



*Commonwealth of Virginia*

***VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY***

1111 E. Main Street, Suite 1400, Richmond, Virginia 23219

P.O. Box 1105, Richmond, Virginia 23218

(800) 592-5482 FAX (804) 698-4178

[www.deq.virginia.gov](http://www.deq.virginia.gov)

Travis A. Voyles  
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus  
Director  
(804) 698-4020

**Subject: Guidance Memo No. 23-XXXX – Environmental Justice in the Permitting Process**

**To:** Regional Directors, Division Directors, Office of Environmental Justice

**From:** Melanie D. Davenport, Director of Regulatory Affairs and Outreach

**Date:** TBD 2023

**Copies:** James J. Golden, Director of Central Operations; Jeffery A. Steers, Director of Regional Operations

**Summary:**

In 2020, the Commonwealth enacted the Virginia Environmental Justice Act (Act) and related implementing legislation. The Virginia Environmental Justice Act makes it Virginia's policy ". . . to promote environmental justice and ensure that it is carried out throughout the Commonwealth, with a focus on environmental justice and fenceline communities." Further, the Department of Environmental Quality's (DEQ) enabling statute was amended to state that DEQ's purpose, among others, is "to ensure the fair treatment and meaningful involvement of all people regardless of race, color, national origin, faith, disability, or income with respect to the administration of environmental laws, regulations, and policies." DEQ established an Office of Environmental Justice (OEJ) in April 2021 which includes a Program Manager and four Environmental Justice Coordinators.

DEQ understands the historical concerns with the administration of environmental laws, regulations, and policies, and DEQ recognizes the importance of ensuring the knowledge of existing practices that provide the opportunity for engagement and developing ways building upon these opportunities. This guidance describes how DEQ will ensure meaningful involvement and fair treatment in environmental permitting and is applicable to all DEQ permitting actions. Ensuring certainty and knowledge of the permitting process will allow for increased opportunities for engagement and effective administration of environmental laws, regulations, and policies, resulting in an enhancement of processes and practices of the past.

The definition of an Environmental Justice Community in the Act results in 53% of the total geographic area and 59% of the population of the Commonwealth being identified as an Environmental Justice Community (see map 1). This large area, the number of DEQ permit actions annually, and the Act requirements of meaningful involvement and fair treatment presents resource challenges to effective

implementation of the Act.

In any given year, DEQ receives thousands of applications, and processes approximately 3,000 permitting actions which include individual permit issuance, reissuance and modifications and authorization for coverage under general permits and permits by rule. General permits and permits by rule are not individual permit actions, rather, they are authorized by regulation and are not subject to the same public participation process as individual permit actions. Public participation for general permits and permits by rule are conducted during the applicable regulatory actions and are not included as permits of concern with the exception of permits by rule for Materials Recovery Facilities (MRFs) and Transfer stations. None of the procedures in this guidance supersede or change existing law or regulatory requirements regarding issuance or denial of permits.

The procedures in this guidance will create opportunity and growth in the ability to administer environmental laws, regulations, and policies, resulting in increased transparency, smart economic development, and enhanced environmental protection. This guidance compliments other ongoing efforts by DEQ to reduce barriers for engagement and ensure effective administration of environmental laws, regulations, and policies. To the extent possible, this guidance should be incorporated into ongoing efforts to enable permit applicants, as well as the public and any stakeholder, to track pending permits and access current information about the critical steps and permitting schedules associated with permit approvals.

**Electronic Copy:**

Once effective, an electronic copy will be available on:

- The Virginia Regulatory Town Hall under the Department of Environmental Quality ([Virginia Regulatory Town Hall Home Page](#)).
- The Department’s website at (<http://www.deq.virginia.gov/>).

**Contact Information:**

Please contact Manager, Office of Environmental Justice, at danielle.simms@[deq.virginia.gov](mailto:deq.virginia.gov) or 804-914-3508, with any questions regarding the application of this guidance.

