



E C O S

# GREEN REPORT

## State Environmental Justice Highlights in 2023

### INTRODUCTION

States and the U.S. Environmental Protection Agency (EPA) have a shared mission to protect human health and the environment that cannot be achieved without deliberate coordination. New laws such as the Inflation Reduction Act (IRA) invest hundreds of billions of dollars to cut greenhouse gas emissions and direct many of these investments to disadvantaged communities to address environmental and public health disparities. Each state has its own mix of economic, environmental, geographic, societal, and legal characteristics that offer unique opportunities and challenges. Now more than ever, state environmental agencies must adapt to face the increasing threats of climate change and emerging pollutants, and to incorporate environmental justice (EJ) into their existing processes. The topics discussed in this report have the potential to highlight some of these differences while still offering comparable best practices. States, as co-regulators with EPA, are essential for administering these dollars and practices and shaping their use in ways that are supported by strong local, state, and federal partnerships.

ECOS members continue to prioritize the efforts of a high-profile workgroup on environmental justice to inform states, engage EPA and others, and develop goals, strategies, and actions towards a collective clean and healthy environment for all. This *ECOS Green Report* provides highlights of five well-attended virtual ECOS EJ Workgroup meetings and trainings in 2023, including several held in conjunction with EPA. In this report, we expand on the following topics: State Implementation of Title VI and EJ, Emerging State Title VI and EJ Programs, Advancing EJ through Supplemental Environmental Projects (SEPs), and EJ Mapping. We thank the ECOS EJ Steering Committee, the ECOS EJ Workgroup, the reviewers of this report, and most notably the environmental agencies of Colorado, Delaware, New Jersey, North Dakota, and Tennessee for presenting during the virtual ECOS EJ Workgroup meetings and for aiding in the development of this report.

2023 ECOS EJ Workgroup Calls
<p><b>January 27 ECOS-EPA EJ Workgroup Call</b>            Overview of EPA Legal Tools to Advance Environmental Justice: Cumulative Impacts Addendum            New EJ Grant Opportunities at EPA            Recap of EPA's 8 principles for Considering EJ in Air Permitting</p>
<p><b>May 15 EJ Workgroup Call</b>            Open Discussion on State Implementation of Title VI and EJ</p>
<p><b>July 17 EJ Workgroup Call</b>            EJ Spotlight: State Innovative Approaches for Overcoming EJ Challenges</p> <ul style="list-style-type: none"> <li>● <i>Delaware Department of Natural Resources and Environmental Control</i></li> <li>● <i>North Dakota Department of Environmental Quality</i></li> </ul>
<p><b>September 20 Joint Compliance Committee and EJ Workgroup Call</b>            Supplemental Environmental Projects (SEPs)</p> <ul style="list-style-type: none"> <li>● <i>Harvard's Environmental &amp; Energy Law Program and Emmett Environmental Law &amp; Policy Clinic</i></li> <li>● <i>The State Energy &amp; Environmental Impact Center at New York University's School of Law</i></li> <li>● <i>Colorado Department of Public Health and Environment</i></li> </ul>
<p><b>October 18 EJ Workgroup Call</b>            EJ Spotlight: Evolving Environmental Justice Initiatives in Tennessee</p> <ul style="list-style-type: none"> <li>● <i>Tennessee Department of Environment and Conservation</i></li> </ul>
<p><b>November 2 ECOS-Esri Workshop</b>            Geographic Information Tools to Support Environmental Justice</p> <ul style="list-style-type: none"> <li>● <i>Esri, Environment and Conservation Team</i></li> <li>● <i>New Jersey Department of Environmental Protection</i></li> </ul>
<p><b>November 15 EPA-ECOS Title VI Training Workshop (1/2)</b>            Overview of the Title VI Complaint and Compliance Review Processes</p>
<p><b>December 15 EPA-ECOS Title VI Training Workshop (2/2)</b>            Exploring Pre-Award Reviews and Post-Award Audits</p>

*Figure 1: List of 2023 ECOS EJ Workgroup calls, workshop training, and topics. Rows highlighted in light blue indicate states/topics discussed in this report.*

## TABLE OF CONTENTS

State Implementation of Title VI and Environmental Justice (EJ) .....	4
Emerging State Title VI and EJ Programs .....	10
Advancing EJ Through Supplemental Environmental Projects (SEPs).....	17
Exploring State EJ Mapping Tools .....	24
Conclusion .....	29
Appendix.....	30

*The ECOS EJ Workgroup, composed of state environmental agency leaders, hosted “peer learning conversations” to identify areas where EPA and states can continue to partner to advance equity and EJ principles. The ECOS EJ Workgroup is led by the ECOS EJ Steering Committee and Co-Chairs Serena McIlwain, Secretary of the Maryland Department of Environment, and Myra Reece, Director of Environmental Affairs, South Carolina Department of Health and Environmental Control. Other ECOS EJ Steering Committee members in 2023 included Shawn LaTourette of New Jersey, Jon Niermann of Texas, Aaron Keatley of Michigan, and Bob Scott of New Hampshire.*

## STATE IMPLEMENTATION OF TITLE VI AND ENVIRONMENTAL JUSTICE

Federal and state agencies continue to make strides in identifying and responding to concerns involving equity and EJ. The January 2021 [Executive Order \(EO\) 14008](#)<sup>1</sup>, [EO 13985](#)<sup>2</sup>, and the April 2023 [EO 14096](#)<sup>3</sup> underscore the importance of equity and EJ and the need to reduce disproportionate and adverse environmental impacts on disadvantaged communities. While the EOs do not impose new requirements on states, EPA strongly encourages states to adopt practices that are sufficiently inclusive to advance EJ. Additional EJ activities at the federal level include the [Justice40 Initiative](#),<sup>4</sup> [EJ grants](#),<sup>5</sup> the [National Environmental Justice Advisory Council](#),<sup>6</sup> and use of EPA’s [EJScreen](#) mapping tool.

Building on the foundation of the [1964 Civil Rights Act](#)<sup>7</sup> and the February 1994 [EO 12898](#),<sup>8</sup> the recent EO 14096 updated the traditional federal definition of EJ to recognize the role of civil rights laws and accountability. The expanded EJ definition in EO 14096, as seen in the table below, includes not only income, race, color, and national origin, but also factors such as tribal affiliation and disability. This new EJ definition also explicitly mentions concerns related to climate change, cumulative impacts, and the legacy of racism and/or other structural or systemic barriers and demonstrates a more comprehensive understanding of the environmental challenges faced by disadvantaged communities. EO 14096 reaffirms the significance of tackling EJ through a more inclusive, comprehensive framework that reflects an evolving understanding of EJ issues, the importance of meaningfully engaging disadvantaged communities, and a recognition of a wider range of factors that can contribute to environmental disparities. While this new definition applies to only federal agencies, it is likely to drive how federal programs conduct their EJ programs, impacting states as co-regulators and partners.

<sup>1</sup> <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/>

<sup>2</sup> <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>

<sup>3</sup> The White House. (2023, April 21). Executive Order on Revitalizing Our Nation’s Commitment to Environmental Justice for All. Retrieved from <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/04/21/executive-order-on-revitalizing-our-nations-commitment-to-environmental-justice-for-all/>

<sup>4</sup> <https://www.whitehouse.gov/environmentaljustice/justice40/>

<sup>5</sup> <https://www.epa.gov/environmentaljustice/environmental-justice-grants>

<sup>6</sup> <https://www.epa.gov/environmentaljustice/national-environmental-justice-advisory-council>

<sup>7</sup> <https://www.archives.gov/milestone-documents/civil-rights-act>

<sup>8</sup> <https://www.archives.gov/files/federal-register/executive-orders/pdf/12898.pdf>

Table 1. Comparison of Two Foundational Definitions of Environmental Justice

<p><b>Traditional EJ definition adopted by EPA:</b></p> <p>EJ is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.</p> <p>This goal will be achieved when everyone enjoys:</p> <ul style="list-style-type: none"> <li>● The same degree of protection from environmental and health hazards, and</li> <li>● Equal access to the decision-making process to have a healthy environment in which to live, learn, and work.<sup>9</sup></li> </ul>	<p><b>New EJ definition in EO 14096:</b></p> <p>EJ means the <u>just</u> treatment and meaningful involvement of all people, regardless of income, race, color, national origin, <u>Tribal affiliation, or disability, in agency decision-making and other federal activities</u> that affect human health and the environment so that people:</p> <ul style="list-style-type: none"> <li>● Are <u>fully protected from disproportionate and adverse human health and environmental effects</u> (including risks) and hazards, including those related to climate change, <u>the cumulative impacts of environmental and other burdens, and the legacy of racism or other structural or systemic barriers</u>, and</li> <li>● Have equitable access to a <u>healthy, sustainable, and resilient</u> environment in which to live, <u>play, work, learn, grow, worship, and engage in cultural and subsistence practices</u>.<sup>10</sup></li> </ul>
--	--

## Meeting Title VI Requirements

Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. §2000d to 2000d-7) prohibits recipients of federal financial assistance (“recipients”), such as state environmental agencies, from excluding participants, denying benefits, or discriminating against any person on the basis of race, color, or national origin (including individuals with limited English proficiency) when engaging in their environmental programs or activities. Under EPA’s Title VI implementing regulation, found at 40 C.F.R. Part 7, EPA funding recipients are prohibited from taking actions, including permitting actions, that are intentionally discriminatory or have an unjustified discriminatory effect. EPA uses its Title VI authority to advance environmental justice concerns.<sup>11</sup>

States vary in their capacity to adopt new practices to meet changing expectations for federal civil rights laws compliance and implementation. Many states also see a disconnect between EPA and states’ capabilities, statutory authorities, financial constraints, staffing realities, and priority work areas. Even with these many competing challenges, states have chosen different policy responses to meet Title VI requirements and address environmental justice concerns, both working within existing authorities and, in some cases, enacting new state

<sup>9</sup> <https://www.epa.gov/environmentaljustice/learn-about-environmental-justice>

<sup>10</sup> <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/04/21/executive-order-on-revitalizing-our-nations-commitment-to-environmental-justice-for-all/>

<sup>11</sup> Source 1: <https://www.epa.gov/system/files/documents/2022-12/Attachment%20-%20EJ%20in%20Air%20Permitting%20Principles%20.pdf>

Source 2: U.S. Environmental Protection Agency. Title VI and Environmental Justice: A Comparison. Retrieved from <https://www.epa.gov/sites/default/files/2015-02/documents/title-vi-ej-comparison.pdf>

laws (examples below). As a result, some states have state-specific definitions of EJ and communities with EJ concerns under their own statutes, regulations, and/or policies.

