the disproportionate impacts of the transfer station.<sup>945</sup>

**Coordination with Federal Government**

Cleveland Clean Air Century Campaign (tags: Air Pollution, Children’s Issues, Community Participation)

In 2000, Ohio EPA became a member of the Cleveland Clean Air Century Campaign which is the result of a U.S. EPA initiative to reduce air toxics in the Cleveland neighborhoods through voluntary efforts by industry, transportation sources, schools and individual home owners.<sup>946</sup> The Campaign has three goals: (1) to reduce air

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<sup>941</sup> E-mail from Bill Fischbein, Deputy Director for Legal Affairs, Ohio EPA (Mar. 22, 2006). The neighborhood receives copies of inspection reports and permits for companies of concern.

<sup>942</sup> *Id.*

<sup>943</sup> *Id.*

<sup>944</sup> 2004 Ohio ENV LEXIS 3 (Ohio Envtl. Rev. Apps. Comm’n Mar. 25, 2004).

<sup>945</sup> *Id.* at \*8.

<sup>946</sup> E-mail from Bill Fischbein (July 10, 2009), *supra* note 922.

toxics in Cleveland within a year; (2) to ensure the project is sustainable over time within the community; and (3) to ensure the approach can be replicated in other counties across the United States.<sup>947</sup> A Working Group comprised of representatives from Cleveland neighborhoods, advocacy organizations, businesses, and local government agencies guides the campaign.<sup>948</sup> Recent Campaign successes include efforts to reduce school bus emissions, improve air quality in school buildings and residential buildings, and promote voluntary air quality improvements in businesses, industries and transportation.<sup>949</sup>

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<sup>947</sup> The American Lung Association of Ohio, *Cleveland Clean Air Century Campaign*, [http://www.midlandlung.org/site/c.kqLNIUOCKrF/b.5286979/k.EA68/Cleveland\\_Clean\\_Air.htm](http://www.midlandlung.org/site/c.kqLNIUOCKrF/b.5286979/k.EA68/Cleveland_Clean_Air.htm) (last visited Sept. 7, 2009).

<sup>948</sup> *Id.*

<sup>949</sup> E-mail from Bill Fischbein (July 10, 2009), *supra* note 922.

# **OKLAHOMA**

(tags: Children’s Issues, Community Participation, Grants, Land Use – permitting, Outreach, Public Health)

## **General Environmental Justice Activities**

Oklahoma does not have any programs or policies specifically aimed at achieving environmental justice. However, some of the state’s general environmental laws have a positive impact on environmental justice.<sup>950</sup>

**Community Participation** (tags: Community Participation, Land Use – permitting, Outreach)

### Oklahoma Uniform Environmental Permitting Act

The Oklahoma Uniform Environmental Permitting Act sets forth a tiered environmental permitting scheme. The purpose of the Act is to “provide for uniform permitting provisions regarding notices and public participation opportunities that apply consistently and uniformly to applications for permits and other permit authorizations issued by the Department of Environmental Quality.”<sup>951</sup> Based on various factors, such as potential impact on the environment and the degree of public concern, the Board of Environmental Quality designates permit applications as Tier I, II, or III.<sup>952</sup> Projects requiring Tier II and Tier III permits must go through additional application procedures, which include publishing a notice that an application was filed, publishing a copy of the draft permit or denial, and a public hearing regarding any draft permit or denial of permit that the Board finds garners significant public interest.<sup>953</sup> The public hearings provide an opportunity for those disproportionately affected by the environmental impacts of particular development projects to oppose the granting of a permit.

**Improving Public Health** (tags: Children’s Issues, Grants, Public Health)

### Oklahoma Lead-Impacted Communities Relocation Assistance Act

The Oklahoma Lead-Impacted Communities Relocation Assistance Act allocates funds to help relocate families living in areas most affected by past lead and zinc mining and that have been designated as a federal Superfund site.<sup>954</sup> The state legislature found that children six years of age and younger are most susceptible to the adverse effects of

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<sup>950</sup> E-mail from Eric Miller, Legal Intern, Oklahoma Dep’t of Environmental Quality (Feb. 10, 2009).

<sup>951</sup> OKLA. STAT. tit. 27A § 2-12-102 (2009).

<sup>952</sup> *Id.* at tit. 27A § 2-14-201.

<sup>953</sup> *Id.* at tit. 27A § 2-14-103.

<sup>954</sup> *Id.* at tit. 27A § 2203. Superfund sites are areas that have been designated as one of the “most seriously contaminated sites in the nation” and placed on the Superfund National Priorities List. *Id.* at tit. 27A § 2202.

lead exposure.<sup>955</sup> In order to qualify for assistance, married couples or individuals must show that they were either pregnant or had a child six years old or younger living with them on December 1, 2003.<sup>956</sup> Funds are available for both renters and property owners, with the amount of the grant adjusted accordingly.<sup>957</sup>

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<sup>955</sup> *Id.*

<sup>956</sup> *Id.* at tit. 27A § 2203.

<sup>957</sup> *Id.*

# OREGON

[tags: Community Participation, Compliance and Enforcement, Grants, Inter-agency Collaboration, Land Use, Native Americans, Outreach, Pollution Cleanup, Redressing Environmental Racism)

## **Community Participation**

### Environmental Justice Advisory Board (tags: Community Participation)

In 1997, Governor John Kitzhaber issued Executive Order 97-16, which established the Governor’s Environmental Justice Advisory Board (“EJAB”). EJAB was created to supplement the recommendations issued by the Oregon Environmental Equity Citizen Advisory Committee in 1994.<sup>958</sup> EJAB eventually disbanded due to lack of funding and reluctance of industry groups to participate.<sup>959</sup> EJAB had neither the authority to make or enforce regulations, nor the funding to carry out its mandate effectively.<sup>960</sup>

### SB 420 -- “Relating to environmental justice” (tags: Community Participation, Grants, Inter-agency Collaboration, Native Americans, Outreach, Redressing Environmental Racism)

In Fall 2007, the Oregon legislature passed SB 420 (Gordly, D, Portland), “Relating to environmental justice.”<sup>961</sup> Governor Kulongoski signed the bill into law. It establishes an Environmental Justice Task Force with twelve members appointed by the Governor.<sup>962</sup> The members are to represent “minority communities, low-income communities, environmental interests, industry groups and geographically diverse areas of the state.”<sup>963</sup> The Task Force is to advise the Governor and fourteen natural resource agencies<sup>964</sup> on EJ issues.

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<sup>958</sup> 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](http://arcweb.sos.state.or.us/governors/Kitzhaber/web_pages/governor/legal/execords/eo97-16.pdf) (last visited Apr. 24, 2006); *Boards and Commissions Book*, available at <http://governor.oregon.gov/Gov/pdf/forms/brdbook.pdf> (last visited Apr. 28, 2006); telephone interview, Office of the Governor, May 1, 2006.

<sup>959</sup> Robert W. Collin, *Environmental Justice in Oregon: It’s the Law*, 38 ENVTL. L. 413, 445-46 (2008).

<sup>960</sup> *Id.* at 448.

<sup>961</sup> *Relating to Environmental Justice*, Chapter 909 Oregon Laws 2007, available at <http://www.leg.state.or.us/07orlaws/sess0900.dir/0909.htm> (last visited Dec. 5 2008).

<sup>962</sup> *Id.* § 2.

<sup>963</sup> *Id.*

<sup>964</sup> The agencies include the Department of Environmental Quality, the State Department of Agriculture, the Water Resources Department, the State Department of Fish and Wildlife, the State Forestry Department, the Department of State Lands, the Department of Education, the State Department of Geology and Mineral Industries, the Department of Land Conservation and Development, the State Marine Board, the Public Utility Commission, the Department of Transportation, the State Fire Marshal and the Department of Human Services. *Id.* § 1.

This law focuses on “public participation processes” and is designed to instigate more meaningful participation from community members traditionally excluded from environmental decision making.<sup>965</sup> The law seeks “to provide greater public participation and to ensure that all persons affected by decisions of the natural resource agencies have a voice in those decisions.”<sup>966</sup> Thus, each natural resource agency must consider the effects of its actions on EJ communities, “[h]old hearings at times and in locations that are convenient for people in the communities that will be affected by the decisions stemming from those hearings,” and conduct public outreach activities.<sup>967</sup> Furthermore, each natural resource agency must create “a citizen advocate position” that promotes public participation, ensures that the agency considers EJ issues, and informs the agency of the effects of its decisions on “communities traditionally underrepresented in public processes.”<sup>968</sup> The directors of the natural resource agencies must report annually to the Governor on the actions they have taken and the results they have obtained.<sup>969</sup>

The Task Force is working with appointees from all 14 state agencies named in the bill to set up an intergovernmental working group to help all the agencies share ideas and devise ways to implement the law.<sup>970</sup> The Task Force and the Oregon Department of Environmental Quality (“DEQ”) representatives are looking at how existing programs can be expanded to meet the new EJ requirements. For example, Oregon has excellent outreach to, and public participation by, rural fish and game enthusiasts. Thus, there may be lessons to be learned from programs that encourage and respond to this constituency’s concerns that can be spread to groups currently underrepresented in environmental decision-making, *e.g.*, urban African American and rural Native American communities.<sup>971</sup>

The Task Force is considering a number of early initiatives, including a “template” for encouraging public participation that could be adjusted to reflect the missions of the different agencies; an EJ “Bill of Rights” for Oregon; agency annual reports that reflect progress on both EJ substance and process goals; and public data on what constituencies agencies serve and what budget allocations go to which communities. The Task Force is hoping to explore obstacles to public participation in environmental decision-making; for example, whether farm workers or industrial laborers are unlikely to participate or report environmental violations for fear of losing their jobs.<sup>972</sup>

Task Force members report that members of the DEQ have enthusiastically embraced the measure, and have appointed Mikell O’Mealy as their required citizen advocate.<sup>973</sup> DEQ is now considering a number of internal actions to “make

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<sup>965</sup> *Id.* § 3(2).

<sup>966</sup> *Id.* § 4.

<sup>967</sup> *Id.*

<sup>968</sup> *Id.* § 4(4).

<sup>969</sup> *Id.* § 5.

<sup>970</sup> *Id.*

<sup>971</sup> *Id.*

<sup>972</sup> *Id.*

<sup>973</sup> Interview with Mikell O’Mealy, Economic Revitalization, Environmental Justice Coordinator & Liaison to Tribal Nations, Oregon Dep’t of Environmental Quality (Dec. 3, 2008).

environmental equity, sustainability, and stewardship a greater focus” in DEQ’s work. This includes new guidance and tools for employees reaching out to traditionally underrepresented communities, management workshops and staff training focusing on what DEQ can do to address EJ concerns, and evaluating disproportionate impacts of pollution on Oregon communities. It also includes exploring how to connect that information to agency planning, permit decisions, and funding to address or relieve those impacts.<sup>974</sup>

Robin Morris Collin, Chair of the Task Force, and Robert W. Collin, a Task Force member, also hope that greater collaboration on EJ issues can lead to greater environmental health and sustainability in a win-win way. They point to the “cleaner, cheaper, smarter” model of collaboration that induces industry cooperation, *e.g.*, the more one reduces a project’s environmental footprint, the less the necessary public involvement with the permit process.<sup>975</sup>

## Equitable Development

### Measures 37 and 49 (tags: Land Use)

In 2004, Oregon voters approved Measure 37<sup>976</sup> (Oregon Revised Statutes 195.305), which was framed as a way to protect landowners against “regulatory takings.” Measure 37 allows property owners to claim reimbursement from local governments for decreases in property value due to government regulations. The Oregon Supreme Court upheld Measure 37 as constitutional.<sup>977</sup> Measure 37 provides:

If a public entity enacts or enforces a new land use regulation or enforces a land use regulation enacted prior to the effective date of this amendment that restricts the use of private real property or any interest therein and has the effect of reducing the fair market value of the property, or any interest therein, then the owner of the property shall be paid just compensation.<sup>978</sup>

If the government is challenged and does not wish to pay just compensation, the governing body “may modify, remove, or not . . . apply the land use regulation” and thus permit the landowner to continue his or her challenged property use.<sup>979</sup> As of December 2007, 6,857 Measure 37 claims had been filed, requesting nearly \$20 billion in compensation.<sup>980</sup> In 2007, voters modified Measure 37 by passing Measure 49, which,

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<sup>974</sup> *Id.*

<sup>975</sup> *Id.*

<sup>976</sup> Oregon Revised Statutes 195.305, text available at

[http://www.oregon.gov/LCD/MEASURE37/legal\\_information.shtml#Information\\_About\\_the\\_Election](http://www.oregon.gov/LCD/MEASURE37/legal_information.shtml#Information_About_the_Election)

<sup>977</sup> *MacPherson v. Dept. of Administrative Services*, 38 Or. 117 (2006).