**Certification:**

As required by Subsection B of § 2.2-4002.1 of the APA, the agency certifies that this guidance document conforms to the definition of a guidance document in § 2.2-4101 of the Code of Virginia. Disclaimer: This document is provided as guidance and, as such, sets forth standard operating procedures for the agency. However, it does not mandate or prohibit any particular action not otherwise required or prohibited by law or regulation. If alternative proposals are made, such proposals will be reviewed and accepted or denied based on their technical adequacy and compliance with appropriate laws and regulations.

**Effective Date:** \_\_\_\_\_ **Initials:** \_\_\_\_\_

# COMMONWEALTH OF VIRGINIA

## Department of Environmental Quality

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**A. Definitions:** based on the definitions in the Environmental Justice Act in Section 2.2-234 of Article 12 except for “permits of concern” and “potential disproportionate share of any negative environmental consequence”, which are DEQ definitions.

All permits will be evaluated based on their location within or outside of an Environmental Justice Community based on the following definitions.

"Community of color" means any geographically distinct area where the population of color, expressed as a percentage of the total population of such area, is higher than the population of color in the Commonwealth expressed as a percentage of the total population of the Commonwealth (37.8% 2014-2018 American Community Survey (ACS)).

"Environmental justice community" means any low-income community or community of color.

"Fair treatment" means the equitable consideration of all people whereby no group of people bears a disproportionate share of any negative environmental consequence resulting from an industrial, governmental, or commercial operation, program, or policy.

"Fenceline Community" means an area that contains all or part of a low-income community or community of color and that presents an increased health risk to its residents due to its proximity to a major source of pollution.

"Low income" means having an annual household income equal to or less than the greater of (i) an amount equal to 80 percent of the median income of the area in which the household is located, as reported by the Department of Housing and Urban Development, and (ii) 200 percent of the Federal Poverty Level (2011-2018 ACS).

"Low-income community" means any census block group in which 30 percent or more of the population is composed of people with low income.

"Meaningful involvement" means the requirements that (i) affected and vulnerable community residents have access and opportunities to participate in the full cycle of the decision-making process about a proposed activity that will affect their environment or health and (ii) decision makers will seek out and consider such participation, allowing the views and perspectives of community residents to shape and influence the decision.

