

Environmental Justice Study

for the

Virginia Department of Environmental Quality

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*Developed by Skeo Solutions, Inc. and Metropolitan Group
for the Virginia Department of Environmental Quality
with support from Ebony Walden Consulting*



Metropolitan Group



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- All the Virginians, DEQ staff and their partners across the state, who faithfully serve the Commonwealth and whose collaboration on implementing the recommendations of this report will help to advance environmental justice across the Commonwealth.

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Chapter 1: Introduction

Purpose

At the request of Virginia Department of Environmental Quality (DEQ), the contractor team (Skeo Solutions, Inc., Metropolitan Group and Ebony Walden Consulting) conducted an Environmental Justice Study. The purpose of the Environmental Justice Study is to provide independent recommendations to DEQ on how to incorporate environmental justice goals into DEQ strategic planning and phased program implementation.

The Environmental Justice Study is a forward-looking report that identifies a set of strategies for advancing environmental justice in the Commonwealth of Virginia which are outlined in Chapter 3. The recommendations draw on stakeholder perspectives described in Chapter 2, national best practices from other state environmental agencies summarized in Chapter 5 and an assessment of legal authority summarized in Chapter 4.

It is important to acknowledge that many federal, state and local government agencies have engaged in a continuing process to align their agency missions with the principles and concepts of environmental justice. It has been particularly challenging to integrate the independent requirements of all recipients of federal financial assistance - especially those in environmental, energy and natural resource agencies - to enforce anti-discrimination goals in accordance with the mandates of the Civil Rights Act of 1964. For more than thirty years this has been true for U.S. EPA itself; though much progress has been made, much more remains to be done to align environmental protection and civil rights enforcement. We address these issues in the legal authorities chapter of this report. The recommendations of this report, which include some clarification of legal authorities by the legislature as well as actions that can be implemented now by DEQ and other partners, will help DEQ and the Commonwealth align environmental protection and civil rights enforcement and build a robust environmental justice program.

Study Approach

During the information gathering phase of the study (Fall 2019-Spring 2020), the contractor team reviewed DEQ's statutory authority for advancing environmental justice and identified best practices for implementing environmental justice in other states. The contractor team also conducted a broad range of stakeholder interviews, held a webinar and a conducted a post-webinar survey to identify potential priority areas for advancing environmental justice (EJ) through Virginia DEQ's programs. Based on the statutory review, the best practice review, the interviews and post-webinar survey, the contractor team developed the recommendations summarized in this report.

The recommendations represent the contractor team's independent assessment of how Virginia DEQ can better incorporate environmental justice into its strategic planning and programs to advance environmental justice outcomes for the Commonwealth of Virginia. Additionally, communities can face environmental justice issues that extend beyond one project or agency program. This report includes many recommendations on information sharing, data availability and mapping tools that can serve as resources for communities, agencies and other stakeholders to examine environmental justice issues that are not project-based or program-limited.

Most recommendations focus on actions for DEQ. However, achieving environmental justice cannot be accomplished by the actions of one agency alone. Achieving environmental justice in the Commonwealth of Virginia will require concerted collaboration and coordination across administrations and agencies and between the many Commonwealth stakeholders that these administrations and agencies serve. To that end, some of the recommendations extend beyond DEQ to include recommendations for alignment between DEQ and local government activities and coordination between DEQ and other state agencies.

DEQ will need support from both the Governor's office and the General Assembly in expanding statutory authorities for DEQ and supporting those authorities with necessary budget appropriations for staffing and programming to implement the full range of recommendations. To this end, many recommendations note the significant role the Governor's office and the General Assembly must play in successful implementation.

Report Overview

The Environmental Justice Study is organized into the following chapters:

1. *Introduction*: Overview of the study purpose, approach, report organization and considerations for successful implementation.
2. *Environmental Justice Study Process*: Summary of the process, including tasks, timeline and approach.
3. *Recommendations*: Recommendations to DEQ on how to incorporate environmental justice across nine operational areas.
4. *Legal Authorities*: Summary of the legal authorities that enable and could further support implementation of the recommendations.
5. *State Implementation Examples*: Environmental justice best practice examples from other states.
6. *Conclusion*: Concluding thoughts on implementation.

Aiming for Success

DEQ has taken a major step in commissioning this study and seeking independent recommendations on how to incorporate environmental justice goals into DEQ strategic planning and program implementation. Furthermore, DEQ's leadership has demonstrated an openness to organizational change by seeking input from a broad range of stakeholders, including those who are critical of both the agency and its leadership.

Virginia DEQ finds itself at a pivotal moment in history. The time is ripe for acknowledgement of environmental justice issues within the Commonwealth of Virginia and adopting a new mindset supporting the advancement of environmental justice through DEQ programs. Recent events – DEQ's commissioning of the Environmental Justice Study, the Fourth Circuit Court of Appeals' decision on the location of the Atlantic Coast Pipeline compressor station, the legislation advancing environmental justice that passed in the 2020 General Assembly session, as well as larger societal issues including the racial and environmental inequities evident in the disparate impacts of the COVID-19 pandemic, and the broader national Movement for Black Lives and racial equity – collectively suggest the need for a reset in how DEQ works in this space going forward and an opportunity for DEQ to become a leader in environmental justice policy and implementation in the Commonwealth.

However, DEQ faces many challenges in making this transition. The agency has faced several decades of continual and significant budget cuts. Additional budget constraints in 2020 and 2021 can be anticipated, as the Commonwealth addresses the fiscal impacts of the COVID-19 pandemic. Additionally, over many administrations the Commonwealth of Virginia has emphasized environmental and public health protection within the context of the need for economic development. Long-standing institutional knowledge and standard operating procedures have developed over time at DEQ before environmental justice became a priority for the Commonwealth and without an acknowledgement of the role of federal civil rights law designed to ensure equal protection and the many instances of environmental injustice in the Commonwealth of Virginia.

Despite these challenges, DEQ has shepherded significant improvements to air quality and water quality since its inception. Additionally, DEQ has a core asset -- the experience and commitment of the staff, many of whom have expressed a desire to support and advance environmental justice if given the tools. Successful implementation will depend on investing in the staff and leadership by providing the necessary trainings, tools and time to help create a shared understanding of what environmental justice is, how it relates to existing and anticipated legal authorities, how it relates to the mission of DEQ and the everyday work lives of DEQ employees, and how to implement environmental justice efforts effectively and consistently across the agency. These investments may include:

- hiring staff who have expertise and can lead implementation and culture change efforts,
- prioritizing staff time for increasing a shared understanding of environmental justice and how to engage with environmental justice communities and partners (e.g., facilitated discussions among existing staff, trainings for existing staff and leadership), and
- prioritizing resources and staff time for development of implementation tools.

Ultimately, DEQ must create the space for a *cultural shift* that centers and aligns environmental justice within its core mission and everyday activities within each program and that supports staff in moving towards a dramatically different approach to their culture and work responsibilities.

Fortunately, there are many state precedents across the nation that can model the way for implementation (see Chapter 5), and not all implementation efforts require additional budget resources. Additionally, DEQ has the support of the current administration, recent new authorizing legislation and the newly created Interagency Environmental Justice Working Group. Finally, there are many partners eager to support DEQ in implementing these recommendations, including EPA, state and agency counterparts, local colleges and universities, local and regional governments, and especially residents experiencing environmental inequities as well as environmental justice organizations and their allies. Forging these partnerships will help significantly leverage the resources available to undertake this work.

The project team believes that the success of DEQ in advancing environmental justice will depend less on checking off each individual recommendation of this report and more on the investments the agency makes in building trust, shared understanding and skills for implementation among its staff, stakeholders and partners. This will require investing time in trust and relationship building and creating the space for significant discussion and coordination among stakeholders and partners to determine how best to implement the recommendations effectively, efficiently and authentically.

Institutional transformation takes time, but it is achievable. If the agency is able to create a culture and mindset shift that puts environmental justice at the center of its work, DEQ will be positioned at the cutting edge of environmental justice work and will be ready to serve as an effective partner in conversations that advance the health, prosperity and well-being of Virginians and the Commonwealth as a whole.

Chapter 2: Environmental Justice Study Process

Overview of Tasks and Timeline

Between Fall 2019 and Fall 2020, the contractor team conducted information gathering, developed recommendations, and provided support for the transition to implementation. These tasks are described below.

Information Gathering (Fall 2019 – Spring 2020)

The contractor team conducted information gathering tasks between Fall 2019 – Spring 2020. These tasks included:

- Review of statutory authorities
- Review of best practices in other states
- Gathering stakeholder perspectives and ideas (interviews, webinar and post-webinar survey)

Recommendations Development (Summer 2020 – Fall 2020)

The contractor team developed recommendations between Summer 2020 – Fall 2020. These tasks included:

- Formulate draft recommendations for how DEQ can incorporate environmental justice goals into DEQ strategic planning and phased program implementation
- Review draft recommendations with DEQ and the Office of the Attorney General
- Seek input from the outgoing Environmental Justice Advisory Council chair and co-chair
- Finalize the recommendations in an Environmental Justice Study Report

Implementation Support (Fall 2020)

The contractor team met with the DEQ Leadership team in Fall 2020 to facilitate an action planning meeting. During this meeting, the DEQ Leadership Team considered the recommendations and began to identify priorities to inform a two-year action plan. This action plan is forthcoming from DEQ.

Situation Assessment Methodology

During the information gathering phase, the contractor team conducted an assessment to identify potential priority areas for advancing environmental justice through Virginia DEQ's programs. The situation assessment included over 70 interviews, a webinar with over 400 participants to share the interview findings with the public, and collection of additional public comments through a post-webinar survey with 65 responses. The methodology for the situation assessment is described in detail below.

Interview Approach

The contractor team conducted over 70 interviews. The interviews generally ranged from 45 minutes to an hour, and interviewees were given the option of completing a pre-interview survey to help focus the conversation on topics of most interest to them. Participants were selected to represent all regions of the Commonwealth and a broad variety of stakeholder perspectives including perspectives from the:

- Environmental justice community
- Environmental organizations
- Regulated community
- Local government
- Citizen boards
- DEQ staff

The interviews helped identify a broad range of stakeholder perspectives regarding the challenges and opportunities for DEQ to advance environmental justice effectively. The consultant team summarized the information gathered through the interviews into themes to share through the statewide webinar.

Statewide Webinar Approach

In order to share the interview feedback as broadly as possible and gather additional feedback from participants across the state, the contractor team hosted simultaneous webinars in English and Spanish on Wednesday, June 17 from 6-8 pm. Copies of the webinar materials and recordings of both webinars may be found at: <https://www.deq.virginia.gov/get-involved/environmental-justice.aspx>.

The webinar format included a one-hour presentation of the interview findings, and one hour of free-flowing Q & A curated through the online chat where webinar participants asked a wide range of questions. The Q & A was also simultaneously interpreted in Spanish.

Between both webinars, there were over 665 registrants and over 400 attendees. The webinar recordings were also posted online, so that additional participants could download and watch the webinar at any time. Most participated through the English language webinar.

Webinar participants who participated in the live event or who watched the recording later were invited to respond to a post-webinar survey by July 6, 2020 with any additional feedback.

Survey Approach

To gather as much additional feedback beyond the interviews as possible, webinar participants were asked to complete a post-webinar survey. Links to English language and Spanish language version of the survey were made available to all participants at: <https://www.deq.virginia.gov/get-involved/environmental-justice.aspx>.

The English language survey received 65 responses. The Spanish language survey received no responses. In addition to the survey responses, the contractor team received less than 10 direct emails from stakeholders who had participated in the webinar.

Feedback received through the survey and email responses was incorporated into the summary of stakeholder findings.

Note on Interviewee Selection Process, Confidentiality and Opportunities for Participation

To ensure authentic and uncensored feedback from a wide range of stakeholders, interview, survey and email participant identities and affiliations is considered confidential.

Some stakeholders have raised concerns about the transparency of the selection process for the interviewees, why particular individuals were not interviewed and why the list of interviewees will remain confidential. The contractor team adopted this standard professional practice of confidentiality and non-attribution around interviewee identities to ensure open, and uncensored conversations during the interviews.

The webinar and post-webinar survey offered an opportunity to anyone who wanted to participate to include any additional perspectives not reflected in the initial interviews.

Chapter 3: Recommendations

Purpose

DEQ tasked the contractor team with developing independent recommendations to DEQ on how to incorporate environmental justice goals into DEQ strategic planning and phased program implementation.

The recommendations presented here reflect the contractor team's synthesis of the statutory authorities available to DEQ, priorities and opportunities for advancing environmental justice identified through the stakeholder feedback, and state best practices for implementing environmental justice in similar agencies across the nation. The recommendations represent the contractor team's independent assessment of how DEQ can better incorporate environmental justice goals into its work and advance environmental justice outcomes for the Commonwealth of Virginia.

Recommendations Overview

The report's recommendations reflect the varying levels of authority and agency that will be required to significantly advance environmental justice across the Commonwealth. It is important to note that many of the recommendations are within DEQ's authority to implement, however, others, particularly those relating to strengthening, clarifying and/or adding authority and resources (both staffing and monetary) require action by the General Assembly and the Governor. In these instances, the recommendations highlight necessary support from the General Assembly and the Governor.

The recommendations are organized into nine goals based on operational areas, as follows:

1. **Authority:** Strengthen and clarify legal and statutory authority to integrate environmental justice into DEQ programs.
2. **Leadership:** Foster subject matter understanding and cohesive support for environmental justice among DEQ leadership.
3. **Staff Capacity:** Increase staff clarity and capacity to effectively support environmental justice and apply environmental justice considerations throughout DEQ programs.
4. **Guidance and Tools:** Provide guidance and tools to ensure clear and consistent implementation of adopted environmental justice policies and practices.
5. **Accessible Information:** Develop tools to provide more transparent, accessible and real-time environmental information to the public.
6. **Relationship Building:** Invest in proactively building productive relationships with environmental justice and other adversely impacted communities.
7. **Community Engagement:** Proactively and authentically engage communities on issues and decision-making that could potentially affect their health and quality of life.
8. **Environmental Justice Community Capacity:** Build the capacity of environmental justice communities to participate meaningfully in environmental decision-making.
9. **Local Government Coordination:** Invest in local government coordination and education to ensure alignment with environmental justice policies.

Implementation Resources, Phasing and State Examples

Implementing the recommendations of this report will require DEQ to identify resources and set implementation phasing priorities. In the best of times, all administrations and their agencies must make decisions about how to allocate resources such as budgets and staff to support priority initiatives. Prioritization becomes even more critical during times of fiscal stress such as the nation is now experiencing during the COVID-19 pandemic. Hearteningly, not all recommendations in this report will require additional budget resources.

