

New Jersey's Environmental Justice Law as a Potential National Model

September 2, 2021

10:00 AM EST-12:00 PM EST



National
Association of
Environmental
Professionals
Be Connected

Agenda

- Introduction – Chris Whitehead
- EJ Champions – Senator Singleton
- Intro from Senator Singleton
- New Jersey EJ Law Overview – NJDEP Commissioner LaTourette
 - Q/A from Moderator
- What's Being Proposed in Other States? – Sara Colangelo
- NEPA High Level Overview and EPA Strategic EJ Plan – Director Tejada
 - Q/A from Moderator
- The Future of Environmental Justice in this Country – Open Discussion
- Q/A from the Audience via the chat box

Organizing for a healthier community

William K. Reilly

- Former Administrator of the EPA
- Strong EJ advocate since 1970s

Taylor Thomas

- Research and policy analyst with East Yard Communities for Environmental Justice Commerce, California

Bakeyah Nelson, Ph.D.

- Executive Director of the clean air advocacy group Air Alliance Houston

Dior St. Hillarie

- Founder of the composting collective and sustainability advocacy group Green Feen
- New York, New York

Rev. Ben Chavis

- National Director of the *Million Man March*
- Wilmington, North Carolina
- Age: 73

Rev. Joseph Lowery

- Leader in the original EJ movement
- Warren County, North Carolina
- Deceased

Dr. Robert Bullard - "Father of EJ"

- Texas Southern University
- Coined the phrase "environmental racism"

Rev. Leon White

- Kicks started the EJ movement by protesting a toxic waste dump

Marie-Monique Robin

- Documentarian of *The World According to Monsanto*
- Gourgé, France
- Age: 61

Vernice Miller-Travis

- Executive VP for Environment and Sustainability at the Metropolitan Group Bowie, Maryland

Greta Thunberg

- Student Activist
- Stockholm, Sweden
- Age: 18

Rev. Dr. William Barber II

- Chair of Poor People's Campaign.
- Speaks around the world on environmental racism. From Goldsboro, North Carolina

Dr. Crystal Cisneros

- TED Educator on Youth Perspective and Environmental Justice
- Denver, Colorado

Rev. Jesse Jackson

- Politician and Minister
- Greenville, South Carolina
- Age: 79

Wilma Mankiller

- Cherokee Tribal Chief
- San Francisco, California
- Deceased

Majora Carter

- Urban Revitalization Strategist
- New York, New York
- Age: 54

Dana Alston

- EJ Pioneer
- San Francisco, California
- Deceased

Fighting to protect their environment

Dr. Nicky Sheats, Esq.

- Director, Center for Urban Environment at the John S. Watson Institute For Public Policy
- Co-Founder & President of NJEJA
- Trenton, New Jersey

Nellie Jean Sindab

International antiracist activist, scholar, and lobbyist. Co-Founder & President of NJEJA New York, New York

Patsy Ruth Oliver

- Single mother of five who fought against environmental racism and pollution in Carver Terrace, Texas

Nilak Butler

- Actress and Singer from Alaska
- Deceased

Juanita Tate

Leader of the Concerned Citizens of South Central Los Angeles, California

Genevieve Eason

- Executive Director at Wilton Youth Council, Inc. a company that empowers youth, parents, and the community.
- Wilton, Connecticut

Nan Freeland

- Advocated to decontaminate the PCB (toxic chemical) landfill in Warren County North Carolina
- Deceased

Janice Stevens

- Board Secretary for the Environmental Commission
- Sparta, New Jersey
- Deceased

Peggy Shephard

- Co-Founder and Executive Director of WE ACT for Environmental Justice
- New York, New York

Beverly Wright, Ph.D.

- Executive Director and Founder of the Deep South Center for Environmental Justice
- Louisiana

Devon Peña

- Professor and Anthropologist
- Seattle, Washington
- Environment and Food justice

Al Gedicks

- Professor of Environmental Sociology at the University of Wisconsin-La Crosse, Wisconsin

Delores Simmons

- Environmental Group Leader at Cone Health
- Greensboro, North Carolina

Janice O'Neal

- Professor at C.S. Mott Community College
- Flint, Michigan
- Deceased



Kim Gaddy

- ▶ From: Newark, New Jersey
- ▶ National Environmental Justice Director for Clean Water Action. (18 years)
- ▶ Kim develops and implements Clean Water Action/Clean Water Fund's grassroots environmental justice campaigns and coalition-building efforts nationally and in New Jersey.
- ▶ Regional Representative for the Moving Forward Network, Port Commissioner for the City of Newark, Appointed by Governor Phil Murphy to serve as Vice-Chair of the NJDEP's Environmental Justice Advisory Council
- ▶ Former Chair of both the Newark Environmental Commission, and a founding member of the New Jersey Environmental Justice Alliance and New Jersey President of the International Black Women's Congress.