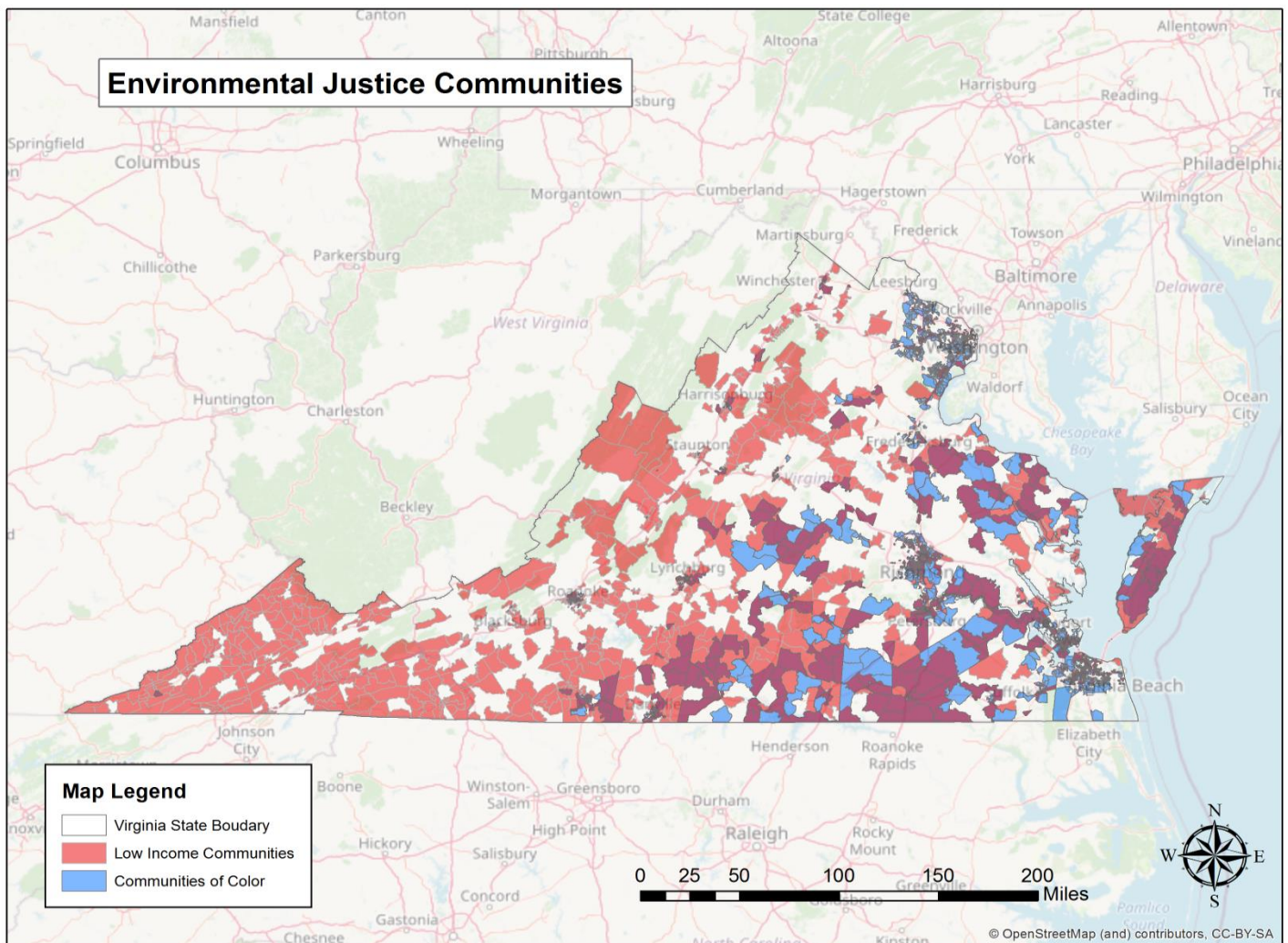
"Permits of concern" means those identified by DEQ based on agency experience working with applicants, Citizen Boards and stakeholders on permits of interest to communities.

"Population of color" means a population of individuals who identify as belonging to one or more of the following groups: Black, African American, Asian, Pacific Islander, Native American, other non-white race, mixed race, Hispanic, Latino, or linguistically isolated.

“Potential disproportionate share of any negative environmental consequence” means an environmental justice community where a proposed permit action meets or exceeds the evaluation criteria in Section D of this guidance.

## B. Environmental Justice Communities:

Environmental justice communities are those census block groups in which 30 percent or more of the population is composed of people having an annual household income equal to or less than the greater of (i) an amount equal to 80 percent of the median income of the area in which the household is located, as reported by the Department of Housing and Urban Development, and (ii) 200 percent of the Federal Poverty Level or any geographically distinct area where the population of color, expressed as a percentage of the total population of such area, is higher than the population of color in the Commonwealth expressed as a percentage of the total population of the Commonwealth (37.8% 2014-2018 ACS). In addition to these statutorily defined environmental justice communities, there may be communities or partial communities with a unique historical importance, population of color or other characteristics which are not identified by traditional screening or mapping tools. These areas will be evaluated on a case by case basis by the OEJ and included in the meaningful involvement and fair treatment process as appropriate. Environmental justice communities in the Commonwealth are depicted in the map below:

