



Public Participation Plans: Federal Guidance and State Examples

Environmental Justice Clinic at Vermont Law School¹

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practices in other states for incorporating the federal requirements for compliance under Title VI of the Civil Rights Act of 1964 and compares existing state public participation plans. The approaches presented in this memo are not intended to be universally applied because not all communities are the same. Rather, these approaches should be customized for application based on the priorities and characteristics of each unique community.

What Is Community Engagement?

The importance of community engagement is grounded in the understanding that governing structures were designed to elevate the rights and access to resources of some people at the expense of others and that systems cannot change without the direct involvement of the communities that bear the weight of systemic disparities.²

There are many terms for *community engagement* – community participation, community involvement, public participation, meaningful involvement, stakeholder involvement, stakeholder engagement, among others. For example, the U.S. Environmental Protection Agency (EPA) defines *meaningful involvement* to mean that “people have an opportunity to participate in decisions about activities that may affect their environment and/or health; the public’s contribution can influence the regulatory agency’s decision; community concerns will be considered in the decision-making process; and decision-makers will seek out and facilitate the involvement of those potentially affected.”³ The Centers for Disease Control and Prevention (CDC) defines *community engagement* as “the process of working collaboratively with and through groups of people affiliated by geographic proximity, special interest, or similar situations to address issues affecting the wellbeing of those people.”⁴

According to the National Environmental Justice Advisory Council (NEJAC), a federal advisory committee to EPA, “all of these terms are commonly used and acceptable.”⁵ **Regardless of the language used, meaningful community engagement ensures that all people and**

² See Washington State Environmental Justice Task Force, *Community Engagement Plan Guidance*, [https://healthequity.wa.gov/Portals/9/Doc/Publications/Reports/EJTF%20Report_FINAL\(1\).pdf](https://healthequity.wa.gov/Portals/9/Doc/Publications/Reports/EJTF%20Report_FINAL(1).pdf).

³ EPA, *Learn About Environmental Justice*, <https://www.epa.gov/environmentaljustice/learn-about-environmental-justice>.

⁴ CDC, Agency for Toxic Substances and Disease Registry, *Principles of Community Engagement*, https://www.atsdr.cdc.gov/communityengagement/pce_what.html.

⁵ NEJAC, *Model Guidelines for Public Participation* 6 (2013), <https://www.epa.gov/sites/production/files/2015-02/documents/recommendations-model-guide-pp-2013.pdf>.

groups who are potentially interested, concerned, or affected by an action or decision should be included and given full consideration in taking that action or decision.⁶

Community engagement can also be seen as a continuum or spectrum of community involvement. Rosa González of Facilitating Power, a Center for Whole Communities board member, developed a tool called *The Spectrum of Community Engagement*,⁷ in part drawing on content from many public participation tools, including *Arnstein's Ladder of Citizen Participation*,⁸ and the *Public Participation Spectrum* created by the International Association for Public Participation.⁹ The stages shown in the figure below can be used to recognize where an agency, for example, is on the spectrum of community engagement and help set goals to transform current systems of public participation.



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According to the NEJAC, community engagement takes time and planning to produce meaningful results.¹¹ Without this commitment, a state agency may waste time and money and the stakeholders and affected community may end up more alienated than if they had not been

⁶ *Id.*

⁷ *The Spectrum of Community Engagement*, Facilitating Power, https://d3n8a8pro7vhmx.cloudfront.net/facilitatingpower/pages/53/attachments/original/1596746165/CE2_O_SPECTRUM_2020.pdf?1596746165.

⁸ *The Citizen's Handbook, Arnstein's Ladder of Citizen Participation* (1969), <https://www.citizenshandbook.org/arnsteinsladder.html>.

⁹ *Public Participation Spectrum*, International Association for Public Participation, <https://sustainingcommunity.wordpress.com/2017/02/14/spectrum-of-public-participation/>.

¹⁰ *The Spectrum of Community Engagement*, Facilitating Power at 3.

¹¹ See NEJAC, *Model Guidelines*.

consulted at all.¹² A community engagement process is not an end in itself—it is a means to better, more widely accepted policy decisions that build trust and resolve potential issues with the affected community.¹³

Principles of Environmental Justice

The *Principles of Environmental Justice* are the starting point for developing meaningful environmental justice and community engagement policies.¹⁴ The Environmental Justice Principles were developed 30 years ago at the *First National People of Color Environmental Leadership Summit* and require community input at all stages of such a decision-making process.

¹⁵ Specifically, the Environmental Justice Principles:

- Demand that public policy be based on mutual respect and justice for all peoples, free from any form of discrimination or bias;
- Affirm the fundamental right to political, economic, cultural, and environmental self-determination of all peoples; and
- Demand the right to participate as equal partners at every level of decision-making, including needs assessment, planning, implementation, enforcement, and evaluation.

A few years later, the *Principles of Working Together* were developed at the *Second National People of Color Leadership Summit*. These principles delve deeper into the values of participation and accountability. For instance, these principles:

- Require participation at every level without barriers.
- Demand cultural sensitivity. This requires patience and time for each group to express their concerns and their concerns should be heard.
- Require a culturally appropriate process.
- Commit to changing the process when the process is not meeting the needs of the people. The changes should be informed by the people's timely feedback and evaluation.
- Recognize traditional knowledge and uphold the intellectual property rights of all peoples of color and Indigenous peoples.
- Recognize that community organizations have expertise and knowledge.
- Recognize that we need each other and we are stronger with each other.

¹² *Id.*

¹³ *Id.*

¹⁴ *Principles of Environmental Justice*, Oct. 27, 1991, <https://www.nrdc.org/sites/default/files/ej-principles.pdf>.

¹⁵ *Principles of Working Together*, Oct. 26, 2002, <https://www.createclimatejustice.net/wp-content/uploads/2018/05/EJ-principles-of-working-together.pdf>.

Legal Requirements

Federal law establishes baseline requirements for public participation that must be followed by state agencies that receive federal financial assistance. The foundational federal requirement for community engagement is Title VI of the Civil Rights Act of 1964 which mandates that “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”¹⁶ Title VI itself prohibits intentional discrimination, and federal agencies implementing Title VI have uniformly prohibited actions that have the *effect* of discriminating based on race, color, or national origin.¹⁷

The degree of public involvement in policymaking, as well as a host of decisions regarding permitting and land use, can directly affect the likelihood of noncompliance with Title VI. An example of excluding people from participation that rises to the level of discrimination is if a state agency receives funds from EPA and fails to provide language translation for people with limited English proficiency (LEP).¹⁸ Another example of illegal discrimination is if concerned residents attending a public hearing hosted by a state agency are treated less favorably than others based on race, color, or national origin.¹⁹

Recipients of federal funding from EPA must comply with EPA’s implementing regulations and guidance.²⁰ EPA’s regulations require recipients of federal funds to, at a minimum: (a) collect, maintain, and provide information showing compliance with Title VI and the regulations, (b) designate a nondiscrimination compliance coordinator, (c) adopt grievance procedures that assure prompt and fair resolution of discrimination complaints, and (d) provide continuing and prominent public notice of nondiscrimination based on race, color, national origin, age, sex, or disability and the identity of the nondiscrimination coordinator.²¹ Other

¹⁶ Title VI, 42 U.S.C. § 2000d *et seq.*

¹⁷ See 40 C.F.R. Part 7 (EPA regulations); *see also* Dept. of Justice, Title VI of the Civil Rights Act Legal Manual,

<https://www.justice.gov/crt/fcs/TitleVI#:~:text=Title%20VI%20Materials%20Executive%20Order%2012250%20authorizes%20the,VI%20of%20the%20Civil%20Rights%20Act%20of%201964.>

¹⁸ *Lau v. Nichols*, 414 U.S. 563, 568 (1974).

¹⁹ See, e.g., EPA Letter re Genesee Power and Michigan Department of Environmental Quality, <https://www.documentcloud.org/documents/3410925-FINAL-Letter-to-Genesee-Case-Complainant-Father.html> (EPA found that Michigan’s Department of Environmental Quality public participation program and procedures constituted discrimination under Title VI).

²⁰ EPA’s guidance is discussed more below.

²¹ 40 C.F.R. Part 7.

federal agencies like the Department of Transportation have more robust requirements and guidelines for recipients of federal funds in their regulations.²²

In addition to Title VI of the Civil Rights Act of 1964, EPA has nondiscrimination responsibilities under other federal statutes, including:

- Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities under federally-assisted programs or activities;²³
- Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination based on sex under programs or activities receiving financial assistance under the Clean Water Act;²⁴ and
- Age Discrimination Act of 1975, which prohibits age discrimination in federally-assisted programs.²⁵

Federal agencies are also subject to executive orders, including these related to public participation: Executive Order 12898, Executive Order 13166, and Executive Order 13175. Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, requires an agency to achieve environmental justice as part of its mission by identifying disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations.²⁶ Executive Order 13166, *Improving Access to Services for Persons with Limited English Proficiency (LEP)*, provides that no person shall be subjected to discrimination based on race, color, or national origin under any program or activity that receives federal financial assistance.²⁷ Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments*, recognizes Tribal sovereignty and requires consultation and coordination with Indian Tribal Governments.²⁸

Note that federal environmental laws administered by states through federally-delegated programs also include legal requirements for public participation and consultation, such as the National Environmental Policy Act and National Historic Preservation Act.

²² See, e.g., 49 CFR Part 21 (DOT regulations); Federal Transit Administration Circular, FTA C 4702.1B, *Title VI Requirements and Guidelines for Federal Transit Administration Recipients*, Oct. 1, 2012, available at https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/FTA_Title_VI_FINAL.pdf.

²³ Section 504 of the Rehabilitation Act of 1973, <https://www.epa.gov/ocr/section-504-rehabilitation-act-1973>.

²⁴ Section 13 of the Federal Water Pollution Control Act Amendments of 1972, https://19january2017snapshot.epa.gov/ocr/section-13-federal-water-pollution-control-act-amendments-1972_.html#:~:text=No%20person%20in%20the%20United,or%20the%20Environmental%20Financing%20Act.

²⁵ Age Discrimination Act of 1975, <https://www.epa.gov/ocr/age-discrimination-act-1975>.

