

ENVIRONMENTAL JUSTICE

Annual Enrichment Seminar
January 26, 2023

Air & Waste Management Association - Niagara Frontier Section



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Legal History

- ▶ Civil Rights Movement

- ▶ Title VI Civil Rights Act:

- ▶ *“no person shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving federal financial assistance” 42 USC 2000d*

- ▶ Alexander v Sandoval 532 US 275,293 (2001)

- ▶ US Supreme Court - No private right of action for unintentional discrimination



THE UNITED STATES
DEPARTMENT *of* JUSTICE

“Environmental justice and Title VI are both rooted in the same basic principle that no person should bear an unfair share of harm on account of their race, color or national origin.”

August 19, 2010 Memorandum:

<https://www.justice.gov/crt/fcs/newsletter/Spring-2015/TitleVIandEJ>



Executive Order 12898 (1994)

- Executive Order 12898 (1994):
 - Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Communities
 - Directs federal agencies to:
 - identify and address the disproportionately high and adverse human health or environmental effects of their actions on minority and low-income populations, to the greatest extent practicable and permitted by law.
 - develop a strategy for implementing environmental justice.
 - promote nondiscrimination in federal programs that affect human health and the environment, as well as provide minority and low-income communities access to public information and public participation.
 - Memorandum:
 - [http:// www.epa.gov/environmentaljustice/resources/publications/interagency/ej-mou-2011-08.pdf](http://www.epa.gov/environmentaljustice/resources/publications/interagency/ej-mou-2011-08.pdf).
 - Department of Justice 2014 Memorandum:
 - https://www.justice.gov/sites/default/files/ej/pages/attachments/2014/12/19/doj_guidance_concerning_ej.pdf



National Environmental Policy Act

- ▶ Impacts all federal agency actions
- ▶ Referenced in the 1994 EO 12898
- ▶ Procedural. “hard look”
- ▶ Prevents “uninformed, not unwise actions”

Clean Air Act

- ▶ Siting considerations in permitting

“Securing environmental justice and equity for all environmentally overburdened communities is a high priority for EPA. Executive Orders 14008, 12898, and 13985 direct agencies to make achieving environmental justice and equity a part of their mission. To advance environmental justice and equity through permitting actions under the Clean Air Act (CAA), the Office of Air and Radiation (OAR) is providing resources and recommendations to the EPA regions regarding approaches for addressing environmental justice and advancing environmental equity”

Memorandum December 22, 2022

<https://www.epa.gov/system/files/documents/2022-12/Attachment%20-%20EJ%20in%20Air%20Permitting%20Principles%20.pdf>



NYSDEC Office of Environmental Justice



[Department of Environmental Conservation](#)

“Environmental Justice is the fair and meaningful treatment of all people, regardless of race, income, national origin or color, with respect to the development, implementation, and enforcement of environmental laws, regulations and policies. Environmental Justice allows for disproportionately impacted residents to access the tools to address environmental concerns across all of DEC's operations. The Office of Environmental Justice (OEJ) works to address environmental issues and concerns that affect primarily low income and minority communities through grant opportunities,”

<https://www.dec.ny.gov/public/333.html>

NEW YORK State Laws and policies

- ▶ Environmental Rights Amendment
- ▶ New York Climate Act
 - ▶ Community and Leadership Protection Act's (CLCPA) definition of “disadvantaged communities: “that bear burdens of negative public health effects, environmental pollution, impacts of climate change, and possess certain socioeconomic criteria, or comprise high-concentrations of low- and moderate-income households,”
- ▶ SEQRA: Senate Bill S8830 “Cumulative Impacts Law”
 - ▶ SIGNED BY GOVERNOR January 2023 effective June 2023
 - ▶ Makes provisions regarding the siting of environmental facilities in minority communities or economically distressed areas
 - ▶ Declares that each community in the state should equitably share the responsibilities and benefits of solving the state’s environmental issues.
 - ▶ Amends the state’s environmental conservation law to include the existing burden report that is meant to describe the existing pollution burden in a disadvantaged community.



Resources

- ▶ *State Laws Provide Pathways for Environmental Justice Claims*
 - ▶ American Bar Association Natural Resources & the Environment Summer 2021 Andrea Wortzel and Viktoriia De Las Casas
- ▶ Executive Order 12898:
 - ▶ <https://www.epa.gov/laws-regulations/summary-executive-order-12898-federal-actions-address-environmental-justice>
- ▶ Federal Highway Administration Environmental Review Toolkit
 - ▶ https://www.environment.fhwa.dot.gov/env_topics/environmental_justice.aspx
- ▶ Enviromapper EJ Screen
 - ▶ <https://ejscreen.epa.gov/mapper/>
- ▶ NYSDEC Environmental Justice
 - ▶ <https://www.dec.ny.gov/public/333.html>
- ▶ Executive Order 14008 <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-protecting-public-health-and-environment-and-restoring-science-to-tackle-climate-crisis/>
- ▶ EJ and Civil Rights Chart Comparison: <https://www.epa.gov/sites/default/files/2015-02/documents/title-vi-ej-comparison.pdf>
- ▶ Environmental Justice Tracker : <https://eelp.law.harvard.edu/ejtracker/>

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