

TO: Patrick Beggs and Julie Ventaloro, Division of Water Resources

FROM: Iqra Ahmed and Emma DeAngeli, Duke Master's Students

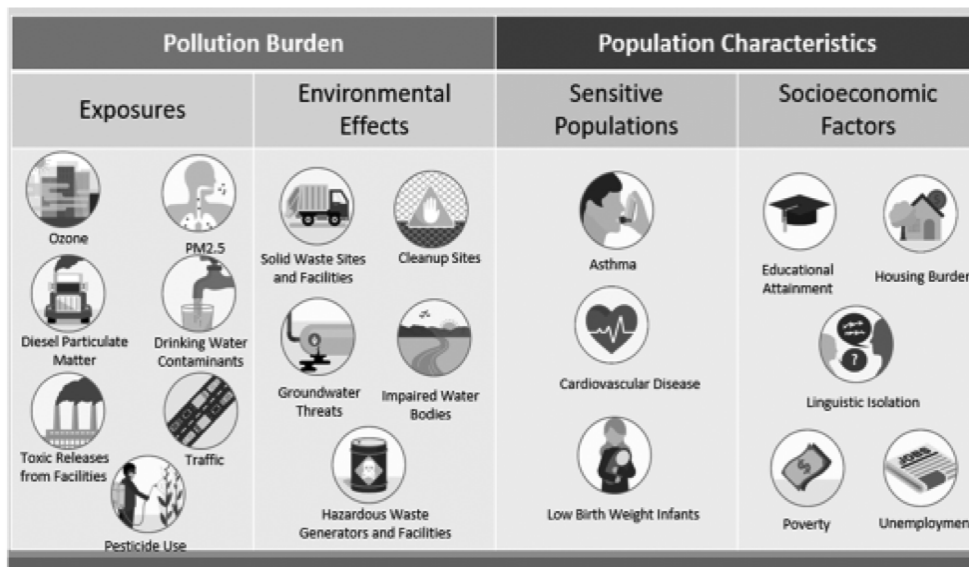
DATE: 4/21/2022

SUBJECT: Comparison of State Agency Integration of Equity and Environmental Justice

There are many examples of how state environmental agencies are working to integrate justice and equity in various capacities. These can be divided into different focus areas including environmental justice in leadership, environmental justice laws, or focus on environmental justice in regulatory impact analyses. In this memo we will highlight some best practices from across different state agencies as informed by our research and [this environmental justice study](#) conducted at the Virginia Department of Environmental Quality in October 2020. There are also several states who are working to promulgate environmental justice laws; more details can be found [here](#).

Equity in the State Regulatory Impact Analysis Process

As related to the RIA development process, the Virginia DEQ EJ study contains a section on impact analyses in permitting. The main recommendation is for agencies to evaluate environmental justice impacts and benefits. This should include analysis of cumulative and disproportionate impacts on vulnerable populations in order to measure the fair treatment component of the [definition of environmental justice](#). As exemplified by California's CalEnviroScreen 2.0, a cumulative impact score can be calculated by examining the pollution burden a population faces (exposures and environmental effects) multiplied by population characteristics (sensitive populations and socioeconomic factors) (see **Figure 1** below).



(Figure 1. Source: [Another Game Change in the Making? Lessons from States Advancing Environmental justice through Mapping and Cumulative Impacts Strategies](#) by Charles Lee)

There are a few models of states with legislation requiring the state's environmental agency to **consider impacts on affected populations during the permitting process:**

- “Kentucky requires an assessment of local impacts prior to granting hazardous waste permits”
- “North Carolina’s solid waste permitting status requires consideration of alternative sites and local socioeconomic and demographic data if a proposed landfill is within one mile of an existing landfill”
- Arkansas has created precedent “against permitting the construction/operation of any high impact solid waste management facility within twelve miles of any existing facility” (Environmental Justice Study for the Virginia Department of Environmental Quality, 2020)

Additionally, there are several states that **require a cumulative or disproportionate impact analysis to be conducted for environmental permits:**

