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S.B. 115
SB 89

Abstract: Many communities across the nation struggle with disproportionately high levels of environmental contamination. Beginning in 1982 with the advent of the environmental justice movement, many communities have begun to speak out against these injustices. Their protests sparked attention from the federal government which began studying the problem. In 1994, President Clinton issued an executive order directing federal agencies to incorporate environmental justice principles into their missions and reiterating the applicability of federal civil rights and environmental laws to these issues. In response to this Executive Order and the concerns that prompted it, many states have joined the fight to find local solutions to environmental justice concerns. In an effort to provide guidance to the California Environmental Justice Workgroup in implementing SB 115, this report provides a brief overview of the federal environmental justice framework and a more comprehensive look at state environmental justice programs.

Environmental Justice: A Review of State Responses

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I. Introduction

Many communities across the nation struggle with disproportionately high levels of environmental contamination. Whether this burden can be attributed to racial factors, economic ones, or both, the underlying problems remain – greater incidence of illness and lower quality of life for those citizens bounded by hazardous waste facilities, landfills, toxic dumps and other undesirable land uses.

Beginning in 1982 with the advent of the environmental justice movement, many communities have begun to speak out against these injustices. Their protests sparked attention from the United States General Accounting Office (GAO) which studied the siting of hazardous waste facilities. In 1990, the EPA formed an Environmental Equity Workgroup to study the issues raised by community groups and the GAO. President Clinton issued Executive Order 12898 in 1994 directing federal agencies to incorporate environmental justice principles into their missions and reiterating the applicability of federal civil rights and environmental laws to these issues. In response to this Executive Order and the concerns that prompted it, many states have joined the fight to find local solutions to environmental justice concerns.

In an effort to provide guidance to the California Environmental Justice Workgroup in implementing SB 115, this report provides a brief overview of the federal environmental justice framework and a more comprehensive look at state environmental justice programs.

II. Summary of Findings

Numerous states have been active in pursuing environmental justice, while a handful of states have been especially active. Those active states (Florida, Maryland, New Jersey, New York, Oregon, and Tennessee) have all employed similar strategies. First, each state created a commission, task force, or advisory council, usually through legislative action. The advisory

groups consisted of representatives from various stakeholder groups, including industry, community groups, government representatives, and other interested parties. Second, in addition to holding internal meetings, the advisory groups often held public meetings throughout the state to gather public input. After this “information gathering” stage, the advisory group usually presented the results of its findings, with recommendations, to the state’s legislature and/or governor.

While the results of these reports varied by state, some common themes emerged. Most reports recommended changing various internal policies (i.e. permitting) to include environmental justice issues, establishing an office or program within the state’s environmental department to continue addressing environmental justice concerns, and creating a separate institution (often at a university) to study environmental justice concerns and provide the general public with an outlet for their concerns.

The benefits of this approach are threefold. First, the process is inclusive, those who want to be included have that opportunity. Further, an ongoing commitment to environmental justice, whether illustrated by a new division in the state’s environmental agency or a separate institution, demonstrates a long-term commitment to this complex problem. Finally, these long-term institutions provide a degree of accountability for those who feel the issue has not yet been fully addressed.

III. Federal Overview

As noted above, some communities have been confronting environmental justice problems for many years. Many trace the origin of the “environmental justice” movement to Warren County, North Carolina where, in 1982, minority residents protested against the siting of

a hazardous waste dump in their community.¹ Members of the predominantly African-American community argued that siting the landfill in their community would violate both environmental and civil rights laws.² This marked the first time environmental and civil rights claims merged and provided the impetus for the creation of the environmental justice movement.³

The Warren County protests led the GAO to investigate the siting of hazardous waste sites. The GAO found that three out of four sites were located near predominately black communities, providing statistical evidence that such populations bear a majority of the environmental dangers associated with such facilities.⁴

In 1990, the EPA formed an Environmental Equity Workgroup (Workgroup), charged with assessing evidence that minority and low-income communities face greater environmental risks than the general population.⁵ The Workgroup report recognized the existence of environmental injustice as well.

A. [Executive Order 12898](#)

In response to mounting evidence that minority and low-income communities face a disproportionate share of adverse environmental consequences of industry, President Clinton issued Executive Order 12898 (Executive Order) entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations." The Executive Order recognized the legitimacy of environmental justice concerns and directed federal agencies to ensure that these concerns were being addressed. More specifically, the president ordered each federal agency to "make achieving environmental justice part of its mission by identifying

¹ See J. Dale Givens, Chair, *Mississippi River Corridor Task Force Report: Final Report to the Governor* (Sept. 2000) at 5.

² See *id.*

³ See *id.*

⁴ See US GENERAL ACCOUNTING OFFICE, SITING OF HAZARDOUS WASTE LANDFILLS AND THEIR CORRELATION WITH RACIAL AND ECONOMIC STATUS OF SURROUNDING COMMUNITIES (1983).

and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations⁶ The Executive Order aimed to promote non-discrimination in those federal programs with a substantial effect on human health and the environment and to provide minority and low-income communities with access to information and the opportunity to participate in matters relating to human health and the environment.⁷

The Executive Order establishes the Clinton administration's stance on environmental justice and does not create any rights or remedies.⁸ It essentially works to improve the "internal management of the executive branch."⁹ As such, the Executive Order is not enforceable in court.¹⁰

The president attached to the Executive Order a memorandum to federal department and agency heads to "underscore certain provisions of existing law" that can be used to pursue environmental justice goals.¹¹ The memorandum makes clear that this includes federal civil rights and environmental statutes, including Title VI of the Civil Rights Act of 1964.¹² President Clinton ordered federal agencies to ensure that "all programs or activities receiving Federal financial assistance that affect human health, or the environment do not directly, or through contractual or other arrangements, use criteria, methods, or practices that discriminate on the basis of race, color, or national origin."¹³ The Memorandum uses the language of Title VI,

⁵ See Environmental Protection Agency, *Environmental Justice Questions- Fact Sheet*, available through www.epa.gov.

⁶ Exec Order No. 12,898, 3 C.F.R. 859 (1995), reprinted as amended in 42 U.S.C. § 4321 (1994 & Supp. IV 1998).

⁷ See *id.*

⁸ See *id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ See Memorandum from William Clinton, President of the United States, for the Heads of All Departments and Agencies (Feb. 11, 1994), available at www.epa.gov/docs/oejpubs/prezmemo.txt.html.

¹² See *id.*

¹³ *Id.*

which prohibits recipients of federal financial assistance (like states, universities and local governments) from discriminating based on race, color, or national origin in their programs or activities.¹⁴

B. Title VI of the Civil Rights Act of 1964

Title VI of the Civil Rights Act of 1964 has emerged as a major tool for environmental justice advocates. It provides, in relevant part, that “No person . . . shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”¹⁵ Under EPA's Title VI implementing regulations, EPA-funded agencies are prohibited from taking acts, including permitting actions, that are intentionally discriminatory or have a discriminatory effect based on race, color, or national origin. Unlike Executive Order 12898, Title VI applies to all recipients of federal funding, including states whose environmental programs may be funded in part by the EPA. Unlike the Executive Order, which applies to the EPA and other federal agencies, Title VI applies to recipients of money from such agencies and not to the agencies themselves.¹⁶

Under Title VI, citizens can file complaints with the EPA alleging discriminatory effects resulting from the issuance of pollution control permits by state and local government agencies.¹⁷

The provisions of Title VI apply to intentional discrimination as well as practices and policies

¹⁴ See Title VI of the Civil Rights Act of 1964, *as amended* 42 U.S.C. §§2000d to 2000d-7 (1999).

¹⁵ *Id.*

¹⁶ See *Title VI and Environmental Justice at the EPA*, available at www.epa.gov/civilrights/t6andej.htm. In addition, federal agencies are required to analyze the environmental effects, including human health, economic, and social effects of federal actions when such analysis is mandated by the National Environmental Policy Act (NEPA). See *Presidential Memorandum*, *supra* note 11.

¹⁷ See Environmental Protection Agency, *Background Information on Brownfields and Title VI*, (last modified July 27, 1998), available at www.epa.gov/swerosps/ej/html-doc/title6b.htm.

that, while facially neutral, tend to have a discriminatory effect.¹⁸ Facially neutral practices that have discriminatory effects are prohibited unless an agency can demonstrate that they are necessary to the program's operation and no less discriminatory alternative exists.¹⁹ The EPA's Office of Civil Rights (OCR) processes and investigates all EPA-related Title VI administrative complaints. The EPA, under the terms of the Civil Rights Act, is responsible for assuring compliance with Title VI from all agencies to which it provides funds.²⁰

Using Title VI to bring claims of discrimination in the environmental context can be advantageous to complainants. First, complainants can prove discrimination using a disparate impact theory, which is less burdensome than an equal protection claim that requires proof of discriminatory intent. Prior to the Executive Order, complainants brought equal protection claims and had little success.²¹ One disadvantage to using Title VI, however, is the remedy. Even if a complainant can prove discrimination, the sole remedy is withdrawal of federal funding.

The EPA has taken considerable steps to ensure environmental justice in its programs. As noted above, the agency formed an Environmental Equity Workgroup in 1990 to study environmental justice issues. Since then, they have created the National Environmental Justice Advisory Council (NEJAC), which has gathered public input at meetings across the country. Perhaps most significantly, the EPA has drafted guidelines to guide states (and other entities) in creating programs that comply with Title VI. When entities receive financial assistance from the

¹⁸ See *Memorandum from Janet Reno, Attorney General of the United States, to Heads of Departments and Agencies That Provide Federal Financial Assistance* (July 14, 1994); see also *Guardians Association v. Civil Service Commission*, 463 U.S. 582 (1983).

¹⁹ See *Memorandum from Janet Reno, supra* note 18.

²⁰ See Environmental Protection Agency, *Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs and Revised Draft Guidance for Investigating Title VI Administrative Complaints Challenging Permits*, 65 Fed. Reg. 39650, 39653 (2000) (hereinafter DRGs).

²¹ See EPA, *Interim Guidance for Investigating Title VI Administrative Complaints Challenging Permits* (1998), available through www.epa.gov.

EPA, they must promise to comply with the EPA's regulations implementing Title VI.²² The EPA drafted the Interim Guidance and the soon-to-be finalized Revised Draft Guidance for recipients of EPA funds. They are "intended to offer suggestions to assist state and local recipients in developing approaches and activities that address Title VI concerns."²³ Unlike the Implementing Regulations, these guidance documents are not binding on fund recipients.²⁴

The EPA released its *Interim Guidance for Investigating Title VI Administrative Complaints* (IG) in 1998.²⁵ The IG resulted in considerable criticism by state agencies, environmental justice advocates and industry representatives, who felt it was unclear and unhelpful. State and industry representatives maintained that the IG would slow or prevent the implementation of permits because it seemed to imply that permits would be suspended if citizens filed a civil rights complaint.²⁶ Similarly, the U.S. Conference of Mayors passed a resolution criticizing the IG as incompatible with efforts to redevelop brownfield properties.²⁷ Community representatives, on the other hand, argued that the IG created hurdles for complainants and would unduly restrict Title VI complaints.²⁸

The EPA convened a Title VI Implementation Advisory Committee (Committee) in April 1998 to study the concerns raised by the IG.²⁹ The Committee suggested that in redrafting the IG, the EPA should undertake more extensive outreach to stakeholders, especially environmental justice community groups, as well as initiate communication with those who have filed Title VI

²² See DRGs, *supra* note 20.

²³ *Id.* at 39,651.

²⁴ *See id.*

²⁵ *See Interim Guidance, supra* note 21.

²⁶ *See* Environmental Protection Agency, *Report of the Title VI Implementation Advisory Committee: Next Steps for EPA, State, and Local Environmental Justice Programs* (March 1999) at 4. While this report was specifically directed toward the EPA, many of the concerns and issues outlined in the Report are also pertinent to states as they approach the issue of environmental justice.