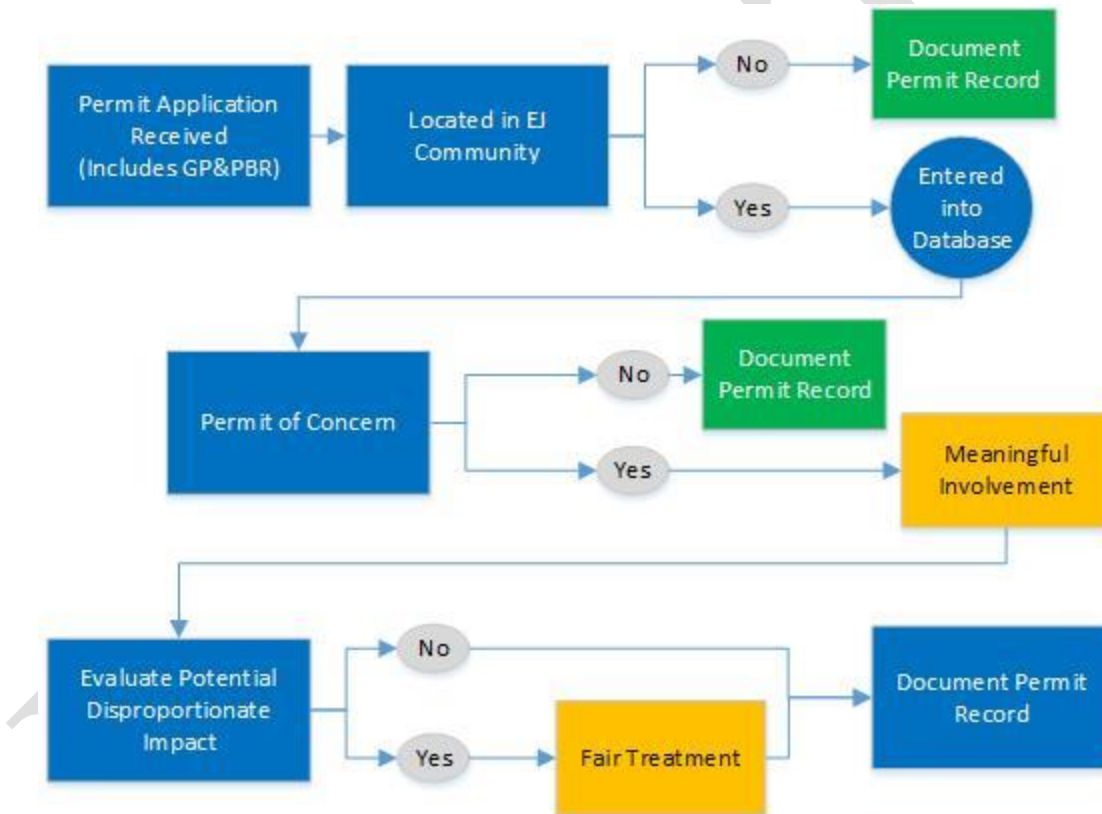


Map 1 All Environmental Justice Communities in the Commonwealth of Virginia per census block group. Purple areas represent Environmental Justice Communities identified by both the Low Income Communities layer and the Communities of Color layer (<http://www.deq.virginia.gov/EJmap>).

### C. Environmental Justice Permit Evaluation Process:

All permit actions (including general permits and permits by rule) will be evaluated to determine if they are located within an environmental justice community. This information will be recorded in the DEQ database for inventory and compliance tracking. Due to the large area of the Commonwealth considered environmental justice communities, and the volume of permit actions processed annually, further evaluation of general permits and permits by rule will not be conducted. All permits of concern for facilities proposed to be located in an environmental justice community will receive meaningful involvement and be evaluated for a potential disproportionate share of any negative environmental consequence. Should a potential disproportionate share of any negative environmental consequence be identified, fair treatment will be addressed in the permit action.

**Permit Evaluation Process – flow chart**



#### 1. Permits of Concern:

Permits of concern represent a subset of the permit actions DEQ may process in any given year. These permits are identified based on DEQ’s experience working with applicants, citizen Boards and stakeholders on permits historically of interest to communities. Additionally, identification of a smaller universe of permit actions will allow limited DEQ resources to be applied to those areas of greatest environmental justice concern through the meaningful involvement and fair treatment process. Importantly, community concerns about permits not identified as a permit of concern will be considered on a case-by-case basis for meaningful involvement and fair treatment.