1. The Minnesota Pollution Control Agency (MPCA) cannot issue an air permit for any facility located near an environmental justice area without first analyzing existing cumulative impacts and fully understanding the effects of past and current pollution from *all* sources on both the environment and communities.
2. The New York State Board on Electric Generation Siting and the Environment isn’t allowed to permit construction or operation of an electricity facility without first examining cumulative and disproportionate impacts on communities. Applicants must further demonstrate evaluation of adverse and disproportionate impacts of the proposed facility’s construction and operation.
3. The New Jersey State Legislature passed NJ S232, requiring the New Jersey Department of Environmental Protection (NJDEP) to identify “burdened communities” according to predetermined criteria (at least 35% of households qualify as low-income households; **or** at least 40% of the residents identify as minority or as members of a state recognized tribal community; **or** at least 40% of the households have limited English proficiency). (Source: [Furthering the Promise](#)). NJDEP must also avoid granting permits for facilities (new or expanded) in burdened communities, unless the applicant has thoroughly evaluated the proposed facility’s impact on the community, including an analysis of existing cumulative impacts. Further, the law requires NJDEP to assign community support for the facility if it is permitted. NJDEP can also deny a permit in a burdened community if approval would pose unreasonable risk to its residents and their environment.
4. California’s EPA Department of Toxic Substances Control (DTSC) must use “available

tools, local and regional health risk assessments, the region’s federal Clean Air Act attainment status, and other indicators of community vulnerability, cumulative impact, and potential risks to health and well-being” in order to fully understand the vulnerability and existing health risks to nearby populations (for the hazardous waste facility permit process). (California EPA, 2021).

Alongside the consideration of cumulative impact and explicit instructions during the permitting process, there is also some **guidance as to which criteria can be examined when executing these impact analyses**:

1. California’s Department of Toxic Substances Control has also outlined criteria for “community involvement profiles” and is developing criteria to assess cumulative impacts in the permitting process (California EPA, 2021).
 - Profiles include “*community demographics, community interest, and the locations of sensitive receptors, nearby tribal lands, and other off-site sources of potential exposures to hazardous wastes, materials, and contaminated sites*” (including transportation-related impacts). (Source: [CA DTSC Fact Sheet](#))
2. New York State, alternatively, requires all major electric generation facilities applicants to fill out a pre-application environmental justice analysis which is used to determine whether there is an environmental justice community present by the proposed facility. This analysis includes:
 - A comprehensive description of the demographics, socioeconomics, and physical description of the impact area;
 - A cumulative impact analysis of air quality for emission sources;
 - An assessment of the existing significant, adverse, and disproportionate environmental impacts; and,
 - A full statement covering the environmental justice issues present in the area
3. New Mexico’s Environmental Improvement Board’s regulations require that applicants demonstrate that proposed projects don’t cause disproportionate impacts on the health and/or environment of particular groups if the proposal is in a vulnerable area. Additionally, applicants must also submit a community impact assessment.
4. The Minnesota Pollution Control Agency also implements methodologies which require a cumulative level and effects analysis during the air permitting process.

Other Considerations

Alternatively, the Virginia DEQ Environmental Justice Study also examines exemplary implementation in state environmental agencies as divided by the following categories:

1. **Leadership: DEQ leadership supports and has subject matter understanding of environmental justice.**
 1. California
 - In 2001, the California Air Resources Board (ARB) published an

Environmental Justice Policies and Actions seeking to “integrate environmental justice into all of [its] programs, policies, and regulations.” The report required the ARB to consider EJ objectives and ensure compliance doesn’t disproportionately impact low-income communities. (Skeo Solutions, Inc. and Metropolitan Group, 2020)

- California also established a Working Group on Environmental Justice in charge of providing guidance and recommendations to CalEPA on coordinating and implementing intra-agency strategies.

2. Delaware

- Delaware assigned a community ombudsperson to coordinate between communities and the Delaware Department of Natural Resources and Environmental Control in order “to 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. . . .”

3. Oregon

- Oregon requires that natural resources agencies have a citizen advocate position responsible for “. . . (a) encouraging public participation; (b) ensuring that the agency considers environmental justice issues; and (c) informing the agency of the effect of its decisions on communities traditionally under-represented in public processes.” (Skeo Solutions, Inc. and Metropolitan Group, 2020)
- Senate Bill 420 established an advisory Environmental Justice Task Force for the Governor and 13 natural resource agencies. The Governor appoints 12 members to the task force “with the goal of creating a citizen advocate group responsible for encouraging public participation, ensuring that the agency considers environmental justice issues, and informing the agency of the effect of its decisions on communities traditionally under-represented in public processes.” (Skeo Solutions, Inc. and Metropolitan Group, 2020)

4. Connecticut

- Connecticut’s Department of Energy and Environmental Protection (CTDEEP) passed an Environmental Justice Policy examining the diversity of staff to ensure they are reflected and representative of the Department’s constituency.
- The EJ Policy further focuses on examining equity issues among staff and provides additional training on environmental issues affecting low-income and minority communities.
- CTDEEP also has hired a coordinator staff person responsible for ensuring that established equity principles are incorporated into all of the

department's policies and programs.