²⁷ *See Background Information on Brownfields and Title VI, supra* note 17.

²⁸ *See id.*

²⁹ *See Advisory Committee Report, supra* note 26 at 1.

complaints.³⁰ In addition, the Committee recommended that the EPA issue revised guidance as quickly as possible, given the backlog of pending Title VI complaints in the OCR.³¹

The Committee noted that permitting issues are only one aspect of the environmental justice problem and highlighted areas they felt deserved greater EPA attention.³² First, the Committee recommended that the EPA develop objective data on past enforcement efforts and evaluate enforcement policies and practices “to determine whether they have the effect of de-emphasizing enforcement in communities containing a protected class.”³³ Second, the Committee felt the EPA should consider the effect Title VI policies and programs may have on brownfield redevelopment in the inner city.³⁴ Third, they recommended that the EPA consider the problem of pollution from unregulated sources, in addition to regulated sources, because such pollution often constitutes a source of disproportionate harm in minority communities.³⁵ In order to comprehensively deal with the issue of environmental justice, the Committee asserted that these other concerns, in addition to permitting concerns, needed to be addressed.

Partly in response to these criticisms and in light of the Committee’s recommendations, the EPA released a revised draft guidance document in June 2000.³⁶ The draft guidance contained two documents, *Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs* and *Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits* (hereinafter referred to together as DRG). The

³⁰ See *id.* at 16.

³¹ See *id.* at 17.

³² See *id.* at 18.

³³ See *id.*

³⁴ See *id.* at 19. According to the Committee report, state and local representatives expressed concern that endorsing the identification of communities of color on a geographic basis would create a stigma that would foreclose economic development. *Id.* Community representatives, on the other hand, were “skeptical about the value of economic development that exacerbates adverse health effects in neighborhoods already bearing a disproportionate burden.” *Id.* With that concern in mind, the community representatives were not willing to “relinquish screening or mapping on the basis that it may chill any form of economic development. . . .” *Id.*

³⁵ See *id.*

first document is intended to offer suggestions to assist state and local recipients in developing approaches and activities to address potential Title VI concerns.³⁷ The second document describes a framework for the OCR's processing of complaints alleging discrimination in the environmental permitting context.³⁸

The DRG relies heavily on the Implementation Advisory Committee's report and suggests that states should develop a Title VI strategy that best meets their individual needs.³⁹ Further, the DRG suggests states should identify and resolve issues within their permitting programs that could lead to Title VI complaints. To this end, recipient states should consider integrating the following activities into their permitting programs:

- (1) staff training;
- (2) encouraging effective public participation and outreach;
- (3) conducting adverse impact and demographic analyses;
- (4) encouraging intergovernmental involvement;
- (5) participating in alternative dispute resolution;
- (6) reducing or eliminating the alleged adverse disparate impact; and
- (7) evaluating Title VI activities to identify progress and areas in need of improvement.⁴⁰

Essentially, the DRG focuses on the importance of community involvement early in the permitting process and the implementation of preventative activities and approaches.⁴¹

The initial response to the DRG has been mixed. The Environmental Council of the States (ECOS) criticized the documents as lacking clarity and certainty.⁴² ECOS noted that key

³⁶ See DRGs, *supra* note 20 at 39,650.

³⁷ See *US EPA Draft Title VI Documents Fact Sheet*, available through www.epa.gov (on file with author).

³⁸ *Id.*

³⁹ See DRGs, *supra* note 20 at 39651, 39656-57.

⁴⁰ See *id.* at 39,657.

⁴¹ See *id.* at 39,663.

⁴² *ECOS Comments on Revised Title VI Guidance* (August 14, 2000), available through www.sso.org/ecos.

terms like “adequate justification” and “comparison populations,” are undefined.⁴³ Further, they maintained that the DRG does little to assist states in avoiding Title VI complaints.⁴⁴

Presumably, some or all of the ECOS’s criticisms of the DRG will be addressed in the final version of the guidance.

IV. State Responses to Environmental Justice

A. California

California is among many states that have responded to the environmental justice concerns discussed above. In October 1999, Governor Davis signed [SB 115](#) (Solis) into law, establishing the Governor’s Office of Planning and Research (OPR) as the lead agency for environmental justice programs. The bill further required the California Environmental Protection Agency (CalEPA) to take specified actions in designing its mission for programs, policies, and standards within the agency, and to develop a model environmental justice mission statement for boards, departments, and offices within the agency by January 1, 2001.⁴⁵ The Governor signed a related bill (SB 89) in September 2000 requiring, among other things, that the Secretary for Environmental Protection convene a Working Group before January 15, 2002 to assist the CalEPA in developing an interagency environmental justice strategy.⁴⁶ These laws come on the heels of prior legislative attempts to address environmental justice in California, beginning in 1991.⁴⁷

⁴³ *See id.*

⁴⁴ *See id.*

⁴⁵ *See* SB 115, *added as* Cal. Gov’t Code § 65040.12 and Cal. Pub. Res. Code § 7200 (West 2000).

⁴⁶ *See* SB 89, *amending* Cal. Gov’t Code § 65040.12 (West 2000) and *added as* Cal. Pub. Res. Code § § 72001.5, 72002, 72003, 72004 (West 2000).

⁴⁷ *See, e.g.*, AB 937 of 1991 (vetoed) and AB 3024 of 1992 (vetoed), and AB 2212 of 1994 (refused passage on the Senate floor). These bills “would have required the submittal of ‘project site demographics’ for a ‘potentially high-impact development project,’ and prohibited an application for such a facility from being accepted as complete, deemed completed, or approved without this information.” SB 115, Bill Analysis prepared by the Legislative Counsel’s Office, *available at* <http://leginfo.public.ca.gov/cgi->

SB 115 faced a fair amount of opposition in the California legislature, mainly from business and municipal associations who argued that the bill would discourage economic development and result in job losses and decreased tax revenues in high unemployment areas.⁴⁸ Proponents countered that the bill promoted informed decision-making and would ensure that Californians are treated fairly with respect to the development and enforcement of environmental laws and public policies.⁴⁹ The bill passed by a vote of 23-14 in the Senate and 46-32 in the Assembly and, as noted above, was signed into law in October 1999.

SB 115 defines “environmental justice” as “the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.”⁵⁰ As stated earlier, it requires that OPR serve as the coordinating agency in state government for environmental justice programs. To this end, the OPR director must consult with the Secretaries of the CalEPA, other state agencies, and all other interested members of the public and private sectors.⁵¹ Additionally, the director must coordinate OPR’s efforts and share information regarding environmental justice programs with specified federal agencies.⁵² It must also review and evaluate any information received from the California Environmental Justice Working Group and from federal agencies based on their regulatory activities under EO 12898.⁵³

SB 115, as amended by SB 89, also added a number of new requirements for CalEPA in designing its mission for programs, policies, and standards. It must now do all of the following:

bin/postquery?bill_number=sb_115&sess=PREV&house=B or by visiting leginfo.public.ca.gov/bilinfo.html and entering SB 115 (hereinafter SB 115 Bill Analysis).

⁴⁸ See SB 115 Bill Analysis, *supra* note 47.

⁴⁹ See *id.*

⁵⁰ Cal. Gov’t Code § 65040.12(b)(3)(c) (West 2000).

⁵¹ Cal. Gov’t Code § 65040.12 (b)(1) (West 2000).

⁵² Cal. Gov’t Code § 65040.12(b)(2) (West 2000).

⁵³ Cal. Gov’t Code § 65040.12(b)(3) (West 2000).

- (a) Conduct its programs, policies, and activities that substantially affect human health or the environment in a way that ensures the fair treatment of people of all races, cultures, and income levels, including minority populations and low-income populations of the state.
- (b) Promote enforcement of all health and environmental statutes within its jurisdiction in a manner that ensures the fair treatment of people of all races, cultures, and income levels, including minority populations and low-income populations in the state.
- (c) Ensure greater participation in the agency's development, adoption, and implementation of environmental regulations and policies.
- (d) Improve research and data collection for programs within the agency relating to the health of, and environment of, people of all races, cultures, and income levels, including minority populations and low-income populations of the state.
- (e) Coordinate its efforts and share information with the federal EPA.
- (f) Identify differential patterns of consumption of natural resources among people of different socioeconomic classifications for programs within the agency.
- (g) Consult with and review any information received from the Working Group on Environmental Justice.⁵⁴

[SB 89](#) complements SB 115 and requires the creation of an environmental justice working group (noted above in subparagraph (g)) and advisory group to assist the CalEPA in developing an interagency environmental justice strategy.⁵⁵ The California Environmental Justice Working Group is comprised of the Secretary for Environmental Protection, the Chairs of the State Air Resources Board, the Director of Environmental Health Hazard Assessment, and the Director of OPR and is charged with:

- (1) examining existing data and studies on environmental justice, and consulting with state, federal, and local agencies and affected communities;
- (2) recommending criteria to the Secretary for Environmental Protection for identifying and addressing any gaps in existing programs, policies, or activities that may impede the achievement of environmental justice;

⁵⁴ Cal. Pub. Res. Code § 7200(a)-(g) (West 2000), *as amended by SB 89 (2000)*.

⁵⁵ *See SB 89 (2000)*.

- (3) recommending procedures and providing guidance to the CalEPA for the coordination and implementation of intra-agency environmental justice strategies;
- (4) recommending procedures for collecting, maintaining, analyzing, and coordinating information relating to an environmental justice strategy;
- (5) recommending procedures to ensure that public documents, notices, and public hearings relating to human health or the environment are concise, understandable and readily accessible to the public;
- (6) holding public meetings to receive public comments regarding recommendations required pursuant to this bill; and
- (7) making recommendations on other matters needed to assist the agency in developing an intra-agency environmental justice strategy.⁵⁶

In addition to the Working Group, the Secretary for Environmental Protection must also convene an advisory group to assist the Working Group by providing recommendations and information to, and serving as a resource for, the Working Group. The advisory group consists of representatives from planning agencies, air districts, certified unified program agencies, environmental organizations, businesses, and community organizations.⁵⁷ In light of the creation of these groups, SB 89 also added new consultation requirements to Cal. Gov't Code §65040.12 and Cal. Pub. Res. Code § 72000 & 72001.5 (West 2000). The Secretary for Environmental Protection must prepare and submit to the Governor and Legislature a report on the implementation of SB 89, no later than January 1, 2006, and every three years thereafter.⁵⁸

B. Other State Approaches

ALABAMA

While Alabama does not have a comprehensive environmental justice plan, it has addressed environmental justice concerns through hazardous waste anti-concentration laws. Alabama law provides that no more than one commercial hazardous waste treatment facility or

⁵⁶ Cal. Pub. Res. Code § 72002 (b), (c) (1)-(7) (West 2000).

⁵⁷ Cal. Pub. Res. Code §§ 72003, 72003(a)-(f) (West 2000).

disposal site may be situated within any one county of the state.⁵⁹ Further, no commercial hazardous waste treatment or disposal site may be situated until the legislature receives and approves a written proposal addressing socioeconomic concerns, among others.⁶⁰ In considering whether to approve the siting request, legislators must take into account the “social and economic impacts of the proposed facility on affected communities, including changes in property values, community perception, and other costs.”⁶¹ Alabama law also provides for notice and opportunity for public comment and the possibility of a public hearing before issuance of any permit for a hazardous waste treatment, storage or disposal facility.⁶² Despite these anti-concentration provisions, the Alabama Department of Environmental Management (ADEM) does not provide any environmental justice information on its website (www.state.al.us).

Recent newspaper reports indicate a fair amount of interest in environmental justice issues in Alabama and some community activity in opposing the construction of landfills and hazardous waste facilities. In August 2000, for example, plans to build Alabama’s biggest solid waste dump in predominantly black and poor Macon County were withdrawn after protests by residents, who were joined by Jesse Jackson and Alabama Governor Don Siegelman.⁶³

It is worth noting that the anti-concentration laws referred to above apply only to commercial hazardous waste sites. Opponents of other undesirable land uses may face greater challenges in voicing their opposition. For example, a recent article describes the struggle over a proposed landfill in Lowdes County, near the site of the 1965 civil rights march from Selma to

⁵⁸ Cal. Pub. Res. Code § 72004 (West 2000).

