



BAY AREA  
AIR QUALITY  
MANAGEMENT  
DISTRICT

BOARD OF DIRECTORS  
COMMUNITY ADVISORY COUNCIL

COMMITTEE MEMBERS

DR. JUAN AGUILERA  
FERNANDO CAMPOS  
WILLIAM GOODWIN  
MS. MARGARET GORDON  
ARIEANN HARRISON  
JOHN JEFFERSON  
JOY MASSEY  
CECILIA MEJIA

HANA MENDOZA  
RIO MOLINA  
MAYRA PELAGIO  
CHARLES REED  
DR. JEFF RITTERMAN  
KEVIN RUANO HERNANDEZ  
FAGAMALAMA VIOLET SAENA  
KEN SZUTU  
LATASHA WASHINGTON

**THIS MEETING WILL BE CONDUCTED UNDER PROCEDURES AUTHORIZED BY ASSEMBLY BILL 361 (RIVAS 2021) ALLOWING REMOTE MEETINGS. THIS MEETING WILL BE ACCESSIBLE VIA WEBCAST, TELECONFERENCE, AND ZOOM. A ZOOM PANELIST LINK WILL BE SENT SEPARATELY TO COMMITTEE OR BOARD MEMBERS**

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**[www.baaqmd.gov/about-the-air-district/community-advisory-council/agendasreports](http://www.baaqmd.gov/about-the-air-district/community-advisory-council/agendasreports)**

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**(669) 900 6833**

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# COMMUNITY ADVISORY COUNCIL MEETING AGENDA

**THURSDAY, SEPTEMBER 8, 2022**

**6:00 PM**

1. **Call to Order - Roll Call**
2. **Public Meeting Procedure**

*The Council Co-Chairs shall call the meeting to order and the Clerk of the Boards shall take roll of the Council members.*

***Public Comment on Agenda Items:** The public may comment on each item on the agenda as the item is taken up. Members of the public who wish to speak on matters on the agenda for the meeting, will have three minutes each to address the Council. Members of the public who wish to speak on matters on the agenda for the meeting, and who are speaking through an interpreter, will have six minutes each to address the Council. No speaker who has already spoken on that item will be entitled to speak to that item again.*

## **CONSENT CALENDAR (Item 3)**

3. Approval of the Minutes of June 30, 2022

*The Council will consider approving the draft minutes of the Community Advisory Council meeting of June 30, 2022.*

## **REGULAR AGENDA (Items 4 - 10)**

4. Selection of an Environmental Justice Policy Ad Hoc Committee

*This is an action item for the Council to consider selecting members for an ad-hoc committee to develop the Environmental Justice policy for consideration by the Community, Equity, Health, and Justice Committee of the Board. This item will be presented by Vernice Miller-Travis of Metropolitan Group and Suma Peesapati, Environmental Justice and Community Engagement Officer.*

5. Revised Community Advisory Council Meeting Land Acknowledgement or Alternative Statement in Lieu of Pledge of Allegiance

*This is an action item for the Council to consider approving a revised Land Acknowledgement or an alternative Mission and Equity Statement in lieu of the Pledge of Allegiance. This item will be presented by Council member Kevin G. Ruano Hernandez and Council member Ken Szutu.*

6. Air District's Services to Address Community-Identified Air Quality Concerns – Overview of the Air Quality Complaint Program and Investigation Process

*Air District staff will present on the agency's process when community submits complaints concerning odor, soil, or air quality issues. This is an informational item only and will be presented by Damian Breen, Senior Deputy Executive Officer of Operations.*

7. Update on Community Air Quality Concerns at the Alice Griffith Housing Development in Bayview Hunters Point, San Francisco

*This is an informational item only and will be presented by Damian Breen, Senior Deputy Executive Officer of Operations.*

8. Approval of Panelists to Interview the Air District's Air Pollution Control Officer Candidates

*This is an action item for the Council to consider approving the list of Council members selected to participate in the Executive Officer / Air Pollution Control Officer interview panel.*

9. Work Plan Ad Hoc Update

*The Council and the public will receive an update from the Work Plan Ad Hoc Committee.*

10. Governance Ad Hoc Update

*The Council and the public will receive updates from the Governance Ad Hoc Committee.*

## **OTHER BUSINESS**

11. Report of the Executive Officer/APCO

12. Public Comment on Non-Agenda Matters

*Pursuant to Government Code Section 54954.3*

*Members of the public who wish to speak on matters not on the agenda for the meeting, will have three minutes each to address the Council.*

13. Time and Place of Next Meeting

*At the Call of the Co-Chairs.*

14. Council Member Comments / Other Business

*Any member of the Council, on his or her own initiative or in response to questions posed by the public, may: ask a question for clarification, make a brief announcement or report on his or her own activities, provide a reference to staff regarding factual information, request staff to report back at a subsequent meeting concerning any matter or take action to direct staff to place a matter of business on a future agenda.*

15. Adjournment

*The Council meeting shall be adjourned by the facilitator.*

**CONTACT:**

**MANAGER, EXECUTIVE OPERATIONS**  
**375 BEALE STREET, SAN FRANCISCO, CA 94105**  
[vjohnson@baaqmd.gov](mailto:vjohnson@baaqmd.gov)

**(415) 749-4941**  
**FAX: (415) 928-8560**  
**BAAQMD homepage:**  
[www.baaqmd.gov](http://www.baaqmd.gov)

- Any writing relating to an open session item on this Agenda that is distributed to all, or a majority of all, members of the body to which this Agenda relates shall be made available at the Air District's offices at 375 Beale Street, Suite 600, San Francisco, CA 94105, at the time such writing is made available to all, or a majority of all, members of that body.

**Accessibility and Non-Discrimination Policy**

The Bay Area Air Quality Management District (Air District) does not discriminate on the basis of race, national origin, ethnic group identification, ancestry, religion, age, sex, sexual orientation, gender identity, gender expression, color, genetic information, medical condition, or mental or physical disability, or any other attribute or belief protected by law.

It is the Air District's policy to provide fair and equal access to the benefits of a program or activity administered by Air District. The Air District will not tolerate discrimination against any person(s) seeking to participate in, or receive the benefits of, any program or activity offered or conducted by the Air District. Members of the public who believe they or others were unlawfully denied full and equal access to an Air District program or activity may file a discrimination complaint under this policy. This non-discrimination policy also applies to other people or entities affiliated with Air District, including contractors or grantees that the Air District utilizes to provide benefits and services to members of the public.

Auxiliary aids and services including, for example, qualified interpreters and/or listening devices, to individuals who are deaf or hard of hearing, and to other individuals as necessary to ensure effective communication or an equal opportunity to participate fully in the benefits, activities, programs and services will be provided by the Air District in a timely manner and in such a way as to protect the privacy and independence of the individual. Please contact the Non-Discrimination Coordinator identified below at least three days in advance of a meeting so that arrangements can be made accordingly.

If you believe discrimination has occurred with respect to an Air District program or activity, you may contact the Non-Discrimination Coordinator identified below or visit our website at [www.baaqmd.gov/accessibility](http://www.baaqmd.gov/accessibility) to learn how and where to file a complaint of discrimination.

Questions regarding this Policy should be directed to the Air District's Non-Discrimination Coordinator, Suma Peesapati, at (415) 749-4967 or by email at [speesapati@baaqmd.gov](mailto:speesapati@baaqmd.gov).

# BAY AREA AIR QUALITY MANAGEMENT DISTRICT

375 BEALE STREET, SAN FRANCISCO, CA 94105

FOR QUESTIONS PLEASE CALL (415) 749-4941

## EXECUTIVE OFFICE:

## MONTHLY CALENDAR OF AIR DISTRICT MEETINGS

### SEPTEMBER 2022

<u>TYPE OF MEETING</u>	<u>DAY</u>	<u>DATE</u>	<u>TIME</u>	<u>ROOM</u>
<b>Board of Directors Community Equity, Health and Justice Committee - CANCELLED AND RESCHEDULED TO THURSDAY, SEPTEMBER 15, 2022, AT 9:30 A.M.</b>	Thursday	1	9:30 a.m.	Webcast only pursuant to Assembly Bill 361
Board of Directors Meeting	Wednesday	7	9:00 a.m.	Webcast only pursuant to Assembly Bill 361
Community Advisory Council Mtg.	Thursday	8	6:00 p.m.	Webcast only pursuant to Assembly Bill 361
Advisory Council Meeting	Monday	12	8:30 a.m.	Webcast only pursuant to Assembly Bill 361
<b>Board of Directors Legislative Committee - CANCELLED</b>	Monday	12	1:00 p.m.	Webcast only pursuant to Assembly Bill 361
Board of Directors Community Equity, Health and Justice Committee	Thursday	15	9:30 a.m.	Webcast only pursuant to Assembly Bill 361
Board of Directors Stationary Source and Climate Impacts Committee	Monday	19	9:00 a.m.	Webcast only pursuant to Assembly Bill 361
Path to Clean Air Community Emissions Reduction Plan Steering Committee	Monday	19	5:30 p.m.	Webcast only pursuant to Assembly Bill 361
Board of Directors Meeting	Wednesday	21	9:00 a.m.	Webcast only pursuant to Assembly Bill 361
Board of Directors Administration Committee	Wednesday	21	1:00 p.m.	Webcast only pursuant to Assembly Bill 361
<b>Board of Directors Mobile Source and Climate Impacts Committee - CANCELLED</b>	Thursday	22	9:30 a.m.	Webcast only pursuant to Assembly Bill 361
<b>Board of Directors Budget and Finance Committee - CANCELLED</b>	Wednesday	28	9:30 a.m.	Webcast only pursuant to Assembly Bill 361

## OCTOBER 2022

<u>TYPE OF MEETING</u>	<u>DAY</u>	<u>DATE</u>	<u>TIME</u>	<u>ROOM</u>
Board of Directors Legislative Committee	Monday	3	1:00 p.m.	Webcast only pursuant to Assembly Bill 361
Board of Directors Meeting	Wednesday	5	9:00 a.m.	Webcast only pursuant to Assembly Bill 361
Board of Directors Community Equity, Health and Justice Committee	Thursday	6	9:30 a.m.	Webcast only pursuant to Assembly Bill 361
Board of Directors Legislative Committee- CANCELED AND RESCHEDULED TO MONDAY, OCTOBER 3, 2022 AT 1:00 P.M.	Monday	10	1:00 p.m.	Webcast only pursuant to Assembly Bill 361
Technology Implementation Office (TIO) Steering Committee	Friday	14	1:00 p.m.	Webcast only pursuant to Assembly Bill 361
Board of Directors Stationary Source and Climate Impacts Committee	Monday	17	9:00 a.m.	Webcast only pursuant to Assembly Bill 361
Path to Clean Air Community Emissions Reduction Plan Steering Committee	Monday	17	5:30 p.m.	Webcast only pursuant to Assembly Bill 361
Board of Directors Meeting	Wednesday	19	9:00 a.m.	Webcast only pursuant to Assembly Bill 361
Board of Directors Administration Committee	Wednesday	19	1:00 p.m.	Webcast only pursuant to Assembly Bill 361
Board of Directors Budget and Finance Committee	Wednesday	26	9:30 a.m.	Webcast only pursuant to Assembly Bill 361
Board of Directors Mobile Source and Climate Impacts Committee	Thursday	27	9:30 a.m.	Webcast only pursuant to Assembly Bill 361

HL 8/30/22 – 11:40 a.m.

G/Board/Executive Office/Moncal

**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**  
Memorandum

To: Members of the Community Advisory Council

From: Sharon L. Landers  
Interim Executive Officer/APCO

Date: September 8, 2022

Re: Approval of the Minutes of June 30, 2022

RECOMMENDED ACTION

Approve the draft minutes of the Community Advisory Committee Meeting of June 30, 2022.

BACKGROUND

None.

DISCUSSION

Attached for your review and approval are the draft minutes of the Community Advisory Committee Meeting of June 30, 2022.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Sharon L. Landers  
Interim Executive Officer/APCO

Prepared by: Brian Butler  
Reviewed by: Veronica Eady

ATTACHMENTS:

1. Draft Minutes of the Community Advisory Committee Meeting of June 30, 2022



Bay Area Air Quality Management District  
375 Beale Street, Suite 600  
San Francisco, California 94105  
(415) 749-5073

**DRAFT MINUTES**

Community Advisory Council  
Thursday June 30, 2022

**This meeting was conducted pursuant to procedures in accordance with Assembly Bill 361.  
Members of the Council participated by teleconference.**

**1. CALL TO ORDER - ROLL CALL**

Randolph Belle of Randolph Belle, Artist (RBA) Creative, started the meeting at 6:01pm as the meeting facilitator. Mr. Belle introduced one of the Community Advisory Council's (Council) three Co-Chairpersons, Latasha Washington. Co-Chair Latasha Washington called the meeting to order and set ground rules for the Council's meeting regarding preparation, communication, distractions, timing, and facilitation.

Present: Dr. Juan Aguilera, Fernando Campos, William Goodwin, Ms. Margaret Gordon, Arieann Harrison, Kevin John Jefferson, Joy Massey, Cecilia Mejia, Hana Mendoza, Rio Molina, Mayra Pelagio, Charles Reed, Dr. Jeff Ritterman, Kevin G. Ruano Hernandez, Violet Saena, Ken Szutu, and Latasha Washington.

Absent: None.

**2. PUBLIC MEETING PROCEDURE**

The Public Meeting Procedure video was played.

**3. APPROVAL OF THE MINUTES OF MARCH 30, 2022**

The Council members requested no edits to the Meeting Minutes of March 30, 2022.

Public Comments

No requests received.

Council Comments

No requests received.

Council Action

Dr. Ritterman made a motion, seconded by Co-Chair Jefferson to approve the Meeting Minutes of March 30, 2022, and the motion carried by the following vote of the Council:

AYES: Dr. Juan Aguilera, Fernando Campos, William Goodwin, Ariann Harrison, Kevin John Jefferson, Cecilia Mejia, Hana Mendoza, Rio Molina, Mayra Pelagio, Charles Reed, Dr. Jeff Ritterman, Kevin G. Ruano Hernandez, Violet Saena, Ken Szutu, Latasha Washington.

NOES: None.

ABSTAIN: None.

ABSENT: Ms. Margaret Gordon, Joy Massey.

**4. COMMUNITY ADVISORY COUNCIL MEETING LAND ACKNOWLEDGEMENT IN LIEU OF PLEDGE OF ALLEGIANCE**

NOTED PRESENT: Council member Massey was noted present at 6:15 p.m., and Council member Szutu was noted present at 6:19 p.m.

Mr. Belle introduced Council member Ruano Hernandez, who gave the presentation *Community Advisory Council Meeting Land Acknowledgement In Lieu of Pledge of Allegiance*, including Requested Action, What is a Land Acknowledgment?, Why is it important?, Option #1 Land Acknowledgement, Option #2 Land Acknowledgment, and Land Acknowledgment Resources.

Council Comments

Council member Molina asked that the land acknowledgment include all tribes within the Bay Area, and not only the Ohlone.

Co-Chair Jefferson agreed to investigate the different tribes that were here before us and acknowledge them as well.

Council member Goodwin suggested providing information for donations for tribes or organizations that support tribal movements.

Council member Szutu asked why only Native Americans are being acknowledged and not other groups of people.

Co-Chair Jefferson suggested showing a map of the indigenous land.

Council member Szutu agreed with modifying the Pledge of Allegiance, but raised a question because of the phrase, “in lieu of.”

Miriam Torres, Air District Senior Advanced Projects Advisor, explained that the Land Acknowledgement does not only recognize the Ohlone people but other communities, as well.

Council member Szutu stated that Asian people were enslaved as well, specifically as slave labor.

#### Public Comment

No requests received.

#### Council Action

No vote taken at this time, as Co-Chair Jefferson and Council Members Molina and Ruano Hernandez will work on suggested revisions to the proposed language and bring it back to the Council for consideration of adoption.

### **7. OVERVIEW OF WILDFIRE MITIGATION AND HOME AIR FILTRATION PROGRAM**

Mr. Belle introduced Joshua Abraham, Senior Staff Specialist, to present the *Overview of Wildfire Mitigation and Home Air Filtration Program*, including Requested Action, Wildfire Air Quality Response Program, Clean Air Filtration (CAF) Program Overview, Program Scope, Impact Prioritized Communities in the Bay Area, Existing Programs, Consultation with EJ Leaders, Proposal, Local Health Centers & Community Partners, Community Based Organization Partnership Additional Parameters, Request for Allocation from Wildfire Mitigation Fund, and Next Steps.

#### Public Comment

Lonnie Mason, First Generation Environmental Health, and Economic Development, noted that First Generation was responsible for bringing this issue of filters to the public prior to the media becoming involved, and inquired as to why First Generation was not acknowledged or communicated with during the project planning. Mr. Mason shared his frustrations regarding a requested meeting with the Air District for over a year to discuss air filters within Bayview Hunter's Point.

Dr. Raymond Tompkins asked whether the filtration units will be able to remove dust particles, and whether they will remove Particulate Matter<sub>2.5</sub> or Particulate Matter<sub>10</sub>.

Damian Breen, Air District Senior Deputy Executive Officer of Operations, stated that the filtration units will be "high efficiency particulate air" (HEPA) filters that remove Particulate Matter<sub>2.5</sub>.

Dr. Tompkins asked whether the filtration units will be able to be used at high volume and operate for 24 hours consistently. He noted that filters are not effective if they are not changed regularly, for high-risk homes. Staff noted that the Air District will investigate this and supply additional filters to homes who require 24-hour usage.

In response to Mr. Mason’s previous comments, LaDonna Williams, All Positives Possible, clarified that she did not obtain air filters through the California Air Resources Board (CARB). Ms. Williams stated that the filters were supplied to All Positives Possible from the Air District, to be distributed to Solano County residents.

### Council Comments

Council member Harrison also raised a suggestion in the Zoom chat feature to recognize Asians in the Land Acknowledgement and asked about skipping Item #6 in the agenda. Mr. Belle responded in the Zoom chat feature that Item 6 was delayed to allow Air District Board Chairperson, John Bauters, to arrive.

Co-Chair Gordon raised a question about the lack of metrics within Item #7, such as measuring less hospital visits for those who received air filters and requested concrete data about positive impacts.

Council member Pelagio shared her experience as part of groups interviewed, noting that she understands why the program is limited to non-profit organizations, and suggested that the program be expanded to the unhoused. Council member Pelagio asked if the Air District will identify communities in need that are not represented by non-profit organizations. Council member Pelagio thanked staff for a quick turnaround before the wildfire season begins.

Council member Molina asked what oversight powers the Council would have to shape the program criteria.

Council member Harrison shared excitement for the filters, which are in high demand in District 10 of the City of San Francisco. Council member Harrison echoed others’ concerns about how to involve small, neighborhood-level groups, she plans to sub-contract and educate them on how to become non-profit organizations.

Council member Goodwin asked whether program awardees must be medically diagnosed with severe asthma.

Council member Mejia asked whether the Air District sent surveys to those who have already received air filters, noting that it can be difficult to obtain physician referrals for home visits.

Council member Reed affirmed Ms. Williams’ comment about keeping community programs at grassroots, community level and not taking away from that expertise.

Co-Chair Gordon asked if this program includes the City of Oakland, and whether schools are scheduled to be closed during the installation of the filtration units.

Council member Saena asked whether the cost of filter replacements is also included in the budget, as they are expensive. Staff stated that there is room in the budget for filter replacements.

Council member Mejia asked whether applicants for the James Cary Smith Community Grant Program will need to show proof of Assembly Bill 617 designation or proof of being low-income. Staff stated that the Air District will assist those who qualify as low-income with the application process.

Council member Szutu wanted to be sure that the Regional Asthma Mitigation and Prevention Program (RAMP) is available to all people in all Bay Area Counties, specifically Vallejo. Staff stated that RAMP does not presently cover every part of the Bay Area.

Co-Chair Gordon asked whether the filters are only for patients who have asthma and respiratory problems, or whether those with low-income zip codes who are in “hot spots” can also qualify. Staff stated that the Air District aims to target those with respiratory issues and those who are at risk by living/working in “hot spots.”

Co-Chair Gordon stated that this language should be clearly included in the presentation and reiterated the importance of providing data to the public.

Council member Molina asked how health centers can determine whether patients qualify for this program. Co-Chair Jefferson suggested bringing all of the various community partners together and discussing ways to expand and synergize this program.

Council member Goodwin asked whether only Medi-Cal recipients can qualify for the program. Council member Goodwin also recommended that the Air District partners with schools to ensure greater outreach. Staff stated that the program is not limited to Medi-Cal recipients only.

#### Council Action

Co-Chair Washington made a motion, seconded by Council Member Massey, to approve and recommend the proposed program strategy for the \$1 million Wildfire Mitigation Designation to the Board of Directors, and the motion carried by the following vote of the Council:

AYES: Dr. Juan Aguilera, Fernando Campos, William Godwin, Ms. Margaret Gordon, Arieann Harrison, Kevin John Jefferson, Joy Massey, Cecilia Mejia, Hana Mendoza, Rio Molina, Mayra Pelagio, Charles Reed, Dr. Jeff Ritterman, Kevin G. Ruano Hernandez, Violet Saena, Ken Szutu, and Latasha Washington.

NOES: None.

ABSTAIN: None.

ABSENT: None.

**8. SELECTION OF AD-HOC COMMITTEE TO DEVELOP THE COMMUNITY ADVISORY COUNCIL (CAC) WORKPLAN FOR FISCAL YEAR (FY) 2023**

Mr. Belle gave the presentation *Selection of Ad-Hoc Committee to Develop The Community Advisory Council (CAC) Workplan For Fiscal Year (FY) 2023*, including Requested Action, Work Plan Ad-hoc Committee, and Ad-Hoc Committee Selection.

Mr. Belle asked for volunteers for this new ad-hoc committee, and those who volunteered were Council members: Campos, Goodwin, Harrison, Molina, Pelagio, and Szutu.

Public Comments

No requests received.

Council Comments

None.

Council Action

Co-Chair Washington made a motion, seconded by Council member Ruano-Hernandez, to create an Ad-Hoc Committee to Develop the Community Advisory Council (CAC) Workplan for Fiscal Year (FY) 2023, and the motion carried by the following vote of the Council:

AYES: Dr. Juan Aguilera, William Goodwin, Ms. Margaret Gordon, Ariann Harrison, Kevin John Jefferson, Cecilia Mejia, Hana Mendoza, Rio Molina, Mayra Pelagio, Dr. Jeff Ritterman, Kevin G. Ruano Hernandez, Violet Saena, and Latasha Washington.

NOES: None.

ABSTAIN: None.

ABSENT: Joy Massey, Charles Reed.

**5. UPDATE ON THE SELECTION OF THE AIR DISTRICT'S AIR POLLUTION CONTROL OFFICER (APCO)**

Mr. Belle introduced the Mayor of Emeryville, John Bauters, Chairperson of the Air District's Board of Directors, who gave the presentation *Update on the Selection of the Air District's Air Pollution Control Officer*, including Presentation Outcome and Air Pollution Control Officer (APCO) Hiring Process. Belmont City Council member and Board Vice Chairperson, Davina Hurt, assisted Chair Bauters with this presentation.

Chair Bauters highlighted the three primary phases of the proposed process. During the first phase, the Council will discuss and vote upon its desired qualifications of the APCO, submitting this information to the Board of Directors in writing no later than August 15, 2022. This item is to be presented to the Air District’s Board of Directors by September 2022.

Council Comments:

Council member Ruano Hernandez asked to know more about Chair Bauters and Vice Chair Hurt. Council member Molina asked to see the prior job description for the APCO position.

Chair Bauters said that he would find examples for similar job descriptions, but that the prior description for this role was created over 20 years ago and is not updated to reflect current laws.

Council member Mendoza stated that seeing job descriptions from other agencies would be helpful.

Council member Jefferson asked whether the class code for APCO (1B101) has been revised since 2008.

District Counsel, Alexander Crockett, will look into this question.

Public Comment:

Ms. Williams asked for clarification regarding the position and wants to ensure that the Air District is looking into the person’s background to see their ability to respect the public’s opinion and work with the public to bring benefits to the communities.

Council Comments Continued:

Council member Mendoza asked whether the CAC may be included in the review of the interview questions and job announcement before it is finalized.

Chair Bauters stated that there will be discussions with a consultant to develop interview questions.

Council Action

None; Receive and file.

**6. DISCUSS AND DEVELOP A LIST OF DESIRED QUALIFICATIONS FOR THE AIR DISTRICT’S EXECUTIVE OFFICER / AIR POLLUTION CONTROL OFFICER**

Mr. Belle introduced Co-chair Washington, who gave the presentation *Discuss and Develop a List of Desired Qualifications for the Air District’s Executive Officer Air Pollution Control Officer*, including Requested Action and Process. Co-chair Washington shared that this is an action item for the Council to develop a list of qualifications for the Air District Board of Directors to consider including in the job description for the Executive Officer / APCO.

Co-chair Washington shared that the list the Council develops will be voted on by the Council, and then presented to the Board of Directors in the form of a letter for the Board’s consideration. Co-chair Washington reminded Council members to please avoid qualifications that could discriminate on the basis of race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, age, or disability.