²⁶ Exec. Order No. 12,898, 59 Fed. Reg. 7629 (1994).

²⁷ Exec. Order No. 13,166, 65 Fed. Reg. 50,121 (Aug. 16, 2000).

²⁸ Exec. Order No. 13,175, 65 Fed. Reg. 67,249 (Nov. 6, 2020).

EPA's Guidance on Public Participation

EPA developed public participation guidance for recipients of EPA financial assistance that administer environmental permitting programs, like DEC.²⁹ In addition to this “Recipient Guidance,” in 2014 EPA published a toolkit that provides a primer on public participation.³⁰ EPA’s Recipient Guidance discusses various approaches and suggests tools recipients may use to help enhance the public involvement aspects of their current permitting programs and comply with Title VI.³¹ EPA recommends that state agencies develop an approach where agencies:

- Focus on early, inclusive, and meaningful public involvement;
- Provide for meaningful public involvement in all its programs, and consistently look for new ways to enhance public input;
- Seek input reflecting all points of view and carefully consider this input in making decisions;
- Ensure that decision-making processes are open and accessible to all interested groups, including those with limited financial and technical resources, English proficiency,³² and experience participating in environmental decision-making; and
- Not accept any recommendation or proposal without careful, critical examination.³³

To achieve these goals, EPA’s Recipient Guidance suggests the following approaches, some of which are discussed in more detail below:

- Develop and implement an Effective Public Involvement Plan;
- Train staff;
- Involve the public early and often throughout the permitting process;
- Encourage stakeholder and intergovernmental involvement;
- Equip communities with tools to help ensure effective public involvement;
- Make assistance/grants available to the public; and

²⁹ EPA, *Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs* (Recipient Guidance), 71 Fed. Reg. 14207, 14215 (March 21, 2006), https://www.epa.gov/sites/production/files/2020-02/documents/title_vi_public_involvement_guidance_for_epa_recipients_2006.03.21.pdf.

³⁰ EPA, *Public Participation Toolkit*, https://www.epa.gov/sites/default/files/2014-05/documents/ppg_english_full-2.pdf.

³¹ *Id.*

³² EPA published a guidance regarding limited English proficiency. See EPA, *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, 35608 (June 25, 2004), <https://www.federalregister.gov/documents/2004/06/25/04-14464/guidance-to-environmental-protection-agency-financial-assistance-recipients-regarding-title-vi>.

³³ See *Id.* at 14210.

- Use alternative dispute resolution.

Developing an Effective Public Participation Plan

To design an effective public participation process, **EPA recommends that an agency start by conducting an internal and external “situation assessment” of the needs and conditions of a decision and community-level stakeholders.**³⁴ According to EPA, the goals of this type of situation assessment are to:

- Clarify the problem or opportunity to be addressed and the decision to be made;
- Define the sponsor agency’s approach to public participation;
- Identify stakeholders and their concerns, including marginalized communities;
- Reveal information gaps or misunderstandings early enough so they can be addressed;
- Identify potential constraints on the public participation process; and
- Surface issues that will need to be considered in the decision process.³⁵

An internal assessment should identify: how the agency defines the problem or decision, constraints on the decision (such as regulations or timing), available resources and capacity for public participation, and a preliminary list of stakeholders.³⁶ Then, the agency should conduct an external assessment through interviews with community stakeholders affected by the agency’s decision. As shown through the state examples highlighted below, many states identify potentially affected communities by utilizing mapping tools that incorporate demographic and environmental information.

This external assessment can involve discussions of the nature and extent of the decision to be made, assess the community’s current understanding of the situation, obtain feedback about the public participation process design, and identify other interested and important stakeholders. This external assessment should inform the development of a Public Participation Plan tailored to the unique decision and stakeholder community. EPA’s toolkit provides some sample stakeholder interview questions to aid in this external assessment, such as:

- How do you view the current situation?
 - What issues are involved in the decision?
 - How important are these issues to you?
 - What are your main interests in this project or decision?
 - What information and sources of information are available to you now?

³⁴ EPA, *Public Participation Guide: Situation Assessments*, <https://www.epa.gov/international-cooperation/public-participation-guide-situation-assessments>; see also, *Toolkit*, at 8-11.

³⁵ *Id.*

³⁶ *Id.*

- o What other information would be helpful
- Who's affected?
 - o Who else should I be speaking to?
 - o Whose support is crucial to implementing the decision?
 - o Who can block the implementation of the decision?
 - o What are the important relationships among stakeholders in this community?
- How would you like to be involved?
 - o What role would you like to play or do you feel the community would like to play in decision making?
 - o What are the best forums for your involvement?
 - o How would you like to receive information and what are the sources of information that you use and trust?
- What's next?
 - o What types of things could be done to help make this a meaningful process for your community?
 - o This is what you can expect from us next.

In addition to this situation assessment, the **NEJAC recommends developing a Plan with a local steering committee or advisory board composed primarily of community-level stakeholders.**³⁷ A committee or board of community members understands the community's specific needs and therefore can help develop information sharing and media outreach strategies, assess the best locations for public meetings and ways to provide public notice and establish a dialogue with the community.

All of this information gathered is then included in a document, known by EPA as a Public Involvement Plan (PIP or Plan), that identifies community needs and concerns and lays out the agency's approaches to ensure that all needs and concerns of the affected community are addressed.³⁸ In addition, an effective Plan keeps the community informed of public involvement opportunities available to them during the decision-making process. According to EPA, an effective Plan includes the following elements:

- (1) An overview of the agency's plan of action for addressing the community's needs and concerns;
- (2) A description of the community (including demographics, history, and background);
- (3) A contact list of agency officials with phone numbers and email addresses to allow the public to communicate via phone or internet;

³⁷ *Id.*

³⁸ *Id.* at 14211

- (4) A list of past and present community concerns (including any civil rights complaints);
- (5) A detailed plan of action (outreach activities) the agency will take to address concerns;
- (6) A contingency plan for unexpected events;
- (7) Location(s) where public meetings will be held (consider the availability and schedules of public transportation);
- (8) Contact names for obtaining translation of documents and/or interpreters for meetings;
- (9) Appropriate local media contacts (based on the culture of the community); and
- (10) Location of the information repository.³⁹

Importantly, a PIP is a living document that may change from one affected community group to another or for the same community group over time depending on the types of facilities in the community and the environmental issues faced by the community.

Training Staff

According to EPA, in addition to a written plan, a successful public involvement program consists of knowledgeable agency staff who are committed to community engagement.⁴⁰ To understand the importance of building relationships with communities, recipients like DEC must incorporate these principles into the culture of how staff are trained and how programs operate.⁴¹ Training should incorporate skills such as respectful communication, active listening, cultural and community relations sensitization, how to engage in dialogue and collaboration, how to explain application agency policies and programs clearly and concisely, and alternative dispute resolution techniques.

Equipping Communities with Tools to Help Ensure Public Involvement

If the public is not aware of opportunities to engage in decision-making, then the public cannot actively engage or may not articulate their concerns in a manner that fits into the decision-making process underlying the issuance of a permit, for example. This results in members of the public feeling that their views were not valued or considered in final permitting decisions.

³⁹ *Id.*

⁴⁰ *See id.* at 14211-12.

⁴¹ *Id.* at 14212.

In order to avoid this problem, EPA recommends that permitting agencies provide the necessary tools for the community to engage.⁴² Some tools to ensure public involvement include: (a) training to educate the public on process and basic technical issues that are relevant in making permitting decisions, and (b) information packets or fact sheets regarding the application of environmental regulations and programs and the role of the public.⁴³

Additionally, providing resources in the form of grants and free technical assistance can help bridge the gap between community groups and other stakeholders.⁴⁴ These resources help communities equip themselves to actively participate in discussions and offer solutions to decisions affecting their lives.

Evaluating the Effectiveness of Public Involvement

According to EPA, evaluating the public involvement plan and the program is fundamental to determine whether goals are met, to identify areas in need of improvement, and to allow for changes.⁴⁵ Tools for evaluating the effectiveness of a program include:

- *Informal feedback* – unstructured communication on a routine basis between the agency, communities, and other stakeholders.
- *Questionnaires and surveys* – short questions used at the end of a public engagement event or process to determine whether participants felt the activity was useful.
- *Interview* – formal interviews to obtain and incorporate feedback.
- *Debriefs* – internal methods to obtain feedback from agency staff on a process to ensure that community issues were addressed and the public's feedback is implemented into future activities.

State Public Participation Plan Comparison

The following section includes a summary of information about statewide public participation plans. Many of the featured states rely on the guidance from EPA because of the legal requirements of Title VI of the Civil Rights Act. However, many states also have their own legal framework for public involvement under the various enabling statutes administered by the state agency and the administrative procedures of a state. Some states, like Washington, are ahead of the curve and have robust community engagement strategies and laws. Others, like Michigan, have struggled to implement their own guidance. The states included in this memo are profiled because the features of the plans as written provide a variety of models from which to

⁴² *Id.*

⁴³ *Id.* at 14214.

⁴⁴ *Id.*

⁴⁵ *Id.* at 14216.

draw, but have not been ground-truthed to determine their efficacy. The featured state plans include:

- California
- Connecticut
- Massachusetts
- Michigan
- Minnesota
- New Hampshire
- New Jersey
- New York
- North Carolina
- Washington

CALIFORNIA

California was one of the first states to codify environmental justice in law, and now has numerous laws, programs, and guidance that inform public participation processes.⁴⁶ For instance, the California Environmental Quality Act requires state and local government agencies to inform decision makers and the public about the potential environmental impacts of proposed projects, and to reduce those environmental impacts.⁴⁷ A key feature of the law is the requirements to provide opportunities for the public to review and provide input on decisions.

In 2004, California's Environmental Protection Agency (CalEPA) published an inter-agency environmental justice strategy and action plan which include efforts to improve public participation and community-capacity building.⁴⁸ CalEPA also hosts an Environmental Justice Task Force to coordinate the compliance and enforcement work in areas of California that are disproportionately vulnerable to multiple sources of pollution.⁴⁹

⁴⁶ See, e.g., Ca. Gov. § 65040.12 <https://codes.findlaw.com/ca/government-code/gov-sect-65040-12.html>; SB 535 (requires CalEPA to identify “disadvantaged communities” based on geographic, socioeconomic, public health, and environmental hazard criteria); AB 1532 (requires a portion of carbon auction proceeds to benefit disadvantaged communities); AB 2312 (established an environmental justice small grants program); AB 32 (among other things, requires convening of environmental justice advisory committee); SB 1000 (requires cities and counties to adopt environmental justice goals, policies and objectives).