<sup>978</sup> Measure 37 § 1, codified at OR. REV. STAT. § 195.305(1) (2007).

<sup>979</sup> *Id.* § 195.305(8).

<sup>980</sup> DLCD 37, *Summary of Claims*,

[http://www.oregon.gov/LCD/MEASURE37/summaries\\_of\\_claims.shtml](http://www.oregon.gov/LCD/MEASURE37/summaries_of_claims.shtml) (last visited Sept. 9, 2009).

*inter alia*, limits subdivisions on valuable farmlands or groundwater resources in order to balance just compensation with resource protection.<sup>981</sup>

While these measures have strong EJ implications, we have found no explicit EJ concerns addressed, and, according to the Professors Robin and Robert Collins, “no one in the EJ community has addressed it because people are so stunned.”<sup>982</sup> But, according to a 2006 Portland State University study, when challenged, municipalities simply revoked regulations rather than paid compensation.<sup>983</sup> The study contends that early Measure 37 claims thwart the public’s will:

[A] Measure 37 claimant may be able to use land in a way that is inconsistent with a community’s adopted plan – even a plan developed with significant public input . . . decisions no longer consider the social, economic, energy and environmental needs of the community. The only considerations are the individual’s wishes, the date on which he purchased his property, and the land use laws in force at the time.<sup>984</sup>

Even were the EJ movement’s goal of diverse public participation in environmental decision-making to be achieved, Measures 37 and 49 allow resultant, carefully crafted regulations representing diverse interests to go unheeded. Where urban growth boundaries decay, and farmland and forests are no longer protected, development can threaten urban water supplies. Where a municipality is less free to regulate redevelopment, it may be less able to clean up degraded brownfields or craft zoning regulations to the benefit of EJ communities. At this point, the EJ effects of Measure 37 and Measure 49 bear watching for EJ impacts.

**Pollution Cleanup** (tags: Compliance and Enforcement, Pollution Cleanup, Redressing Environmental Racism, Waste, Water)

In settling an environmental enforcement case, DEQ may allow violators to mitigate their penalties by completing a Supplemental Environmental Project (“SEP”).<sup>985</sup> SEPs can include activities that improve air quality, reduce hazardous waste, encourage more efficient use of resources, improve water quality, reduce or clean up solid waste, or aid in environmental emergency preparedness.<sup>986</sup> Many SEPs provide opportunities for community members to be involved in improving their environment and DEQ criteria for

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<sup>981</sup> Oregon Secretary of State, *Measure 49*,

[http://www.sos.state.or.us/elections/nov62007/guide/m49\\_text.html](http://www.sos.state.or.us/elections/nov62007/guide/m49_text.html) (last visited Sept. 9, 2009).

<sup>982</sup> Interview with Robin Morris Collin and Robert W. Collin, *supra* note 953.

<sup>983</sup> Sheila A. Martin & Katie Shriver, *Documenting the Impact of Measure 37: Selected Case Studies*, at 4, (2006), available at

[http://www.pdx.edu/sites/www.pdx.edu.ims/files/media\\_assets/ims\\_M37brainerdreport.pdf](http://www.pdx.edu/sites/www.pdx.edu.ims/files/media_assets/ims_M37brainerdreport.pdf) (last visited Sept. 9, 2009).

<sup>984</sup> *Id.*

<sup>985</sup> Oregon Dep’t of Environmental Quality, *Internal Management Directive on Supplemental Environmental Projects*, available at <http://www.deq.state.or.us/programs/enforcement/SEPolicy07.pdf> (last visited July 28, 2009).

<sup>986</sup> Oregon Dep’t of Environmental Quality, Office of the Director, *Supplemental Environmental Projects*, [www.deq.state.or.us/programs/enforcement/SEP.htm](http://www.deq.state.or.us/programs/enforcement/SEP.htm) (last visited Sept. 8, 2009).

approving SEPs includes projects that address EJ concerns.<sup>987</sup> DEQ is currently exploring opportunities to use SEPs more to address disproportionate impacts of pollution on minority, low-income and other underrepresented communities in Oregon.<sup>988</sup>

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<sup>987</sup> *Internal Management Directive on Supplemental Environmental Projects*, *supra* note 975, at 4.

<sup>988</sup> Interview with Mikell O’Mealy, *supra* note 959.

# PENNSYLVANIA

(tags: Brownfields, Community Education, Community Participation, Compliance and Enforcement, Grants, Land Use – permitting, Land Use - siting, Mapping, Outreach, Public Health, Redressing Environmental Racism, Study, Waste)

## **General Environmental Justice Activities**

Environmental Justice Work Group (tags: Community Participation, Compliance and Enforcement, Cumulative/Secondary Effects, Land Use – permitting, Study)

In 1999, Pennsylvania established the Environmental Justice Work Group (“Work Group”) to review Department of Environmental Protection (“PA DEP”) programs and ensure equity in its environmental protection efforts. The Work Group completed a report in June 2001 recommending that the PA DEP: (1) implement a ten-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.<sup>989</sup>

Environmental Justice Advisory Board (tags: Community Participation, Redressing Environmental Racism)

The Environmental Justice Advisory Board (“EJAB”) was created in response to the recommendations made by the Environmental Justice Work Group Report.<sup>990</sup> EJAB advises the PA DEP on how to implement the recommendations made in the Environmental Justice Work Group Report. EJAB holds quarterly public meetings, and has a stated purpose of recommending any policy “it deems necessary and advisable for implementation of the agency’s environmental programs and the recommendations of the Environmental Justice Work Group.”<sup>991</sup> The membership of EJAB is comprised of “a broad cross-section of interests,” including representatives of low-income and minority communities and affected industries.<sup>992</sup>

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<sup>989</sup> Pennsylvania Dep’t of Environmental Protection, *Environmental Justice Work Group Report to the Pennsylvania Department of Environmental Protection* (2001), available at <http://www.depweb.state.pa.us/environadvocate/lib/environadvocate/EJReportFinal.pdf> (last visited Feb. 27, 2009).

<sup>990</sup> Pennsylvania Dep’t of Environmental Protection, Office of Environmental Advocate *Frequently Asked Questions*, <http://www.depweb.state.pa.us/environadvocate/cwp/view.asp?a=3&q=470347> (last visited Feb. 27, 2009).

<sup>991</sup> Pennsylvania Dep’t of Environmental Protection, *Environmental Justice Advisory Board Bylaws*, available at [http://www.depweb.state.pa.us/environadvocate/lib/environadvocate/ejab\\_bylaws\\_changes\\_081505.doc](http://www.depweb.state.pa.us/environadvocate/lib/environadvocate/ejab_bylaws_changes_081505.doc) (last visited Sept. 7, 2009).

<sup>992</sup> *Id.*

Statewide Environmental Justice Conference (tags: Brownfields, Community Education, Grants, Land Use – permitting)

In April 2009, EJAB, the Work Group, and Drexel University organized Pennsylvania's first Statewide Environmental Justice Conference, *Building Healthy and Improved Communities for All*, to educate and improve communication among members of EJ communities, community organizations, private sector organizations and government officials.<sup>993</sup> The conference featured panel discussions outlining how low-income communities can best take advantage of the state's permitting process and Environmental Justice Policy, funding opportunities for grassroots organizations, alternative dispute resolution tools for communities affected by EJ issues, Brownfields resources, and green-collar job opportunities.<sup>994</sup>

### **Community Participation**

Environmental Justice Public Participation Policy (tags: Community Participation, Land Use – permitting, Mapping, Redressing Environmental Racism)

In 2004, PA DEP issued its Environmental Justice Public Participation Policy. Under the policy, if a proposed permit affects an area with demographics of either 20% below the poverty rate or 30% minority population, enhanced public participation is required as part of the permitting procedure.<sup>995</sup> The policy aimed to create greater community awareness and build stronger stakeholder groups.<sup>996</sup> According to a 2005 notice filed by PA DEP, however, "corrections were made . . . to accurately reflect that participation by permit applicants in the enhanced public participation objectives of the policy is voluntary."<sup>997</sup> In addition, PA DEP has drafted a map of areas subject to the public participation policy.<sup>998</sup>

On-Line Environmental Justice Discussion Areas (tags: Community Participation)

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<sup>993</sup> Pennsylvania Dep't of Environmental Protection, Office of Environmental Advocate, *1st Statewide Environmental Justice Conference*, <http://www.depweb.state.pa.us/environadvocate/cwp/view.asp?a=1538&q=542615> (last visited Apr. 17, 2009); Reuters, *Pennsylvania to Hold First Statewide Environmental Justice Conference* (Jan. 27, 2009) available at <http://www.reuters.com/article/pressRelease/idUS188943+27-Jan-2009+PRN20090127> (last visited Apr. 17, 2009).

<sup>994</sup> Pennsylvania Dep't of Environmental Protection, Office of Environmental Advocate, *1st Statewide Environmental Justice Conference*, <http://www.depweb.state.pa.us/environadvocate/cwp/view.asp?a=1538&Q=545835> (last visited Apr. 17, 2009).

<sup>995</sup> Pennsylvania Dep't of Environmental Protection, 34 Pa.B. 2237 (Apr. 24, 2004), *modified by* 35 Pa.B. 68 (Jan. 1, 2005); e-mail from Ayanna King, Director, Pennsylvania Dep't of Environmental Protection, Office of Environmental Advocate (Mar. 6, 2009).

<sup>996</sup> Telephone interview with Ayanna King, Director, Pennsylvania Dep't of Environmental Protection, Office of Environmental Advocate (Dec. 13, 2005).

<sup>997</sup> Pennsylvania Dep't of Environmental Protection, 35 Pa.B. 68, *supra* note 985.

<sup>998</sup> Pennsylvania Dep't of Environmental Protection, Office of Environmental Advocate, *Environmental Justice Areas in Pennsylvania*, available at <http://www.depweb.state.pa.us/environadvocate/lib/environadvocate/eja2.pdf> (last visited Apr. 17, 2009).

Previously, PA DEP sought to encourage public participation through its Environmental Justice Advisory Board on-line discussion area.<sup>999</sup> The on-line discussion area allowed citizens to post comments related to four of its subcommittees.<sup>1000</sup> However, DEP has since removed all discussion boards due to improper use, as individuals were abusing the online forum instead of using it to address EJ issues.<sup>1001</sup>

Office of Environmental Advocate (tags: Community Education, Community Participation, Land Use – permitting, Outreach)

The Pennsylvania Office of Environmental Advocate (“POEA”) was also created as a result of the Environmental Justice Work Group Report.<sup>1002</sup> The office was set up “as a point of contact for Pennsylvania’s residents.<sup>1003</sup> Its goal is to “increase communities’ environmental awareness and involvement.”<sup>1004</sup> The POEA staff includes Regional Advocates charged with ensuring EJ compliance in certain regions of Pennsylvania.<sup>1005</sup>

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 EJ concerns are responded to in a timely manner.<sup>1006</sup> POEA works with permit applicants to carry out the public participation process, and ensure there are plain language summaries to promote community understanding. At community meetings, community members are thereby better equipped to inform the industry of their concerns.<sup>1007</sup> POEA has also 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.<sup>1008</sup> POEA e-mails notices when PA DEP Draft Technical Documents are open for public comment.<sup>1009</sup>

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<sup>999</sup> Pennsylvania Dep’t of Environmental Protection, *Environmental Justice Advisory Board Discussion Forum*, formerly available at <http://www.dep.state.pa.us/discussion.environmentaladvocate/> (last visited June 26, 2003).

<sup>1000</sup> Pennsylvania Dep’t of Environmental Protection, Office of Environmental Advocate, *Message Boards*, formerly available at <http://www.dep.state.pa.us/hosting/environmentaladvocate/discussion> (last visited June 26, 2003).

<sup>1001</sup> Telephone interview with Ayanna King, *supra* note 986.

<sup>1002</sup> Pennsylvania Dep’t of Environmental Protection, *Office of Environmental Advocate*, <http://www.depweb.state.pa.us/environadvocate/site/default.asp> (last visited Mar. 27, 2009).

<sup>1003</sup> *Id.*

<sup>1004</sup> *Id.*

<sup>1005</sup> *Id.*

<sup>1006</sup> Pennsylvania Dep’t of Environmental Protection, Office of Environmental Advocate, *Brochure*, available at <http://www.depweb.state.pa.us/environadvocate/lib/environadvocate/ejbrochure2.pdf> (last visited Feb. 27, 2009).

<sup>1007</sup> Telephone interview with Ayanna King, *supra* note 986.

<sup>1008</sup> See, e.g., Pennsylvania Dep’t of Environmental Protection, *E-notice Pennsylvania*, available at <http://www.ahs2.dep.state.pa.us/eNOTICEWeb/> (last visited Feb. 27, 2009); *DEP Fact Sheet*, available at <http://www.depweb.state.pa.us/environadvocate/cwp/view.asp?a=3&Q=469577&environadvocateNav=> (last visited Feb. 27, 2009).