⁵⁹ See Ala. Code § 22-30-5.1(c) (1999).

⁶⁰ Ala. Code § 22-30-5.1 (c) & (d) (1999).

⁶¹ Ala. Code § 22-30-5.1(d)(1) (1999).

⁶² See Ala. Code § 22-30-12 (g) (2000).

⁶³ See Dave Bryan, “McGregor withdraws plans as Jackson joins opponents of landfill,” A.P. Newswires, August 24, 2000.

Alabama.⁶⁴ Lowdes County first approved the landfill permit application in 1998. Subsequent litigation over which agency had jurisdiction in the approval process was thrown out of court, opening the door to the state permitting process.⁶⁵ According to Gerald Hardy, chief of ADEM's land division, "the department denied requests for hearings during the state permitting process because complaints about the site were socioeconomic rather than environmental and thus did not fall under ADEM's purview."⁶⁶ Despite this, Alabama law does allow residents to file a complaint with the state's seven-member Environmental Management Commission.⁶⁷

The Alabama Department of Transportation (ALDOT) has also recognized environmental justice as an issue and refers to it in its Statewide Transportation Plan (SWTP), a long-range planning document.⁶⁸ In that document, ALDOT states that it is "cognizant of and sensitive to the evolving environmental justice guidance, including E.O. 12898, which requires that states . . . consider the extent to which low-income and minority populations may be disproportionately impacted by transportation plans and projects."⁶⁹ It continues, "Environmental justice is a relatively new concept in transportation planning and the actions required of the states are still largely undetermined. However, this plan reflects ALDOT's efforts to begin to address environmental justice in statewide planning."⁷⁰ Clearly, environmental justice issues cut across many agency lines and involve more than just "environmental" laws.

Contact Information: ADEM, (334) 271-7700, www.adem.state.al.us.

ALASKA

⁶⁴ See 2000 WL 12746261, "Decision to build landfill in Alabama sparks debate over history versus growth," in Solid Waste Report, August 10, 2000.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ See generally, Ala. Code § 22-22A-6 *et seq.* (1999).

⁶⁸ See www.dot.state.al.us/bureau/transportation_planning/stateplan/introduction.htm.

⁶⁹ *Id.*

Although the state government is not directly involved in environmental justice issues, the Maniilaq Association (Association), a non-profit tribal consortium of eleven federally recognized tribes located in Northwest Alaska, certainly is.⁷¹ The Association runs several programs, including a Tribal Environmental Protection Program, which the EPA's Indian General Assistance Program funds.⁷² The Association is creating a guidebook on environmental justice issues facing Native Americans which it plans to distribute throughout the state and suggest as a model for Alaska to emulate.⁷³

According to its website, the Association is focusing on: (1) public awareness, education, and training; (2) contamination and pollution prevention; (3) environmental assessment; (4) community programs; and (5) environmental information and resource and technical assistance.⁷⁴

Contact information: (907) 442-7639; www.manniilaq.org; Frances Chin, Program Director, fchin@manniilaq.org.

ARIZONA

Arizona has approached environmental equity concerns by providing information to affected communities. The Arizona Department of Environmental Quality (ADEQ) must provide notification of any major permit application to counties, cities, and towns that may be impacted by a permitting decision.⁷⁵ According to Chuck Barlow, author of "State Environmental Justice Programs and Related Authorities," ADEQ has instructed its Air Quality, Water Quality, Hazardous Waste, and Solid Waste Divisions (as part of its Public Notification

⁷⁰ *Id.*

⁷¹ *See generally*, www.manniilaq.org/aboutus.htm.

⁷² *See generally*, www.manniilaq.org/tribalenvprotect.htm.

⁷³ Telephone interview with Frances Chin, November 20, 2000.

⁷⁴ *See* www.manniilaq.org/environmentalprogram.htm

⁷⁵ *See* Ariz. Rev. Stat. Ann. § 49-111 (2000).

Policy for Ariz. Rev. Stat. Ann. § 49-111) to “proactively support the Environmental Justice program and when deemed necessary by ADEQ management, notify the environmental justice population affected within thirty-one (31) days of receipt of permit applications.”⁷⁶

The Office of Administrative Counsel within ADEQ is responsible for policy adoption, environmental justice and tribal liaison programs, and coordinating ADEQ’s multimedia enforcement efforts.⁷⁷ According to Mark Santana, ADEQ Administrative Counsel, the state has an environmental justice coordinator whose role is to “facilitate” community awareness of environmental justice issues.⁷⁸ This is the only environmental justice activity in the state. While there have been several detailed environmental justice bills introduced in the state legislature, they have all died in committee.

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ARKANSAS

In 1993, Arkansas passed the Arkansas Environmental Equity Act which provides a straightforward approach to ensuring environmental justice in the siting context.⁷⁹ The Arkansas legislature explicitly recognized a tendency to concentrate high impact solid waste disposal facilities in lower-income or minority communities.⁸⁰ Indeed, the legislative purpose in enacting these provisions was “to prevent communities from becoming involuntary hosts to a proliferation of high impact solid waste management facilities.”⁸¹ To that end, the statute provides “a

⁷⁶ See Chuck D. Barlow, “*State Environmental Justice Programs and Related Authorities*,” in *The Law of Environmental Justice: Theories and Procedures to Address Disproportionate Risks* 143 (Michael B. Gerrard ed. 1999).

⁷⁷ See www.adeq.state.az.us.

⁷⁸ Telephone interview with Mark Santana, November 14, 2000.

⁷⁹ See Ark. Code Ann. § 8-6-1501 *et seq.* (Michie 2000).

⁸⁰ Ark. Code Ann. § 8-6-1501(b) (Michie 2000).

⁸¹ *Id.*

rebuttable presumption against permitting the construction or operation of any high impact solid waste management facility . . . within twelve (12) miles of any existing high impact solid waste management facility.”⁸² Further, the Arkansas Department of Environmental Quality (ADEQ) may not process any application for a permit subject to Ark. Code Ann. §8-6-1504 until the affected local and regional authorities have issued definitive findings regarding the criteria set out in Ark. Code Ann. §8-6-1504.⁸³

Despite Arkansas’ early enactment of anti-concentration statutes and acknowledgment of environmental justice concerns, it does not have a statewide environmental justice program. ADEQ does, however, define environmental justice/equity and refer to its hazardous waste siting law on its website, www.state.adeq.ar.us.⁸⁴

Contact Information: ADEQ, (501) 682-0923.

COLORADO

The State of Colorado and the EPA are continuing an ongoing and long-standing partnership to protect environmental quality in the state. The State first incorporated an environmental justice statement into its Performance Partnership Agreement with the EPA in 1997.⁸⁵ Continuing in this tradition, the 2001-2002 Colorado Environmental Performance Partnership Agreement (August 2000 draft) specifically addresses community-based and

⁸² Ark. Code Ann. § 8-6-1504 (a)(1) (Michie 2000). This presumption may be rebutted by showing either the lack of other suitable sites because of geological or other factors, or the presence of incentives that have prompted the host community to accept the siting of the facility (such as increased employment opportunities, host fees, financial contributions to the community infrastructure, compensation for decreased property values, or subsidization of community services). *See* Ark. Code Ann. § 8-6-1504 (Michie 2000).

⁸³ *See* Ark. Code Ann. § 8-6-1503 (Michie 2000).

⁸⁴ *See id.* ADEQ defines environmental justice/equity as: “Equal protection from environmental hazards of individuals, groups or communities regardless of race, ethnicity, or economic status. This applies to the development, implementation, and enforcement of environmental laws, regulations, and policies, and implies that no population of people should be forced to shoulder a disproportionate share of negative environmental impacts.” *Id.*; *see also* www.adeq.state.ar.us/hazwaste/staterule.htm.

⁸⁵ *See Environmental Justice in California: Implementing SB 115*, OPR internal document (on file with authors) at 6.

environmental justice programs.⁸⁶ The plan recommends a coordination and contact process at the Colorado Department of Public Health and Environment (CDPHE) with the goal of developing cross-media coordination and integration. Further, the EPA and CDPHE will identify joint priorities, coordinate processes, pool resources, and continue to develop a “place driven” rather than a “program driven” approach.⁸⁷ A copy of the relevant portion of the Colorado Environmental Performance Partnership Agreement is included in the appendix.

Contact Information: Cathy Heald, CDPHE, (303) 692-2034.

CONNECTICUT

The State of Connecticut has a comprehensive environmental justice program.⁸⁸ On its website, Connecticut provides background on the environmental equity movement and the actions Connecticut has taken to ensure environmental equity in the state.⁸⁹ In December 1993, the Connecticut Department of Environmental Protection (DEP) issued an environmental equity policy stating that it will encourage community participation in its ongoing operations and program development, including inclusion on the agency’s advisory boards and commissions, regulatory review panels, and planning and permitting activities.⁹⁰ The policy also provides that DEP will employ a staff person “responsible for ensuring that environmental equity principles are incorporated into all the [DEP’s] policies and programs.”⁹¹

Additionally, DEP provides information to permit applicants about how to work with local communities impacted by permit applications, including providing a list of alternative

⁸⁶ Col. Dept. of Public Health & Environ. and U.S. EPA, *Colorado Environmental Performance Partnership Agreement 2001-2002* (draft August 2000), available at www.cdphe.state.co.us/oe/oeppahom.asp.

⁸⁷ *Id.* at 18.

⁸⁸ See generally, www.dep.state.ct.us/pao/envequit.htm.

⁸⁹ *Id.*

⁹⁰ *Id.* A copy of this policy is included in the appendix.

⁹¹ *Id.*

media that serve people of color in Connecticut.⁹² In addition to recommending that permit applicants inform residents through the media, DEP recommends that applicants communicate directly with local community representatives and groups and provides a list of community representatives and groups throughout Connecticut.⁹³

The DEP and the Governor's Office for Urban Affairs have also created Environmental Justice Community Advisory Boards in Hartford and New Haven "to build a relationship between state government and neighborhood communities."⁹⁴

Contact Information: Environmental Equity Program, (860) 424-3044.

DELAWARE

According to an OPR survey of state environmental justice programs, the Delaware Department of Natural Resources and Environmental Control (DNREC) has developed an EJ policy currently in internal draft form.⁹⁵ DNREC has formed a community-industry advisory committee to address land use, agency/public relations, industry/community relations, and increasing public participation in the permitting processes.⁹⁶ Although recommendations "are anticipated by Summer 2000," the authors were unable to determine whether they have been released.

Contact Information: (302) 739-4764.

DISTRICT OF COLUMBIA

Although the nation's capital does not have an environmental justice division within its Department of Health, it does have provisions within its statutes to address environmental justice

⁹² *Id.*

⁹³ *Id.*

⁹⁴ See "Connecticut Recognized for Work in Environmental Justice and Will Serve on National Environmental Justice Advisory Council," DEP press release, *available at* www.dep.state.ct.us/whatshap/press/1998/cr092898.htm.

⁹⁵ See OPR internal document, *supra* note 85.

⁹⁶ *Id.*

concerns. Pursuant to D.C. Code Ann. § 6-3455(2) (2000), all solid waste facilities must create a traffic flow plan and post that plan for public review. Advisory Neighborhood Councils then have forty-five days to submit comments.⁹⁷ Further, D.C. Code Ann. §6-3461 states that the advisory panel in charge of making solid waste siting decisions must consult with the National Environmental Justice Advisory Council.⁹⁸

Contact Information: (202) 535-2500; www.dc.gov.