⁴⁷ CEQA, <https://opr.ca.gov/ceqa/>.

⁴⁸ See CalEPA, *Intra-Agency Environmental Justice Strategy*, <https://calepa.ca.gov/wp-content/uploads/sites/6/2017/01/EnvJustice-Documents-2004yr-EnglishStrategy.pdf>; see also Cal EPA, *Environmental Justice Action Plan*, <https://calepa.ca.gov/wp-content/uploads/sites/6/2016/10/EnvJustice-ActionPlan-Documents-October2004-ActionPlan.pdf>.

⁴⁹ CalEPA, Environmental Justice Task Force, <https://calepa.ca.gov/enforcement/environmental-justice-compliance-and-enforcement-task-force/>.

Other California state agencies also have public participation guidance. The California Water Boards has a dedicated Office of Public Participation which assists the water boards in designing and implementing effective stakeholder involvement processes.⁵⁰ California's Department of Toxic Substances Control (DTSC) has a robust manual of public participation policies and procedures, which lists requirements and suggested activities for programs and projects.⁵¹ According to the manual, a public participation process involves a community assessment phase to evaluate community needs, writing a plan, developing outreach materials, establishing an information repository, and notifying the community of opportunities for input.⁵² The California Department of Transportation also has public participation and Title VI guidance.⁵³

California has several online tools to enhance the public's access to information. CalEPA and other state agencies utilize a mapping tool, called CalEnviroScreen, to aggregate environmental, health, and socioeconomic data to consider the extent to which communities across the state are burdened by pollution.⁵⁴ DTSC also maintains a publically accessible enforcement program database, called EnviroStor, for inspection and enforcement related data.⁵⁵ The database provides the public with information about enforcement actions, dates of inspections, and violations found for businesses that generate, transport, treat, store and dispose of hazardous wastes.⁵⁶

CONNECTICUT

In 1993, Connecticut Department of Energy and Environmental Protection (CTDEEP) adopted an environmental justice policy that required certain facilities to submit an Environmental Equity Plan as part of the notice requirement in the application submittal package.⁵⁷ CTDEEP also developed Environmental Justice Public Participation Guidelines in 2012 to inform permit applicants about how to meet the requirements of developing a project-level Environmental Equity Plan.⁵⁸ The Guidelines, fact sheet, and accompanying permit checklist include both general principles for public engagement and detailed requirements for

⁵⁰ See *Citizen's Guide to Working with the California Water Boards*, https://www.waterboards.ca.gov/publications_forms/publications/general/docs/citizenguide.pdf.

⁵¹ DTSC, *Public Participation Manual*, <https://dtsc.ca.gov/wp-content/uploads/sites/31/2018/07/DTSC-PublicParticipationManual.pdf>.

⁵² *Id.*

⁵³ California Transportation Plan 2050, <https://dot.ca.gov/-/media/dot-media/programs/transportation-planning/documents/ctp-2050-v3-a11y.pdf>

⁵⁴ CalEnviroScreen, <https://oehha.ca.gov/calenviroscreen>.

⁵⁵ EnviroStor, <https://www.envirostor.dtsc.ca.gov/public/>.

⁵⁶ *Id.*

⁵⁷ CTDEEP, *Environmental Equity Policy*, (Dec. 17, 1993), <https://portal.ct.gov/DEEP/Environmental-Justice/Environmental-Equity-Policy>.

⁵⁸ CTDEEP, *The Environmental Justice Public Participation Guidelines*, 3 (Feb. 8, 2012), https://portal.ct.gov/-/media/DEEP/environmental_justice/EJGuidpdf.pdf.

how to carry out the outreach.⁵⁹ During the COVID-19 pandemic, CTDEEP published updated guidance about how best to remotely engage the public.⁶⁰

In 2008, Connecticut adopted a statewide environmental justice law, which was updated in 2020, to enhance notice to environmental justice communities to ensure meaningful public participation.⁶¹ Under the law, entities operating power plants, sewage treatment facilities, landfills or transfer stations, or hazardous waste sites in statutorily defined “environmental justice communities” are required to submit plans for public engagement and mitigation of cumulative impacts from their facilities which must be approved by CTDEEP before submitting applications for permits or approvals.⁶² CTDEEP provides a form for facilities to use in developing their project-level public participation plans.⁶³ The facilities later submit reports documenting the implementation of the project-level participation plan and will have their applications deemed “insufficient” if this process is not completed.⁶⁴ For new facilities in a municipality with at least five such sources of pollution, the law requires a community environmental benefit agreement between the utility operator and the elected municipal government.⁶⁵

Connecticut’s environmental justice law defines “meaningful public participation” as follows:

- residents of an environmental justice community have an appropriate opportunity to participate in the process regarding a proposed facility or the expansion of an existing facility that may adversely affect such residents’ environment or health;
- public’s participation may influence the regulatory agency’s decision; and
- the applicant for a new or expanded permit, certificate, or siting approval seeks out and facilitates the participation of those potentially affected during the regulatory process.⁶⁶

⁵⁹ *Id.*; see also CTDEEP, *Permit Checklist*, (Aug. 24, 2015), https://portal.ct.gov/-/media/DEEP/environmental_justice/permitchecklistpdf.pdf; Governor’s Council on Climate Change (GC3), Equity & Environmental Justice Working Group, *Draft Environmental Justice Public Participation Checklist*, https://portal.ct.gov/-/media/DEEP/climatechange/GC3/GC3-2020-agendas-and-minutes/Draft-public-participation-documents/GC3_Public_Participation_Checklist.pdf.

⁶⁰ CTDEEP, *Environmental Justice Public Participation Plan Remote Guidance*, https://portal.ct.gov/-/media/DEEP/environmental_justice/EJPublicParticipationPlanRemoteGuidance.pdf.

⁶¹ Conn. Public Act 20-6, <https://www.cga.ct.gov/2020/ACT/PA/PDF/2020PA-00006-R00HB-07008SS3-PA.PDF>.

⁶² *Id.*

⁶³ CTDEEP, *Environmental Justice Public Participation Plan Form*, https://portal.ct.gov/-/media/DEEP/environmental_justice/EJplanpdf.pdf.

⁶⁴ Conn. Public Act 20-6.

⁶⁵ *Id.*

⁶⁶ *Id.* at (a)(3).

Under the law, a “meaningful public participation plan” shall, at a minimum, contain:

- measures to facilitate meaningful public participation in the permitting process;
- certification that the applicant will undertake such measures;
- identification of a time and place for an informal public meeting that is convenient for the residents of the affected environmental justice community; and
- identification of methods to publicize the informal public meeting and publication of the notice of the informal public meeting.⁶⁷

To implement these requirements, CTDEEP has dedicated environmental justice staff including an Administrator and an Outreach & Education Coordinator that administer this process.⁶⁸ There are no express requirements to publicly share contact information for a permit applicant in their project-level plan or accompanying checklist, however, contact information would likely be available through other required outreach information.⁶⁹

To access information, CTDEEP maintains an online document portal.⁷⁰ The Guidelines also suggest that permit applicants establish a complaint phone line, organize a community committee that periodically meets with the facility contact, and identify and routinely contact community groups directly with important correspondence and documents.⁷¹

MASSACHUSETTS

Environmental justice is embedded in Massachusetts’s law and its constitution. Article 97 of the Constitution of the Commonwealth of Massachusetts provides that “[t]he people shall have the right to clean air and water, freedom from excessive and unnecessary noise, and the right to natural, scenic, historic, and esthetic qualities of their environment . . .”⁷² The state’s recently-updated environmental justice policy⁷³ incorporates the requirements of Massachusetts’s latest climate and environmental justice law, *An Act Creating a Next-Generation Roadmap for Massachusetts Climate Policy*.⁷⁴ This policy reinforces that all communities must have a strong voice in environmental decision-making regardless of race, color, national origin, income, or

⁶⁷ *Id.* at (b)(2).

⁶⁸ CTDEEP, *Environmental Justice Program*, <https://portal.ct.gov/DEEP/Environmental-Justice/Environmental-Justice-Program-Overview>.

⁶⁹ CTDEEP, *Environmental Justice Public Participation Plan Form*, https://portal.ct.gov/-/media/DEEP/environmental_justice/EJplanpdf.pdf.

⁷⁰ CTDEEP, Document Search Portal, <https://filings.deep.ct.gov/DEEPDocumentSearchPortal>

⁷¹ See *The Environmental Justice Public Participation Guidelines* at 8.

⁷² Article 97, Constitution of the Commonwealth of Massachusetts.

⁷³ Environmental Justice Policy, June 24, 2021, <https://www.mass.gov/doc/environmental-justice-policy6242021-update/download>.

⁷⁴ Ch. 8 of the Acts of 2021, <https://malegislature.gov/bills/192/S9>.

English language proficiency and that such voices can influence environmental decision-making.

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The policy also requires:

- environmental justice training for agency staff
- the establishment of a Director of Environmental Justice
- translation services and the development of language access plans
- the development of various fact sheets covering environmental programs
- the development and maintenance of a list of environmental justice communities and advocacy organizations, and an “EJ Mailing List” for interested members of communities
- the development of a list of alternative information outlets to be made available to agencies seeking public comments
- establishing alternative information repositories in neighborhoods where environmental justice populations reside
- establishing an Interagency Environmental Justice Working Group to promote collaboration with stakeholders and convene semiannually to ensure environmental justice concerns are properly evaluated and addressed in agency programs
- preparing detailed maps to identify environmental justice communities
- establishing and updating an environmental justice website with information about the environmental justice activities, mapping tools, and data, initiatives, and resources⁷⁶

The policy also includes a requirement that all agencies under the Executive Office of Energy and Environment Affairs (EEA) establish an inclusive, robust public participation program for key agency actions that focuses agency resources on outreach activities that enhance public participation opportunities for agency activities that potentially affect EJ populations.⁷⁷ Each EEA agency must create a Public Involvement and Community Engagement Strategy for key activities, including a plan for federally funded activities with applicable obligations under Title VI of the Civil Rights Act.