<sup>1009</sup> See *E-notice Pennsylvania*, *supra* note 998.

Open Access to Permit Applications and Violations (tags: Compliance and Enforcement, Land Use – permitting, Outreach)

In June 2004, PA DEP updated its Environmental Facility Application Compliance Tracking System (“eFacts”), an on-line environmental compliance reporting system.<sup>1010</sup> The revamped system offers more search options, allowing a user to search by authorization, client, facility, inspection, name, site, or site by municipality. E-facts “provides the public with multiple options and tools to view environmental/compliance information on regulated facilities as well as information on permitting, licensing and pending applications.”<sup>1011</sup>

## **Equitable Development / Smart Growth**

### Case Law

*Eagle Environmental, L.P. v. Commonwealth of Pennsylvania*<sup>1012</sup> (2005)  
(tags: Land Use – siting, Waste)

The Pennsylvania DEP’s Environmental Quality Board issued landfill siting regulations, implementing legislation for the permitting of waste disposal facilities. The regulations require that permit applicants specify the known impacts of the landfill (*e.g.*, effects on the environment, public health and safety) and known and potential environmental harms together with mitigation plans. At issue in the case was the harm/benefit test requiring that DEP find that the public benefits of a landfill clearly outweigh its articulated and potential environmental harms (including social harms).<sup>1013</sup> Eagle Environmental challenged the treatment of its permit application, which DEP had conditionally approved subject to the applicant’s actually providing the benefits promised.

The Pennsylvania Supreme Court found that the harm/benefit balancing test was a “flexible and effective means to implement and enforce” the authorizing waste management statutes. Furthermore, the court observed that the legitimacy of the regulation was strengthened by the act’s reference to the Commonwealth’s constitutional guarantee of the people’s “right to clean air, pure water and to the preservation of the natural, scenic, historic and aesthetic values of the environment.”<sup>1014</sup> This point builds on

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<sup>1010</sup> Pennsylvania Dep’t of Environmental Protection, *E-facts*, <http://www.ahs2.dep.state.pa.us/eFactsWeb/default.aspx> (last visited Feb. 27, 2009).

<sup>1011</sup> *Id.*

<sup>1012</sup> 884 A.2d 867 (Pa. 2005); the regulations before the court are found at 25 Pa. Code §§ 271.127 and [287.127](#). This case does not expressly reference “environmental justice,” but is included as an example of the trend that state constitutional rights to a clean environment are interpreted as supporting or requiring procedural safeguards, benefiting environmental justice communities. *See* discussion of Louisiana case law, *supra* notes 282-84, and accompanying text, for similar support for environmental analysis being required before permit approvals, notwithstanding the absence of a state environmental assessment statute.

<sup>1013</sup> *Id.*

<sup>1014</sup> *Id.* at 879, *citing* Pennsylvania Constitution, art. I, § 27.

prior Pennsylvania cases, which had viewed the state constitution as requiring DEP to balance its responsibilities to protect the environment and to provide needed services to the public.<sup>1015</sup>

*Commonwealth of Pennsylvania. v. East Brunswick Township*<sup>1016</sup> (2008)  
(tags: Compliance and Enforcement, Land Use – permitting, Waste)

In December 2006, East Brunswick Township (“Township”) in Schuylkill County enacted the Sewage Sludge Ordinance (“Ordinance”), which prohibits any corporation from using sewage sludge to fertilize its land and imposes criminal sanctions upon corporations that do so in violation of the Ordinance.<sup>1017</sup> The Ordinance does allow individuals to apply sewage sludge to land, but only after securing a permit from the Township.<sup>1018</sup> More broadly, the Ordinance recognizes that ecosystems have enforceable rights against corporations, that corporations doing business in the township will be treated as state actors required to respect the rights of people and natural communities within the Township, and that East Brunswick residents can bring lawsuits to vindicate not only their own civil rights, but also the newly-mandated rights of Nature.<sup>1019</sup> The Commonwealth brought suit to have the Ordinance declared an “unauthorized local ordinance” under the Municipal Planning Code as well as state environmental and agricultural statutes.<sup>1020</sup>

Though the Commonwealth Court of Pennsylvania did not make a determination of the validity of the Ordinance, the Court refused the Attorney General’s application for summary relief and held that the Ordinance was not unauthorized on its face.<sup>1021</sup> In order to determine whether the Ordinance was preempted by the Commonwealth Agricultural Code, the Court observed that it would be necessary to make an evidentiary determination of whether application of sewage sludge to land is a “normal agricultural operation” or instead, “industrial waste disposal.”<sup>1022</sup>

### **Coordination with Federal Government** (tags: Public Health)

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<sup>1015</sup> See, e.g., *Payne v. Kassab*, 312 A.2d 86, 94 (Pa. Commw. Ct. 1973), aff’d, 361 A.2d 263, 273 (Pa. 1976).

<sup>1016</sup> 956 A.2d 1100 (Pa. 2008).

<sup>1017</sup> *Id.* at 1103.

<sup>1018</sup> *Id.*

<sup>1019</sup> The Community Environmental Legal Defense Fund, *East Brunswick Strips Sludge Corporations of “Rights,”* available at <http://www.celdf.org/PressReleases/EastBrunswickStripsSludgeCorporationsofRigh/tabid/407/Default.aspx> (last visited June 23, 2009); The Community Environmental Legal Defense Fund worked with several other municipal entities in Schuylkill County to draft and pass similar sewage sludge ordinances and expected communities across Pennsylvania to follow suit. See The Community Environmental Legal Defense Fund, *Tamaqua Law Is First In Nation to Recognize Rights of Nature*, available at <http://www.celdf.org/PressReleases/TamaquaLawRecognizesRightsofNature/tabid/367/Default.aspx>, (last visited June 23, 2009).

<sup>1020</sup> 956 A.2d at 1103.

<sup>1021</sup> *Id.* at 1015-16.

<sup>1022</sup> *Id.*

## Performance Partnership Agreement

In September 2002, U.S. EPA and PA DEP signed a performance partnership agreement. The agencies agreed to work to implement the recommendations of the Pennsylvania Environmental Justice Work Group.<sup>1023</sup> Specifically, a main priority was reducing detrimental environmental exposure to citizens, including sensitive populations. PA DEP agreed to work with U.S. EPA to identify areas of the Commonwealth with elevated occurrences of infectious and chronic disease related to environmental exposures.<sup>1024</sup>

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<sup>1023</sup> Pennsylvania Association of Conservation Districts, *PACD News*, formerly available at [www.pacd.org/news/october%252002/p3.htm+%22performance+partnership+agreement%22&hl=en&ct=clnk&cd=1&gl=us&ie=UTF-8](http://www.pacd.org/news/october%252002/p3.htm+%22performance+partnership+agreement%22&hl=en&ct=clnk&cd=1&gl=us&ie=UTF-8) (last visited Feb. 27, 2009).

<sup>1024</sup> *Id.*

## **RHODE ISLAND**

(tags: Brownfield's, Children's Issues, Community Education, Community Participation, Compliance and Enforcement, Grants, Land Use – permitting, Land Use – siting, Mapping, Open Space/Recreation, Outreach, Pollution Cleanup, Power Plants, Public Health, Redressing Environmental Racism, Study, Toxic Waste Cleanup)

### **Equitable Development**

Outdoor Recreation and Community Farming Programs (tags: Grants, Open Space/Recreation)

One aspect of the Rhode Island Department of Environmental Management's ("RI DEM") concern for environmental equity is a focus on "Open Space and Recreation Opportunities." 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."<sup>1025</sup> In addition to making urban, disadvantaged communities healthy and environmentally sound, RI DEM also seeks to make those areas desirable places to live. For example, RI DEM has amended recreational grant regulations to encourage more recreational development in disadvantaged communities by considering the "geographic disparities in the allocation of recreational resources throughout the state when considering grant applications."<sup>1026</sup>

### **Pollution Cleanup**

Environmental Justice Policy (tags: Brownfields, Community Education, Community Participation, Compliance and Enforcement, Outreach, Pollution Cleanup, Redressing Environmental Racism, Toxic Waste Cleanup)

In November 2006, the RI DEM initiated a collaborative stakeholder process which came to be known as the RI DEM Stakeholder Group on Environmental Equity in the Clean Up and Reuse of Contaminated Properties in Rhode Island.<sup>1027</sup> The goal of the stakeholder process was to develop and implement measures to ensure consistent and fair consideration of environmental equity and community issues related to the cleanup of contaminated sites in Rhode Island.<sup>1028</sup> The work of the stakeholders is captured in a June 2009 policy entitled "Policy for Considering Environmental Justice in the Review of Investigation and Remediation of Contaminated Properties."<sup>1029</sup>

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<sup>1025</sup> Rhode Island Dep't of Environmental Management, *Environmental Equity in Rhode Island Progress Report*, at 13, available at <http://www.dem.ri.gov/pubs/eeqprog.pdf> (last visited Sept. 7, 2009).

<sup>1026</sup> *Id.* at 16.

<sup>1027</sup> E-mail from Elizabeth Stone, Policy Analyst, Rhode Island Dep't of Environmental Management (July 15, 2009).

<sup>1028</sup> *Id.*

<sup>1029</sup> Available at <http://www.dem.ri.gov/enequity/pdf/ejfinal.pdf> (last visited Aug. 1, 2009).

The Policy states that low income and minority communities have historically been subject to environmental inequalities that must be addressed by providing fair and effective process for involvement in contaminated site remediation projects.<sup>1030</sup> To this aim, the Policy emphasizes the rights of the public to petition RI DEM regarding suspected release of contaminants.<sup>1031</sup> Petitions must receive a formal response, in writing, confirming receipt of the petition and the anticipated work and timeline necessary for response. In addition, RI DEM must inform the petitioner of the results of the contaminated site evaluation and anticipated next steps.<sup>1032</sup> The RI DEM is also required to establish a multilingual complaint hotline and website, as well as an on-line inventory of all sites currently under investigation or that have been investigated. The inventory will include information on the types of contaminants found at each site, as well as planned response actions and remedial actions taken or to be taken.<sup>1033</sup>

As stated in the Policy, RI DEM plans to develop and distribute information about the DEM and its Site Remediation and Brownfields Program in order to increase awareness of tools and resources offered so that communities may address EJ issues in their own neighborhoods.<sup>1034</sup> Facts sheets and pamphlets will be distributed both at individual contaminated sites and at community centers. RI DEM also hopes to expand advertisement of Environmental Roundtable meetings in urban communities.<sup>1035</sup>

Industrial Property Remediation and Reuse Act (tags: Children’s Issues, Community Participation, Land Use – siting, Outreach, Redressing Environmental Racism, Toxic Waste Cleanup)

Rhode Island’s Industrial Property Remediation and Reuse Act (“IPRARA”) statute mandates that the RI DEM “shall consider the effects that clean-ups would have on the population surrounding each site and shall consider the issues of environmental equity for low-income and racial minority populations.”<sup>1036</sup> 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.”<sup>1037</sup>

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<sup>1030</sup> *Id.*

<sup>1031</sup> *Id.* at 3.

<sup>1032</sup> *Id.*

<sup>1033</sup> *Id.*

<sup>1034</sup> *Id.* at 6.

<sup>1035</sup> *Id.* at 7.

<sup>1036</sup> R.I. GEN. LAWS § 23-19.14-5(a) (2003).

<sup>1037</sup> *Id.*; *see also* § 23-19-13.4 (describing host community assessment committees and their role in siting decisions).

In response to the *Hartford Park* case discussed below, RI DEM proposed a change to IPRARA in the 2006 legislative session. The amendment, enacted in July of 2006, provides for public participation earlier in the site selection process when: (1) the proposed use is sensitive (e.g. public recreational facility, school, and day-care; and (2) one or more of the sites under consideration is contaminated.<sup>1038</sup> The enhanced protections also result in a written report incorporating analysis and public comments, and, absent exigencies, no work may be performed on the site until the public meeting has been held and the comment period has closed.<sup>1039</sup>

### Case Law

*Hartford Park Tenants Association*<sup>1040</sup> (2005) (tags: Children’s Issues, Community Participation, Land Use – permitting, Outreach, Redressing Environmental Racism)

Plaintiffs invoked IPRARA’s Section 5(a) in challenging RI DEM’s conduct when issuing a permit for a school to be sited on a former landfill, near a predominantly African-American and Latino, low-income population. Specifically, plaintiffs contended that RI DEM failed to consider EJ issues, and did not provide an opportunity for effective public participation as required by IPRARA. The court agreed, stating that while the site investigation was thorough and the site remedy exceeded that which could have been required by law or regulation, RI DEM failed “to develop and implement a process that ensured community involvement.”<sup>1041</sup> Specifically, RI DEM did not ensure that abutters received notice of the impending actions, and failed to provide access to the relevant public records near the site. In addition, RI DEM did not heed the requirements of IPRARA Section 5(a), in failing to consider environmental equity in the conducting the site investigation of the former landfill. The court rejected Title VI and section 1983 claims.<sup>1042</sup>

### **Improving Public Health**

Mapping Project (tags: Mapping, Power Plants, Public Health, Study)

In 2001, RI DEM’s 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.”<sup>1043</sup> This study analyzed the proximity of populations to environmental risks including, among other things, air emissions, wastewater treatment facilities, and power plants. The students mapped demographic, racial, and income

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<sup>1038</sup> E-mail from Michele Musselman (Mar. 17, 2006) (on file with authors); SB 3113 (2006), *codified at* R.I. GEN. LAWS § 23-19.14-5(a)(4)(i)(2007).