## Select State Environmental Justice Policies Adopted in 2023

In 2023, states continued to pass legislation and adopt policies that offered additional clarity around addressing environmental justice through programs like environmental permitting. While some states have made legislative changes, other states continue to rely on the federal protections afforded by the Civil Rights Act as well as the tenets of early, frequent, and substantive engagement with stakeholders and co-regulators, as paramount to achieving EJ. The legislative, regulatory, and policy actions of certain states highlighted in this section are not meant to be a comprehensive listing of actions taken by states and territories for the betterment of their communities identifying as EJ or disadvantaged communities. In many cases, state environmental agencies are increasing practices, policies, and resources to respond directly to overburdened and underserved communities.

**New Jersey:** In April 2023, Governor Phil Murphy announced the final adoption of regulations to implement New Jersey's EJ Law, aimed at reducing pollution in historically overburdened communities and communities of color that have been subjected to disproportionately adverse environmental and public health stressors. The new rules require enhanced upfront community engagement before such facilities are proposed in the state's [overburdened communities](#).<sup>12</sup> The regulations also require use of community-level environmental and public health data available through the Department of Environmental Protection's [Environmental Justice Mapping, Assessment, and Protection \(EJMAP\)](#)<sup>13</sup> tool, and directs permit applicants to avoid and minimize environmental and public health stressors. This enables NJ DEP to establish permit conditions that better protect vulnerable communities. Where disproportionate impacts are not avoidable, certain new facilities could be limited, or existing facilities could be subject to additional permit conditions that reduce environmental and public health stressors affecting the community.<sup>14</sup>



**Colorado:** In May 2023, Colorado adopted a new rule that enhances modeling and monitoring requirements for new or modified air pollution sources in communities disproportionately impacted by air pollution. Under the new rule, all applicable air permit applicants must submit an EJ summary with their application. The summary must cover environmental health data about the community where the air pollution source operates. Permit applicants can use [Colorado EnviroScreen](#),<sup>15</sup> the state's interactive EJ mapping tool, to identify areas that meet the state law definition of

<sup>12</sup> <https://dep.nj.gov/ej/communities/>

<sup>13</sup> <https://experience.arcgis.com/experience/548632a2351b41b8a0443cfc3a9f4ef6>

<sup>14</sup> <https://www.nj.gov/governor/news/news/562023/approved/20230417a.shtml>

<sup>15</sup> <https://cdphe.colorado.gov/enviroscreen>

disproportionately impacted community and to compile data for their EJ summaries.<sup>16</sup> (See Chapter 4 for more information on Colorado EnviroScreen.) Additionally, permit applicants in disproportionately impacted communities are required to either pay a fee to support community air monitoring programs or to adopt enhanced monitoring standards, depending on the type of disproportionately impacted community where the air pollution source is located. Permit applicants in disproportionately impacted communities must implement reasonably available control technology to reduce emissions.

**Connecticut:** In June 2023, the Connecticut General Assembly passed Senate Bill (SB) 1147, [An Act Concerning the Environmental Justice Program of the Department of Energy and Environmental Protection \(DEEP\)](#).<sup>17</sup> SB 1147

preserves the existing EJ statutory public participation processes for both new and expanded permits, and provides a framework to address the cumulative impacts of historic siting practices head-on. Importantly, the new law acknowledges that environmental impacts precede individual projects or permits and can create adverse cumulative environmental or public health stressors in an environmental justice community. Pursuant to SB 1147, DEEP will develop a tool to measure existing environmental and health stressors in a community. This tool will help applicants for new permits assess whether cumulative impact thresholds would be exceeded if their permit application were approved. In turn, applicants can anticipate whether DEEP or the Connecticut Siting Council might apply additional conditions in a permit or potentially decide not to grant the permit.



**Pennsylvania:** On September 16, 2023, the Pennsylvania Department of Environmental Protection (DEP) issued an updated interim final [EJ Policy](#).<sup>18</sup> Though the Policy is an internal agency policy and not an act of legislation, it expands on the enhanced public participation in environmental permits that were part of the previous policy which had been enacted since 2004. The EJ Policy also looks to consider how EJ considerations can be incorporated into other PA DEP activities, such as

grantmaking, climate initiatives, inspection, compliance, and enforcement activities. The EJ Policy adoption also coincides with a change in where the policy applies through the new [PennEnviroScreen](#) tool, which looks at over 30 environmental burdens and population characteristics.<sup>19</sup>

<sup>16</sup> <https://cdphe.colorado.gov/new-environmental-justice-report-tool-for-air-quality-regulation-3>

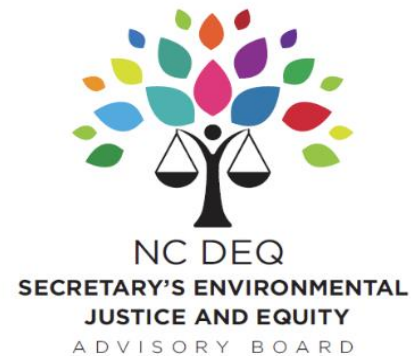
<sup>17</sup> <https://legiscan.com/CT/text/SB01147/id/2831018>

<sup>18</sup>

<https://greenport.pa.gov/elibrary//GetDocument?docId=5600403&DocName=ENVIRONMENTAL%20JUSTICE%20POLICY.PDF%20%20%3cspan%20style%3D%22color:green%3b%22%3eCOMMENTS%20DUE%20OCTOBER%2029%2c%202023%3c/span%3e%20%3cspan%20style%3D%22color:blue%3b%22%3e%28NEW%29%3c/span%3e>

<sup>19</sup> <http://www.dep.pa.gov/EJPolicyRevision>

**North Carolina:** On October 24, 2023, North Carolina Governor Roy Cooper issued [EO No. 292](#), directing bold action to advance environmental justice in the state.<sup>20</sup> EO 292 reestablishes the Secretary of Environmental Quality’s Environmental Justice and Equity Advisory Board as the Governor’s Environmental Justice Advisory Council. This Advisory Council will serve as a forum for a whole of government approach to environmental justice that identifies funding opportunities that advance EJ throughout North Carolina’s state government agencies. Among other directives, this EO further defines EJ, and directs agencies across the state to develop environmental justice goals and measurable outcomes, including a statewide EJ mapping tool and a framework to assess cumulative impacts as it relates to state government programs and activities.



## Ongoing Coordination with EPA

While EPA plays an important role in Title VI enforcement and oversight, the agency also continues to partner with states and has provided additional direction and clarity on EJ and the federal legal authorities for Title VI, including with respect to permitting. These clarifying policy documents remain important, as states are often limited in the resources they have to dedicate to EJ, particularly as it goes beyond more basic Title VI practices and procedural safeguards such as non-discrimination notices, translations, and public participation plans.

In 2022 and 2023, ECOS and EPA collaborated on a series of Title VI of the Civil Rights Act training workshops, listed below. Notably, EPA also issued the 2022 [Interim Environmental Justice and Civil Rights in Permitting Frequently Asked Questions](#)<sup>21</sup> and [Principles for Addressing EJ Concerns in Air Permitting](#)<sup>22</sup> documents, and updated and revised the agency’s EJ Legal Tools document with the release of the [2022 EPA Legal Tools to Advance Environmental Justice](#)<sup>23</sup> and the [2023 Cumulative Impacts Addendum](#).<sup>24</sup> EPA also provides substantial technical assistance to ECOS member state agencies on an individual and as-needed basis.

Table 2: Resources from EPA-ECOS Title VI Workshops

2022 EPA-ECOS Title VI Workshop Trainings	2023 EPA-ECOS Title VI Workshop Trainings
<ul style="list-style-type: none"> <li>● <a href="#">Title VI 101</a></li> <li>● <a href="#">Civil Rights Procedural Requirements and Best Practices</a></li> <li>● <a href="#">Ensuring Compliance with Anti-Discrimination Requirements – Application to Permitting and Other Issues.</a></li> </ul>	<ul style="list-style-type: none"> <li>● <a href="#">Overview of the Title VI Complaint and Compliance Review Processes</a></li> <li>● <a href="#">Exploring Pre-Award Reviews and Post-Award Audits</a></li> </ul>

<sup>20</sup> <https://governor.nc.gov/executive-order-no-292/open>

<sup>21</sup> <https://www.epa.gov/system/files/documents/2022-08/EJ%20and%20CR%20in%20PERMITTING%20FAQs%20508%20compliant.pdf>

<sup>22</sup> <https://www.epa.gov/caa-permitting/ej-air-permitting-principles-addressing-environmental-justice-concerns-air>

<sup>23</sup> <https://www.epa.gov/system/files/documents/2022-05/EJ%20Legal%20Tools%20May%202022%20FINAL.pdf>

<sup>24</sup> <https://www.epa.gov/system/files/documents/2022-12/bh508-Cumulative%20Impacts%20Addendum%20Final%202022-11-28.pdf>



Strategies to ensure EPA oversight of Title VI compliance have evolved with notable changes to EPA's program management and approach in recent years, which has included notable efforts to eliminate the agency's case backlog and take decisive action on civil rights enforcement.<sup>25</sup>

According to an EPA internal report, the agency began to refocus its efforts on reducing a significant backlog of discrimination complaints while simultaneously developing policy and guidance documents in 2016 with the agency resolving a backlog of 61 cases from fiscal years 2017 through 2019.<sup>26</sup> These efforts, however, have not slowed the number of complaints or subsequent evaluation processes received by the agency. In fiscal year 2023, 49 complaints were received and as of mid-October 2023, "*...the [a]gency was negotiating informal resolution agreements to settle 20 complaints...and has completed four agreements, over complaints about a contaminated shipyard in California, lack of accessibility in West Virginia water quality notices, a fuel-loading facility in St. Louis...and the Flint matter.*"<sup>27</sup>

EPA's approach for receiving and accepting complaints often includes an opportunity for pursuing voluntary compliance strategies through informal resolution agreements and alternative dispute resolutions.<sup>28</sup> These approaches, while voluntary, can cause states undue tension between the limitations of state legal authorities, well-understood environmental processes, the named entities, and the expected outcomes for communities impacted. State leaders also reason that these voluntary agreements can lead to unhelpful comparisons of terms across states. Amid ongoing and regular engagement with EPA, states continue to seek best practices for handling Title VI issues, preventing Title VI complaints and petitions, and ensuring positive outcomes for all parties while advancing environmental justice goals.