Council members utilized the virtual platform “Jamboard” to develop their collective desired qualifications of the APCO. Some of the Jamboard-noted qualifications, included integrity, lack of arrogance, experience working with non-profit agencies, knows the difference between equity and equality, high level communication skills, experience working with a CAC, visionary, anti-racist, familiar with Bay Area environmental justice, ability to lead transformative regulatory efforts, knowledge of air quality regulatory and incentive programs, previous experience working with underserved communities and ethnic minorities, lived experience and prioritizing social and racial justice, dynamic and articulate, results-oriented leader, acknowledge racism, understands urgency to prioritize adaptation measures to climate change, track record of hiring, retaining and promoting staff of color, anticipate issues and policy questions, approachable and receptive to new ideas, high degree of inventiveness, imagination and innovation, uses analytical tools, familiar with diversity, inclusion and equity planning & implementation, acknowledge that white privilege exists, etc.

Staff summarized the Jamboard comments into a list to be voted on by the council.

Public Comments

Ms. Williams asked who has decision making power should staff and CAC recommendations not align.

Council Questions

None.

Council Comments

Interim APCO, Sharon L. Landers, shared suggestions to the Council, stating that “people of color” might be a phrase that triggers legal consequences.



Council member Mendoza shared her concern about “people of color” as a trigger word and asked clarification from the APCO.

Mr. Crockett noted that “people of color” is not suggesting that any race or ethnicity should be promoted over others.

Council member Mendoza made a motion, seconded by Co-Chair Gordon, to approve the Council’s collaborative list of desired qualifications for the Executive Officer / APCO, to be included in a letter signed by the Community Advisory Council Co-Chairs and submitted to the Air District Board of Directors, and the motion carried by the following vote of the Council:

AYES: Dr. Juan Aguilera, Fernando Campos, William Goodwin, Ms. Margaret Gordon, Kevin John Jefferson, Arieann Harrison, Cecilia Mejia, Hana Mendoza, Rio Molina, Mayra Pelagio, Dr. Jeff Ritterman, Kevin G. Ruano Hernandez, Violet Saena, Ken Szutu, and Latasha Washington.

NOES: None.

ABSTAIN: None.

ABSENT: Joy Massey, Charles Reed.

9. **UPDATE ON COMMUNITY AIR QUALITY CONCERNS AT THE ALICE GRIFFITH HOUSING DEVELOPMENT IN BAYVIEW HUNTERS POINT, SAN FRANCISCO**

This item is to be continued until the next meeting.

10. **AIR DISTRICT’S SERVICES TO ADDRESS COMMUNITY-IDENTIFIED AIR QUALITY CONCERNS – OVERVIEW OF THE AIR QUALITY COMPLAINT PROGRAM AND INVESTIGATION PROCESS**

This item is to be continued until the next meeting.

11. **REPORT OF THE INTERIM EXECUTIVE OFFICER/APCO**

This item is to be continued until the next meeting.

12. **PUBLIC COMMENT ON NON-AGENDA ITEMS**

Public Comments:

None.

**13. COUNCIL MEMBER COMMENTS / OTHER BUSINESS**

None.

**14. TIME AND PLACE OF NEXT MEETING**

At the end of the meeting, the time and place of the next meeting was at the call of the Chairpersons. After the meeting adjourned, the next meeting was scheduled for Thursday, September 8, 2022, at 6:00 p.m., via webcast, teleconference, or Zoom, pursuant to procedures in accordance with Assembly Bill 361 (Rivas 2021).

**15. ADJOURNMENT**

The meeting was adjourned at 10:37 p.m.

Briana Turk, InterEthnica  
Reviewed by: Marcy Hiratzka, Clerk of the Boards

**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**  
Memorandum

To: Members of the Community Advisory Council

From: Sharon L. Landers  
Interim Executive Officer/APCO

Date: September 8, 2022

Re: Selection of an Environmental Justice Policy Ad Hoc Committee

RECOMMENDED ACTION

Select Council members for an ad-hoc committee to develop an Environmental Justice (EJ) Policy for consideration by the Community, Equity, Health, and Justice Committee of the Board.

BACKGROUND

This is an action item for the Council to create the Environmental Justice Policy Ad Hoc Committee and select members to discuss and develop an Environmental Justice policy. The Environmental Justice Policy Ad Hoc Committee is anticipated to convene from October 2022 to October 2023.

DISCUSSION

The Council will have the opportunity to vote to establish an ad hoc committee to develop an Environmental Justice policy for consideration by the Community, Equity, Health, and Justice Committee of the Board. The Council will develop an Environmental Justice policy the Air District can implement to promote equity and Environmental Justice in all of the agency's work. In compliance with the Brown Act, the Council will be able to select up to 8 Council members to serve on a workplan ad hoc committee.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None. Stipends for the work of the Community Advisory Council members selected to participate in the ad-hoc committee are included in the fiscal year ending 2022 and fiscal year ending 2023 budgets.

Respectfully submitted,

Sharon L. Landers  
Interim Executive Officer/APCO

Prepared by: Lisa Flores  
Reviewed by: Veronica Eady

ATTACHMENTS:

1. US EPA Environmental Justice, Civil Rights, & Permitting Policy
2. California Environmental Protection Agency's February 2020 Enforcement Memo
3. New Jersey Environmental Justice Law
4. New York Climate Leadership and Community Protection Act
5. Vermont's EJ Policy, Senate Bill148



# Environmental Protection Agency

*Interim*

## **Environmental Justice and Civil Rights in Permitting Frequently Asked Questions**

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## Acknowledgements

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# Introduction

These Frequently Asked Questions (FAQs) provide information to federal, state, and local environmental permitting programs to help them meet their responsibilities to integrate environmental justice (EJ) and civil rights into relevant environmental permitting processes. They do not change obligations to comply with applicable environmental and civil rights laws or create any new legal rights or responsibilities.<sup>1</sup> This is a “living document” that EPA will update and refine as the practice of integrating EJ and civil rights into permitting advances.

## 1

**Why is it important for permitting programs to ensure consideration of environmental justice and comply with federal civil rights laws, including Title VI of the Civil Rights Act of 1964, as well as state civil rights and environmental justice laws?<sup>2</sup>**

EPA’s mission is to protect human health and the environment. EPA is committed to achieving our mission for all people in the United States, regardless of race, color, national origin (including limited English proficiency [LEP] status), disability, age, sex, or income. For decades, many people of color, as well as low-income and indigenous populations, have been disproportionately burdened by pollution and denied equal access to a healthy environment.<sup>3</sup> This legacy of environmental injustice represents a systemic deficit in public health and environmental protection. Finding solutions is not only the right thing to do; it is also our collective obligation.

Federal environmental justice policy directs EPA to address environmental injustices to the full extent authorized by law.<sup>4</sup> This policy was based, in part, on the nation’s civil rights laws, which were enacted

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<sup>1</sup> EPA is committed to issuing additional guidance in the near future to update and clarify information about investigative and legal standards applicable to external civil rights claims, including those concerning permitting.

<sup>2</sup> As discussed below, Title VI and EPA Title VI implementing regulations do not apply to the federal government itself. Moreover, these FAQs provide general information about integrating environmental justice and civil rights obligations, where applicable, recognizing that the implementation of these principles by permitting programs will vary depending on their statutory and regulatory authority. See generally EPA Legal Tools to Advance Environmental Justice (2022), <https://www.epa.gov/ogc/epa-legal-tools-advance-environmental-justice>.

<sup>3</sup> See, e.g., Tessum, C.W., Paoella, D.A., Chambliss, S.E., Apte, J.S., Hill, J.D., & Marshall, J.D. *PM2.5 polluters disproportionately and systemically affect people of color in the United States*, *Science Advances* 7(18) (2021), [10.1126/sciadv.abf4491](https://doi.org/10.1126/sciadv.abf4491); Ihab Mikati, Adam F. Benson, Thomas J. Luben, Jason D. Sacks, & Jennifer Richmond-Bryant, *Disparities in Distribution of Particulate Matter Emission Sources by Race and Poverty Status*, *Am J Public Health*, 108(4): 480–485 (2018), [10.2105/AJPH.2017.304297](https://doi.org/10.2105/AJPH.2017.304297); U.S. Env’t Prot. Agency, *Technical Guidance for Assessing Environmental Justice in Regulatory Analysis*, Section 4, [https://www.epa.gov/sites/default/files/2016-06/documents/eitg\\_5\\_6\\_16\\_v5.1.pdf](https://www.epa.gov/sites/default/files/2016-06/documents/eitg_5_6_16_v5.1.pdf); Catherine Jampel, *Intersections of Disability Justice, Racial Justice, and Environmental Justice*, *Environmental Sociology* (2018); [10.1080/23251042.2018.1424497](https://doi.org/10.1080/23251042.2018.1424497); USGCRP, *Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, Volume II*, Chapter 19 (discussing rural communities) [Reidmiller, D.R., C.W. Avery, D.R. Easterling, K.E. Kunkel, K.L.M. Lewis, T.K. Maycock, and B.C. Stewart (eds.)], U.S. Global Change Research Program, Washington, DC, USA, 1515 pp. doi: 10.7930/NCA4.2018 (2018), <https://nca2018.globalchange.gov>.

<sup>4</sup> Executive Order 12898: “Federal actions to address environmental justice in minority populations and low-income populations,” <https://www.archives.gov/files/federal-register/executive-orders/pdf/12898.pdf>.



to address all forms of discrimination.<sup>5</sup> To date, most federal enforcement action in the civil rights arena has focused on other sectors, e.g., education, employment, housing, and transportation—and not on environmental protection. EPA recognizes that it is time to use the full extent of its enforcement authority under federal civil rights laws, including Title VI of the Civil Rights Act of 1964.

EPA also recognizes that it does not and need not stand alone in pursuing environmental justice. More than 40 states and the District of Columbia have laws, policies, or programs pertaining to environmental justice. Several states (e.g., California, Minnesota, and New Jersey) and municipalities have enacted laws to address cumulative and disproportionate impacts in the permitting context, and others are considering such legislation.<sup>6</sup> In addition, most states and many local jurisdictions also have civil rights laws. These state and local laws may provide independent authority to advance environmental justice and ensure protection of civil rights. EPA greatly values the contribution of its partners in this critical effort.

Historically, industrial facilities have been sited, have expanded, and have added to the pollution burden in already vulnerable communities without due consideration of whether, either intentionally or in effect, the decisions allowing such outcomes are discriminatory under civil rights law or unfair under environmental justice policies. By considering the principles of environmental justice, complying with federal civil rights laws, and complying with applicable state environmental justice and civil rights policies and laws, environmental permitting programs can better identify and address discriminatory or unfair permitting processes and outcomes. EPA intends these FAQs to help permitting programs consider these critical issues.

## 2

### What are EPA's responsibilities under federal environmental justice policy, including with respect to permitting?

Three Executive Orders (E.O.s) establish federal policy on equity and environmental justice:

- [E.O. 12898](#) *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (1994)* lays the foundation of EPA's EJ policy. It directs each listed federal agency, including EPA, to "make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations." Agencies must do this to the "greatest extent practicable and permitted

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<sup>5</sup> See Memorandum on Environmental Justice (Feb. 11, 1994), <https://www.govinfo.gov/content/pkg/WCPD-1994-02-14/pdf/WCPD-1994-02-14-Pg279.pdf> (requiring federal agencies to ensure that all programs or activities receiving federal financial assistance that affect human health or the environment do not "use criteria, methods, or practices that discriminate on the basis of race, color, or national origin"). See also Title VI of the Civil Rights Act of 1964, 42 United States Code §§ 2000d to 2000d-7 (Title VI); Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 *et seq.*; Age Discrimination Act of 1975, 42 U.S.C. §§ 6101 *et seq.*; Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500 § 13, 86 Stat. 903 (codified as amended at 33 U.S.C. § 1251 (1972)); 40 C.F.R. Parts 5 and 7.

<sup>6</sup> See generally Environmental Justice for All: A Fifty State Survey of Environmental Justice Legislation, Policies and Cases (2007), <https://www.issuelab.org/resources/3124/3124.pdf>.

by law.” The Presidential memorandum accompanying E.O. 12898 notes that existing environmental and civil rights statutes provide many opportunities to ensure that all communities and persons live in a safe and healthful environment.

- [E.O. 14008](#) *Tackling the Climate Crisis at Home and Abroad (2021)* reaffirms the importance of environmental justice and makes explicit that agencies should address “climate-related and other cumulative impacts on disadvantaged communities, as well as the accompanying economic challenges of such impacts.” It also establishes a federal policy “to secure environmental justice and spur economic opportunity for disadvantaged communities that have been historically marginalized and overburdened by pollution and underinvestment in housing, transportation, water and wastewater infrastructure, and health care.”
- [E.O. 13985](#) *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (2021)* establishes a whole-of-government equity agenda to address entrenched disparities in our laws and policies and to promote equal opportunity for underserved communities that have been denied fair, just, and impartial treatment.

### 3

#### What responsibilities do EPA staff and managers with permit issuance and review responsibilities have to ensure compliance with civil rights laws by recipients of EPA financial assistance?

As a federal agency, EPA is responsible for civil rights enforcement. EPA is also committed to carrying out its permitting processes in a nondiscriminatory manner and improving the accessibility of its programs and activities to ensure meaningful access for persons with disabilities and persons with limited English proficiency.<sup>7</sup>

As discussed below, EPA civil rights regulations prohibit state, local, or other entities that receive federal financial assistance, either directly or indirectly from EPA (“recipients”), from taking actions that are intentionally discriminatory as well as practices that have an unjustified discriminatory effect, including on the basis of race, color, or national origin. Two provisions of EPA’s civil rights regulations are particularly relevant to recipients’ permitting processes:

*“A recipient shall not use criteria or methods of administering its program or activity which have the effect of subjecting individuals to discrimination because of their race, color, national origin, ...or have the effect of defeating or substantially impairing*

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<sup>7</sup> Title VI is inapplicable to EPA actions because it only applies to programs and activities of recipients of federal financial assistance, not to federal agencies. Nonetheless, EPA is committed to a policy of nondiscrimination in its own permitting programs. The equal protection guarantee in the Due Process Clause of the U.S. Constitution prohibits the federal government from engaging in intentional discrimination. Moreover, section 2–2 of Executive Order 12898, *Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*, directs federal agencies to ensure, in part, that federal actions substantially affecting human health or the environment do not have discriminatory effects based on race, color, or national origin. See 40 C.F.R. Part 12: “NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE ENVIRONMENTAL PROTECTION AGENCY; Executive Order 13166, *Improving Access to Services for Persons With Limited English Proficiency*, <https://www.govinfo.gov/content/pkg/FR-2000-08-16/pdf/00-20938.pdf>; EPA LEP Guidance and Materials, <https://www.epa.gov/ogc/assisting-people-limited-english-proficiency>.

*accomplishment of the objectives of the program or activity with respect to individuals of a particular race, color, [or] national origin ...”<sup>8</sup>*

*“A recipient shall not choose a site or location of a facility that has the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program or activity to which this part applies on the grounds of race, color, or national origin...; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of this subpart.”<sup>9</sup>*

When accepting assistance, recipients of EPA funding acknowledge that they have an affirmative obligation “to implement effective Title VI compliance programs” and to ensure that their actions “do not involve discriminatory treatment and do not have discriminatory effects even when facially neutral.”<sup>10</sup> When reviewing environmental permits issued by states and other recipients, EPA staff and managers with permit review responsibilities have authority and are encouraged to work with their servicing legal office as needed to provide comments on environmental justice and civil rights issues raised by such permits, including the potential for adverse and disproportionate impacts from a permit decision, as well as issues regarding meaningful involvement and fair treatment of any population adversely and disproportionately affected by a permit. EPA also offers technical assistance on civil rights compliance.

## 4

### What is the relationship between EJ and civil rights compliance, particularly in the context of environmental permitting?

Environmental justice and civil rights compliance are complementary. Integrating environmental justice in decision-making and ensuring compliance with civil rights laws can together address the strong correlation between the distribution of environmental burdens and benefits and the racial and ethnic composition, as well as income level, of communities.

EPA defines environmental justice as the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Environmental justice policies and laws, provisions requiring that cumulative impacts be identified and addressed in a permit decision, and many other measures that ensure fair treatment and empower communities affected by government decisions all represent pathways to fairer distribution of environmental burdens and benefits. Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, establishes executive branch policy on environmental justice on the federal level.

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<sup>8</sup> 40 C.F.R. § 7.35(b).

<sup>9</sup> 40 C.F.R. § 7.35(c).

<sup>10</sup> EPA, General Terms and Conditions Effective October 1, 2021, at 26, [https://www.epa.gov/system/files/documents/2021-09/fy\\_2022\\_epa\\_general\\_terms\\_and\\_conditions\\_effective\\_october\\_1\\_2021.pdf](https://www.epa.gov/system/files/documents/2021-09/fy_2022_epa_general_terms_and_conditions_effective_october_1_2021.pdf).

For recipients of federal financial assistance, civil rights compliance is mandatory—and it is a critical tool for achieving environmental justice when a permitting action is likely to have an adverse and disproportionate impact, particularly on the basis of race, color, or national origin. Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin by recipients of federal funds, is the civil rights law that is most frequently invoked in the permitting context. It applies to public and private entities that receive federal financial assistance but does not apply to the federal government itself. It covers all of the operations of programs or activities that receive federal financial assistance without regard to whether specific portions of the program or activity are federally funded. The term “program or activity” means all of the operations of a department, agency, or the entity to which federal financial assistance is extended.<sup>11</sup> Title VI covers both intentional discrimination and acts that have an unjustified disparate impact on the basis of race, color, or national origin. The disparate impact analysis under Title VI of the Civil Rights Act of 1964 and EPA regulations includes not only an assessment of whether a permit will have a disproportionate impact on the basis of race, color, or national origin, but also whether there is a substantial and legitimate justification for any such disproportionate impact, as well as whether there is a less discriminatory alternative. See [FAQ #11](#).

As discussed at more length below, environmental justice and civil rights analyses undertaken by permitting authorities may overlap substantially. Environmental justice policies and laws and civil rights laws generally incorporate procedural requirements, and EPA has long recognized the value of “early, inclusive and meaningful public involvement throughout the entire permitting process.”<sup>12</sup> See [FAQ #15](#). As noted above, both environmental justice policies at the federal level—and, in many cases, at state and local levels—and civil rights laws call on decision-makers to identify and address whether programs and activities, including permitting decisions, have adverse disproportionate impacts on the basis of race, color and national origin (including LEP status). At the federal level, Executive Order 12898 and environmental justice policies more generally also address disproportionate impacts on the basis of income. In both contexts, decision-makers should consider the potential impacts of a permitted activity in light of cumulative impacts in overburdened communities. Methodologies for conducting environmental justice analyses, such as health impact assessments (HIAs), create opportunities for considering a range of mitigations that can be pursued if appropriate under federal or state environmental and environmental justice laws and can also be relevant to consideration of civil rights compliance. See [FAQ #10](#).

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<sup>11</sup> See DOJ, *Title VI Legal Manual*, <https://www.justice.gov/crt/fcs/T6manual5> (discussing “Program or Activity”).

<sup>12</sup> Title VI Public Involvement Guidance, 71 Fed. Reg. at 14210 (discussing belief that meaningful public involvement will help ensure compliance with Title VI and EPA’s Title VI implementing regulations); see also EPA, Learn About Environmental Justice, <https://www.epa.gov/environmentaljustice/learn-about-environmental-justice> (defining “meaningful involvement”).

# 5

## Does an entity's full compliance with the federal environmental laws in carrying out its permitting programs and decisions equate to compliance with the federal civil rights laws?

State, local, and other recipients of federal financial assistance have an independent obligation to comply with federal civil rights laws with respect to all of their programs and activities, including environmental permitting programs.<sup>13</sup>

A recipient's compliance with the requirements of federal environmental laws with respect to permitting activities and decisions does not necessarily mean that the recipient is complying with federal civil rights laws. Federal civil rights laws prohibit recipients of federal financial assistance from taking actions that discriminate based on race, color, national origin, disability, age, and sex. Enforcement of federal civil rights laws and implementation of environmental laws are complementary. Used together, these laws help to ensure the non-discriminatory protection of human health and the environment.

# 6

## How could a permitting decision raise a statutory civil rights compliance concern about intentional discrimination, or have a discriminatory effect?

Intentional discrimination can occur when a recipient makes a permitting decision or takes an action that deliberately treats individuals differently or otherwise knowingly causes them harm because of their race, color, national origin (including LEP status), disability, age, or sex. Evidence of intentional discrimination can be direct, such as a comment by a decision-maker that expresses a discriminatory motive. A claim of intentional discrimination can also be shown with different types of indirect or circumstantial evidence that, taken together, allow an inference that the recipient acted, at least in part, because of race, color, national origin (including LEP status), disability, age, or sex.

For example, intentional discrimination may be present in the following scenario: a recipient decides to hold public hearings about a proposed permit for a facility in a town that has racially identifiable neighborhoods. The facility is to be sited in the west section of a town, which has a population that is predominantly Black. The east section of town is predominantly White. The recipient holds two hearings in the east section of town and provides opportunities to participate in both the daytime and in the evening after work hours. By contrast, the recipient holds only one daytime hearing in the west section of town—and that hearing is shorter. Armed security officers also attend the west section hearing. The differences in the time for community comment, when the hearings are scheduled, and how the

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<sup>13</sup> See EPA, *U.S. EPA's External Civil Rights Compliance Office Compliance Toolkit* (EPA ERCO's Toolkit) Chapter I (January 18, 2017), [https://www.epa.gov/sites/default/files/2017-01/documents/toolkit-chapter1-transmittal\\_letter-faqs.pdf](https://www.epa.gov/sites/default/files/2017-01/documents/toolkit-chapter1-transmittal_letter-faqs.pdf).

hearings are staffed in the predominantly White community compared to the predominantly Black community raise different treatment concerns.<sup>14</sup>

Discrimination may also occur under Title VI and EPA’s implementing regulation when a recipient’s permitting decision has an adverse and disproportionate impact based on race, color, or national origin (including LEP status). The focus in a “disparate impact” case of discrimination<sup>15</sup> is on whether the consequences of the recipient’s permitting policies, decisions, and actions, or failure to act, has had or will have the effect of subjecting persons to discrimination, regardless of the recipient’s intent. For example, a recipient approves a Clean Air Act permit for a power plant. The population living in proximity to the plant (“residents”) is disproportionately Black, as compared to the rest of the town, county, or state. If those residents have reason to believe that the recipient’s permitting of the power plant will cause them to suffer adverse health and/or non-health impacts, such as odor, noise, or decrease in property values, at comparatively higher rates as compared to the larger population of persons not adversely impacted, then this may potentially raise a viable disparate impact claim and provide a reason to file a federal civil rights complaint.<sup>16</sup> As discussed in [FAQ #11](#), the question of whether there is a disparate impact is not the end of the inquiry in evaluating whether the permit approval might violate civil rights law.

## 7

### In addition to federal civil rights laws, what other laws and regulations support consideration of environmental justice in permitting?

Specific provisions of the nation’s environmental statutes authorize and may require consideration of environmental justice in permitting, including the National Environmental Policy Act and state policy review laws, Clean Air Act, Clean Water Act, Safe Drinking Water Act, and Resource Conservation and Recovery Act. EPA’s 2022 *Legal Tools to Advance Environmental Justice* provides an overview of these authorities, among others.<sup>17</sup>

As noted at [FAQ #1](#), many states and municipalities have also enacted laws that support consideration of environmental justice, including in the environmental permitting process. Permitting programs should carefully review applicable authorities for opportunities to incorporate environmental justice considerations and to ensure that such considerations are adequately and appropriately incorporated into permitting decisions.

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<sup>14</sup> See EPA ECRCO’s Toolkit Chapter I at p. 4, *supra* note 13. If a *prima facie* case of disparate treatment is established, the recipient then has the burden of producing a legitimate, non-discriminatory reason for the challenged policy or decision and the different treatment. If the recipient articulates such a reason, EPA must then determine if there is evidence that the proffered reason is false, i.e., that the nondiscriminatory reason(s) the defendant gives for its actions are a pretext for discriminatory intent. See DOJ, *supra* note 11.

<sup>15</sup> The terms “disparate impact” and “discriminatory effect” are used interchangeably in this document.

<sup>16</sup> See generally DOJ, *supra* note 11.

<sup>17</sup> See EPA, *EPA Legal Tools to Advance Environmental Justice* (2022), <https://www.epa.gov/ogc/epa-legal-tools-advance-environmental-justice>.

# 8

## How can states and other recipients screen for EJ and civil rights concerns with respect to their permitting programs and decisions?

States and other recipients administering environmental permitting programs can adopt a routine process of screening for EJ and civil rights concerns early in the permitting process.<sup>18</sup> If a permit applicant initiates pre-application discussions, knowledge gained from conducting an early EJScreen can make early discussions more meaningful and productive and add predictability and efficiency to the permitting process.