2. Staff Capacity: “Increase staff clarity and capacity to effectively support environmental justice and apply environmental justice considerations throughout DEQ programs.”

a. South Carolina

- i. The South Carolina Department of Health and Environmental Control (SC DHEC) created a team to specialize in EJ, engagement and outreach in support of multiple bureaus within the Office of Environmental Affairs. The Office of Environmental Affairs has also designated its own community liaisons to serve as public participation coordinators within each bureau. (Skeo Solutions, Inc. and Metropolitan Group, 2020)
- ii. SC DHEC created tailored training for its staff by assessing current staff knowledge and attitudes of public participation. EJ training sessions were hosted with the EPA's Region 4 Office of Environmental Justice and the International Association of Public Participation (IAP2). Throughout this process, SC DHEC also underscored the need for training to “meet the needs of communities . . . in a professional, culturally appropriate manner.”
- iii. Other notable states include Connecticut, Oregon, Indiana, Washington State, New Jersey – see Chapter 5 in the full Virginia DEQ EJ Study for more details.

3. Guidance and Tools: “Provide guidance and tools to ensure clear and consistent implementation of adopted environmental justice policies and practices.”

a. Louisiana

- i. Louisiana's Department of Environmental Quality was required to hold public hearings focusing on environmental equity issues in its programs. The hearings also served as a way to study and quantify pollution emissions and effects on residential areas.
- b. Other notable states include California, Illinois, Michigan, New Jersey, New Mexico, New York, Oregon, Washington State – see Chapter 5 in the full Virginia DEQ EJ Study for more details.

4. Accessible Information: “Develop tools to provide more transparent, accessible and real-time environmental information to the public.”

a. New Jersey

- i. New Jersey hosts an online portal providing information on all air permitting, enforcement, and inspection actions. The platform allows air permits to be searched for by county, facility, municipality, or zip code.

Likewise, enforcement actions and inspections are searchable by county or zip code and date.

b. Pennsylvania

- i. Pennsylvania hosts a publicly accessible reporting platform through its DEP Environment Facility Application Compliance Tracking System (eFacts). Anyone can 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.” (Skeo Solutions, Inc. and Metropolitan Group, 2020)

c. Massachusetts

- i. The Massachusetts Executive Office of Energy and Environmental Affairs’ hosts an interactive environmental justice website which shows environmental justice areas as classified by 2010 Census block groups.

d. Florida

- i. The St. John’s Water Management District in Florida hosts a portal allowing any member of the public to search a database of project permits using a number a different parameters: specific region/city, permit type, time frame, or a permit number if they have this information (but not required, allowing the public better access to general information). Application information available for the public to view includes the name, phone number and email of staff members involved in reviewing the permit, as well as the status of the application alongside an infographic showing the different stages of the permit process to provide context; permit documents; map and tools as well as space to submit comments and upload documents.

- e. Other notable states include California, Minnesota, Oregon, and Washington State – see Chapter 5 in the full Virginia DEQ EJ Study for more details.

5. Relationship Building: “Invest in proactively building productive relationships with environmental justice and other adversely impacted communities.”

a. South Carolina

- i. South Carolina Department of Health and Environmental Control’s (DHEC) Office of Environmental Affairs staffs an Environmental Justice Coordinator who oversees environmental justice initiatives. A Community Liaison at the Office of Environmental Quality Control (EQC), the regulatory arm of DHEC, is responsible for addressing community concerns around EQC’s activities.
- ii. SC DHEC has an internal Public Participation Task Force which held