To aid in this effort, the ECOS EJ SC and WG developed a **Risk Management Framework (RMF)** to help ECOS member states in understanding state compliance with civil rights laws and Title VI as they relate to environmental permitting and other activities.<sup>29</sup> The RMF lays out a series of levels and key actions (e.g., identifying communities and facilities of interest, analyzing potential impacts, and exploring ways to incorporate meaningful public engagement) to help states consider which practices may reduce the likelihood of a state being subject to either an EPA investigation and resolution process, or industry litigation. This document, along with its suggested practices, aims to identify consensus actions that are more mandatory versus discretionary in nature, and seeks to transparently guide states in understanding the limits of their discretion over the state permitting process. Given that the understanding of legal risk is complex, dynamic, and informed by ongoing litigation, navigating state Title VI compliance is subject to evolution over time.

<sup>25</sup> Link 1: [https://www.epa.gov/sites/default/files/2020-09/documents/epaig\\_20200928-20-e-0333.pdf](https://www.epa.gov/sites/default/files/2020-09/documents/epaig_20200928-20-e-0333.pdf), Strengthening Civil Rights Enforcement, Goal 2, Equity Action Plan, [https://www.epa.gov/system/files/documents/2022-04/epa\\_equityactionplan\\_april2022\\_508.pdf](https://www.epa.gov/system/files/documents/2022-04/epa_equityactionplan_april2022_508.pdf)

Link 2: EPA's Strategic Plan for FY2022-2026 includes "Take Decisive Action to Advance Environmental Justice and Civil Rights" as Strategic Goal 2. <https://www.epa.gov/system/files/documents/2022-03/fy-2022-2026-epa-strategic-plan.pdf>

<sup>26</sup> [https://www.epaig.gov/sites/default/files/2020-09/documents/epaig\\_20200928-20-e-0333.pdf](https://www.epaig.gov/sites/default/files/2020-09/documents/epaig_20200928-20-e-0333.pdf)

<sup>27</sup> <https://publicintegrity.org/environment/pollution/environmental-justice-denied/environmental-justice-epa-civil-rights-story/>

<sup>28</sup> <https://www.epa.gov/ogc/case-resolution-manual>

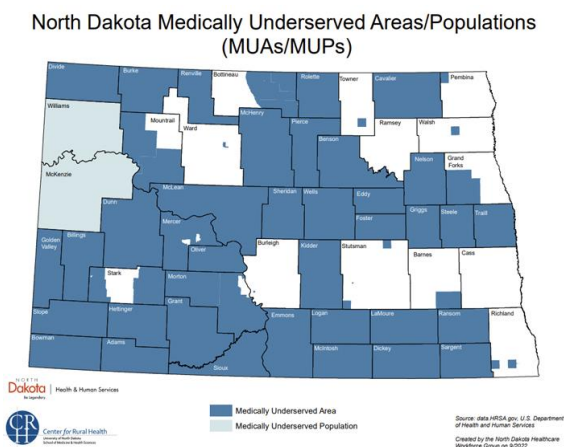
<sup>29</sup> <https://www.ecos.org/documents/an-environmental-permitting-risk-management-framework-for-states-to-reduce-risk-of-civil-rights-violations-and-address-environmental-justice/>



residents to share their thoughts on the importance of rural North Dakota. Many responses focused on access to nature and a clean environment, with an emphasis on stewardship of the land. Building on that common ground, *Rural Matters* helped create a shared approach that served as the foundation to NDDEQ's EJ program, giving North Dakotans of all backgrounds an equal opportunity to inform agency priorities.

## Challenges and Opportunities

North Dakota faces unique EJ challenges and opportunities. For example, environmental injustices can contribute to health risks like asthma and cancers among vulnerable populations. But in North Dakota, a large state with a small population, many rural areas are medically underserved, lacking nearby hospitals and other health institutions. As shown in this map from the North Dakota Department of Health and Human Services, medically underserved areas comprise most of the state's counties, making it difficult for some EJ communities to seek healthcare.



On the other hand, North Dakota is the only state with no sites currently on the National Priorities List (NPL). The state previously had two sites listed: the Arsenic Trioxide Site in Ransom, Richland, and Sargent counties in southeastern North Dakota, and the Minot Landfill in Minot. The Arsenic Trioxide Site was cleaned up and removed from the NPL in 1996 and is now used as residential and agricultural land. The Minot Landfill was cleaned up and removed from the NPL in 1997. Today, NDDEQ is working with the City of Minot to transform this site into a park, per the city's plan.

Despite successes with Superfund cleanup, brownfields sites remain scattered throughout North Dakota. Several are located within the state's Native American reservations. In 2020, [the Spirit Lake Tribe and Turtle Mountain Band of Chippewa Indians received \\$810,000 from EPA to assist with Brownfields cleanup](#), an investment in the health and welfare of these communities. Both nations' remediation projects are located in census tracts designated as Qualified Opportunity Zones, created by the Tax Cuts and Jobs Act of 2017, which overlap with areas facing EJ concerns.<sup>31</sup> This designation provides preferential tax treatment and promotes investment, encouraging the allocation of resources to these economically and environmentally-distressed communities.

NDDEQ's inter-agency engagement has already led to exciting and impactful joint initiatives. Together with the North Dakota Department of Health and Human Services as well as two nonprofit groups, NDDEQ was recently selected for a \$1 million EPA Environmental Justice Government-to-Government grant. This grant will enable NDDEQ to develop a radon awareness, testing, and mitigation campaign with the goal of reducing radon's impacts in low-income homes in three pilot regions across the state.

As an emerging program, North Dakota's EJ/nondiscrimination initiative has taken significant steps, including forming a department environmental justice advisory group and actively learning best practices from other North Dakota agencies as well as other state environmental agencies. NDDEQ expects these initiatives to continue in future years.

<sup>31</sup> [https://www.epa.gov/sites/default/files/2020-10/documents/efab\\_epa\\_opportunity\\_zones\\_oct\\_2020.pdf](https://www.epa.gov/sites/default/files/2020-10/documents/efab_epa_opportunity_zones_oct_2020.pdf)

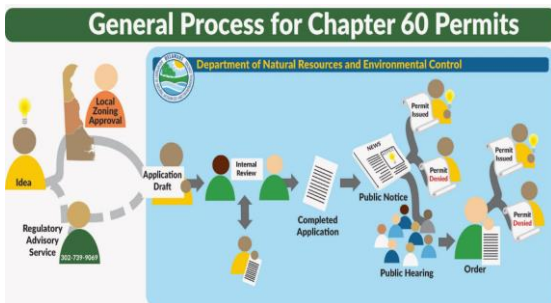
## Overcoming Environmental Justice Challenges in Delaware

Dr. Katera Moore, Environmental Justice Coordinator, Office of the Secretary,  
Delaware Department of Natural Resources and Environmental Control (DNREC)



### DELAWARE DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

The [Delaware Department of Natural Resources and Environmental Control](#) (DNREC) was created in 1966 as the Water and Air Resources Commission and has seen its mission grow and expand over the past half-century.<sup>32</sup> In February 2023, DNREC hired its first EJ Coordinator and launched its new [EJ webpage](#)<sup>33</sup>, kickstarting an expansion of its EJ program. Today, EJ is a top agency priority, and this emerging program is already pursuing several exciting initiatives.



### Internet and Intranet Environmental Justice Resources

Delaware's new public-facing EJ webpage displays DNREC's Title VI policy, contact information for the Title VI coordinator and other relevant offices, and a comment [form](#) for community members to provide feedback, as well as DNREC's Community Assets Campaign, which allows the local leaders and residents to share their knowledge and experience, facilitating two-way communication between the agency and local communities.<sup>34</sup> The webpage links to public participation information, the DNREC [EJ Area Viewer](#) mapping tool,

and a range of resources relevant to EJ communities, such as waste management programs and technical support for climate adaptation initiatives.<sup>35</sup>

Beyond this publicly available information, EJ staff have also developed a variety of internal resources for DNREC on a SharePoint intranet site, encouraging the integration of EJ tenets into agency processes. There, DNREC staff can view resources and videos on the history of EJ in the United States and the current federal administration's approach, as well as virtual toolkits and training sessions on community engagement best practices and Delaware's EJ vision.

<sup>32</sup> <https://dnrec.alpha.delaware.gov/>

<sup>33</sup> <https://dnrec.alpha.delaware.gov/environmental-justice/>

<sup>34</sup> <https://app.smartsheet.com/b/form/b59561607b9a4cbb906f5f9d675539ae>

<sup>35</sup> <https://dnrec.maps.arcgis.com/apps/instant/sidebar/index.html?appid=c639c1d1be634591b8e14d3f3205f753>

## Making Informed Decisions

In 2021, Delaware passed the [House Concurrent Resolution 40](#), creating the first state-level Justice40 Oversight Committee in the United States.<sup>36</sup> Its members include the DNREC's Secretary, Secretaries of several other state agencies, and state legislators from both major parties (or designees thereof). Among other charges, the committee was asked to “identify disadvantaged and marginalized communities through Delaware with environmental justice impact,” and to “identify the infrastructure deficiencies in these communities.”

In accordance with Justice40 objectives, DNREC has identified Equity Focus Areas (EFAs) throughout the state, the first Delaware agency to adopt this methodology developed by Delaware Department of Transportation (DelDOT) and a contractor. EFAs help DNREC “make informed investment decisions, provide data for public outreach and engagement strategies, and create a standardized tool to identify disadvantaged communities.” The agency has also developed a Limited English Neighborhoods metric, identifying communities where at least 15% of residents have limited English proficiency. DNREC policy requires additional community outreach concerning sites within both EFAs and Limited English Neighborhoods, and highlights these areas on its EJ Area Viewer mapping tool.

In Delaware, Equity Focus Areas are defined as either *moderate* or *severe*. On the EJ Area Viewer map shown to the right, moderate EFAs are shaded in light blue and severe EFAs are colored dark blue.