In developing these public involvement and community engagement strategies, agencies must consider the following outreach efforts:

- Scheduling public meetings or hearings at locations and times convenient for neighborhood stakeholders, and in consideration of public transportation availability;
- Encouraging permit applicants to hold pre-application meetings with the local community, and providing them with environmental justice fact sheets organization contact lists;

⁷⁵ Environmental Justice Policy, at 2.

⁷⁶ *Id.* at 8-9.

⁷⁷ *Id.* at 10.

- Translating public notices and other key public engagement documents into other languages in areas with persons of limited English language proficiency;
- Offering interpreters and translated documents at public meetings as appropriate and upon request;
- On a case-by-case basis:
 - Establishing one or more local information repositories that are convenient and accessible for the impacted community, as well as providing availability of information online;
 - Gathering community-specific local media contacts (based on the culture of the community);
- Utilizing collaborative approaches to problem-solving, including public deliberation and consensus-building where appropriate, to address public concerns;
- Providing timely notices to neighborhoods potentially impacted by a decision, and providing clear guidance on applicable grievance/appeal procedures; and
- Providing information and assistance to environmental justice populations regarding grant applications and environmental, energy, or climate change regulations to assist them with compliance and sustainability.⁷⁸

The policy also provides enhanced public participation requirements under the Massachusetts Environmental Policy Act (MEPA) statute.⁷⁹ Under the MEPA, EEA reviews the potential environmental impacts of state agency actions that exceed certain regulatory thresholds.⁸⁰ “Enhanced public participation” under the policy is required for any project (1) that exceeds a certain threshold for air, solid and hazardous waste, or wastewater and sewage sludge treatment or disposal, and (2) where the project site is located within one mile of an environmental justice population (or five miles if the projects exceed the thresholds mentioned above).⁸¹ Environmental justice communities in Massachusetts can be found using the state’s mapping tool.⁸² The enhanced public participation measures may include the use of alternative media outlets such as community or ethnic newspapers, use of alternative information repositories, and translation of materials or interpretation services before and during public meetings where the relevant environmental justice population uses a primary language other than English in the home.⁸³

⁷⁸ *Id.*

⁷⁹ M.G.L. Ch.30, Sections 61-621.

⁸⁰ *Id.*

⁸¹ Environmental Justice Policy, at 11.

⁸² Massachusetts 2020 Environmental Justice Map, <https://mass-eoeea.maps.arcgis.com/apps/webappviewer/index.html?id=1d6f63e7762a48e5930de84ed4849212>

⁸³ *Id.*

MICHIGAN

Over the years, numerous communities have alleged that Michigan's Department of Environment, Great Lakes, and Energy (EGLE) has violated Title VI of the Civil Rights Act for discriminatory practices such as failing to provide language access, intimidating community members at public meetings, and disregarding communities of color in the agency's decision-making process.⁸⁴ As a result, EPA has required Michigan to implement public participation and language access procedures.⁸⁵

To comply with its civil rights obligations, EGLE published its nondiscrimination policy which includes a process for collecting compliance information, designating a "nondiscrimination compliance coordinator," adopting a grievance procedure to allow any person or group to submit a complaint alleging discrimination by EGLE, and affirming EGLE's commitment to provide access to all programs and activities for people with Limited English Proficiency and disabilities.⁸⁶

In 2020, EGLE updated its Policy on Public Involvement in Department Decisions.⁸⁷ The policy recognizes the important role of community engagement in successful public participation, including in co-planning and co-sponsoring events.⁸⁸ EGLE aims to develop public participation plans with affected communities including sharing responsibilities for event planning and logistics, with the intent that local community members take a leadership role, including serving as translators, facilitators, and panelists.⁸⁹ EGLE also limits the role of the permit applicant in public meetings so as not to appear to be endorsing or promoting the underlying project.⁹⁰

⁸⁴ See, e.g., EPA Resolution, Genesee Power, https://www.epa.gov/sites/default/files/2019-12/documents/19-12-19_final_resolution_letter_and_agreement_recipient_-_genesee_county_18rd-16-r5.pdf; July 2020 Title VI Complaint, <https://drive.google.com/file/d/1o9nb6H1drdLA3SjPmCnJLVEx2L-hbbf/view>; see also EPA Resolution, City of Flint, https://www.epa.gov/sites/default/files/2020-03/documents/2020.03.04_resolution_letter_for_recipient_19rd-16-r5.pdf.

⁸⁵ See *id.* (Genesee Power Resolution).

⁸⁶ EGLE, *Policy on Nondiscrimination in EGLE Programs*, No. 09-024, https://www.michigan.gov/documents/egle/EGLE_Policy_09-024_679779_7.pdf.

⁸⁷ EGLE, *Policy on Public Involvement in Department Decisions*, No. 09-007, https://www.michigan.gov/documents/egle/EGLE_Policy_09-007_679780_7.pdf.

⁸⁸ *Id.* at 4.

⁸⁹ *Id.*

⁹⁰ *Id.*

In addition, EGLE committed to maintaining a weekly calendar of public notice of department actions on its website. EGLE also states that it will “use available resources” to get information about community needs, such as (a) methods to effectively inform residents, (b) identification of needs and services for community members with LEP, (c) identification of needs of community members with disabilities, and (d) locations and times for public meetings suitable to meet the needs of the community.⁹¹ The policy includes a list of actions EGLE will take in preparation for a public hearing, such as:

- Encourage permit applicants to develop a Community Relations Plan to structure ongoing communication with neighboring communities
- Engage with community leaders, public officials, environmental groups, and concerned citizens
- Draft public notices using terminology and language easily understood
- Provide written information for people without internet access
- Create document repositories on the internet
- Host informational meetings before public meetings to inform the public of the scope and nature of a project or action
- Draft fact sheets and project summaries of the major aspects of the project, including the purpose, location, and potential impacts⁹²

EGLE also adopts a policy to continuously improve its public involvement process by identifying opportunities to increase the effectiveness of the process, training staff to increase their skills for working with the public, and encouraging staff to be involved with their local communities, among other things.⁹³

EGLE has a separate policy about consultation and coordination with tribal government⁹⁴, which implements the requirements of the 2002 “Government-to-Government Accord”⁹⁵ with Michigan’s federally-recognized tribes and the Michigan Governor’s Executive Directive 2019-17⁹⁶ to formalize the commitments of the Accord.⁹⁷ This policy recognizes that tribal governments are sovereign entities with inherent authority to exercise jurisdiction over their

⁹¹ *Id.* at 2.

⁹² *Id.* at 2-4.

⁹³ *Id.* at 4-5.

⁹⁴ EGLE, *Consultation and Coordination with Indian Tribal Governments*, No. 09-031, https://www.michigan.gov/documents/egle/EGLE_Policy_09-031_Consultation_and_Coordination_with_Indian_Tribal_Governments_697321_7.pdf [hereinafter *Tribal Policy*].

⁹⁵ *2002 Government-to-Government Accord between the State of Michigan and the Federally Recognized Indian Tribes in the State of Michigan*, https://www.michigan.gov/documents/Accordfinal_53478_7.pdf.

⁹⁶ Michigan Gov. Whitmer, Exec. Directive 2019-17, https://www.michigan.gov/whitmer/0,9309,7-387-90499_90704-520036--,00.html.

⁹⁷ See EGLE, *Tribal Consultation*, <https://www.michigan.gov/environmentaljustice/0,9615,7-400-98506---,00.html>.

respective lands and citizens and possess the right to self-governance and self-determination.⁹⁸ The policy establishes guidelines for tribal consultation and communication that include approaches such as regularly scheduled interactions between tribal and EGLE staff; participation and attendance at tribal meetings and outreach events; providing and partnering in technical assistance, grants, and training; and collaboration on air and water monitoring programs.⁹⁹

Other state action impacting public participation in Michigan includes Governor Whitmer's Executive Order 2019-06, signed in 2019, which created the Office of the Environmental Justice Public Advocate and the Interagency Environmental Justice Response Team.¹⁰⁰ Since its inception, the office has coordinated with tribal and municipal governments on projects relating to food security and air quality, mostly in Detroit.¹⁰¹ The role of Environmental Justice Public Advocate was created to assist with environmental justice efforts throughout the state, receive environmental justice concerns and complaints, and work with the Response Team.¹⁰² The Response Team was created to advise and assist EGLE in developing, implementing, and updating a statewide environmental justice plan and policies for use by state agencies, and recommend changes in Michigan law to enhance environmental justice.¹⁰³ The Response Team is authorized to make inquiries, studies, investigations; hold hearings; receive public comment; consult with experts and advisors, and retain contractors.¹⁰⁴

As the state's primary recipient of federal transportation funds, the Michigan Department of Transportation (MDOT) has a Title VI plan and program to ensure equal access and opportunity to all persons.¹⁰⁵ This plan includes a Title VI Coordinator, nondiscrimination guidelines,¹⁰⁶ an LEP plan, and a detailed public involvement plan.¹⁰⁷ Importantly, the public involvement plan acknowledges the Environmental Justice Principles and aims to integrate them into the agency's practices.¹⁰⁸ The plan suggests developing a project-specific "local advisory

⁹⁸ *Tribal Policy* at 1.

⁹⁹ *Id.* at 4.

¹⁰⁰ Michigan Gov. Whitmer, Exec. Order 2019-06, https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-490039--,00.html.

¹⁰¹ Michigan Office of the Environmental Justice Public Advocate, *Environmental Justice Projects and Initiatives*, https://www.michigan.gov/environmentaljustice/0,9615,7-400-98505_104657---,00.html.

¹⁰² Exec. Order 2019-06.

¹⁰³ *Id.*; see also EGLE, *Michigan Interagency Environmental Justice Response Team*, https://www.michigan.gov/environmentaljustice/0,9615,7-400-98505_98666---,00.html.

¹⁰⁴ Exec. Order 2019-06.

¹⁰⁵ MDOT, *Title VI Implementation Plan*, https://www.michigan.gov/documents/mdot/2017_FHWA_Title_VI_Plan-Signed_605862_7.pdf.