PERMITS of CONCERN
AIR <sup>1</sup>
Construction of a new major source or major modification to an existing major source
Construction of a new major source or major modification to an existing fossil fuel-fired generating facility with a capacity of 500 megawatts or more
Construction of a new major source or major modification to an existing fossil fuel-fired compressor station facility used to transport natural gas (this excludes fossil fueled backup compressor station power)
WATER
VPDES new or expanded major municipal ( $\geq 25$ MGD) and new or expanded major industrial discharges
VWP wetlands individual permits greater than 10ac wetlands or 25,000 lf stream proposed impacts
Groundwater new individual permits ( $> 1.0$ MGD) or expanded existing withdrawals
Surface Water Withdrawal new individual or expanded existing withdrawals
LAND
New or expanded solid waste landfills
New or modified hazardous waste permitted Treatment / Storage / Disposal Facilities
New or expanded materials recovery facility or transfer station covered by Permit by Rule
Other Permits on Case by Case Basis

<sup>1</sup> New stationary sources and projects at existing stationary sources that are exempt from permitting under 9VAC5 Chapter 80, operating permits and permit amendments are not considered permits of concern.

## 2. Meaningful Involvement:

In consultation with the appropriate Regional Directors, Division Directors, Program Managers, permit staff and Communications Office, the OEJ Coordinators will reach out to their community contacts to gauge interest in proposed permits of concern in the following manner:

- a) If the community, community leaders, civic leaders, etc. living in or representing the community do not express an interest or concern for the proposed permit action, the OEJ Coordinator will document their findings from their environmental justice review and initial outreach efforts to include with the permit application documentation. This will conclude the environmental Justice review.
- b) If the community, community leaders, civic leaders, etc. in or representing the community express interest, concern, or opposition to the proposed permit action, OEJ Coordinators will direct the Permit Applicant to provide early engagement to communities tailored to their interests and needs, assist if possible, and monitor the progress of such engagement.
- c) Permit actions identified as requiring meaningful involvement will be posted on the DEQ website within five days of being so identified.

The table below sets forth a process toolkit for meaningful involvement. The intent of the matrix is to provide the greatest flexibility to meet a community's needs.

## Public Engagement Matrix for Permitting

Process Point	Initial Outreach Activities Options	Purpose for Initial Outreach	Additional Outreach Activities- as Needed	Purpose for Additional Outreach
<b>Application submitted</b>	Direct outreach to known community contacts, networking, social media, phone/text, circulating OEJ contact information, surveys Direct outreach to applicant to determine their outreach plans	To gauge interest in and concern about the project; to inform the community about the proposed project, process, and anticipated timeline; to respond to community concerns; to check in with communities as draft permit nears completion, to potentially coordinate with the applicant on outreach	Informational meetings, listening sessions, walking or driving tours, working sessions, site visits, ongoing communication	To facilitate communication with and/or provide community feedback to permit writer and/or applicant; to check in with community as additional information becomes available; to gather information about meeting various community accessibility needs (translation services, time of day for meetings, location etc.)
<b>Prior to public meetings, hearings, and/or comment periods</b>	Direct outreach to known community contacts, networking, social media, phone/text	To gauge interest in and concern about the project, to inform the community about the public process and timeline	Informational meetings, ongoing communication	To provide updated information; to gather information about meeting accessibility needs
<b>Public meetings, hearings, and/or comment periods</b>	Work with permit writers and Office of Communication on early engagement	To comply with statutory or regulatory public engagement requirements; to enhance outreach efforts in EJ communities	Incorporate accessibility options in public meetings and hearings, monitor public comments and work with technical staff to provide timely responses	To improve accessibility and engagement in the public process, to seek out comment from members of affected EJ communities
<b>Closing the loop on DEQ permitting decisions</b>	Direct outreach to known community contacts, social media	To communicate the permitting decision to the community and to answer any questions	Informational meetings, ongoing communication, surveys	To provide additional information about the permit and/or the process; to evaluate perceptions of OEJ and early engagement

### 3. Fair Treatment:

Fair treatment addresses the equitable consideration of all people whereby no group of people bears a disproportionate share of any negative environmental consequence resulting from an industrial, governmental, or commercial operation, program, or policy. This is a broad and comprehensive consideration involving industry, government and commercial entities holistically. For the purpose of this guidance, DEQ will address equitable consideration, within the limits of agency authority, for any proposed permit of concern located in an environmental justice community with a potential disproportionate share of any negative environmental consequence. DEQ will actively engage permit applicants to voluntarily take additional measures to minimize or mitigate any potential disproportionate share of impacts from the proposed permit action to the fullest extent possible.