This type of screening will indicate whether a permitting decision has the potential to cause or contribute to significant public health or environmental impacts, whether the community may be particularly vulnerable to any adverse effects of the proposed permitting action, and whether the community is already disproportionately bearing public health or environmental burdens. A sound screening practice will also provide important information to states and other recipients as to whether there are residents of the affected community who could be disproportionately subjected to adverse health, environmental, and/or quality of life impacts on the basis of race, color, or national origin (including LEP status).

This screening process will also provide valuable information for the development of plans to meaningfully involve the affected community. For example, demographic information gathered during this screening process will help inform action to ensure meaningful access for persons with limited English proficiency, persons with disabilities, persons of different ages, and persons who are low-income who may lack access to the internet or necessary equipment. For more information about meaningful community engagement, see [FAQ #15](#).

Finally, and critically, screening may inform recipients as to whether a more extensive analysis of potential disproportionate impacts would aid them in avoiding a violation of Title VI. See [FAQs #9-10](#).

### Best Practices for Screening:

- Geographic Information System (GIS) tools such as EPA’s EJScreen<sup>19</sup> or state EJ mapping tools<sup>20</sup> can be used as a starting point to assess whether the permitting action raises environmental justice or civil rights concerns, using indicators of community characteristics and existing conditions in the potentially affected community. Considered together with readily available information on community concerns, these tools can help the permitting program quickly assess and document the extent of community vulnerability and pollution burden and the associated potential for disproportionate impacts. They can also support consistent approaches by using standard benchmarks to characterize the potential for disproportionate impacts. EJScreen

<sup>18</sup> The term “EJ concerns” is used to indicate the “actual or potential lack of fair treatment or meaningful involvement of minority populations, low-income populations, tribes, and indigenous peoples in the development, implementation and enforcement of environmental laws, regulations and policies.” <https://www.epa.gov/sites/default/files/2015-06/documents/considering-ej-in-rulemaking-guide-final.pdf> at p. 9.

<sup>19</sup> EPA, *EJScreen: Environmental Justice Screening and Mapping Tool*, <https://www.epa.gov/ejscreen>.

<sup>20</sup> A number of state EJ mapping tools are linked at <https://www.epa.gov/ejscreen/additional-resources-and-tools-related-ejscreen#other-maps>.

indices simplify the use of benchmarks for initial screening by highlighting indices at the 80<sup>th</sup>, 90<sup>th</sup>, and 95<sup>th</sup> percentiles in terms of the potential for disproportionate impacts relative to state, regional, and national averages.

- Identify and record responses to key questions such as: is there the potential that the affected population already experiences disproportionate impacts? How likely are the potential impacts of the permit under consideration to cause or contribute to disproportionate impacts?
- Especially when GIS tools or known community concerns suggest a potential for disproportionate impacts, review other readily available data. For example, EJScreen makes a range of demographic and environmental data layers readily available for review. It also identifies additional resources and tools for further analysis.<sup>21</sup> State databases or GIS tools may also include additional data. Other information relevant to screening for disproportionate impacts includes:
  - Other permitted facilities in the area, including whether these facilities are major or minor sources of pollution and contribute to community risk. An area with an above average number of sources, especially if those sources are large or close to people in the area, is a sign of concern.<sup>22</sup>
  - Applicant compliance record.
  - Demographic data including race and national origin,<sup>23</sup> age (percent less than 5 years, older than 64 years), percent non-English speakers, income, and education.<sup>24</sup>
  - Environmental data that reflects pollutant measurements (e.g., ambient concentrations, total loadings in waterbody, etc.), presence of other significant emissions sources (e.g., woodstoves, ports, freight facilities, highways), facilities handling hazardous materials, etc.
  - Health data such as mortality rates, asthma, incidence of infant mortality, and incidence of low birth weight. Data on unhoused populations and healthcare access.
- Local knowledge and information from past community engagement are important components of the screening process for potential environmental justice or civil rights concerns. This is best

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<sup>21</sup> *Id.*

<sup>22</sup> EPA's ECHO mapping tool (<https://echo.epa.gov/>) can be used to identify all regulated facilities in a given area together with information on their permits and compliance monitoring and enforcement history.

<sup>23</sup> EJSCREEN defines "people of color" as people "who list their racial status as a race other than white alone and/or list their ethnicity as Hispanic or Latino" in the U.S. Census. The Census Bureau provides the following choices for people to self-identify racial status: American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, White, or "Some Other Race." People may report multiple races. For ethnicity, the Census Bureau, based on the Office of Management and Budget standards, classifies individuals in one of two categories: "Hispanic or Latino" or "Not Hispanic or Latino." The Census Bureau uses the term "Hispanic or Latino" interchangeably with the term "Hispanic," and also refers to this concept as "ethnicity." See <https://www.census.gov/programs-surveys/decennial-census/decade/2020/planning-management/release/faqs-race-ethnicity.html>.

<sup>24</sup> The Centers for Disease Control also considers factors such as the experience of racism to be "social determinants of health." See CDC, *NCHHSTP Social Determinants of Health*, <https://www.cdc.gov/nchhstp/socialdeterminants/index.html>. "The social determinants of health are the conditions in which people are born, grow, live, work and age as well as the complex, interrelated social structures and economic systems that shape these conditions. Social determinants of health include aspects of the social environment (e.g., discrimination, income, education level, marital status), the physical environment (e.g., place of residence, crowding conditions, built environment [i.e., buildings, spaces, transportation systems, and products that are created or modified by people]), and health services (e.g., access to and quality of care, insurance status)" (citations omitted).



accomplished by establishing early and ongoing relationships in a community, particularly those with a history of EJ and civil rights concerns. Such relationships assist in the trust and communication needed to gain input from impacted residents, stakeholders, local agencies, tribal governments, and others. For more information about community engagement, see [FAQ #15](#).

- Relevant information may be found in public complaints to federal, state, tribal, and local authorities; media reports; and national, state, or local environmental or health data. Complaints may directly relate to the permitting action at issue (e.g., anticipated facility traffic or emissions) or reflect conditions in the community (e.g., high rates of asthma, unemployment, or elderly populations).

## 9

**If the screening analysis indicates that a proposed permitting action raises civil rights and/or environmental justice concerns, what additional steps can a permitting program consider to address EJ concerns and ensure compliance with Title VI?**

The screening analysis identified in [FAQ #8](#) may identify EJ concerns and possible issues of civil rights compliance, i.e., questions about whether a state's or other recipient's permitting decision may violate Title VI and EPA implementing regulations by disproportionately subjecting persons to adverse health, environmental, and/or quality of life impacts on the basis of race, color, or national origin (including LEP status). In such cases, states and other recipients can consider conducting additional analysis.

In the EJ context, EPA has generally referred to this additional consideration as an EJ analysis. Although they may overlap, conducting an EJ analysis will not satisfy Title VI requirements. In the civil rights context, the analysis used to evaluate whether a recipient's action has an adverse and disproportionate impact on the basis of race or national origin is generally referred to as a disparate impact analysis. In many respects, the line of inquiry is similar to the environmental justice analysis: Who is being affected by the action? How, and how much? Compared to whom? Can we and how do we mitigate the effects? There are, however, several particular considerations in the civil rights context. In [FAQs #11-13](#), we explain these unique considerations.

When a screening analysis identifies potential EJ or civil rights concerns, the permitting program can consider the following steps:

- Conducting an appropriately scoped EJ analysis or disparate impact analysis as needed to further evaluate and address adverse and disproportionate impacts, and to inform and support enhanced community engagement – see [FAQ #15](#);
- Exercising relevant statutory and regulatory authority and discretion under federal, state, and local environmental laws, as well as applicable environmental justice and civil rights laws, to prevent or mitigate any adverse disproportionate impacts that would otherwise violate Title VI; and

- To the extent mitigation included in the permit is not sufficient to address adverse and disproportionate impacts that would otherwise violate Title VI; consider implementing mitigation outside the context of the permit, coordinating across agency programs, state agencies, community organizations, NGOs, etc. See [FAQ #14](#).

# 10

## What are promising practices in conducting an EJ analysis?

There is a significant body of practice, policy, and caselaw about EJ analysis in permitting upon which permitting programs can draw when developing and conducting an EJ analysis.

First, additional EJ analysis should be tailored to the specific permitting decision. The scope may depend on several factors, including but not limited to the potential for adverse and disproportionate impacts associated with a given facility, community concerns, and potential cumulative impacts. EPA recognizes that permits vary widely in purpose and effect, and that there is no "one size fits all" approach to EJ analysis. Appropriately scoped, additional EJ analysis should accomplish two purposes: (1) it should address the principle of fair treatment by further evaluating adverse and disproportionate impacts beyond the screening results and identifying ways to prevent or mitigate such impacts; and (2) it should address the principle of meaningful involvement by fostering enhanced community engagement in the permitting decision.

One promising practice for conducting EJ analyses is the Health Impact Assessment (HIA), which systematically evaluates how a proposed action may impact health and well-being.<sup>25</sup> HIAs explicitly consider potential distributive effects (e.g., whether there will be disproportionate impacts) and inform decision-makers of potential outcomes before the decision is made. HIAs generally:

- Determine the potential effects of a proposed decision on the health of a population and the distribution of those effects within the population;
- Consider input from stakeholders, including those impacted by the decision;
- Use different types of qualitative and quantitative evidence and analytical methods;
- Are flexible based on available time and resources; and
- Provide evidence and recommendations to decision-makers in a timely manner.<sup>26</sup>

<sup>25</sup> See EPA, *The Health Impact Assessment (HIA) Resource and Tool Compilation* (2016), [https://www.epa.gov/sites/default/files/2017-07/documents/hia\\_resource\\_and\\_tool\\_compilation.pdf](https://www.epa.gov/sites/default/files/2017-07/documents/hia_resource_and_tool_compilation.pdf); see also HIA report issued by the City of Chicago, Chicago Department of Public Health, Health Impact Report, RMG/Southside Recycling Permit Application (February 2022), [https://www.chicago.gov/content/dam/city/sites/rgm-expansion/documents/RMG\\_RecyclingPermit\\_HealthImpactAssessment\\_Feb2022.pdf](https://www.chicago.gov/content/dam/city/sites/rgm-expansion/documents/RMG_RecyclingPermit_HealthImpactAssessment_Feb2022.pdf); see also different HIA applications at <https://www.epa.gov/healthresearch/epa-health-impact-assessment-case-studies>.

<sup>26</sup> See EPA, *Health Impact Assessments*, <https://www.epa.gov/healthresearch/health-impact-assessments>.

A permitting program may find it helpful to organize an EJ analysis by applying HIA practice standards and elements, including by adapting the six key steps that guide the HIA process:

1. **Screening.** Determines the need for and value of an HIA. (See [FAQ #8](#) for application to an EJ analysis.)
2. **Scoping.** Identifies the project partners, health and social impacts requiring assessment, methodology for the analysis, and a work plan.
3. **Assessment.** Provides an analysis of existing conditions; an assessment of the policy, plan, project, or program under study; and an evaluation of the potential impacts of the policy, plan, project, or program on existing conditions.
4. **Recommendations.** Develops a set of recommendations for maximizing health outcomes.
5. **Reporting.** Develops a report and communicates findings and recommendations.
6. **Monitoring.** Tracks the impact of the HIA on the proposed policy, plan, project, or program and the impacts of the final policy, plan, project, or program on existing conditions.<sup>27</sup>

# 11

## What is a disparate impact analysis under Title VI?

Title VI disparate impact regulations ensure that federal financial assistance is not spent in any fashion which encourages, entrenches, subsidizes, or results in racial discrimination. Recipients are prohibited from practices having a discriminatory effect on members of a group identified by race, color, or national origin, even if the actions or practices are not intentionally discriminatory. The disparate impact analysis under Title VI examines a number of critical questions to evaluate whether a recipient's policy or practice has an unjustified disparate impact prohibited by Title VI.<sup>28</sup>

- **Disparate impact:** Does a recipient's criteria or method of administering its program or activities adversely and disparately affect members of a group identified by race, color, or national origin?
  - **Adverse Impacts:** Is there an adverse impact of the policy or practice? Adverse impacts could include harmful health effects, odor, noise, decrease in property values, etc.

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<sup>27</sup> See EPA, *A Review of Health Impact Assessments in the U.S.: Current State-of-Science, Best Practices, and Areas of Improvement* (2014), [https://www.epa.gov/sites/default/files/2013-12/documents/health-impact-assessment-factsheet\\_0.pdf](https://www.epa.gov/sites/default/files/2013-12/documents/health-impact-assessment-factsheet_0.pdf); HIP, *HIA Minimum Elements and Practice Standards for HIA*, <https://humanimpact.org/hiprojects/hia-minimum-elements-and-practice-standards>.

<sup>28</sup> Courts have developed analytical frameworks to assess disparate impact claims in litigation that inform agencies' investigative process. See DOJ, *supra* note 11. The disparate impact analysis described in [FAQ #11](#) is used not only by EPA, but also by twenty-five other federal agencies that also have Title VI regulations that include provisions addressing the discriminatory effects/impacts standard.

- **Disproportionality:** Is a disproportionate share of the adversity borne based on race, color, or national origin (including LEP status)? Disparity is a fact-specific inquiry that involves identifying an appropriate measure.<sup>29</sup>
- **Causation:** Is there a causal link between the recipient’s policy or practice and the disparate impact?<sup>30</sup>
- **Justification:** If so, is there a substantial legitimate justification for the policy or practice? This question is unique to a disparate impact analysis. See [FAQ #13](#).
- **Less discriminatory alternative:** Even if there is a substantial legitimate justification for the policy or practice causing the disparate impact, is there an alternative practice that may be comparably effective with less disparate impact?<sup>31</sup>

Questions about the disparate impact and less discriminatory alternative may have been evaluated, at least in part, during the EJ analysis. See [FAQs #9-10](#). The “less discriminatory alternative” inquiry, however, may go beyond mitigation measures usually examined in an EJ analysis. See [FAQ #13](#).

# 12

## How would EPA consider “cumulative impacts” within the Title VI disparate impact analysis?

In the context of Title VI investigations, EPA considers cumulative impacts when evaluating whether there is an adverse impact from the recipient’s policy or practice.<sup>32</sup> That is, EPA considers whether any adverse impact caused by the permitting decision—and borne disproportionately by persons on the basis of race, color, or national origin (including LEP status)—may be even greater considering cumulative impacts from other chemical and non-chemical stressors.

As EPA notes in guidance on considering cumulative impacts in the NEPA context, “cumulative impacts result when the effects of an action are added to or interact with other effects in a particular place and within a particular time.”<sup>33</sup> EPA’s Office of Research and Development recently offered an operational

<sup>29</sup> See, e.g., *S. Camden Citizens in Action v. New Jersey Dept. of Env’tl. Protec.*, 145 F. Supp. 2d 446, 493 (D.N.J. 2001), *opinion modified and supplemented*, 145 F. Supp. 2d 505 (D.N.J. 2001), *rev’d*, 274 F.3d 771 (3d Cir. 2001) (disparity analysis); see also DOJ, *supra* note 11.

<sup>30</sup> *Texas Dep’t of Hour. & Cmty. Affairs v. Inclusive Communities*, 135 S. Ct. 2507, 2523 (citing *Wards Cove*, 490 U.S. at 653); See also U.S. DOJ, *supra* note 11.

<sup>31</sup> *Id.* See also ECRCO’s Toolkit Chapter I and FAQ, *supra* note 13; see also U.S. DOJ, *supra* note 11.

<sup>32</sup> See, e.g., Final Genesee Complaint Letter to Director Grether, 19-23 (Jan. 19, 2017), <https://www.epa.gov/sites/default/files/2017-01/documents/final-genesee-complaint-letter-to-director-grether-1-19-2017.pdf> (consideration of cumulative air toxics data from point sources countywide); see also *S. Camden Citizens in Action v. New Jersey Dept. of Env’tl. Protec.*, 145 F. Supp. 2d 446, 490 (D.N.J. 2001), *opinion modified and supplemented*, 145 F. Supp. 2d 505 (D.N.J. 2001), *rev’d*, 274 F.3d 771 (3d Cir. 2001) (interpreting EPA methodology as requiring consideration of the totality of the circumstances and cumulative environmental burdens and finding that plaintiffs demonstrated that permitting and operation of a facility was likely to have adverse impacts in context of “current health conditions and existing environmental burdens” in the community).

<sup>33</sup> U.S. EPA Office of Federal Activities, *Consideration of Cumulative Impacts in EPA Review of NEPA Documents*, (2252A) EPA 315-R-99-002/May 1999 (1999), <https://www.epa.gov/sites/default/files/2014-08/documents/cumulative.pdf>.

definition of “cumulative impacts” based on definitions developed by various state and federal agencies, as follows:

*“Cumulative impacts” refers to the total burden – positive, neutral, or negative – from chemical and non-chemical stressors and their interactions that affect the health, well-being, and quality of life of an individual, community, or population at a given point in time or over a period of time. Cumulative impacts include contemporary exposures in various environments where individuals spend time and past exposures that have lingering effects. Total burden encompasses direct health effects and indirect effects to people through impacts on resources and the environment that affect human health and well-being. Cumulative impacts provide context for characterizing the potential state of vulnerability or resilience of the community, i.e., their ability to withstand or recover from additional exposures under consideration.<sup>34</sup>*

# 13

**What if a Title VI disparate impact analysis by a permitting program concludes that the permit decision will have adverse disparate impacts on the basis of race, color, or national origin (including LEP status)?**

If the permitting action will have a disparate impact on the basis of race, color, or national origin (including LEP status) (i.e., it raises a possible violation of Title VI), then the next steps in a civil rights disparate impact framework discussed in [FAQs #9](#) and [#11-12](#) include:

- Identify a substantial legitimate justification for the challenged policy or practice.<sup>35</sup> That is, can the recipient show that the challenged policy was “necessary to meet a goal that was legitimate, important, and integral to the [recipient’s] institutional mission” in order to establish a “substantial legitimate justification”?<sup>36</sup>
- Even if the recipient identifies a substantial legitimate justification, a sufficient Title VI analysis evaluates whether there are any comparably effective alternative practices that would achieve the same legitimate objective but with a less discriminatory effect. That is, is there a comparably effective alternative decision or action that would result in less adverse impact? For example, can the recipient prevent any adverse and disproportionate effects by requiring that the facility be operated in a manner that would eliminate or mitigate its disproportionate impact, e.g., by

<sup>34</sup> Cumulative Impacts Recommendation for ORD Research EXTERNAL REVIEW DRAFT at p. 6, January 2022.

<sup>35</sup> ECRCO’s Toolkit Chapter I and FAQs at pp. 9-10, *supra* note 13.

<sup>36</sup> EPA will evaluate whether the policy was “necessary” by requiring that the justification bear a “manifest demonstrable relationship” to the challenged policy. As part of its assessment, EPA will generally consider not only the recipient’s perspective, but the views of the affected community in its assessment of whether a permitted facility, for example, will provide direct, economic benefits to that community. ECRCO’s Toolkit Chapter I and FAQs, *supra* note 13. *See also* U.S. DOJ, *supra* note 11.

modifying permit operating conditions, employing practicable mitigation measures to lessen or eliminate the demonstrated adverse impacts, or by not renewing the permit?<sup>37</sup>

- If there are no mitigation measures the permitting authority can take, whether within or outside the permitting program, that can address the disparate impacts, and there is no legally sufficient justification for the disparate impacts, denial of the permit may be the only way to avoid a Title VI violation. Whether denial of a permit is required to avoid a Title VI violation is a fact-specific determination that would take into account an array of circumstances, including whether the facility will have an unjustified racially disproportionate impact, as well as the less discriminatory alternatives available.<sup>38</sup>

## 14

### What are some examples of measures that a permitting program may be able to take to mitigate adverse and disproportionate impacts and/or develop and implement less discriminatory alternatives?

Under a civil rights analysis pursuant to Title VI and EPA's implementing regulations, recipients are obligated to adopt a comparably effective less discriminatory alternative to address an unjustified disparate impact on the basis of race, color, or national origin (including LEP status). If a permitting program's decision is likely to have an adverse and disproportionate effect on the basis of race, color, or national origin (including LEP status), then the program should consider broadly the availability of less discriminatory alternatives. This might include the range of mitigation measures discussed below or working with the permit applicant for alternative siting. However, as discussed in [FAQ #13](#), if there are no mitigation measures that can address the unjustified disparate impacts, denial of the permit may be the only means of avoiding a Title VI violation. This will be a fact-specific determination.

EJ principles and practices call for consideration of whether mitigation measures will reduce or eliminate unfair treatment. Whether mitigation will effectively address adverse and disproportionate impacts will depend on the unique circumstances of each permit, the community in which the pollution source is or will be located, and other factors.

Some proactive mitigation measures that a state or other recipient might explore include the following:

Permit terms:

- Enforceable requirements for continuous compliance monitoring equipment (e.g., opacity cameras) to ensure proper operation of control devices, compliance with permitted limits, and adherence to industry best practices.

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<sup>37</sup> ECRCO's Toolkit Chapter I and FAQs at p. 15, *supra* note 13.

<sup>38</sup> See generally ECRCO's Toolkit Chapter I and FAQs at 14-15, *supra* note 13 (discussing disparate impact- municipal solid waste landfill permit example).

- Enhancements to compliance assurance provisions, including additional continuous or periodic monitoring, recordkeeping, or reporting requirements.
- Establishment of a public-facing website with all relevant compliance information about the facility and real-time data measurements.
- Additional pollution controls or more stringent limits.
- Inclusion of enforceable work practices, operating plans, and/or best practices for minimizing emissions and/or discharges (e.g., a fugitive emission plan).
- Incorporating modeling assumptions as legally and practically enforceable limits or work practices (e.g., hours of operation).
- Expansion of buffers or modification of operational hours.

The use of non-environmental authorities:

- Use public health authority to implement a mobile health monitoring program in the affected community.
- Use transportation authority to develop new traffic plan to reduce diesel emissions in the affected community.
- Use public health authority to establish a citizen hotline with a 24-hour response time.

Other potential commitments:

- Third-party monitoring of community complaints.
- Support for public transparency of monitoring information, including community-driven monitoring.
- Other enforceable agreements (e.g., community benefit agreements).

## 15

### When and how should permitting programs conduct community engagement?

Community engagement should occur as soon as possible and should go far beyond simply posting public notices. With respect to permitting actions that could result in significant health, environmental and quality of life impacts, the stakes are often that much higher for communities with EJ concerns. The goal of community engagement is to ensure that the people most affected by the permit have input into the decisions that will impact their lives. Community engagement is an active process that requires permitting programs to be proactive in outreach to the public. While some of these activities are required to satisfy statutory obligations and comply with environmental justice directives, going beyond such requirements when called for is good government practice. Among other things, it builds ongoing

relationships with community leaders necessary for a deeper level of engagement. Robust community engagement is crucial for making informed permitting decisions that meaningfully consider the site-specific circumstances of the permitting action.<sup>39</sup>

In addition, it is important that states and other recipients ensure that community engagement and other public participation actions be conducted consistent with the federal civil rights law, which require that no person shall be excluded on the basis of race, color, national origin, or other prohibited grounds from participation in any program or activity receiving EPA financial assistance.<sup>40</sup> Meaningful involvement consists of informing, consulting, and working with potentially affected communities at various stages of the environmental decision-making process to address their questions and concerns.<sup>41</sup> This includes:

- Ensuring that public involvement processes are available to all persons regardless of race, color, national origin (including LEP status), disability, sex, and age, or prior exercise of rights or opposition to actions protected by 40 C.F.R. Parts 5 and 7 and the federal non-discrimination laws;
- Ensuring that the factors used to determine the appropriate time, place, location, duration, and security at public meetings are developed and applied in a non-discriminatory manner; and
- Ensuring that public participation processes specifically address the needs of persons with limited English proficiency, persons with disabilities, and persons of different ages. Best practice and environmental justice policy would also call for ensuring that processes are accessible to persons without access to digital communication, and other members of the recipient's communities who may have limited access to information.

Best practice to demonstrate compliance is to have in place a public involvement plan, yet EPA recognizes that a recipient's staff size, available resources, and the nature of its programs and activities may dictate the type and scope of written public involvement policies and procedures. EPA guidance identifies as a best practice that all government entities – for example, state, regional, county, and local government entities – have written and published public involvement procedures that are consistent with the federal civil rights laws and EPA's Public Participation Guidance.<sup>42</sup>

By implementing the following steps, states and other recipients will be in a better position to provide opportunities for effective public participation that is meaningfully accessible to all persons regardless of race, color, national origin (including LEP status), disability, age, and sex each time they engage in a process involving public participation:

- Develop a description of the relevant/affected community (including demographics, history, and background, such as: percentage of the area that includes people of color, has less than a high

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<sup>39</sup> "Community engagement," "public involvement," and "public participation" are used interchangeably in this document.

<sup>40</sup> See Title VI of the Civil Rights Act of 1964, 42 United States Code §§ 2000d to 2000d-7 (Title VI); Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 et seq.; Age Discrimination Act of 1975, 42 U.S.C. §§ 6101 et seq.; Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500 § 13, 86 Stat. 903 (codified as amended at 33 U.S.C. § 1251 (1972)); 40 C.F.R. Parts 5 and 7. See also EPA, *supra* note 12.