FLORIDA

Florida has taken a comprehensive approach to environmental justice concerns. In 1994, it created the Environmental Equity and Justice Commission (Commission) by statute (which has since been repealed).⁹⁹ Interestingly, Florida's environmental justice provisions are included within its civil rights laws. The Commission was charged with gathering information to provide an objective basis for assessment of risks by income and race, in light of national studies indicating disproportionate risk.¹⁰⁰ The Commission's final report found that minorities and low-income communities are disproportionately impacted by targeted environmentally hazardous sites.¹⁰¹

In 1998, the state created a Center for Environmental Equity and Justice (Center) within the Environmental Science Institute at the Florida Agricultural and Mechanical University.¹⁰² The Center's purpose is "to conduct and facilitate research, develop policies, and engage in education, training, and community outreach with respect to environmental equity and justice issues."¹⁰³ Additionally, the Center "shall sponsor students to serve as interns at the Department

⁹⁷ D.C. Law §6-3455 (2) (Michie 2000)

⁹⁸ D.C. Law § 6-3461 (e) (Michie 2000)

⁹⁹ See Fl. Rev. St. § 760.85 (1995), *repealed by* Laws 1999, c. 99-5 § 75, eff. June 29, 1999.

¹⁰⁰ See *id.*, preamble.

¹⁰¹ See Fl. Rev. Stat. § 376.78 (7) (2000).

¹⁰² See Fl. Rev. Stat. § 760.854 (2000).

¹⁰³ Fl. Rev. Stat. § 760.854 (2) (2000).

of Health, the Department of Environmental Protection, the Department of Community Affairs, and other relevant state agencies.”¹⁰⁴ The Center may also “enter into a memorandum of understanding with these agencies to address environmental equity and justice issues.”¹⁰⁵

Florida has also established a Community Environmental Health Program (Program), statutorily cross-referenced to the new Center for Environmental Equity and Justice.¹⁰⁶ Created in 1999, the Program aims to “ensure the availability of public health services to members of low-income communities that may be adversely affected by contaminated sites located in or near the community.”¹⁰⁷ These services include measures to address the health effects associated with exposure to environmental contamination.¹⁰⁸ The statute instructs the Department of Health (DOH) to create a Community Environmental Health Advisory Board (Board) with the majority of members being low-income residents and the rest composed of representatives from county health departments, health care professionals and providers, and elected officials.¹⁰⁹ The Board is to “identify the community environmental health needs and types of services which should be provided.”¹¹⁰

Florida also has an extensive brownfields program that addresses environmental justice concerns.¹¹¹ One of the specific goals of the program is to “provide the opportunity for Environmental Equity and Justice.”¹¹² In enacting this legislation, the legislature recognized environmental justice concerns and declared, in part:

¹⁰⁴ Fl. Rev. Stat. § 760.854 (4) (2000).

¹⁰⁵ *Id.*

¹⁰⁶ *See* Fl. Rev. Stat. § 381.1015 (2000).

¹⁰⁷ Fl. Rev. Stat. § 381.1015 (1) (2000).

¹⁰⁸ *See id.*

¹⁰⁹ Fl. Rev. Stat. § 381.1015(2) (2000).

¹¹⁰ *Id.*

¹¹¹ *See* Brownfield Redevelopment Act, Fl. Rev. Stat. § 376.78 et seq (2000); *see also* www.dep.state.fl.us/dwm/programs/brownfields/default.htm.

¹¹² *Id.*

According to the statistical proximity study contained in the final report of the Environmental Equity and Justice Commission, minority and low-income communities are disproportionately impacted by targeted environmentally hazardous sites. The results indicate the need for the health and risk exposure assessments of minority and poverty populations around environmentally hazardous sites in this state. Redevelopment of hazardous sites should address questions relating to environmental and health consequences.

Environmental justice considerations should be inherent in meaningful public participation elements of a brownfield redevelopment program.

The existence of brownfields within a community may contribute to, or be a symptom of, overall community decline, including issues of human disease and illness, crime, educational and employment opportunities, and infrastructure decay. The environment is an important element of quality of life in any community, along with economic opportunity, educational achievement, access to health care, housing quality and availability, provision of governmental services, and other socioeconomic factors. Brownfields redevelopment, properly done, can be a significant element in community revitalization.¹¹³

In recognition of these problems, the DEP created a Contaminated Soils Forum (Forum) which provides an opportunity for interested parties to talk about evolving policy, scientific, and application issues associated with site clean up and the re-use of contaminated sites.¹¹⁴ One of the focus groups within the Forum discusses and makes recommendations on environmental equity and justice, among other issues.¹¹⁵

Florida also provides notice and opportunity for public comment on pending hazardous waste permit applications.¹¹⁶

Contact Information: DEP, (850) 922-5438.

GEORGIA

According to Ted Jackson, Quality Assurance Manager with the Georgia Department of Natural Resources, there are “environmental justice efforts ongoing within [the] Hazardous

¹¹³ Fl. Rev. Stat. § 376.78 (2000).

¹¹⁴ See generally, www.dep.state.fl.us/dwm/programs/csf.

¹¹⁵ *Id.*

¹¹⁶ See Fl. Rev. Stat. § 403.723 (2000).

Waste portion of the Georgia Environmental Protection Division.”¹¹⁷ However, a search of Westlaw and the state website does not reveal any information released publicly regarding this subject. Georgia has enacted legislation that prohibits municipal solid waste disposal facilities from locating next to a city or county without that entity’s permission.¹¹⁸

While it was difficult to gather information on what the Georgia government is doing to address environmental justice, it was easy to find information on environmental justice from community groups. The Hyde Park and Aragon Park Improvement Committee website contains information about high rates of cancer and skin disease resulting from creosote exposure.¹¹⁹ According to the website, “economic conditions make it impossible for most Hyde Park residents to move out of their toxic environment. The corporations that own factories surrounding Hyde Park don’t care about the residents. They have more money and more power than the people of Hyde Park do.”¹²⁰ Clearly, there is some community concern in Georgia over environmental justice issues.

Contact Information: Ted Jackson, GDNR, (404) 657-5739.

HAWAII

The authors did not locate any relevant environmental justice information for the State of Hawaii.

IDAHO

The authors did not locate any relevant environmental justice information for the State of Idaho.

ILLINOIS

¹¹⁷ E-mail from Ted Jackson, Quality Assurance Manager, Georgia Dept. of Natural Resources, to Hannah Shafsky, (Oct. 20, 2000) (on file with author).

¹¹⁸ See Ga. Code Ann. § 12-8-25 (1999).

¹¹⁹ See Hyde Park and Aragon Park Improvement Committee website *at* members.tripod.com/~HPAC.

The authors did not locate any relevant environmental justice information for the State of Illinois.

INDIANA

The Indiana Department of Environmental Management (IDEM) is developing an Environmental Justice Program through an EPA State and Tribal Environmental Justice grant, which it received in September 2000.¹²¹ IDEM has formed an Interim Environmental Justice Advisory Council (IEJAC), which is a stakeholder-based group similar to the national level group (NEJAC). IEJAC is comprised of citizens, environmentalists, academics, and industry representatives from across the state. IEJAC assisted IDEM in developing an Environmental Justice Strategic Plan.¹²²

The Environmental Justice Strategic Plan recommends that IDEM: (1) train its employees on matters related to environmental justice; (2) identify any necessary improvements to the public participation process found in permitting and rulemaking; (3) develop environmental justice maps; (4) educate communities about environmental justice issues and how IDEM functions; and (5) include other agencies (i.e., Indiana Department of Transportation) in the discussion on environmental justice so they can develop their own program.¹²³

Further, Indiana University Northwest is one of ten universities nationwide to receive an EPA grant to establish an Environmental Justice Resource Center (Center). The Center will help educate residents about pollution in their communities.

¹²⁰ *Id.*

¹²¹ E-mail from Matt Klein, Indiana Dept. of Env. Management, to Hillary Gross (October 6, 2000) (on file with author); *see also*, www.state.in.us/idem/kaplan/speeches/2000.asapspeech.html at 4. A copy of IDEM's Environmental Justice Plan is included in the appendix.

¹²² *Id.*

¹²³ *Id.*

Contact Information: Tim Sutherland, Environmental Justice Resource Center, sutherla@indiana.edu, www.lib.iun.edu/env_justaboutus.htm; Matt Klein, IDEM Office of Enforcement, Hazardous Waste Section, MKLEIN@dem.state.in.us.

IOWA

The authors did not locate any relevant environmental justice information for the State of Iowa.

KANSAS

The authors did not locate any relevant environmental justice information for the State of Kansas.

KENTUCKY

The State of Kentucky has a provision in its waste treatment statute requiring the board of environmental safety to consider the “social and economic impacts of [a] proposed facility on the affected community including changes in property values, community perception and other psychic costs[.]”¹²⁴ This provision applies to the construction or operation of a regional integrated waste treatment and disposal demonstration facility.¹²⁵

LOUISIANA

The State of Louisiana began addressing the issue of environmental justice in 1992 when the Louisiana Department of Environmental Quality (LDEQ) developed a “conceptual approach to Environmental Justice” and contracted with Louisiana State University for an environmental equity study.¹²⁶ Beginning in 1992, LDEQ also met repeatedly with various community groups, held a variety of environmental justice workshops throughout the state, worked with and

¹²⁴ Ky Rev. Stat. Ann. § 224.46-830 (Baldwin 2000).

¹²⁵ *Id.*

¹²⁶ Louisiana Department of Environmental Quality, *Community-Industry Relations Group, Chronology and Accomplishments* (Nov. 2000) (on file with author).

received funding from the EPA for its environmental justice work, and addressed various community-specific pollution concerns.¹²⁷

Louisiana also instituted an Environmental Justice Panel Process, which LDEQ oversees, in several communities during 1994-1996.¹²⁸ The Environmental Justice panels are designed to facilitate communication between industries and communities.¹²⁹ One panel continues to operate in St. Charles Parish and LDEQ will implement a second panel near Baton Rouge.

LDEQ has a Community Industry Relations Group (CIRG) that addresses the concerns of community members about industrial pollution and health.¹³⁰ The CIRG also works with representatives of industry in order to improve communication between the community and nearby industries.¹³¹

In 1997, the Louisiana legislature added an environmental justice provision to its statutes.¹³² The statute requires LDEQ, dependant of specific funding from the legislature, to “examine and study the relationship between the emission of air pollutants and the discharge of wastes by facilities located in or near residential areas.”¹³³ More specifically, LDEQ must determine the amount of such emissions and discharges (including permitted and unpermitted emissions and discharges) in each residential area and set out any correlations that may exist.¹³⁴ Although this study was to be completed by February 1, 1998, the authors could not locate a completed document.

¹²⁷ *See id.*

¹²⁸ *See id.*

¹²⁹ Environmental Justice Group, National Conference of State Legislatures, “*Environmental Justice: A Matter of Perspective*” (Sept. 1995).

¹³⁰ E-mail from Roger Ward, Executive Management Officer, LDEQ, to Hannah Shafsky (Oct. 30, 2000) (on file with author).

¹³¹ *Id.*

¹³² *See* La. Rev. Stat. Ann. § 30:2011.2 (West 1999).

¹³³ *Id.*

¹³⁴ *Id.*

In 1998, the governor issued an executive order creating the Mississippi River Corridor Task Force (Task Force).¹³⁵ The executive order directed the task force to study environmental justice issues in Louisiana and to focus specifically on the Mississippi River Industrial Corridor between Baton Rouge and New Orleans.¹³⁶ The Task Force met periodically over an eighteen-month period to gather information and solicit testimony. In September 2000 the Task Force issued its final report to the Governor which recommended that Louisiana:

- (1) Consider implementing a state environmental review statute, similar to the National Environmental Policy Act, which should apply only to major projects (not just environmental permitting actions).
- (2) Consider creating a regional organization, comprised of state and local government officials and state residents, to “integrate, give greater voice to, and assist with coordinating activities of the multiple jurisdictions of the region.”
- (3) Develop job-training programs for residents who live near industrial facilities.
- (4) Encourage continued support of health studies, especially lead and cancer studies.
- (5) Ensure that existing laws do not unfairly impact long-term growth in the state.
- (6) Strengthen state whistleblower laws and develop a program that better educates the public about whistleblower laws.
- (7) Study how zoning can develop into broader land use planning and develop a statute that requires a “buffer zone” between a proposed industrial facility and the nearby community.¹³⁷

The Governor is in the process of considering these recommendations to determine the scope of environmental justice problems in Louisiana and the best method for implementing those recommendations that apply. According to Roger Ward, Environmental Justice Coordinator for LDEQ, the Task Force’s recommendations may lead to state legislation.