DEQ engagement with applicants regarding fair treatment efforts, and the potential disproportionate impact evaluation detailed in Section D will be included in the permit record along with the documentation of meaningful involvement.

Specifically, these measures will include one or more of the following (in order of precedence);

- a) Engage the applicant to evaluate additional treatment and operational actions to reduce or further minimize pollutants or impacts beyond regulatory requirements.
- b) The applicant will be asked to consider engaging the community to identify potential community projects or initiatives for reduction or mitigation of any negative environmental consequences that could result from the proposed permit action, or other beneficial community projects as appropriate.
- c) DEQ will evaluate the need for any additional ambient air, receiving stream or other environmental monitoring to further evaluate potential impacts.
- d) DEQ will evaluate the appropriateness of enhanced compliance scrutiny under the Risk Based Inspection Strategy (<http://www.deq.virginia.gov/RiskBasedAssessment>) for the proposed facility and surrounding permitted facilities as appropriate.

#### **D. Potential Disproportionate Impacts in Environmental Justice Communities:**

Environmental justice communities may experience a potential disproportionate share of any negative environmental consequences as a result of a proposed permit action. While all permits issued by DEQ are required to meet applicable state and federal standards for public involvement and the protection of human health and the environment, permits of concern proposed in these areas will undergo an additional potential disproportionate impact evaluation. The evaluation is a screening tool for identifying potential impacts based on air modeling, proximity to impaired waters or existing landfills. The evaluation does not make any determination or finding of specific or cumulative environmental impacts.

##### **1. Permits for Air Pollution Control:**

The following process will be used to define whether there is a potential for a “disproportionate share of any negative environmental consequences” in an environmental justice community as a result of emissions from a new or modified stationary source of air pollution (i.e. permits of concern).

All modeling results shall be evaluated to ensure compliance with the applicable National Ambient Air Quality Standards (NAAQS). The Clean Air Act (CAA) requires EPA to set NAAQS for pollutants considered harmful to public health and the environment. These standards provide public health protection, including protecting the health of “sensitive” populations such as asthmatics, children, and the elderly. No permit shall be issued to a new stationary source or project that causes or significantly contributes to a modeled NAAQS violation.

The potential for a disproportionate share of any negative environmental consequences in an environmental justice community may exist when all of the following criteria are met for any single regulate NSR pollutant:

- a) The cumulative modeling for a pollutant and averaging period exceeds 90% of the NAAQS in an environmental justice community.
- b) The maximum air quality impact resulting from the new stationary source or project (by itself), at any ambient air location within the environmental justice community that exceeds 90% of the NAAQS, is equal to or greater than the impact thresholds in Table 1.



- c) The difference between the cumulative modeled maximum impact in the environmental justice community and cumulative modeled maximum impact in the closest non-environmental justice community is equal to or greater than the impact thresholds in Table 1.

Pollutant	Averaging Period	Impact Threshold ( $\mu\text{g}/\text{m}^3$ )
Nitrogen Dioxide (NO <sub>2</sub> )	1-hour	7.5
Nitrogen Dioxide (NO <sub>2</sub> )	Annual	1
Carbon Monoxide (CO)	1-hour	2,000
Carbon Monoxide (CO)	8-hour	500
Sulfur Dioxide (SO <sub>2</sub> )	1-hour	7.9
Particulate Matter $\leq 10 \mu\text{m}$ (PM <sub>10</sub> )	24-hour	5
Particulate Matter $\leq 2.5 \mu\text{m}$ (PM <sub>2.5</sub> )	24-hour	1.2
Particulate Matter $\leq 2.5 \mu\text{m}$ (PM <sub>2.5</sub> )	Annual	0.2
Ozone (O <sub>3</sub> )	8-hour	1.0 ppb

## 2. Water Permits (VPDES, VWP, Groundwater Withdrawal, and Surface Water Withdrawal):

The four water permit types addressed in this guidance apply to distinctly different water resources including point source discharges to streams, filling or draining of wetlands and streams and groundwater resources. Given these distinct water resources, a water quality impairment approach was used to screen environmental justice communities with a potential disproportionate share of any negative environmental consequences.