¹⁰⁶ MDOT, *Title VI Nondiscrimination Program Guidelines*, https://www.michigan.gov/documents/mdot/FTA_Title_VI_Plan_2020-Final_704099_7.pdf.

¹⁰⁷ MDOT, *Public Involvement/ Public Hearing Procedures for Federal-Aid Project Development*, https://www.michigan.gov/Documents/MDOT/Public_Involvement_Hearing_Procedures_613195_7.pdf.

¹⁰⁸ *Id.* at 26-30.

committee” comprised of representatives from the various advocacy groups, elected officials, and public agencies to act as a “sounding board” for vetting issues through discussion.¹⁰⁹ The plan also recommends a “kickoff” meeting held as early as practical to solicit early public and agency input on the impacts of a project or program.¹¹⁰ The plan also suggests a variety of tools such as newsletters, brochures and fact sheets, websites, online comment forms, visualization, and an audience response system to engage the public at meetings.¹¹¹

MINNESOTA

In 2020, the Minnesota Pollution Control Agency (MPCA) updated its environmental justice policy which states, “[the MPCA] expects the fair treatment and meaningful involvement of communities of color, Indigenous communities, and low-income communities in agency actions and decisions that affect them. It is the policy of the MPCA that an outcome of its work, in addition to protecting and improving the environment and public health, must address environmental justice concerns.”¹¹²

MPCA developed an *Environmental Justice Framework* to provide direction and guidance on integrating the policy and the Environmental Justice Principles into the agency’s work.¹¹³ In the Framework, MPCA acknowledges the reality that not everyone has benefited equally from Minnesota’s natural environment, and that low-income and people of color in the state have been exposed to more pollution than others.¹¹⁴ The Framework describes MPCA’s environmental justice policy and plans, strategies for implementing environmental justice into MPCA programs, and resources to support environmental justice.¹¹⁵ The Framework was informed by community and stakeholder feedback.¹¹⁶ The Framework seeks to ensure that:

- Pollution does not have disproportionate negative impacts on any group of people.
- The benefits, opportunities, and risks of agency policies, decisions, and activities are fairly and equitably distributed.
- All individuals and groups are given the opportunity for meaningful involvement in agency decisions that may impact them.

¹⁰⁹ *Id.* at 11.

¹¹⁰ *Id.*

¹¹¹ *Id.* at 20-22.

¹¹² MPCA, Admin. Policy No. 8-29, *Environmental Justice*, <https://www.pca.state.mn.us/sites/default/files/i-admin8-29.pdf>.

¹¹³ Minnesota Pollution Control Agency (MPCA), *Environmental Justice Framework*, <https://www.pca.state.mn.us/sites/default/files/p-gen5-05.pdf> [hereinafter *Framework*].

¹¹⁴ *Id.* at 1.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

- Environmental justice concerns are given due consideration by agency decision-makers during the development, implementation, and enforcement of environmental laws, regulations, and policies.
- The MPCA and its stakeholders have mechanisms in place to regularly evaluate progress, success, and failure in meeting the agency's goals, and the outcomes of those evaluations are used to inform future planning and decision-making by the agency.

To achieve these goals, MPCA aims to (1) identify areas where low-income, people of color, and others may be experiencing more harm, and (2) modify the agency's approach and increase the agency's work to address the environmental justice issues.¹¹⁷ To identify the affected communities and areas of concern, MPCA uses demographic data, information on environmental conditions, and health data, as well as using community knowledge to verify and supplement the data sources.¹¹⁸ To modify the agency's approach to these areas of concern, MPCA proposes to use monitoring and assessment to better understand pollution and health risks; examine ways to reduce these sources using regulatory authority; target education, outreach, technical assistance, and grants; and improve public participation and engagement of people around the actions and decisions that affect them.¹¹⁹

In the Framework, MPCA acknowledges that the permitting process is a critical opportunity for community involvement in areas with environmental justice concerns.¹²⁰ With that in mind, MPCA commits to expanding opportunities for public involvement beyond the formal public notice period and to enhance relationships with the surrounding communities.¹²¹ The Framework lists strategies to promote community involvement in MPCA's decision making, such as:

- Establish an advisory group that meets regularly to provide feedback to the MPCA on Framework implementation and to collaborate on ways to improve MPCA's strategies and implementation. This group will be made up of a variety of stakeholders working on community engagement, environmental justice, health equity, and related work.
- Expand the network of community stakeholders that we interact with to ensure representation from affected communities and the inclusion of as many community members and organizations working on environmental justice as possible.
- Tailor outreach and public participation to the specific community.

¹¹⁷ *Id.* at 4.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.* at 6.

¹²¹ *Id.*

- Written materials, presentations, and informal communication should be easily understandable, free of jargon and undefined acronyms, and available in multiple languages when appropriate.
- Hold community meetings and events early and frequently.
- Expand public notification methods.
- Encourage the facilities we regulate to plan for public participation.¹²²

In addition to these general principles for public participation, MPCA also has a specific Tribal consultation and coordination policy governing actions and decisions that may directly affect Tribes in Minnesota.¹²³

The Framework also establishes a goal of training MPCA staff in multicultural competency, institutional racism, the MPCA’s environmental justice policy, and Civil Rights Act Title VI requirements to promote ongoing implementation of environmental justice policy at multiple levels within the agency to ensure that services are delivered in a multicultural, sensitive, and equitable manner.¹²⁴ Notably absent from the MPCA Framework, however, is guidance for translation of materials into languages other than English.¹²⁵

The MPCA webpage includes some other useful public resources, such as the “what’s in my neighborhood?” search tool¹²⁶ and map of environmental justice communities of concern.¹²⁷ This tool contains information on environmental permits and registration, as well as on soil and groundwater investigations, including properties that are being investigated or are currently part of MPCA’s cleanup programs.¹²⁸ The web tool is searchable by address and allows users to look for information for specific locations or topics.¹²⁹ The MPCA also maintains a nondiscrimination and civil rights webpage that describes the procedures of how to submit a civil rights complaint, and information on how to contact the nondiscrimination coordinator.¹³⁰

¹²² *Id.* at 12-15.

¹²³ MPCA, *Policy on Consultation and Coordination with Indian Tribal Governments*, <https://www.pca.state.mn.us/sites/default/files/p-gen5-06.pdf>.

¹²⁴ *Id.* at 14.

¹²⁵ *See id.*

¹²⁶ MPCA, *What’s in My Neighborhood*, <https://www.pca.state.mn.us/data/whats-my-neighborhood>.

¹²⁷ MPCA, *Environmental Justice Overview of Areas of Concern*, <https://mpca.maps.arcgis.com/apps/MapSeries/index.html?appid=f5bf57c8dac24404b7f8ef1717f57d00>.

¹²⁸ MPCA, *What’s in My Neighborhood*, <https://www.pca.state.mn.us/data/whats-my-neighborhood>.

¹²⁹ *Id.*

¹³⁰ MPCA, *Nondiscrimination and Civil Rights*, <https://www.pca.state.mn.us/about-mpca/nondiscrimination-and-civil-rights>.

NEW HAMPSHIRE

New Hampshire's state constitution requires the fair treatment of its citizens stating, "equality of rights under the law shall not be denied or abridged by this state on account of race, creed, color, sex or national origin."¹³¹ This language informed the New Hampshire Department of Environmental Services (NHDES) adoption of an Environmental Equity Policy in 1994 to "ensure fair and equitable treatment of all New Hampshire citizens in the implementation of federal and state environmental laws, rules, programs, and policies."¹³² Despite this policy, NHDES does not appear to have a publicly-available public participation plan, Title VI program, or environmental justice program.¹³³

In 2019, the NHDES entered into a Performance Partnership Agreement with the EPA to improve joint governance and NHDES's environmental programs.¹³⁴ In the Agreement, NHDES mentions the disproportionate impact of pollution on minority and lower-income populations and sets environmental justice "key project areas."¹³⁵ The Agreement does not explicitly discuss improved public participation practices, but it states that NHDES "will work with its stakeholders to provide the necessary outreach to make members of the EE/EJ community aware of its policies and opportunities to become more resilient."¹³⁶

In February 2020, the NHDES published a Strategic Plan which included a guiding principle to "provide meaningful opportunities for public participation in meeting [NHDES] responsibilities."¹³⁷ The Strategic Plan includes the following commitments related to public participation:

- NHDES will have a greater web presence which includes establishing an Environmental Monitoring Database (EMD), a portal to present "real-time" and up-to-date trend information on the state of New Hampshire's environment and key agency outcomes, as well as to provide access to related data from outside agencies and organizations.

¹³¹ *Bill of Rights, New Hampshire Constitution*, Art. 1, 2, <https://www.nh.gov/glance/bill-of-rights.htm>.

¹³² New Hampshire's policy does not appear to be available online, but it is referenced in the Performance Partnership Agreement with EPA from 2019. See NHDES & EPA, *Performance Partnership Agreement*, at 7, <https://www.des.nh.gov/sites/g/files/ehbemt341/files/documents/2020-01/ffy19-21ppa.pdf>.

¹³³ See www.des.nh.gov.

¹³⁴ The Agreement.

¹³⁵ *Id.* at 7.

¹³⁶ *Id.* at 8.

¹³⁷ NHDES, *Strategic Plan*, <https://www.des.nh.gov/sites/g/files/ehbemt341/files/documents/2020-01/strategic-plan.pdf>.

- NHDES will also create a centralized, web-searchable document library to include such items as quality assurance project plans, rules, grant information, site-specific information, key correspondence, and photos.
- NHDES will establish a comprehensive, coordinated program of outreach to town officials, school-age populations, and the general public to enhance understanding of environmental programs and NHDES programs.
- NHDES will improve, and increase as necessary, public forums and opportunities (including remote learning) for disseminating information on environmental issues.
- NHDES will collaborate with partners to provide information and technical assistance to communities and organizations that are seeking to reduce their greenhouse gas emissions and incorporate adaptation measures into their projects.¹³⁸

Unlike NHDES, the New Hampshire Department of Transportation (NHDOT) developed detailed public involvement procedures for its projects.¹³⁹ The procedures outline federal and state legal requirements for public involvement and the agency's outreach activities and methods.