¹³⁵ Executive Order MJF 98-1, Jan. 7, 1998.

¹³⁶ *See id.*

¹³⁷ *Mississippi River Corridor Task Force: Final Report to the Governor*, *supra* note 1 at 51-53.

The State of Louisiana has also issued formal comments to the EPA's June 27, 2000, Title VI guidance documents. Louisiana argues that the documents are seriously flawed and need substantial revision.¹³⁸

While it appears clear that the State of Louisiana and the LDEQ are addressing the issue of environmental justice, their battle is a large one. The hundred-mile stretch along the Mississippi River between Baton Rouge and New Orleans is home to several oil refineries and hundreds of industrial facilities, known to some as "Cancer Alley."¹³⁹ In communities near these facilities, there are high rates of cancer, miscarriages, asthma, and other diseases.¹⁴⁰ A large controversy erupted when Shintec, a giant Japanese chemical corporation, announced plans in 1996 to build three chemical factories and an incinerator in the small, predominantly African-American community of Convent.¹⁴¹ Convent residents filed a Title VI complaint with the EPA alleging that LDEQ violated their civil rights by issuing permits for the facilities.¹⁴² The company eventually abandoned its plan to locate in Convent.¹⁴³

Contact Information: Roger Ward, Esq., Executive Management Officer, LDEQ,
roger_w@deq.state.la.us.

MAINE

The authors did not locate any relevant environmental justice information for the State of Maine.

MARYLAND

¹³⁸ *See id.*

¹³⁹ *See* Barbara Koepfel, Cancer Alley, Louisiana, *Thenation.com*, Nov. 8, 1999, <http://past.thenation.com/e2k/recent/1108koepfel.shtml>.

¹⁴⁰ *See id.*

¹⁴¹ *See* Environmental Justice in Louisiana, *Rachel's Environment and Health Weekly*, June 4, 1998 *available at*, www.garynull.com/documents/erf/environmental_justice_in_louisia.htm.

¹⁴² *See id.*

¹⁴³ *See Shintec and the Tulane Law Clinic*, www.law.lsu/library/biblio/shintec.htm (last modified Oct. 13, 1998).

In 1997, the General Assembly passed House Bill 1350, establishing the Maryland Advisory Council on Environmental Justice (MACEJ), its members, duties, purposes, and staffing.¹⁴⁴ The bill required MACEJ to develop and present a draft state policy by June 1999 to both the Governor and General Assembly of Maryland. A subsequent bill extended the due date of the report.¹⁴⁵

MACEJ's mission is to develop and examine recommendations on environmental justice policy and direction. Maryland has adopted a working model for decision-making from the National Conference of State Legislators. MACEJ's specific goals and objectives are to:

- (1) Prevent environmental harm to all people, particularly disenfranchised groups and communities.
- (2) Facilitate the growth of a sustainable Maryland economy balancing economic growth with ecological aspirations.
- (3) Create a clearly democratic process that ensures diverse groups and individuals contribute to the decision-making process involved in formulating the environmental justice agenda.¹⁴⁶

On October 14, 1997 MACEJ had its initial meeting and began creating an internal organizational structure and assigning duties. To date, MACEJ has completed and approved a set of bylaws and a working definition of environmental justice. It has also engaged in research and fact gathering. To this end, MACEJ held four regional forums to gather citizen input on environmental justice. MACEJ has created three subcommittees to provide general and expert assistance. The subcommittees are: (1) public outreach, education and participation; (2) state and local interagency coordination; and (3) environmental health concerns and research.¹⁴⁷

¹⁴⁴ Md. Code Ann. § 18-313 (1997).

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

In addition to HB 1350, Maryland also passed House Joint Resolution 6 in January 2000.¹⁴⁸ This legislation addresses environmental justice concerns in zip code 21226, known as Anne Arundel County. The act requests the Department of the Environment, in consultation with MACEJ, to develop a plan to promote environmental justice in that specific county because of its high cancer mortality rate.¹⁴⁹ Further, the resolution states additional industrial activity should not proceed in the county and no further environmental permits should be issued in designated areas of concern within the zip code area.¹⁵⁰

According to Andrew Sawyer, a MACEJ member, MACEJ is presently focusing on distributive forms of justice as well as analyzing community profiles to make detailed studies (i.e. health of residents, amount of permits in the area, number of existing facilities in the area, etc.). After MACEJ compiles the information, it hopes to bring in representatives from local industries and engage in conflict resolution. Because this is an ongoing process, there is not any available written documentation at this time.¹⁵¹

Contact Information: MACEJ, www.mde.state.md.us; Ms. Suzanne Bond, (410) 631-3003, sbond@mde.state.md.us. A copy of MACEJ's recommendations to Governor Glendening is included in the appendix.

MASSACHUSETTS

Massachusetts has been very active in pursuing environmental equity goals. The Executive Office of Environmental Affairs (EOEA) has taken a case-by-case approach to addressing environmental justice concerns and is moving toward a more comprehensive strategy. In 1998, the EOEA established the Office of Environmental Justice and Brownfields and it is

¹⁴⁸ Md. H.J.R. 6 (2000).

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ Telephone interview with Andrew Sawyer, October 17, 2000.

fully committed to the redevelopment of brownfield sites as part of its strategy to address environmental justice issues.

The Secretary of the EOEA created an Environmental Justice Program and hired full-time staff to develop policy tools for addressing environmental justice issues in Massachusetts and to ensure fair and equitable implementation of Massachusetts' environmental programs. According to the EOEA, "[c]ommunity visioning and self-determination are the cornerstone of [the] Secretary[']s Environmental Justice agenda."¹⁵² EOEA's environmental policy will provide a framework within which the Commonwealth can address environmental justice and health issues on a broad and comprehensive basis and foster sustainability that is focused on community priorities.¹⁵³ Through their environmental justice program, the EOEA plans to "forg[e] ties with community groups and residents who are working on environmental justice issues in their local communities."¹⁵⁴

In addition to this activity, Massachusetts has made environmental justice a priority in its Performance Partnership Agreement (PPA) with the EPA. According to the 1999 PPA and Self Assessment, the Massachusetts Department of Environmental Protection (DEP) has set as one of its six management goals to "[i]ncrease staff awareness of environmental equity and further integrate environmental equity objectives into DEP's programs and policies."¹⁵⁵ According to the self-assessment report:

DEP is committed to managing its programs and policies so that environmental benefits and costs are distributed equitably without regard to race, ethnicity or income. DEP will

¹⁵² See www.state.ma.us:80/envir/environmentaljustice.htm.

¹⁵³ *Id.*

¹⁵⁴ *Id.* Its website also provides links to the "Environmental Justice Resource Center" and the "Harvard Working Group on Environmental Justice." *Id.*

¹⁵⁵ MA DEP 1999 Performance Partnership Agreement, Section III, *available at* www.state.ma.us/dep/files/ppa/ppa%5Fiii.htm.

(a) adopt an environmental equity policy that articulates this principle and the actions we intend to take to ensure it is implemented through our core programs;

(b) target compliance and enforcement in low income communities;

(c) revise its internal enforcement guidance to explicitly endorse environmental justice initiatives as a component of supplemental environmental projects;

(d) propose solid waste management facility siting regulations that establish the cumulative impact of the proposed facility and existing sources of pollution as a site selection criterion;

(e) conduct awareness and local capacity building in connection with the implementation of the brownfields redevelopment legislation; and

[(f)] maintain DEP's language bank's translation services for the non-English speaking community.¹⁵⁶

Contact Information: EOE, (617) 626-1000.

MICHIGAN

The State Department of Environmental Quality (MDEQ) is working on the issue of environmental justice, although community groups have criticized its efforts. MDEQ sponsored an Environmental Justice Workgroup (Workgroup), comprised of representatives from industry, local governments, state agencies, and the community. MDEQ created the Workgroup to design an environmental justice plan for the state and divided it into four subgroups, each with a “specific charge to address the issue of environmental justice.”¹⁵⁷ Many of the community representatives pulled out of the Workgroup because they felt it was a “sham.”¹⁵⁸ According to Kary Moss, Director of the Michigan chapter of the American Civil Liberties Union, “there was no trust by the community groups in the head of the [M]DEQ.”¹⁵⁹

¹⁵⁶ *Id.* For more information, contact Stephen Nelson at Stephen.Nelson@state.ma.us.

¹⁵⁷ *Michigan Environmental Justice Workgroup Recommendations* (Oct. 1999) at 3.

¹⁵⁸ Telephone Interview with Alma Lawry, Director, Environmental Justice Program, Sugar Law Center, October 27, 2000.

¹⁵⁹ E-mail from Kary Moss, Director, American Civil Liberties Union, Detroit, Michigan, to Hannah Shafsky (Oct. 28, 2000) (on file with author).

Despite the community groups' disinvolvement, the Workgroup issued a report with recommendations to the MDEQ in October 1999.¹⁶⁰ As might be expected, many of the community groups do not support the report.¹⁶¹ The four subgroups, charges and recommendations are as follows:

1. Role of Local Governments and Local Zoning Subgroup: Charged with considering and making recommendations for what role(s) zoning and governments should play in addressing the issue of environmental justice.¹⁶² The subgroup recommended that an application for a zoning change contain a checklist requiring the landowner to consider the possible impacts of potential emissions and waste streams, whether wetlands are present, and whether any community outreach has been initiated.¹⁶³ The group further recommended that the application be forwarded to the Industrial Review Committee or similar entity for "further evaluation."¹⁶⁴
2. Environmental Justice Area Subgroup: Responsible for identifying geographical areas where environmental justice is an issue.¹⁶⁵ This subgroup suggested that MDEQ and the applicant consider the area within a one-mile radius of the site in determining whether "additional, pro-active outreach efforts with the local community would be prudent so as to address potential environmental justice issues."¹⁶⁶ In addition to the one-mile area surrounding the site, the area of possible impact should also be considered (impact of emissions, for example, might extend beyond one mile).¹⁶⁷
3. Community Outreach Subgroup: Charged with recommending what "additional outreach and public participation efforts, beyond those required by statute, should be undertaken in environmental justice areas."¹⁶⁸ This group suggested that permit applicants be encouraged to interact with local communities early in the permit process.¹⁶⁹ They also suggested that a group be established to assist the community in providing technical assistance and advice to applicants on how to effectively work with the community.¹⁷⁰ The group further suggested that MDEQ create and disseminate a brochure to communities detailing the public participation process.¹⁷¹

¹⁶⁰ *See id.*

¹⁶¹ *See id.*

¹⁶² *See id.*

¹⁶³ *See id.* at 6.

¹⁶⁴ *See id.*

¹⁶⁵ *See id.* at 3.

¹⁶⁶ *See id.* at 10.

¹⁶⁷ *See id.* at 11.

¹⁶⁸ *Id.* at 3.

¹⁶⁹ *See id.* at 15.

¹⁷⁰ *See id.* at 16.

¹⁷¹ *See id.*

4. Disparate Impact Area Subgroup: Charged with considering what community impacts should be considered in environmental decision-making.¹⁷² This group concluded that an “actionable ‘disparate impact’ in a potentially viable environmental justice complaint must be both adverse and disparate.”¹⁷³ If one is not present, then evaluation is not necessary because there will not be an actionable environmental justice complaint.¹⁷⁴ This group was also concerned about the possibility of reverse discrimination if higher environmental standards were implemented in minority and low-income population than in non-minority communities.¹⁷⁵

Lynn Buhl, Director of the Southeast Offices of the MDEQ, said the MDEQ approach during the process has been to “examine the processes by which [MDEQ] issue[s] permits under federal and state environmental statutes and see how those processes might be changed to include environmental justice concerns.”¹⁷⁶

Contact Information: Lynn Buhl, MDEQ, (517) 373-7917.