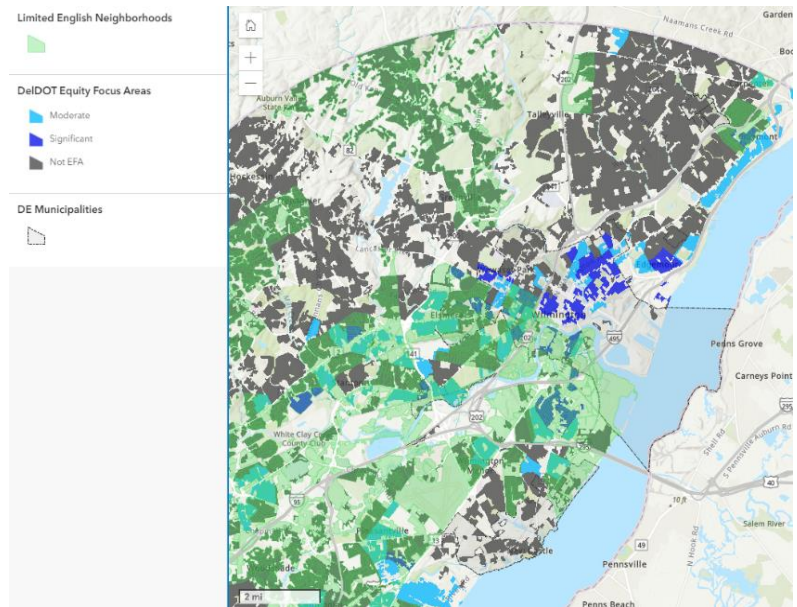


Table 3: Equity Focus Areas in Delaware	
Moderate Equity Focus Areas (EFAs)	Severe Equity Focus Areas (EFAs)
<p>Defined as American Community Survey block groups where at least one of following is true:</p> <ul style="list-style-type: none"> <li>• The percentage of population in poverty is greater than the state average, and the population of African Americans, Hispanics, Asians, or Native Americans is greater than twice the state average</li> <li>• The combined population of minorities is greater than twice the state average</li> <li>• The percentage of population in poverty is greater than twice the state average, and</li> <li>• The median household income for a family of four is less than or equal to \$45,985.</li> </ul>	<p>Defined as American Community Survey block groups where at least one of following is true:</p> <ul style="list-style-type: none"> <li>• The percentage of population in poverty is greater than the state average, and the population of African Americans, Hispanics, Asians, or Native Americans is greater than three times the state average</li> <li>• The combined population of minorities is greater than three times the state average</li> <li>• The percentage of population in poverty is greater than three times the state average, and</li> <li>• The median household income for a family of four is less than or equal to \$28,070.</li> </ul>

By identifying *moderate* and *severe* EFAs, DNREC and other state agencies can work to effectively invest in underserved communities.

### Ongoing Initiatives

A top ongoing priority for EJ in Delaware is interagency collaboration. During public engagement, agency representatives are often asked about issues outside of their jurisdiction, typically concerning truck traffic and other localized transportation emissions. To best serve community needs, DNREC has a goal of working with the state Department of Transportation (DelDOT) to include DelDOT representatives in DNREC public meetings.

Additionally, DNREC staff are currently in the process of developing an updated Public Involvement Plan, as well as creating a new tool, separate from the existing EJ Area Viewer, to display analysis of social vulnerability factors. The agency has created an EJ Office and hopes to have it staffed by FY2025, and is improving publicly accessible resources through future social media content and other materials. DNREC has made significant progress on incorporating EJ into its workflow, and has many exciting initiatives forthcoming.

## Environmental Justice Updates in Tennessee

Rachael Maitland, Senior Policy Analyst and Non-discrimination/Title VI Coordinator, Office of Policy and Planning, Tennessee Department of Environment and Conservation (TDEC)



The [Tennessee Department of Environment & Conservation](#) (TDEC) is a Cabinet-level agency in Tennessee, which aims to protect and improve the quality of Tennessee's air, land, and water through a responsible regulatory system; protect and promote human health and safety; conserve and promote natural, cultural and historic resources; and provide a variety of quality outdoor recreational experiences.<sup>37</sup> TDEC has received delegation from EPA to assume responsibility for most environmental regulatory programs in the state, and makes it a priority to engage citizens in its decision-making through public hearings, meetings, and other types of public information sessions. In addition to its designation as the state's chief environmental and natural resource regulatory agency, TDEC is also responsible for managing Tennessee's state parks and natural areas.

TDEC has made serving economically distressed communities a priority since early 2019, when newly elected Governor Bill Lee issued his first Executive Order, [EO 1: An Order Requiring a Statement of Rural Impact and Recommendations for Better Serving Rural Tennesseans from all Executive Branch Departments](#).<sup>38</sup> This Order identified 15 Tennessee counties as economically distressed, as defined by the Appalachian Regional Commission, and asked TDEC to review policies and processes in these areas. Later, President Biden's emphasis on EJ early in his administration dovetailed with TDEC's ongoing efforts, given significant overlap between disadvantaged rural communities and communities facing EJ concerns.

### EJ Across TDEC's Organization

TDEC is split into three bureaus: the Bureau of Environment, overseeing environmental regulatory programs; the Bureau of Conservation, overseeing state parks and natural areas; and the Bureau of Operations, Strategy, and Engagement, which includes department-wide service units such as the Office of Policy and Planning and the Division of Stakeholder Engagement. TDEC houses most Title VI and EJ-focused staff within the Office of Policy and Planning, which completes research and analysis and drafts recommendations for the various bureaus. The Division of Stakeholder Engagement also conducts EJ work through its community outreach activities, staffing eight local field offices to help build trust and meaningful relationships with communities across the state.

Tennessee has made recent strides to incorporate EJ into funding and grant opportunities, as well as public engagement practices and discretionary agency decisions. These efforts are supported by the Office of Policy and Planning's EJ-focused training sessions for staff in other departments. For example, regular internal workshops with technical staff cover topics such as [EJScreen](#), the [Climate and Economic Justice Screening Tool](#), and other EJ mapping tools, and provides policy briefings to TDEC leadership on ongoing EJ initiatives in Tennessee, other states, and at the federal level.

<sup>37</sup> <https://www.tn.gov/environment.html>

<sup>38</sup> <http://publications.tnsosfiles.com/pub/execorders/exec-orders-lee1.pdf>



These new initiatives, resources, and consistent cross-bureau practices are supported through the formation of the 2023 EJ Working Group. This group, led by the Office of Planning Policy and Planning and the Division of Stakeholder Engagement, includes representatives from the Bureau of Environment, the Office of the General Counsel, and the Bureau of Conservation, serving as an interagency forum to formalize EJ conversations and practices across departments, and to share lessons learned and approaches for managing

challenging topics. Major topics have included identifying disadvantaged communities and addressing EJ in environmental permitting decisions.

### Case Study: Considering Disadvantaged Communities in American Rescue Plan Funding

Through the American Rescue Plan, TDEC received \$1.35 billion to put towards municipal water infrastructure grants. To develop a funding formula, the agency utilized the state's existing "[Ability to Pay Index](#)," which considers population growth, median household income, food stamp dependence, unemployment, and poverty.<sup>39</sup> TDEC considers these factors to score communities on a 0-100 index, with scores below 50 considered "disadvantaged." Following the ethos of the federal Justice40 initiative, TDEC ensured that over 40% of funds were allocated to communities that scored below this benchmark. See the below chart for one example:

Select County →	Jackson	Tennessee	Relative Trend	Tennessee
Change in Population (2010-2019)	1.7%	7.6%	Growth below state average	
Poverty Level (2019)	14.0%	11.1%	Above state average	
Unemployment Rate (2020)	7.5%	6.4%	Somewhat above state average	
Food Stamps (2019)	18.1%	13.6%	Above average reliance	
Adjusted Median Household Income (2019)	\$36,588	\$55,411	Very low MHI	
Jackson	2010	2019	<b>Ability to Pay Index</b>	
Population	11,491	11,682	30	
Adjusted Median Household Income	\$38,520	\$36,588		

### Title VI and Ongoing Initiatives

TDEC also has several ongoing Title VI and EJ projects and programs in progress. The agency administers an [annual Title VI training](#) to all staff and grant sub-recipients, which includes discussion on environmental justice at TDEC including EJ definitions and related considerations.<sup>40</sup> Due to TDEC's jurisdiction over the state park system, Title VI and EJ efforts at TDEC also include meaningful and equal access to nature, and TDEC provides translation and interpretation services throughout its programs. TDEC is currently updating several of its policies and procedures, including its complaint procedures, language access plan, and public participation plan and aims to make these policies web-accessible to the public. New sections within the public participation plan will highlight enhanced engagement that reaches underserved communities, as well as a commitment to using existing EJ mapping tools, to be finalized in 2024. Tennessee's Department of Environment and Conservation has made significant advances in its Title VI and EJ programs in recent years, and is poised to continue making progress going forward.

<sup>39</sup> <https://www.tn.gov/environment/program-areas/wr-water-resources/srfp/srf-home/srf-subsidy-and-ability-to-pay-index.html>

<sup>40</sup> <https://tdec.tn.gov/title6/index.html>



# ADVANCING ENVIRONMENTAL JUSTICE THROUGH SUPPLEMENTAL ENVIRONMENTAL PROJECTS (SEPs)



## An Introduction to SEPs

Many federal and state enforcement actions result from a failure to comply with environmental laws and regulations and are resolved through settlement agreements. As part of a settlement agreement, the named entity in violation may be offered the opportunity to voluntarily undertake an environmentally beneficial project, known as a Supplemental Environmental Project (SEP). In doing so, violators are able to decrease their penalties. ECOS encourages the use of SEPs by states and U.S. EPA in all appropriate instances to respond to environmental harm and to invigorate communities across the nation.

## Federal Requirements - EPA & DOJ

Provision	DOJ (2022)	EPA (2015)
<b>Scope</b>	defined "with particularity"	"specifically described and defined"
<b>Nexus</b>	"strong connection"	"sufficient" nexus
<b>Approved by</b>	Dep. AG or AAG	No special approval required
<b>Cash Donations</b>	OK if restricted	Prohibited

Thirty-seven states have adopted SEPs Policies to date, making SEPs an integral part of the settlement process to advance the public interest by providing additional environmental and public health benefits for communities adversely impacted by environmental violations.

## How can SEPs advance Environmental Justice?

SEP settlements may advance environmental justice objectives by ensuring that some of the settlement funds directly benefit the impacted community. The SEPs process can include impacted community members in decisions related to how these benefits are distributed in order to ensure projects are benefiting the community as intended. For instance, residents may play a role in generating ideas for potential SEPs. These projects may offer additional resources to communities that have been disproportionately burdened by environmental harms.