<sup>41</sup> "Meaningful involvement" and "meaningful participation" are used interchangeably for purposes of this document.

<sup>42</sup> See EPA, *supra* note 12.



school education, has members of households who speak a language other than English and/or speak English less than very well, has a history of filing complaints, has an inability to access traditional communication channels, internet, etc.);<sup>43</sup>

- Provide a contact list for relevant staff members on the recipient's website, including phone numbers and email addresses, to allow the public to communicate via phone or internet;
- Develop a list of past and present community civil rights concerns (including any complaints filed under the federal non-discrimination laws), and actions undertaken in response to such concerns;
- Develop and implement a detailed plan of action (including outreach activities) the recipient will take to address concerns raised by the public;
- Develop and implement a contingency plan for unexpected events that impact public meetings or other public participation avenues;
- Identify location(s) where public meetings will be held (considering the availability and schedules of public transportation), and ensure that public meetings are held at times and in locations that allow for meaningful involvement by individuals with LEP and individuals with disabilities;
- Develop and maintain a plan for providing reasonable modifications and auxiliary aids and services at no cost for individuals with disabilities and language assistance services for limited English proficient persons, including translation of documents and/or interpreters for meetings;
- Develop and maintain a list of appropriate local media contacts (based on the cultural and linguistic needs of the community);
- Develop guidance to help ensure the meaningful involvement of individuals with limited English proficiency and individuals with disabilities at any in-person public meetings and when in-person meetings are not possible due to national, state, or local emergencies; and
- In addition, develop public involvement plans with public input. The plans should be prominently highlighted online for the benefit of interested residents and should explain how interested residents can participate in the permitting process under various environmental laws.
- The public involvement plan and other plans to provide meaningful access should also be made available for the public in areas that would be easily accessible to the community (e.g., libraries, community centers, etc.).

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<sup>43</sup> See EPA, *Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons* (2004), <https://www.federalregister.gov/documents/2004/06/25/04-14464/guidance-to-environmental-protection-agency-financial-assistance-recipients-regarding-title-vi>.

Also, to be most effective, recipients' public involvement plans should incorporate the following elements:

- How the recipient will meaningfully engage the public prior to and during significant activities (e.g., how the public can request a public hearing and criteria for determining whether public hearings will be held);
- How the recipient will effectively communicate and engage with the public regarding its programs, activities, and services (e.g., public notice procedures for submitting public comment during permit comment periods); and
- What methods the recipient will implement to ensure the public can access publicly available information and documents regarding its programs, activities, and services.

## 16

### How does tribal consultation differ from community engagement?

Tribal consultation is a process of meaningful communication and coordination between EPA and tribal officials prior to EPA taking actions or implementing decisions that may affect tribes.<sup>44</sup> [Executive Order 13175: Consultation and Coordination with Indian Tribal Governments](#) (November 6, 2000) describes important elements of the federal government's consultation with federally recognized tribes and calls for federal agencies to have an accountable process to ensure meaningful and timely input by tribal officials in the development of certain regulatory actions and policies that have tribal implications. EPA's tribal consultation policy calls for EPA to consult on a government-to-government basis with federally recognized tribes on a broad range of EPA actions and decisions that may affect tribal interests. Tribal consultation is an important element of fulfilling the federal government's trust responsibility that arises from treaties, statutes, executive orders, and the historical relations between the United States and tribes. Conducting government-to-government tribal consultation is separate and distinct from EPA's obligations to involve the public as required by environmental laws. Conducting community engagement, including with tribal and indigenous communities, cannot replace tribal consultation, and tribal consultation cannot replace community engagement.

Apart from EPA consultation with tribes, it is also appropriate for States to consider tribal interests in their permitting processes by reaching out to and coordinating with affected tribal governments to ensure their views are obtained and appropriately factored into permitting decisions.

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<sup>44</sup> See EPA, [Response to Tribal Consultation & Coordination Comments on Plan EJ 2014 Strategy and Implementation Plans](#), EPA Policy on Consultation and Coordination with Indian Tribes (2011) (<https://www.epa.gov/tribal/epa-policy-consultation-and-coordination-indian-tribes>). See also EPA, [Plan for Implementing Executive Order 13175: Consultation and Coordination with Indian Tribal Governments](#), <https://www.epa.gov/system/files/documents/2021-08/epa-plan-to-implement-eo-13175.pdf>.

# 17

## What are some resources on environmental justice, civil rights, and tribal consultation?

EPA has many tools to help permitting programs engage in public outreach. The following additional resources and references on Community Engagement and Tribal Consultation may be helpful:

### Environmental Justice

- Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (1994): <https://www.archives.gov/files/federal-register/executive-orders/pdf/12898.pdf>
- Executive Order 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* (2021): <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>
- Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad* (2021): <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/>
- EPA Activities to Promote Environmental Justice in the Permit Application Process, 78 Fed. Reg. 27220 (May 9, 2013): <https://www.federalregister.gov/documents/2013/05/09/2013-10945/epa-activities-to-promote-environmental-justice-in-the-permit-application-process>
- Regional Environmental Justice Implementation Plans: <https://www.epa.gov/environmentaljustice/environmental-justice-your-community>
- EPA Legal Tools to Advance Environmental Justice (2022): <https://www.epa.gov/ogc/epa-legal-tools-advance-environmental-justice>
- Promising Practices for Environmental Justice Methodologies in NEPA Reviews (2016): [https://www.epa.gov/sites/default/files/2016-08/documents/nepa\\_promising\\_practices\\_document\\_2016.pdf](https://www.epa.gov/sites/default/files/2016-08/documents/nepa_promising_practices_document_2016.pdf) (focusing on the agency practices identified by the EJ IWG NEPA Committee concerning the interface of environmental justice considerations through NEPA processes)
- Guidance on Considering Environmental Justice During the Development of a Regulatory Action (2015): <https://www.epa.gov/sites/default/files/2015-06/documents/considering-ej-in-rulemaking-guide-final.pdf>; and Technical Guidance for Assessing Environmental Justice in Regulatory Analysis (2016): [https://www.epa.gov/sites/default/files/2016-06/documents/ejtg\\_5\\_6\\_16\\_v5.1.pdf](https://www.epa.gov/sites/default/files/2016-06/documents/ejtg_5_6_16_v5.1.pdf) (while focused on the rulemaking process, these guidance documents provide useful information when considering and addressing disproportionate impacts in other contexts as well).

In addition, the National Environmental Justice Advisory Council (NEJAC) provides independent advice and recommendations to the EPA Administrator on a broad range of issues related to environmental justice. NEJAC produced three recommendations related to EJ in permitting:

- Environmental Justice in the Permitting Process (2000): <https://www.epa.gov/sites/default/files/2015-02/documents/permit-recom-report-0700.pdf>
- Enhancing Environmental Justice in EPA Permitting Programs (2011): <https://www.epa.gov/sites/default/files/2015-02/documents/ej-in-permitting-report-2011.pdf>
- Recommendations Regarding EPA Activities to Promote Environmental Justice in the Permit Application Process (2013): <https://www.epa.gov/sites/default/files/2015-02/documents/2013-ej-in-permitting.pdf>.

#### Civil Rights

- Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 69 Fed. Reg. 35602 (June 25, 2004): <https://www.govinfo.gov/content/pkg/FR-2004-06-25/pdf/04-14464.pdf>
- The Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Recipient Guidance), 54 Fed. Reg. 14207 (Mar. 21, 2006): [https://www.epa.gov/sites/default/files/2020-02/documents/title\\_vi\\_public\\_involvement\\_guidance\\_for\\_epa\\_recipients\\_2006.03.21.pdf](https://www.epa.gov/sites/default/files/2020-02/documents/title_vi_public_involvement_guidance_for_epa_recipients_2006.03.21.pdf)
- EPA's External Civil Rights Compliance Office Toolkit at [https://www.epa.gov/sites/default/files/2017-01/documents/toolkit-chapter1-transmittal\\_letter-faqs.pdf](https://www.epa.gov/sites/default/files/2017-01/documents/toolkit-chapter1-transmittal_letter-faqs.pdf)
- DOJ Title VI Legal Manual (Updated April 22, 2021): <https://www.justice.gov/crt/fcs/T6Manual7#W>

#### Tribal Consultation

- EPA Policy for the Administration of Environmental Programs on Indian Reservations (1984): <https://www.epa.gov/sites/default/files/2015-04/documents/indian-policy-84.pdf>
- EPA Policy on Consultation and Coordination with Indian Tribes: Guidance for Discussing Tribal Treaty Rights (2016): [https://www.epa.gov/tribal/forms/consultation-and-coordination-tribes#policy\\_consultation\\_coordination](https://www.epa.gov/tribal/forms/consultation-and-coordination-tribes#policy_consultation_coordination)
- U.S. Environmental Protection Agency (EPA) Response to Tribal Consultation & Coordination Comments on Plan EJ 2014 Strategy and Implementation Plans (2012): <https://www.epa.gov/sites/default/files/2015-02/documents/plan-ej-tribal-consult-responses.pdf>
- Policy on Environmental Justice for Working with Federally Recognized Tribes and Indigenous Peoples (2014) : <https://www.epa.gov/environmentaljustice/epa-policy-environmental-justice-working-federally-recognized-tribes-and>

- EPA Plan for Implementing Policies & Directives of E.O. 13175 (2021):  
<https://www.epa.gov/tribal/epa-plan-implementing-policies-and-directives-eo-13175-consultation-coordination-indian>

# 18

How do I get additional information or provide feedback on the FAQs?

Please email [EJ.permitting@epa.gov](mailto:EJ.permitting@epa.gov) with any questions or feedback.




Gavin Newsom  
Governor

Jared Blumenfeld  
Secretary for Environmental Protection

## MEMORANDUM

TO: CalEPA Staff

FROM: Jared Blumenfeld   
Secretary for Environmental Protection  
California Environmental Protection Agency

DATE: February 14, 2020

SUBJECT: Environmental Enforcement

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Enforcement is an essential part of CalEPA's mission. A robust, equitable and forward leaning enforcement and compliance program enables us to protect California's residents and its natural resources from environmental degradation caused by those who violate environmental laws. Although California has an abundance of enforcement tools, the State faces persistent environmental challenges, including the disparate impact of pollution on environmental justice communities.

CalEPA's Office of the Secretary is responsible for developing a program to ensure that our boards, departments and offices (BDOs) take "consistent, effective and coordinated enforcement and compliance actions to protect public health and the environment." (Gov. Code § 12812.2 (a)(1).) While we share the responsibility for environmental enforcement and compliance with our federal, local and tribal partners, the public expects the State of California to take the lead in assuring that environmental laws are enforced. To do that, we must maximize state resources to achieve the most strategic outcomes in the most efficient ways possible.

Effective use of our enforcement tools not only assures that individual violators become compliant with regulatory requirements; it also serves as a deterrent to those similarly situated and thus has a multiplier effect. Strong enforcement also respects and honors the hard work by the public, non-governmental organizations, and legislators who have enacted environmental laws. Without effective enforcement, these laws risk losing meaning. By removing a potentially unfair business advantage, effective enforcement also levels the economic playing field and promotes a competitive market for the regulated community.

This memo sets forth the basic elements of a proactive state environmental enforcement program, with recognition that some of these elements already exist within the BDOs. This memo also provides a framework to strengthen CalEPA's coordination and oversight of enforcement work at the boards and the departments with the goal of achieving a high level of environmental compliance throughout the state.

Air Resources Board • Department of Pesticide Regulation • Department of Resources Recycling and Recovery • Department of Toxic Substances Control Office of Environmental Health Hazard Assessment • State Water Resources Control Board • Regional Water Quality Control Boards

## **1. Leadership**

**It is critical to establish a clear and consistent enforcement message, philosophy and policies across the CalEPA boards and departments.**

CalEPA's enforcement authority is defined by: constitutional, jurisdictional, statutory, and regulatory authority; internal policy and guidance documents; and, common law. Within that legal framework, CalEPA holds discretion in the allocation of enforcement resources and prioritization of enforcement goals. CalEPA seeks to apply that discretion to achieve a robust deterrent-based enforcement and compliance program that the general public and businesses trust. At core, we need a clear and consistent enforcement message, philosophy and policy that is implemented across the boards and departments. I will be asking the CalEPA General Counsel's Office to work with the BDOs to help develop and implement a consistent enforcement philosophy, as well as consistent messages and programs across all the BDOs. We will also engage in more data-driven monitoring of board and department enforcement efforts to make certain that enforcement efforts are yielding tangible and significant pollution-reduction results.

## **2. Planning, Prioritization and Effective Resource Utilization**

**It is critical that CalEPA strategically deploy limited resources to address the most pressing environmental enforcement and compliance priorities, violations and emerging issues.**

A successful enforcement and compliance program requires strategic vision, targeting and resource allocation decisions, and effective adaptability, within the bounds of CalEPA's jurisdictional authority. The program must implement core enforcement functions as well as incorporate new initiatives designed to promote CalEPA's enforcement goals. Enhanced CalEPA enforcement leadership will facilitate effective deployment of limited resources and will include strategic sharing of resources, including personnel and equipment, to address ongoing and evolving enforcement challenges.

In the spirit of a "one CalEPA" culture," and to ensure that CalEPA as a whole is effectively allocating its enforcement resources, CalEPA will track the enforcement work of the boards and departments. This will include a regular review of:

- Bi-annual sectoral prioritization (e.g., facilities using large quantities of flammable materials);
- Geographic targeting focused on environmental risk;
- The number and type of active enforcement investigations and cases;
- The amount of pollution/risk reduction as a result of enforcement efforts;
- The penalties assessed on violators through enforcement;
- Injunctive relief to remediate violations and SEPs incorporated into settlements;
- Results-focused, inter-agency coordination of investigation/inspection/enforcement;
- Compliance rates of regulated industries; and
- Most common types of violations observed.

### **3. Local Government Enforcement Oversight and Coordination**

**Environmental enforcement programs must promote strong local action, through work-sharing, resource utilization and effective oversight.**

Local partners are critical to the success of California's enforcement and compliance programs. CalEPA's oversight responsibilities require that we establish clear guidelines, goals, deadlines, and consequences for all local environmental programs subject to state oversight, including but not limited to the CUPAs, the County Agricultural Commissioners, Air Quality Control Districts, and local solid waste enforcement agencies. Auditing of local agencies (such as DTSC and Water Board's periodic auditing of CUPAs) should be coordinated, consistent and complete.

To be successful, we will need to assess the strengths and weaknesses of local enforcement programs and work with partners to deploy their resources effectively. CalEPA staff should also make efforts to effectively coordinate with local agencies outside of the CalEPA's purview. For example, to the extent possible, the BDOs should coordinate investigation, inspection, enforcement and compliance assistance efforts with cities, counties, and District Attorneys. Close ties with local programs will also assist in collection of information and data that will assist in determining where to target state resources. Where oversight is indirect, and where appropriate, CalEPA will leverage its expertise to provide informal and formal input in local enforcement efforts. CalEPA also reserves the right to formally participate in the public processes provided by local agencies during permitting and enforcement activities.

### **4. Multi-Media and Cross-Program Enforcement**

**Effective enforcement looks across our statutory and organizational "stove-pipes" to successfully meet our goals to protect public health and the environment.**

The CalEPA boards and departments, and CalEPA itself, have responsibility to assure compliance with a multitude of state and federal environmental laws. CalEPA is positioned to explore opportunities to effectively and efficiently conduct enforcement efforts that address a broad range of potential environmental violations. Multimedia enforcement, pursuing a single facility for violations occurring in more than one media and under more than one statutory scheme, can address violations more efficiently for both the state and for facilities than serial inspections/actions by several boards and departments. Furthermore, cross-program strategies to address environmental problems in disadvantaged communities are increasingly important as CalEPA pursues efforts to assure environmental justice.

### **5. Well-Trained Enforcement and Compliance Assistance Personnel**

**An effective environmental enforcement and compliance program requires well-trained personnel and state of the art enforcement tools.**

It is critical to a strong enforcement program to attract and retain a strong and well-trained workforce of inspectors, case developers and other enforcement personnel who can meaningfully assist regulated entities in achieving compliance and readily pursue enforcement opportunities. Enforcement requires not only a high degree of technical knowledge and deep knowledge of the relevant regulations, but also the skills to interact appropriately with the



regulated community and, in particular, those who violate the law. We also want to build excellence by providing the support, encouragement, mentoring and training to assure that each member of the enforcement workforce has the necessary tools to inspect, develop and prosecute the type and number of complicated cases we want to bring. That effort includes exploring technological tools that integrate data analysis across agencies.

Well-trained enforcement personnel also understand how to meaningfully and transparently interact with impacted communities. Apart from being responsive to community complaints, CalEPA will consider pathways for incorporating community based science, traditional ecological knowledge and participatory research in data gathering efforts. BDOs should also develop protocols around communicating inspection and sampling results, along with enforcement outcomes, with affected communities.

## **6. State and Federal Enforcement Partners**

### **Strong partnerships with other state and federal agencies are essential**

Enforcement cases often involve partnerships with other entities, including the California Attorney General in their independent capacity, U.S. EPA, the U.S. DOJ, the Resources Agency, CalGEM, the State Lands Commission and others. The success of our state enforcement programs hinge on developing and maintaining excellent working relationships with these other state and federal enforcement entities. Having a central point of contact at CalEPA to coordinate enforcement work with other state and federal entities will enhance CalEPA's ability to lead state-wide. In addition, it is important that our state partners have a clear point of contact to raise enforcement related issues and a clear counterpart at the agency level with whom to coordinate on broad issues such as evaluation of legislative cross-media enforcement proposals and response to judicial decisions that have cross-media enforcement effects.

## **7. Tribal Enforcement Partners**

### **Building strong government-to-government relations with California Native American Tribes**

California has the second largest number of federally-recognized tribes in the nation, and, according to the 2010 US Census, the largest Native American population in the United States. All California Native American Tribes, whether officially recognized by the federal government or not, have environmental, economic and public health concerns that are at times different from and at times similar to concerns of non-Tribe California residents. Enforcement agencies need to establish strong government-to-government relations with California Native American Tribes and effective partnerships, including enforcement action partnerships, to ensure protection of members of Native American Tribes and Tribal resources from environmental harms.

## **8. Enforcement and Program Integration**

**A strong enforcement and compliance program requires coordination between permitting, policy and enforcement to assure that priorities are in alignment.**

Program functions such as rulemaking and permitting must be carried out with a view toward the ultimate enforcement of the rules that are adopted and conditions included in permits. That requires coordination between enforcement staff and program staff in the update of current regulations and the development of new rules and permit conditions. CalEPA will develop agency-wide protocols for that coordination, including protocols for consideration in each permit decision and rulemaking decision of how compliance with new rule requirements and permit conditions will be monitored and enforced.

## **9. Enforcement and Communications Coordination**

The deterrent effect of enforcement is lost if the regulated community never learns of enforcement actions by the CalEPA boards and departments. An effective enforcement program requires dedicated attention to the most effective methods of making certain that the regulated community and affected community members learn of all enforcement activity. This can be through traditional media for major enforcement actions, but can also be through trade publications and other resources for more routine enforcement actions. CalEPA will develop agency-wide protocols for coordination between enforcement with communications operations, with requirements that notice of all enforcement action be disseminated effectively to the regulated community.

## **10. Equity in Enforcement**

The State recognizes historical and ongoing inequity in the distribution of environmental burdens and benefits among Californians. In an effort to remedy those inequities, CalEPA BDOs should develop policies and metrics to ensure equitable deployment of enforcement and compliance resources. A key goal of CalEPA's enforcement program is to prioritize the deployment of enforcement resources to communities with highest pollution burdens and environmental risks. This means that BDO enforcement chiefs should work closely with the EJ Task Force to ensure coordination and integration of the Task Force's work into each BDO's enforcement agenda. Likewise, BDOs should integrate community based enforcement leads, such as tips and complaints from the Identifying Violations Affecting Neighborhoods (IVAN) networks, into enforcement efforts.

To measure progress in enforcement equity, CalEPA should develop protocols to compare enforcement results, such as pounds of pollution reduced and penalties assessed, to data focused on environmental risk. Environmental risk may be measured through data-driven tools such as CalEnviroScreen.

## **Conclusion**

I want to recognize the excellent enforcement work that has already taken place in CalEPA's boards and departments.

This plan to enhance CalEPA's enforcement coordination and oversight, including ensuring that all board and department enforcement efforts incorporate the elements set forth above, will require work by all of us. With this in mind, the Office of the Secretary's Assistant General Counsel for Enforcement (Enforcement AGC) will oversee and coordinate the development of a cross-BDO enforcement program that meets the goals set forth in this memo and provide regular updates on progress. The Enforcement AGC will work with the BDOs to first develop and document a baseline understanding of CalEPA's current enforcement activities. The Enforcement AGC will then work with the BDOs to develop policies and provide guidance aimed at building the enforcement capacities and cultures outlined above. CalEPA-wide enforcement staff meetings will be held quarterly.

I am looking forward to doing the required work together to produce the very best environmental results we can. Thank you.

## CHAPTER 92

AN ACT concerning the disproportionate environmental and public health impacts of pollution on overburdened communities, and supplementing Title 13 of the Revised Statutes.

**BE IT ENACTED** by the Senate and General Assembly of the State of New Jersey:

C.13:1D-157 Findings, declarations relative to impact of pollution on overburdened communities.

1. The Legislature finds and declares that all New Jersey residents, regardless of income, race, ethnicity, color, or national origin, have a right to live, work, and recreate in a clean and healthy environment; that, historically, New Jersey's low-income communities and communities of color have been subject to a disproportionately high number of environmental and public health stressors, including pollution from numerous industrial, commercial, and governmental facilities located in those communities; that, as a result, residents in the State's overburdened communities have suffered from increased adverse health effects including, but not limited to, asthma, cancer, elevated blood lead levels, cardiovascular disease, and developmental disorders; that children are especially vulnerable to the adverse health effects caused by exposure to pollution, and that such health effects may severely limit a child's potential for future success; that the adverse effects caused by pollution impede the growth, stability, and long-term well-being of individuals and families living in overburdened communities; that the legacy of siting sources of pollution in overburdened communities continues to pose a threat to the health, well-being, and economic success of the State's most vulnerable residents; and that it is past time for the State to correct this historical injustice.

The Legislature further finds and declares that no community should bear a disproportionate share of the adverse environmental and public health consequences that accompany the State's economic growth; that the State's overburdened communities must have a meaningful opportunity to participate in any decision to allow in such communities certain types of facilities which, by the nature of their activity, have the potential to increase environmental and public health stressors; and that it is in the public interest for the State, where appropriate, to limit the future placement and expansion of such facilities in overburdened communities.

C.13:1D-158 Definitions relative to impact of pollution on overburdened communities.

2. As used in this act:

"Department" means the Department of Environmental Protection.

"Environmental or public health stressors" means sources of environmental pollution, including, but not limited to, concentrated areas of air pollution, mobile sources of air pollution, contaminated sites, transfer stations or other solid waste facilities, recycling facilities, scrap yards, and point-sources of water pollution including, but not limited to, water pollution from facilities or combined sewer overflows; or conditions that may cause potential public health impacts, including, but not limited to, asthma, cancer, elevated blood lead levels, cardiovascular disease, and developmental problems in the overburdened community.

“Facility” means any: (1) major source of air pollution; (2) resource recovery facility or incinerator; (3) sludge processing facility, combustor, or incinerator; (4) sewage treatment plant with a capacity of more than 50 million gallons per day; (5) transfer station or other solid waste facility, or recycling facility intending to receive at least 100 tons of recyclable material per day; (6) scrap metal facility; (7) landfill, including, but not limited to, a landfill that accepts ash, construction or demolition debris, or solid waste; or (8) medical waste incinerator; except that “facility” shall not include a facility as defined in section 3 of P.L.1989, c.34 (C.13:1E-48.3) that accepts regulated medical waste for disposal, including a medical waste incinerator, that is attendant to a hospital or university and intended to process self-generated regulated medical waste.

“Limited English proficiency” means that a household does not have an adult that speaks English “very well” according to the United States Census Bureau.

“Low-income household” means a household that is at or below twice the poverty threshold as that threshold is determined annually by the United States Census Bureau.

“Major source” means a major source of air pollution as defined by the federal “Clean Air Act,” 42 U.S.C. s.7401 et seq., or in rules and regulations adopted by the department pursuant to the “Air Pollution Control Act,” P.L.1954, c.212 (C.26:2C-1 et seq.) or which directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant, or other applicable criteria set forth in the federal “Clean Air Act,” 42 U.S.C. s.7401 et seq.

“Overburdened community” means any census block group, as determined in accordance with the most recent United States Census, in which: (1) at least 35 percent of the households qualify as low-income households; (2) at least 40 percent of the residents identify as minority or as members of a State recognized tribal community; or (3) at least 40 percent of the households have limited English proficiency.