DEQ anticipates developing a two-year implementation plan that responds to the recommendations of the Environmental Justice Study. Therefore, the consultant team has included suggestions regarding resourcing, phasing and state implementation examples for each recommendation in the pages that follow.

Resource Suggestions

In the recommendations tables that start on the following page, the consultant team has included a resource column suggesting a variety of approaches that DEQ can use to support implementation. These include:

- Fiscal (\$): Increasing the agency's budget via the General Assembly, using limited agency discretion to re-prioritize within the existing budget, and securing grants and recognizing that the costs to implement some of the recommendations could be significant.
- Staff time (ST): Reprioritizing staff time, redeploying staff or changing the approach to current staff activities, recognizing though that DEQ may ultimately require additional fiscal resources as necessary to accommodate some of these staffing suggestions.
- Partnerships (P): Pursuing external expertise and capacity with resource partners taking the lead, including federal agencies, other state agencies, local institutions of higher education, local government, and other agency stakeholders (e.g., environmental justice communities, environmental organizations, regulated entities).

Phasing Suggestions

The recommendations tables also include a phasing column suggesting whether a recommendation should begin in:

- Year 1 of DEQ's implementation plan
- Year 2 of DEQ's implementation plan
- Year 3 or beyond (a future implementation plan)

State Implementation Examples

Finally, the recommendations tables include a list of state implementation examples where available. More information on these examples can be found in the related sections in Chapter 5.

Recommendations

1 Authority: Strengthen and clarify legal and statutory authority to integrate environmental justice into DEQ programs.					
	Resources			Phasing	State Examples
	S	ST	P		
<p>1A. Center environmental justice within DEQ’s environmental responsibilities:</p> <ul style="list-style-type: none"> The Commonwealth should update DEQ’s mission statement to center environmental justice within DEQ’s environmental responsibilities. Additionally, DEQ could center environmental justice in the vision and priorities of the agency as reflected in the agency’s strategic plan. 		•	•	1	CA
<p>1B. In coordination with the Office of the Attorney General (OAG), review, integrate and better align understanding of existing authorities, including Title VI of the Civil Rights Act (Title VI) requirements. Seek understanding, for example, of what authority is currently used to implement environmental justice at VDOT and how VDOT views Title VI’s relationship to program implementation.</p>		•	•	1	
<p>1C. The Commonwealth should seek legislation and regulations with specific requirements for public engagement in the permitting process, including increased notification, outreach, engagement, and public comment periods by both DEQ and permit applicants, with special considerations for environmental justice communities (aligned with Recommendations 4A and 7A-C). The General Assembly should ensure appropriate implementation funding for staff and programming is included with passage of the legislation.</p>	•	•	•	1	CA, CT, NY, OR, RI
<p>1D. The Commonwealth should seek legislation and implementing regulations to adopt a method for evaluating environmental justice benefits and impacts (including adverse, cumulative and disproportionate impacts on sensitive populations) during the permitting process (aligned with Recommendations 4B and 4C). The General Assembly should ensure appropriate implementation funding for staff and programming is included with passage of the legislation.</p>	•	•	•		CA, AR, KY, MN, NC, NM, NY
<p>1E. The Commonwealth should seek legislation and regulations to require enhanced monitoring and enforcement in environmental justice communities and communities with disproportionate health impacts (aligned with Recommendations 5C and 5E-G). The General Assembly should ensure appropriate implementation funding for staff and programming is included with passage of the legislation.</p>	•	•	•	2	CA, NY
<p>1F. The Commonwealth should seek legislation and implementing regulations to fund environmental justice organizations to conduct outreach, education, and environmental monitoring (aligned with Recommendations 5C, 7A and 8C). The General Assembly should ensure appropriate implementation funding for staff and programming is included with passage of the legislation.</p>	•		•	3	CA
<p>1G. The Commonwealth should seek legislation and implementing regulations to fund third party technical assistance that provides communities access to independent scientists and experts (aligned with Recommendation 8D). See for example, EPA’s Technical Assistance Services to Communities - TASC program. The General</p>	•		•		

	Assembly should ensure appropriate implementation funding for staff and programming is included with passage of the legislation.					
1H.	The Commonwealth should seek legislation requiring Virginia municipalities to consider environmental justice in their comprehensive plans and zoning ordinances in alignment with DEQ permitting responsibilities (aligned with Recommendation 7A and Recommendation 9). The General Assembly should ensure appropriate implementation funding for staff and programming is included with passage of the legislation.	•	•	•	1	CA
1I.	Host an annual working session with the Leadership Team and OAG to review DEQ's current authorities related to environmental justice and identify specific needs to strengthen and clarify authorities through the additional legislation suggested above (aligned with 1B).		•	•	1-3	

Key

Resources: \$ = Fiscal: Increasing the agency's budget via the General Assembly, using limited agency discretion to re-prioritize within the existing budget, and securing grants and recognizing that the costs to implement some of the recommendations could be significant. ST = Staff time: Reprioritizing staff time, redeploying staff or changing the approach to current staff activities, recognizing though that DEQ may ultimately require additional fiscal resources as necessary to accommodate some of these staffing suggestions. P = Partnerships: Pursuing external expertise and capacity with resource partners taking the lead, including federal agencies, other state agencies, local institutions of higher education, local government, and other agency stakeholders (e.g., environmental justice communities, environmental organizations, regulated entities).

Phasing: 1 = Year 1 of DEQ's implementation plan. 2 = Year 2 of DEQ's implementation plan. 3 = Year 3 or beyond (a future implementation plan).

State Examples: The recommendations also include a list of state implementation examples where available. More information on these examples can be found in the related section of Chapter 5.

2 Leadership: Foster subject matter understanding and cohesive support for environmental justice among DEQ leadership.					
	Resources			Phasing	State Examples
	\$	ST	P		
2A. Coordinate with the Governor's office to create and staff an environmental justice office at DEQ, and support increasing staff with environmental justice and civil rights expertise in the OAG. The General Assembly should ensure appropriate implementation funding for staff and programming in both instances.	•		•	1	CA, CT
2B. Develop an agencywide environmental justice policy and strategic plan that outlines program specific implementation actions.		•		1	CA, CT, OR
2C. Develop and adopt a clear and consistent message to convey DEQ's commitment to environmental justice and specific environmental justice priorities both internally and externally.		•		1	CA, CT, OR
2D. Increase diversity and representation in DEQ management through hiring and promotion with specific attention to reflecting the racial and ethnic diversity of the Commonwealth, expanding environmental justice expertise, and increasing representation from impacted communities consistent with Virginia Department of Human Resources Management policies. The Governor's office should advance similar diversity and representation outcomes in citizen board appointments, in coordination and alignment with efforts at DEQ.		•	•	2	CT
2E. Address real or perceived influence of political and economic interests on DEQ by coordinating with the Governor's office to establish structures such as an ombudsman or external agency review to provide accountability. The Governor's office should promote similar independence in citizen board operations, in coordination and alignment with efforts at DEQ.	•	•	•	2	DE, OR
2F. Provide annual environmental justice training to the leadership team at DEQ and extend the opportunity to key leadership from the Office of the Attorney General (OAG) and the Interagency Environmental Justice Working Group (aligned with Recommendation 3F).	•	•		1	CA, CT
2G. Invest in the cross-agency, collaborative Interagency Environmental Justice Working Group to identify opportunities and responsibilities to collaboratively and proactively advance environmental justice.		•		1	CA

Key

Resources: \$ = Fiscal: Increasing the agency's budget via the General Assembly, using limited agency discretion to re-prioritize within the existing budget, and securing grants and recognizing that the costs to implement some of the recommendations could be significant. ST = Staff time: Reprioritizing staff time, redeploying staff or changing the approach to current staff activities, recognizing though that DEQ may ultimately require additional fiscal resources as necessary to accommodate some of these staffing suggestions. P = Partnerships: Pursuing external expertise and capacity with resource partners taking the lead, including federal agencies, other state agencies, local institutions of higher education, local government, and other agency stakeholders (e.g., environmental justice communities, environmental organizations, regulated entities).

Phasing: 1 = Year 1 of DEQ's implementation plan. 2 = Year 2 of DEQ's implementation plan. 3 = Year 3 or beyond (a future implementation plan).

State Examples: The recommendations also include a list of state implementation examples where available. More information on these examples can be found in the related section of Chapter 5.

3 Staff Capacity: Increase staff clarity and capacity to effectively support environmental justice and apply environmental justice considerations throughout DEQ programs.					
	Resources			Phasing	State Examples
	S	ST	P		
3A.	Develop a recruitment, hiring and promotion process with benchmarks for diversifying DEQ staff to reflect the racial and ethnic diversity of the regions, including hiring from environmental justice communities and Tribal communities, consistent with Virginia Department of Human Resources policies and guidance.			1	CT, OR
3B.	Hire staff with expertise in engagement of environmental justice and Tribal communities and assessment of disproportionate and cumulative environmental impacts. During the interim, contract with consultants or local academic institutions to increase DEQ's capacity and environmental justice expertise.			3 ¹	CT, IN, OR, SC
3C.	Hire or increase access to translators and interpreters.			3 ²	OR, WA
3D.	Continue to strengthen productive communication, relationships and coordination between technical and non-technical staff.			1	
3E.	Include dedicated environmental justice, community engagement and communications specialists on technical teams.			1	
3F.	Train staff annually on environmental justice, land use and the history of racial segregation, DEIJ, community engagement and new environmental justice policies including: <ul style="list-style-type: none"> History of environmental justice, environmental racism (including the relationship between discriminatory policies of the past and present-day disparities and practices), legal authorities for addressing environmental justice (including Title VI requirements), and disproportionate and cumulative impacts on human health and the environment. Diversity, equity, inclusion and justice (DEIJ) in the workplace, along with cultural competence/cultural humility awareness and skills building. Meaningful communication and outreach strategies including cross cultural communication and conflict resolution, and how to be more transparent and build trust with environmental justice communities and Tribal communities DEQ's enhanced understanding of their legal authorities related to environmental justice (aligned with Recommendations 1A-G) and related shifts in departmental culture regarding environmental justice. How to incorporate environmental justice policies and methods into core DEQ programs (aligned with Recommendations 4A-D). 			1-3	OR, NJ, SC

Key

Resources: *S = Fiscal*: Increasing the agency's budget via the General Assembly, using limited agency discretion to re-prioritize within the existing budget, and securing grants and recognizing that the costs to implement some of the recommendations could be significant. *ST = Staff time*: Reprioritizing staff time, redeploing staff or changing the approach to current staff activities, recognizing though that DEQ may ultimately require additional fiscal resources as necessary to accommodate some of these staffing suggestions. *P = Partnerships*: Pursuing external expertise and capacity with resource partners taking the lead, including federal agencies, other state agencies, local institutions of higher education, local government, and other agency stakeholders (e.g., environmental justice communities, environmental organizations, regulated entities). Phasing: 1 = Year 1 of DEQ's implementation plan. 2 = Year 2 of DEQ's implementation plan. 3 = Year 3 or beyond (a future implementation plan). *State Examples*: The recommendations also include a list of state implementation examples where available. More information on these examples can be found in the related section of Chapter 5.

¹ The project team encourages hiring sooner if budget resources allow.

² The project team encourages hiring and/or increasing access sooner if budget resources allow.

4. Guidance and Tools: Provide guidance and tools to ensure clear and consistent implementation of adopted environmental justice policies and practices.					
	Resources			Phasing	State Examples
	\$	ST	P		
4A.	Develop more robust community engagement guidance, metrics and tools, (aligned with Recommendations 7A-C), including guidance on using a respectful approach to security during public hearings.			1	CA, IL, OR, PA
4B.	Develop a user-friendly statewide mapping tool to help identify environmental justice communities and Tribal communities (aligned with Recommendations 1D, 5F and 5G). ³ The mapping tool should be a “one-stop” shop for the public, so that they do not have to track down data from multiple agencies. For example, the tool could include data such as socioeconomics, environmental exposures and health statistics. This may require coordination with other state and federal agencies (e.g., the Virginia Department of Health) on data collection and/or display.			2	CA, IL, MA, MD, MI, MN, WA
4C.	Develop a method, based on environmental justice best practices, to evaluate cumulative and disproportionate impacts to environmental justice communities and Tribal communities and evaluate site suitability, including a process for integrating knowledge and expertise from environmental justice experts and residents and standards for evaluating data developed by applicants (aligned with Recommendation 1D).			2	CA, NY, MN, NJ
4D.	Evaluate programs and develop regulations to align the new environmental justice legislation, policies and methods in and across each program, including monitoring, enforcement and permitting.			1-34	CA, LA, MN, NJ, NM, NY,

Key

Resources: \$ = Fiscal: Increasing the agency’s budget via the General Assembly, using limited agency discretion to re-prioritize within the existing budget, and securing grants and recognizing that the costs to implement some of the recommendations could be significant. ST = Staff time: Reprioritizing staff time, redeploying staff or changing the approach to current staff activities, recognizing though that DEQ may ultimately require additional fiscal resources as necessary to accommodate some of these staffing suggestions. P = Partnerships: Pursuing external expertise and capacity with resource partners taking the lead, including federal agencies, other state agencies, local institutions of higher education, local government, and other agency stakeholders (e.g., environmental justice communities, environmental organizations, regulated entities).

Phasing: 1 = Year 1 of DEQ’s implementation plan. 2 = Year 2 of DEQ’s implementation plan. 3 = Year 3 or beyond (a future implementation plan).

State Examples: The recommendations also include a list of state implementation examples where available. More information on these examples can be found in the related section of Chapter 5.

³ EJSSCREEN may be used as one model for this tool; however, it is important to note that EJSSCREEN does not identify federally-recognized or state-recognized Tribal communities in Virginia. Addressing this gap through the statewide mapping tool will assist the Commonwealth in navigating the history of erasure of Tribal peoples in Virginia and advancing environmental justice in partnership with Tribal communities.

⁴ The project team anticipates that this action would happen in a rolling manner as new legislation is passed.