<b>3rd Party Selection</b>	Agency can specify "type" but not propose/select party to receive \$ or implement SEP	
<b>Decreased Penalty</b>	Not addressed	Multi-factor test
<b>Post-Settlement Control</b>	<b>None</b> (oversight OK)	
<b>Use for Agency Activities?</b>	<b>No.</b> Can't be used to satisfy "statutory obligation" or fund projects that get specific appropriations.	

## Federal Agency Perspectives on SEPs

EPA's most recent [SEPs Guidance](#)<sup>41</sup> is from 2015, while [DOJ's guidance](#)<sup>42</sup> is more recent, from a [2022 memorandum](#).<sup>43</sup> The DOJ's recent policy, Guidelines and Limitations for Settlement Agreements Involving Payments to Non-Governmental Third Parties (May 2022), reinstates the use of SEPs in settlements after a 2020 phase-out of the policy under the Trump administration.<sup>44</sup> Both EPA and DOJ require SEPs to have a clear beginning and end and finite amount of funding. DOJ requires that projects address the "nexus," or a connection between the SEP and violation being addressed – either through reducing effects of the violation or deterring similar violations in the future. EPA has similar nexus requirements that are slightly less restrictive.

DOJ allows cash donations if restricted, while EPA does not allow cash donations in any circumstance. DOJ also requires a higher level of approval for settlement agreements than EPA. Both agencies have similar guidance on who selects the SEP and specify the types of organizations that could implement the project, though they cannot propose who exactly does so. Neither agency has post-settlement control over the SEP beyond general oversight.

According to both EPA and DOJ guidance, entities cannot use SEPs to fund a project that an agency is already obligated to carry out under statute. EPA allows the option to mitigate a violator's civil penalty if the defendant voluntarily chooses to implement a SEP.

EPA offers guidance related to categories that particular SEPs may address. However, whether or not a given category is acceptable in a particular circumstance depends on the violation and nexus. EPA also prohibits funding from going to certain types of projects.

On December 7, 2023, [EPA announced](#)<sup>45</sup> that SEP ideas can be submitted to its enforcement program inbox at [SEPIdeas@epa.gov](mailto:SEPIdeas@epa.gov).

<i>Table 4: EPA SEP Guidelines</i>	
EPA SEPs Categories	EPA SEPs Explicit Prohibitions
<ul style="list-style-type: none"> <li>● Public health, pollution prevention and reduction</li> <li>● Environmental restoration and protection</li> <li>● Assessments and audits, compliance promotion</li> <li>● Emergency planning and preparedness<sup>46</sup></li> </ul>	<ul style="list-style-type: none"> <li>● General education</li> <li>● \$ to colleges or universities</li> <li>● Unrelated studies</li> <li>● Projects that rely on federal \$/loans</li> <li>● Profit-generating activities</li> </ul>

<sup>41</sup> <https://www.epa.gov/enforcement/2015-update-1998-us-epa-supplemental-environmental-projects-policy>

<sup>42</sup> <https://www.federalregister.gov/documents/2022/05/10/2022-10036/guidelines-and-limitations-for-settlement-agreements-involving-payments-to-non-governmental-third>

<sup>43</sup> <https://www.justice.gov/ag/page/file/1499241/download>

<sup>44</sup> <https://www.ecos.org/documents/resolution-17-3-on-the-value-of-supplemental-environmental-projects/>

<sup>45</sup> <https://www.epa.gov/newsreleases/epa-enforcement-program-seeks-public-ideas-supplemental-environmental-projects/>

<sup>46</sup> <https://www.epa.gov/sites/default/files/2015-04/documents/sepupdatedpolicy15.pdf>

## SEP Policies at the State Level

States take a variety of approaches with SEP policies, sometimes similar to federal policies, but many state SEP policies are different. For instance, some states incorporate EPA categories into their SEP policies. Certain states also have more requirements related to nexuses than others, and some states do not require a nexus at all in approving a project. Many states allow for general education SEPs (CO, CA, CT, MA, ME, MI, NY, OR, RI, VT), which enable violators to sponsor projects promoting environmental awareness.

<i>Table 5: Selected State Nexus Definitions</i>	
<b>California Environmental Protection Agency's "Nexus" Definition</b>	<b>Massachusetts Environmental Protection Agency's "Nexus" Definition</b>
<p>"A nexus to an environmental violation exists if a SEP meets one of the following criteria:</p> <ol style="list-style-type: none"> <li>1. It reduces the likelihood that similar violations will occur in the future.</li> <li>2. It reduces the adverse impact, including cumulative impacts, to public health or the environment to which the violation being resolved contributes."<sup>47</sup></li> </ol>	<p>"A nexus relationship can be shown where the proposed SEP:</p> <ol style="list-style-type: none"> <li>1. Advances at least one of the declared objectives of the environmental statutes that form the basis of the underlying enforcement action, although a SEP can neither be inconsistent with, nor reduce the stringency or timeliness of requirements of environmental statutes and regulations; and either</li> <li>2. Remediates or reduces the actual or probable overall environmental or public health impacts or risks to which the violation at issue contributes; or</li> <li>3. Is designed to reduce the likelihood that similar violations will occur in the future." </li></ol>

In terms of selecting third-party recipients, a few states allow agencies overseeing the SEP to recommend who receives the funding – though most states do not offer guidance related to an agency's role in this part of the process. In some states, SEPs funds may go to government entities, such as the County Conservation Board in Iowa. Organizations interested in receiving a SEP can submit proposals to project banks in some states, which pre-approve projects for when settlements arrive.

## SEP Idea Libraries

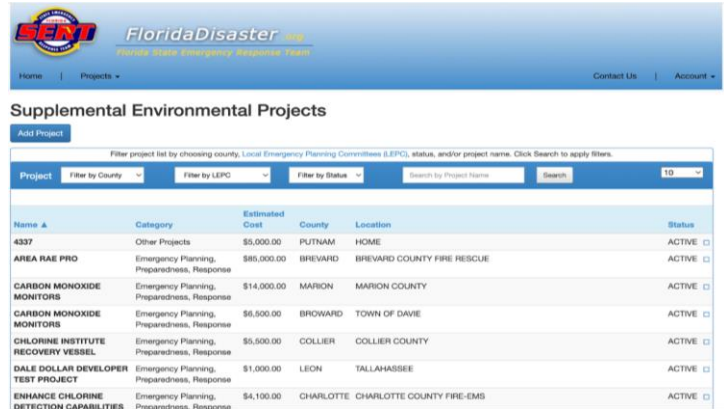
Colorado, California, Louisiana, Indiana, New Jersey, Maryland, and Florida all offer resources for the public to submit SEP ideas or proposals. States use these submissions to create lists of approved ideas to consult in choosing a SEP for a given settlement. SEP idea banks may simplify the settlement process by helping to easily identify a project that will meet the needs of a given violator. Soliciting SEP ideas from the public can also promote environmental justice by empowering community members to contribute to the decision-making process.

<sup>47</sup> [https://calepa.ca.gov/wp-content/uploads/sites/6/2018/06/CalEPA\\_SEP\\_Guidance-June-2018.pdf](https://calepa.ca.gov/wp-content/uploads/sites/6/2018/06/CalEPA_SEP_Guidance-June-2018.pdf)

## Florida's SEP Idea Library

Florida also has a SEPs idea library that collects project proposals for possible SEPs from the public. The SEP library is meant to “help identify potential response projects that will help increase the safety of our communities in the event of an emergency.”<sup>48</sup> As such, the majority of potential SEPs are related to violations of the Emergency Planning and Community Right-to-Know Act. Violators can consult the list of potential projects should they elect to complete a SEP. Most SEPs involve working to increase local emergency response capacity, though Florida does list other categories as options, including:

- Emergency Planning, Preparedness, Response
- Environmental Restoration and Protection
- Environmental Education and Public Awareness
- Pollution Prevention/Reduction
- Waste Collection Events and Community Waste Programs, and
- Other Projects.



Name	Category	Estimated Cost	County	Location	Status
4337	Other Projects	\$5,000.00	PUTNAM	HOME	ACTIVE
AREA RAE PRO	Emergency Planning, Preparedness, Response	\$85,000.00	BREVARD	BREVARD COUNTY FIRE RESCUE	ACTIVE
CARBON MONOXIDE MONITORS	Emergency Planning, Preparedness, Response	\$14,000.00	MARION	MARION COUNTY	ACTIVE
CARBON MONOXIDE MONITORS	Emergency Planning, Preparedness, Response	\$6,500.00	BROWARD	TOWN OF DAVIE	ACTIVE
CHLORINE INSTITUTE RECOVERY VESSEL	Emergency Planning, Preparedness, Response	\$5,500.00	COLLIER	COLLIER COUNTY	ACTIVE
DALE DOLLAR DEVELOPER TEST PROJECT	Emergency Planning, Preparedness, Response	\$1,000.00	LEON	TALLAHASSEE	ACTIVE
ENHANCE CHLORINE DETECTION CAPABILITIES	Emergency Planning, Preparedness, Response	\$4,100.00	CHARLOTTE	CHARLOTTE COUNTY FIRE-EMS	ACTIVE

Florida Department of Environmental Protection's Settlement Guidelines Policy also allows violators the opportunity to propose In-Kind Penalties and Pollution Prevention Projects. More information can be found [here](#).

## States Using EJ in SEP Implementation

### California<sup>49</sup>

Each of the boards and departments within the California Environmental Protection Agency (CalEPA) that enforces environmental laws – California [Air Resources Board](#), [CalRecycle](#), [Department of Pesticide Regulation](#), [Department of Toxic Substances Control](#), and [Water Boards](#) – has its own SEP policy. CalEPA has also published a SEP guidance that informs the boards and departments' individual policies. California allows several different categories of SEPs and SEPs must have a nexus to the alleged environmental violation.