<sup>1039</sup> R.I. GEN. LAWS § 23-19.14-5(a)(4)(ii)(2007).

<sup>1040</sup> *Hartford Park Tenants Ass’n v. R.I. Dep’t of Env’tl. Mgmt.* 2005 R.I. Super. Lexis 148 (Sup. Ct. R.I. 2005).

<sup>1041</sup> *Hartford Park Tenants*, 2005 R.I. Super. Lexis at 174

<sup>1042</sup> *Hartford Park*, 2005 R.I. Super. Lexis at 175, *citing* R.I. GEN. LAWS §23-19.14.1-1.

<sup>1043</sup> *Environmental Equity in Rhode Island, Progress Report*, *supra* note 1015, at 8.

census data and compared it to pollution source data.<sup>1044</sup> The study provided the state with a quantifiable method for identifying populations that are exposed to a disproportionate amount of environmental hazards.<sup>1045</sup> After completing the study, the students conducted a similar study on a finer scale, focusing on the city of Providence.<sup>1046</sup>

## Coordination with Federal Government

Performance Partnership Agreement (tags: Community Participation, Compliance and Enforcement)

RI DEM's 2008-2010 PPA with U.S. EPA reiterates RI DEM's strategy to increase effective public participation in site remediation and Brownfield projects in EJ areas through implementation of RI DEM's EJ policy and stakeholder recommendations.<sup>1047</sup> EPA's Priorities and Commitments List 2008 for RI DEM states that by 2011, thirty communities with potential EJ concerns should achieve significant, measurable environmental or public health improvement through collaborative problem solving problems.<sup>1048</sup>

Partnership with Brown University (tags: Community Participation, Grants, Toxic Waste Cleanup)

RI DEM has also partnered with Brown University on issues related to site cleanup and community involvement. Brown is the recipient of a Superfund Research Program (SRP) grant as part of a network of university grants designed to seek solutions to the complex health and environmental issues associated with the nation's hazardous waste sites. The research conducted by the SRP is a coordinated effort with the EPA.<sup>1049</sup>

The Community Outreach core of Brown's SRP works with community-based organizations on environmental health and justice issues, in formal and informal partnerships, on education, legislation, regulation, and cleanup.<sup>1050</sup> Professors, Ph.D. candidates, and undergraduate students working with the Community Outreach core program have been actively involved in RI DEM's Environmental Justice stakeholder process and similar EJ work since 2006.<sup>1051</sup>

## Contact

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<sup>1044</sup> *Id.* at 8-12. The pollution source data included, among other things, locations of power plants, hazardous waste generators, and auto body shops.

<sup>1045</sup> *Id.* at 8.

<sup>1046</sup> *Id.*

<sup>1047</sup> Rhode Island Dep't of Environmental Management and U.S. EPA, *Performance Partnership Agreement (FYS 2008-2010)*, at Tab A, 132, available at <http://www.dem.ri.gov/pubs/ppa0810.pdf> (last visited July 2, 2009).

<sup>1048</sup> *Id.* at Tab B, 14.

<sup>1049</sup> E-mail from Elizabeth Stone, *supra* note 1017.

<sup>1050</sup> Brown University SRP, *Community Outreach Core – Environmental Health and Justice*, <http://www.brown.edu/Research/SBRP/coreE.shtml> (last visited Aug. 1, 2009).

<sup>1051</sup> E-mail from Elizabeth Stone, *supra* note 1017.

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## SOUTH CAROLINA

(tags: Community Education, Community Participation, Compliance and Enforcement, Land Use – permitting, Outreach, Redressing Environmental Racism, Study)

### **General Environmental Justice Activities**

DHEC and EQC (tags: Community Education, Community Participation, Land Use – permitting, Outreach, Study)

The Department of Health and Environmental Control (“DHEC”) does not have a formal EJ policy, but has previously studied EJ issues. In 1995, Ms. Lill Mood, a former Office of Environmental Quality Control (“EQC”) Community Liaison, organized a Future Search Conference where she brought together a balanced group of stakeholders to find common ground on EJ issues.<sup>1052</sup> 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. The studies helped the DHEC focus on what areas are particularly vulnerable, and as a result, DHEC collaborated with U.S. EPA on a Community Based Environmental Protection Project in one of those areas.<sup>1053</sup> 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.<sup>1054</sup>

The EQC, the environmental regulatory arm of DHEC, currently has a Community Liaison, Nancy Whittle, who also acts as the EJ Coordinator. She is responsible for addressing community concerns with respect to EQC permitting and other activities.<sup>1055</sup> The EJ Coordinator initially created an EQC Public Participation Plain Language Taskforce; however, upon meeting, it became evident that the task force needed to address other issues that dealt with the public besides simply language issues.<sup>1056</sup> The Public Participation Task Force held listening sessions across the state in order to receive input from its stakeholders on its public participation actions. Since then, staff has reviewed and analyzed the comments to develop some priorities to be addressed. Two subcommittees were formed and are presently addressing Early, Consistent and Effective Notifications and the Public Education and Interaction. The task force defines public participation as “a full range of actions and processes that EQC uses to involve the public in our work.”<sup>1057</sup>

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<sup>1052</sup> E-mail from Lill Mood, former Community Liaison, Office of Environmental Quality Control, Dep’t of Health and Environmental Control (Nov. 4, 2000) (on file with authors).

<sup>1053</sup> *Id.*

<sup>1054</sup> Telephone interview with Nancy Whittle, Environmental Justice Coordinator, Dep’t of Health and Environmental Control (Oct. 15, 2003).

<sup>1055</sup> *Id.*

<sup>1056</sup> E-mail from Karen Sprayberry, EQC Administration, Dep’t of Health and Environmental Control (July 31, 2009).

<sup>1057</sup> *Id.*

DHEC has a policy objective that being proactive and involving all stakeholders early in the process will address EJ concerns through community input rather than through use of a formal EJ policy.<sup>1058</sup> Since creating the public participation task force, the DHEC has taken the following actions:

1. Established public participation workgroups in each program area.
2. Created a public participation orientation video.
3. Developed public participation training using orientation video.
4. Public participation added to DHEC's strategic plan and staff's EPDP.
5. Developed a meeting/hearing evaluations survey.
6. Conducted a benchmark survey of staff on public participation knowledge and attitude towards changing the culture.
7. Provided EJ training to DHEC staff by EPA-Region 4 EJ staff.
8. Added five additional staff – three Program Public Participation Coordinators and two Regional Community Liaisons (Upstate and Low Country).
9. Held pre-meeting/debriefing before and after meetings/hearings.
10. Provided IAP2 training to another group of staff (management, outreach, etc.)
11. Deputy has public participation as one of his top five priorities for EQC.
12. Conducted three listening sessions around the state (diversity of stakeholders) – asking about DHEC's process, *i.e.*, public meetings, public notices, DHEC's authority, accessibility of information and staff.
13. Identified priorities.
14. Established two subcommittees.<sup>1059</sup>

In 2008, DHEC was awarded the 2008 Environmental Justice Achievement Award by the U. S. EPA. The agency received this award for its distinguished accomplishments in addressing EJ issues through the public participation initiative.<sup>1060</sup>

#### HB 3933 (tags: Community Participation, Compliance and Enforcement, Study)

On May 31, 2007, the legislature passed HB 3933, a Joint Resolution to create the multi-agency South Carolina Environmental Justice Advisory Committee (“EJAC”) to the DHEC.<sup>1061</sup> EJAC, which has met bimonthly since October 2007, has been charged with studying existing practices at state agencies related to EJ issues in economic development and revitalization projects in this state and to make recommendations back to the Governor and General Assembly in a report due in January 2010.<sup>1062</sup> EJAC defines EJ as the fair treatment and meaningful involvement of people of all races, cultures and income with respect to the development, adoption, implementation and enforcement of environmental laws, regulations and policies in working towards

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<sup>1058</sup> Telephone interview with Nancy Whittle, EJ Coordinator, Dep't of Health and Environmental Control, (Nov. 7, 2005).

<sup>1059</sup> E-mail from Karen Sprayberry, *supra* note 1046.

<sup>1060</sup> *Id.*

<sup>1061</sup> HB 3933, 2007 Leg. 117th Sess. (S.C. 2007); E-mail from Nancy Whittle, EJ Coordinator, Dep't of Health and Environmental Control, (Mar. 9, 2009).

<sup>1062</sup> E-mail from Karen Sprayberry, *supra* note 1046.

increasing prosperity of all South Carolinians.<sup>1063</sup> EJAC realized that those most impacted by EJ issues were not a part of the Advisory Committee; therefore, the EJAC decided to hold listening sessions across the state.<sup>1064</sup> They held four listening sessions between January and May 2009 and invited various stakeholders to attend.<sup>1065</sup> The information received from those listening sessions will be incorporated into the report to the Governor and General Assembly.<sup>1066</sup>

Pursuant to its goal of studying EJ in connection with economic revitalization and the EJ practices and policies of state agencies, EJAC established four subcommittees to report on health, education and awareness, policy, and revitalization and reuse.<sup>1067</sup> The subcommittees' findings, accompanied by public comments, will be submitted in the report as well.<sup>1068</sup> Staff of the EJAC believes that once the report is presented, new EJ policies will be placed in some, if not most, state agencies.<sup>1069</sup>

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<sup>1063</sup> E-mail from Nancy Whittle, *supra* note 1051.

<sup>1064</sup> *Id.*

<sup>1065</sup> *Id.*

<sup>1066</sup> *Id.*

<sup>1067</sup> *Id.*

<sup>1068</sup> *Id.*

<sup>1069</sup> E-mail from Karen Sprayberry, *supra* note 1046.

## **SOUTH DAKOTA**

(tags: Compliance and Enforcement, Native Americans)

### **General Environmental Justice Activities** (tags: Native Americans)

The authors did not find any relevant EJ programs, policies, or statutes for the state of South Dakota, and a staff attorney for the South Dakota Department of Environment and Natural Resources (“DENR”) confirmed that South Dakota does not have a formal policy.<sup>1070</sup> South Dakota continues to monitor EJ developments across the country, and remains committed to complying with any federal mandates that are put in place.<sup>1071</sup> South Dakota’s main focus, with regard to EJ issues, is on tribal lands the U.S. EPA considers “Indian Country,” although U.S. EPA has declined to delegate authority over EJ issues over to the state authorities.<sup>1072</sup>

### **Coordination with Federal Government**

#### Performance Partnership Agreement (tags: Compliance and Enforcement)

In 2008, DENR, the South Dakota Department of Agriculture, and U.S. EPA adopted a multi-year PPA that will end in fiscal year 2012.<sup>1073</sup> As it has done in previous PPAs, the Department of Agriculture identifies environmental justice as one of its top fifteen priorities, along with community-based environmental protection.<sup>1074</sup>

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<sup>1070</sup> E-mail from Joe Nadenicek, Staff attorney, South Dakota Dep’t of Environment & Natural Resources (June 30, 2009).

<sup>1071</sup> *Id.*

<sup>1072</sup> *Id.*

<sup>1073</sup> South Dakota Dep’t of Environment & Natural Resources, *South Dakota’s Performance Partnership Agreement (Abstract)*, available at <http://denr.sd.gov/documents/ppg.aspx> (last visited June 29, 2009).

<sup>1074</sup> *Id.*

# **TENNESSEE**

(tags: Brownfields, Children’s Issues, Community Education, Community Participation, Grants, Outreach, Public Health, Redressing Environmental Racism, Waste)

## **General Environmental Justice Activities** (tags: Community Participation, Outreach)

### Environmental Justice Program

In March 2005, the Tennessee Department of Environment and Conservation (“TDEC”) completed a total reorganization of the Bureau of Environment, and created a position for a Director of Diversity Programs, which includes Title VI and Environmental Justice. David Owenby, Director of Public Affairs for TDEC, explained that TDEC has elevated the position in order to demonstrate its importance.<sup>1075</sup> In 2006, TDEC hired Costin Shamble to fill the Environmental Justice Coordinator position.