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

	Resources			Phasing	State Examples
	S	ST	P		
5A. Provide a more intuitive, user-friendly website.	•	•		1	CA, NJ
5B. Develop user-friendly graphics illustrating (1) DEQ’s authority, mission, programs, responsibilities and structure, (2) the authorities of the citizen boards relative to DEQ, and (3) the roles and responsibilities of DEQ and other agencies involved in the Interagency Environmental Justice Working Group (aligned with Recommendations 1A, 1G and 2G). ⁵		•		1-2	CA, NJ
5C. Increase access to information about existing environmental monitoring tools and enforcement actions in environmental justice communities and Tribal communities (aligned with Recommendations 1F, 5F, 5G and 7).		•		1	CA, NJ, OR, PA
5D. Develop project-specific and issue-specific handouts using plain language to explain the project or issue and how to get involved. As appropriate, translate into additional languages spoken in the community (aligned with Recommendation 7).	•	•		1-2	NJ, WA
5E. Expand water quality monitoring and the state air monitoring network in collaboration with impacted communities to more accurately capture ambient and fugitive emissions and discharges from industrial facilities and other sources in or near frontline communities (by expanding placement of stationary monitors, increasing use of mobile monitors (in partnership with EPA), increasing fence-line monitoring, partnering with local schools of public health and schools of engineering, and partnering with communities on citizen science monitoring.)	•	•	•	2	CA, OR
5F. Develop an interactive GIS map of Virginia that includes real-time permit information including applicant, permit type, compliance status and compliance standards (aligned with Recommendations 4B, 4C, 5C, 5G and 7).	•	•	•	3	
5G. Develop an interactive GIS map of Virginia that shows real-time air quality and water quality monitoring data and contaminated sites (aligned with Recommendations 4B, 4C, 5C, 5F and 7).	•	•	•	3	MA, MN

Key

Resources: S = Fiscal: Increasing the agency’s budget via the General Assembly, using limited agency discretion to re-prioritize within the existing budget, and securing grants and recognizing that the costs to implement some of the recommendations could be significant. ST = Staff time: Reprioritizing staff time, redeploying staff or changing the approach to current staff activities, recognizing though that DEQ may ultimately require additional fiscal resources as necessary to accommodate some of these staffing suggestions. P = Partnerships: Pursuing external expertise and capacity with resource partners taking the lead, including federal agencies, other state agencies, local institutions of higher education, local government, and other agency stakeholders (e.g., environmental justice communities, environmental organizations, regulated entities). **Phasing:** 1 = Year 1 of DEQ’s implementation plan. 2 = Year 2 of DEQ’s implementation plan. 3 = Year 3 or beyond (a future implementation plan). **State Examples:** The recommendations also include a list of state implementation examples where available. More information on these examples can be found in the related section of Chapter 5.

⁵The development of the third graphic could be a service DEQ provides to the workgroup and could be developed with their input, review and approval. Alternatively, the workgroup may wish to delegate the development of this graphic to another entity. Either way, the graphic should align with the development of the first two graphics recommended here (and ideally be rolled out on the same timeline), for ease of use by the public.

6. Relationship Building: Invest in proactively building productive relationships with environmental justice and other adversely impacted communities.					
	Resources			Phasing	State Examples
	S	ST	P		
6A.	Establish and staff an Office of Community Engagement with communications expertise and ensure communications and community engagement staff are integrated into project teams (aligned with Recommendations 3A-E and Recommendations 7A-C).			1	SC
6B.	Support staff who do community engagement by providing tools, trainings (aligned with 3F), supports such as flexible work hours to accommodate evening and weekend meetings, and a culture that values relationship building as integral to achieving mission-related outcomes.			1	OR, SC
6C.	Conduct standing monthly or quarterly meetings with environmental justice communities, Tribal communities and other adversely impacted groups. Relationships need to be built and strengthened at all levels, with an emphasis on relationships between these communities and senior leadership and decision-makers at DEQ.			2	
6D.	Adopt a formal structure to build community relationships such as regional community engagement liaisons. Relationship building should emphasize building relationships with formal community leadership (e.g., elected officials, organizational leaders) and directly with community residents. Where possible, seek out opportunities to attend and build relationships at community-sponsored events (meet with the community in their own spaces, such as existing community meetings, Tribal powwows, etc.).			2	DE, SC

Key

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

	Resources			Phasing	State Examples
	S	ST	P		
7A. Proactively and effectively notify (including requiring applicant notification criteria) Environmental Justice and Tribal communities early in regulatory and permitting processes (including during the project scoping, siting and permit application phases), and share relevant information and educational resources (aligned with Recommendations 1F, 5, 6 and 9). Coordinate with EPA, as needed.	•	•		1	CT, IL, OH
7B. Proactively engage with affected communities on decisions (aligned with Recommendations 5 and 6), including: <ul style="list-style-type: none"> Clarify decision points, discuss potential benefits and adverse impacts; clarify to what extent the community can influence decisions and how the public input ultimately influenced final decision-making. Establish timelines for permits and rulemaking to accommodate community engagement and extended comment periods (aligned with Recommendations 1C and 4A). Ensure compliance with Federal law, but recognize that there may be instances where DEQ can go above and beyond the minimum requirements of Federal law. Ensure public comment is fully captured; provide transcripts to the public when possible. Hold meetings in the impacted community at a time and location that are convenient for residents. Provide information and explanations of technical documents in plain language and in languages spoken by the impacted community (aligned with Recommendations 5C and 5D). 	•	•		1	OR, TN, WV
7C. Allocate staff time and resources equitably between impacted communities and the regulated community (e.g., permit applicants) in regulatory and permit processes (aligned with Recommendations 5, 6 and 8A).	•	•		1	CT, DE

Key

Resources: S = Fiscal: Increasing the agency’s budget via the General Assembly, using limited agency discretion to re-prioritize within the existing budget, and securing grants and recognizing that the costs to implement some of the recommendations could be significant. ST = Staff time: Reprioritizing staff time, redeploying staff or changing the approach to current staff activities, recognizing though that DEQ may ultimately require additional fiscal resources as necessary to accommodate some of these staffing suggestions. P = Partnerships: Pursuing external expertise and capacity with resource partners taking the lead, including federal agencies, other state agencies, local institutions of higher education, local government, and other agency stakeholders (e.g., environmental justice communities, environmental organizations, regulated entities).

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

	Resources			Phasing	State Examples
	S	ST	P		
8A. Prioritize environmental justice, Tribal (both federally and state recognized), and underserved communities for investment through existing grant programs and designated staff time, including prioritizing funding to those most in need and reducing barriers for grant programs and access to other funds and resources (aligned with Recommendation 7C).		•		1	CA, DE, NY, SC
8B. Partner with a third party to host trainings on effective public comment and effective and timely engagement in permitting processes (aligned with Recommendations 7A-C).	•		•	2	LA
8C. Partner with and fund environmental justice organizations to conduct outreach, education, and environmental monitoring (aligned with Recommendations 1F, 5C, 6A and 7A).	•		•	3	SC
8D. Provide third party technical assistance that provides communities access to independent scientists and experts (aligned with Recommendation 1G). See for example, EPA's Technical Assistance Services to Communities - TASC program.	•		•	3	

Key

Resources: S = Fiscal: Increasing the agency's budget via the General Assembly, using limited agency discretion to re-prioritize within the existing budget, and securing grants and recognizing that the costs to implement some of the recommendations could be significant. ST = Staff time: Reprioritizing staff time, redeploying staff or changing the approach to current staff activities, recognizing though that DEQ may ultimately require additional fiscal resources as necessary to accommodate some of these staffing suggestions. P = Partnerships: Pursuing external expertise and capacity with resource partners taking the lead, including federal agencies, other state agencies, local institutions of higher education, local government, and other agency stakeholders (e.g., environmental justice communities, environmental organizations, regulated entities).

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State Examples: The recommendations also include a list of state implementation examples where available. More information on these examples can be found in the related section of Chapter 5.

9. Local Government Coordination: Invest in local government coordination and education to ensure alignment with environmental justice policies

	Resources			Phasing	State Examples
	S	ST	P		
9A. Partner with local government coordination organizations to provide education to local governments on their roles and responsibilities related to environmental justice in the comprehensive planning, zoning and other land use regulations, local siting review and approval processes and how those roles and responsibilities relate to evaluation of environmental justice-related considerations in the permitting process (aligned with Recommendation 1H, 4C, and 9C). Ensure appropriate coordination and partnership with Tribal governments, as well.	•	•	•	3	CA, MA, NJ
9B. Identify or develop plain language materials that outline general considerations by industry type that local and Tribal governments should evaluate when making siting decisions prior to the DEQ permitting process.		•		3	
9C. Offer “pre-screening” services to local and Tribal governments before local siting decisions are made to explain how local siting decisions can meet environmental justice and community engagement criteria in DEQ’s permitting process (aligned with Recommendations 1D, 1E, 1H, 4C and 9A).		•		3	
9D. Allocate staff time to coordinate and engage with local and Tribal governments.		•		2	
9E. Collaborate with local and Tribal government coordination venues (such as the Soil and Water Conservation Districts) to build trust, education and coordination.		•	•	2	

Key

Resources: S = Fiscal: Increasing the agency’s budget via the General Assembly, using limited agency discretion to re-prioritize within the existing budget, and securing grants and recognizing that the costs to implement some of the recommendations could be significant. ST = Staff time: Reprioritizing staff time, redeploing staff or changing the approach to current staff activities, recognizing though that DEQ may ultimately require additional fiscal resources as necessary to accommodate some of these staffing suggestions. P = Partnerships: Pursuing external expertise and capacity with resource partners taking the lead, including federal agencies, other state agencies, local institutions of higher education, local government, and other agency stakeholders (e.g., environmental justice communities, environmental organizations, regulated entities).

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State Examples: The recommendations also include a list of state implementation examples where available. More information on these examples can be found in the related section of Chapter 5.

Chapter 4: Legal Authorities

This section first reviews existing legal authorities to address environmental justice in Virginia Department of Environmental Quality (DEQ) programs, followed by statutory and regulatory enhancements the Commonwealth could pursue to clarify and strengthen DEQ's authorities and responsibilities to integrate environmental justice and equal protection in its programs.

Existing Authority to address Environmental Justice in DEQ Programs

As outlined below, DEQ derives authority to address environmental justice factors in its programs through existing program authorities, the Virginia Environmental Justice Act and related legislation, and Title VI of the Civil Rights Act of 1964.

DEQ's Delegated Programs

Upon the Commonwealth's adoption of statutory and regulatory authorities that meet Federal standards, DEQ received delegation of several Federal environmental programs and assumed operational responsibilities for these programs,⁶ including the State's Air Permit and Compliance Program, VPDES (Wastewater) Permitting and Compliance Program, and Hazardous Waste Program. In Plan EJ 2014, EPA identified numerous existing Federal statutory authorities to address environmental justice issues throughout the Federal environmental programs.⁷ Plan EJ 2014's Legal Tools section may provide a useful reference for the Commonwealth's Office of Attorney General (OAG) to determine what parallel authorities currently exist in Virginia law and what new authorities could be considered to strengthen the Commonwealth's environmental justice program. Plan EJ 2014's Legal Tools section also outlines the U.S. Environmental Protection Agency's (EPA) oversight authorities and suggests that, in the future, EPA may prioritize permit and other reviews based on factors related to environmental justice.

Existing Authorities for Certain Air Permits

As outlined in *Friends of Buckingham v. State Air Pollution Control Board*, 947 F.3d 68 (4th Cir. 2020), the Fourth Circuit found that existing state law requires Virginia's State Air Pollution Control Board (Air Board) to consider environmental justice issues and location suitability when issuing certain minor new source review (NSR) permits under the Clean Air Act. The Commonwealth Energy Policy states that it is the policy of the Commonwealth to "[e]nsure 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."⁸ Virginia law also requires the Air Board, when approving permits, to "consider facts and circumstances relevant to the reasonableness of the activity involved and the regulations proposed to control it including . . . [t]he character and degree of injury to, or interference with, safety, health, or the reasonable use of property which is caused or threatened to be caused . . . [and t]he suitability of the activity to the area in which it is located . . ."⁹ According to the Fourth Circuit in *Friends of Buckingham*, to comply the Air Board, must consider issues relevant to site suitability, including a detailed evaluation of land uses, local demographics and distances to the proposed site,¹⁰ and when the Air Board is approving a permit for an energy facility, it must also "consider [environmental justice]" in the approval process and assess the likelihood of disproportionate harm under the Commonwealth Energy Policy.¹¹ The Fourth Circuit found that when evaluating disproportionate impacts, DEQ must consider the health impacts of emissions on those living closest to a proposed facility and not rely on whether emissions complied with the National Ambient Air

⁶ See, e.g., U.S. EPA, Delegation of Clean Air Act Authority, <https://www.epa.gov/caa-permitting/delegation-clean-air-act-authority>, U.S. EPA, NPDES State Program Authorization Information, <https://www.epa.gov/npdes/npdes-state-program-authorization-information>; U.S. EPA, State Authorization under RCRA, <https://www.epa.gov/rcra/state-authorization-under-resource-conservation-and-recovery-act-rcra>.

⁷ US EPA, Plan EJ 2014 Legal Tools, <https://nepis.epa.gov/Exe/ZyPDF.cgi/P100DFCQ.PDF?Dockey=P100DFCQ.PDF>.

⁸ Va. Code Ann. § 67-102(A)(8), <https://law.lis.virginia.gov/vacode/title67/chapter1/section67-102/>.

⁹ Va. Code Ann. § 10.1-1307(E), <https://law.lis.virginia.gov/vacode/title10.1/chapter13/section10.1-1307/>.

¹⁰ *Friends of Buckingham*, 947 F.3d at 86-93.

¹¹ *Id.* at 88, 90.

Quality Standards (NAAQS).¹² For environmental justice populations near a proposed permitted facility, this requires a thorough evaluation of potential adverse impacts and how those impacts can be mitigated. The Fourth Circuit's determination in *Friends of Buckingham* is similar to the social impact assessments required for certain federal projects under the National Environmental Policy Act (NEPA) to thoroughly evaluate the potential adverse impacts of proposed facility siting, construction and operation under three scenarios: (1) build, (2) build with modifications and (3) no build.¹³

Virginia Environmental Justice Act and Related Legislation

In 2020, the Commonwealth enacted the Virginia Environmental Justice 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 frontline communities."¹⁴ Further, DEQ's enabling statute was amended to state that DEQ's purpose, among others, is "[t]o further environmental justice and enhance public participation in the regulatory and permitting processes" and "[t]o 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."¹⁵ The Commonwealth defines "fair treatment" as ". . . the equitable consideration of all people whereby no group of people bears a disproportionate share of any negative environmental consequence resulting from a[] . . . governmental . . . program . . ."¹⁶ Both DEQ's new purposes and the Commonwealth's environmental justice policy authorize DEQ to incorporate environmental justice considerations in its decisions and actions to ensure its programs do not disproportionately impact environmental justice communities.¹⁷

Title VI of the Civil Rights Act of 1964

Title VI Obligations and EPA's Title VI Compliance Complaint Processes and Procedures

Title VI of the Civil Rights Act of 1964 (Title VI) states that "[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 subjected to discrimination under any program or activity receiving Federal financial assistance."¹⁸ Title VI authorizes Federal agencies that dispense Federal financial assistance to promulgate regulations implementing the Title VI prohibition.¹⁹ In response, EPA adopted 40 C.F.R. § 7.35(b), which states "[a] recipient [of Federal financial assistance] shall not use criteria or methods of administering its program which have the effect of subjecting individuals to discrimination because of their race, color, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, national origin or sex."²⁰ EPA regulations define "program

¹² *Id.* at 92. Note that *Friends of Buckingham* is distinguished by *Town of Weymouth v. MDEP*, 961 F.3d 34 (1st Cir. 2020), <https://law.justia.com/cases/federal/appellate-courts/ca1/19-1794/19-1794-2020-06-03.html>, in which the First Circuit found that the Massachusetts Department of Environmental Protection's issuance of an air permit for a natural gas pipeline compressor station did not violate the Massachusetts Env'tl. Justice Policy requiring agencies to engage in "enhanced public participation" when a project site is located within five miles (for air pollutants) of an environmental justice population and where emissions would exceed the Environmental Notification Form (ENF) threshold under the Massachusetts Environmental Protection Act (MEPA) because the proposed station's emissions would not exceed relevant thresholds.