CalEPA encourages its boards and departments to solicit SEP ideas from disadvantaged communities. The agency provides a form on its website that allows community members to submit SEP ideas, and its boards and departments do substantial stakeholder outreach related to SEPs. In accordance with state law, California is particularly focused on encouraging projects within or that benefit disadvantaged communities.<sup>50</sup> California also recently began considering SEP applications for funding through CalEPA's Environmental Justice Action Grants programs to reduce administrative burdens and disseminate funds to communities more efficiently. This helps projects receive funding, regardless of whether the funding is through a SEP.<sup>51</sup>

<sup>48</sup> <https://apps.floridadisaster.org/sep>

<sup>49</sup> <https://ww2.arb.ca.gov/our-work/programs/supplemental-environmental-projects-seps/supplemental-environmental-project-sep-0>

<sup>50</sup> CA Public Resources Code, § 71118

<sup>51</sup> <https://www.flickr.com/photos/ninameigs/5365578646/>

## Santa Cruz, CA



A household hazardous waste collection facility in Watsonville, California mismanaged hazardous waste collected from community members. Common household hazardous wastes include batteries, used oil, drain cleaners, paints, pesticides, mercury thermometers, fluorescent lights, etc. These wastes can be toxic, flammable, explosive, or carcinogenic, or contain other types of hazards that present a threat to public health and the environment if not managed properly.

The 2022 settlement included \$71,697 toward a SEP intended to directly benefit the affected communities of Watsonville. These funds were utilized by the

Watsonville Wetlands Watch to work with the public to conduct wetland habitat enhancement, implementation of wetlands cleanup programs, stormwater conservation, waste reduction, and proper waste management for youth and community members. Two-thousand two hundred students spent more than 1,100 community volunteer hours planting native plants, removing invasive plants, removing litter from wetlands, and educating the public. In addition, the funds were used to host community cleanup events, student field trips, and science water quality events.

*Photo Description: Watsonville Wetlands Watch staff leads local students and community volunteers in invasive plant removal to enhance wetland habitat along Struve Slough and the Struve Slough trail, August 2022.*

## Massachusetts

### New Bedford, Massachusetts



A bus company in New Bedford was unnecessarily idling, polluting the air in communities already disproportionately impacted by pollution and other environmental harms. As part of its settlement, the bus company elected to undertake a SEP. Most of these funds were split between two community groups, Friends of Buttonwood Park and Greater New Bedford Community Health Center.

The decree provides funding in the amount of \$50,000 to fund projects to plant and maintain trees and vegetation in and to increase access for environmental justice communities to

Buttonwood Park. Friends of Buttonwood Park led an effort in which community groups helped plant trees, maintain vegetation, and build trails to increase access for EJ communities in the local area. The Greater New Bedford Community Health Center funding was used for patient home assessments, asthma education and treatment, and the purchase of home medical equipment.<sup>52</sup>

<sup>52</sup> [https://drive.google.com/file/d/1PHakmmWxN4kKG\\_xM0jNCfpA2vQgc6X28/view?usp=sharing](https://drive.google.com/file/d/1PHakmmWxN4kKG_xM0jNCfpA2vQgc6X28/view?usp=sharing)

## A Spotlight on Colorado's SEPs Program

Colorado recently moved its SEPs program under its EJ Program, in an effort to integrate EJ throughout the SEP process. The state defines SEPs as “projects that benefit the environment or public health & safety, funded through environmental enforcement actions.” SEPs “cannot be projects that a SEP administrator previously initiated, budgeted for, committed to, or is legally required to implement.”<sup>53</sup>

The state requires that SEPs have a geographic nexus of at least the county level, meaning that the project must directly benefit the affected community. SEPs are entirely voluntary and must have a measurable impact. The state prefers projects that benefit health equity, EJ, climate change, or pollution prevention efforts or that have cross-media impacts.

Colorado has two kinds of SEPs, carried out either by the first-party defendant or a third-party to whom the defendant gives settlement funds. Often, in the case of a first-party SEP, the regulated entity carries out the project within their facility. A limitation of first-party SEPs is that they cannot reward the regulated entity. Third-party SEPs must be carried out by a nonprofit, government agency, or community organization with a non-profit fiscal sponsor.

The SEPs funding process begins when Colorado finds a violation and pursues subsequent enforcement actions. Then, the violator can choose whether they would like to offset their penalty with a SEP. If the SEP is a third-party SEP, the violator sends the funds directly to the third party.

Colorado revised its SEP policy this year to add more language addressing EJ and disproportionately impacted communities, including an explicit definition for the latter. The new SEP policy also now allows community-based air and water monitoring projects. The new policy is written in more plain language and provides more and clearer information to potential SEP administrators and the public.

### SEP Categories & Examples

**Pollution Prevention**

- renewable energy
- process change - material substitution
- waste minimization
- conservation and efficiency

**Pollution reduction**

- household hazardous waste collection
- improved operating and maintenance
- reducing pollutant discharge

**Environmental restoration**

- restoration of a wetland
- protection of critical habitat
- planting native species/removal of invasive species

**Environmental education**

- training restoration leaders and volunteers
- greenhouses at school

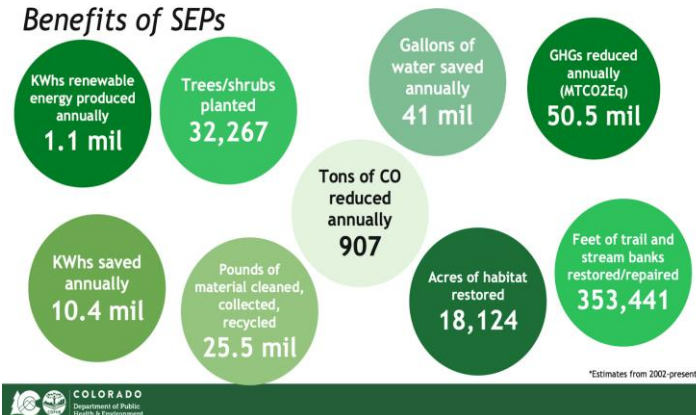
**Public health & safety**

- mitigation of lead-based paint, radon, etc.
- community-based monitoring

*\*The website highlights [successful SEP projects](#)*

COLORADO  
Department of Public Health & Environment

### Benefits of SEPs



### Colorado's SEP Idea Library

In Colorado, projects that don't get funded by the state's Environmental Justice Grant Program<sup>54</sup> can be added to the SEP idea library as another funding avenue if they meet the definition of a SEP. Within the SEP idea library, one can search potential projects by county, type of SEP, budget, and violation amounts. Prospective SEP administrators and CDPHE enforcement staff can reference the library to identify shovel-ready projects for funding through a third-party SEP in the county where a violation occurred.

<sup>53</sup> <https://cdphe.colorado.gov/supplemental-environmental-projects/>

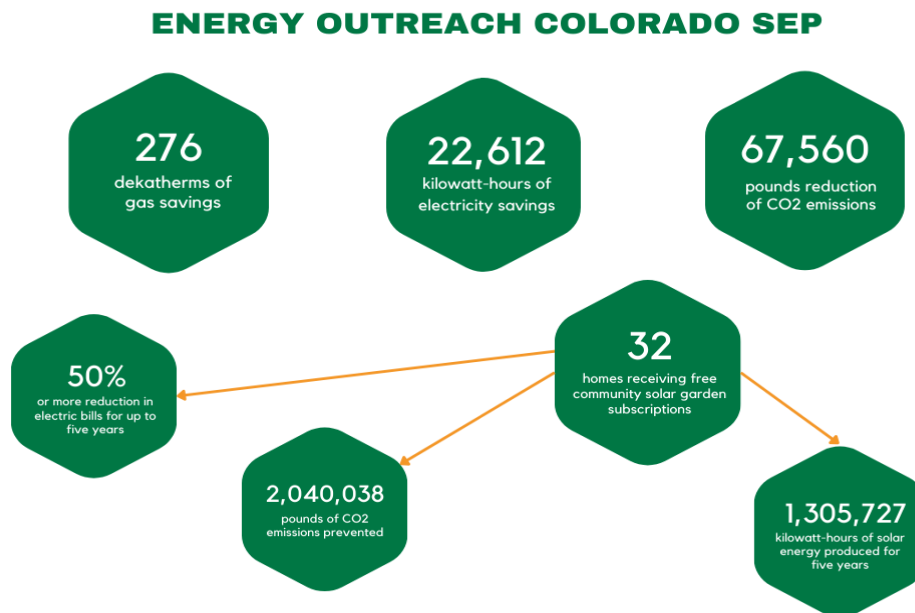
<sup>54</sup> <https://cdphe.colorado.gov/ej/grants/>

## Examples of Successful SEPs

Pueblo County has the highest Colorado EnviroScreen score among all Colorado counties. The Pueblo School District 70 used SEP funds to install solar greenhouses for four elementary, middle and high schools in the district. The greenhouses have since been used as part of curriculums related to nutrition, sustainability, and the local and sustainable food movement. School staff have integrated the solar greenhouses into courses in a range of subjects including science, math, social studies, literature, and art. This SEP has enabled students to gain hands-on experience in agriculture and learn about the benefits of renewable energy. The school has also benefited from this project by getting to serve students the food they have grown.<sup>55</sup>



Another successful, two-part SEP was completed by Energy Outreach Colorado and several partners in north Denver's Globeville, Elyria, Swansea (GES) neighborhoods. Part One was weatherization with energy-efficiency projects. Part Two was enrollment in a community solar garden. The organization provided energy and safety audits for 35 homes. They installed items such as LED lights, high-efficiency plumbing and HVAC equipment, programmable thermostats, insulation, air sealing, and evaporative coolers. The graphic below illustrates the results.



<sup>55</sup> <https://cdphe.colorado.gov/successful-supplemental-environmental-projects/>

## EXPLORING STATE ENVIRONMENTAL JUSTICE MAPPING TOOLS



**Maryland**  
Department of  
the Environment



UTAH DEPARTMENT of  
**ENVIRONMENTAL  
QUALITY**



**COLORADO**  
Department of Public  
Health & Environment

### *State EJ Mapping Tools: What They Are and Why They Matter*

In 2013, the California Environmental Protection Agency (CalEPA) released its first version of CalEnviroScreen, “the nation’s first comprehensive statewide environmental health screening tool,”<sup>56</sup> which identified overburdened communities across the state on a Geographical Information Systems map using environmental and socioeconomic indicators. Approximately two years later, EPA published its first version of EJScreen, providing a similar service across the United States. As such, state agencies have been at the forefront of GIS EJ mapping development for the past decade, using environmental and social indicators to identify communities of concern and potentially inform agency actions, exploring more detailed and state-specific data than EJScreen provides. A variety of state environmental agencies have EJ mapping systems publicly available online, and additional states currently have tools under development.<sup>57</sup>

The contents of state EJ screening tools differ among states. Most tools include socioeconomic indicators combined with environmental data. Some states include only socioeconomic data such as race/ethnicity and income, and most include environmental indicators of air quality, water quality, and other forms of pollution. Some tools, like those in North Carolina and Virginia, include locations of community centers, schools, and places of worship, and some states (including California, Colorado, Michigan, North Carolina, and Washington) include health data such as asthma, heart disease, and diabetes. Using these indicators, many state mapping tools provide a reporting tool with charts, graphs, and other measurements that can be shared and used in planning. Despite many differences in definition, most states identify EJ communities in terms of race/ethnicity and class/income. Many states, like Maryland, Michigan, Oregon, and Washington, also take environmental indicators into account when describing environmental justice communities.