Pursuant to Title VI of the Civil Rights Act of 1964, the Environmental Justice Program (“EJP”) “seeks to ensure the full and fair participation by all potentially affected communities in the environmental decision-making process and emphasizes quality of life and environmental protection improvements in all communities.”<sup>1076</sup>

Since its inception, the EJP has made several strides in promoting EJ, including the development of Title VI materials to promote compliance with federal non-discrimination requirements and the provision of Title VI training for TDEC Environmental Field Office managers.<sup>1077</sup> In 2008, EJP submitted a comprehensive version of TDEC’s Title VI Implementation Plan, which included a new Title VI poster and a Limited English Proficiency plan.<sup>1078</sup>

## **Community Participation**

### Educational Efforts (tags: Community Education, Outreach)

EJP coordinated with other TDEC divisions to provide materials in Spanish to increase the effectiveness of communication with residents with limited English proficiency.<sup>1079</sup> Publications included the Radon Program Flyer, the Radon Program sign-up pamphlet, and the “Learn Before you Burn” handout.<sup>1080</sup>

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<sup>1075</sup> E-mail from David Owenby, Director of Public Affairs, Tennessee Dep’t of Environment and Conservation (Apr. 5, 2005).

<sup>1076</sup> E-mail from Costin Shamble, Environmental Justice Coordinator, Tennessee Dep’t of Environment and Conservation (Feb. 20, 2009).

<sup>1077</sup> *Id.*

<sup>1078</sup> *Id.*

<sup>1079</sup> *Id.*

<sup>1080</sup> *Id.*

In its effort to promote environmental justice, EJP has given presentations on environmental justice. At the 2007 East Tennessee Environmental Conference, EJP presented *Environmental Justice in Tennessee*. In 2008, EJP presented *Environmental Justice: A Historical, Policy, and Case Overview* during an engineering seminar at Tennessee State University (TSU). Also in 2008, EJP presented *State Funding Opportunities* at TSU to provide an overview of grants and loans available from TDEC.

#### Recycling Partnerships With Elementary Schools (tags: Children's Issues, Waste)

EJP used the percentage of students participating in the USDA's free and reduced price lunch program, minority student population, and English as a Second Language student population as factors for selecting schools to partner with to promote recycling.<sup>1081</sup> During the 2007-08 school year, EJP partnered with Charlotte Park Elementary School to enhance their recycling program.<sup>1082</sup> The following school year, EJP collaborated with Robert E. Lillard Design Center at Kings Lane Elementary School to set up a new recycling program.

### **Equitable Development**

#### Case Law

*Ball v. Union Carbide Corp.*<sup>1083</sup> (2004) (tags: Redressing Environmental Racism)

Plaintiffs sought compensation for harm allegedly incurred from the emission of radioactive substances from the manufacture of nuclear weapons at the federal facilities in Oak Ridge.<sup>1084</sup> The facilities recruited African-Americans to work as laborers and housed them in close proximity to one of the plants.<sup>1085</sup> Plaintiffs claimed that because of the exposure they either have cancer or are more likely to develop cancer and that the location of the plant violated civil rights statutes as well as the Due Process and Equal Protection clauses of the Constitution.<sup>1086</sup>

The Sixth Circuit denied plaintiffs relief on the grounds that their claim was barred by Tennessee's one-year limit for personal injury claims. In an attempt to bypass the statute of limitations bar, plaintiffs claimed that the limitation was not applicable because the contractors had a duty to remedy the vestiges of past de jure racial segregation.<sup>1087</sup> The court held that the contractors had no affirmative duty to remedy the vestiges of past governmental discrimination.<sup>1088</sup>

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<sup>1081</sup> *Id.*

<sup>1082</sup> *Id.*

<sup>1083</sup> 385 F.3d 713 (6th Cir. 2004).

<sup>1084</sup> *Id.* at 718.

<sup>1085</sup> *Id.*

<sup>1086</sup> *Id.*

<sup>1087</sup> *Id.* at 724.

<sup>1088</sup> *Id.* at 725.

## Improving Public Health

### Lead Screenings (tags: Children's Issues, Outreach, Public Health)

In 2008, TDEC and EJP collaborated with the Tennessee Department of Public Health and the Lenoir City Government to provide free lead screenings in Lenoir City, Tennessee.<sup>1089</sup> The screenings were provided to children between the ages of six months and ten years old and to pregnant women in an area with a large Hispanic population.<sup>1090</sup> Educational materials were distributed in both English and Spanish.<sup>1091</sup>

### Reducing Exposure to Indoor Air Pollutants (tags: Grants, Public Health)

Teaming up with other TDEC employees, EJP applied for the "2008 Indoor Environments: Reducing Public Exposure to Indoor Air Pollutants" EPA grant.<sup>1092</sup> The EJ component of the grant "focused on the high incidence of asthma in minority and low-income communities."<sup>1093</sup>

## Pollution cleanup

### Brownfields (tags: Brownfields, Grants, Toxic Waste Cleanup)

In 2008, EJP worked with Petroleum Brownfields Initiative Work Group to develop a broad-based approach for identifying brownfield sites that are potentially eligible for EPA grants.<sup>1094</sup> The EJP provided the EJ component of the brownfields informational toolbox, which provided tips on obtaining demographic information about brownfield sites.<sup>1095</sup>

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<sup>1089</sup> E-mail from Costin Shamble, *supra* note 1066.

<sup>1090</sup> *Id.*

<sup>1091</sup> *Id.*

<sup>1092</sup> *Id.*

<sup>1093</sup> *Id.*

<sup>1094</sup> *Id.*

<sup>1095</sup> *Id.*

# **TEXAS**

(tags: Community Participation, Grants, Redressing Environmental Racism, Water)

**General Environmental Justice Activities** (tags: Community Participation, Redressing Environmental Racism)

## Environmental Equity Program

In 1993, the Texas Commission on Environmental Quality (“TCEQ”) created an Environmental Equity Program (“Program”) to improve communications between government, local communities, and neighboring industries.<sup>1096</sup> As part of the Program, TCEQ established an Environmental Equity Office to address complaints and citizens’ actions relating to TCEQ activities. The Program seeks to increase community participation in the regulatory process, “serve as the agency contact to address allegations of injustice,” and promote environmental equity in all communities.<sup>1097</sup>

To help facilitate these goals, TCEQ has set up a toll-free number to enable individuals to raise environmental equity concerns. Additionally, TCEQ works to increase staff awareness about environmental equity and justice issues. In particular, the program encourages technical staff to consider that the environmental programs they develop for businesses also affect the communities living around those businesses.<sup>1098</sup>

**Coordination with Federal Government** (tags: Grants, Water)

## Water Fund Distribution Regulations

In distributing capitalization grant funds under the Clean Water Revolving Fund<sup>1099</sup> and the Drinking Water Revolving Fund,<sup>1100</sup> Texas requires that a project must comply with federal Executive Order 12898, which requires federal agencies to incorporate EJ principles into their missions.<sup>1101</sup>

## **Contact**

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<sup>1096</sup> Texas Commission on Environmental Equity, *Environmental Equity: Program Overview* [http://www.tceq.state.tx.us/comm\\_exec/opa/envequ.html](http://www.tceq.state.tx.us/comm_exec/opa/envequ.html) (last visited Aug. 31, 2009).

<sup>1097</sup> *Id.*

<sup>1098</sup> *Id.*

<sup>1099</sup> Clean Water State Revolving Fund, 31 TEX. ADMIN. CODE § 375.212 (West 2003).

<sup>1100</sup> Drinking Water State Revolving Fund, 31 TEX. ADMIN. CODE § 371.18 (West 2003).

<sup>1101</sup> Exec. Order No. 12,898, *supra* note 11.

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# UTAH

(tags: Compliance and Enforcement, Waste)

## **General Environmental Justice Activities**

Utah does not have a formal EJ policy or program.

## **Coordination with Federal Government**

Performance Partnership Agreement (tags: Compliance and Enforcement, Waste)

Utah Department of Environmental Quality (“UDEQ”) has a current PPA with U.S. EPA which repeats their understanding of EJ, the intention to conduct regulatory programs according to EJ principles, and to communicate about EJ issues.<sup>1102</sup> The PPA explains in more detail the agreement between U.S. EPA and divisions of UDEQ. The section of the PPA outlining the Division of Solid and Hazardous Waste (“DSHW”) programs, for example, states DSHW’s intention to identify waste sites in EJ communities, address disparate impacts of permitting and enforcement, and use U.S. EPA staff and GIS resources.<sup>1103</sup>

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<sup>1102</sup> *Utah Department of Environmental Quality Performance Partnership Agreement* (FY 2009), at III-5, available at [http://www.deq.utah.gov/About\\_DEQ/Planning/PPA/docs/2009\\_PPA\\_PDFs/2009\\_agreements\\_and\\_initiatives\\_final.pdf](http://www.deq.utah.gov/About_DEQ/Planning/PPA/docs/2009_PPA_PDFs/2009_agreements_and_initiatives_final.pdf) (last visited June 29, 2009).

<sup>1103</sup> *See*. Dep’t of Environmental Quality, *Division of Solid and Hazardous Waste RCRA Program – Performance Partnership FY 2009*, available at [http://www.deq.utah.gov/About\\_DEQ/Planning/PPA/docs/2009\\_PPA\\_PDFs/2009\\_dshw\\_final.pdf](http://www.deq.utah.gov/About_DEQ/Planning/PPA/docs/2009_PPA_PDFs/2009_dshw_final.pdf) (last visited Aug. 29, 2009).

## VERMONT

(tags: Brownfields, Grants, Land Use – permitting, Land Use – siting, Mapping, Redressing Environmental Racism, Study, Transportation, Waste, Water)

**General Environmental Justice Activities** (tags: Community Education, Land Use – siting, Study, Waste)

In its “Environment 2001” Report, the Vermont Agency of Natural Resources (“ANR”) included a whole section about the importance of environmental justice in its “assessment of waste” section.<sup>1104</sup> The report defined EJ as the “the pursuit of equal treatment and equal protection for all people under environmental statutes and regulations.”<sup>1105</sup> More recent reports have not included such EJ statements.<sup>1106</sup> While the statement does not rise to the level of an EJ policy, it does demonstrate an awareness of environmental justice. The statement explains that avoiding potential environmental injustice issues related to the siting of new landfills and transfer stations provides ANR with additional incentives to curtail consumption, stimulate reuse and recycling, and reduce the flow of trash to existing landfills in the state.<sup>1107</sup> Accordingly, ANR has created an ambitious Solid Waste Management Plan to curtail the amount of refuse sent to landfills that may be in EJ communities.<sup>1108</sup>

Within ANR, the Department of Environmental Conservation (“DEC”) maintains an Environmental Assistance Office, which, among other functions, provides environmental compliance assistance to small businesses, municipalities, and communities “to identify effective and economical ways to reduce waste at the source . . . and to safeguard human health and the environment.”<sup>1109</sup>

### Statutory Provision (tags: Water)

In 1985, Vermont added a statutory provision (as amended in 2003) to its Conservation and Development code section that provides for a reduced loan rate and longer amortization period for disadvantaged municipalities<sup>1110</sup> receiving financial assistance with water supply projects.<sup>1111</sup>

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<sup>1104</sup> Vermont Agency of Natural Resources, *Environment 2001*, “Waste,” <http://www.anr.state.vt.us/env01/waste.htm> (last visited Feb. 5, 2009).

<sup>1105</sup> *Id.*

<sup>1106</sup> See, e.g., Vermont Agency of Natural Resources, *Topic Index (1997-2003)*, available at <http://www.anr.state.vt.us/mei2.html> (last visited July 29, 2009). The most recent report indexed on the Agency’s website is from 2003.

<sup>1107</sup> *Environment 2001*, “Waste,” *supra* note 1094.

<sup>1108</sup> Telephone interview with Warren Coleman, General Counsel, Agency of Natural Resources (Apr. 21, 2005).

<sup>1109</sup> Vermont Department of Environmental Conservation, *Environmental Assistance Office*, available at <http://www.anr.state.vt.us/dec/ead/index.htm> (last visited Feb. 5, 2009).

<sup>1110</sup> “Disadvantaged municipality” is defined by VT. STAT. ANN. tit. 10, § 1571(9) (2009) as either (1) having a median household income (“MHI”) below the state MHI and, after construction of the water

## Community Participation

### Mapping/GIS (tags: Brownfields, Mapping)

ANR maintains an Environmental Interest Locator, a web map that provides geographic information about environmental features and sites that the agency manages, including brownfields and hazardous waste sites.<sup>1112</sup> This web based viewer allows users to view not only the spatial aspects of a hazardous waste site, but also environmental data sets about each site that will allow a more thorough assessment of the site's attributes and risks. The hazardous waste site database is updated weekly.