¹³ See The Interorganizational Committee on Guidelines and Principles for Social Impact Assessment, *Guidelines and Principles For Social Impact Assessment* (1994), https://www.iaia.org/pdf/IAIAMemberDocuments/Publications/Guidelines_Principles/SIA%20Guide.PDF.

¹⁴ Va. Code Ann. § 2.2-235, <https://law.lis.virginia.gov/vacode/title2.2/chapter2/>.

¹⁵ *Id.* at § 10.1-1183.

¹⁶ *Id.* at § 2.2-234.

¹⁷ Va. Code Ann. § 10.1-1183(B)(4), (13), <https://law.lis.virginia.gov/vacode/title10.1/chapter11.1/section10.1-1183/>.

¹⁸ 42 U.S.C. § 2000d, <https://www.law.cornell.edu/uscode/text/42/2000d>.

¹⁹ *Id.* at § 2000d-1.

²⁰ 40 C.F.R. § 7.35(b), https://www.ecfr.gov/cgi-bin/text-idx?SID=236fa48049faf68ad06fcc936268a2c9&mc=true&tpl=/ecfrbrowse/Title40/40cfr7_main_02.tpl. See also 42 U.S.C. § 2000d-4a,

Cureton v. Nat'l Collegiate Athletic Ass'n., 198 F.3d 107, 115 (3d Cir. 1999) (Finding that Title VI ". . . encompasses programs or activities of a recipient of Federal financial assistance on an institution-wide basis.")

or activity” as “. . . all of the operations of any [State agency], any part of which is extended Federal financial assistance.”²¹ EPA regulations also require federal grant recipients to create a nondiscriminatory program that provides continuing notice of non-discrimination, the designation of at least one person to coordinate non-discrimination compliance efforts, and grievance procedures that assure prompt and fair resolution of complaints of Title VI violations.²²

When investigating a Title VI complaint alleging that a State agency’s program has a discriminatory effect, EPA performs an analysis to determine whether an adverse and disparate impact occurred by “. . . (1) identify[ing] the specific policy or practice at issue, (2) establish[ing] adversity/harm, (3) establish[ing] disparity, and (4) establish[ing] causation.”²³ When analyzing whether a harm exists, EPA may find adverse health effects even though a State agency’s actions comply with existing environmental standards.²⁴ EPA’s *Draft Revised Guidance for Investigating Title VI Complaints Challenging Permits* states that “[c]ompliance with environmental laws does not constitute per se compliance with Title VI” and “[a] recipient’s Title VI obligation exists in addition to the Federal or state environmental laws governing its environmental permitting program.”²⁵ EPA’s 2017 *External Civil Rights Compliance Office Compliance Toolkit* similarly states that “[i]f in a given circumstance a recipient is in compliance with applicable environmental laws[,] that fact alone does not necessarily mean that the recipient is in compliance with federal civil rights laws.”²⁶

Best Practices and Models for Title VI Implementation

Much guidance exists showing how state agencies can approach Title VI implementation. A 2006 report funded by EPA to “. . . advance the development of environmental justice programs by state agencies across the United States[]” recommends that “[t]o comply with the various requirements imposed by Title VI and EPA’s non-discrimination regulations, state environmental agencies must ensure their actions do not intentionally discriminate or have the effect of discriminating on the basis of race, color or national origin; and they must adopt some kind of process to receive, investigate and resolve discrimination complaints.”²⁷ The report further recommends that “[t]he most effective way [] for state environmental agencies to ensure compliance with Title VI’s mandates is to establish an agency-wide compliance program that promotes environmental justice.”²⁸

Many State environmental agencies have adopted environmental justice programs that employ a variety of strategies to implement Title VI. Some states, such as California, New York, New Jersey and Rhode Island, have adopted additional legal

²¹ 40 C.F.R. § 7.25; *See also* 42 U.S.C. § 2000d-4a, *Cureton v. Nat’l Collegiate Athletic Ass’n.*, 198 F.3 107, 115 (3d. Cir. 1999) (Finding that Title VI “. . . encompasses programs or activities of a recipient of Federal financial assistance on an institution-wide basis.”).

²² 40 CFR §§ 7.95(a), 7.85(g), 7.90.

²³ Genesee Complaint Letter from Lilian S. Dorka, Director, External Civil Rights Compliance Office, Office of Gen. Counsel, U.S. EPA to Heidi Grether, Director, Mich. Dep’t Env’tl. Quality 17-9 (Jan. 19, 2017), <https://www.epa.gov/sites/production/files/2017-01/documents/final-genesee-complaint-letter-to-director-grether-1-19-2017.pdf>.

²⁴ *Id.* at 21 (Stating “EPA also examined whether site-specific information demonstrates the presence of adverse health effects from the NAAQS pollutants, even though the area is designated attainment for all such pollutants and the facility recently obtained a construction and operating permit that ostensibly meets applicable requirements” and “[t]he Complainants provided information that indicated presence of an adverse impact from lead despite the designation of attainment.”)

²⁵ Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs and Draft Revised Guidance for Investigating Title VI Complaints Challenging Permits, 65 Fed. Reg. 39650, 39680 (June 27, 2000),

<https://www.govinfo.gov/content/pkg/FR-2000-06-27/pdf/00-15673.pdf>; *see also* Office of Civil Rights, U.S. EPA, Draft Title VI Guidance Documents Questions and Answers 4 (2000) (Stating that “[a] recipient’s Title VI obligation exists independent from Federal or state environmental laws governing its permitting program. Recipients may have policies and practices that are compliant with Federal or state regulations but that have discriminatory effects (such as an adverse disparate impact) on certain populations based on race, color, or national origin, and are therefore noncompliant with Title VI”), <https://www.epa.gov/sites/production/files/2016-04/documents/t6guidefaq2.pdf>.

²⁶ External Civil Rights Compliance Office, OGC, US EPA, External Civil Rights Compliance Office Compliance Toolkit 28 (2017), https://www.epa.gov/sites/production/files/2017-01/documents/toolkit-chapter1-transmittal_letter-faqs.pdf.

²⁷ Rhode Island Legal Services, Env’tl. Justice for States: A Guide for Developing Env’tl. Justice Programs for State Env. Agencies i, 23 (2006), <http://www.dem.ri.gov/envequity/pdf/rilsrept.pdf>.

²⁸ *Id.* at 23-4.

authorities to help address environmental justice issues.²⁹ States typically adopt statutory and/or regulatory authorities prior to considering environmental justice factors during the permitting process or monitoring and enforcement activities.³⁰ Most recently, the New Jersey State Legislature passed NJ S232, which requires an applicant seeking a permit from the New Jersey Department of Environmental Protection to prepare a report assessing the environmental impacts, including cumulative impacts posed by existing conditions, for a proposed facility located in a “burdened community.”³¹ Some states also have adopted legislation to authorize funding for technical assistance for environmental justice communities or to require consideration of environmental justice factors during local decision-making processes.³² Other states, such as South Carolina, have created robust environmental justice programs largely under their existing legal authorities.³³ Such programs may include environmental justice offices, policies, strategic plans, internal trainings, personnel trained to interface with the public, translation services, outreach activities and enhanced public engagement, information sharing, relationship building activities, and mapping tools designed to identify sensitive environmental justice areas. Chapter 5 of this report presents a variety of State environmental programs that take this approach.

In addition to the state implementation examples found in Chapter 5 of this report, DEQ may wish to review the environmental justice and Title VI programs of other Commonwealth agencies, which could provide helpful models for DEQ to consider, acknowledging implementation may differ between transportation and environmental agencies. For example, at the Virginia Department of Transportation (VDOT), the Commonwealth created an environmental justice program through which VDOT “. . . assess[es] and document[s] the impacts of transportation projects on minority and low-income populations as a normal part of [VDOT’s] environmental analysis efforts” and “. . . ensure[s] the involvement of affected communities in the project development process.”³⁴ VDOT’s Title VI Implementation Plan outlines the agency’s Title VI authorities, implementation responsibilities, and discrimination complaint process.³⁵

Recommended Changes to Statutory and Regulatory Authorities

To create an environmental justice program at DEQ, the Commonwealth could either adopt additional legal authorities or proceed under DEQ’s existing authorities. This report does not indicate whether specific recommendations require additional legal authority or not. However, recognizing the option for additional State-level legal authorities as a frequent approach, the report does recommend several areas where the Commonwealth might wish to focus its efforts at DEQ through clarifying authorities (Recommendation 1) and summarizes them below (in the Recommended Changes to Statutory and Regulatory Authorities subsection of Ch 4).

The following statutory and regulatory changes are recommended to clarify and strengthen DEQ’s authority to ensure its environmental programs do not disproportionately impact certain communities. For each authority recommendation, this section provides examples of legislation and/or regulations from other states that address environmental justice in their administrative environmental programs.

Environmental Justice in DEQ’s Mission Statement

To focus its commitment to environmental justice, the General Assembly should update the agency’s mission statement to center environmental justice considerations related to fulfilling DEQ’s environmental responsibilities. California required its Environmental Protection Agency (CalEPA) to develop a model environmental justice mission statement for

²⁹ See State statutory and regulatory examples below in *Recommended Changes to Statutory and Regulatory Authorities* in Chapter 4.

³⁰ *Id.*

³¹ S. 232, 219th Leg., 2020 Sess. (N.J. 2020), https://www.njleg.state.nj.us/2020/Bills/S0500/232_I1.HTM.

³² *Id.*

³³ See State examples described throughout Chapter 5 of this report.

³⁴ VDOT, Env’tl. Justice, https://www.virginiadot.org/business/civil_rights_environmental_justice.asp#:~:text=The Virginia Department of Transportation,of our environmental analysis efforts; see also VDOT, Title VI of the Civil Rights Act of 1964 and Additional Nondiscrimination Requirements, https://www.virginiadot.org/business/civil_rights_title_vi_of_the_civil_rights_act_of_1964.asp.

³⁵ VDOT, Title VI Implementation Plan (2020),

https://www.virginiadot.org/business/resources/Civil_Rights/Title_VI_Implementation_Plan_2020.pdf.

the boards, departments, and office within the agency³⁶ in consultation with the state's Working Group on Environmental Justice.³⁷ The mission statement reads "[CalEPA] 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 that promotes equity and affords fair treatment, accessibility, and protection for all Californians, regardless of race, age, culture, income, or geographic location."³⁸

Enhanced Public Engagement

Recent amendments to DEQ's creation statute provide the agency with clear authority to engage the public around environmental justice issues. The statute now states that DEQ's purpose, among others, is "[t]o further environmental justice and enhance public participation in the regulatory and permitting processes" and "[t]o 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, regs and policies."³⁹ To further clarify this authority, the General Assembly should enact legislation (including corresponding budgetary resources) with specific requirements for public engagement in permitting processes, as well as appropriate implementing regulations. New public engagement provisions could require enhanced notification, outreach, and public comment periods for affected environmental justice communities, provided by both DEQ and permit applicants.⁴⁰ For example, Oregon requires its natural resources agencies to ensure greater public participation by holding hearings at times and in locations that are convenient for people in affected communities and to engage in public outreach activities in these communities.⁴¹ Similarly, Rhode Island requires its Department of Environmental Management to develop and implement a process to ensure community involvement throughout the investigation and remediation of contaminated sites, including notification of abutting residents and adequate availability of all relevant public records.⁴² Connecticut extends public engagement requirements to applicants requiring those seeking certain certificates, permits or siting approvals for an "affecting facility" proposed in an environmental justice community to file a "meaningful public participation plan" and to consult with the chief elected official(s) of the affected municipality to evaluate the need for a community benefit agreement.⁴³ Environmental agencies in several states have promulgated regulations with detailed instructions for public engagement activities during permitting. Rhode Island's site investigation rules for remediation of hazardous material releases require signs posted at contaminated sites located in environmental justice focus areas to inform local residents about the project, in languages other than English when necessary.⁴⁴ For public hearings for proposed changes to solid waste facilities, California requires the enforcing agency to consider environmental justice issues when preparing and distributing public notice and to ensure notice is understandable for limited-English speaking populations.⁴⁵ Finally, New York State requires applicants for proposed major electric generating facilities to engage the public in a pre-application process, providing comprehensive application materials in plain language and an opportunity to comment.⁴⁶

³⁶ Cal. Pub. Res. Code § 71111,

http://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=PRC&division=34.&title=&part=3.&chapter=&article=

³⁷ *Id.* at § 71112.

³⁸ See CalEPA, Programs, <https://calepa.ca.gov/programs/>; CalEPA, Intra-agency Env. Justice Strategy 5 (2004), <https://calepa.ca.gov/wp-content/uploads/sites/6/2017/01/EnvJustice-Documents-2004yr-EnglishStrategy.pdf>.

³⁹ Va. Code Ann. § 10.1-1183(B)(4), (13).

⁴⁰ This may require review by the Office of the Attorney General to ensure that new timelines do not conflict with Federal requirements and timelines.

⁴¹ Or. Rev. Stat. § 182.545, https://www.oregonlegislature.gov/bills_laws/ors/ors182.html.

⁴² R.I. Gen. Laws § 23-19.14-5, <http://webserver.rilin.state.ri.us/Statutes/TITLE23/23-19.14/23-19.14-5.HTM>.

⁴³ Conn. Gen. Stat. § 22a-20a(b)(1), https://www.cga.ct.gov/current/pub/chap_439.htm#sec_22a-20a.

⁴⁴ 250 R. I. Code R. § 140-30-1.8.1(F), <https://rules.sos.ri.gov/regulations/part/250-140-30-1>.

⁴⁵ Cal. Pub. Res. Code § 44004(h)(C),

http://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=PRC&division=30.&title=&part=4.&chapter=3.&article=1.