The DEQ Water Quality Assessment program prepares a watersheds layer that identifies the number of impaired waterbodies in every National Hydrography Dataset Hydrologic Unit Code 12 (NHD HUC12) watershed based on the most current EPA approved 305(b)/303(d) Integrated Report. Among the other methods explored, this method was the most straightforward representation of localized potential negative environmental consequences and was impacted the least by monitoring priorities, buried and piped urban streams, and the ubiquitous nature of some impairments. Using this watersheds layer, an intersection analysis was performed to identify the average number of impairments in watersheds intersected by environmental justice communities compared to the average number of impairments in watersheds intersected by non-environmental justice communities and statewide.

**Table 1. Summary statistics on the number of impairments in watersheds intersected.**

	Mean	Minimum	First Quartile	Median	Third Quartile	Maximum
<b># impairments in watersheds intersected by all CBGs*</b>	3.77	0	1	2	4.5	51
<b># impairments in watersheds intersected by all non-</b>	3.82	0	1	3	4.5	51

<b>environmental justice community CBGs</b>						
<b># impairments in watersheds intersected by all environmental justice community CBGs</b>	5.03	0	3	3	6	51

\*Census block group (CBGs)

Based on these results, it was determined that environmental justice communities that fall within watersheds with five (5) or more water quality impairments ([deq.virginia.gov/EJWatersheds](http://deq.virginia.gov/EJWatersheds)) may experience a potential disproportionate share of negative environmental consequences.

### 3. Land Permits (Solid and Hazardous Waste):

The potential disproportionate impact evaluation for a proposed land permit action is based on the location of existing permitted municipal solid waste or coal combustion residuals (CCR) landfills in a 5-mile radius. An intersection analysis was performed to identify all CBGs within a 5-mile radius of active Municipal Solid Waste Permits or active CCR Solid Waste Permits. This analysis was run for environmental justice communities, non-environmental justice communities, and statewide.

**Table 2. Proportion of CBGs intersected by active Municipal Solid Waste Permits or active CCR Solid Waste Permits using a 5-mile buffer.**

	<b>Proportion of CBGs intersected with 5-mile buffer</b>
<b>Statewide</b>	19%
<b>Non-environmental justice communities</b>	18%
<b>Environmental justice communities</b>	24%

Environmental justice communities within a 5-mile radius of an active Municipal Solid Waste Permit or an active CCR Solid Waste Permit ([deq.virginia.gov/EJSWP5mi](http://deq.virginia.gov/EJSWP5mi)) may experience a potential disproportionate share of negative environmental consequences.

### E. Internal DEQ Coordination:

OEJ Coordinators will work with Program Managers and permit staff to plan meetings, answer community questions, and when appropriate, manage public comments. OEJ staff will work with the Communications Office on social media posts, webpage creation and updates, meeting materials and other communication tasks as needed.

#### 1. Reporting:

After completion of all regulatory public involvement activities but prior to a final permit action, the OEJ Coordinator working with the permit staff will document the entire meaningful involvement and fair treatment process for inclusion in the permit record. The documentation will include, but is not limited to,

- List of community meetings both formal and informal with DEQ
  - Project Proponent Efforts
  - meeting materials
  - attendance lists
  - pre and post survey results
  - social media posts and engagement of each post,
  - response to comments, when applicable
  - recordings, both video and audio if available
- Webpages
  - Webpage engagement (if appropriate)
- List of meetings with permittee
  - DEQ OEJ staff meeting with permittee and program staff
    - Location
    - Attendees
    - Topics of discussion and any decisions made at the meeting
  - Permittee public meetings (optional)
    - Location and number of attendees only
    - Topics addressed
- Site visit(s)
  - Field report form(s)
- Concerns and their resolution
  - Issues raised by community members
  - Issues raised to permittee
  - Issues resolved or not resolved
- Potential disproportionate impact evaluation
  - Includes Fair Treatment determination under Section C.3.a),b),c) and d).