## Equitable Development

### Case Law

*Senville v. Peters*<sup>1113</sup> (2004) (tags: Redressing Environmental Racism, Transportation)

Plaintiffs sued the Federal Highway Administration (“FHWA”) under NEPA, challenging defendants’ evaluation of the final EIS for the Chittenden County Circumferential Highway Project (“the project”). In their EJ claim, plaintiffs argued that when preparing the FEIS, FHWA failed to consider the impacts of the project on low-income and minority communities.<sup>1114</sup> Plaintiffs alleged that because construction of the project would result create jobs primarily in non-urban outlying areas inaccessible by public transportation, the project would have an adverse impact on EJ communities that rely on public transportation.<sup>1115</sup>

The district court held that because FHWA chose to consider EJ impacts in its Final Revised Environmental Evaluation (“FREA”) of the project, the FREA was subject to review under the Administrative Procedure Act.<sup>1116</sup> However, the FREA did include figures projecting that any shift in job growth caused by the project would be insignificant. As such, the court held that it was not unreasonable for FHWA to conclude that such a small shift was not a significant adverse employment effect on low-income and minority communities, and that FHWA’s evaluation was reasonable.<sup>1117</sup>

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project, an annual household user cost of over one percent of MHI, or (2) having a MHI of equal or greater than state median and an annual household user cost of over 2.5 percent of MHI.

<sup>1111</sup> Telephone interview with Catherine Gjessing, General Counsel, Department of Environmental Conservation (Feb. 5, 2009); *see also* VT. STAT. ANN. tit. 10, § 1624 (2009).

<sup>1112</sup> Vermont Agency of Natural Resources, *Environmental Interest Locator*, [http://maps.vermont.gov/imf/sites/ANR\\_NATRESViewer/jsp/launch.jsp](http://maps.vermont.gov/imf/sites/ANR_NATRESViewer/jsp/launch.jsp) (last visited Aug. 31, 2009).

<sup>1113</sup> 327 F.Supp.2d 335 (D. Vt. 2004).

<sup>1114</sup> *Id.* at 362.

<sup>1115</sup> *Id.* at 362-63.

<sup>1116</sup> *Id.*

<sup>1117</sup> *Id.*

**Coordination with Federal Government** (tags: Compliance and Enforcement, Grants, Land Use – permitting)

According to the PPA between DEC and U.S. EPA for the Federal Fiscal Years 2007-2009, DEC “will continue to incorporate Environmental Justice into [its] permitting decisions and other administrative actions, in regulatory, enforcement and grant programs, to the extent allowed by appropriate legal authorities.”<sup>1118</sup> DEC also agreed in this PPA “to prepare a policy document on Environmental Justice . . . to further advance [its] efforts in this area.”<sup>1119</sup>

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<sup>1118</sup> Vermont Environmental Conservation, *Performance Partnership Agreement 2007-2009*, available at [http://www.anr.state.vt.us/dec/epappa/PPA2007-2009/Final\\_PPA\\_2007\\_to\\_2009.pdf](http://www.anr.state.vt.us/dec/epappa/PPA2007-2009/Final_PPA_2007_to_2009.pdf) (last visited Feb. 5, 2009).

<sup>1119</sup> *Id.*

# VIRGINIA

(tags: Community Participation, Compliance and Enforcement, Land Use - siting, Mapping, Outreach, Redressing Environmental Racism, Study, Waste)

**General Environmental Justice Activities** (tags: Compliance and Enforcement, Land Use – siting, Mapping, Redressing Environmental Racism, Study, Waste)

Virginia began addressing EJ concerns in 1993.<sup>1120</sup> Its 1993 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.<sup>1121</sup> In a 1995 report to the General Assembly, 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.”<sup>1122</sup> The JLARC study also discovered there are more inspections at waste facilities located in white areas than those located in minority areas.<sup>1123</sup>

As a result of the study, JLARC recommended that the Virginia Department of Environmental Quality (“VDEQ”) 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.<sup>1124</sup>

## **Community Participation**

Online Permitting and Consent Order Information (tags: Community Participation)

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<sup>1120</sup> H.J.R. 529, 1993 Sess. (Va. 1993), available at <http://leg2.state.va.us/dls/h&sdocs.nsf/4d54200d7e28716385256ec1004f3130/b9bdf4f9e5dd582e8525616a006f1778?OpenDocument> (last visited July 5, 2009).

<sup>1121</sup> See Virginia Waste Management Act, VA. CODE ANN. § 10.1 – 1408.1 *et seq.* (Michie 2003) (requiring public participation for permit approval of solid and hazardous waste siting facilities).

<sup>1122</sup> 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/4d54200d7e28716385256ec1004f3130/b9bdf4f9e5dd582e8525616a006f1778?OpenDocument> (last visited Jan. 28, 2009).

<sup>1123</sup> *Id.*

<sup>1124</sup> Telephone interview with Bob Rotz, Joint Legislative Audit and Review Commission (Nov. 20, 2000).

VDEQ makes permitting and consent order information available online, and provides copies of the notice, draft permit, consent order.<sup>1125</sup> It also lists the time frames for public comment for each permit or order, as well as the VDEQ contact person.<sup>1126</sup>

#### Mapping/GIS (tags: Mapping)

VDEQ maintains a “What’s In My Backyard” application through its online mapping system. A state map displays a range of environmental information, including the location of petroleum release sites, solid waste facilities, significant discharges, impaired waters, and water quality monitoring stations.<sup>1127</sup> Individuals can zoom in to the street level and estimate distances using the measurement tool.

#### Public Participation Guidelines (tags: Community Participation, Outreach)

In 2008 the Department of Planning and Budget, as required by statute, drafted Model Public Participation Guidelines that various agencies, including VDEQ, the Air Pollution Control Board, the Water Control Board, and the Waste Management Board were required to adopt.<sup>1128</sup> The guidelines include requirements for notification, public comment, advisory panels, and public hearing.<sup>1129</sup> Under the new regulations, interested persons can request to be on the “notification list,” and receive e-mail or paper notification of proposed regulatory actions in their area of interest.<sup>1130</sup> Individuals can also request to receive such notification on the “Town Hall” website, which “houses detailed information on all regulations and regulatory meetings of all state agencies” and boards.<sup>1131</sup>

#### Community Involvement Policies (tags: Community Participation, Study)

The Community Involvement Task Force was created by VDEQ in 2004 to study ways to increase public participation in VDEQ decisions.<sup>1132</sup> The Task Force was composed of representatives of major environmental groups and DEQ staff members.<sup>1133</sup>

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<sup>1125</sup> Virginia Dep’t of Environmental Quality, *Air Permitting Public Notices*, <http://www.deq.state.va.us/air/permitting/permits.htm> (last visited Mar. 4, 2009); Virginia Dep’t of Environmental Quality, *Enforcement – Public Notices*, <http://www.deq.state.va.us/enforcement/notices.html> (last visited Mar. 4, 2009).

<sup>1126</sup> *Air Permitting Public Notices*, *supra* note 1115.

<sup>1127</sup> Virginia Dep’t of Environmental Quality, Geographic Environmental Information Systems, *What’s in My Backyard*, [http://gisweb.deq.virginia.gov/deqims/viewer.htm?SERVICE=VA\\_DEQ](http://gisweb.deq.virginia.gov/deqims/viewer.htm?SERVICE=VA_DEQ) (last visited Feb. 23, 2009).

<sup>1128</sup> See Virginia Dep’t of Environmental Quality, *Public Notice – Environmental Regulation*, available at <http://www.deq.state.va.us/export/sites/default/info/pdf/publicnotice-ppg.pdf> (last visited Feb. 23, 2009).

<sup>1129</sup> See, e.g., 9 VA. ADMIN. CODE § 5-5-10, *et. seq.* (2009).

<sup>1130</sup> *Id.* at § 5-5-30 (2009).

<sup>1131</sup> Virginia Dep’t of Environmental Quality, *The Virginia Regulatory Town Hall*, available at <http://www.deq.state.va.us/export/sites/default/info/pdf/GetTheFacts.TownHall.pdf> (last visited Mar. 4, 2009).

<sup>1132</sup> Virginia Dep’t of Environmental Quality, *Community Involvement Task Force*, <http://www.deq.state.va.us/community/taskforce.html> (last visited Mar. 4, 2009).

<sup>1133</sup> *Id.*

One of the results of the Task Force was development of a Community Involvement Policy, which was approved in 2004.<sup>1134</sup> Since then, VDEQ has produced numerous information pamphlets which are available on its website including the *Guide for Effective Public Comments* and *Best Practices in DEQ Community Involvement*, a summary of effective techniques recently used by various VDEQ offices to engage the public.<sup>1135</sup>

## Equitable Development

### Energy Plan (tags: Land Use – siting, Redressing Environmental Racism)

Virginia’s statutes governing energy development articulate support for environmental justice. One of the stated objectives is “developing energy resources and facilities in a manner that does not impose a disproportionate adverse impact on economically disadvantaged or minority communities.”<sup>1136</sup> The statutes direct various state agencies to work together to create a comprehensive 10-year energy plan that reinforces the EJ and other objectives.<sup>1137</sup> The 10-Year Plan, among other things, must include the following information: an analysis of siting of energy facilities to identify any disproportionate adverse impact of such activities on economically disadvantaged or minority communities. In considering which parcels of land are suitable for energy facility development, the agencies must consider, in addition to technical matters, “potential impacts to natural and historic resources and to economically disadvantaged or minority communities, and compatibility with the local land use plan.”<sup>1138</sup>

### Environmental Justice Maps (tags: Mapping)

The Virginia Department of Transportation (“VDOT”) makes accessible demographic maps “as a first step in analyzing environmental justice issues.”<sup>1139</sup> The maps show percentages of specific segments of the population as a percentage of the

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<sup>1134</sup> Virginia Dep’t of Environmental Quality, *Community Involvement Policy*, available at <http://www.deq.state.va.us/export/sites/default/community/pdf/comminvolvepolicy.pdf> (last visited Mar. 4, 2009).

<sup>1135</sup> Virginia Dep’t of Environmental Quality, *A Guide for Effective Public Comments*, available at <http://www.deq.state.va.us/export/sites/default/info/documents/GetTheFacts.Comments.pdf> (last visited Mar. 4, 2009); Virginia Dep’t of Environmental Quality, *Best Practices in DEQ Community Involvement*, available at <http://www.deq.state.va.us/export/sites/default/community/documents/bestpractices12.07.pdf> (last visited Mar. 4, 2009).

<sup>1136</sup> VA. CODE ANN. § 67-101 (2009); *see also Id.* at § 67-102, stating that to achieve the objectives of § 67-101, it shall be the policy of the Commonwealth to “ensure that development of new, or expansion of existing, energy resources or facilities does not have a disproportionate adverse impact on economically disadvantaged or minority communities.”

<sup>1137</sup> *Id.* at § 67-201.

<sup>1138</sup> *Id.* at § 67-201(d).

<sup>1139</sup> Virginia Dep’t of Transportation, *Environmental Justice Maps*, <http://www.virginiadot.org/business/business-civil-rights-maps.asp> (last visited July 5, 2009).

whole community.<sup>1140</sup> The specific demographic maps are based on disability, gender, age, race, linguistics, and economics.<sup>1141</sup>

## **Pollution Cleanup**

Supplemental Environmental Projects (tags: Compliance and Enforcement, Redressing Environmental Racism)

Virginia law authorizes 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.”<sup>1142</sup> SEPs are authorized for use in administrative and judicial orders. 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.<sup>1143</sup>

## **Coordination with Federal Government**

Performance Partnership Agreement (tags: Compliance and Enforcement)

In its third PPA, the latest one available online, VDEQ agreed to “areas of emphasis,” including one with an EJ overtone — community-based mitigation projects.<sup>1144</sup> VDEQ and U.S. EPA agreed to pursue “opportunities to address ozone, [particulate matter] non-attainment and toxics in communities of concern.”<sup>1145</sup>

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<sup>1140</sup> *Id.*

<sup>1141</sup> *Id.*

<sup>1142</sup> VA. CODE ANN. § 10.1-1186.2 (2009).

<sup>1143</sup> *Id.*

<sup>1144</sup> *Performance Partnership Agreement* (2005), available at

<http://www.epa.gov/ocirpage/nepps/pdf/vadeq-ppa-100105-093007.pdf> (last visited July 5, 2009).