MINNESOTA

On July 1, 1999, the Minnesota Pollution Control Agency (MPCA) and the EPA entered into a new biennial agreement.¹⁷⁷ The Environmental Performance Partnership Agreement (PPA) is reviewed and updated every two years, and the current agreement is effective through June 30, 2001.¹⁷⁸

The PPA contains an “Environmental Justice” section which establishes three goals for the MPCA:

- (1) ensure that minority and economically disadvantaged communities do not bear a disproportionate share of risks and consequences of environmental pollution;
- (2) ensure that minority and economically disadvantaged communities are not denied equal access to environmental benefits; and

¹⁷² *See id.* at 3.

¹⁷³ *See id.* at 18.

¹⁷⁴ *See id.*

¹⁷⁵ *See id.* at 21.

¹⁷⁶ E-mail from Lynn Buhl, Director of the Southeast Offices, Michigan Department of Environmental Quality, to Hannah Shafsky (Oct. 30, 2000).

¹⁷⁷ *See Environmental Performance Partnership Agreement (PPA)*, available at www.pca.state.mn.us/programs/enppa.html

¹⁷⁸ *Id.*

(3) concentrate on giving meaningful participation opportunities to minority and economically disadvantaged communities.¹⁷⁹

Ms. Vinegas, who works in the MPCA Policy and Planning Division, said the MPCA, because of a State and Tribal Environmental Justice Grant, is in the process of soliciting public input regarding environmental justice issues.¹⁸⁰ In order to accomplish this goal, the MPCA recently sent out questionnaires to various minority populations throughout the state, and Ms. Vinegas attended several community groups' meetings. The MPCA is working with minority councils to ensure that all interested members of the public are involved.¹⁸¹ The ultimate goal is to formulate Environmental Justice principles and guidelines that will be incorporated into all MPCA programs.¹⁸²

Contact Information: MPCA, (651) 296-6300, www.pca.stae.mn.us. Ms. Vinegas, MPCA Policy and Planning Division, (651) 297-8370. A copy of the relevant portion of the PPA is included in the appendix.

MISSISSIPPI

There is no readily accessible environmental justice information on Mississippi's state website.¹⁸³ However, in 1994 the Mississippi Legislature directed the Mississippi Department of Environmental Quality (MDEQ) to prepare a comparative risk assessment "that will include consideration of environmental risk to the health and welfare of the citizens of Mississippi and to the environment."¹⁸⁴ In preparing this report, MDEQ created and involved a public advisory committee consisting of thirty-two organizations from business, local governments,

¹⁷⁹ *Id.* at 72.

¹⁸⁰ Telephone interview with Ms. Vinegas, October 30, 2000.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *See* www.deq.state.ms.us.

¹⁸⁴ *See* Barlow, *supra* note 76 at 145-6, *citing* MS § 49-2-31 (1999).

environmental equity communities, state institutions of higher learning, health agencies and agriculture.¹⁸⁵ The report, completed in February 1997, includes a chapter on environmental equity, which makes specific recommendations to the Department. These recommendations include:

- (1) developing a format for inclusive public comment on permit applications for hazardous and solid waste facilities;
- (2) providing public notification early in the permitting process;
- (3) facilitating inter-agency cooperation; and
- (4) collecting spatial data of the locations of proposed facilities.¹⁸⁶

There is no indication anything has been done with these recommendations. The MDEQ is currently working on a Community-Industry Relations Program, which will provide a forum for both industries and communities to address and resolve environmental justice issues.

MISSOURI

The authors did not locate any relevant environmental justice information for the State of Missouri.

MONTANA

The authors did not locate any relevant environmental justice information for the State of Montana.

NEBRASKA

The authors did not locate any relevant environmental justice information for the State of Nebraska.

NEVADA

¹⁸⁵ *Id.* at 146.

¹⁸⁶ *Id.*, citing COMPARATIVE ENVIRONMENTAL RISKS IN MISSISSIPPI at 39-40 (Mississippi Department of Environmental Quality, 1997) and setting out these recommendations in full.

The authors did not locate any relevant environmental justice information for the State of Nevada.

NEW HAMPSHIRE

In September 1994 the New Hampshire Department of Environmental Services (DES) incorporated an Environmental Equity Policy and Implementation Strategy into their platform. The DES's overall approach is to incorporate equity considerations into every applicable decision or action through:

- (1) Posting the Environmental Equity Policy throughout the department, and providing a copy to all staff;
- (2) Using the EPA's national criteria for identifying areas of concern according to race, ethnicity, economic status, or community, as modified for New Hampshire, in implementing the Environmental Equity Policy;
- (3) Developing and distributing written guidance and providing training on incorporating the Environmental Equity Policy into the department's daily decisions or actions, including: public education and outreach, technical assistance, rulemaking, permit reviews, compliance monitoring, enforcement actions, emergency response, complaint response, and site cleanup; and
- (4) Incorporating the Environmental Equity Policy into all appropriate annual work plans and grant applications;
- (5) Adding implementation of the Environmental Equity Policy as a specific objective in the department's Strategic Plan, and monitoring progress with implementation as part of the annual review of the Strategic Plan.

New Hampshire has entered into a PPA with the EPA for Fiscal Years 2000-2001.¹⁸⁷

Included in this agreement is a section entitled "Environmental Equity," which states that the department's overall approach to an environmental justice policy is to incorporate environmental equity considerations into all applicable decisions and actions.¹⁸⁸ The relevant section of the agreement is included in the appendix.

¹⁸⁷ See www.des.state.nh.us/ppa/ppa_sect2.htm.

¹⁸⁸ *Id.*

Contact Information: Chuch Knox, DES, (603) 271-3503;

www.des.state.nh.us/equity_policy.

NEW JERSEY

New Jersey has a detailed environmental justice program. It began its environmental justice efforts with the creation of an Environmental Justice (EJ) Task Force charged with developing a New Jersey Department of Environmental Protection (NJDEP) policy and process for incorporating EJ concerns into New Jersey's permitting process.¹⁸⁹ The task force was reestablished as a permanent Advisory Council on Environmental Equity (Council), created by the NJDEP Commissioner through Administrative Order 1998-15.¹⁹⁰

The Council's purpose is to provide advice and guidance to the NJDEP Commissioner and to assist NJDEP as it implements both an environmental equity policy and a process.¹⁹¹ A 1999 NJDEP Performance Report provides an overview of New Jersey's current environmental justice efforts:

Currently, the draft policy is being updated to accurately reflect the current needs of NJDEP. The draft process is also being further refined in order to ensure that the final product can be effectively incorporated into the permitting process. The strength of the proposed process is an up-front approach to identify and informally resolve situations that may potentially result in the filing of a complaint with the EPA or in court, pursuant to Title VI of the Civil Rights Act of 1964, as amended. This up-front approach includes community, NJDEP, and industry involvement. It also involves the utilization of an environmental equity screening tool to identify, early in the permitting process, any potentially burdened minority or low-income community at the site of the permit application. This approach has been recognized by the USEPA in that the NJDEP was one of only five recipients nationwide to receive a State and Tribal Environmental Justice Grant during FY 99 to further develop our program. Upon approval of the final draft, the environmental equity process will be further established by the promulgation of rules.¹⁹²

¹⁸⁹ See Fiscal Year 1999 Annual Performance Report on the Fiscal Year 1999-2000 New Jersey Performance Partnership Agreement at 23.

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.* at 23-24. According to the Report, EPA awarded the grant to NJDEP in 1998 to implement a model program promoting environmental equity in minority and urban areas. EPA has been working with NJDEP to develop an enhanced Data Collection Model that would utilize an automated data system to determine whether a permitted facility is in an affected community that is experiencing a cumulative environmental burden. Since the proposed

The Environmental Council of the States has recognized DEP's leadership in environmental equity and an EPA advisory committee has endorsed New Jersey's pilot program on environmental equity as a model for other states.¹⁹³ A Program Summary of NJDEP's Environmental Equity Program is included in the appendix.

Contact Information: NJDEP, (609) 292-2885.

NEW MEXICO

New Mexico is currently deciding how to approach an environmental justice plan.¹⁹⁴ There are four employees within the New Mexico Environment Department (Department) working as an informal committee on the issue. The first step, according to Diane Naranjo of the Department, is to establish a working relationship with community groups in order to identify environmental justice issues.¹⁹⁵ Various community groups are working with the Department to facilitate the process. The Department has not developed an environmental justice plan, but the goal of their work with community groups is to come up with an appropriate plan.¹⁹⁶ The plan, if completed, will apply only to the Department in its dealings with the community.

On a related note, the Southwest Organizing Project, one of the community groups working with the Department, submitted an environmental justice bill to the New Mexico

automated data collection system is a significant change to the approved grant workplan methodology, EPA advised NJDEP in June 1999 to amend the workplan and request an extension to the project period that would allow them additional time to complete the grant activities. EPA approved the project period extension request and is currently assisting NJDEP in revising the Data Collection Model procedure and the specific amended activities of the revised workplan. *Id.* at 24.

¹⁹³ See NJDEP news release, "New Jersey Selected by EPA to Develop Model Program for Environmental Justice," Nov. 5, 1998, available at www.state.nj.us/dep/newsrel/releases/98_0141.htm.

¹⁹⁴ Telephone interview with Diane Naranjo, New Mexico Environment Department, Oct. 27, 2000.

¹⁹⁵ See *id.*

¹⁹⁶ See *id.*

Legislature during the 2000 session.¹⁹⁷ Although the bill stalled in committee, the group intends to submit another bill next session.

Contact Information: Diane Naranjo, New Mexico Environment Department, (505) 827-2883.

NEW YORK

In October 1999, the New York State Department of Environmental Conservation (DEC) created a new program to address environmental justice concerns and ensure community participation in the state's permitting process. As part of the program, it established the New York State Environmental Justice Advisory Group, comprised of environmental justice advocates, environmental advocates, tribal representatives, academics, and business representatives, as well as federal, state, and local representatives. Monica Conley, a senior attorney in DEC's Division of Environmental Enforcement, was appointed as the state's environmental justice coordinator.¹⁹⁸

The Environmental Justice Advisory Group is responsible for:

- (1) Developing recommendations for an environmental justice permit policy for New York State;
- (2) Recommending elements which should be included in a comprehensive environmental justice plan; and
- (3) Prioritizing environmental justice issues and recommending procedures which can be used to address those priorities.¹⁹⁹

Between May and July 2000, the Environmental Justice Advisory Group held four public meetings throughout the state to solicit comments on environmental justice issues affecting local residents. The Group also accepted written comments. Summaries from those meetings,

¹⁹⁷ E-mail from Jeanne Gauna, Director, Southwest Organizing Committee, to Hannah Shafsky (Oct. 27, 2000).

¹⁹⁸ See www.dec.state.ny.us/website/ej/publicmtgs.html.

¹⁹⁹ See www.dec.state.ny.us/website/ej/advisorygroup.html.

provided by the DEC, are included in the appendix. The DEC's recommendations to the governor are currently pending.

In addition to the DEC's recommendations, the state has existing hazardous waste facility siting regulations which require a public hearing to be held within fifteen days of receiving a permit application.²⁰⁰

According to Cecil Corbin-Mark, a member of WE ACT (West Harlem Environmental Action), the DEC needs a more holistic approach to environmental justice matters.²⁰¹ Specifically, he advocates legislation (or other binding legal authority) to force DEC to coordinate with other agencies, such as the Department of Health.²⁰² He criticized the DEC for not publicizing their meetings well enough which resulted in low community attendance. While Mr. Corbin-Mark recognized the value of a task force, he felt it could only be successful if there is strong communication between the task force and the public, specifically those who are most affected by environmental justice issues. Overall, Mr. Corbin-Mark felt it was too early to tell if New York's environmental justice policy is working.²⁰³

In addition to state government involvement, the City of New York is heavily involved in environmental justice issues. Following a court agreement with the state after a finding of non-compliance at a municipal sewage treatment plant located in Greenpoint/Williamsburg (an inner-city neighborhood located in Brooklyn), the City of New York created an environmental assessment and remediation program in the Greenpoint/Williamsburg neighborhood.²⁰⁴

²⁰⁰ OPR document, *supra* note 85 at 8.