“Permit” means any individual permit, registration, or license issued by the department to a facility establishing the regulatory and management requirements for a regulated activity under the following State laws: R.S.12:5-1 et seq.; P.L.1975, c.232 (C.13:1D-29 et al.); the “Solid Waste Management Act,” P.L.1970, c.39 (C.13:1E-1 et seq.); section 17 of P.L.1975, c.326 (C.13:1E-26); the “Comprehensive Regulated Medical Waste Management Act,” P.L.1989, c.34 (C.13:1E-48.1 et al.); P.L.1989, c.151 (C.13:1E-99.21a et al.); the “New Jersey Statewide Mandatory Source Separation and Recycling Act,” P.L.1987, c.102 (C.13:1E-99.11 et al.); the “Pesticide Control Act of 1971,” P.L.1971, c.176 (C.13:1F-1 et seq.); “The Wetlands Act of 1970,” P.L.1970, c.272 (C.13:9A-1 et seq.); the “Freshwater Wetlands Protection Act,” P.L.1987, c.156 (C.13:9B-1 et al.); the “Coastal Area Facility Review Act,” P.L.1973, c.185 (C.13:19-1 et seq.); the “Highlands Water Protection and Planning Act,” P.L.2004, c.120 (C.13:20-1 et seq.), the “Air Pollution Control Act (1954),” P.L.1954, c.212 (C.26:2C-1 et seq.); the “Water Supply Management Act,” P.L.1981, c.262 (C.58:1A-1 et al.); P.L.1947, c.377 (C.58:4A-5 et seq.); the “Water Pollution Control Act,” P.L.1977, c.74 (C.58:10A-1 et seq.); P.L.1986, c.102 (C.58:10A-21 et seq.); or the “Flood Hazard Area Control Act,” P.L.1962, c.19 (C.58:16A-50 et seq.); except that “permit” shall not include any authorization or approval necessary to perform a remediation, as defined pursuant to section 23 of P.L.1993, c.139 (C.58:10B-1), or any authorization or approval

required for a minor modification of a facility's major source permit for activities or improvements that do not increase emissions.

C.13:1D-159 List of overburdened communities on website.

3. No later than 120 days after the effective date of this act, the department shall publish and maintain on its Internet website a list of overburdened communities in the State. The department shall update the list of overburdened communities at least once every two years. The department shall notify a municipality if any part of the municipality has been designated an overburdened community pursuant to this act.

C.13:1D-160 Requirements for permit applicants.

4. a. Beginning immediately upon the adoption of the rules and regulations required pursuant to section 5 of this act, the department shall not consider complete for review any application for a permit for a new facility or for the expansion of an existing facility, or any application for the renewal of an existing facility's major source permit, if the facility is located, or proposed to be located, in whole or in part, in an overburdened community, unless the permit applicant first:

(1) Prepares an environmental justice impact statement that assesses the potential environmental and public health stressors associated with the proposed new or expanded facility, or with the existing major source, as applicable, including any adverse environmental or public health stressors that cannot be avoided if the permit is granted, and the environmental or public health stressors already borne by the overburdened community as a result of existing conditions located in or affecting the overburdened community;

(2) Transmits the environmental justice impact statement required to be prepared pursuant to paragraph (1) of this subsection, at least 60 days in advance of the public hearing required pursuant to paragraph (3) of this subsection, to the department and to the governing body and the clerk of the municipality in which the overburdened community is located. Upon receipt, the department shall publish the environmental justice impact statement on its Internet website; and

(3) Organizes and conducts a public hearing in the overburdened community. The permit applicant shall publish a notice of the public hearing in at least two newspapers circulating within the overburdened community, including one local non-English language newspaper, if applicable, not less than 60 days prior to the public hearing. The permit applicant shall provide a copy of the notice to the department, and the department shall publish the notice on its Internet website and in the monthly bulletin published pursuant to section 6 of P.L.1975, c.232 (C.13:1D-34). The notice of the public hearing shall provide the date, time, and location of the public hearing, a description of the proposed new or expanded facility or existing major source, as applicable, a map indicating the location of the facility, a brief summary of the environmental justice impact statement, information on how an interested person may review a copy of the complete environmental justice impact statement, an address for the submittal of written comments to the permit applicant, and any other information deemed appropriate by the department. At least 60 days prior to the public hearing, the permit applicant shall send a copy of the notice to the department and to the

governing body and the clerk of the municipality in which the overburdened community is located. The applicant shall invite the municipality to participate in the public hearing. At the public hearing, the permit applicant shall provide clear, accurate, and complete information about the proposed new or expanded facility, or existing major source, as applicable, and the potential environmental and public health stressors associated with the facility. The permit applicant shall accept written and oral comments from any interested party, and provided an opportunity for meaningful public participation at the public hearing. The permit applicant shall transcribe the public hearing and, no later than 10 days after the public hearing, submit the transcript along with any written comments received, to the department. Following the public hearing, the department shall consider the testimony presented and any written comments received, and evaluate the issuance of, or conditions to, the permit, as necessary in order to avoid or reduce the adverse environmental or public health stressors affecting the overburdened community.

The department may require the applicant to consolidate the public hearing held pursuant to this paragraph with any other public hearing held or required by the department regarding the permit application, provided the public hearing meets the other requirements of this paragraph. The department shall consider a request by a permit applicant to consolidate required public hearings and, if the request is granted by the department, the consolidation shall not preclude an application from being deemed complete for review pursuant to subsection a. of this section.

b. Notwithstanding the provisions of P.L.1975, c.232 (C.13:1D-29 et seq.) or any other law, or rule or regulation adopted pursuant thereto, to the contrary, the department shall not issue a decision on an application for a permit for a new facility or for the expansion of an existing facility, or on an application for the renewal of an existing facility's major source permit, if such facility is located, or proposed to be located, in whole or in part in an overburdened community until at least 45 days after the public hearing held pursuant to paragraph (3) of subsection a. of this subsection.

c. Notwithstanding the provisions of any other law, or rule or regulation adopted pursuant thereto, to the contrary, the department shall, after review of the environmental justice impact statement prepared pursuant to paragraph (1) of subsection a. of this section and any other relevant information, including testimony and written comments received at the public hearing, deny a permit for a new facility upon a finding that approval of the permit, as proposed, would, together with other environmental or public health stressors affecting the overburdened community, cause or contribute to adverse cumulative environmental or public health stressors in the overburdened community that are higher than those borne by other communities within the State, county, or other geographic unit of analysis as determined by the department pursuant to rule, regulation, or guidance adopted or issued pursuant to section 5 of this act, except that where the department determines that a new facility will serve a compelling public interest in the community where it is to be located, the department may grant a permit that imposes conditions on the construction and operation of the facility to protect public health.

d. Notwithstanding the provisions of any other law, or rule or regulation adopted pursuant thereto, to the contrary, the department may, after review of the environmental

justice impact statement prepared pursuant to paragraph (1) of subsection a. of this section and any other relevant information, including testimony and written comments received at the public hearing, apply conditions to a permit for the expansion of an existing facility, or the renewal of an existing facility's major source permit, concerning the construction and operation of the facility to protect public health, upon a finding that approval of a permit or permit renewal, as proposed, would, together with other environmental or public health stressors affecting the overburdened community, cause or contribute to adverse cumulative environmental or public health stressors in the overburdened community that are higher than those borne by other communities within the State, county, or other geographic unit of analysis as determined by the department pursuant to rule, regulation, or guidance adopted or issued pursuant to section 5 of this act.

e. If a permit applicant is applying for more than one permit for a proposed new or expanded facility, the permit applicant shall only be required to comply with the provisions of this section once, unless the department, in its discretion, determines that more than one public hearing is necessary due to the complexity of the permit applications necessary for the proposed new or expanded facility. Nothing in this section shall be construed to limit the authority of the department to hold or require additional public hearings, as may be required by any other law, rule, or regulation.

f. Nothing in this section shall be construed to limit the right of an applicant to continue facility operations during the process of permit renewal to the extent such right is conveyed by applicable law, rule, or regulation, including the application shield provisions of the rules and regulations adopted pursuant to the "Air Pollution Control Act (1954)," P.L.1954, c.212 (C.26:2C-1 et seq.).

g. In addition to any other fee authorized by law, rule, or regulation, the department shall assess each permit applicant a reasonable fee in order to cover the department's costs associated with the implementation of this act, including costs to provide technical assistance to permit applicants and overburdened communities as needed to comply with this act.

C.13:1D-161 Rules, regulations.

5. a. The department shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) rules and regulations to implement the provisions of this act.

b. The department may issue a technical guidance for compliance with this act, which the department shall publish on its Internet website.

6. This act shall take effect immediately.

Approved September 18, 2020.



## N.J. Stat. § 13:1D-157

Section 13:1D-157 - Findings, declarations relative to impact of pollution on overburdened communities

The Legislature finds and declares that all New Jersey residents, regardless of income, race, ethnicity, color, or national origin, have a right to live, work, and recreate in a clean and healthy environment; that, historically, New Jersey's low-income communities and communities of color have been subject to a disproportionately high number of environmental and public health stressors, including pollution from numerous industrial, commercial, and governmental facilities located in those communities; that, as a result, residents in the State's overburdened communities have suffered from increased adverse health effects including, but not limited to, asthma, cancer, elevated blood lead levels, cardiovascular disease, and developmental disorders; that children are especially vulnerable to the adverse health effects caused by exposure to pollution, and that such health effects may severely limit a child's potential for future success; that the adverse effects caused by pollution impede the growth, stability, and long-term well-being of individuals and families living in overburdened communities; that the legacy of siting sources of pollution in overburdened communities continues to pose a threat to the health, well-being, and economic success of the State's most vulnerable residents; and that it is past time for the State to correct this historical injustice.

The Legislature further finds and declares that no community should bear a disproportionate share of the adverse environmental and public health consequences that accompany the State's economic growth; that the State's overburdened communities must have a meaningful opportunity to participate in any decision to allow in such communities certain types of facilities which, by the nature of their activity, have the potential to increase environmental and public health stressors; and that it is in the public interest for the State, where appropriate, to limit the future placement and expansion of such facilities in overburdened communities.

*N.J.S. § 13:1D-157*

Added by L. 2020, c. 92, s. 1, eff. 9/18/2020.

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# Climate Leadership and Community Protection Act

## *An Overview*

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On July 18, 2019, The New York State Climate Leadership and Community Protection Act (CLCPA) was enacted into law. The CLCPA (Chapter 106 of 2019) establishes aggressive, legally binding targets to completely transition New York's economy off fossil fuels. This new law has significant implications for every sector, and will spur innovation, create jobs, and make New York a true global climate leader.

To get from where we are today to a fossil-fuel free New York by 2050, the law creates a framework of emissions reduction targets, action plans, a blueprint for an equitable transition across all sectors of the economy, and important government reporting and accountability measures.

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## Key Provisions

### Emission Reduction Targets

The goal of the CLCPA is to eliminate 100% of the climate pollution caused by humans, calling for an 85% reduction in greenhouse gas emissions by 2050, with an interim target of 40% by 2030.

The legislation allows for the remaining 15% of emissions beyond the 85% reduction mandate to be achieved by a very limited offset program that only some select industries can participate in. The CLCPA also provides for an electricity-sector mandate, requiring 70% of all of New York's electricity to come from renewable sources by 2030 and 100% zero emission generation by 2040. The electric generation sector is not one that can participate in the offset program.

### Action Plan

To meet the objectives set out in the CLCPA, all of state government will need to reorient its many decision making processes. This will be achieved mainly through the development and implementation of a Climate Action Plan.

The Climate Action Plan will be created by a Climate Action Council, which will consist of 22 members from key state agencies and independent legislative appointments. The Department of Environmental Conservation (DEC) and New York State Energy Research and Development Authority (NYSERDA) will co-lead the council.

The Council's work will be informed by several newly created working groups and expert advisory panels, including a Climate Justice Working Group, Environmental Justice Advisory Group, and Just Transition Working Group. The Council will be expected to develop a plan that provides detailed recommendations for action in the areas of transportation, energy intensive and trade-exposed industries, land use and local government, energy efficiency and housing, power generation, and agriculture and forestry.

# Climate Leadership and Community Protection Act

## *An Overview* ...continued

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The plan will guide the adoption of rules and regulations to ensure compliance with state-wide emissions limits and implementation of the recommendations contained within the final plan. The initial draft Action Plan is due by January 1, 2022 with the final report due by January 1, 2023.

### **Just Transition**

Disadvantaged communities are suffering the effects of climate change and pollution today. The CLCPA acknowledges the need to assist in a 'Just Transition' off fossil fuels and significantly incorporates the principles of equity and environmental justice in the investment and decision-making framework. The CLCPA establishes the Climate Justice Working Group, the Environmental Justice Advisory Group, and the Just Transition Working Group, which will all play different roles in the just transition off of fossil fuels.

The Climate Justice Working Group will help identify disadvantaged communities who under the legislation will receive at least 35% of the benefits of clean energy and energy efficiency initiatives implemented by the state. The Environmental Justice Advisory Group will advise state agencies to embed the concept of equity in state agency decision-making and the Just Transition Working Group will prepare a comprehensive workforce development plan for the Climate Action Council.

### **Reporting and Accountability**

In order to measure progress, the CLCPA contains a number of accountability measures, including:

- A comprehensive report on statewide greenhouse gas emissions, including emissions associated with imported electricity and fossil fuels. (Annual, DEC)
- Period reports on the progress toward meeting greenhouse gas limits and recommending modifications to regulations to ensure the state meets climate and equity goals. (Once every four years, DEC)
- Mandates for all of state government to apply a climate and equity screen to every decision they make, from launching new programs to issuing a permit and authorizes state agencies and authorities to promulgate regulations to implement the policies of the CLCPA.
- Requirements for DEC to monitor and enforce compliance with its greenhouse gas emission reduction regulations.
- Increased legal standing for the public to challenge agency decisions.

# STATE OF NEW YORK

S. 6599

A. 8429

2019-2020 Regular Sessions

## SENATE - ASSEMBLY

June 18, 2019

IN SENATE -- Introduced by Sens. KAMINSKY, HOYLMAN, ADDABBO, BAILEY, BENJAMIN, BIAGGI, BRESLIN, BROOKS, CARLUCCI, COMRIE, GAUGHRAN, GIANARIS, GOUNARDES, HARCKHAM, JACKSON, KAPLAN, KAVANAGH, KENNEDY, KRUEGER, LIU, MARTINEZ, MAY, MAYER, METZGER, MONTGOMERY, MYRIE, PARKER, PERSAUD, RAMOS, RIVERA, SALAZAR, SANDERS, SEPULVEDA, SERRANO, SKOUFIS, STAVISKY, STEWART-COUSINS, THOMAS -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

IN ASSEMBLY -- Introduced by M. of A. ENGLEBRIGHT, LIFTON, FAHY, ORTIZ, CAHILL, WALKER, CARROLL, L. ROSENTHAL, THIELE, JAFFEE, SIMON, OTIS, DINOWITZ, WILLIAMS, ROZIC, ABINANTI, MOSLEY, BARRETT, STECK, GALEF, GOTTFRIED, LUPARDO, PHEFFER AMATO, DE LA ROSA, JEAN-PIERRE, COLTON, CUSICK, PEOPLES-STOKES, SEAWRIGHT, PICHARDO, WEPRIN, SIMOTAS, GLICK, FERNANDEZ, D'URSO, O'DONNELL, GRIFFIN, REYES, BURKE, SOLAGES, ROMEO, STIRPE, MAGNARELLI, EPSTEIN, TAYLOR, FALL, CRUZ, STERN, SANTABARBARA, BRONSON, BARNWELL, DAVILA, HEVESI, NIOU, HUNTER, M. G. MILLER, BENEDETTO, RODRIGUEZ, QUART, WRIGHT, HYNDMAN, CRESPO, FRONTUS, RYAN, SAYEGH, BARRON, PRETLOW, GUNTHER, RICHARDSON, RAYNOR, KIM, McMAHON, DICKENS, JACOBSON, WEINSTEIN -- Multi-Sponsored by -- M. of A. DenDEKKER, LENTOL, NOLAN, PAULIN, RAMOS -- (at request of the Governor) -- read once and referred to the Committee on Ways and Means

AN ACT to amend the environmental conservation law, the public service law, the public authorities law, the labor law and the community risk and resiliency act, in relation to establishing the New York state climate leadership and community protection act

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Legislative findings and declaration. The legislature here-  
2 by enacts the "New York state climate leadership and community  
3 protection act" and finds and declares that:

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD12037-01-9

1 1. Climate change is adversely affecting economic well-being, public  
2 health, natural resources, and the environment of New York. The adverse  
3 impacts of climate change include:

4 a. an increase in the severity and frequency of extreme weather  
5 events, such as storms, flooding, and heat waves, which can cause direct  
6 injury or death, property damage, and ecological damage (e.g., through  
7 the release of hazardous substances into the environment);

8 b. rising sea levels, which exacerbate damage from storm surges and  
9 flooding, contribute to coastal erosion and saltwater intrusion, and  
10 inundate low-lying areas, leading to the displacement of or damage to  
11 coastal habitat, property, and infrastructure;

12 c. a decline in freshwater and saltwater fish populations;

13 d. increased average temperatures, which increase the demand for air  
14 conditioning and refrigeration among residents and businesses;

15 e. exacerbation of air pollution; and

16 f. an increase in the incidences of infectious diseases, asthma  
17 attacks, heart attacks, and other negative health outcomes. These  
18 impacts are having a detrimental effect on some of New York's largest  
19 industries, including agriculture, commercial shipping, forestry, tour-  
20 ism, and recreational and commercial fishing. These impacts also place  
21 additional strain on the physical infrastructure that delivers critical  
22 services to the citizens of New York, including the state's energy,  
23 transportation, stormwater, and wastewater infrastructure.

24 2. a. The severity of current climate change and the threat of addi-  
25 tional and more severe change will be affected by the actions undertaken  
26 by New York and other jurisdictions to reduce greenhouse gas emissions.  
27 According to the U.S. Global Change Research Program (USGCRP) and the  
28 Intergovernmental Panel on Climate Change (IPCC), substantial reductions  
29 in greenhouse gas emissions will be required by mid-century in order to  
30 limit global warming to no more than 2°C and ideally 1.5°C, and thus  
31 minimize the risk of severe impacts from climate change. Specifically,  
32 industrialized countries must reduce their greenhouse gas emissions by  
33 at least 80% below 1990 levels by 2050 in order to stabilize carbon  
34 dioxide equivalent concentrations at 450 parts per million--the level  
35 required to stay within the 2°C target.

36 b. On December 12, 2015, one hundred ninety-five countries at the 21st  
37 Conference of the parties of the United Nations Framework Convention on  
38 Climate Change adopted an agreement addressing greenhouse gas emissions  
39 mitigation, adaptation, and finance starting in the year 2020, known as  
40 the Paris Agreement. The Paris Agreement was adopted on November 4,  
41 2016, and is the largest concerted global effort to combat climate  
42 change to date.

43 3. Action undertaken by New York to reduce greenhouse emissions will  
44 have an impact on global greenhouse gas emissions and the rate of  
45 climate change. In addition, such action will encourage other jurisdic-  
46 tions to implement complementary greenhouse gas reduction strategies and  
47 provide an example of how such strategies can be implemented. It will  
48 also advance the development of green technologies and sustainable prac-  
49 tices within the private sector, which can have far-reaching impacts  
50 such as a reduction in the cost of renewable energy components, and the  
51 creation of jobs and tax revenues in New York.

52 4. It shall therefore be a goal of the state of New York to reduce  
53 greenhouse gas emissions from all anthropogenic sources 100% over 1990  
54 levels by the year 2050, with an incremental target of at least a 40  
55 percent reduction in climate pollution by the year 2030, in line with

1 USGCRP and IPCC projections of what is necessary to avoid the most  
2 severe impacts of climate change.

3 5. Although substantial emissions reductions are necessary to avoid  
4 the most severe impacts of climate change, complementary adaptation  
5 measures will also be needed to address those risks that cannot be  
6 avoided. Some of the impacts of climate change are already observable in  
7 New York state and the northeastern United States. Annual average  
8 temperatures are on the rise, winter snow cover is decreasing, heat  
9 waves and precipitation are intensifying, and sea levels along New  
10 York's coastline are approximately one foot higher than they were in  
11 1900. New York has also experienced an increasing number of extreme and  
12 unusual weather events, like Hurricanes Irene and Lee and the  
13 unprecedented Superstorm Sandy in 2012, which caused at least 53 deaths  
14 and \$32 billion in damage in New York state.

15 6. New York should therefore minimize the risks associated with  
16 climate change through a combination of measures to reduce statewide  
17 greenhouse gas emissions and improve the resiliency of the state with  
18 respect to the impacts and risks of climate change that cannot be  
19 avoided.

20 7. Climate change especially heightens the vulnerability of disadvan-  
21 taged communities, which bear environmental and socioeconomic burdens as  
22 well as legacies of racial and ethnic discrimination. Actions undertaken  
23 by New York state to mitigate greenhouse gas emissions should prioritize  
24 the safety and health of disadvantaged communities, control potential  
25 regressive impacts of future climate change mitigation and adaptation  
26 policies on these communities, and prioritize the allocation of public  
27 investments in these areas.

28 8. Creating good jobs and a thriving economy is a core concern of New  
29 York state. Shaping the ongoing transition in our energy sector to  
30 ensure that it creates good jobs and protects workers and communities  
31 that may lose employment in the current transition must be key concerns  
32 of our climate policy. Setting clear standards for job quality and  
33 training standards encourages not only high-quality work but positive  
34 economic impacts.

35 9. Workers are at the front lines of climate change. Construction  
36 workers and building service workers were some of the first workers  
37 dedicated to cleaning up damage inflicted by recent storms. These work-  
38 ers were often operating in unsafe and toxic environments, cleaning up  
39 mold, and working in unstable buildings. In order to protect the health  
40 and welfare of these workers, it is in the interest of the state of New  
41 York to establish safe and healthy working conditions and proper train-  
42 ing for workers involved in climate change related activities. In addi-  
43 tion, much of the infrastructure work preparing our state for additional  
44 climate change events must happen quickly and efficiently. It is in the  
45 interest of the state to ensure labor harmony and promote efficient  
46 performance of work on climate change related work sites by requiring  
47 workers to be well-trained and adequately compensated.

48 10. Ensuring career opportunities are created and shared geograph-  
49 ically and demographically is necessary to ensure increased access to  
50 good jobs for marginalized communities while making the same neighbor-  
51 hoods more resilient. Climate change has a disproportionate impact on  
52 low-income people, women, and workers. It is in the interest of the  
53 state of New York to protect and promote the interests of these groups  
54 against the impacts of climate change and severe weather events and to  
55 advance our equity goals by ensuring quality employment opportunities in  
56 safe working environments.

1 11. The complexity of the ongoing energy transition, the uneven  
 2 distribution of economic opportunity, and the disproportionate cumula-  
 3 tive economic and environmental burdens on communities mean that there  
 4 is a strong state interest in setting a floor statewide for labor stand-  
 5 ards, but allowing and encouraging individual agencies and local govern-  
 6 ments to raise standards.

7 12. By exercising a global leadership role on greenhouse gas miti-  
 8 gation and climate change adaptation, New York will position its econo-  
 9 my, technology centers, financial institutions, and businesses to bene-  
 10 fit from national and international efforts to address climate change.  
 11 New York state has already demonstrated leadership in this area by  
 12 undertaking efforts such as:

13 a. executive order no. 24 (2009), establishing a goal to reduce green-  
 14 house gas emissions 80% by the year 2050, creating a climate action  
 15 council, and calling for preparation of a climate action plan;

16 b. chapter 433 of the laws of 2009, establishing a state energy plan-  
 17 ning board and requiring the board to adopt a state energy plan;

18 c. chapter 388 of the laws of 2011, directing the department of envi-  
 19 ronmental conservation to promulgate rules and regulations limiting  
 20 emissions of carbon dioxide by newly constructed major generating facil-  
 21 ities;

22 d. the adoption of a state energy plan establishing clean energy goals  
 23 for the year 2030 aimed at reducing greenhouse gas emission levels by  
 24 40% from 1990 levels, producing 70% of electricity from renewable sourc-  
 25 es, increasing energy efficiency from 2012 levels by 23% and the addi-  
 26 tional expressed goal of reducing 100% of the electricity sector's  
 27 greenhouse gas emissions by 2040;

28 e. collaboration with other states on the Regional Greenhouse Gas  
 29 Initiative, and the development of a regional low carbon fuel standard;

30 f. creation of new offices and task forces to address climate change,  
 31 including the New York state office of climate change, the renewable  
 32 energy task force, and the sea level rise task force; and

33 g. the enactment of the Community Risk and Resiliency Act (CRRRA),  
 34 which requires agencies to consider sea level rise and other climate-re-  
 35 lated events when implementing certain state programs.

36 This legislation will build upon these past developments by creating a  
 37 comprehensive regulatory program to reduce greenhouse gas emissions that  
 38 corresponds with the targets established in executive order no. 24, the  
 39 state energy plan, and USGCRP and IPCC projections.

40 § 2. The environmental conservation law is amended by adding a new  
 41 article 75 to read as follows:

42 ARTICLE 75

43 CLIMATE CHANGE

44 Section 75-0101. Definitions.

45 75-0103. New York state climate action council.

46 75-0105. Statewide greenhouse gas emissions report.