⁴⁶ N.Y. Comp. Codes R. & Regs. tit. 6 §§ 487.1, 487.6(b),

[https://govt.westlaw.com/nycrr/Browse/Home/NewYork/NewYorkCodesRulesandRegulations?guid=Ic1b73790eb9511e18b86000845b8d3e&originationContext=documenttoc&transitionType=Default&contextData=\(sc.Default\)](https://govt.westlaw.com/nycrr/Browse/Home/NewYork/NewYorkCodesRulesandRegulations?guid=Ic1b73790eb9511e18b86000845b8d3e&originationContext=documenttoc&transitionType=Default&contextData=(sc.Default)).

Impacts Analyses in Permitting

The General Assembly should provide appropriate resources and enact legislation, including authority for DEQ to implement regulations and clarifying the agency's authority to adopt a method for evaluating environmental justice benefits and impacts during the agency's permitting processes. Required methodology could include evaluations of cumulative and disproportionate impacts on sensitive populations to ensure "fair treatment" or "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" as defined by the Code of Virginia.⁴⁷ Several states have adopted legislation requiring state environmental agency consideration of impacts on affected communities during permitting. Kentucky requires an assessment of local impacts prior to granting hazardous waste permits,⁴⁸ North Carolina's solid waste permitting statute requires consideration of alternative sites and local socioeconomic and demographic data if a proposed landfill is within one mile of existing landfill,⁴⁹ and Arkansas created a rebuttable presumption against permitting the construction or operation of any high impact solid waste management facility within twelve miles of any existing facility.⁵⁰

Several other states require cumulative and/or disproportionate impact analyses for certain environmental permits. For example, the Minnesota Pollution Control Agency (MPCA) may not issue an air permit to a facility near an historic environmental justice area ". . . without analyzing and considering the cumulative levels and effects of past and current environmental pollution from all sources on the environment and residents of the geographic area within which the facility's emissions are likely to be deposited . . ." ⁵¹ Similarly, CalEPA's Department of Toxic Substances Control (DTSC) must consider "[the] vulnerability of, and existing health risks to, nearby populations . . . using 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" during the hazardous waste facility permit process.⁵² The New York State board on electric generation siting and the environment in the NYS Department of Public Service may not grant a certificate for the construction or operation of a major electric generating facility without considering cumulative and disproportionate environmental impacts on the local community,⁵³ and applicants must evaluate significant and adverse disproportionate environmental impacts of the proposed facility, if any, resulting from its construction and operation.⁵⁴ In August 2020, the New Jersey State Legislature passed NJ S232, which requires the New Jersey Department of Environmental Protection (NJDEP) to identify "burdened communities" and refrain from granting environmental permits for new or expanded facilities located in a burdened community unless the permit applicant first prepares a report assessing the proposed facility's environmental impact on the burdened community, including cumulative impacts posed by existing conditions.⁵⁵ The law further requires NJDEP to consider community support for the proposed facility and authorizes NJDEP to deny a permit application for a facility in a burdened community if the approval would, together with identified cumulative impacts, constitute an unreasonable risk to the health of the residents of the burdened community and to their environment.⁵⁶

State agencies charged with performing cumulative and/or disproportionate impact analyses during a permitting process have adopted regulations or guidance that includes criteria for executing these analyses. California's DTSC promulgated

⁴⁷ Va. Code Ann. § 2.2-234, <https://law.lis.virginia.gov/vacode/title2.2/chapter2/section2.2-234>.

⁴⁸ KY. Rev. Stat. Ann. § 224.46-520, <https://apps.legislature.ky.gov/law/statutes/statute.aspx?id=46561>.

⁴⁹ N.C. Gen. Stat. § 153A-136(c), https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_153A/GS_153A-136.pdf.

⁵⁰ Ark. Code Ann. §§ 8-6-1501, -1504, <https://portal.arkansas.gov/agency/bureau-of-legislative-research/service/arkansas-code-search-laws-and-statutes/>.

⁵¹ Minn. Stat. Ann. § 116.07(4a)(a), <https://www.revisor.mn.gov/statutes/cite/116.07>.

⁵² Cal. Health & Safety Code § 25200.21(b),

http://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=HSC§ionNum=25200.21.

⁵³ N.Y. Pub. Serv. Law § 168(2)(d), <https://www.nysenate.gov/legislation/laws/PBS/168>.

⁵⁴ *Id.* at § 164(1)(f).

⁵⁵ S. 232, 219th Leg., 2020 Sess. (N.J. 2020), https://www.njleg.state.nj.us/2020/Bills/S0500/232_I1.HTM.

⁵⁶ *Id.*

hazardous waste facility permitting regulations outline criteria for community involvement profiles⁵⁷ and is developing permit criteria to assess cumulative impacts.⁵⁸ NYS regulations for major electric generating facilities require applicants to undertake a pre-application environmental justice analysis if an “[environmental justice] area” is present within a certain distance of a proposed major electric generating facility⁵⁹ and to prepare a comprehensive demographic, economic and physical description of the impact study area,⁶⁰ require air emission sources to conduct a cumulative impact analysis of air quality,⁶¹ and require an evaluation of significant, adverse and disproportionate environmental impacts⁶² and requires a statement of environmental justice issues.⁶³ Similarly, New Mexico Environmental Improvement Board regulations require landfill and transformation facility applicants to demonstrate that a proposed project will not result in a disproportionate effect on the health and environment of a particular socioeconomic group if sited in a “vulnerable area”⁶⁴ and require landfill and transformation facility applicants to submit a community impact assessment.⁶⁵ Although it did not promulgate related regulations, the MPCA has implemented methodologies to complete a “cumulative levels and effects (CL&E) analysis” when required during an air permitting process.⁶⁶ Additionally, California and other states have developed effective mapping and screening tools that “. . . assess cumulative impacts based on relative rankings that empirically identify places that, when compared to others, are disproportionately impacted.”⁶⁷ Described further in the State Implementation Examples related to Guidance and Tools (Chapter 5), DEQ could develop and use such a mapping tool to help address environmental justice factors in environmental permitting.⁶⁸

Enhanced Monitoring and Enforcement

To ensure permitted facilities do not further burden environmental justice communities, the General Assembly should enact legislation (including funding) further clarifying DEQ’s authority to enhance its monitoring and enforcement efforts in environmental justice communities and communities that experience disproportionate health impacts. For example, California requires CalEPA to “[p]romote enforcement of all health and environmental statutes within its jurisdiction in a manner that ensures the fair treatment of people of all races, cultures, and income levels, including minority populations and low-income populations in the state⁶⁹ and directs the California Department of Toxic Substances Control to prioritize enforcement actions in communities that CalEPA has identified as being the “most impacted” environmental justice communities.⁷⁰ To authorize targeted monitoring, the New York State Department of Conservation (DEC) promulgated regulations requiring monitoring at permitted facilities where DEC determines the regulated facility, site or regulated

⁵⁷ Cal. Code Regs. tit. 22 §§ 66270.14(a)(23), https://dtsc.ca.gov/wp-content/uploads/sites/31/2019/04/18.DTSC-SB-673-Reg-TEXT_OAL_20181023-revised.pdf.

⁵⁸ California Department of Toxic Substances Control, SB 673 Permit Criteria—Community Protection, <https://dtsc.ca.gov/sb-673-permit-criteria-for-community-protection/>.

⁵⁹ N.Y. Comp. Codes R. & Regs. tit. 6 § 487.1. Section 487.6 outlines the preparation and content of the required environmental justice analysis.

⁶⁰ *Id.* at § 487.9.

⁶¹ *Id.* at § 487.7.

⁶² *Id.* at § 487.10.

⁶³ *Id.* at § 487.11.

⁶⁴ N.M. Code R. § 20.9.3.8(E), <http://164.64.110.134/parts/title20/20.009.0003.html>.

⁶⁵ *Id.* at § 20.9.3.8(D)(2).

⁶⁶ Kristie M. Ellickson et al., *Cumulative Risk Assessment and Environmental Equity in Air Permitting: Interpretation, Methods, Community Participation, and Implementation of a Unique Statute*, 8 Int’l J. Env’tl. Res. & Pub. Health 4140-59 (2011), https://pdfs.semanticscholar.org/64ea/a77f689802f6e81db0e11da3cb9fee39a5b4.pdf?_ga=2.111720900.1957124788.1578585786-1391638390.1551285865.

⁶⁷ Charles Lee, *A Game Changer in the Making? Lessons from States Advancing Env’tl. Justice Through Mapping and Cumulative Impact Strategies*, 50 ELR 10203, 10205 (2020), <https://elr.info/news-analysis/50/10203/game-changer-making-lessons-states-advancing-environmental-justice-through-mapping-and-cumulative-impact>.

⁶⁸ *Id.*

⁶⁹ Cal. Pub. Res. Code § 71110(b), http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=199920000SB89.

⁷⁰ Cal. Health & Safety Code § 25180.2, http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=HSC§ionNum=25180.2.

activity needs additional oversight due to exceptional circumstances related to its . . . location (such as proximity to human use or habitation, to drinking water supplies, to critical or sole source aquifers, to endangered species, to other sensitive receptors or to environmental justice areas)”⁷¹

Funding for Technical Assistance Activities

To support environmental justice communities, the General Assembly should provide funding for and enact legislation authorizing technical assistance activities that offer outreach, education, environmental monitoring and/or access to independent scientists and experts. For example, California’s Environmental Justice Small Grant Program provides financial assistance to eligible community groups in areas adversely affected by environmental pollution that are working to address environmental justice issues.⁷² The program funds activities that distribute information and educate community members about environmental justice issues, improve coordination between agencies and stakeholders, develop guidance on the relative significance of various environmental risks, promote community involvement in agency decision making processes, and provide community members with environmental data.⁷³ Implementing regulations describe procedures for applying for the grant program, criteria for determining which applications will be funded, and administrative and fiscal requirements governing the receipt and expenditure of grant funds.⁷⁴

Environmental Justice in Local Planning and Zoning

Finally, the General Assembly should enact legislation requiring Virginia municipalities to consider environmental justice in their comprehensive plans and zoning ordinances in alignment with DEQ permitting responsibilities.⁷⁵ California requires municipal general plans to identify any disadvantaged communities within the area covered by the general plan and include an environmental justice element with goals, policies and objectives to promote public engagement in the decision making process and to reduce “ . . . the unique or compounded health risks in disadvantaged communities by means that include, but are not limited to, the reduction of pollution exposure, including the improvement of air quality”⁷⁶ The state also requires the Governor’s Office of Planning and Research to issue General Plan Guidelines that provide local governments with guidance for incorporating environmental justice considerations into their general plans.⁷⁷

Implementation Considerations

Ideally DEQ will coordinate with the Office of the Attorney General (OAG) to review, integrate and better align understanding of DEQ’s existing authorities to address environmental justice, including Title VI requirements. To identify

⁷¹ N.Y. Comp. Codes R. & Regs. tit. 6 § 360.20(a)(4);

[https://govt.westlaw.com/nycrr/Document/Id4d60821dfe911e7aa6b9b71698a280b?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/nycrr/Document/Id4d60821dfe911e7aa6b9b71698a280b?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)).

⁷² Cal. Pub. Res. Code § 71116,

http://leginfo.legislature.ca.gov/faces/codes_displayexpandedbranch.xhtml?tocCode=prc&division=34.&title=&part=&chapter=&article=

⁷³ *Id.*

⁷⁴ Cal. Code Regs. tit. 27, §§ 10050-10056,

[https://govt.westlaw.com/calregs/Browse/Home/California/CaliforniaCodeofRegulations?guid=I9F75B590D44F11DEA95CA4428EC25FA0&originationContext=documenttoc&transitionType=Default&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/Browse/Home/California/CaliforniaCodeofRegulations?guid=I9F75B590D44F11DEA95CA4428EC25FA0&originationContext=documenttoc&transitionType=Default&contextData=(sc.Default)).

⁷⁵ Because local government is considered “ . . . a creature of the state . . . possessing only those powers the state has chosen to confer upon it,” the Commonwealth of Virginia may create dual jurisdiction over local siting issues around environmental justice communities by requiring both DEQ and local governments to consider environmental justice factors in their decisionmaking and actions. Richard Briffault, *Our Localism, Part 1—The Structure of Local Government Law*, 90 Colum. L. Rev. 1, 7-8 (1990). To avoid any dual jurisdiction litigation issues, the Commonwealth could authorize local governments to consider environmental justice factors and approve/disapprove/condition approvals based on these factors but not require it. This approach would still require the Commonwealth to provide local governments with guidance for what to consider during the planning and approval processes, as well as a mechanism for coordinating local and state actions.

⁷⁶ Cal. Gov’t Code § 65302(h),

http://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=1.&title=7.&part=&chapter=3.&article=5.

⁷⁷ *Id.* at § 65040.2(d).

specific needs to strengthen its environmental justice authorities as outlined above, DEQ might consider convening a working session with the Leadership Team and the OAG to review DEQ's current authorities related to environmental justice and the recommended legislative and regulatory changes.

Chapter 5: State Implementation Examples

The following state implementation examples are organized following recommendation operational goals 2-9.

Leadership

California, Delaware, Oregon and Connecticut demonstrate strong leadership among their agencies by fostering cohesive support for environmental justice among the DEQ leadership team.

Diversity and Representation Among DEQ Management and Environmental Justice Training for Leadership

Connecticut's Department of Energy and Environmental Protection (CTDEEP) adopted an Environmental Justice Policy with a focus on the diversity and racial and ethnic makeup of its staff, to better reflect and represent the Department's diverse constituency.⁷⁸ The CTDEEP Environmental Justice Policy fosters a heightened awareness of environmental equity issues among its own staff and provides training on the environmental issues affecting low-income and minority communities.⁷⁹ Managers implement specific environmental equity goals in their respective programs.

Commitment to Environmental Justice Priorities through Guidelines and Policies

The CTDEEP Environmental Justice Policy has committed to employ a staff person responsible for ensuring that environmental equity principles are incorporated into all the Department's policies and programs.⁸⁰ The CTDEEP Environmental Justice Policy states that "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."⁸¹ The Department has committed to incorporating environmental equity into program development, policy making, and regulatory activities.