At the federal level, EPA’s EJScreen mapping tool supports educational programs, grant writing, community awareness efforts, and other initiatives, and was created to allow users “to access high-resolution environmental and demographic information for locations in the United States, and compare their selected locations to the rest of the state, U.S. EPA region, or the nation.”<sup>58</sup> It must be noted, however, that EJScreen does not provide data on every indicator that may be relevant to a particular location, and data may be several years old. It is recommended that users consult the [Limitations and Caveats in Using EJScreen](#) webpage for additional information on how and when this tool may be appropriate. As such, agency staff, policymakers, and community members all benefit from additional state-level mapping tools.

<sup>56</sup> <https://oehha.ca.gov/media/downloads/calenviroscreen/press-release-calenviroscreen/calenviroscreenpress042313.pdf>

<sup>57</sup> <https://www.epa.gov/ejscreen/additional-resources-and-tools-related-ejscreen/>

<sup>58</sup> <https://www.epa.gov/ejscreen/purposes-and-uses-ejscreen/>



## Maryland Department of the Environment: MDE EJ Screening Tool

The Maryland Department of Environment (MDE) has released the [MDE EJ Screening Tool](#), which builds off of the existing [Maryland EJScreen Mapper](#). The latter tool was initially created by the Community Engagement, Environmental Justice, and Health Laboratory at the University of Maryland School of Public Health, in collaboration with the Maryland Institute for Applied Environmental Health, the National Center for Smart Growth, the Maryland Environmental Health Network, and others. The MDE EJ Screening tool was released in 2022 along with guidance documents, and is currently in its second iteration. MDE and the University of Maryland plan to merge their separate EJ mapping tools in 2024.

Currently, the MDE EJ Screening Tool identifies potential underserved or overburdened communities using four indicators, each composed of additional sub-indicators.

Users have the ability to isolate individual sub-indicators, combined indicators, or an overall EJ Score. The tool also includes a variety of additional geographic and environmental features, such as coal mines and floodplains. The following table illustrates the EJ indicators and sub-indicators available.

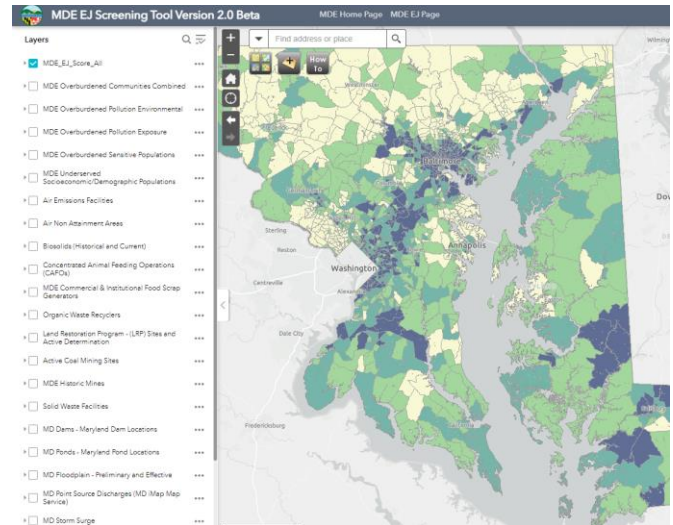


Table 6: MDE EJ Screening Tool EJ Indicators

Pollution Burden Exposure	Pollution Burden Environmental Effects
<ul style="list-style-type: none"> <li>● Particulate matter (PM) 2.5</li> <li>● Ozone</li> <li>● National Air Toxic Assessment diesel PM</li> <li>● NATA cancer risk</li> <li>● NATA respiratory hazard index</li> <li>● Traffic proximity</li> <li>● Proximity to a Toxics Release Inventory facility</li> <li>● Proximity to a hazardous waste landfill</li> </ul>	<ul style="list-style-type: none"> <li>● Lead paint indicator</li> <li>● Risk management plan facility proximity</li> <li>● Hazardous waste proximity</li> <li>● Superfund site proximity</li> <li>● Wastewater discharge indicator</li> <li>● Proximity to a brownfields site</li> <li>● Proximity to emitting power plants</li> <li>● Proximity to a concentrated animal feeding operation</li> <li>● Proximity to mining operations</li> </ul>
Sensitive Populations	Socioeconomic/Demographic Indicators
<ul style="list-style-type: none"> <li>● Low-birth-weight infants</li> <li>● Asthma emergency room discharges</li> <li>● Myocardial infarction discharges</li> <li>● Percent of the population lacking broadband coverage</li> </ul>	<ul style="list-style-type: none"> <li>● At least 25% of the residents qualify as low-income</li> <li>● At least 50% of the residents identify as nonwhite</li> <li>● At least 15% of the residents have limited English proficiency</li> </ul>

The MDE EJ Screening Tool is designed to help users identify potential overburdened communities or communities of environmental justice concern. The tool is meant to enhance agency compliance oversight, monitoring, investment, and communication and outreach in areas with permitting activities in EJ, overburdened, or underserved communities. The wide range of indicators available in this map allows users to compare many aspects of environmental and social wellbeing across the state.

MDE defines underserved and overburdened communities separately, and then defines EJ communities as communities that are both underserved and overburdened. Maryland's [Climate Solutions Now Act](#) defines Underserved Communities as "any census tract in which, according to the most recent U.S. census bureau survey: (I) at least 25% of the residents qualify as low-income; (II) at least 50% of the residents identify as nonwhite; or (III) at least 15% of the residents have limited English proficiency," corresponding to the tool's Socioeconomic/Demographic Indicators. Overburdened Communities are defined as "any census tract in which three or more environmental health indicators are above the 75th percentile statewide, referring to other EJ Screening Tool sub-indicators.

The MDE EJ Screening Tool uses separate and specific definitions for overburdened, underserved, and EJ communities, helping to avoid confusion between these terms.

### **Utah Department of Environmental Quality: Utah Environmental Interactive Map**

The [Utah Environmental Interactive Map](#), first published in 2014, was created by the Utah Department of Environmental Quality (DEQ). This mapping tool includes initiatives relevant to a variety of DEQ programs, and layers specific to environmental justice were added in early 2022. The Environmental Initiative Map is currently published as Version 1.9.1, last updated in November 2022.

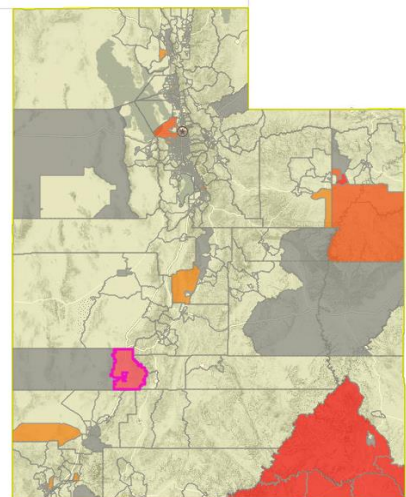
Utah DEQ's Environmental Interactive Map includes thirteen indicators specifically marked as EJ Indexes:

- Air Toxics Respiratory Hazard EJ Index
- Air Toxics Cancer Risk EJ Index
- Ozone EJ Index
- Particulate Matter 2.5 EJ Index
- Diesel Particulate Matter EJ Index
- Lead Paint in Homes EJ Index
- Superfund Proximity EJ Index
- Risk Management Plan Facility Proximity EJ Index
- Hazardous Waste Proximity EJ Index
- Underground Storage Tanks EJ Index
- Wastewater Discharge EJ Index
- EJ Demographic Index

It should be noted that these indicators are gathered from EPA's EJScreen data and not data generated at the state level. Percentiles are calculated relative to Utah census block groups to provide more accurate identification of EJ areas within the state.

Separate from the indicators above, the Utah DEQ Interactive Map also includes data on Drinking Water, Water Quality, Air Quality, Environmental Response & Remediation, and Waste Control & Radiation Management, each including a variety of indicators. These layers are largely generated using Utah DEQ data, rather than EPA data. While not considered EJ layers, these data allow for increased contextualization of the intersections of

Utah Environmental Interactive Map <sup>1.9.1</sup>



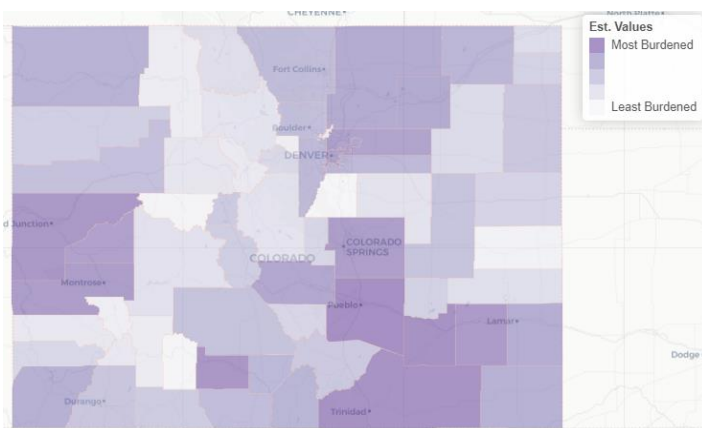
environmental harms, and several, such as PM 2.5 Nonattainment/Maintenance Areas and Hazardous Waste & Used Oil, may relate to EJ concerns.

According to this tool's disclaimer, "the information contained in this website has been compiled from the DEQ database(s) and is provided as a service to the public. This Interactive Map is to be used to obtain only a summary of information regarding sites regulated by DEQ." Like other mapping applications, it can be used by state agencies, companies, and individuals to enhance funding allocation and permitting and identify overburdened/underserved communities. Having the EJ map colocated with different environmental data allows EJ communities to be examined in different contexts and compared to different environmental phenomena.