¹⁴⁰ To improve public involvement NHDOT set these goals:

- Make public meetings as accessible as possible to all parties;
- Make special efforts to give traditionally underserved populations and individuals with limited proficiency in English the opportunity to learn about transportation plans, programs, and/or projects and to voice their opinions about them;
- Reach out to municipalities and community organizations to disseminate and gather information; and
- Determine whether those efforts are achieving the desired results, NHDOT conducts and evaluates surveys of the public affected by transportation projects.

NHDOT's plan includes a list of outreach activities and methods, such as:

- Public meetings are held at as central a location and at a time as convenient as possible for the majority of parties affected by the plan/project under consideration.
- Public meetings must be held in only those locations that can be physically accessed by individuals with disabilities.
- Public meetings are accessible to people who rely on public transportation.

¹³⁸ *See id.*

¹³⁹ NHDOT, *Public Involvement Procedures for New Hampshire Transportation Improvement Projects*, <https://www.nh.gov/dot/org/projectdevelopment/planning/documents/publicinvolvementprocess.pdf>. NHDOT also has its Title VI complaint and investigation procedures available online. *See* NHDOT, *Title VI Complaint and Investigation Procedures*, <https://www.nh.gov/dot/org/administration/ofc/documents/TitleVIComplaintProcess.pdf>.

¹⁴⁰ *Id.*

- Community leaders, as well as key personnel in organizations where a significant part of their memberships will be affected by the plan/project under consideration, must be contacted to assure maximum awareness of the public meeting.
- When US Census data indicate that a population with LEP exceeds the greater of 5% of the total population affected by a planned project or 1,000 people, the Planning Bureau's lead person on the project is responsible for contacting and coordinating outreach efforts.
- All notices translated into languages other than English must contain the contact information of the NHDOT employee assigned to respond to callers with LEP. The person responding to the limited English caller should be prepared to relate the project scope and purpose of the public meeting or hearing. If the caller expresses an interest in attending and requires an interpreter, the request should be forwarded to the project manager or lead person, who will be responsible for arranging the required language services.

Importantly, NHDOT's plan includes a process for monitoring and evaluating the effectiveness of its public participation processes. For instance, NHDOT provides participants of public meetings with a survey to determine whether the outreach was effective. The survey asks the following questions:

- Was the information presented in a complete and comprehensive manner
- Did you feel that comments made by the public were adequately considered?
- Did you feel that you had an opportunity to participate?
- Was the location of this meeting convenient for you?
- How far did you have to travel to the meeting?
- Was this meeting scheduled at a convenient time for you?
- What would be the most convenient time to start such meetings?
- How did you hear about this meeting?
- Were people allowed to submit comments verbally or in writing?
- If you have any comments about how the meeting was planned or conducted (or on how future meetings can be improved), please write them in the space below.

NEW JERSEY

The New Jersey Department of Environmental Protection (NJDEP) adopted its first environmental justice policy in 2000 and has since developed its policies and procedures in response to numerous executive orders and laws on environmental justice.¹⁴¹ In 2018, Governor Murphy issued Executive Order 23 which required the development of a guidance document as a framework for state agencies and departments to follow when considering environmental justice

¹⁴¹ *Historical Overview of DEP's Environmental Justice Program*, Aug. 2018, <https://nj.gov/dep/ej/docs/historical-overview-njdep-environmental-justice-program.pdf>.

in their operations, decision-making processes, and actions.¹⁴² Two years later, New Jersey's legislature passed a landmark environmental justice law which requires additional scrutiny and public participation for proposed and existing facilities in an "overburdened community."¹⁴³

Executive Order 23 and the landmark law led to the development of NJDEP's guidance *Furthering the Promise: A Guidance Document for Advancing Environmental Justice Across State Government* which provides an environmental justice framework that includes meaningful public involvement.¹⁴⁴ The guidance recommends starting by identifying the environmental justice communities in the state.¹⁴⁵ The criteria for identifying an "overburdened community," set out in New Jersey's environmental justice law, is a community block group that has a population that is 35% low income, 40% minority, or 40% limited English proficient.¹⁴⁶

After identifying the overburdened communities, NJDEP assesses the community's level of "environmental and public health stressors".¹⁴⁷ These stressors include the concentration of stationary and mobile sources of air pollution; contaminated sites; waste transfer stations or other solid waste facilities; recycling facilities; water quality, 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.¹⁴⁸ And finally, NJDEP identifies the lack or absence of environmental and public health benefits, such as high-quality parks; clean energy alternatives; quality public housing; a large number of parks; tree canopy resulting in reduced urban heat island effect; safe bicycle and pedestrian corridors in populated communities; and access to healthy food.¹⁴⁹

When developing its guidance, NJDEP embarked on a stakeholder process, which included members of communities of concern, and the top two opportunities identified by stakeholders were to (1) improve community engagement by state agencies, and (2) provide capacity-building assistance for communities.¹⁵⁰ Some of the recommendations in the guidance to achieve these goals were:

¹⁴² Gov. Murphy Exec. Order 23, <https://nj.gov/infobank/eo/056murphy/pdf/EO-23.pdf>.

¹⁴³ N.J.S.A. 13:1D-157, <https://www.nj.gov/dep/ej/docs/ej-law.pdf>.

¹⁴⁴ NJDEP, *Furthering the Promise: A Guidance Document for Advancing Environmental Justice Across State Government*, <https://www.nj.gov/dep/ej/docs/furthering-the-promise.pdf>.

¹⁴⁵ *Id.* at 9.

¹⁴⁶ N.J.S.A. 13:1D-157; *see also*, *Statewide Overburdened Communities Map*, <https://www.nj.gov/dep/ej/communities.html>.

¹⁴⁷ *Furthering the Promise*, at 9.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 13.

- NJDEP should know the composition of, build an appreciation for, and cultivate synchronization with the communities we serve. This process begins with cultivating awareness by providing workshops and training for NJDEP employees.
- Partnerships between communities and government must be inclusive of all and are value-added. Communities of concern must be engaged so that they can speak for themselves. When state agencies are more proactive in inviting communities of concern to the table during the decision-making process, the community feels included, trust and respect are built, state agencies are more informed, businesses are stronger neighbors, and the overall outcomes are better for all.
- Engagement in the decision-making process can be achieved in the timing, consistency, frequency, and methods of outreach and feedback collection with communities. They must be afforded the right to participate as equal partners at every level of the decision-making process, including needs assessment, planning, implementation, and evaluation.¹⁵¹

One unique feature of NJDEP’s guidance is an “initial assessment” worksheet for agencies to complete to help inform a specific environmental justice action plan for each agency.¹⁵² Some sample prompts from the assessment include, (a) identifying ways to modify the agency’s approach to carrying out its mission to increase benefits and reduce stressors on communities of concern, and (b) assessing ways a program’s activities may cause environmental disturbances and reduce quality of life.¹⁵³ The assessment also prompts the agency to identify specific communities of concern and develop specific outreach and engagement methods for each community.¹⁵⁴ The assessment includes a specific outreach checklist of ideas, such as:

- Identify community concerns and challenges for obtaining input for program design and developing policies or regulations.
- To tailor to the community’s needs, plan meetings
 - In the community
 - In the evening, to allow more people to attend
 - To have a translator attend the meeting in areas where necessary
 - To occur more than once for issues of high importance and community interest
- Translate notices to relevant language(s) spoken widely in the community.
- Provide early public notice, ideally 60 days, before a formal proposal or decision is made, to allow an effective opportunity for community input.

¹⁵¹ *Id.* at 14-15.

¹⁵² *Id.* at 19-25.

¹⁵³ *Id.* at 19.

¹⁵⁴ *Id.* at 22.

- Post notices in places that community members are most likely to see, including local community group offices and other gathering spots, and through media, including social media, commonly used by the community.
- Make underlying information for the proposal available in advance of public meetings, in an easy-to-access place and format.
- Conduct active, personal outreach to community group leaders to make sure that notice has been effectively received.
- Present information at the meeting in accessible, clear, understandable, nontechnical language, and with visual aids such as graphs, icons, infographics, and photos.

NJDEP also utilizes technology to improve access to public information. NJDEP provides access to information through an online portal known as DataMiner.¹⁵⁵ This tool is part of NJDEP’s larger environmental justice mapping program and provides “up-to-the-minute” reports of enforcement actions, public engagement events, and permit requirements by location or category.¹⁵⁶ NJDEP also created an interactive map to view overburdened communities.¹⁵⁷ However, these maps do not include detailed environmental data such as air and water quality, ground and surface water flows, or soil types. NJDEP also hosts an app called “warn NJDEP” that utilizes GPS technology to pinpoint the exact location of environmental incidents and allows the public to submit photos with a report directly to the DEP.¹⁵⁸

Another state agency doing this work is the New Jersey Transportation Planning Authority (NJPTA), which adopted a Public Engagement Plan (PEP) in 2018 to provide clearer guidance and understanding around the roles and opportunities for transportation planning in central New Jersey.¹⁵⁹

The main goal of the plan is to treat the public as partners through engaging the public for transportation planning.¹⁶⁰ Additional goals include promoting greater opportunities for the public to engage with board members, providing meaningful two-way discussions between the NJPTA and the public both in-person and online, making continuous efforts to engage a diverse and wide-ranging representation of those who use transportation in NJ, emphasizing engagement with those traditionally underrepresented in the planning process, and to evaluate and adjust

¹⁵⁵ NJDEP, DataMiner, <https://www13.state.nj.us/DataMiner>.

¹⁵⁶ NJDEP, *What’s In My Community?*
<https://www.arcgis.com/apps/webappviewer/index.html?id=76194937cbbe46b1ab9a9ec37c7d709b>.

¹⁵⁷ NJDEP, Environmental Justice Mapping Tool,
<https://njdep.maps.arcgis.com/apps/webappviewer/index.html?id=34e507ead25b4aa5a5051dbb85e55055>.

¹⁵⁸ *Id.*

¹⁵⁹ North Jersey Transportation Planning Authority, *Public Engagement Plan*,
<https://www.njtpa.org/PEP.aspx>.