- hearing sessions to receive feedback from stakeholders on DHEC’s public participation actions. SC DHEC has worked to build relationships with EJ voices in order to ensure that underserved communities are involved in the decision-making process and “to ensure that those community concerns are addressed through the use of collaborative, problem-solving strategies and partnerships.” (Skeo Solutions, Inc. and Metropolitan Group, 2020)
- iii. The DHEC has committed to Environmental Justice Guiding Principles, which ensure the agency is proactively building relationships with communities “by sharing information, providing technical assistance, identifying resources, and promoting partnerships between communities and other stakeholders”. (Skeo Solutions, Inc. and Metropolitan Group, 2020)
 - b. Delaware
 - i. In 2001, the Delaware legislature created the Community Involvement Advisory Council (CIAC) and a Community Ombudsman position; both were created with the intention to liaise between the Department of Natural Resources and Environmental Control (DNREC) and communities. The Community Ombudsman is responsible for helping communities to identify and understand environmental problems that they face while helping the department understand the needs of communities. The 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.”
 - c. Other notable states include Oregon – see Chapter 5 in the full Virginia DEQ EJ Study for more details.

6. Community Engagement: “Proactively and authentically engage communities on issues and decision-making that could potentially affect their health and quality of life.”

- a. West Virginia
 - i. WV’s Department of Environmental Protection houses an Office of Environmental Advocate, which is responsible for responding to citizen information requests, providing guidance through DEP processes, and which also hosts informational public education workshops and forums.
- b. Other notable states include Connecticut, Delaware, Illinois, Ohio, Oregon, Tennessee – see Chapter 5 in the full Virginia DEQ EJ Study for more details.

7. Environmental Justice Community Capacity: “Build the capacity of environmental justice communities to participate meaningfully in environmental decision-making.”

a. South Carolina

- i. The South Carolina General Assembly created the SC Environmental Justice Advisory Committee in 2007, tasked with assessing the progress of environmental justice initiatives and providing recommendations to the Governor and General Assembly.
- ii. SC DHEC’s Office of Environmental Affairs administers an Environmental Justice Initiative, which has been involved in a plethora of projects ranging from addressing procedural equity through public participation and providing technical assistance to communities. The EJ Initiative “focuses on including all stakeholders in the decision-making process, facilitating dissemination of information, providing technical assistance to environmental justice communities, building partnerships between communities and other stakeholders, collaborative problem solving, and strengthening agency leadership.”
- iii. DHEC worked with EPA’s Region 4 Office of Environmental Justice (OEJ) to create an Environmental Justice Leadership School in 2013, which trained community members on leadership development principles, organizational sustainability practices, and other skills that assist attendees with sustaining the momentum of current and future projects. The program later acted as a model for EPA Region 4’s OEJ Environmental Justice Academy and Allen University’s Environmental Justice Scholars program. Participants cultivate skills to identify environmental challenges and accomplish environmental improvement goals in their communities.

b. Louisiana

- i. Louisiana Department of Environmental Quality (LDEQ) created the EnviroSchool program. This is an environmental education outreach effort of the Agency providing training for communities, businesses, and others on regulatory topics. These workshops are completely free and open to anyone, given throughout the entire state, and cover various topics such as “DEQ Construction Stormwater Permits and Onsite Sewerage System Maintenance, Health and the Environment” with the goal of educating others about the DEQ’s regulatory process..
- ii. Other notable states include New York – see Chapter 5 in the full Virginia DEQ EJ Study for more details.

8. Local Government: “Invest in local government coordination and education to ensure alignment with environmental justice policies.”

a. Massachusetts

- i. The Massachusetts Office of Energy and Environmental Affairs offers an environmental justice module in its online Smart Growth/Smart Energy Toolkit that presents guidance for municipalities and developers describing ways to better engage environmental justice populations in the planning and development process, including enhanced outreach and notification, engaging local leaders, holding meetings at accessible times, providing supports to meeting participants and meeting local language needs
- b. New Jersey
 - i. New Jersey's Office of Smart Growth, an affiliate of the Department of Community Affairs, provides guidance to municipalities seeking planning endorsement by providing them with local environmental justice inventories and municipal plans for EJ. To assist with this, New Jersey's Department of Environmental Protection supplies local environmental and socioeconomic data while also providing applicants with technical assistance. The data provided directly ensures and complies with NJ law that local plans don't adversely and disproportionately affect communities of color and low-income populations.
 - ii. Other notable states include California – see Chapter 5 in the full Virginia DEQ EJ Study for more details.