<sup>1145</sup> *Id.*

## WASHINGTON

(tags: Air Pollution, Children’s Issues, Community Education, Community Participation, Compliance and Enforcement, Cumulative/Secondary Effects, Inter-agency Collaboration, Mapping, Outreach, Public Health, Redressing Environmental Racism, Study, Transportation)

### **General Environmental Justice Activities**

Department of Ecology (tags: Community Education, Community Participation, Inter-agency Collaboration)

The principal environmental management agency within the State of Washington is the Department of Ecology (“Ecology”). Ecology has a three-pronged goal of preventing pollution, cleaning up existing pollution, and supporting sustainable communities and natural resources.<sup>1146</sup> Ecology has an EJ Coordinator and an EJ Committee.<sup>1147</sup> The EJ Coordinator’s public responsibilities include collaborating with local governments, community organizations, and EPA Region 10, to address EJ issues statewide that relate to the work of Ecology.<sup>1148</sup> The EJ Coordinator’s duties within Ecology include providing EJ assistance and training to agency staff and working on addressing EJ in Ecology’s programs, the Sustainability Team, Diversity Committee, and Multi-lingual Interpretation and Translation Teams.<sup>1149</sup>

The Environmental Justice Checklist (tags: Community Education, Community Participation, Cumulative/Secondary Effects, Mapping, Outreach, Public Health, Redressing Environmental Racism)

In 2004, Ecology implemented the *Environmental Justice Checklist and Resources for Ecology Staff and Management*.<sup>1150</sup> Ecology staff are encouraged to use the checklist to assess and guide their daily activities to promote environmental justice. The checklist invites Ecology staff to think broadly about what communities might be affected by the agency’s actions. Ecology staff members are also encouraged to consider the “cumulative effects” of possible environmental pollution and work with other officials such as experts in public health and mapping.<sup>1151</sup> The checklist also directs staff to consider whether minority groups with language and cultural barriers may need special accommodations, such as translation services, to create effective discussions around EJ issues.<sup>1152</sup>

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<sup>1146</sup> Washington Dep’t of Ecology, *About Us*, <http://www.ecy.wa.gov/about.html> (last visited June 1, 2009).

<sup>1147</sup> E-mail from Millie Piazza, Environmental Justice Coordinator, Dep’t of Ecology, (Feb. 03, 2009).

<sup>1148</sup> *Id.*

<sup>1149</sup> *Id.*

<sup>1150</sup> The checklist is on file with the authors.

<sup>1151</sup> *Id.*

<sup>1152</sup> *Id.*

Department of Transportation (tags: Community Education, Outreach, Redressing Environmental Racism, Study, Transportation)

Because the Washington State Department of Transportation (“WSDOT”) receives federal funding, and thus subject to Title VI of the Civil Rights Act of 1964, the WSDOT must address the unequal environmental burden often borne by minority and low-income populations.<sup>1153</sup> As such, the WSDOT must minimize or mitigate disproportionately high and adverse health and environmental effects on minority and low-income populations, ensure fair public participation in the transportation decision-making process, and prevent denial of, or reduction in, benefits to minority and low-income populations.<sup>1154</sup> To comply with these mandates, WSDOT requires that projects go through an EJ analysis. The EJ analysis procedures include, among other things, identification of affected communities, documentation of community outreach efforts, and consideration of disproportionate effects on minority and low-income populations.<sup>1155</sup>

### **Community Participation**

Regulation (tags: Community Education, Community Participation, Redressing Environmental Racism)

The Washington Energy Site Facility Evaluation Council issued a rule, which among other things, establishes a “preapplication consultation” period and requires applicants to document outreach efforts designed to communicate with all potentially impacted people, including residents of low-income and minority communities.<sup>1156</sup> It is, therefore, the applicant’s responsibility to “involve the public” even before submitting an application for a new energy facility.<sup>1157</sup>

Language Translation Teams (tags: Community Education, Outreach)

Ecology’s Multilingual Interpretation and Translation Team (MITT) has four formal language translation and interpretation teams: Spanish, Korean, Chinese, and Vietnamese.<sup>1158</sup> Additionally, the MITT provides staff online resources and a language mapping tool (based on the 2000 Census and GIS mapping files) to better identify areas in Washington where there are significant populations that do not speak English as a primary language.<sup>1159</sup> These reference tools are used to better understand which languages should be considered for translation assistance in order to facilitate public outreach on cleanup and other activities.

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<sup>1153</sup> See Washington State Dep’t of Transportation, *Environmental Justice*, <http://www.wsdot.wa.gov/Environment/EJ/EnviroJustice.htm> (last visited Feb. 20, 2009).

<sup>1154</sup> *Id.*

<sup>1155</sup> Washington State Dep’t of Transportation, *Environmental Justice FAQ*, <http://www.wsdot.wa.gov/Environment/EJ/EJfaq.htm#Doing> (last visited June 22, 2009).

<sup>1156</sup> WASH. ADMIN. CODE § 463-60-101 (2004).

<sup>1157</sup> *Id.*

<sup>1158</sup> E-mail from Millie Piazza, *supra* note 1137.

<sup>1159</sup> *Id.*

## Improving Public Health

Governor's Interagency Council on Health Disparities (tags: Children's Issues, Public Health, Redressing Environmental Racism)

The Governor's Interagency Council on Health Disparities ("The Council"), which was established in 2006, is charged with addressing the legislature's finding that people of color experience significant disparities from the general population in social determinants of health, including in areas of education, employment, healthful living conditions, and access to health care.<sup>1160</sup> To remedy this, the Council is charged with creating a state action plan for eliminating health disparities by race/ethnicity and gender by 2012, establishing issue-specific advisory committees, and conducting health impact reviews in collaboration with the Washington State Board of Health.<sup>1161</sup>

Washington State Board of Health Recommendations (tags: Community Education, Study)

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.<sup>1162</sup> The report contained three broad recommendations including that: (1) WSBH and Ecology conduct better coordination on EJ issues; (2) state and local agencies improve their capacity to address EJ issues by providing educational opportunities for their staff; and (3) state and local agencies consider adopting EJ guidelines. The report suggested various strategies to implement these recommendations.<sup>1163</sup> In addition, WSBH's website provides the public with general information about EJ as well as contact information and links to state and federal agencies with EJ policies or programs.<sup>1164</sup>

## Coordination With Federal Government

Performance Partnership Agreement (tags: Compliance and Enforcement, Redressing Environmental Racism)

The PPA between Ecology and U.S. EPA Region 10 commits these agencies to on-going coordination efforts to improve EJ in Washington State. The 2007-2009 PPA 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,

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<sup>1160</sup> WASH. REV. CODE § 43.20.270 (2008).

<sup>1161</sup> See The Governor's Interagency Council on Health Disparities, [www.healthequity.wa.gov](http://www.healthequity.wa.gov) (last visited June 1, 2009).

<sup>1162</sup> Washington State Board of Health, *Environmental Justice*, <http://www.sboh.wa.gov/Goals/Past/EJustice/index.htm> (last visited Feb. 20, 2009).

<sup>1163</sup> Washington State Board of Health Environmental Justice Committee, *Final Report State Board of Health Priority: Environmental Justice*, at pp. 5-6, available at [http://www.sboh.wa.gov/Pubs/docs/EJReport\\_2001.pdf](http://www.sboh.wa.gov/Pubs/docs/EJReport_2001.pdf) (last visited Feb. 20, 2009).

<sup>1164</sup> See Washington State Board of Health, *Environmental Justice*, *supra* note 1152.

education, or income level in the development, implementation, and enforcement of environmental laws, regulations, and policies.”<sup>1165</sup> U.S. EPA Region 10 and Ecology agreed to monthly telephone calls to identify current EJ 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.”<sup>1166</sup>

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<sup>1165</sup> Department of Ecology, *Environmental Performance Partnership Agreement for July 1, 2007 to June 30, 2009*, at 15, available at <http://www.ecy.wa.gov/pubs/0701028.pdf> (last visited Feb. 20, 2009).

<sup>1166</sup> *Id.*

## WEST VIRGINIA

(tags: Community Education, Community Participation, Land Use - siting, Mapping, Outreach, Power Plants, Redressing Environmental Racism)

### **General Environmental Justice Activities** (tags: Redressing Environmental Racism)

The West Virginia Department of Environmental Protection (“DEP”) issued an Environmental Equity Policy on December 15, 2003.<sup>1167</sup> The policy states that DEP will, “within its authority, ensure that no segment of the population, because of its status as low income or minority community, or any other factors relating to its racial or economic makeup, bear a disproportionate share of the risks and consequences of environmental pollution or be denied equal access to environmental benefits.”<sup>1168</sup> DEP seeks to incorporate environmental equity into its program development and implementation, policy making, and regulatory activities.<sup>1169</sup>

### **Community Participation** (tags: Community Education, Community Participation, Outreach)

Within DEP is the quasi-independent Office of the Environmental Advocate, established in 1994.<sup>1170</sup> The Environmental Advocate works on behalf of West Virginia residents requesting help with DEP processes. For example, the advocate may help clarify the public comment process, explain how to appeal agency decisions or how to file a Freedom of Information Act request, or describe the best method for getting agency attention for a community problem.<sup>1171</sup> Complaints can be made to the Environmental Advocate, who will direct the complaint to the appropriate DEP office(s).<sup>1172</sup> In addition, upon request, Pam Nixon, the current Environmental Advocate, will set up meetings between communities and DEP representatives.<sup>1173</sup> At the meetings Ms. Nixon may also ask the community members if they are aware of other groups who are concerned about the subject of the meeting to whom she should reach out.<sup>1174</sup> If communities want information, technical assistance, or advocacy, the Environmental Advocate will provide

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<sup>1167</sup> E-mail from Pam Nixon, Environmental Advocate, Dep’t of Environmental Protection (Jan. 27, 2005).

<sup>1168</sup> West Virginia Dep’t of Environmental Protection, Environmental Equity Policy, *available at* [http://www.wvdep.org/Docs/5353\\_EnviroEquity%20Policy.pdf](http://www.wvdep.org/Docs/5353_EnviroEquity%20Policy.pdf) (last visited Jan. 28, 2009).

<sup>1169</sup> *Id.*

<sup>1170</sup> W. VIRGINIA CODE § 22-20-1 (2003).

<sup>1171</sup> West Virginia Dep’t of Environmental Protection, *Office of Environmental Advocate*, <http://www.wvdep.org/item.cfm?ssid=17> (last visited Jan. 28, 2009).

<sup>1172</sup> Telephone interview with Pam Nixon, Environmental Advocate, Dep’t of Environmental Protection (Feb. 23, 2009).

<sup>1173</sup> *Id.*

<sup>1174</sup> *Id.*

the citizens with contact information for environmental groups active in West Virginia.<sup>1175</sup>

Pam Nixon also assists with DEP mailing lists. DEP allows people to register with the department to receive notices regarding permitting, public notices, and DEP news.<sup>1176</sup> Pam Nixon has contributed to the program by sending e-mails to EJ community members that have not registered with the DEP mailing list, but might find particular notices of interest.<sup>1177</sup>

Recently Ms. Nixon has developed two booklets intended to inform and empower the community to get involved in environmental decision-making: the *Citizen's Guide* and the *Permit Hearings and Appeals Guide*.<sup>1178</sup> The *Citizen's Guide* provides directions for accessing public information regarding DEP activities, explains the rulemaking processes, and outlines permitting procedures for various projects requiring approval by one or more DEP offices.<sup>1179</sup> In addition, it includes a glossary of environmental terms and provides citizens with contact information for the various DEP offices and boards.<sup>1180</sup> The *Permit Hearings and Appeals Guide* gives a step-by-step overview of the hearings and appeals processes, as well as directions for participating at each step.<sup>1181</sup>

## Equitable Development

### Mapping/GIS (tags: Mapping)

WV DEP has created an interactive mapping system, which allows the public to locate open dump cleanup projects, landfill closure projects, and oil and gas wells.<sup>1182</sup> The website also has a searchable Toxic Release Inventory, which one can search by chemical, industry classification, zip code, or facility name.<sup>1183</sup>

### Case law

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<sup>1175</sup> *Id.* Such organizations include the Ohio Valley Environmental Coalition, West Virginia Citizen Action Group, West Virginia Environmental Council, Coal River Mountain Lodge, Sierra Club, and Highlands Conservancy. *Id.*

<sup>1176</sup> West Virginia Dep't of Environmental Protection, *DEP Mailing Lists*, <http://www.wvdep.org/MailingLists.cfm> (last visited Jan. 28, 2009).

<sup>1177</sup> Telephone interview with Pam Nixon, Environmental Advocate, Dep't of Environmental Protection (Feb. 17, 2005).

<sup>1178</sup> Telephone interview with Pam Nixon (Feb. 23, 2009), *supra* note 1162.

<sup>1179</sup> West Virginia Dep't of Environmental Protection, *Citizen's Guide* (2008), available at [http://www.wvdep.org/Docs/15448\\_DEP2008CitizensGuide.pdf](http://www.wvdep.org/Docs/15448_DEP2008CitizensGuide.pdf) (last visited Feb. 23, 2009).