¹⁶⁰ *Id.*

public participation efforts periodically.¹⁶¹ The PEP specifically directs the Transportation Planning Authority to engage with immigrants, individuals with limited English proficiency, low-income residents, people with disabilities, and historically underrepresented racial and ethnic groups.¹⁶²

Community engagement types included in the PEP cover a variety of outreach mediums and tools.¹⁶³ The PEP describes how they use their website, email lists, mailing lists, social media, magazine, newspaper, radio, and FOIA requests to share information.¹⁶⁴ They also discuss the ways they have used the following community engagement tools to engage different communities on different project types: public committee meetings, workshops, general information sessions, forums/symposiums, speakers for community meetings, public comment (written and oral), task force meetings, and a public engagement toolkit (including the spectrum of public participation).¹⁶⁵ Accommodations mentioned in the PEP include:

- materials developed to be easy to understand, venues are accessible and comfortable; as possible;
- meetings accessible by public transit,
- electronic content available online,
- some meetings available with translation, and
- some meetings available entirely in a language other than English if a large number of area residents request it.¹⁶⁶

These tools all promote reaching multiple audiences, providing advance notice, and providing information to promote transparency.

NEW YORK

Aspects of environmental justice and public participation are enshrined in New York law, including a pending bill that requires enhanced public participation.¹⁶⁷ New York's environmental justice law sets a policy that "citizen involvement in the development of laws, regulations, and policies that affect the quality of the environment be as reflective of the diversity of interests and perspectives found within the affected community as possible,

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *See, e.g.*, NY Senate Bill S3211A, <https://www.nysenate.gov/legislation/bills/2021/s3211/amendment/a>; Pub. Auth. L. §164; State Environmental Quality Review Act (SEQR), 6 N.Y.C.R.R. Part 617, https://www.dec.ny.gov/docs/permits_ej_operations_pdf/part617seqr.pdf.

including those of racial, ethnic and socioeconomic groups.”¹⁶⁸ Importantly, the law requires that information by the government and agencies be publicly disclosed in a “full, timely, and accessible” manner.¹⁶⁹

The new bill proposes enhancements to public participation planning by requiring, at a minimum:

- a description of the proposed project, including potential environmental impacts of the proposed project;
- a description of the environmental justice community in which the proposed project is located or which is located adjacent to the proposed project, including a map or maps of the project and environmental justice community;
- the location of sensitive receptors in the environmental justice community, including hospitals, schools, elder care facilities, daycare facilities, parks, and other sensitive areas identified by the community, including a map showing the location of such receptors;
- a list, developed in consultation with the environmental justice community, of representative stakeholders in the community, including but not limited to residents, local elected officials, and community-based organizations;
- a description of how public notices and other written information about the proposed project will be posted and distributed in the community and updated regularly and promptly;
- a schedule for holding public meetings in the environmental justice community to provide information about the proposed project, answer questions about the project, and receive input from the community about the project;
- the location in the environmental justice community of easily accessible document repositories where written information about the project will be made available, and establishment of a document website where such information will be posted;
- an implementation schedule for all measures outlined in the plan; and
- provision for submission by the applicant of quarterly progress reports to the department and the environmental justice community concerning the implementation of the plan.¹⁷⁰

The Commissioner of the New York Department of Environmental Conservation (NYDEC) issued a public participation policy in 2003 to ensure community participation in the NYDEC environmental permit review process and establish requirements for proposed projects

¹⁶⁸ Environmental Conservation Law § 48-0101, <http://public.leginfo.state.ny.us/lawsrch.cgi?NVLWO:>.

¹⁶⁹ *Id.*

¹⁷⁰ NY Senate Bill S3211A.

affecting those communities.¹⁷¹ The policy includes a list of directives to NYDEC to enhance public participation, such as:

- Provide enhanced access to public permit information held by the NYDEC, including access to permit information on the NYDEC website and a toll-free environmental justice hotline to enable the public to access the Office of Environmental Justice during business hours.
- Use geographic information system screening tools and U.S. Census data to identify potential environmental justice areas within New York State.
- Use enhanced public participation and public notification mechanisms, including those which are most effective in potential environmental justice areas.
- Make guidance available to assist permit applicants in complying with the Public Participation Plan requirements of this policy. The guidance shall contain tools and information, including those that will better enable the applicant to engage community residents in potential environmental justice areas in the environmental permit review process.
- Facilitate alternative dispute resolution between permit applicants and the public to resolve conflicts in the permit review process.
- Draft regulations to enhance the effectiveness and strengthen the elements of this policy and address potential adverse environmental impacts that may bear disproportionately on potential environmental justice areas, including regulations to establish mandatory public participation requirements
- Draft legislation to establish funding and criteria for a technical assistance grant program to assist the public in the permit review process.
- Translate information on the NYDEC environmental permit process for comprehension by non-English speakers.
- Educate NYDEC staff concerning environmental justice, the environmental review process, and the requirements of this policy.
- Identify and begin conducting workshops to educate the public concerning environmental justice, the environmental review process, the requirements of this policy, and the methodology for identifying a potential environmental justice area.

NYDEC utilizes mapping tools to help identify potential environmental justice communities and areas.¹⁷² Environmental justice areas are defined as meeting or exceeding these thresholds: (1) at least 52.42% of the population in an urban area reported themselves to be members of minority groups; (2) at least 26.28% of the population in a rural area reported

¹⁷¹ NYDEC, Commissioner Policy-29 Environmental Justice and Permitting (CP-29), <https://www.dec.ny.gov/regulations/36951.html>.

¹⁷² See NYDEC, *Maps and Geospatial Information System (GIS) Tools for Environmental Justice*, <https://www.dec.ny.gov/public/911.html>.

themselves to be members of minority groups; and (3) at least 22.82% of the population in an urban or rural area had household incomes below the federal poverty level.¹⁷³

The policy also directs permit applicants to create and submit project-specific public participation plans.¹⁷⁴ To support the development of these plans, NYDEC published a policy guidance document of ‘tips’ and provides consultation on plan development through NYDEC’s project manager, a regional citizen participation specialist, and the Office of Environmental Justice.¹⁷⁵ According to NYDEC’s policy, a project-specific public participation plan must, at a minimum, contain the following:

- Identify stakeholders to the proposed action, including residents adjacent to the proposed action site, local elected officials, community-based organizations, and community residents located in a potential environmental justice area;
- Distribute and post written information on the proposed action and permit review process. Information shall be presented in an easy-to-read, understandable format, using plain language and, when appropriate, public notice materials shall be translated into languages other than English for comprehension by non-English speaking stakeholders;
- Hold public information meetings to keep the public informed about the proposed action and permit review status. Meetings should be held throughout the permit review process at locations and times convenient to the stakeholders of the project;
- Establish easily accessible document repositories in or near the potential environmental justice area to make available pertinent project information, including but not limited to: application material, studies, reports, meeting presentation materials, and media releases. The applicant may also establish a repository on the internet.

In addition to the policy and its guidance, NYDEC published a Citizen Participation Handbook for Remedial Programs.¹⁷⁶ The Handbook details site-level public participation plan requirements for remediation of brownfields and inactive hazardous waste disposal sites throughout the state.¹⁷⁷ The Handbook also details who is responsible for planning and conducting citizen participation, description of the citizen participation program, and outlines opportunities and recommended methods for effective citizen participation.¹⁷⁸

¹⁷³ *Id.*

¹⁷⁴ *See, Tips for Preparing a Public Participation Plan Pursuant to the New York State Department of Environmental Conservation Commissioner Policy-29, Environmental Justice and Permitting*, https://www.dec.ny.gov/docs/permits_ej_operations_pdf/ppp.pdf.

¹⁷⁵ *Id.* at 2.

¹⁷⁶ NYDEC, *DER-23 / Citizen Participation Handbook for Remedial Programs*, https://www.dec.ny.gov/docs/remediation_hudson_pdf/der23.pdf.

¹⁷⁷ *Id.*

¹⁷⁸ *Citizen Participation Handbook*, at 1.

NYDEC maintains information on its website that is important for public participation. NYDEC has a document repository¹⁷⁹ and has a public participation website that includes current and archived information related to public participation, an event calendar, weekly environmental notice bulletin, proposed regulations, contact information, public record resources to request documents, email listservs, and links to community advisory groups across New York State.¹⁸⁰ NYDEC also maintains a website for those seeking language assistance and provides foreign language or sign language interpretation at public meetings, if given two weeks' notice.

¹⁸¹

NORTH CAROLINA

The North Carolina Department of Environmental Quality (NCDEQ) has a Public Participation Plan and Limited English Proficiency Plan easily accessible on its website.¹⁸² The Public Participation Plan was last updated in December 2020 and is reviewed every two years.¹⁸³ The Plan notes that while the document “provides guidance and best practices, each community is different and a ‘one-size fits all’ procedure for public participation is not the most effective approach. Rather, the Department will apply best practices and methods that reflect the needs of each community.”¹⁸⁴ The Plan includes the following goals:

- Create better opportunities and mechanisms to receive public input,
- Promote respectful and meaningful dialogue between community members, organizations, regulated industry, and the Department,
- Educate the public about the Department’s programs,
- Build trust with the public to strengthen community ties and partnerships,
- Work with community organizations to identify shared goals and opportunities for collaboration,
- Provide consistent communication about state law and DEQ’s regulatory authority,
- Work with the public on strategies to improve future public engagement, and
- Identify underserved communities, as needed, and develop tailored communication plans that best serve their specific cultural and logistical needs.¹⁸⁵

¹⁷⁹NYSDEC, *DECinfo Locator*, <https://www.dec.ny.gov/pubs/109457.html>

¹⁸⁰ NYSDEC, *Public Participation*, <https://www.dec.ny.gov/public/51805.html> ,

¹⁸¹ NYDEC, *Language Assistance*, <https://www.dec.ny.gov/about/85156.html>.

¹⁸² NCDEQ, *Public Participation Plan and Limited English Proficiency Plan*, <https://deq.nc.gov/outreach-education/environmental-justice/public-participation-plan-and-limited-english-proficiency>.

¹⁸³ North Carolina Department of Environmental Quality (NCDEQ), *Public Participation Plan*, <https://files.nc.gov/ncdeq/EJ/Public-Participation-Plan-12.2020.pdf>.

¹⁸⁴ *Id.* at 1.

¹⁸⁵ *Id.* at 2.