In Oregon, enacted Senate Bill 420 established an Environmental Justice Task Force with twelve members appointed by the Governor,⁸² 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. The members are to represent "minority communities, low-income communities, environmental interests, industry groups and geographically diverse areas of the state."⁸³ The Task Force plays an advisory role to the Governor and fourteen natural resource agencies on environmental justice issues. A primary focus of the Bill is on "public participation processes" and is designed to instigate more meaningful participation from community members traditionally excluded from environmental decision making.⁸⁴

The California Air Resources Board (ARB) published its *Environmental Justice Policies and Actions* report in 2001, in which it seeks to "integrate environmental justice into all of [its] programs, policies, and regulations."⁸⁵ The Air Resources Board is required to consider environmental justice objectives and must ensure that compliance activities do not disproportionately impact low-income communities.⁸⁶

⁷⁸ CT DEEP, Environmental Justice Policy, <https://portal.ct.gov/DEEP/Environmental-Justice/Environmental-Equity-Policy>.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² Or. S.B. 420 (2007), codified at Or. Rev. Stat. § 182.545 to .550, https://www.oregonlegislature.gov/bills_laws/ors/ors182.html.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ California Environmental Protection Agency, California Air Resources Board, Policies and Actions for Environmental Justice 3 (2001), <http://www.arb.ca.gov/ch/programs/ej/ejolicies.pdf>.

⁸⁶ California Global Warming Solutions Act of 2006, codified as Cal. Health & Safety Code §§ 38500 – 38599, https://leginfo.ca.gov/faces/codes_displayexpandedbranch.xhtml?tocCode=HSC&division=25.5.&title=&part=&chapter=&article=.

Office of Environmental Justice and Collaborative Interagency Practices

The CT Environmental Justice Program incorporates principles of environmental justice into aspects of the CTDEEP's program development, policy making, and regulatory activities.⁸⁷ The CT Environmental Justice Program assesses and responds to environmental problems in low income and minority communities, develops strategies to increase public participation in the agency's decisions making and administrative proceedings, educates the public on DEP regulation, policies, and procedures, and works to decrease language barriers.⁸⁸

California established a Working Group on Environmental Justice that was charged with recommending procedures and providing guidance to CalEPA for the coordination and implementation of intra-agency environmental justice strategies.⁸⁹

Environmental Justice Accountability

Delaware established a community ombudsperson to liaise between the Delaware Department of Natural Resources and Environmental Control and communities statewide “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. . . .”⁹⁰ Oregon requires the state's natural resources agencies to create 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.”⁹¹

⁸⁷ CT DEEP, Overview—Environmental Justice Program, <https://portal.ct.gov/DEEP/Environmental-Justice/Environmental-Justice-Program-Overview>.

⁸⁸ *Id.*

⁸⁹ Cal. Pub. Res. Code § 71113, http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PRC§ionNum=71113.

⁹⁰ Del. Code Ann. tit. 29, § 8016A(h), <https://delcode.delaware.gov/title29/c080/sc01/index.shtml>.

⁹¹ Or. Rev. Stat. § 182.545(4), <https://www.oregonlaws.org/ors/182.545>.

Staff Capacity

Connecticut, Oregon, South Carolina, Indiana, Washington State and New Jersey demonstrate how states can build agency capacity to effectively support environmental justice throughout their program areas.

Agency Staff with Expertise in Environmental Justice and Community Engagement

Oregon's enacted Senate Bill 420 required fourteen agencies, including the Oregon Department of Environmental Quality (OR DEQ), to create full-time positions (Citizen Advocate Environmental Justice Coordinator) dedicated to advancing environmental justice in their respective agencies.⁹² Senate Bill 420 also established an Environmental Justice Task Force to oversee each agency's annual progress.

The South Carolina Department of Health and Environmental Control (SC DHEC) established a team of staff specializing in environmental justice, community engagement and outreach to support multiple bureaus within the Office of Environmental Affairs.⁹³ The Office of Environmental Affairs also designated public participation coordinators to serve as community liaisons within each bureau.

As per the agency's Nondiscrimination Policy, the Indiana Department of Environmental Management (IDEM) designates an Environmental Stakeholder Inclusion Coordinator as the internal and external point of contact for environmental justice.⁹⁴ The Environmental Stakeholder Inclusion Coordinator connects agency staff with translation, interpretation, and plain language resources as well as organizes staff training on environmental justice.

The Connecticut Department of Energy and Environmental Protection (CT DEEP) hires staff under its Environmental Justice Program to investigate complaints from environmental justice communities, review permit applicants' Environmental Justice Public Participation Plans, and facilitate community negotiations.⁹⁵

Staff Training

To guide the states agencies under its oversight, the Oregon Environmental Justice Task Force developed a handbook of recommended environmental justice strategies.⁹⁶ The Oregon Environmental Justice Task Force identified regular staff trainings as critical to building agency capacity for environmental justice. The OR DEQ Citizen Advocate Environmental Justice Coordinator currently provides in-person and online trainings on environmental justice, its relevance to agency goals and EPA's EJSCREEN tool.⁹⁷

SC DHEC assessed current staff knowledge of and attitude towards public participation and hosted trainings with the EPA's Region 4 Office of Environmental Justice and the International Association of Public Participation (IAP2) on environmental justice. SC DHEC also underscores the need for training to "meet the needs of communities . . . in a professional, culturally appropriate manner."⁹⁸

Under Executive Order 23, the New Jersey Department of Environmental Protection (NJ DEP) is tasked with developing guidance and trainings for state agencies on integrating environmental justice into their policies and programs.⁹⁹ In 2019,

⁹² Or. S.B. 420 (2007), codified at Or. Rev. Stat. § 182.545 to .550, https://www.oregonlegislature.gov/bills_laws/ors/ors182.html.

⁹³ S.C. DHEC, History (EJ), <https://www.scdhec.gov/history-ej>.

⁹⁴ IDEM Internal Agency Policy Document No. A-008-AW-18-P-R5, Nondiscrimination Policy (2018), https://www.in.gov/idem/health/files/idem_policy_A-008-AW-18-P-R5.pdf.

⁹⁵ Conn. DEEP, Overview – Env'tl. Justice Program, <https://portal.ct.gov/DEEP/Environmental-Justice/Environmental-Justice-Program-Overview>.

⁹⁶ State of Or. Env'tl. Justice Task Force, Environmental Justice: Best Practices for Oregon's Natural Resource Agencies (2016), https://www.oregon.gov/gov/policy/environment/environmental_justice/Documents/Oregon%20EJTF%20Handbook.v4.pdf.

⁹⁷ State of Or., Environmental Justice Task Force Agency Reports (2019), https://www.oregon.gov/gov/Documents/EJTF%20Meetings%20and%20Reports/2018_EJTF%20Agency%20Report.pdf.

⁹⁸ S.C. D Strategic Plan, <https://www.scdhec.gov/sites/default/files/Library/CR-003160.pdf>.

⁹⁹ N.J. Exec. Order No. 23 (2018), <https://nj.gov/infobank/eo/056murphy/pdf/EO-23.pdf>.

EPA hosted a webinar series to build the capacity of state agencies to identify environmental justice communities and implement meaningful community involvement.¹⁰⁰

Diversity in Staff Recruitment and Retention

OR DEQ and the CT DEEP incorporate staff diversity into their environmental justice policies. In 1997, the OR DEQ adopted an Environmental Justice Policy that identified staff diversity as critical to the agency's implementation of environmental justice principles.¹⁰¹ Similarly, in its environmental justice Policy, CT DEEP commits to a workforce that better reflects the diverse racial and ethnic composition of the state.¹⁰²

Access to Translation and Interpretation

The Washington Department of Ecology staffs a Language Access Coordinator and four language translation teams to provide written, in-person or phone interpretation into Spanish, Korean, Chinese, and Vietnamese.¹⁰³ OR DEQ is developing an agency-wide plan to bridge gaps in access to information in languages other than English.¹⁰⁴

¹⁰⁰ U.S. EPA, Environmental Justice, State and Local Government, <https://www.epa.gov/environmentaljustice/state-and-local-government>.

¹⁰¹ Or. DEQ, Environmental Justice, <https://www.oregon.gov/deq/about-us/Pages/Environmental-Justice.aspx>.

¹⁰² Conn. DEEP, Environmental Equity Policy, <https://portal.ct.gov/DEEP/Environmental-Justice/Environmental-Equity-Policy>.

¹⁰³ Washington Department of Ecology, Language Services, <https://ecology.wa.gov/About-us/Accountability-transparency/Language-services>.

¹⁰⁴ Or. DEQ, Environmental Justice, <https://www.oregon.gov/deq/about-us/Pages/Environmental-Justice.aspx>.

Guidance and Tools

California, Illinois, Louisiana, Maryland, Michigan, Minnesota, New Jersey, New Mexico, New York, Oregon and Washington State demonstrate how DEQ can begin to develop environmental justice guidance and tools to ensure clear and consistent implementation of environmental justice policies and practices across its environmental programs.

Policy Guidance for Environmental Justice Implementation Across Programs

State environmental agencies typically begin integrating environmental justice across their programs through policy guidance and program evaluations. California began addressing environmental justice in 1999 when it enacted SB 115, the state's first environmental justice law that charged the California Environmental Protection Agency (CalEPA) with conducting “. . . its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures the fair treatment of people of all races, cultures, and income levels, including minority populations and low-income populations of the state.”¹⁰⁵ California subsequently enacted SB 828, which instructed CalEPA and its Interagency Working Group on Environmental Justice to develop an agency-wide strategy to identify and address gaps in existing CalEPA programs, policies and activities that may impede environmental justice.¹⁰⁶ In 2004, CalEPA issued its Intra-Agency Environmental Justice Strategy that outlines the agency's environmental justice mission, vision, core values and strategic goals to guide environmental justice integration into its environmental programs.¹⁰⁷ Using this strategy, CalEPA's boards, departments and office (BDOs) prepared an Environmental Justice Strategic Plan to provide guidance on precautionary approaches in CalEPA programs and cumulative impact analysis and to create public participation and community capacity-building tools.¹⁰⁸ Similarly, Louisiana required its Department of Environmental Quality to hold three public hearings to investigate environmental equity issues in the department's programs and to study and quantify pollution emissions near residential areas, as well as its possible effects on these areas.¹⁰⁹

Environmental Justice Mapping Tools

Several states use mapping tools to better understand environmental justice impacts. In 2013, CalEPA and the Office of Environmental Health Hazard Assessment released the California Communities Environmental Health Screening Tool (CalEnviroScreen), a mapping tool that uses environment, health and socioeconomic data to identify disproportionately impacted environmental justice communities by census tract¹¹⁰ pursuant to SB 535, which requires CalEPA to identify disadvantaged communities based on geographic, socioeconomic, public health, and environmental hazard criteria.¹¹¹ [CalEnviroScreen 3.0](#) ranks environmental justice communities using pollution burden and demographic information and is used to administer environmental justice grants, target compliance efforts and prioritize clean-ups, among other activities. Washington State, Illinois, Michigan and Maryland have all produced similar environmental justice mapping tools using CalEnviroScreen's scoring formula and data from EPA's EJSCREEN, which uses 11 environmental indicators and six demographic indicators to identify environmental justice areas throughout the nation.¹¹² Such environmental justice mapping tools enable state agencies to map cumulative impacts, “. . . characterize, visualize and operationalize an

¹⁰⁵ Cal. Pub. Res. Code § 72000, http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=199920000SB115.

¹⁰⁶ *Id.* at §§ 71110-71113, http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200120020SB828.

¹⁰⁷ CalEPA, Intra-Agency Environmental Justice Strategy (2004), <https://calepa.ca.gov/wp-content/uploads/sites/6/2017/01/EnvJustice-Documents-2004yr-EnglishStrategy.pdf>.

¹⁰⁸ CalEPA, EJ Action Plan (2004), <https://calepa.ca.gov/wp-content/uploads/sites/6/2016/10/EnvJustice-ActionPlan-Documents-October2004-ActionPlan.pdf>.

¹⁰⁹ La. Rev. Stat. Ann. §§ 30:2011, 30:2011.2, https://www.legis.la.gov/legis/Laws_Toc.aspx?folder=75&level=Parent.

¹¹⁰ CalEPA, EJ Program Update (2016), <https://calepa.ca.gov/wp-content/uploads/sites/6/2016/10/EnvJustice-Documents-2016yr-EJReport.pdf>; Cal. OEHHA, CalEnviroScreen, <https://oehha.ca.gov/calenviroscreen>.

¹¹¹ Cal. Health & Safety Code § 39713, http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB535.

¹¹² Charles Lee, A Game Changer in the Making? Lessons from States Advancing EJ Through Mapping and Cumulative Impact Strategies, 50 ELR 10203 (2020), available at <https://elr.info/news-analysis/50/10203/game-changer-making-lessons-states-advancing-environmental-justice-through-mapping-and-cumulative-impact>; EPA, EJSCREEN: EJ Screening and Mapping Tool, <https://www.epa.gov/ejscreen>.

understanding of disproportionate impacts,” and take these impacts into account during funding decisions, community engagement, monitoring and enforcement efforts, and permitting.¹¹³

Permitting and Cumulative and Disparate Impacts Analyses

Several states also require cumulative and/or disproportionate impacts analyses during environmental permitting. The New York State board on electric generation siting and the environment in the NYS Department of Public Service must consider cumulative and disproportionate environmental impacts on the local community during the approval process for major electric generating facilities¹¹⁴ and requires air emission sources to conduct a cumulative impact analysis of air quality.¹¹⁵ In New Mexico, landfill and transformation facility applicants must demonstrate that a proposed project will not result in a disproportionate effect on the health and environment of a particular socioeconomic group if sited in a “vulnerable area”¹¹⁶ and must submit a community impact assessment.¹¹⁷ The California Department of Toxic Substances Control promulgated hazardous waste facility permit criteria regulations for community protection, including community data profiles, and is developing procedures for considering cumulative impacts during the permitting process.¹¹⁸ Similarly, the Minnesota Pollution Control Agency (MPCA) created a “cumulative levels and effects analysis” for air permits issued in a designated environmental justice area that compiles all available environmental health data and identifies hazard, exposure and health indices for consideration during the permitting process.¹¹⁹ In its 2006 report to EPA, Rhode Island Legal Services offers methods that State environmental agencies can use to help determine disparate impacts during permitting processes.¹²⁰

Environmental Justice in Monitoring and Enforcement

Some states are incorporating environmental justice considerations in their monitoring and enforcement programs. The CalEPA Environmental Justice Task Force coordinates the agency’s compliance and enforcement activities using CalEnviroScreen 3.0 to target these efforts in disproportionately impacted areas.¹²¹ The Environmental Justice Task Force engages in community consultations, compliance assistance for regulated businesses and coordinated enforcement sweeps in these targeted areas. In addition, New Jersey created an environmental justice enforcement initiative to support environmental justice communities¹²² and New York State’s Department of Conservation requires monitoring at permitted facilities near sensitive locations.¹²³

¹¹³ *Id.* at 10205.

¹¹⁴ N.Y. Pub. Serv. Law § 168(2)(d); <https://www.nysenate.gov/legislation/laws/PBS/168>.