<sup>1180</sup> *Id.*

<sup>1181</sup> West Virginia Dep't of Environmental Protection, *Permit Hearings and Appeals Guide*, available at [http://www.wvdep.org/Docs/13476\\_Permit%20Hearings%20and%20Appeals%20Guide.pdf](http://www.wvdep.org/Docs/13476_Permit%20Hearings%20and%20Appeals%20Guide.pdf) (last visited Feb. 23, 2009).

<sup>1182</sup> West Virginia Dep't of Environmental Protection, *GIS Server*, <http://gis.wvdep.org/> (last visited Feb. 23, 2009).

<sup>1183</sup> *Id.*

Longview Power, LLC<sup>1184</sup> (2004) (tags: Land Use – siting, Power Plants)

In denying the project proponent's petition to strike testimony related to disproportionate impacts from a proposed power plant, the State Public Service Commission held that the testimony was probative of whether the siting certificate is in the public interest.<sup>1185</sup>

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<sup>1184</sup> 2004 W.Va. PUC LEXIS 1769.

<sup>1185</sup> *Id.*

# WISCONSIN

(tags: Brownfields, Children’s Issues, Community Participation, Public Health, Redressing Environmental Racism, Study, Toxic Waste Cleanup, Transportation, Water)

## **Community Participation**

Wisconsin Department of Transportation (tags: Community Participation, Study Transportation)

The state’s first Environmental Justice Conference was sponsored by the Wisconsin Department of Transportation (“DOT”) in February 2003.<sup>1186</sup> The conference’s goal was to reach out to members of the community and receive their input regarding transportation decisions and planning.

In 2004, DOT merged its environmental, civil rights, and disadvantaged business enterprise programs to create the Bureau of Equity and Environmental Services (“BEES”).<sup>1187</sup> In creating BEES, DOT sought to strengthen the focus, visibility, and coordination of its environmental and social justice programs.

In January 2004, a research administrator for DOT prepared a report on best practices for involving disadvantaged populations, defined as elderly, disabled, and ethnic minorities, in the transportation planning process.<sup>1188</sup> The report created case studies from both around the country and Wisconsin, and created innovative strategies to create interests among disadvantaged people to both attend and remain active in the planning process. The Wisconsin case study demonstrated how DOT officials conduct a needs assessment study of two heavily used arterials in Madison. Project strategy included community meetings, workshops, neighborhood open houses, and other efforts to involve all stakeholders as a means of addressing the segregation of neighborhoods by major highways. A particularly innovative method included involvement of youth in the identification of pedestrian and bicycle needs.<sup>1189</sup>

Southeastern Wisconsin Regional Commission (“SEWRPC”) (tags: Community Participation, Redressing Environmental Racism)

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<sup>1186</sup> See, Wisconsin Dep’t of Transportation, *Environmental justice - All voices build better transportation solutions*, available at <http://www.dot.wisconsin.gov/projects/env/justice/docs/summary.pdf> (last visited July 29, 2009).

<sup>1187</sup> E-mail from Carolyn Amegashie, Division of Transportation Infrastructure Development (Feb. 14, 2005).

<sup>1188</sup> Wisconsin Dep’t of Transportation, *Environmental Justice in Transportation*, available at <http://www.dot.wisconsin.gov/library/research/docs/tsrs/tsrenvironmentaljustice.pdf> (last visited Feb. 7, 2006).

<sup>1189</sup> *Id.*

The SEWRPCA, the official land planning commission in the highly urbanized southeastern region of Wisconsin, has an Environmental Justice Task Force (“Task Force”) that is charged with “help[ing] address three basic principles of environmental justice: (1) ensure public involvement of low-income and minority groups in decision making; (2) prevent disproportionately high and adverse impacts of decisions on low-income and minority groups; and (3) assure that low-income and minority groups receive a proportionate share of benefits.”<sup>1190</sup> The EJ Task Force meets regularly, holding open hearings where community members are invited to attend and participate.<sup>1191</sup>

## **Improving Public Health.**

### Case Law

*Jandrt v. Jerome Foods, Inc.*<sup>1192</sup> (1999) (tags: Children’s Issues, Compliance and Enforcement, Public Health)

Plaintiffs brought action on behalf of three children who were born with birth defects allegedly caused from their mothers’ exposure to chemicals used and present at the defendant’s turkey plant, where the mothers worked.<sup>1193</sup> A medical consultant advised the law firm that they would need to gather information from Jerome Foods through discovery about the specific chemicals used at the plant before causation could be conclusive.<sup>1194</sup> The firm proceeded to file a complaint.<sup>1195</sup> Nine months after the complaint was filed, the firm realized that epidemiological studies would need to be conducted in order to demonstrate that the chemicals at the turkey plant caused the birth defects.<sup>1196</sup> Upon this discovery, plaintiffs voluntarily dismissed the complaint.<sup>1197</sup>

Jerome Foods filed a motion against the law firm for commencing and continuing a frivolous lawsuit for failing to make a reasonable inquiry into the facts underlying the complaint.<sup>1198</sup> The Wisconsin Supreme Court held that the commencement of the action was not frivolous, but the continuation of the action was.<sup>1199</sup> The court awarded Jerome Foods attorney’s fees under state law permitting sanctions for frivolous lawsuits.

**Pollution cleanup** (tags: Brownfields, Toxic Waste Cleanup, Water)

### Land Recycling Loan Program

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<sup>1190</sup> See, Southeastern Wisconsin Regional Commission, <http://www.sewrpc.org> (last visited July 29, 2009).

<sup>1191</sup> Southeastern Wisconsin Regional Commission, *Environmental Justice Task Force*, <http://www.sewrpc.org/transportation/taskforce/> (last visited July 29, 2009).

<sup>1192</sup> 227 Wis. 2d 531 (1999).

<sup>1193</sup> *Id.* at 537-38.

<sup>1194</sup> *Id.* at 538.

<sup>1195</sup> *Id.*

<sup>1196</sup> *Id.*

<sup>1197</sup> *Id.*

<sup>1198</sup> *Id.*

<sup>1199</sup> *Id.* at 563, 573.

The Wisconsin Department of Natural Resources (“WDNR”) provides low cost loans for brownfield remediation projects at “landfills, sites or facilities where contamination has affected or threatens to affect groundwater or surface water.”<sup>1200</sup> WDNR scores loan applications according to its regulations, and prioritizes the higher scoring projects in times of tight funding.<sup>1201</sup> Significantly, the scoring system provides that “[a] site where remediation of environmental contamination will improve environmental justice shall be assigned one point.”<sup>1202</sup> “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.”<sup>1203</sup>

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<sup>1200</sup> Wisconsin Dep’t of Natural Resources, *Land Recycling Loan Program*, <http://www.dnr.state.wi.us/org/caer/cfa/EL/Section/brownfield.html> (last visited July 29, 2009).

<sup>1201</sup> WIS. ADM. CODE § NR 167 *et seq.* (2003).

<sup>1202</sup> *Id.* at § NR 167.07 (2)(j).

<sup>1203</sup> *Id.* at § NR 167.03 (4).

# WYOMING

(tags: Land Use – siting)

## **General Environmental Justice Activities**

While the Wyoming Department of Environmental Quality (“WDEQ”) has designated an Environmental Justice Coordinator, and receives EJ information from EPA, it has not developed a formal state EJ policy, but rather operates under EJ guidance from EPA.<sup>1204</sup> WDEQ has not identified any EJ issues prevalent in Wyoming, which the EJ Coordinator attributes in part to Wyoming’s low population and vast amount of land.<sup>1205</sup>

## **Equitable Development** (tags: Land Use – siting)

### Industrial Siting Statute

In 2004, Wyoming passed a statute creating the Industrial Siting Council.<sup>1206</sup> Part of the Industrial Siting Division of the Wyoming Department of Environmental Quality, the Council “reviews the socio-economic and environmental impacts of industrial facilities before issuing a permit for construction.”<sup>1207</sup> “Emphasis is placed upon social-economic impacts.”<sup>1208</sup> Analysis of such impacts generally focuses upon the economic benefit to both the industry and the community that can be achieved by siting.<sup>1209</sup>

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<sup>1204</sup> Telephone Interview with James Uzell, Environmental Justice Coordinator, Dep’t of Environmental Quality (Jan. 27, 2009).

<sup>1205</sup> *Id.*

<sup>1206</sup> WYO. STAT. ANN. § 35-12-104 (2004).

<sup>1207</sup> Wyoming Dep’t of Environmental Quality, *Welcome to Industrial Siting*, <http://deq.state.wy.us/isd/isdCouncil.htm> (last visited Feb. 25, 2009).

<sup>1208</sup> *Id.*

<sup>1209</sup> Telephone Interview with James Uzell, *supra* note 1194.

## **Appendix A – List of Tags**

**AGRICULTURAL CHEMICALS** (workplace exposure to pesticides, etc.)

**AIR POLLUTION** (laws and policies that addresses air pollution or quality issues, including steps taken to reduce emissions)

**BROWNFIELDS** (policies and authorities addressing brownfields, although initiatives concerning development of brownfields will be referenced by “**BROWNFIELDS REDEVELOPMENT**”; there will be some overlap with “**TOXIC WASTE CLEANUP**”)

**BROWNFIELDS REDEVELOPMENT**

**CHILDREN’S ISSUES** (includes initiatives directed towards children or schools)

**CLIMATE CHANGE** (initiatives addressing global warming that expressly reference environmental justice concerns)

**COMMUNITY PARTICIPATION** (initiatives that provide enhanced opportunities for EJ communities, by requiring the inclusion of representatives of EJ communities on advisory panels or by creating mechanisms for required input from affected communities)

**COMMUNITY EDUCATION** (initiatives that generally build capacity in EJ communities by providing information about environmental or health risks, or that seek to inform them about public decision-making processes around environmental actions)

**COMPLIANCE AND ENFORCEMENT** (any authorities aiming to redress historically lax enforcement of existing environmental laws in disenfranchised communities. Also includes initiatives with complaint procedures for raising enforcement related objections)

**CUMULATIVE/SECONDARY EFFECTS** (initiatives that require the secondary and cumulative impacts of projects be considered)

**DIET** (policy addressing concerns with food or diet)

**EQUITABLE DEVELOPMENT** (includes authorities and initiatives shaped by a concern for balancing environmental justice concerns with the future of development; occasionally the tag “**SMART GROWTH**” is used when Smart Growth policies give an explicit nod to environmental justice)

**GRANTS** (programs advancing funds to governmental entities or NGOs)

**HOUSING** (initiatives that address EJ issues in housing development, construction, or maintenance)

**LAND USE**, with the following sub-categories

- **Land Use – permitting** (the most general, capturing the idea of permitting decisions with environmental justice considerations);
- **Land Use – siting** (siting decisions based in part on proximity to environmental justice communities);
- **Land Use – anti-concentration** (permitting decisions required to reflect consideration pre-existing pollution sources although without explicitly referring to environmental justice community);
- **Land Use – general plans** (special districts, general or comprehensive plans are required to reflect environmental justice concerns);

[It is noted that permitting, siting and anti-concentration have considerable overlap, although “siting” aims at location, above all, while permitting is more general, having to do with any land use decision concerning the environment, while anti-concentration is the most narrow, requiring a consideration of prior environmental degradation before the grant of a new permit (sub-flavor of permitting). Readers interested in particular permitting decisions are advised to search for terms such as “nuclear” or “radiation” directly.]

**MAPPING** (policy initiatives creating maps of environmental or EJ concerns)

**MINING** (including mountaintop mining)

**NATIVE AMERICANS** (initiatives expressly referencing Native American tribes)

**OPEN SPACE/RECREATION** (policies and authorities addressing EJ issues by advocating for or requiring the creation of open spaces, parks, or recreation areas)

**OUTREACH** (includes policies addressing language barriers in affected communities, as well as affirmative obligations of governmental or private actors to notify affected communities of impending regulatory actions/decisions)

**POLLUTION CLEANUP** (authority or program that involves the cleanup of pollution)

**POWER PLANTS**

**PUBLIC HEALTH** (initiatives directly addresses general (or more usually) specific public health concerns caused by environmental factors)

**REDRESSING ENVIRONMENTAL RACISM** (authority or program that explicitly attempts to address past environmental racism)

**STUDY** (primarily reports examining correlations between environmental degradation, health risks and minority and low income populations; tends not to include pure policy recommendations)

**TRANSPORTATION** (initiatives that address the environmental justice issues attending transportation policy)

**TOXIC WASTE CLEANUP** (initiatives that advocate, require, or regulate the cleanup of toxic waste contamination; may incorporate brownfields sites and Superfund sites)

**WATER** (includes concerns about delivery of potable water drinking water, as well as water pollution)

**WASTE** (includes authorities and initiatives that concern the collection of waste -- garbage pickup and waste collection facilities; includes recycling, e-waste” and hazardous waste)

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