The NCDEQ Plan suggests additional outreach and engagement for “underserved” communities.¹⁸⁶ NCDEQ defines “underserved” communities by race and poverty rate. A population with a racial composition of “share of nonwhites over fifty percent” or “at least ten percent higher than the county or state share” is considered underserved.¹⁸⁷ Also underserved is a “population experiencing poverty over twenty percent” *and* a “share of households in poverty is at least five percent higher than the county or state share.”¹⁸⁸ According to the Plan, NCDEQ uses a mapping tool to look for potentially affected communities and then applies this definition.

¹⁸⁹

If NCDEQ identifies an “underserved” community, it will undertake “enhanced engagement” methods, such as:

- Distributing flyers, when appropriate and resources allow, in locally-owned businesses, community stores, libraries, places of worship, senior centers, and other gathering places in the areas where communities are potentially affected.
- Engaging non-English speakers through social media and other non-English language media outlets.
- Communicating and distributing vital documents (which may include public hearing notices, project summary documents, etc.) in non-English languages to successfully reach potentially impacted communities, in accordance with the Department’s LEP Language Access Plan.
- Coordinating with community and faith-based organizations, local and Tribal Governments, educational institutions, and other entities to implement public engagement strategies specifically for members of historically underserved communities.
- Working with local community members to identify methods for non-electronic notices/communication.
- Organizing information sessions to familiarize community members who may be familiar with or understand the work conducted and services offered by the Department.
- Notifying communities, organizations, and local governments in counties near projects when the Draft EJ Report incorporates multiple counties.
- Attending community events.

NCDEQ documents this analysis in a “Draft EJ Report” which is distributed to interested community members and posted on the DEQ website, accompanying the related permit

¹⁸⁶ *Id.* at 5.

¹⁸⁷ *Id.* at 6.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*; *see also*, *North Carolina Community Mapping System*, <https://deq.nc.gov/outreach-education/environmental-justice/deq-north-carolina-community-mapping-system>.

application and draft permit until the close of the public comment period.¹⁹⁰ After soliciting feedback on this Draft EJ Report, a Final EJ Report is prepared to incorporate any additional information learned about the surrounding community and describe any enhanced engagement methods.¹⁹¹

In addition to the Plan and website, NCDEQ administers an environmental justice email listserv where stakeholders and the public can be notified of permit applications, enforcement actions, and designations of environmental justice communities.¹⁹² NCDEQ also utilizes an anonymous comment tool that members of the public can use to “provide anonymous suggestions or complaints about an environmental concern or an incident of discrimination involving an environmental concern.”¹⁹³

WASHINGTON

In 2021, Washington State passed the Healthy Environment for All (HEAL) Act which requires state agencies to adopt a “community engagement plan” by January 2022 that “describes how it will engage with overburdened communities and vulnerable populations as it evaluates new and existing activities and programs.”¹⁹⁴ Under the law, this plan must describe how the agency plans to facilitate “equitable participation and support meaningful and direct involvement of vulnerable populations and overburdened communities,” and must include the following:

- How the covered agency will identify and prioritize overburdened communities for purposes of this chapter;
- Best practices for outreach and communication to overcome barriers to engagement with overburdened communities and vulnerable populations;
- Use of special screening tools that integrate environmental, demographic, and health disparities data, such as the environmental health disparities map, to evaluate and understand the nature and needs of the people who the agency expects to be impacted by significant agency actions and processes to overcome barriers to participation;
- Processes that facilitate and support the inclusion of members of communities affected by agency decision making including, to the extent legal and practicable, but not limited to, child care and reimbursement for travel and other expenses; and

¹⁹⁰ *Id.* at 6-7.

¹⁹¹ *Id.* at 7.

¹⁹²

¹⁹³ NCDEQ, *N.C. DEQ Anonymous Comment Tool*,

<https://deq.nc.gov/outreach-education/environmental-justice/nc-deq-anonymous-comment-tool>.

¹⁹⁴ The HEAL Act, 5141-S2.SL,

<https://lawfilesexternal.wa.gov/biennium/2021-22/Pdf/Bills/Session%20Laws/Senate/5141-S2.SL.pdf?q=20211021085811>.

- Methods for outreach and communication with those who face barriers, language or otherwise, to participation.¹⁹⁵

The HEAL Act includes other requirements to enhance community engagement, such as asking agencies to create opportunities for overburdened communities and vulnerable populations to meaningfully participate in agency expenditure decisions and requiring tribal consultation.¹⁹⁶

The requirements of the law are based on recommendations of the Washington Environmental Justice Task Force, which published a report in 2020 that discussed guidance on community engagement.¹⁹⁷ The Task Force developed five environmental justice principles “to serve as an initial blueprint for a shared vision for EJ in Washington state[,]”¹⁹⁸ informed by communities across the state and by the original 1991 Environmental Justice Principles. The Washington state EJ principles are as follows:

1. Achieve the highest attainable environmental quality and health outcomes for all people.
2. Adopt a racial justice lens.
3. Engage community meaningfully.
4. Be transparent.
5. Be accountable.¹⁹⁹

The Task Force also drew from and provides guidance on applying tools developed by the Government Alliance on Race and Equity (GARE), notably the GARE Racial Equity Toolkit, which is designed “to assist agencies with tracking and communicating progress toward EJ and embedding EJ in agency strategic plans”²⁰⁰ and which has been adapted for use in both Seattle²⁰¹ and King County²⁰², Washington. The Task Force recommends that agencies undertake an evaluation process to determine who is negatively impacted and who is benefitted by any agency decisions meant to benefit the public and includes measurable goals and model policy recommendations for implementation.²⁰³

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Environmental Justice Task Force, Recommendations for Prioritizing EJ in Washington State Government, Appendix C, Community Engagement Plan Guidance*, [https://healthequity.wa.gov/Portals/9/Doc/Publications/Reports/EJTF%20Report_FINAL\(1\).pdf](https://healthequity.wa.gov/Portals/9/Doc/Publications/Reports/EJTF%20Report_FINAL(1).pdf).

¹⁹⁸ *Id.* at 7.

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ See e.g. Seattle Office for Civil Rights, Racial Equity Toolkit (n.d.)

<https://www.seattle.gov/civilrights/what-we-do/race-and-social-justice-initiative/racial-equity-toolkit>; Virginia Garcia, *Seattle Office of City Auditor Pursues Racial Equity in its Audits through the use of its Race and Social Justice Toolkit*, Local and Regional GARE Blog (Jan. 29, 2019)

<https://www.racialequityalliance.org/2019/01/29/seattle-office-of-city-auditor-pursues-racial-equity-in-its-audits-through-the-use-of-its-race-and-social-justice-toolkit/>.

²⁰² Office of Equity and Social Justice, *King County Equity and Social Justice Strategic Plan 2016-2022* (n.d.)

<https://your.kingcounty.gov/dnrp/library/dnrp-directors-office/equity-social-justice/201609-ESJ-SP-FULL.pdf>.

²⁰³ *Id.* at 88.

Other Washington state agencies have robust guidance on community engagement. For instance, the Washington State Department of Health published a *Community Engagement Guide* which includes a list of community engagement principles, methods, and best practices.²⁰⁴ The Washington State Department of Transportation also has a community engagement plan which includes best practices on reaching out to communities, engagement strategies, and assessing effective engagement.²⁰⁵ The environmental justice and community engagement guidance documents published by Washington state agencies provide significantly more guidance than those from other states.

Additional Resources

This section includes useful resources encountered during development of this memo that can be reviewed alongside the resources cited in the footnotes above. These materials could be used to further research, inform conversations between decision makers and community organizations, and as tools for developing a community engagement strategy.

Resources:

- Urban Sustainability Directors Network, *From Community Engagement to Ownership Tools for the Field with Case Studies of Four Municipal Community-Driven Environmental & Racial Equity Committees*²⁰⁶
- Free Online Conference by the California EPA and Natural Resources Agency, *Building Our Skills Together Online Conference* – June 2-4, 2020²⁰⁷
- Facilitating Power, *The Spectrum of Community Engagement*²⁰⁸
- CDC, *Program Evaluation and Evaluating Community Engagement*²⁰⁹
- EPA, *Tribal Community Engagement Strategy*²¹⁰

²⁰⁴ Washington State Dept. of Health, *Community Engagement Guide*,
<https://www.doh.wa.gov/Portals/1/Documents/1000/CommEngageGuide.pdf>.

²⁰⁵ Washington State Dept. of Transportation, *Community Engagement Plan*,
<https://wsdot.wa.gov/sites/default/files/2019/05/22/Planning-CommunityEngagementPlan-2016Update.pdf>.

²⁰⁶
https://www.usdn.org/uploads/cms/documents/community_engagement_to_ownership_-_tools_and_case_studies_final.pdf

²⁰⁷ <https://resources.ca.gov/Newsroom/Page-Content/News-List/Online-Environmental-Engagement>

²⁰⁸ https://d3n8a8pro7vhmx.cloudfront.net/facilitatingpower/pages/53/attachments/original/1596746165/C_E2O_SPECTRUM_2020.pdf?1596746165

²⁰⁹ https://www.atsdr.cdc.gov/communityengagement/pdf/pce_report_chapter_7_shef.pdf

²¹⁰
<https://www.epa.gov/sites/production/files/2017-03/documents/tribalswcommunityengagementstrategy508.pdf>

- EPA, *Guidance on Internet Resources for Public Participation*²¹¹
- California Air Resources Board (CARB), *Community Engagement Resources*²¹²
- Government Alliance on Race and Equity, *Racial Equity Toolkit: An Opportunity to Operationalize Equity*²¹³
- North American Association for Environmental Education, *Guidelines for Excellence: Community Engagement*²¹⁴
- Agency for Toxic Substances and Disease Registry, *Principles of Community Engagement & Literature Review*²¹⁵

²¹¹

<https://www.epa.gov/international-cooperation/public-participation-guide-internet-resources-public-participation>.

²¹² <https://ww2.arb.ca.gov/community-engagement-resources>

²¹³ https://www.racialequityalliance.org/wp-content/uploads/2015/10/GARE-Racial_Equity_Toolkit.pdf

²¹⁴ https://cdn.naaee.org/sites/default/files/community_engagement_-_guidelines_for_excellence.pdf

²¹⁵ https://www.atsdr.cdc.gov/communityengagement/pce_what.html