¹¹⁵ N.Y. Comp. Codes R. & Regs. tit. 6 § 487.7,

[https://govt.westlaw.com/nycrr/Document/Ie9f14c68f2ab11e1837f0000845b8d3e?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/nycrr/Document/Ie9f14c68f2ab11e1837f0000845b8d3e?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)).

¹¹⁶ N.M. Code R. § 20.9.3.8(E); <http://164.64.110.134/parts/title20/20.009.0003.html>.

¹¹⁷ *Id.* at § 20.9.3.8(D)(2).

¹¹⁸ Cal. Health & Safety Code §§ 25200.21 and .23,

https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201520160SB673; California Department of Toxic Substances Control, SB 673 Permit Criteria—Community Protection, <https://dtsc.ca.gov/sb-673-permit-criteria-for-community-protection/>.

¹¹⁹ Minn. Stat. § 116.07(4a)(a), <https://www.revisor.mn.gov/statutes/cite/116.07>; Kristie M. Ellickson et al., Cumulative Risk Assessment and Environmental Equity in Air Permitting: Interpretation, Methods, Community Participation, and Implementation of a Unique Statute, 8 Int’l J. Envtl. Res. & Pub. Health 4140-59 (2011), available at https://pdfs.semanticscholar.org/64ea/a77f689802f6e81db0e11da3cb9fee39a5b4.pdf?_ga=2.111720900.1957124788.1578585786-1391638390.1551285865.

¹²⁰ RILS, Envtl. Justice for States: A Guide for Developing Envtl. Justice Programs for State Env. Agencies 36-41 (2006),

<http://www.dem.ri.gov/envequity/pdf/rilsrept.pdf>.

¹²¹ CalEPA, EJ Task Force, <https://calepa.ca.gov/enforcement/environmental-justice-compliance-and-enforcement-task-force/>.

¹²² Office of EJ, N.J. DEP, EJ at N.J. State Agencies, <https://www.nj.gov/dep/ej/ej-state.html>.

¹²³ N.Y. Comp. Codes R. & Regs. tit. 6 § 360.20(a)(4),

[https://govt.westlaw.com/nycrr/Document/Id4d60821dfe911e7aa6b9b71698a280b?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/nycrr/Document/Id4d60821dfe911e7aa6b9b71698a280b?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)).

Community Engagement Guidance and Tools

Finally, California, Oregon and other states also participate in enhanced community engagement with environmental justice communities. The CalEPA Environmental Justice Task Force provides communities with opportunities to provide input on environmental justice concerns and remedies through targeted initiatives, including the Stockton Environmental Justice Initiative, which focused on strategies to address environmental concerns identified by residents, city officials, and community partners.¹²⁴ In Oregon, SB 420 (2007) charges natural resource agencies with providing greater public participation, including holding hearings at convenient times and locations for affected communities, conducting public outreach activities in affected communities and creating citizen advocate positions.¹²⁵ Finally, the Illinois Environmental Protection Agency and Pennsylvania Department of Environmental Protection both have public participation policies that outline concrete steps the agencies should take to inform and involve affected communities.¹²⁶

¹²⁴ CalEPA, EJ Task Force, <https://calepa.ca.gov/enforcement/environmental-justice-compliance-and-enforcement-task-force/>.

¹²⁵ Or. Rev. Stat. § 182.545, available at <https://www.oregonlaws.org/ors/182.545>.

¹²⁶ Ill. EPA, EJ Public Participation Policy (2018), <https://www2.illinois.gov/epa/topics/environmental-justice/Documents/public-participation-policy.pdf>; PA DEP, DEP Enhanced Public Participation Process, <https://www.dep.pa.gov/PublicParticipation/OfficeofEnvironmentalJustice/Pages/DEP-Enhanced-Public-Participation-Policy.aspx>.

Accessible Information

California, New Jersey, Pennsylvania, Massachusetts, Minnesota, Oregon, and Washington State demonstrate how DEQ can develop various initiatives and tools to provide more transparent, accessible and real-time environmental information to the public.

Intuitive and User-Friendly Website and Graphics

To establish an intuitive and user-friendly website, California's CalEPA's Environmental Justice Program provides their website in both English and Spanish.¹²⁷ New Jersey NJDEP and California CalEPA both offer user-friendly graphics online to illustrate their organizational structure.¹²⁸ CalEPA also offers annual Environmental Compliance and Enforcement Reports, which encompasses explanations of the department's mission, roles and responsibilities, and includes helpful pictures, graphs, and charts to convey the data.¹²⁹

Online Interactive Information Centers and Maps

New Jersey provides online access to air permitting, enforcement, and inspection actions.¹³⁰ 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. Pennsylvania also provides a publicly accessible online compliance reporting system through their DEP Environment Facility Application Compliance Tracking System (eFacts).¹³¹ Users 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."¹³²

The Massachusetts Executive Office of Energy and Environmental Affairs' publicly available interactive environmental justice viewer that shows which 2010 Census block groups are classified as environmental justice areas,¹³³ and the Minnesota Pollution Control Agency's (MPCA) interactive data and mapping tool showing how power plant location and emissions may impact areas of potential environmental justice concern.¹³⁴

Increased Access to Plain Language Resources and Translation Services

Washington State's Department of Ecology Language Translation Teams and language mapping tool are used to identify and understand the primary language of communities.¹³⁵ The Washington State Environmental Justice 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 environmental justice issues.¹³⁶ NJDEP's Office of Environmental Justice implements environmental justice policies and programs to improve public outreach, as well. Environmental justice considerations in its programs are incorporated through enhanced notice to environmental justice communities, public outreach guidance for applicants, better agency outreach to environmental justice communities, ensuring community access to technical and scientific data, and training staff on environmental justice issues.¹³⁷ The DEP

¹²⁷ Cal. EPA, **Environmental Justice Program**, <http://www.calepa.ca.gov/EnvJustice>.

¹²⁸ N.J. DEP, Organizational Chart, Department Overview, <https://www.nj.gov/dep/commissioner/orgchart.pdf>; CalEPA, About Us, <https://calepa.ca.gov/about/>.

¹²⁹ CalEPA, Enforcement Publications, <https://calepa.ca.gov/enforcement/enforcement-publications/>.

¹³⁰ N.J. DEP, **DEP DataMiner**, <https://www13.state.nj.us/DataMiner>.

¹³¹ Pa. DEP, **Welcome to E-facts**, <http://www.ahs2.dep.state.pa.us/eFactsWeb/default.aspx>.

¹³² *Id.*

¹³³ Mass. DEP, EJ Populations in Mass., <https://www.mass.gov/info-details/environmental-justice-populations-in-massachusetts>.

¹³⁴ MPCA, EJ and Electricity Generation in Minn., <https://www.pca.state.mn.us/air/environmental-justice-and-electricity-generation-minnesota>.

¹³⁵ Wa. Dep't of Ecology, **Language services**, <https://ecology.wa.gov/About-us/Accountability-transparency/Language-services>.

¹³⁶ Wa. Dep't of Ecology, About Us, <http://www.ecy.wa.gov/about.html>. Checklist is used by staff and management.

¹³⁷ N.J. DEP, Historical Overview of DEP's Environmental Justice Program, <https://nj.gov/dep/ej/docs/historical-overview-njdep-environmental-justice-program.pdf>.

policy on environmental justice was implemented by DEP administrative order to help facilitate local community access to technical and scientific data, by increasing the availability and transfer of data and making information easy to understand.¹³⁸

Collaboration with Environmental Justice Communities to Expand Water and Air Monitoring

California utilizes an Environmental Justice Task Force that employs targeted, local monitoring/enforcement initiatives in collaboration with affected communities.¹³⁹ Oregon's Department of Environmental Quality Environmental Justice Program aims to enhance public participation in the agency's actions and ensure the meaningful involvement of people who may be affected by these decisions.¹⁴⁰ Oregon has worked to expand their environmental justice monitoring and reporting network by working with local environmental justice groups to improve air quality, working with the Confederated Tribes of the Umatilla Indian Reservation and other tribal nations to increase state water quality standards, and through developing partnerships with the Oregon Public Health Division.¹⁴¹

¹³⁸ *Id.*

¹³⁹ CalEPA, Environmental Justice Task Force, <https://calepa.ca.gov/enforcement/environmental-justice-compliance-and-enforcement-task-force/>.

¹⁴⁰ Or. DEQ, Environmental Justice, <https://www.oregon.gov/deq/about-us/Pages/Environmental-Justice.aspx>.

¹⁴¹ *Id.*

Relationship Building

South Carolina, Oregon, and Delaware demonstrate how to successfully build relationships by proactively investing in productive connections with environmental justice communities and other adversely impacted communities.

Offices and Staff Geared Toward Community Engagement with Proper Tools and Training

Within the South Carolina Department of Health and Environmental Control (DHEC), the Office of Environmental Affairs manages the environmental justice initiative and staffs an Environmental Justice Coordinator.¹⁴² The Office of Environmental Quality Control (EQC), the environmental regulatory arm of DHEC, has a Community Liaison position who is responsible for addressing community concerns with respect to EQC permitting and other activities.¹⁴³ Oregon's DEQ has enacted several internal actions to "make environmental equity, sustainability, and stewardship a greater focus" in DEQ's work.¹⁴⁴ This includes new guidance and tools for employees reaching out to traditionally underrepresented communities, and management workshops and staff training focusing on what DEQ can do to address environmental justice concerns.¹⁴⁵

Formal Structure to Build Community Relationships

Delaware legislature that created the Community Involvement Advisory Council (CIAC) in 2001, also created the Community Ombudsman position to serve as a liaison between the Department of Natural Resources and Environmental Control (DNREC) and local communities statewide.¹⁴⁶ The Community Ombudsman helps communities identify and understand environmental problems, and helps 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."¹⁴⁷

Communication with Environmental Justice Communities and Statewide Environmental Justice Leadership

South Carolina's DHEC created an internal Public Participation Task Force, that held listening sessions across the state to receive input from its stakeholders on its public participation actions.¹⁴⁸ Staff then reviewed and analyzed the comments to develop priorities that need to be addressed. The South Carolina DHEC has worked closely over the years to develop and strengthen relationships with environmental justice stakeholders to ensure that citizens within overburdened communities are involved within the decision-making process.¹⁴⁹ The DHEC works to address concerns within these communities, while encouraging the use of collaborative, problem-solving strategies and partnerships.¹⁵⁰ The DHEC compiled Environmental Justice Guiding Principles to ensure that they are proactively building and strengthening relationships with communities by sharing information, providing technical assistance, identifying resources, and promoting partnerships between communities and other stakeholders.¹⁵¹

¹⁴² S.C. DHEC, Environmental Justice (EJ), <https://www.scdhec.gov/environmental-justice-ej>.

¹⁴³ S.C. DHEC, Fundamentals of Public Participation (2011), <https://semspub.epa.gov/work/HQ/174882.pdf>.

¹⁴⁴ Or. DEQ, Environmental Justice, <https://www.oregon.gov/deq/about-us/Pages/Environmental-Justice.aspx>.

¹⁴⁵ *Id.*

¹⁴⁶ Del. DNREC, Community Ombudsman, <https://dnrec.alpha.delaware.gov/community-services/community-ombudsman/#:~:text=The%20Community%20Ombudsman%20serves%20as,understand%20the%20needs%20of%20communities>.

¹⁴⁷ *Id.*

¹⁴⁸ S.C. DHEC, Environmental Justice (EJ), <https://www.scdhec.gov/environmental-justice-ej>.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ S.C. DHEC, Guiding Principles (EJ), <https://www.scdhec.gov/guiding-principles-ej>.

Community Engagement

Connecticut, Delaware, Illinois, Ohio, Oregon, Tennessee and West Virginia demonstrate various ways that states can proactively and authentically engage communities on issues and decision-making that could potentially affect their health and quality of life.

Early Notification and Participation

Several states require early public participation in permitting processes. In 2009, Connecticut passed a law that requires applicants seeking a permit for a new or expanded "applicable facility" proposed for location in an "environmental justice community," to file an Environmental Justice Public Participation Plan with and receive approval from the state's Department of Energy and Environmental Protection (CTDEEP) prior to filing any application for such permit.¹⁵² The Plan must identify a time and place for an informal public meeting convenient for the EJ community, and CTDEEP must offer a pre-application meeting to the applicant. Applicants also must consult with the municipality's chief elected official(s) to evaluate the need for a community benefit agreement.¹⁵³ Similarly, Ohio requires a public information session and public hearing near proposed new or modified solid waste facilities within the county in which the facility would be located or a contiguous county.¹⁵⁴

The Illinois Environmental Protection Agency's (IEPA) Public Participation Policy provides public engagement steps the agency and public should follow during IEPA's decision making processes.¹⁵⁵ Prior to public notice, IEPA's Office of Community Relations coordinators reach out to environmental justice communities to initiate meetings between citizens, the agency and the applicant.¹⁵⁶ The coordinators also mail notifications to potentially affected citizens and encourage the community to request public meetings.¹⁵⁷

Proactive Engagement

West Virginia's Department of Environmental Protection has an Office of Environmental Advocate that responds to citizen information requests, helps guide citizens through DEP processes, and helps implement informational workshops and public education forums.¹⁵⁸ Oregon's natural resources agencies must ensure greater public participation by holding hearings at times and in locations that are convenient for people in affected communities and to engage in public outreach activities in these communities.¹⁵⁹ The Tennessee Department of Environment & Conservation offers an online, interactive map that shows public participation opportunities throughout the state.¹⁶⁰

Environmental Justice Complaint Contact and Investigator

In Connecticut, the Environmental Justice Program at the Department of Environmental Protection (DEP) has an "EJ Complaint Investigator."¹⁶¹ This investigator is one of three DEP staff 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."¹⁶² For instance, DEP could receive an environmental justice complaint that implicates the

¹⁵² Conn. Gen. Stat. § 22a-20a(b)(1), https://www.cga.ct.gov/current/pub/chap_439.htm#sec_22a-20a.

¹⁵³ *Id.*

¹⁵⁴ Ohio Rev. Code Ann. § 3734.05(A)(2)(e), <http://codes.ohio.gov/orc/3734.05v1>.

¹⁵⁵ IEPA, *Public Participation Policy* (2018), available at <https://www2.illinois.gov/epa/topics/environmental-justice/Documents/public-participation-policy.pdf>

¹⁵⁶ Ill. EPA, Community Relations, <https://www2.illinois.gov/epa/topics/community-relations/Pages/default.aspx>.

¹⁵⁷ *Id.*

¹⁵⁸ W.V. Dep't of Env'tl. Protection, Office of Environmental Advocate, <https://dep.wv.gov/Pages/agencydetail.aspx?CustomID=16>.