47 75-0107. Statewide greenhouse gas emissions limits.

48 75-0109. Promulgation of regulations to achieve statewide green-  
 49 house gas emissions reductions.

50 75-0111. Climate justice working group.

51 75-0113. Value of carbon.

52 75-0115. Community air monitoring program.

53 75-0117. Investment of funds.

54 75-0119. Implementation reporting.

55 § 75-0101. Definitions.

1 For the purposes of this article the following terms shall have the  
2 following meanings:

3 1. "Allowance" means an authorization to emit, during a specified  
4 year, up to one ton of carbon dioxide equivalent.

5 2. "Carbon dioxide equivalent" means the amount of carbon dioxide by  
6 mass that would produce the same global warming impact as a given mass  
7 of another greenhouse gas over an integrated twenty-year time frame  
8 after emission.

9 3. "Co-pollutants" means hazardous air pollutants produced by green-  
10 house gas emissions sources.

11 4. "Council" means the New York state climate action council estab-  
12 lished pursuant to section 75-0103 of this article.

13 5. "Disadvantaged communities" means communities that bear burdens of  
14 negative public health effects, environmental pollution, impacts of  
15 climate change, and possess certain socioeconomic criteria, or comprise  
16 high-concentrations of low- and moderate- income households, as identi-  
17 fied pursuant to section 75-0111 of this article.

18 6. "Emissions reduction measures" means programs, measures and stand-  
19 ards, authorized pursuant to this chapter, applicable to sources or  
20 categories of sources, that are designed to reduce emissions of green-  
21 house gases.

22 7. "Greenhouse gas" means carbon dioxide, methane, nitrous oxide,  
23 hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, and any other  
24 substance emitted into the air that may be reasonably anticipated to  
25 cause or contribute to anthropogenic climate change.

26 8. "Greenhouse gas emission limit" means the maximum allowable level  
27 of statewide greenhouse gas emissions, in a specified year, expressed in  
28 tons of carbon dioxide equivalent, as determined by the department  
29 pursuant to this article.

30 9. "Greenhouse gas emission offset" means a deduction representing one  
31 metric ton of carbon dioxide equivalent emissions, reduced, avoided, or  
32 sequestered by a greenhouse gas emission offset project from a measured  
33 baseline of emissions pursuant to the statewide greenhouse gas emissions  
34 report.

35 10. "Greenhouse gas emission offset projects" means one or more  
36 projects, including:

37 a. Natural carbon sinks including but not limited to afforestation,  
38 reforestation, or wetlands restoration;

39 b. Greening infrastructure;

40 c. Restoration and sustainable management of natural and urban forests  
41 or working lands, grasslands, coastal wetlands and sub-tidal habitats;

42 d. Efforts to reduce hydrofluorocarbon refrigerant, sulfur hexafluor-  
43 ide, and other ozone depleting substance releases;

44 e. Anaerobic digesters, where energy produced is directed toward  
45 localized use;

46 f. Carbon capture and sequestration;

47 g. Ecosystem restoration; and

48 h. Other types of projects recommended by the council in consultation  
49 with the climate justice working group that provide public health and  
50 environmental benefits, and do not create burdens in disadvantaged  
51 communities.

52 11. "Greenhouse gas emission source" or "source" means any anthropo-  
53 genic source or category of anthropogenic sources of greenhouse gas  
54 emissions, determined by the department:

55 a. whose participation in the program will enable the department to  
56 effectively reduce greenhouse gas emissions; and,



1 b. that are capable of being monitored for compliance.

2 12. "Leakage" means a reduction in emissions of greenhouse gases with-  
3 in the state that is offset by an increase in emissions of greenhouse  
4 gases outside of the state.

5 13. "Statewide greenhouse gas emissions" means the total annual emis-  
6 sions of greenhouse gases produced within the state from anthropogenic  
7 sources and greenhouse gases produced outside of the state that are  
8 associated with the generation of electricity imported into the state  
9 and the extraction and transmission of fossil fuels imported into the  
10 state. Statewide emissions shall be expressed in tons of carbon dioxide  
11 equivalents.

12 14. "Statewide greenhouse gas emissions limit" or "statewide emissions  
13 limit" means the maximum allowable level of statewide greenhouse gas  
14 emissions in a specified year, as determined by the department pursuant  
15 to this article.

16 15. "Environmental justice advisory group" shall mean the permanent  
17 environmental justice advisory group established by a chapter of the  
18 laws of two thousand nineteen amending the environmental conservation  
19 law relating to establishing a permanent environmental justice advisory  
20 group and an environmental justice interagency coordinating council, as  
21 proposed in legislative bills numbers S. 2385 and A. 1564.

22 § 75-0103. New York state climate action council.

23 1. There is hereby established the New York state climate action coun-  
24 cil ("council") which shall consist of the following twenty-two members:

25 a. the commissioners of transportation, health, economic development,  
26 agriculture and markets, housing and community renewal, environmental  
27 conservation, labor, the chairperson of the public service commission,  
28 the presidents of the New York state energy research and development  
29 authority; New York power authority; Long Island power authority; the  
30 secretary of state, or their designees.

31 b. two non-agency expert members appointed by the governor;

32 c. three members to be appointed by the temporary president of the  
33 senate;

34 d. three members to be appointed by the speaker of the assembly;

35 e. one member to be appointed by the minority leader of the senate;  
36 and

37 f. one member to be appointed by the minority leader of the assembly.

38 2. The at large members shall include at all times individuals with  
39 expertise in issues relating to climate change mitigation and/or adapta-  
40 tion, such as environmental justice, labor, public health and regulated  
41 industries.

42 3. Council members shall receive no compensation for their services  
43 but shall be reimbursed for actual and necessary expenses incurred in  
44 the performance of their duties.

45 4. The co-chairpersons of the council shall be the commissioner of  
46 environmental conservation and the president of the New York state ener-  
47 gy research and development authority or their designee.

48 5. Each member of the council shall be entitled to one vote. The coun-  
49 cil's approval and adoption of the final scoping plan pursuant to this  
50 section, and any subsequent interim updates thereto, shall require a  
51 supermajority of the council. No action may be taken by the council  
52 unless there is a quorum, which shall at all times be a majority of the  
53 members of the council.

54 6. Any vacancies on the council shall be filled in the manner provided  
55 for the initial appointment.

1 7. The council shall convene advisory panels requiring special exper-  
2 tise and, at a minimum, shall establish advisory panels on transporta-  
3 tion, energy intensive and trade-exposed industries, land-use and local  
4 government, energy efficiency and housing, power generation, and agri-  
5 culture and forestry. The purpose of the advisory panels shall be to  
6 provide recommendations to the council on specific topics, in its prepa-  
7 ration of the scoping plan, and interim updates to the scoping plan, and  
8 in fulfilling the council's ongoing duties.

9 a. Each advisory panel shall be chaired by the relevant agency head or  
10 his or her designee. The council may convene and dissolve additional  
11 advisory panels, in its sole discretion, and pursuant to the require-  
12 ments herein.

13 b. Advisory panels shall be comprised of no more than five voting  
14 members. The council shall elect advisory panel members, and such  
15 membership shall at all times represent individuals with direct involve-  
16 ment or expertise in matters to be addressed by the advisory panels  
17 pursuant to this section.

18 c. Advisory panels shall work directly with the council on the prepa-  
19 ration of the scoping plan pursuant to this section. Each advisory panel  
20 shall coordinate with the environmental justice advisory group and  
21 climate justice working group.

22 d. All agencies of the state or subdivisions thereof may, at the  
23 request of any such advisory panel or the council, provide the advisory  
24 panel with such facilities, assistance, and data as will enable advisory  
25 panels to carry out their powers and duties.

26 8. The council shall convene a just transition working group. The  
27 working group shall be chaired by the commissioner of labor and the  
28 president of the New York state energy research and development authori-  
29 ty and shall consist of no less than thirteen, but no more than seven-  
30 teen members and shall include the commissioners of housing and communi-  
31 ty renewal, the chair of the department of public service,  
32 representatives of environmental justice communities and representatives  
33 of labor organizations, clean energy developers and at least five repre-  
34 sentatives of distinct energy-intensive industries. The just transition  
35 working group shall:

36 a. advise the council on issues and opportunities for workforce devel-  
37 opment and training related to energy efficiency measures, renewable  
38 energy and other clean energy technologies, with specific focus on  
39 training and workforce opportunities for disadvantaged communities, and  
40 segments of the population that may be underrepresented in the clean  
41 energy workforce such as veterans, women and formerly incarcerated  
42 persons;

43 b. identify energy-intensive industries and related trades and identi-  
44 fy sector specific impacts of the state's current workforce and avenues  
45 to maximize the skills and expertise of New York state workers in the  
46 new energy economy;

47 c. identify sites of electric generating facilities that may be closed  
48 as a result of a transition to a clean energy sector and the issues and  
49 opportunities presented by reuse of those sites;

50 d. with respect to potential for greenhouse gas emission limits devel-  
51 oped by the department of environmental conservation pursuant to this  
52 article, advise the council on the potential impacts of carbon leakage  
53 risk on New York state industries and local host communities, including  
54 the impact of any potential carbon reduction measures on the competi-  
55 tiveness of New York state business and industry;

1 e. advise the council and conduct stakeholder outreach on any other  
2 workforce matters directed by the council; and

3 f. at a time frame determined by the council, prepare and publish  
4 recommendations to the council on how to address: issues and opportu-  
5 nities related to the energy-intensive and trade-exposed entities; work-  
6 force development for trade-exposed entities, disadvantaged communities  
7 and underrepresented segments of the population; measures to minimize  
8 the carbon leakage risk and minimize anti-competitiveness impacts of any  
9 potential carbon policies and energy sector mandates.

10 g. The just transition working group is hereby authorized and directed  
11 to conduct a study of and report on:

12 i. The number of jobs created to counter climate change, which shall  
13 include but not be limited to the energy sector, building sector, trans-  
14 portation sector, and working lands sector;

15 ii. The projection of the inventory of jobs needed and the skills and  
16 training required to meet the demand of jobs to counter climate change;  
17 and

18 iii. Workforce disruption due to community transitions from a low  
19 carbon economy.

20 9. The department and the New York state energy research and develop-  
21 ment authority shall provide the council with such facilities, assist-  
22 ance and data as will enable the council to carry out its powers and  
23 duties. Additionally, all other agencies of the state or subdivisions  
24 thereof may, at the request of the co-chairpersons, provide the council  
25 with such facilities, assistance, and data as will enable the council to  
26 carry out its powers and duties.

27 10. The council shall consult with the climate justice working group  
28 established in section 75-0111 of this article, the department of state  
29 utility intervention unit, and the federally designated electric bulk  
30 system operator.

31 11. The council shall on or before two years of the effective date of  
32 this article, prepare and approve a scoping plan outlining the recommen-  
33 dations for attaining the statewide greenhouse gas emissions limits in  
34 accordance with the schedule established in section 75-0107 of this  
35 article, and for the reduction of emissions beyond eighty-five percent,  
36 net zero emissions in all sectors of the economy, which shall inform the  
37 state energy planning board's adoption of a state energy plan in accord-  
38 ance with section 6-104 of the energy law. The first state energy plan  
39 issued subsequent to completion of the scoping plan required by this  
40 section shall incorporate the recommendations of the council.

41 12. The draft scoping plan shall be developed in consultation with the  
42 environmental justice advisory group, and the climate justice working  
43 group established pursuant to section 75-0111 of this article and other  
44 stakeholders.

45 a. The council shall hold at least six regional public comment hear-  
46 ings on the draft scoping plan, including three meetings in the upstate  
47 region and three meetings in the downstate region, and shall allow at  
48 least one hundred twenty days for the submission of public comment.

49 b. The council shall provide meaningful opportunities for public  
50 comment from all segments of the population that will be impacted by the  
51 plan, including persons living in disadvantaged communities as identi-  
52 fied pursuant to section 75-0111 of this article.

53 c. On or before three years of the effective date of this article, the  
54 council shall submit the final scoping plan to the governor, the speaker  
55 of the assembly and the temporary president of the senate and post such  
56 plan on its website.

1 13. The scoping plan shall identify and make recommendations on regu-  
2 latory measures and other state actions that will ensure the attainment  
3 of the statewide greenhouse gas emissions limits established pursuant to  
4 section 75-0107 of this article. The measures and actions considered in  
5 such scoping plan shall at a minimum include:

6 a. Performance-based standards for sources of greenhouse gas emis-  
7 sions, including but not limited to sources in the transportation,  
8 building, industrial, commercial, and agricultural sectors.

9 b. Measures to reduce emissions from the electricity sector by  
10 displacing fossil-fuel fired electricity with renewable electricity or  
11 energy efficiency.

12 c. Land-use and transportation planning measures aimed at reducing  
13 greenhouse gas emissions from motor vehicles.

14 d. Measures to achieve long-term carbon sequestration and/or promote  
15 best management practices in land use, agriculture and forestry.

16 e. Measures to achieve six gigawatts of distributed solar energy  
17 capacity installed in the state by two thousand twenty-five, nine giga-  
18 watts of offshore wind capacity installed by two thousand thirty-five, a  
19 statewide energy efficiency goal of one hundred eighty-five trillion  
20 British thermal units energy reduction from the two thousand twenty-five  
21 forecast; and three gigawatts of statewide energy storage capacity by  
22 two thousand thirty.

23 f. Measures to promote the beneficial electrification of personal and  
24 freight transport and other strategies to reduce greenhouse gas emis-  
25 sions from the transportation sector.

26 g. Measures to achieve reductions in energy use in existing residen-  
27 tial or commercial buildings, including the beneficial electrification  
28 of water and space heating in buildings, establishing appliance effi-  
29 ciency standards, strengthening building energy codes, requiring annual  
30 building energy benchmarking, disclosing energy efficiency in home  
31 sales, and expanding the ability of state facilities to utilize perform-  
32 ance contracting.

33 h. Recommendations to aid in the transition of the state workforce and  
34 the rapidly emerging clean energy industry.

35 i. Measures to achieve healthy forests that support clean air and  
36 water, biodiversity, and sequester carbon.

37 j. Measures to limit the use of chemicals, substances or products that  
38 contribute to global climate change when released to the atmosphere, but  
39 are not intended for end-use combustion.

40 k. Mechanisms to limit emission leakage as defined in subdivision  
41 eleven of section 75-0101 of this article.

42 l. Verifiable, enforceable and voluntary emissions reduction measures.

43 14. In developing such plan the council shall:

44 a. Consider all relevant information pertaining to greenhouse gas  
45 emissions reduction programs in states in the United States Climate  
46 Alliance, as well as other states, regions, localities, and nations.

47 b. Evaluate, using the best available economic models, emission esti-  
48 mation techniques and other scientific methods, the total potential  
49 costs and potential economic and non-economic benefits of the plan for  
50 reducing greenhouse gases, and make such evaluation publicly available.  
51 In conducting this evaluation, the council shall quantify:

52 i. The economic and social benefits of greenhouse gas emissions  
53 reductions, taking into account the value of carbon, established by the  
54 department pursuant to section 75-0113 of this article, any other tools  
55 that the council deems useful and pertinent for this analysis, and any  
56 environmental, economic and public health co-benefits (such as the

1 reduction of co-pollutants and the diversification of energy sources);  
2 and

3 ii. The costs of implementing proposed emissions reduction measures,  
4 and the emissions reductions that the council anticipates achieving  
5 through these measures.

6 c. Take into account the relative contribution of each source or  
7 source category to statewide greenhouse gas emissions, and the potential  
8 for adverse effects on small businesses, and recommend a de minimis  
9 threshold of greenhouse gas emissions below which emission reduction  
10 requirements will not apply.

11 d. Identify measures to maximize reductions of both greenhouse gas  
12 emissions and co-pollutants in disadvantaged communities as identified  
13 pursuant to section 75-0111 of this article.

14 15. The council shall update its plan for achieving the statewide  
15 greenhouse gas emissions limits at least once every five years and shall  
16 make such updates available to the governor, the speaker of the assembly  
17 and the temporary president of the senate and post such updates on its  
18 website.

19 16. The council shall identify existing climate change mitigation and  
20 adaptation efforts at the federal, state, and local levels and may make  
21 recommendations regarding how such policies may improve the state's  
22 efforts.

23 17. The council shall maintain a website that includes public access  
24 to the scoping plan and greenhouse gas limit information.

25 § 75-0105. Statewide greenhouse gas emissions report.

26 1. No later than two years after the effective date of this article,  
27 and each year thereafter, the department shall issue a report on state-  
28 wide greenhouse gas emissions, expressed in tons of carbon dioxide  
29 equivalents, from all greenhouse gas emission sources in the state,  
30 including the relative contribution of each type of greenhouse gas and  
31 each type of source to the statewide total.

32 2. The statewide greenhouse gas emissions report shall be a comprehen-  
33 sive evaluation, informed by a variety of data, including but not limit-  
34 ed to:

35 a. information relating to the use of fossil fuels by sector, includ-  
36 ing for electricity generation, transportation, heating, and other  
37 combustion purposes;

38 b. information relating to fugitive and vented emissions from systems  
39 associated with the production, processing, transport, distribution,  
40 storage, and consumption of fossil fuels, including natural gas;

41 c. information relating to emissions from non-fossil fuel sources,  
42 including, but not limited to, garbage incinerators, biomass combustion,  
43 landfills and landfill gas generators, and anaerobic digesters;

44 d. information relating to emissions associated with manufacturing,  
45 chemical production, cement plants, and other processes that produce  
46 non-combustion emissions; and

47 e. information from sources that may be required to participate in the  
48 registration and reporting system pursuant to subdivision four of this  
49 section.

50 3. The statewide greenhouse gas emissions report shall also include an  
51 estimate of greenhouse gas emissions associated with the generation of  
52 imported electricity and with the extraction and transmission of fossil  
53 fuels imported into the state which shall be counted as part of the  
54 statewide total.

55 4. Within one year after the effective date of this article, the  
56 department shall consider establishing a mandatory registry and report-

1 ing system from individual sources to obtain data on greenhouse gas  
2 emissions exceeding a particular threshold. If established, such regis-  
3 try and reporting system shall apply a consistent reporting threshold to  
4 ensure the unbiased collection of data.

5 5. The statewide greenhouse gas emissions report shall also include an  
6 estimate of what the statewide greenhouse gas emissions level was in  
7 1990.

8 6. The statewide greenhouse gas emissions report shall utilize best  
9 available science and methods of analysis, including the comparison and  
10 reconciliation of emission estimates from all sources, fuel consumption,  
11 field data, and peer-reviewed research.

12 7. The statewide greenhouse gas emissions report shall clearly explain  
13 the methodology and analysis used in the department's determination of  
14 greenhouse gas emissions and shall include a detailed explanation of any  
15 changes in methodology or analysis, adjustments made to prior estimates,  
16 as needed, and any other information necessary to establish a scientifi-  
17 cally credible account of change.

18 8. The department shall hold at least two public hearings to seek  
19 public input regarding the methodology and analysis used in the determi-  
20 nation of statewide greenhouse gas emissions, and periodically thereaft-  
21 er.

22 § 75-0107. Statewide greenhouse gas emissions limits.

23 1. No later than one year after the effective date of this article,  
24 the department shall, pursuant to rules and regulations promulgated  
25 after at least one public hearing, establish a statewide greenhouse gas  
26 emissions limit as a percentage of 1990 emissions, as estimated pursuant  
27 to section 75-0105 of this article, as follows:

28 a. 2030: 60% of 1990 emissions.

29 b. 2050: 15% of 1990 emissions.

30 2. Greenhouse gas emission limits shall be measured in units of carbon  
31 dioxide equivalents and identified for each individual type of green-  
32 house gas.

33 3. In order to ensure the most accurate determination feasible, the  
34 department shall utilize the best available scientific, technological,  
35 and economic information on greenhouse gas emissions and consult with  
36 the council, stakeholders, and the public in order to ensure that all  
37 emissions are accurately reflected in its determination of 1990 emis-  
38 sions levels.

39 4. In order to comply with the statewide greenhouse gas emissions  
40 limits promulgated pursuant to this section, a source may utilize the  
41 alternative compliance mechanism established pursuant to subdivision  
42 four of section 75-0109 of this article. The use of such mechanism shall  
43 be in accordance with the provisions of that subdivision.

44 § 75-0109. Promulgation of regulations to achieve statewide greenhouse  
45 gas emissions reductions.

46 1. No later than four years after the effective date of this article,  
47 the department, after public workshops and consultation with the coun-  
48 cil, the environmental justice advisory group, and the climate justice  
49 working group established pursuant to section 75-0111 of this article,  
50 representatives of regulated entities, community organizations, environ-  
51 mental groups, health professionals, labor unions, municipal corpo-  
52 rations, trade associations and other stakeholders, shall, after no less  
53 than two public hearings, promulgate rules and regulations to ensure  
54 compliance with the statewide emissions reduction limits and work with  
55 other state agencies and authorities to promulgate regulations required

1 by section eight of the chapter of the laws of two thousand nineteen  
2 that added this article.

3 2. The regulations promulgated by the department pursuant to this  
4 section shall:

5 a. Ensure that the aggregate emissions of greenhouse gases from green-  
6 house gas emission sources will not exceed the statewide greenhouse gas  
7 emissions limits established in section 75-0107 of this article.

8 b. Include legally enforceable emissions limits, performance stand-  
9 ards, or measures or other requirements to control emissions from green-  
10 house gas emission sources, with the exception of agricultural emissions  
11 from livestock.

12 c. Reflect, in substantial part, the findings of the scoping plan  
13 prepared pursuant to section 75-0103 of this article.

14 d. Include measures to reduce emissions from greenhouse gas emission  
15 sources that have a cumulatively significant impact on statewide green-  
16 house gas emissions, such as internal combustion vehicles that burn  
17 gasoline or diesel fuel and boilers or furnaces that burn oil or natural  
18 gas.

19 3. In promulgating these regulations, the department shall:

20 a. Design and implement all regulations in a manner that seeks to be  
21 equitable, to minimize costs and to maximize the total benefits to New  
22 York, and encourages early action to reduce greenhouse gas emissions.

23 b. Ensure that greenhouse gas emissions reductions achieved are real,  
24 permanent, quantifiable, verifiable, and enforceable by the department.

25 c. Ensure that activities undertaken to comply with the regulations do  
26 not result in a net increase in co-pollutant emissions or otherwise  
27 disproportionately burden disadvantaged communities as identified pursu-  
28 ant to section 75-0111 of this article.

29 d. Prioritize measures to maximize net reductions of greenhouse gas  
30 emissions and co-pollutants in disadvantaged communities as identified  
31 pursuant to section 75-0111 of this article and encourage early action  
32 to reduce greenhouse gas emissions and co-pollutants.

33 e. Incorporate measures to minimize leakage.

34 4. a. The department may establish an alternative compliance mechanism  
35 to be used by sources subject to greenhouse gas emissions limits to  
36 achieve net zero emissions.

37 b. The use of such mechanism shall account for not greater than  
38 fifteen percent of statewide greenhouse gas emissions estimated as a  
39 percentage of nineteen ninety emissions pursuant to section 75-0105 of  
40 this article, provided that the use of this mechanism must offset a  
41 quantity greater than or equal to the greenhouse gases emitted. The  
42 offset of greenhouse gas emissions shall not result in disadvantaged  
43 communities having to bear a disproportionate burden of environmental  
44 impacts.

45 c. The department shall verify that greenhouse gas emission offset  
46 projects authorized pursuant to this subdivision represent greenhouse  
47 gas equivalent emission reductions or carbon sequestration that are  
48 real, additional, verifiable, enforceable, and permanent.

49 d. Any greenhouse gas emissions offset project shall comply with all  
50 of the requirements of this subdivision.

51 e. The department shall establish an application process that, at a  
52 minimum, requires a source to sufficiently demonstrate that compliance  
53 with the greenhouse gas emissions limits is not technologically feasi-  
54 ble, and that the source has reduced emissions to the maximum extent  
55 practicable. After an initial four year period, the department shall  
56 review the participation of a source in this mechanism, and make a

1 determination as to the source's continued need for an alternative  
2 compliance, considering the extent to which the source is utilizing the  
3 best available technology standards.

4 f. Sources in the electric generation sector shall not be eligible to  
5 participate in such mechanism.

6 g. The following types of projects shall be prohibited:

7 i. waste-to-energy projects, including incineration and pyrolysis; and

8 ii. biofuels used for energy or transportation purposes.

9 h. Any greenhouse gas emission offset project approved by the depart-  
10 ment shall:

11 i. be designed to provide a discernable benefit to the environment  
12 rather than to the source;

13 ii. be located in the same county, and within twenty-five linear  
14 miles, of the source of emissions, to the extent practicable;

15 iii. enhance the conditions of the ecosystem or geographic area  
16 adversely affected; and

17 iv. substantially reduce or prevent the generation or release of  
18 pollutants through source reduction.

19 i. A greenhouse gas emission offset project shall not be approved by  
20 the department where the project:

21 i. is required pursuant to any local, state or federal law, regu-  
22 lation, or administrative or judicial order;

23 ii. contains measures which the source would have undertaken anyway  
24 within the next five years;

25 iii. contributes to environmental research at a college or university;  
26 or

27 iv. is a study or assessment without a commitment to implement the  
28 results.