²⁰¹ Telephone interview with Cecil Corbin-Mark, November 8, 2000; website for WE ACT is www.cucrej.rutgers.edu/html.

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ See www.iclei.org/csdcases.greenp.htm.

The Environmental Benefits Program (EBP) was a three-year program that operated between 1991 and 1994, focusing only on the Greenspoint/Williamsburg neighborhood. The EBP addressed environmental justice by attempting to engage area residents to help define, develop, and implement solutions to their environmental problems and allowing them to participate in the city's decision-making process.²⁰⁵ One of the EBP's goals was to produce baseline aggregate environmental load profiles (BAEL) of various neighborhoods to be used by policymakers and citizens to design and implement effective pollution prevention and abatement strategies.²⁰⁶ There have been several significant results from the EBP including:

- (1) Establishment of new environmental governance strategies within the DEP;
- (2) Development of new monitoring activities; and
- (3) Education outreach activities in the local school.²⁰⁷

Contact Information: Monica Conley, DEC, mlconley@gw.dec.state.ny.us, (518) 457-6558; general address, envirju@gw.dec.state.ny.us, www.dec.state.ny.us/website/ej/advisorygroup.html.

NORTH CAROLINA

North Carolina does not have a comprehensive environmental justice policy but it does have public notice requirements for permit applications. North Carolina requires that a city or county government “consider alternative sites and socioeconomic and demographic data” before approving a proposed new nonhazardous waste landfill site.²⁰⁸ The socioeconomic data to be considered includes census data and other data submitted to the governmental authority during a

²⁰⁵ *Id.* at 2.

²⁰⁶ *Id.* at 4.

²⁰⁷ *Id.* at 8.

²⁰⁸ *See* NC Gen. Stat. §160A-325(a) (2000).

required public hearing.²⁰⁹ Similarly, new proposed sanitary landfills must also meet these requirements. The city or county government must consider alternative sites and socioeconomic and demographic data and they must hold a public hearing prior to selecting or approving a site for a new sanitary landfill that receives residential solid waste that is located within one mile of an existing sanitary landfill within the state.²¹⁰

Contact Information: (919) 733-4984.

NORTH DAKOTA

The authors did not locate any relevant environmental justice information for the State of North Dakota.

OHIO

Although Ohio does not have an environmental justice policy (nor working group), they do have provisions in their siting requirements which provide for public input and consideration of local/cumulative impacts.²¹¹

Contact Information: Mark Navarre, Legal Office of Ohio EPA, (614) 644-2782.

OKLAHOMA

The Oklahoma Department of Environmental Quality has adopted an environmental justice provision in its Administrative Procedures Manual.²¹² The manual refers to Title VI as the basis for the environmental justice concept.²¹³ The policy states: “Everyone, regardless of race or ethnicity should get equal environmental protection from the DEQ” in the provision of

²⁰⁹ See NC Gen. Stat. §160A-325(a)(4) (2000).

²¹⁰ See NC Gen. Stat. §153A-136(c) (2000).

²¹¹ Ohio Rev. Code Ann. §37.34 (Anderson 2000).

²¹² Barlow, *supra* note 76 at 147, *citing Subject: Environmental Justice*, OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY ADMINISTRATIVE PROCEDURES MANUAL (December 1, 1995).

services, permitting, and enforcement.”²¹⁴ The manual recommends language translations and targeting of media to local neighborhoods.²¹⁵ This administrative procedure was adopted on December 1, 1995.²¹⁶

Contact Information: DEQ, (405) 702-1000.

OREGON

Oregon has approached environmental justice programs through a process similar to the EPA. On August 1, 1997, Oregon Governor John Kitzhaber issued Executive Order 97-16 creating the Governor’s Environmental Justice Advisory Board (Advisory Board).²¹⁷ This Board was created to supplement and add to the recommendations issued by the Oregon Environmental Equity Citizen Advisory Committee in 1994.²¹⁸

The State of Oregon defines environmental discrimination as

any policy, practice, or directive that generates environmental impacts that disadvantage groups or communities based on race, color, national origin or economic background. This discrimination includes lesser enforcement of environmental standards and practices that limit participation by these same people in decision-making.²¹⁹

With this definition in mind, the Advisory Board recommended the following:

- (1) Encourage partnerships between communities, industries and government agencies.²²⁰
- (2) Correlate data on pollution, permitting, compliance and violations with information on race and socioeconomic status to determine whether patterns of bias exist.²²¹
- (3) “Make cumulative impacts of siting and other permitting activities an important factor in environmental regulation and decision-making.”²²²

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ Oregon Executive Order 97-16, Aug. 1, 1997.

²¹⁸ See Governor’s Environmental Justice Advisory Board, *Implementation of Environmental Justice in Oregon Natural Resource and Environmental Agencies: 1998 Annual Report* (February 1999) at 1.

²¹⁹ *Id.*

²²⁰ See *id.* at 3.

²²¹ See *id.*

(4) Form a citizen position within state environmental and natural resource agencies. The individual in this position would be responsible for providing access to citizens of the permitting process and will advocate for communities in the process.²²³

The Advisory Board report also discussed the presence of environmental injustice in the State of Oregon. According to the report, North Portland, a predominantly African American community, houses the city's largest concentration of brownfield sites.²²⁴ Native American tribes complain that their water rights are not protected.²²⁵ Finally, because minorities make up the majority of hotel and farm workers, they suffer from the toxic chemicals and pesticides associated with such work more than other populations.²²⁶

In June 2000, Governor Kitzhaber created a new twelve member Environmental Justice Advisory Board, comprised of individuals representing minority and low-income communities, environmental interests, industry, and members representing the different geographic regions of the State.²²⁷ The Board's goal is to define environmental justice issues and advise state agencies.²²⁸ This newest Advisory Board will address what has occurred since the issuance of the 1999 Report and formulate appropriate recommendations to state agencies.

PENNSYLVANIA

The Department of Environmental Protection (DEP) established an Environmental Equity Work Group (Work Group) to review the agency's programs and assist the DEP in ensuring equity in its environmental protection efforts. The group met for the first time in June 1999.

The Work Group's goals are to:

- (1) Identify any causes of environmental inequities in Pennsylvania;

²²² *See id.*

²²³ *See id.*

²²⁴ *See id.* at 9.

²²⁵ *See id.*

²²⁶ *See id.*

- (2) Determine whether DEP's current decision-making processes can adequately address the appropriate issues such as cumulative impact and nuisance issues;
- (3) Improve DEP's permitting program so that it is clear and understandable while still satisfying legal and administrative requirements;
- (4) Improve public participation in DEP's decision-making processes to address any inequities; and
- (5) Improve public outreach, beyond the permitting process, by enhancing long-term environmental education, communication, and compliance assistance programs.

Contact Information: Alisa Harris, DEP, harris.alias@dep.state.pa.us, (717) 787-4449;

www.dep.state.pa.us/environmentalequity/default.html.

RHODE ISLAND

Rhode Island is one of few states that provides for the consideration of environmental equity by statute.²²⁹ The statute mandates that the Department of Environmental Management (DEM) consider the effects environmental remediation will have on the populations surrounding each site.²³⁰ Under the statute, the DEM must develop and implement a process to “ensure community involvement throughout the investigation and remediation of contaminated sites.”²³¹ Unfortunately, there is no information regarding the success of this statute and what, if any, effect it has had on tackling the issue of environmental justice.

The DEM also created a Strategic Planning and Policy Section to carry out “several important functions related to integrating, prioritizing and measuring efforts to achieve the

²²⁷ Oregon Executive Order EE-00-05 (April 2000).

²²⁸ *See id.*

²²⁹ *See* R.I. Gen. Laws § 23-19.14-5 (2000), part of the Industrial Property Remediation and Reuse Act.

²³⁰ *Id.*

²³¹ *Id.* The process is to include, but is not limited to, the following components: (1) Notification to abutting residents when a work plan for a site investigation is proposed; (2) Adequate availability of all public records concerning the investigation and clean-up of the site, including, where necessary, the establishment of informational repositories in the impacted community; and (3) Notification to abutting residents, and other interested parties, when the investigation of the site is deemed complete by the department of environmental management. *See id.*; *see also* R.I. Gen. Laws § 23-19-13.4 (describing host community assessment committees and their role in siting decisions).

Department's ten vision goals and maximize cost effectiveness."²³² Among other responsibilities, the Section coordinates the implementation of the Department's Goals for Environmental Equity.²³³

Contact Information: (401) 222-3434.

SOUTH CAROLINA

Though the Department of Health and Environmental Control does not have a division dedicated to environmental justice, it does have a contact person, Ms. Lill Mood. In 1995, Ms. Mood organized a Future Search Conference where she brought together a balanced group of stakeholders to find common ground on environmental justice issues.²³⁴ The published proceedings from this conference are included in the appendix.

Under the direction of the Department of Health and Environmental Control (DHEC), Ms. Mood conducted two studies: one on siting and one on enforcement in order to identify gaps or weaknesses in the process.²³⁵ The studies have helped the DHEC focus on what areas are particularly vulnerable. Recently, the EPA collaborated with the DHEC on a Community Based Environmental Protection Project in one of those areas.²³⁶

Contact Information: Lilian Mood, DHEC, moodlh@columb30dhec.state.sc.us;

www.state.sc.us/dhec.

SOUTH DAKOTA

²³² See generally, Rhode Island Office of Strategic Planning and Policy, www.state.ri.us/dem/org/stratpol.htm.

²³³ See *id.*

²³⁴ E-mail from Ms. Lill Mood, Dept. of Health and Env. Control, to Hillary Gross (Nov. 4, 2000) (on file with author).

²³⁵ *Id.*

²³⁶ *Id.*

South Dakota entered into a Performance Partnership Agreement with the EPA, effective though 2002, that lists environmental justice as one of the state's priorities.²³⁷

TENNESSEE

Tennessee is currently developing a plan through the Tennessee Department of Environment and Conservation (TDEC) to address environmental health and justice concerns.²³⁸

The state is completing the planning process and issued a draft plan for public comment in November 2000.²³⁹ The draft plan is the result of surveys and meetings. Staff members gathered input at the Memphis Chamber of Commerce's Tennessee-Mississippi-Arkansas environmental meeting, attended an environmental justice training session sponsored by the Federal Highway Administration, set up booths at the annual Minority Health Conference and the Black Caucus Legislative Retreat to disseminate information regarding the planning effort. Additionally, they participated in a dialogue group comprised of state environmental employees and environmental justice community leaders. TDEC received a grant from the EPA to conduct the planning process. It appears the plan will be implemented within the Department only, although one of the plan's goals is to serve as a model for other state agencies.

The draft plan included the following recommendations, directed to TDEC:

- (1) Establish a framework for implementation within the Department and incorporate environmental justice into Department policies and programs.²⁴⁰
- (2) Develop an outreach program that works to "empower" communities with the tools needed to understand environmental issues important to their respective communities and to participate in the decision-making process.²⁴¹

²³⁷ See South Dakota/EPA Performance Partnership Agreement (1998), available at www.state.sd.us/denr/Documents/ppg.htm.

²³⁸ E-mail from Linda Tidwell, Special Projects Coordinator, Tennessee Department of Environment and Conservation Policy Office, to Hannah Shafsky (Oct. 17, 2000) (on file with author).