¹⁵⁹ Or. Rev. Stat. § 182.545, https://www.oregonlegislature.gov/bills_laws/ors/ors182.html.

¹⁶⁰ Tenn. Dep't of Env't & Conservation, Public Participation Opportunities, <https://www.tn.gov/environment/ppo-public-participation.html>.

¹⁶¹ Conn. DEEP, The Environmental Justice Public Participation Guidelines (2012), https://portal.ct.gov/-/media/DEEP/environmental_justice/EJGuidpdf.pdf.

¹⁶² *Id.*

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. 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). A key to the program's effectiveness is that assigned staff are enforcement and not policy personnel. In addition, the complaint investigators assist environmental justice populations in navigating the state bureaucracy and serve as advocates of the environmental justice complaint.

Community Involvement Advisory Council and Community Ombudsman

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.¹⁶³ Two years later, the legislature made the CIAC a permanent entity for the purpose of advising the Secretary of DNREC. 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."¹⁶⁴ The committee includes representatives from adversely affected communities, community-based nonprofit organizations, environmental organizations, health care providers, local government, academic institutions and business/industry. The CIAC released a March 2001 report that contains several recommendations for facilitating and implementing community participation in environmental permitting and decision making. As of March 2005, the CIAC continues to meet once every other month, and several of its recommendations have been implemented.

¹⁶³ Global Environmental Resources Inc., Report Of The Community Involvement Advisory Committee To The Delaware Department Of Natural Resources And Environmental Control (2001), <http://www.dnrec.state.de.us/dnrec2000/Admin/BusServ/CIACReport.pdf>.

¹⁶⁴ *Id.*

Environmental Justice Community Capacity

South Carolina, Louisiana, New York and several other states demonstrate how DEQ can begin to build the capacity of environmental justice communities to participate meaningfully in environmental decision-making.

Fund environmental justice organizations to do outreach, education and training

In 2007, South Carolina General Assembly created the SC Environmental Justice Advisory Committee to assess the status of environmental justice initiatives in state agencies and make environmental justice recommendations to the Governor and General Assembly.¹⁶⁵ The SC Department of Health and Environmental Control (DHEC) administers an Environmental Justice Initiative through its Office of Environmental Affairs. The Environmental Justice Initiative has been involved in many projects addressing environmental justice through public participation and technical assistance for environmental justice communities and focuses its efforts 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.

For example, in 2009 DHEC launched the “Leaders in Environmental Action Pilot” (LEAP)¹⁶⁶ through an agreement with the EPA to provide grants and technical assistance to an environmental justice community in each of the state’s four (4) regions who worked to address an issue that was unique to that community. Later, 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 Scholar’s program. Participants cultivate skills to identify environmental challenges and accomplish environmental improvement goals in their communities.

Support third party technical assistance that provides communities access to independent scientists and experts.

EPA’s national Technical Assistance Services for Communities (TASC) program provides independent assistance through a contract to help communities better understand the science, regulations and policies of environmental issues and EPA actions. A contractor provides scientists, engineers and other professionals to review and explain information to communities on a project-specific basis at no cost to communities.¹⁶⁷ The TASC program benefits communities by explaining technical findings and answering community questions, helping them understand complex environmental issues, and supporting their active roles in protecting healthy communities and advancing environmental protection. Services can include information assistance and expertise, community education, needs evaluation and plan development, and assistance to help community members work together to participate effectively in environmental decision-making.

Partner with a third party to host trainings on effective public comment.

The EnviroSchool program at the Louisiana Department of Environmental Quality (LDEQ) is the environmental education outreach arm of the Agency that provides training for communities, businesses, and other organizations on a number of regulatory topics. The goal of this program is for the attendees to become informed about the environmental regulatory process and to maintain and improve environmental compliance.¹⁶⁸ The workshops are free and open to the public, given throughout the state and cover topics such as DEQ Construction Stormwater Permits and Onsite Sewerage System Maintenance, Health and the Environment.

¹⁶⁵ South Carolina Environmental Justice Advisory Committee, Final Report (2009),

<https://www.scdhec.gov/sites/default/files/media/document/EJAdvisoryFinalReportCombined.pdf>.

¹⁶⁶ S.C. DHEC, History(EJ), <https://www.scdhec.gov/history-ej>.

¹⁶⁷ EPA, TASC Program, <https://www.epa.gov/superfund/technical-assistance-services-communities-tasc-program>; EPA, TASC (2013), <https://semspub.epa.gov/work/HQ/174610.pdf>.

¹⁶⁸ La. DEQ, Outreach and Education, <https://deq.louisiana.gov/page/outreach>.

Prioritize environmental justice communities, Tribal communities (both federally and state recognized), and underserved communities for investment through grant programs and designated staff time, including prioritizing funding to those most in need and reducing barriers for grant programs and access to other funds and resources.

California, Delaware and New York are among several states that have prioritized investment in and barrier removal for environmental justice, underserved and Tribal communities. Delaware's Department of Natural Resources and Environmental Control (DNREC) established a grant program for environmental justice communities funded by Delaware's Community Environmental Project Fund.¹⁶⁹ The fund receives revenue from penalties for violations of environmental regulations. CalEPA's Environmental Justice Small Grants Program funds eligible non-profit community organizations and federally recognized Tribal governments to perform environmental justice projects in areas disproportionately affected by environmental pollution and hazards.¹⁷⁰

New York Department of Environmental Conservation's Office of Environmental Justice offers competitive grants to support and empower communities to develop and implement solutions that address environmental issues, harms, and health hazards, build community consensus, set priorities, and improve public outreach and education. Community Impact Grants provide community-based organizations with funding for projects that address various environmental and public health concerns that disproportionately affect low-income and minority communities. These grants have helped communities generate data through community-based science and have helped to engage residents in addressing and understanding the challenges and opportunities for improving community health, safety, and sustainability. Currently, \$4.3 million is available to help eligible community-based organizations located in the affected communities.¹⁷¹

Likewise, the NY DEC recognizes the unique relationship with tribal nations who share many of their environmental concerns. Commissioner Policy CP-42¹⁷² requires department staff to consult with Indian Nation representatives on matters affecting Indian Nation interests particularly concerning actions which may affect lands on which a nation resides, water or air quality of nation lands, and other natural resources of nation interest (e.g., wetlands, fisheries, wildlife, etc.)¹⁷³ Consultation is defined as meaningful involvement in the decision-making process, and there is a designated Indian Nations Affairs Coordinator who acts as a liaison to facilitate the process.

¹⁶⁹ Division of Community Affairs, Del. DNREC, Community Environmental Project Fund, <https://dnrec.alpha.delaware.gov/community-services/environmental-project-fund/>.

¹⁷⁰ CalEPA, Env'tl. Justice Small Grants and Funding Opportunities, <https://calepa.ca.gov/envjustice/funding/>.

¹⁷¹ N.Y. DEC, Env'tl. Justice Grant Programs, <https://www.dec.ny.gov/public/31226.html>.

¹⁷² N.Y. DEC, DEC Policy CP-42 (2009), http://134.179.112.44/docs/permits_ej_operations_pdf/cp42.pdf.

¹⁷³ N.Y. DEC, Indian Nation Consultation, <https://www.dec.ny.gov/public/974.html>.

Local Government

Massachusetts, California and New Jersey along with other resources demonstrate how states can help local governments integrate environmental justice into their local plans, land use regulations and review and approval processes.

State Guidance for Local Planning and Zoning

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.¹⁷⁴

California requires its local governments to identify environmental justice communities within their jurisdictions and include environmental justice goals, policies and objectives in their municipal general plans.¹⁷⁵ To aid local government planning efforts, the California Governor's Office of Planning and Research issues General Plan Guidelines that provide municipalities with guidance for incorporating environmental justice considerations into their general plans.¹⁷⁶ The Guidelines include community engagement and outreach guidance on tribal consultations and cultural considerations, a checklist for the required environmental justice element, and data sources for equity and environmental justice.¹⁷⁷ Additionally, CalEPA's Air Resources Board offers an Air Quality Land Use Handbook that helps local governments evaluate air pollution impacts associated with proposed projects¹⁷⁸ and has issued a subsequent Technical Advisory to provide local decision makers and developers with strategies for reducing traffic emissions.¹⁷⁹

New Jersey's Office of Smart Growth, an affiliate of the Department of Community Affairs, includes provisions for local environmental justice inventories and municipal environmental justice plans in its guidance to municipalities seeking a planning endorsement from the state.¹⁸⁰ To assist with this, New Jersey's Department of Environmental Protection prepares environmental justice inventories for petitioning municipalities using local environmental and demographic data and provides petitioners with technical assistance.¹⁸¹ The guidance directs petitioning municipalities to ensure local plans do not adversely and disproportionately affect minority and low-income populations.

Other Environmental Justice Guidance for Local Governments

Other helpful guidance documents explain how local governments can consider environmental justice during their planning, zoning and review and approval processes. EPA offers helpful environmental justice resources for local governments, including environmental justice planning guidance for local communities,¹⁸² and its Environmental Justice Collaborative Problem-Solving Model, which shows how municipalities and other entities can use collaborative problem

¹⁷⁴ Mass. Executive Office of Energy and Env'tl. Affairs, Smart Growth / Smart Energy Toolkit Modules—Env'tl. Justice, http://www.mass.gov/envir/smart_growth_toolkit/pages/mod-ej.html.

¹⁷⁵ Cal. Gov't Code § 65302(h), http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB1000.

¹⁷⁶ Cal. Governor's Office of Planning and Research, General Plan Information, <https://www.opr.ca.gov/planning/general-plan/>.

¹⁷⁷ State of Cal. Governor's Office of Planning and Research, General Plan Guidelines 26-37, 164-194 (2017), https://opr.ca.gov/docs/OPR_COMPLETE_7.31.17.pdf.

¹⁷⁸ CalEPA Air Resources Bd., Air Quality and Land Use Handbook: A Community Health Perspective, https://ww3.arb.ca.gov/ch/rd_technical_advisory_final.pdf; see also CalEPA Air Resources Bd., Air Quality Land Use Handbook: A Community Health Perspective, <https://ww3.arb.ca.gov/ch/landuse.htm>.

¹⁷⁹ Research Div., CalEPA Air Resources Bd., Strategies to Reduce Air Pollution Exposure Near High-Volume Roadways (2017), https://ww3.arb.ca.gov/ch/rd_technical_advisory_final.pdf.

¹⁸⁰ Office of Smart Growth, Dep't. of Comty. Affairs, NJS Planning Comm'n, Plan Endorsement Guidelines (2004), <https://nj.gov/state/planning/assets/docs/publications/167-2004-pe-guidelines.pdf>.

¹⁸¹ Id. at 22; see also N.J. DEP, Historical Background of DEP's EJ Program 3-4 (2018), <https://nj.gov/dep/ej/docs/historical-overview-njdep-environmental-justice-program.pdf>.

¹⁸² EPA, EJ: Key Resources for Building a Community of Practice for Local Planning (2014), <https://bit.ly/2Q6Y4Gh>.

solving to address local environmental issues.¹⁸³ The American Planning Association and other organizations have published similar guidance to assist municipalities with incorporating environmental justice into local comprehensive plans and zoning codes.¹⁸⁴

¹⁸³ Office of EJ, EPA, EPA's EJ Collaborative Problem-Solving Model (2008), <https://www.epa.gov/sites/production/files/2015-04/documents/ejproblemcollaborativesolvingmodel.pdf>.

¹⁸⁴ See Patricia E. Salkin, APA Quick Notes No. 26, EJ and Land-Use Planning (2010), <https://planning-org-uploaded-media.s3.amazonaws.com/document/PASQuickNotes26.pdf>; Craig A. Arnold, APA PAS Report No. 549/550, Fair and Healthy Land Use: EJ and Planning (2007), https://planning-org-uploaded-media.s3.amazonaws.com/publication/download_pdf/PAS-Report-549-550.pdf; Patricia E. Salkin, Intersection Between EJ and Land Use Planning, *58 Planning & Envtl. Law* 3 (2006), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1029861&download=yes; NAPA, Addressing Community Concerns: How EJ Relates to Land Use Planning and Zoning (2003), <https://www.epa.gov/sites/production/files/2015-02/documents/napa-land-use-zoning-63003.pdf>.

Chapter 6: Conclusion

The Environmental Justice Study provides independent recommendations to DEQ and policy makers in the Commonwealth on how to incorporate environmental justice goals into DEQ strategic planning and phased program implementation. The project team conducted a review of DEQ's legal authority and state implementation examples and solicited and analyzed input from a vast number of stakeholders from across the state and within DEQ. Based on these insights, the project team has developed a robust set of recommendations to help strengthen and clarify DEQ's authority, invest in leadership and staff capacity, implement changes to advance environmental justice through DEQ programs, and build stronger, more effective relationships with environmental justice communities and local government partners.

These recommendations are organized around the following nine operational goals, and include suggestions regarding resources, phasing and state implementation examples:

1. **Authority:** Strengthen and clarify legal and statutory authority to integrate environmental justice into DEQ programs.
2. **Leadership:** Foster subject matter understanding and cohesive support for environmental justice among DEQ leadership.
3. **Staff Capacity:** Increase staff clarity and capacity to effectively support environmental justice and apply environmental justice considerations throughout DEQ programs.
4. **Guidance and Tools:** Provide guidance and tools to ensure clear and consistent implementation of adopted environmental justice policies and practices.
5. **Accessible Information:** Develop tools to provide more transparent, accessible and real-time environmental information to the public.
6. **Relationship Building:** Invest in proactively building productive relationships with environmental justice and other adversely impacted communities.
7. **Community Engagement:** Proactively and authentically engage communities on issues and decision-making that could potentially affect their health and quality of life.
8. **Environmental Justice Community Capacity:** Build the capacity of environmental justice communities to participate meaningfully in environmental decision-making.
9. **Local Government Coordination:** Invest in local government coordination and education to ensure alignment with environmental justice policies.

Now is the time to lean in to advance environmental justice in the Commonwealth of Virginia. The recommendations contained in this report represent an opportunity for DEQ to move into a dramatically different approach to their work in the environmental justice space.

The single most important investment for DEQ's success in making this institutional transition will be its ability to create the space for staff to make a cultural shift that centers environmental justice within DEQ's core mission and everyday program activities. Investments the agency makes up front in building trust, shared understanding and skills-building for implementation among its staff, stakeholders and partners will pay great dividends. Creating the space for significant discussion and coordination among these parties will enable the agency to determine how best to implement the recommendations effectively, efficiently and authentically.

It is the project team's sincere hope that the recommendations of this report – and the forthcoming two-year action plan that DEQ is developing in response – will carry DEQ forward into a new era of cooperation and collaboration in service of advancing environmental justice for impacted communities, all Virginians and our shared Commonwealth.