29 j. In approving greenhouse gas emission offset projects, the depart-  
30 ment shall prioritize projects that maximize public health and environ-  
31 mental benefits within the state and especially localized benefits in  
32 disadvantaged communities, defined pursuant to section 75-0111 of this  
33 article.

34 k. The department shall establish a public registry of greenhouse gas  
35 emission offset projects approved pursuant to this subdivision.

36 l. Prior to the inclusion of any alternative compliance mechanism in  
37 the regulations, to the extent feasible and in the furtherance of  
38 achieving the statewide greenhouse gas emissions limit, the department  
39 shall do all of the following:

40 i. consult with the council, the environmental justice advisory group,  
41 and the climate justice working group;

42 ii. consider the potential for direct, indirect, and cumulative emis-  
43 sion impacts from this mechanism, including localized impacts in disad-  
44 vantaged communities as identified pursuant to section 75-0111 of this  
45 article;

46 iii. design the alternative compliance mechanism to prevent any  
47 increase in the emissions of co-pollutants; and

48 iv. maximize additional environmental, public health, and economic  
49 benefits for the state and for disadvantaged communities identified  
50 pursuant to section 75-0111 of this article, as appropriate.

51 § 75-0111. Climate justice working group.

52 1. There is hereby created within the department, no later than six  
53 months after the effective date of this article, a "climate justice  
54 working group". Such working group will be comprised of representatives  
55 from: environmental justice communities, the department, the department



1 of health, the New York state energy and research development authority,  
2 and the department of labor.

3 a. Environmental justice community representatives shall be members of  
4 communities of color, low-income communities, and communities bearing  
5 disproportionate pollution and climate change burdens, or shall be  
6 representatives of community-based organizations with experience and a  
7 history of advocacy on environmental justice issues, and shall include  
8 at least three representatives from New York city communities, three  
9 representatives from rural communities, and three representatives from  
10 upstate urban communities.

11 b. The working group, in consultation with the department, the depart-  
12 ments of health and labor, the New York state energy and research devel-  
13 opment authority, and the environmental justice advisory group, will  
14 establish criteria to identify disadvantaged communities for the  
15 purposes of co-pollutant reductions, greenhouse gas emissions  
16 reductions, regulatory impact statements, and the allocation of invest-  
17 ments related to this article.

18 c. Disadvantaged communities shall be identified based on geographic,  
19 public health, environmental hazard, and socioeconomic criteria, which  
20 shall include but are not limited to:

21 i. areas burdened by cumulative environmental pollution and other  
22 hazards that can lead to negative public health effects;

23 ii. areas with concentrations of people that are of low income, high  
24 unemployment, high rent burden, low levels of home ownership, low levels  
25 of educational attainment, or members of groups that have historically  
26 experienced discrimination on the basis of race or ethnicity; and

27 iii. areas vulnerable to the impacts of climate change such as flood-  
28 ing, storm surges, and urban heat island effects.

29 2. Before finalizing the criteria for identifying disadvantaged commu-  
30 nities and identifying disadvantaged communities pursuant to subdivision  
31 one of this section, the department shall publish draft criteria and a  
32 draft list of disadvantaged communities and make such information avail-  
33 able on its website.

34 a. The council shall hold at least six regional public hearings on the  
35 draft criteria and the draft list of disadvantaged communities, includ-  
36 ing three meetings in the upstate region and three meetings in the down-  
37 state region, and shall allow at least one hundred twenty days for the  
38 submission of public comment.

39 b. The council shall also ensure that there are meaningful opportu-  
40 nities for public comment for all segments of the population that will  
41 be impacted by the criteria, including persons living in areas that may  
42 be identified as disadvantaged communities under the proposed criteria.

43 3. The group will meet no less than annually to review the criteria  
44 and methods used to identify disadvantaged communities and may modify  
45 such methods to incorporate new data and scientific findings. The  
46 climate justice working group shall review identities of disadvantaged  
47 communities and modify such identities as needed.

48 § 75-0113. Value of carbon.

49 1. No later than one year after the effective date of this article,  
50 the department, in consultation with the New York state energy research  
51 and development authority, shall establish a social cost of carbon for  
52 use by state agencies, expressed in terms of dollars per ton of carbon  
53 dioxide equivalent.

54 2. The social cost of carbon shall serve as a monetary estimate of the  
55 value of not emitting a ton of greenhouse gas emissions. As determined  
56 by the department, the social cost of carbon may be based on marginal

1 greenhouse gas abatement costs or on the global economic, environmental,  
2 and social impacts of emitting a marginal ton of greenhouse gas emis-  
3 sions into the atmosphere, utilizing a range of appropriate discount  
4 rates, including a rate of zero.

5 3. In developing the social cost of carbon, the department shall  
6 consider prior or existing estimates of the social cost of carbon issued  
7 or adopted by the federal government, appropriate international bodies,  
8 or other appropriate and reputable scientific organizations.

9 § 75-0115. Community air monitoring program.

10 1. For purposes of this section, the following definitions and related  
11 provisions shall apply:

12 a. "Community air monitoring system" means advanced sensing monitoring  
13 equipment that measures and records air pollutant concentrations in the  
14 ambient air at or near sensitive receptor locations in disadvantaged  
15 communities.

16 b. "Disadvantaged community" means a community identified as disadvan-  
17 tagged pursuant to the criteria set forth in section 75-0111 of this  
18 article.

19 c. "Sensitive receptors" includes hospitals, schools and day care  
20 centers, and such other locations as the department may determine.

21 2. a. On or before October first, two thousand twenty-two, the depart-  
22 ment shall prepare, in consultation with the climate justice working  
23 group, a program demonstrating community air monitoring systems.

24 b. The program shall identify the highest priority locations in disad-  
25 vantaged communities around the state to deploy community air monitoring  
26 systems, which shall be communities with potentially high exposure  
27 burdens for toxic air contaminants and criteria air pollutants. The  
28 program shall be undertaken in no less than four communities statewide  
29 with regional consideration.

30 c. The department shall publish the air quality data produced by the  
31 community air monitoring systems deployed pursuant to this section on  
32 its website as it becomes available.

33 3. On or before June first, two thousand twenty-four, the department  
34 shall prepare, in consultation with the climate justice working group, a  
35 strategy to reduce emissions of toxic air contaminants and criteria air  
36 pollutants in disadvantaged communities affected by a high cumulative  
37 exposure burden. The strategy shall include criteria for the development  
38 of community emission reduction programs. The criteria presented in the  
39 strategy shall include, but are not limited to, the following:

40 a. an assessment and identification of communities with high cumula-  
41 tive exposure burdens for toxic air contaminants and criteria air pollu-  
42 tants.

43 b. a methodology for assessing and identifying the contributing sourc-  
44 es or categories of sources, including, but not limited to, stationary  
45 and mobile sources, and an estimate of their relative contribution to  
46 elevated exposure to air pollution in impacted communities identified  
47 pursuant to paragraph a of this subdivision.

48 c. an assessment of the existing and available measures for reducing  
49 emissions from the contributing sources or categories of sources identi-  
50 fied pursuant to paragraph b of this subdivision.

51 4. a. Based on the assessment and identification of disadvantaged  
52 communities with high cumulative exposure burdens for toxic air contam-  
53 inants and criteria air pollutants completed pursuant to paragraph a of  
54 subdivision three of this section, the department shall select disadvan-  
55 tagged communities around the state for preparation of community emis-

1 sions reduction programs. The department may select additional locations  
2 annually thereafter, as appropriate.

3 b. The department shall have the authority to adopt regulations estab-  
4 lishing programs to achieve emissions reductions for the locations  
5 selected using the most cost-effective measures identified pursuant to  
6 paragraph c of subdivision three of this section.

7 § 75-0117. Investment of funds.

8 State agencies, authorities and entities, in consultation with the  
9 environmental justice working group and the climate action council,  
10 shall, to the extent practicable, invest or direct available and rele-  
11 vant programmatic resources in a manner designed to achieve a goal for  
12 disadvantaged communities to receive forty percent of overall benefits  
13 of spending on clean energy and energy efficiency programs, projects or  
14 investments in the areas of housing, workforce development, pollution  
15 reduction, low income energy assistance, energy, transportation and  
16 economic development, provided however, that disadvantaged communities  
17 shall receive no less than thirty-five percent of the overall benefits  
18 of spending on clean energy and energy efficiency programs, projects or  
19 investments and provided further that this section shall not alter funds  
20 already contracted or committed as of the effective date of this  
21 section.

22 § 75-0119. Implementation reporting.

23 1. The department in consultation with the council shall, not less  
24 than every four years, publish a report which shall include recommenda-  
25 tions regarding the implementation of greenhouse gas reduction measures.

26 2. The report shall, at minimum, include:

27 a. Whether the state is on track to meet the statewide greenhouse gas  
28 emissions limits established in section 75-0107 of this article.

29 b. An assessment of existing regulations and whether modifications are  
30 needed to ensure fulfillment of the statewide greenhouse gas emissions  
31 limits.

32 c. An overview of social benefits from the regulations or other meas-  
33 ures, including reductions in greenhouse gas emissions and copollutants,  
34 diversification of energy sources, and other benefits to the economy,  
35 environment, and public health.

36 d. An overview of compliance costs for regulated entities and for the  
37 department and other state agencies.

38 e. Whether regulations or other greenhouse gas reduction measures  
39 undertaken are equitable, minimize costs and maximize the total benefits  
40 to the state, and encourage early action.

41 f. Whether activities undertaken to comply with state regulations  
42 disproportionately burden disadvantaged communities as identified pursu-  
43 ant to section 75-0111 of this article.

44 g. An assessment of local benefits and impacts of any reductions in  
45 co-pollutants related to reductions in statewide and local greenhouse  
46 gas emissions.

47 h. An assessment of disadvantaged communities' access to or community  
48 ownership of the services and commodities identified in section six of  
49 the chapter of the laws of two thousand nineteen which added this arti-  
50 cle.

51 i. Whether entities that have voluntarily reduced their greenhouse gas  
52 emissions prior to the implementation of this article receive appropri-  
53 ate credit for early voluntary reductions.

54 j. Recommendations for future regulatory and policy action.

1 3. In preparing this report, the department shall, at a minimum,  
2 consult with the council, and the climate justice working group estab-  
3 lished in section 75-0111 of this article.

4 4. The report shall be published and posted on the department's  
5 website.

6 § 3. Paragraphs f and g of subdivision 1 of section 54-1523 of the  
7 environmental conservation law, as added by section 5 of part U of chap-  
8 ter 58 of the laws of 2016, are amended and a new paragraph h is added  
9 to read as follows:

10 f. enabling communities to become certified under the climate smart  
11 communities program, including by developing natural resources invento-  
12 ries, right sizing of municipal fleets and developing climate adaptation  
13 strategies; ~~and~~

14 g. climate change adaptation planning and supporting studies, includ-  
15 ing but not limited to vulnerability assessment and risk analysis of  
16 municipal drinking water, wastewater, and transportation infrastruc-  
17 ture~~[-]~~; and

18 h. to establish and implement easily-replicated renewable energy  
19 projects, including solar arrays, heat pumps and wind turbines in public  
20 low-income housing in suburban, urban and rural areas.

21 § 4. The public service law is amended by adding a new section 66-p to  
22 read as follows:

23 § 66-p. Establishment of a renewable energy program. 1. As used in  
24 this section:

25 (a) "jurisdictional load serving entity" means any entity subject to  
26 the jurisdiction of the commission that secures energy to serve the  
27 electrical energy requirements of end-use customers in New York state;

28 (b) "renewable energy systems" means systems that generate electricity  
29 or thermal energy through use of the following technologies: solar ther-  
30 mal, photovoltaics, on land and offshore wind, hydroelectric, geothermal  
31 electric, geothermal ground source heat, tidal energy, wave energy,  
32 ocean thermal, and fuel cells which do not utilize a fossil fuel  
33 resource in the process of generating electricity.

34 2. No later than June thirtieth, two thousand twenty-one, the commis-  
35 sion shall establish a program to require that: (a) a minimum of seventy  
36 percent of the state wide electric generation secured by jurisdictional  
37 load serving entities to meet the electrical energy requirements of all  
38 end-use customers in New York state in two thousand thirty shall be  
39 generated by renewable energy systems; and (b) that by the year two  
40 thousand forty (collectively, the "targets") the statewide electrical  
41 demand system will be zero emissions. In establishing such program, the  
42 commission shall consider and where applicable formulate the program to  
43 address impacts of the program on safe and adequate electric service in  
44 the state under reasonably foreseeable conditions. The commission may,  
45 in designing the program, modify the obligations of jurisdictional load  
46 serving entities and/or the targets upon consideration of the factors  
47 described in this subdivision.

48 3. No later than July first, two thousand twenty-four and every two  
49 years thereafter, the commission shall, after notice and provision for  
50 the opportunity to comment, issue a comprehensive review of the program  
51 established pursuant to this section. The commission shall determine,  
52 among other matters: (a) progress in meeting the overall targets for  
53 deployment of renewable energy systems and zero emission sources,  
54 including factors that will or are likely to frustrate progress toward  
55 the targets; (b) distribution of systems by size and load zone; and (c)  
56 annual funding commitments and expenditures.

1 4. The commission may temporarily suspend or modify the obligations  
2 under such program provided that the commission, after conducting a  
3 hearing as provided in section twenty of this chapter, makes a finding  
4 that the program impedes the provision of safe and adequate electric  
5 service; the program is likely to impair existing obligations and agree-  
6 ments; and/or that there is a significant increase in arrears or service  
7 disconnections that the commission determines is related to the program.

8 5. No later than July first, two thousand twenty-four, the commission  
9 shall establish programs to require the procurement by the state's load  
10 serving entities of at least nine gigawatts of offshore wind electricity  
11 generation by two thousand thirty-five and six gigawatts of photovoltaic  
12 solar generation by two thousand twenty-five, and to support three giga-  
13 watts of statewide energy storage capacity by two thousand thirty.

14 6. In any proceeding commenced by the commission with a goal of  
15 achieving one hundred eighty-five trillion British thermal units of  
16 end-use energy savings below the two thousand twenty-five energy-use  
17 forecast, the commission will include mechanisms to ensure that, where  
18 practicable, at least twenty percent of investments in residential ener-  
19 gy efficiency, including multi-family housing, can be invested in a  
20 manner which will benefit disadvantaged communities, as defined in arti-  
21 cle seventy-five of the environmental conservation law, including low to  
22 moderate income consumers.

23 7. In the implementation of this section, the commission shall design  
24 programs in a manner to provide substantial benefits for disadvantaged  
25 communities, as defined in article seventy-five of the environmental  
26 conservation law, including low to moderate income consumers, at a  
27 reasonable cost while ensuring safe and reliable electric service.  
28 Specifically, the commission shall:

29 (a) To the extent practicable, specify that a minimum percentage of  
30 energy storage projects should deliver clean energy benefits into NYISO  
31 zones that serve disadvantaged communities, as defined in article seven-  
32 ty-five of the environmental conservation law, including low to moderate  
33 income consumers, and that energy storage projects be deployed to reduce  
34 the usage of combustion-powered peaking facilities located in or near  
35 disadvantaged communities;

36 (b) In pursuing the state's solar deployment goals, the New York state  
37 energy research and development authority shall consider enhanced incen-  
38 tive payments for solar and community distributed generation projects,  
39 focusing in particular but not limited to those serving disadvantaged  
40 communities, as defined in article seventy-five of the environmental  
41 conservation law, which result in energy cost savings or demonstrate  
42 community ownership models; and,

43 (c) In the allocation of ratepayer funds for clean energy, direct the  
44 New York state energy research and development authority and investor  
45 owned utilities to develop and report metrics for energy savings and  
46 clean energy market penetration in the low and moderate income market  
47 and in disadvantaged communities, as defined in article seventy-five of  
48 the environmental conservation law, and post such information on the  
49 authority's website.

50 § 5. This act shall be subject to current prevailing wage law.

51 § 6. Report on barriers to, and opportunities for, community ownership  
52 of services and commodities in disadvantaged communities. 1. On or  
53 before two years of the effective date of this act, the department of  
54 environmental conservation, in cooperation with the New York state ener-  
55 gy research and development authority and the New York power authority,  
56 with input from relevant state agencies, the environmental justice advi-

1 sory group as defined in section 75-0101 of the environmental conserva-  
2 tion law, the climate justice working group as defined in section  
3 75-0111 of the environmental conservation law and Climate Action Council  
4 established in article 75 of the environmental conservation law, and  
5 following at least two public hearings, shall prepare a report on barriers  
6 to, and opportunities for, access to or community ownership of the  
7 following services and commodities in disadvantaged communities as iden-  
8 tified in article 75 of the environmental conservation law:

9 a. Distributed renewable energy generation.

10 b. Energy efficiency and weatherization investments.

11 c. Zero-emission and low-emission transportation options.

12 d. Adaptation measures to improve the resilience of homes and local  
13 infrastructure to the impacts of climate change including but not limit-  
14 ed to microgrids.

15 e. Other services and infrastructure that can reduce the risks associ-  
16 ated with climate-related hazards, including but not limited to:

17 i. Shelters and cool rooms during extreme heat events;

18 ii. Shelters during flooding events; and

19 iii. Medical treatment for asthma and other conditions that could be  
20 exacerbated by climate-related events.

21 2. The report, which shall be submitted to the governor, the speaker  
22 of the assembly and the temporary president of the senate and posted on  
23 the department of environmental conservation website, shall include  
24 recommendations on how to increase access to the services and commod-  
25 ities.

26 3. The department of environmental conservation shall amend the scop-  
27 ing plan for statewide greenhouse gas emissions reductions in accordance  
28 with the recommendations included in the report.

29 § 7. Climate change actions by state agencies. 1. All state agencies  
30 shall assess and implement strategies to reduce their greenhouse gas  
31 emissions.

32 2. In considering and issuing permits, licenses, and other administra-  
33 tive approvals and decisions, including but not limited to the execution  
34 of grants, loans, and contracts, all state agencies, offices, authori-  
35 ties, and divisions shall consider whether such decisions are inconsis-  
36 tent with or will interfere with the attainment of the statewide green-  
37 house gas emissions limits established in article 75 of the  
38 environmental conservation law. Where such decisions are deemed to be  
39 inconsistent with or will interfere with the attainment of the statewide  
40 greenhouse gas emissions limits, each agency, office, authority, or  
41 division shall provide a detailed statement of justification as to why  
42 such limits/criteria may not be met, and identify alternatives or green-  
43 house gas mitigation measures to be required where such project is  
44 located.

45 3. In considering and issuing permits, licenses, and other administra-  
46 tive approvals and decisions, including but not limited to the execution  
47 of grants, loans, and contracts, pursuant to article 75 of the environ-  
48 mental conservation law, all state agencies, offices, authorities, and  
49 divisions shall not disproportionately burden disadvantaged communities  
50 as identified pursuant to subdivision 5 of section 75-0101 of the envi-  
51 ronmental conservation law. All state agencies, offices, authorities,  
52 and divisions shall also prioritize reductions of greenhouse gas emis-  
53 sions and co-pollutants in disadvantaged communities as identified  
54 pursuant to such subdivision 5 of section 75-0101 of the environmental  
55 conservation law.

1 § 8. Authorization for other state agencies to promulgate greenhouse  
2 gas emissions regulations. 1. The public service commission, the New  
3 York state energy research and development authority, the department of  
4 health, the department of transportation, the department of state, the  
5 department of economic development, the department of agriculture and  
6 markets, the department of financial services, the office of general  
7 services, the division of housing and community renewal, the public  
8 utility authorities established pursuant to titles 1, 1-A, 1-B, 11,  
9 11-A, 11-B, 11-C and 11-D of article 5 of the public authorities law and  
10 any other state agency shall promulgate regulations to contribute to  
11 achieving the statewide greenhouse gas emissions limits established in  
12 article 75 of the environmental conservation law. Provided, however, any  
13 such regulations shall not limit the department of environmental conser-  
14 vation's authority to regulate and control greenhouse gas emissions  
15 pursuant to article 75 of the environmental conservation law.

16 § 9. Chapter 355 of the laws of 2014, constituting the community risk  
17 and resiliency act, is amended by adding two new sections 17-a and 17-b  
18 to read as follows:

19 § 17-a. The department of environmental conservation shall take  
20 actions to promote adaptation and resilience, including:

21 (a) actions to help state agencies and other entities assess the  
22 reasonably foreseeable risks of climate change on any proposed projects,  
23 taking into account issues such as: sea level rise, tropical and extra-  
24 tropical cyclones, storm surges, flooding, wind, changes in average and  
25 peak temperatures, changes in average and peak precipitation, public  
26 health impacts, and impacts on species and other natural resources.

27 (b) identifying the most significant climate-related risks, taking  
28 into account the probability of occurrence, the magnitude of the poten-  
29 tial harm, and the uncertainty of the risk.

30 (c) measures that could mitigate significant climate-related risks, as  
31 well as a cost-benefit analysis and implementation of such measures.

32 § 17-b. Major permits for the regulatory programs of subdivision three  
33 of section 70-0107 of the environmental conservation law shall require  
34 applicants to demonstrate that future physical climate risk has been  
35 considered. In reviewing such information the department may require the  
36 applicant to mitigate significant risks to public infrastructure and/or  
37 services, private property not owned by the applicant, adverse impacts  
38 on disadvantaged communities, and/or natural resources in the vicinity  
39 of the project.

40 § 10. Nothing in this act shall limit the existing authority of a  
41 state entity to adopt and implement greenhouse gas emissions reduction  
42 measures.

43 § 11. Nothing in this act shall relieve any person, entity, or public  
44 agency of compliance with other applicable federal, state, or local laws  
45 or regulations, including state air and water quality requirements, and  
46 other requirements for protecting public health or the environment.

47 § 12. Review under this act may be had in a proceeding under article  
48 78 of the civil practice law and rules at the instance of any person  
49 aggrieved.

50 § 13. Severability. If any word, phrase, clause, sentence, paragraph,  
51 section, or part of this act shall be adjudged by any court of competent  
52 jurisdiction to be invalid, such judgement shall not affect, impair, or  
53 invalidate the remainder thereof, but shall be confined in its operation  
54 to the word, phrase, clause, sentence, paragraph, section, or part ther-  
55 eof directly involved in the controversy in which such judgement shall  
56 have been rendered.

1 § 14. This act shall take effect on the same date and in the same  
2 manner as a chapter of the laws of 2019, amending the environmental  
3 conservation law, relating to establishing a permanent environmental  
4 justice advisory group and an environmental justice interagency coordi-  
5 nating council, as proposed in legislative bills numbers S. 2385 and A.  
6 1564, takes effect; provided further, the provisions of section 75-0115  
7 of the environmental conservation law as added by section two of this  
8 act shall take effect October 1, 2022.



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This act summary is provided for the convenience of the public and members of the General Assembly. It is intended to provide a general summary of the act and may not be exhaustive. It has been prepared by the staff of the Office of Legislative Counsel without input from members of the General Assembly. It is not intended to aid in the interpretation of legislation or to serve as a source of legislative intent.

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**Act No. 154 (S.148). Conservation and development; government; environmental justice**

**An act relating to environmental justice in Vermont**

This act establishes an environmental justice policy for the State of Vermont and requires the State agencies to incorporate environmental justice into their work, rules, and procedures. It establishes the Environmental Justice Advisory Council and the Interagency Environmental Justice Committee to advise the State on environmental justice issues. It also requires the creation of an environmental justice mapping tool.

Effective Date: May 31, 2022

**No. 154. An act relating to environmental justice in Vermont.**

(S.148)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. FINDINGS

The General Assembly finds that:

(1) According to American Journal of Public Health studies published in 2014 and 2018 and affirmed by decades of research, Black, Indigenous, and Persons of Color (BIPOC) and individuals with low income are disproportionately exposed to environmental hazards and unsafe housing, facing higher levels of air and water pollution, mold, lead, and pests.

(2) The cumulative impacts of environmental harms disproportionately and adversely impact the health of BIPOC and communities with low income, with climate change functioning as a threat multiplier. These disproportionate adverse impacts are exacerbated by lack of access to affordable energy, healthy food, green spaces, and other environmental benefits.

(3) Since 1994, Executive Order 12898 has required federal agencies to make achieving environmental justice part of their mission by identifying and addressing disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and populations with low incomes in the United States.

(4) According to the Centers for Disease Control and Prevention, 30 percent of Vermont towns with high town household poverty have limited

access to grocery stores. In addition, a study conducted at the University of Vermont showed that in Vermont, BIPOC individuals were twice as likely to have trouble affording fresh food and to go hungry in a month than white individuals.

(5) Inadequate transportation impedes job access, narrowing the scope of jobs available to individuals with low income and potentially impacting job performance.

(6) In 2020, the Center for American Progress found that 76 percent of BIPOC individuals in Vermont live in “nature deprived” census tracts with a higher proportion of natural areas lost to human activities than the Vermont median. In contrast, 27 percent of white individuals live in these areas.