²³⁹ See Tennessee Dept. of Env. and Conservation, *Draft Environmental Justice in the State of Tennessee: A Strategic Plan for the Tennessee Department of Environment and Conservation*, available at www.state.tn.us/environment/epo/ej/plan/index.html.

²⁴⁰ See *id.* at 2.4.

²⁴¹ See *id.*

(3) Establish a statewide Environmental Justice Committee consisting of community members and Department representatives to be in charge of implementing the state's environmental justice plan.²⁴²

(4) Collaborate with local government and industry representatives in addressing environmental justice concerns.²⁴³

The draft plan defines environmental justice as:

--Equal access to public information, personnel, facilities, and resources to all people regardless of race; color; national, tribal, or ethnic origin; or income;

--Opportunities for the meaningful involvement of all people in the development, implementation and enforcement of environmental laws, regulations, permits and policies;

--Effective protection from environmental and public health hazards for all people regardless of race; color; national, tribal, or ethnic origin; or income; and

--Fair treatment and equitable application and enforcement of environmental laws, regulations and policies to all people and their communities.²⁴⁴

TDEC will incorporate the public comments and recommendations from the environmental justice community into a 4-Year Strategic Plan. The current Strategic Plan sets as a goal the finalization of "an environmental justice plan by June 30, 2000, that guides departmental activities and annually report[s] on progress."²⁴⁵ TDEC hopes "to develop a strategic plan through meaningful community involvement and participation that will ensure environmental health and justice in the Department's programs and that can serve as a state and national model."²⁴⁶ The state also hopes to enhance program efforts to work directly with affected environmental justice communities. The regulatory programs established by the state under various statutes (Clean Water Act, Safe Drinking Water Act, Solid Waste Disposal Act,

²⁴² *See id.*

²⁴³ *See id.*

²⁴⁴ *See id.* at 1.0.

²⁴⁵ Tennessee Department of Environment and Conservation, *2000-2003: TDEC 4-Year Strategic Plan* (Mar. 2000) at 53.

²⁴⁶ *See* E-mail from Linda Tidwell, *supra* note 234.

and Clean Air Act), will also be addressed and their requirements will be included in the environmental justice strategic plan. The plan will also address employee training, public education and pollution prevention.²⁴⁷

Tennessee has accomplished a number of things since it began its environmental justice efforts. TDEC has set up an Environmental Assistance Center (Center) with a toll-free number to field citizen concerns. TDEC has also placed posters advertising the Center in public libraries and other meeting areas. During the planning process, TDEC issued several informative quarterly progress reports that demonstrate how it conducted the process.²⁴⁸

Contact Information: Linda Tidwell, Special Projects Coordinator, TDEC Policy Office,
ltidwell@mail.state.tn.us

TEXAS

The Texas Natural Resource Conservation Commission (TNRCC) created an Environmental Equity Program (Program) in 1993 to help counter the trend of burdening low income and minority populations with a disproportionate share of environmental risks. As part of the Program, the TNRCC established an Environmental Equity Office to address complaints and citizens' actions relating to TNRCC activities.²⁴⁹

The goals of the Program are to:

- (1) Help citizens and neighborhood groups participate in the regulatory process;
- (2) Serve as the agency contact to address allegations of environmental injustice;
- (3) Serve as a link for communications between the community, industries, and the government;
- (4) Ensure that agency programs that substantially affect human health or the environment operate without discrimination;

²⁴⁷ See www.state.tn.us/environment/epo/ej/ej.htm.

²⁴⁸ See www.state.tn.us/environment/eop/ej/4qtr99.htm, www.state.tn.us/environment/epo/ej/quart2.htm.

²⁴⁹ See OPR document, *supra* note 85 at 10.

- (5) Promote greater use and analysis of demographic information for areas surrounding proposed facilities or sites;
- (6) Give greater attention to the environmental and human health conditions affecting minority and low-income communities; and
- (7) Thoroughly consider all citizens' concerns and handle them fairly.²⁵⁰

TNRCC has set up a toll-free number to enable individuals to raise environmental equity concerns. Further, in 1999 TNRCC created the State and Tribal Environmental Justice Advisory Panel, which meets quarterly in various communities to exchange information and develop solutions to local concerns.

Contact Information: www.tnrcc.state.tx.us/comm/opa/envequ.html; (512) 239-4000, 33@tnrcc.state.tx.us; Office of Public Assistance, (512) 239-2566.

UTAH

Utah has not developed a formal environmental justice program. A general environmental justice policy statement is included in Utah's Performance Partnership Agreement with USEPA Region VIII.²⁵¹ The policy statement declares that there will be fair treatment of people of all races, incomes and cultures with respect to the management of environmental programs. The Utah Department of Environmental Quality has received basic environmental justice training from the EPA but has no plans to expand its environmental justice efforts.²⁵²

Contact Information: (800) 458-0145.

VERMONT

Vermont does not have a comprehensive environmental justice strategy. However, in 1998, the EPA awarded the Vermont Agency of Natural Resources, Department of

²⁵⁰ See www.tnrcc.state.tx.us/comm/opa/envequ.html.

²⁵¹ Barlow, *supra* note 76 at 149.

²⁵² *Id.*

Environmental Conservation a State and Tribal Environmental Justice grant to complete a project focusing on the environmental and public health concerns facing mobile home residents.²⁵³

Contact Information: (802) 476-0190.

VIRGINIA

Virginia began addressing environmental justice concerns in 1993 when the Virginia General Assembly passed House Joint Resolution 529.²⁵⁴ The resolution required the Joint Legislative Audit Review Commission (JLARC) to study the siting, monitoring, and cleanup of solid and hazardous waste facilities, emphasizing how the waste facilities affect minority communities.²⁵⁵ In a report to the General Assembly in 1995, the JLARC stated Virginia is home to more than 240 non-hazardous waste facilities and, though there was no evidence of intent, “the analysis revealed that in some cases, siting and monitoring practices have had a disproportionate impact on minority communities.”²⁵⁶ The JLARC also discovered there are more inspections at waste facilities located in white areas than those located in minority areas.²⁵⁷

As a result of the study, JLARC recommended that:

- (1) The Department of Environmental Quality (DEQ) should develop a technical assistance guide for local governments regarding the process of siting solid waste management facilities;
- (2) DEQ should develop a geographical mapping data base to assist in identifying the racial characteristics of residents surrounding proposed municipal waste management facilities;
- (3) DEQ should develop a reporting and inspection system for its waste facilities; and

²⁵³ See *Environmental Justice Information*, compiled by Cheryl Jones, graduate student at SUNY College of Environmental Science and Forestry, for the New York State Department of Environmental Compliance (Summer 2000) (on file with author).

²⁵⁴ National Conference of State Legislatures, *Environmental Justice: A Matter of Perspective* (September 1995) at 15. A copy of this document is provided in the appendix.

²⁵⁵ *Environmental Justice Information*, *supra* note 253.

²⁵⁶ National Conference of State Legislatures, *supra* note 254 at 15.

²⁵⁷ Telephone interview with Bob Rotz, JLARC, by Hillary Gross, November 20, 2000.

(4) the General Assembly may want to authorize penalties for violators of the reporting or inspection systems.²⁵⁸

A copy of the report is included in the appendix.

Contact Information: Bob Rotz, JLARC, (804) 819-4585; DEQ, (804) 698-4000.

WASHINGTON

The State of Washington is confronting the issue of environmental justice more informally than some states. The Department of Ecology (DOE) is implementing policies to address environmental justice within the state, but a formal advisory group or task force has not been convened. The Environmental Justice Coordinator within the DOE has primarily been handling these efforts.

In 1995, the DOE completed a study on environmental equity in the State of Washington and issued a report.²⁵⁹ The study concluded, “at this point, the question [of whether there is environmental equity in Washington] cannot be fully answered. However, the data do suggest that the distribution of facilities and toxic releases around the state are not proportional to the state’s demographics.”²⁶⁰ The study recommended identification of areas of potential concern, including conducting case studies to determine the distances between communities and facilities, and coordinating efforts to address environmental justice with other state agencies.²⁶¹

According to John Ridgeway, DOE Environmental Justice Coordinator, there is informal work being done between the DOE and other agencies regarding environmental justice. The DOE is currently developing and implementing environmental justice policies, including creating a less confusing and more open rulemaking process, coordinating with other

²⁵⁸ *Id.*, adapted from *Solid Waste Facility Management in Virginia: Impact on Minority Communities*, Joint Legislative Audit and Review Commission of the Virginia General Assembly (January 1995).

²⁵⁹ See Washington State Department of Ecology, *A Study on Environmental Equity in Washington State* (October 1995).

²⁶⁰ *Id.* at 22.

Washington state agencies that encounter environmental justice issues, working with colleges and universities to gain from research in areas like mapping and epidemiology, and considering demographics in the DOE's work.²⁶² In addition to the Environmental Justice Coordinator position within the DOE, there is a similar position at the Washington State Board of Health. There is no environmental justice legislation within the State of Washington, and no Title VI administrative complaints or lawsuits have been filed.²⁶³

Contact Information: John Ridgeway, Environmental Justice Coordinator, DOE, (360) 407-6713.

WEST VIRGINIA

Although the Division of Environmental Protection (DEP) does not have a specific environmental justice program, it does have provisions within its waste statutes to address environmental justice issues. The Solid Waste Management Act includes a requirement that all permits be publicized in the local newspaper before being approved.²⁶⁴ The EPA has approved this Program.²⁶⁵

Contact Information: Paul Benedum, DEP Solid Waste Division, (304) 558-6350.

WISCONSIN

The authors did not locate any relevant environmental justice information for the State of Wisconsin.

WYOMING

²⁶¹ *See id.* at 24-25.

²⁶² E-mail from John Ridgeway, Environmental Justice Coordinator, Washington Department of Ecology, to Hannah Shafsky (Nov. 1, 2000) (on file with author).

²⁶³ *See id.*

²⁶⁴ W. Va. Code § 22-15 (2000).

²⁶⁵ Telephone interview with Paul Benedum, DEP Solid Waste Division, by Hillary Gross (Nov. 20, 2000).

The authors did not locate any relevant environmental justice information for the State of Wyoming.

V. Recommendations

The Title VI guidance documents and increased statistical evidence of environmental injustice provide an impetus for states to create a thorough response to environmental justice concerns. In light of the research performed for this report, the following suggestions are offered.

Consider the concerns and recommendations of the Report of the Title VI Implementation Advisory Committee, especially that areas other than environmental permitting should be addressed in confronting the issue of environmental justice.

Create a mechanism for considering the cumulative impacts of a proposed project. For example, in an environmental justice analysis, it is important not only to consider the risks posed by the particular pollutant, chemical or facility, but also to consider the cumulative risks posed by different pollutants and facilities in the same area. In this way, an environmental justice plan can be truly comprehensive.

It is also integral that the affected members of the public, including both industry and community representatives, have ready and early access to information. While conducting research for this project, it became apparent that numerous states lack information pertaining to environmental justice on their state websites. This is one indication that information on what different states are doing on environmental justice issues is not as readily available as it should be in order to facilitate easy public access to information.

Create a mechanism for dialogue between industry and community representatives. If members of the two groups communicate with one another, problems can be anticipated and

alleviated. A dialogue will help reduce the “us v. them” mentality that is often present in both groups.

Because many of these programs are relatively new, there has not been enough time to evaluate their progress. Further, it may be difficult to assess a state’s response to environmental justice concerns simply by analyzing whether new laws or procedures have been passed. Often, environmental justice concerns are not best addressed through new processes but, rather, by changing existing processes. Successfully confronting environmental justice issues may require a new mode of analysis instead of specific legislation requiring, for example, hazardous waste sites to be a certain distance from one another. Perhaps the best way, then, to assess whether a state program has been successful is to ask those who suffer from environmental injustices, the low-income and minority populations who have traditionally been exposed to more environmental harms than other segments of society. These qualitative rather than quantitative measures, although more difficult to measure, are more indicative of whether states have actually been successful in addressing environmental justice.