The Utah Environmental Interactive Map uses information directly from EPA's EJScreen tool, reframing it in a local context, and connecting it to state data. Helpfully, Utah DEQ has produced a [series of publicly available videos](#) explaining how to use the Utah Environmental Interactive Map, including a four-part full tutorial and three additional targeted training videos.

### **Colorado Department of Public Health & Environment: Colorado EnviroScreen**

Colorado [EnviroScreen](#) is a bilingual interactive EJ mapping tool created by a team from Colorado State University for the Colorado Department of Public Health and Environment (CDPHE). Colorado prioritized community engagement throughout the development process, featuring interviews, bilingual focus groups and public meetings, and comprehensive beta testing. The first version was released on June 29, 2022. Continuous updates are planned, and version 2.0 is currently in development. CDPHE is currently conducting a community engagement process for the version 2.0 update.<sup>59</sup>

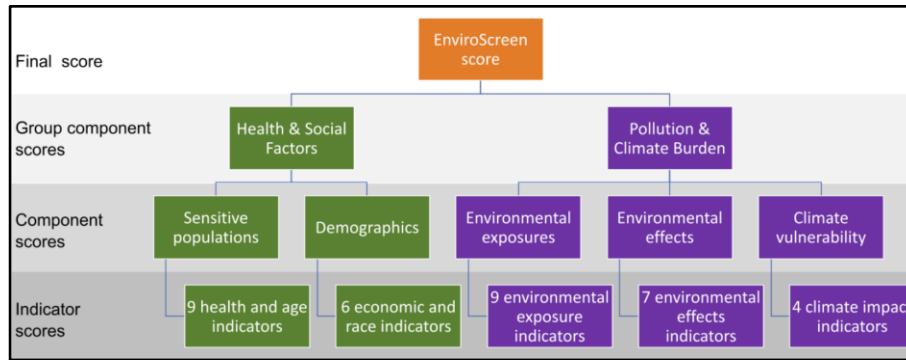


Colorado EnviroScreen features 15 Health and Social Factors (further organized into 9 Sensitive Populations Indicators and 6 Demographic Indicators) and 20 Pollution and Climate Burden scores (further organized into 9 Environmental Exposure Indicators, 7 Environmental Effects Indicators, and 4 Climate Vulnerability Indicators). These indicators mainly come from publicly available data from state and federal agencies, including EPA, the Centers for Disease Control and Prevention, the Colorado Department of Public Health and Environment (CDPHE), and the Colorado Energy and Carbon Management Commission.<sup>60</sup>

Each group of indicators is combined to calculate component scores, and further combined to calculate group component scores, as shown in the diagram below. Colorado EnviroScreen then uses all indicators to calculate a final "EnviroScreen Score" that is used to show areas in Colorado that are likely to have higher environmental health injustices, identify areas for government agencies to prioritize resource allocation and pollution reduction, provide information to empower community advocacy, and identify geographic areas that meet the definition of disproportionately impacted communities under Colorado law ([House Bill 23-1233, C.R.S. § 24-4-109\(2\)\(b\)\(II\)](#)).

<sup>59</sup> <https://cdphe.colorado.gov/enviroscreen>

<sup>60</sup> [https://teeo-cdphe.shinyapps.io/COEnviroScreen\\_English/](https://teeo-cdphe.shinyapps.io/COEnviroScreen_English/)



The Legislature initially adopted a definition of disproportionately impacted community in 2021, and also created a CDPHE-led Environmental Justice Action Task Force to review the definition and recommend changes.<sup>61</sup> The Task Force issued final recommendations for updating the definition and the legislature adopted a revised definition in May 2023.

The Colorado EnviroScreen score ranges from 0 to 100, with the highest score representing the highest burden. The Colorado EnviroScreen score is a percentile, which ranks each area according to the proportion of the state's counties, census tracts, or census block groups that have a lower score than it.

CDPHE provides a very detailed description of its creation process and technical [documentation](#) as well as instructions for how to use each feature of the map. It also allows the user to download charts and data about each community/census block group. These charts and data are useful in education programs and provide support for EJ efforts both within and outside of CDPHE. Additionally, Colorado EnviroScreen is a fully open-source tool. All of the underlying GIS files and R code are publicly available to download for free on CDPHE's website.<sup>62</sup>

<sup>61</sup> [https://drive.google.com/file/d/1I4rN-o3h3OJg8TciUzh-qxytULvyD\\_NE/view?usp=drive\\_link](https://drive.google.com/file/d/1I4rN-o3h3OJg8TciUzh-qxytULvyD_NE/view?usp=drive_link)

<sup>62</sup> <https://cdphe.colorado.gov/enviroscreen/>

## CONCLUSION

In 2023, states and U.S. EPA made notable progress in bolstering Title VI and EJ within state environmental agency work. States have advanced EJ and equity by developing new legislation and policy, expanding EJ programs and resources, navigating Title VI issues, and directly engaging with communities to increase access to environmental benefits. ECOS looks forward to continuing to foster meaningful collaboration among state and federal agencies, providing opportunities that deliver sustainable improvements that advance equity and justice in all of our communities. Learn more about ECOS EJ and Title VI related work [here](#). For additional resources on the topics discussed above, also note the Appendix below.

More information about state efforts to advance Title VI and environmental justice is also provided in previous ECOS *Green Reports* including the 2022 [State Strides on Environmental Justice & Title VI of the Civil Rights Act](#)<sup>63</sup> and 2017 [State Approaches to Community Engagement and Equity Considerations in Permitting](#).<sup>64</sup> Questions can be directed to Adam Elkins of ECOS at [aelkins@ecos.org](mailto:aelkins@ecos.org).

---

<sup>63</sup> <https://www.ecos.org/documents/ecos-green-report-state-strides-on-environmental-justice-title-vi-of-the-civil-rights-act/>

<sup>64</sup> <https://www.ecos.org/wp-content/uploads/2017/02/February-2017-Green-Report-Final-1.pdf>

## APPENDIX

**Table 7. Additional Title VI and EJ resources for states not included in the text above.**

Green Report Chapter	Source	Last Updated	Resource	Description
Chapter 1: State Implementation of Title VI and Environmental Justice (EJ)	U.S. Environmental Protection Agency (EPA)	2022	<a href="#">2022 EJ Action Plan: Building Up Environmental Justice in EPA's Land Protection and Cleanup Programs</a>	EPA's Office of Land and Emergency Management (OLEM)'s Environmental Justice Action Plan includes projects, tools and practices that will occur across all parts of the Office to support implementation of EO EJ directives.
Chapter 1: State Implementation of Title VI and Environmental Justice (EJ)	U.S. Environmental Protection Agency (EPA)	2021	<a href="#">Case Resolution Manual (CRM)</a>	This CRM is intended to provide procedural guidance to ECRCO case managers to ensure EPA's prompt, effective, and efficient resolution of civil rights complaints consistent with the civil rights laws and the mission of EPA – to protect human health and the environment.
	U.S. Department of Justice (DOJ)	2021	<a href="#">DOJ Title VI Legal Manual (Updated)</a>	This Legal Manual provides an overview of Title VI legal principles and is intended to be an abstract of Title VI principles and issues; it is not intended to provide a complete, comprehensive directory of all cases or issues related to Title VI.
	U.S. Environmental Protection Agency (EPA)	2020	<a href="#">Improved U.S. EPA Oversight of Funding Recipients' Title VI Programs Could Prevent Discrimination</a>	EPA's Office of Inspector General conducted this evaluation to determine whether the EPA has implemented an oversight system to provide reasonable assurance that organizations receiving EPA funding comply with Title VI of the Civil Rights Act of 1964.
	U.S. Environmental Protection	2013	<a href="#">U.S. EPA Activities to Promote</a>	EPA has developed these FAQs to promote environmental justice in the permit application process and to

	Agency (EPA)		<a href="#">Environmental Justice in the Permit Application Process Frequently Asked Questions (FAQs)</a>	explain how it will encourage meaningful engagement of such communities on EPA-issued permits.
Chapter 2: Emerging State Title VI and EJ Programs	Harvard Law School's Environmental and Energy Law Program	2023	<a href="#">Federal Environmental Justice Tracker</a>	This tracker is designed to provide up-to-date information on the Biden administration's environmental justice commitments, and progress made on those commitments.
	Vermont Law School's Environmental Justice Clinic	2023	<a href="#">Environmental Justice State by State Law Library &amp; Database</a>	Environmental Justice State by State is a law library of environmental justice laws, policies, mapping tools, and definitions across the fifty states and territories designed for community advocates, attorneys, scholars, and policymakers to use in the adoption and advancement of environmental justice law and policy.
	Centers for Disease Control and Prevention (CDC)	2022	<a href="#">Environmental Justice Resource Inventory</a>	This inventory includes publicly available environmental justice (EJ) resources developed by various agencies across the United States, within jurisdictions that have programs funded by the CDC's Environmental Public Health Tracking Program.
Chapter 3: Advancing EJ Through Supplemental Environmental Projects (SEPs)	U.S. Department of Justice (DOJ)	2023	<a href="#">Comprehensive Environmental Justice Enforcement Strategy Annual Report</a>	DOJ released this report to highlight recent accomplishments in cases with environmental justice concerns and outlining the department's strategy for engaging with and delivering results to communities long overburdened by pollution.
Chapter 4: Exploring State	Centers for Disease Control and Prevention	2023	<a href="#">The Environmental Justice Index (EJI)</a>	EJI is a tool designed to measure the cumulative impacts of environmental burden through the lens of human health and health equity. The EJI

EJ Mapping Tools	(CDC)			delivers a single score for each community so that public health officials can identify and map areas most at risk for the health impacts of environmental burden.
	Department of Energy (DOE)	2023	<a href="#"><u>Energy Justice Dashboard (BETA)</u></a>	The Energy Justice Dashboard (BETA) is a pilot data visualization tool that displays DOE-specific investments in communities across the country experiencing disproportionately high and adverse economic, human health, climate-related, environmental, and other cumulative impacts.
	The White House Council on Environmental Quality (CEQ)	2022	<a href="#"><u>Climate and Economic Justice Screening Tool (CEJST)</u></a>	Executive Order 14008 directed the CEQ to develop a new tool to help federal agencies identify disadvantaged communities that will benefit from programs included in the Justice40 Initiative. This tool allows users to identify communities that are overburdened and underserved.