(7) The U.S. Centers for Disease Control and Prevention states that systemic health and social inequities disproportionately increases the risk of racial and ethnic minority groups becoming infected by and dying from COVID-19.

(8) According to the Vermont Department of Health, inequities in access to and quality of health care, employment, and housing have contributed to disproportionately high rates of COVID-19 among BIPOC Vermonters.

(9) An analysis by University of Vermont researchers found that mobile homes are more likely than permanent structures to be located in a flood hazard area. During Tropical Storm Irene, mobile parks and over 561 mobile homes in Vermont were damaged or destroyed. Mobile homes make up 7.2

percent of all housing units in Vermont and were approximately 40 percent of sites affected by Tropical Storm Irene.

(10) A University of Vermont study reports that BIPOC individuals were seven times more likely to have gone without heat in the past year, over two times more likely to have trouble affording electricity, and seven times less likely to own a solar panel than white Vermonters.

(11) The U.S. Environmental Protection Agency recognized Vermont's deficiencies in addressing environmental justice concerns related to legacy mining and mobile home park habitability, providing grants for these projects in 1998 and 2005.

(12) Vermont State agencies receiving federal funds are subject to the antidiscrimination requirements of Title VI of the Civil Rights Act of 1964.

(13) In response to the documented inadequacy of state and federal environmental and land use laws to protect vulnerable communities, increasing numbers of states have adopted formal environmental justice laws and policies.

(14) At least 17 states have developed mapping tools to identify environmentally overburdened communities and environmental health disparities.

(15) The State of Vermont does not currently have a State-managed mapping tool that clearly identifies environmentally overburdened communities.

(16) The 1991 Principles of Environmental Justice adopted by The First National People of Color Environmental Leadership Summit demand the right of all individuals to participate as equal partners at every level of decision making, including needs assessment, planning, implementation, enforcement, and evaluation.

(17) Article VII of the Vermont Constitution establishes the government as a vehicle for the common benefit, protection, and security of Vermonters and not for the particular emolument or advantage of any single set of persons who are only a part of that community. This, coupled with Article I's guarantee of equal rights to enjoying life, liberty, and safety, and Article IV's assurance of timely justice for all, encourages political officials to identify how particular communities may be unequally burdened or receive unequal protection under the law due to race, income, or geographic location.

(18) Lack of a clear environmental justice policy has resulted in a piecemeal approach to understanding and addressing environmental justice in Vermont and creates a barrier to establishing clear definitions, metrics, and strategies to ensure meaningful engagement and more equitable distribution of environmental benefits and burdens.

(19) It is the State of Vermont's responsibility to pursue environmental justice for its residents and to ensure that its agencies do not contribute to unfair distribution of environmental benefits to or environmental burdens on low-income, limited-English proficient, and BIPOC communities.

Sec. 2. 3 V.S.A. chapter 72 is added to read:

CHAPTER 72. ENVIRONMENTAL JUSTICE

§ 6001. PURPOSE

The purpose of this chapter is to identify, reduce, and eliminate environmental health disparities to improve the health and well-being of all Vermont residents.

§ 6002. DEFINITIONS

As used in this chapter:

(1) “Environmental benefits” means the assets and services that enhance the capability of communities and individuals to function and flourish in society. Examples of environmental benefits include access to a healthy environment and clean natural resources, including air, water, land, green spaces, constructed playgrounds, and other outdoor recreational facilities and venues; affordable clean renewable energy sources; public transportation; fulfilling and dignified green jobs; healthy homes and buildings; health care; nutritious food; Indigenous food and cultural resources; environmental enforcement; and training and funding disbursed or administered by governmental agencies.

(2) “Environmental burdens” means any significant impact to clean air, water, and land, including any destruction, damage, or impairment of natural resources resulting from intentional or reasonably foreseeable causes. Examples of environmental burdens include climate change impacts; air and

water pollution; improper sewage disposal; improper handling of solid wastes and other noxious substances; excessive noise; activities that limit access to green spaces, nutritious food, Indigenous food or cultural resources, or constructed outdoor playgrounds and other recreational facilities and venues; inadequate remediation of pollution; reduction of groundwater levels; increased flooding or stormwater flows; home and building health hazards, including lead paint, lead plumbing, asbestos, and mold; and damage to inland waterways and waterbodies, wetlands, forests, green spaces, or constructed playgrounds or other outdoor recreational facilities and venues from private, industrial, commercial, and government operations or other activities that contaminate or alter the quality of the environment and pose a risk to public health.

(3) “Environmental justice” means all individuals are afforded equitable access to and distribution of environmental benefits; equitable distribution of environmental burdens; and fair and equitable treatment and meaningful participation in decision-making processes, including the development, implementation, and enforcement of environmental laws, regulations, and policies. Environmental justice recognizes the particular needs of individuals of every race, color, income, class, ability status, gender identity, sexual orientation, national origin, ethnicity or ancestry, religious belief, or English language proficiency level. Environmental justice redresses structural and institutional racism, colonialism, and other systems of oppression that result in

the marginalization, degradation, disinvestment, and neglect of Black, Indigenous, and Persons of Color. Environmental justice requires providing a proportional amount of resources for community revitalization, ecological restoration, resilience planning, and a just recovery to communities most affected by environmental burdens and natural disasters.

(4) “Environmental justice focus population” means any census block group in which:

(A) the annual median household income is not more than 80 percent of the State median household income;

(B) Persons of Color and Indigenous Peoples comprise at least six percent or more of the population; or

(C) at least one percent or more of households have limited English proficiency.

(5) “Limited English proficiency” means that a household does not have a member 14 years or older who speaks English “very well” as defined by the U.S. Census Bureau.

(6) “Meaningful participation” means that all individuals have the opportunity to participate in energy, climate change, and environmental decision making. Examples include needs assessments, planning, implementation, permitting, compliance and enforcement, and evaluation. Meaningful participation also integrates diverse knowledge systems, histories, traditions, languages, and cultures of Indigenous communities in decision-



making processes. It requires that communities are enabled and administratively assisted to participate fully through education and training. Meaningful participation requires the State to operate in a transparent manner with regard to opportunities for community input and also encourages the development of environmental, energy, and climate change stewardship.

§ 6003. ENVIRONMENTAL JUSTICE STATE POLICY

It is the policy of the State of Vermont that no segment of the population of the State should, because of its racial, cultural, or economic makeup, bear a disproportionate share of environmental burdens or be denied an equitable share of environmental benefits. It is further the policy of the State of Vermont to provide the opportunity for the meaningful participation of all individuals, with particular attention to environmental justice focus populations, in the development, implementation, or enforcement of any law, regulation, or policy.

§ 6004. IMPLEMENTATION OF STATE POLICY

(a) As used in this chapter, “covered agencies” means the following State agencies, departments, and bodies: the Agencies of Natural Resources, of Transportation, of Commerce and Community Development, of Agriculture, Food and Markets, and of Education; the Public Utility Commission; the Natural Resources Board; and the Departments of Health, of Public Safety, and of Public Service.

(b) The covered agencies shall consider cumulative environmental burdens, as defined by rule pursuant to subsection 6005(a) of this title, and access to environmental benefits when making decisions about the environment, energy, climate, and public health projects; facilities and infrastructure; and associated funding.

(c) Each of the covered agencies shall create and adopt on or before July 1, 2025 a community engagement plan that describes how the agency will engage with environmental justice focus populations as it evaluates new and existing activities and programs. Community engagement plans shall align with the core principles developed by the Interagency Environmental Justice Committee pursuant to subdivision 6006(c)(2)(B) of this title and take into consideration the recommendations of the Environmental Justice Advisory Council pursuant to subdivision 6006(c)(1)(B) of this title. Each plan shall describe how the agency plans to provide meaningful participation in compliance with Title VI of the Civil Rights Act of 1964.

(d) The covered agencies shall submit an annual summary beginning on January 15, 2024 and annually thereafter to the Environmental Justice Advisory Council, detailing all complaints alleging environmental justice issues or Title VI violations and any agency action taken to resolve the complaints. The Advisory Council shall provide any recommendations concerning those reports within 60 days after receipt of the complaint summaries. Agencies shall consider the recommendations of the Advisory

Council pursuant to subdivision 6006(c)(1)(E) of this title and substantively respond in writing if an agency chooses not to implement any of the recommendations, within 90 days after receipt of the recommendations.

(e) The Agency of Natural Resources, in consultation with the Environmental Justice Advisory Council and the Interagency Environmental Justice Committee, shall review the definitions contained in section 6002 of this title at least every five years and recommend revisions to the General Assembly to ensure the definition achieves the Environmental Justice State Policy.

(f) The Agency of Natural Resources, in consultation with the Interagency Environmental Justice Committee and the Environmental Justice Advisory Council, shall issue guidance on how the covered agencies shall determine which investments provide environmental benefits to environmental justice focus populations on or before September 15, 2023. A draft version of the guidance shall be released for a 40-day public comment period before being finalized.

(g)(1) On or before February 15, 2024, the covered agencies shall, in accordance with the guidance document developed by the Agency of Natural Resources pursuant to subsection (f) of this section, review the past three years and generate baseline spending reports that include:

(A) where investments were made, if any, and which geographic areas, at the municipal level and census block group, where practicable, received environmental benefits from those investments; and

(B) a description and quantification of the environmental benefits as an outcome of the investment.

(2) The covered agencies shall publicly post the baseline spending reports on their respective websites.

(h) On or before July 1, 2024, it shall be the goal of the covered agencies to direct investments proportionately in environmental justice focus populations.

(i)(1) Beginning on January 15, 2026, and annually thereafter, the covered agencies shall either integrate the following information into existing annual spending reports or issue annual spending reports that include:

(A) where investments were made and which geographic areas, at the municipal level and census block group, where practicable, received environmental benefits from those investments; and

(B) the percentage of overall environmental benefits from those investments provided to environmental justice focus populations.

(2) The covered agencies shall publicly post the annual spending reports on their respective websites.

(j) Beginning on January 15, 2025, the covered agencies shall each issue and publicly post an annual report summarizing all actions taken to incorporate

environmental justice into its policies or determinations, rulemaking, permit proceedings, or project review.

§ 6005. RULEMAKING

(a) On or before July 1, 2025, the Agency of Natural Resources, in consultation with the Environmental Justice Advisory Council and the Interagency Environmental Justice Committee, shall adopt rules to:

(1) define cumulative environmental burdens;

(2) implement consideration of cumulative environmental burdens within the Agency of Natural Resources; and

(3) inform how the public and the covered agencies implement the consideration of cumulative environmental burdens and use the environmental justice mapping tool.

(b) On or before July 1, 2026 and as appropriate thereafter, the covered agencies, in consultation with the Environmental Justice Advisory Council, shall adopt or amend policies and procedures, plans, guidance, and rules, where applicable, to implement this chapter.

(c)(1) Prior to drafting new rules required by this chapter, agencies shall consult with the Environmental Justice Advisory Council to discuss the scope and proposed content of rules to be developed. Agencies shall also submit draft rulemaking concepts to the Advisory Council for review and comment. Any proposed rule and draft Administrative Procedure Act filing forms shall be provided to the Advisory Council not less than 45 days prior to submitting

the proposed rule or rules to the Interagency Committee on Administrative Rules (ICAR).

(2) The Advisory Council shall vote and record individual members' support or objection to any proposed rule before it is submitted to ICAR. The Advisory Council shall submit the results of their vote to both ICAR and the Legislative Committee on Administrative Rules (LCAR).

§ 6006. ENVIRONMENTAL JUSTICE ADVISORY COUNCIL AND

INTERAGENCY ENVIRONMENTAL JUSTICE COMMITTEE

(a) Advisory Council and Interagency Committee.

(1) There is created:

(A) the Environmental Justice Advisory Council (Advisory Council) to provide independent advice and recommendations to State agencies and the General Assembly on matters relating to environmental justice, including the integration of environmental justice principles into State programs, policies, regulations, legislation, and activities; and

(B) the Interagency Environmental Justice Committee (Interagency Committee) to guide and coordinate State agency implementation of the Environmental Justice State Policy and provide recommendations to the General Assembly for amending the definitions and protections set forth in this chapter.

(2) Appointments to the groups created in this subsection shall be made on or before December 15, 2022.

(3) Both the Advisory Council and the Interagency Committee shall consider and incorporate the Guiding Principles for a Just Transition developed by the Just Transitions Subcommittee of the Vermont Climate Council in their work.

(b) Meetings. The Advisory Council and Interagency Committee shall each meet not more than eight times per year, with at least four meetings occurring jointly. Meetings may be held in person, remotely, or in a hybrid format to facilitate maximum participation and shall be recorded and publicly posted on the Secretary's website

(c) Duties.

(1) The Advisory Council shall:

(A) advise State agencies on environmental justice issues and on how to incorporate environmental justice into agency procedures and decision making as required under subsection 6004(b) of this title and evaluate the potential for environmental burdens or disproportionate impacts on environmental justice focus populations as a result of State actions and the potential for environmental benefits to environmental justice focus populations;

(B) advise State agencies in the development of community engagement plans;

(C) advise State agencies on the use of the environmental justice mapping tool established pursuant to section 6008 of this title and on the

enhancement of meaningful participation, reduction of environmental burdens, and equitable distribution of environmental benefits;

(D) review and provide feedback to the relevant State agency, pursuant to subsection 6005(c) of this title, on any proposed rules for implementing this chapter; and

(E) receive and review annual State agency summaries of complaints alleging environmental justice issues, including Title VI complaints, and suggest options or alternatives to State agencies for the resolution of systemic issues raised in or by the complaints.

(2) The Interagency Committee shall:

(A) consult with the Agency of Natural Resources in the development of the guidance document required by subsection 6004(g) of this title on how to determine which investments provide environmental benefits to environmental justice focus populations; and

(B) on or before July 1, 2023, develop, in consultation with the Agency of Natural Resources and the Environmental Justice Advisory Council, a set of core principles to guide and coordinate the development of the State agency community engagement plans required under subsection 6004(d) of this title.

(3) The Advisory Council and the Interagency Committee shall jointly:

(A) consider and recommend to the General Assembly, on or before December 1, 2023, amendments to the terminology, thresholds, and criteria of



the definition of environmental justice focus populations, including whether to include populations more likely to be at higher risk for poor health outcomes in response to environmental burdens; and

(B) examine existing data and studies on environmental justice and consult with State, federal, and local agencies and affected communities regarding the impact of current statutes, regulations, and policies on the achievement of environmental justice.

(d) Membership.

(1) Advisory Council. Each member of the Advisory Council shall be well informed regarding environmental justice principles and committed to achieving environmental justice in Vermont and working collaboratively with other members of the Council. To the greatest extent practicable, Advisory Council members shall represent diversity in race, ethnicity, age, gender, urban and rural areas, and different regions of the State. The Advisory Council shall consist of the following 11 members, with a goal to have more than 50 percent residing in environmental justice focus populations:

(A) the Director of Racial Equity or designee;

(B) the following members appointed by the Committee on

Committees:

(i) one representative of municipal government;

(ii) one representative of a social justice organization;

(iii) one representative of mobile home park residents;

(C) the following members appointed by the Speaker of the House:

(i) one representative who resides in a census block group that is designated as an environmental justice focus population;

(ii) one representative of an organization working on food security issues;

(iii) one representative of immigrant communities in Vermont;

(iv) one representative of a statewide environmental organization;

(D) one representative of a State-recognized Native American Indian tribe, recommended and appointed by the Vermont Commission on Native American Affairs;

(E) the Executive Director of the Vermont Housing and Conservation Board or designee; and

(F) the Chair of the Natural Resources Conservation Council or designee.

(2) Interagency Committee. The Interagency Committee shall consist of the following 11 members:

(A) the Secretary of Education or designee;

(B) the Secretary of Natural Resources or designee;

(C) the Secretary of Transportation or designee;

(D) the Commissioner of Housing and Community Development or designee;

(E) the Secretary of Agriculture, Food and Markets or designee;

(F) the Commissioner of Health or designee;

(G) the Director of Emergency Management or designee;

(H) the Commissioner of Public Service or designee;

(I) the Director of Racial Equity or designee;

(J) the Chair of the Natural Resources Board or designee; and

(K) the Chair of the Public Utility Commission or designee.

(3) The Advisory Council and the Interagency Committee may each elect two co-chairs.

(4) After initial appointments, all appointed members of the Advisory Council shall serve six-year terms and serve until a successor is appointed. The initial terms shall be staggered so that one third of the appointed members shall serve a two-year term, another third of the appointed members shall serve a four-year term, and the remaining members shall be appointed to a six-year term.

(5) Vacancies of the Advisory Council shall be appointed in the same manner as original appointments.

(6) The Advisory Council shall have the administrative, technical, and legal assistance of the Agency of Natural Resources.

#### § 6007. ENVIRONMENTAL JUSTICE MAPPING TOOL

(a) The Agency of Natural Resources shall create and maintain the State environmental justice mapping tool. The Agency, in consultation with the Environmental Justice Advisory Council and the Interagency Environmental

Justice Committee, shall determine indices and criteria to be included in the State mapping tool to depict environmental justice focus populations and measure environmental burdens at the smallest geographic level practicable.

(b) The Agency of Natural Resources may cooperate and contract with other states or private organizations when developing the mapping tool. The mapping tool may incorporate federal environmental justice mapping tools, such as EJSCREEN, as well as existing State mapping tools such as the Vermont Social Vulnerability Index.

(c) On or before January 1, 2025, the mapping tool shall be available for use by the public as well as by the State government.

### Sec. 3. SPENDING REPORT

On or before December 15, 2025, the Agency of Natural Resources shall submit a report to the General Assembly describing whether the baseline spending reports completed pursuant to 3 V.S.A. § 6004(g) of this section indicate if any municipalities or portions of municipalities are routinely underserved with respect to environmental benefits, taking into consideration whether those areas receive, averaged across three years, a significantly lower percentage of environmental benefits from State investments as compared to other municipalities or portions of municipalities in the State. This report shall include a recommendation as to whether a statutory definition of “underserved community” and any other revisions to this chapter are necessary to best carry out the Environmental Justice State Policy.

Sec. 4. APPROPRIATIONS

(a) There is appropriated the sum of \$500,000.00 in fiscal year 2023 from the General Fund to the Agency of Natural Resources for the cost of developing the mapping tool required in 3 V.S.A. § 6007 and for conducting community outreach associated with the work of the Environmental Justice Advisory Council.

(b) There is appropriated the sum of \$250,000.00 in fiscal year 2023 from the General Fund to the Agency of Natural Resources for the following positions:

(1) one full-time Civil Rights Compliance Director; and

(2) two new full-time positions to assist in the implementation of the Environmental Justice State Policy and support the Environmental Justice Advisory Council, one to be hired after July 1, 2022 and one to be hired after December 31, 2022.

Sec. 5. EFFECTIVE DATE

This act shall take effect on passage.

Date Governor signed bill: May 31, 2022

**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**  
Memorandum

To: Members of the Community Advisory Council

From: Sharon Landers  
Interim Executive Officer/APCO

Date: September 8, 2022

Re: Revised Community Advisory Council Meeting Land Acknowledgement or Alternative Statement in Lieu of Pledge of Allegiance

RECOMMENDED ACTION

Approve the revised Land Acknowledgement or alternative Mission and Equity statement, which will replace the Pledge of Allegiance at the beginning of each Council meeting.

BACKGROUND

During the June 30, 2022 Community Advisory Council (CAC) meeting, the CAC decided to table the Land Acknowledgement item and return with a revised statement at the next CAC meeting. A group of Council members volunteered to support Council member Ruano Hernandez in revising and updating the presentation and Land Acknowledgment. The presentation includes the Land Acknowledgment (Option 1) as previously proposed with edits provided by Council member Jefferson and Council member Molina. It also includes the alternative statement (Option 2) as proposed by Council member Szutu, which is distinct from the Land Acknowledgments proposed during the June 30th meeting.

DISCUSSION

The Land Acknowledgement (Option 1) will recognize and pay respect to the Indigenous People as traditional stewards of this land and the enduring relationship that exists between Indigenous Peoples and their traditional territories. This Land Acknowledgment also recognizes the challenges People of Color and other disadvantaged communities have endured in this country as a result of white supremacy. It celebrates the brilliance and leadership of People of Color in resistance, vision, wisdom, and love.

The alternative proposal (Option 2) is a Mission and Equity statement that focuses on the commitments and aims to bring the CAC together. Should the CAC adopt this statement, its principles could serve to guide the CAC's discussion and work.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Sharon L. Landers  
Interim Executive Officer/APCO

Prepared by: Lisa Flores  
Reviewed by: Veronica Eady

ATTACHMENTS:

None

**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**  
Memorandum

To: Members of the Community Advisory Council

From: Sharon L. Landers  
Interim Executive Officer/APCO

Date: September 8, 2022

Re: Air District's Services to Address Community-Identified Air Quality Concerns –  
Overview of the Air Quality Complaint Program and Investigation Process

RECOMMENDED ACTION

None; receive and file.

BACKGROUND

The Air Quality Complaint Program is a core program of the Compliance & Enforcement Division that provides an avenue for members of the public to communicate air quality concerns to the Air District. The Air District investigates every air pollution complaint received to achieve early intervention in resolving air quality problems and identifying violations of State or Federal law or Air District regulations. Air pollution complaints are an important part of the daily work of Inspectors, and it is essential that complaint investigations are handled in an objective, efficient, and professional manner. The Air District investigates all air pollution complaints as an impartial party to determine facts and circumstances surrounding alleged air emission releases and takes appropriate enforcement actions for violations of air quality regulations. Mitigating and resolving community air pollution concerns through the Air Quality Complaint Program continues to be a top priority for the Air District.

DISCUSSION

The presentation will provide an overview of the Air Quality Complaint Program and highlight the different steps in the complaint investigation process to ensure compliance with air quality regulations. Staff will speak to the program goals and objectives, how the public may report a complaint via phone and online, and how Inspectors investigate a complaint at an alleged site/facility to determine and identify the potential source(s) of emissions. The presentation will explain the role of the Air District Inspector and the actions taken to document an alleged complaint, investigation findings and enforcement actions when non-compliance is discovered.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.



Respectfully submitted,

Sharon L. Landers  
Interim Executive Officer/APCO

Prepared by: Ying Yu and Tracy Lee  
Reviewed by: Damian Breen and Veronica Eady

ATTACHMENTS:

None

**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**  
Memorandum

To: Members of the Community Advisory Council

From: Damian Breen  
Senior Deputy Executive Officer of Operations

Date: September 8, 2022

Re: Update on Community Air Quality Concerns at the Alice Griffith Housing Development in Bayview Hunters Point, San Francisco

RECOMMENDED ACTION

None; receive and file.

BACKGROUND

Residents of the Alice Griffith Housing Development and members of the community have expressed concerns about health and quality of living impacts from air pollution emitted by facilities and construction activities near this Bayview Hunters Point neighborhood. Material handling facilities to the residents' east and past and present construction activities within and around the surrounding area contributed to particulate matter (PM) pollution including dust and PM2.5 and raised concerns of exposure to naturally occurring asbestos (NOA).

DISCUSSION

Staff will provide an update on the actions taken by Air District staff and other partnering agencies to address community air quality concerns at the Alice Griffith Housing Development in Bayview Hunters Point, San Francisco. The presentation will include a discussion of the Air District's enforcement process, an overview of the regulated facilities adjacent to the housing development, a discussion of neighborhood air quality concerns, and an overview of the actions taken to address these air quality concerns over the past year.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Damian Breen  
Senior Deputy Executive Officer of Operations

Prepared by: John Marvin

Reviewed by: Jeff Gove

ATTACHMENTS:

None

**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**  
Memorandum

To: Members of the Community Advisory Council

From: Sharon L. Landers  
Interim Executive Officer/APCO

Date: September 8, 2022

Re: Approval of Panelists to Interview the Air District's Air Pollution Control Officer Candidates

RECOMMENDED ACTION

Approve the list of Council members to participate in the Executive Officer / Air Pollution Control Officer interview panel.

BACKGROUND

The Air District Board of Directors invited the Community Advisory Council (CAC) to participate in the process to select the next Executive Officer / Air Pollution Control Officer (APCO). During the June 30, 2022 CAC meeting, the CAC created a list of desired qualifications for the APCO. During the Board's July 20, 2022 meeting, Co-Chair Ms. Washington presented the CAC's list of desired qualifications. The CAC Co-Chairs subsequently sent a letter to the Board on July 25, 2022 with the list of desired qualifications for the Board to consider including it in the APCO's job listing.

The Board also invited up to seven CAC members to serve on a panel to interview the APCO candidates. The three CAC Co-Chairs and four additional Council members self-nominated to participate in the interview panel. Interested Council members self-nominated to be interviewers by submitting a short essay.

DISCUSSION

The CAC will vote to approve the list of Council members selected to participate in the CAC panel to interview candidates for the Air District's APCO role.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None. Stipends for the work of the CAC members selected to participate in the ad-hoc committee are included in the fiscal year ending 2022 and fiscal year ending 2023 budgets.

Respectfully submitted,

Sharon L. Landers  
Interim Executive Officer/APCO

Prepared by: Lisa Flores  
Reviewed by: Veronica Eady

ATTACHMENTS:

None