Maria Lopez-Nuñez



- ▶ Lifelong Newark, NJ Resident
- ▶ On the White House's Environmental Justice Advisory Council
- ▶ Director of EJ and Community Development at the Ironbound Community Corporation for more than seven years.
- ▶ Key figure in “The Sacrifice Zone” documentary

New Jersey's Environmental Justice Law

Shawn M. LaTourette, Commissioner

New Jersey Department of Environmental Protection



NEW JERSEY
DEPARTMENT OF
ENVIRONMENTAL
PROTECTION

NJ's Environmental Justice Law: Findings

- All New Jersey residents, regardless of income, race, ethnicity, color or national origin, have a right to live, work and recreate in a clean and healthy environment.
- Historically, New Jersey's low-income communities and communities of color have been subject to a disproportionately high number of environmental and public health stressors, including pollution from numerous industrial, commercial and governmental facilities located in those communities.
- The legacy of siting sources of pollution in overburdened communities continues to pose a threat to the health, well-being and economic success of the State's most vulnerable residents and it is past time for the State to correct this historical injustice.

NJ's Environmental Justice Law: Findings

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

Facilities Subject to the NJ EJ Law

One of eight (8) types of facilities:

1. Major sources of air pollution (e.g., power plants, cogeneration facilities);
2. Incinerators or resource recovery facilities;
3. Large sewage treatment plants (more than 50 million gallons per day);
4. Transfer stations or solid waste facilities;
5. Recycling facilities that receive at least 100 tons of recyclable material per day;
6. Scrap metal facilities;
7. Landfills; or
8. Medical waste incinerators, except those attendant to hospital and universities.

Environmental and Public Health Stressors

“Environmental or public health stressors” means sources of environmental pollution, including, but not limited to:

1. Concentrated areas of air pollution,
2. Mobile sources of air pollution,
3. Contaminated sites,
4. Transfer stations or other solid waste facilities, recycling facilities, scrap yards and
5. Point sources of water pollution including, but not limited to, water pollution from facilities or combined sewer overflows;

Or conditions that may cause potential public health impacts in the overburdened community (e.g., asthma, cancer, elevated blood lead levels, cardiovascular disease).

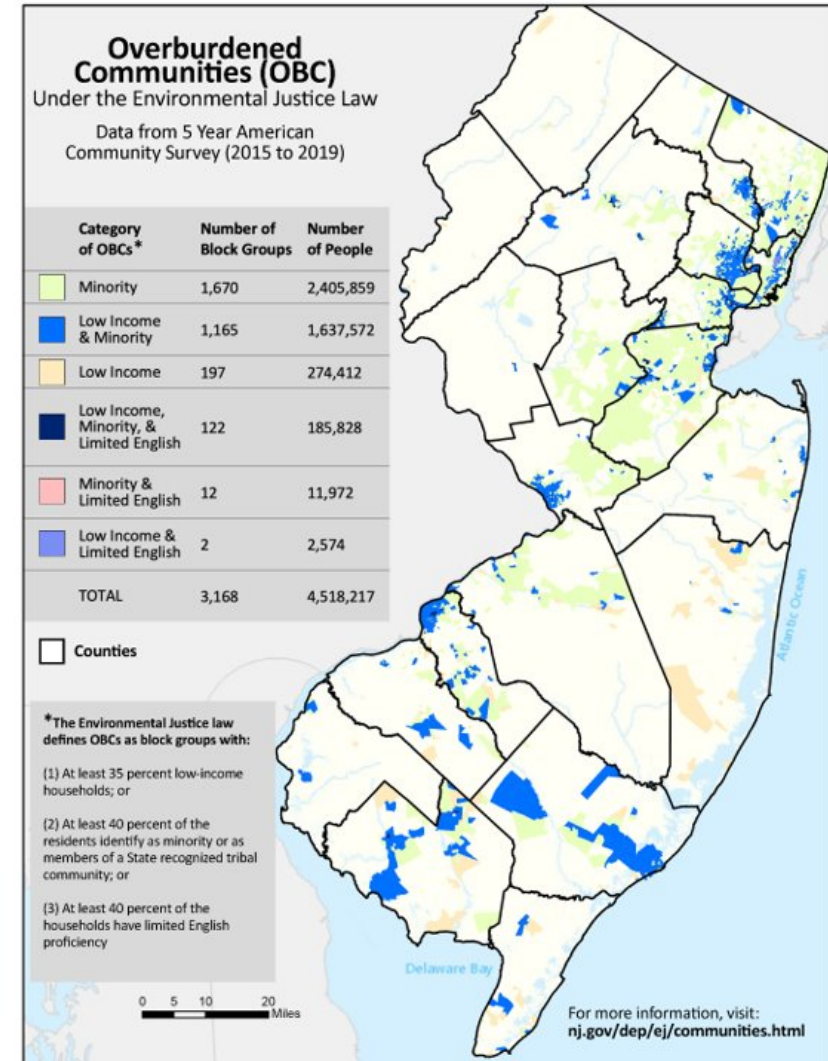
NJDEP considering 30+ specific stressors for inclusion in its EJ siting analysis.

Defining 'Overburdened Community'

5-year American Community Survey Data, 2015-2019

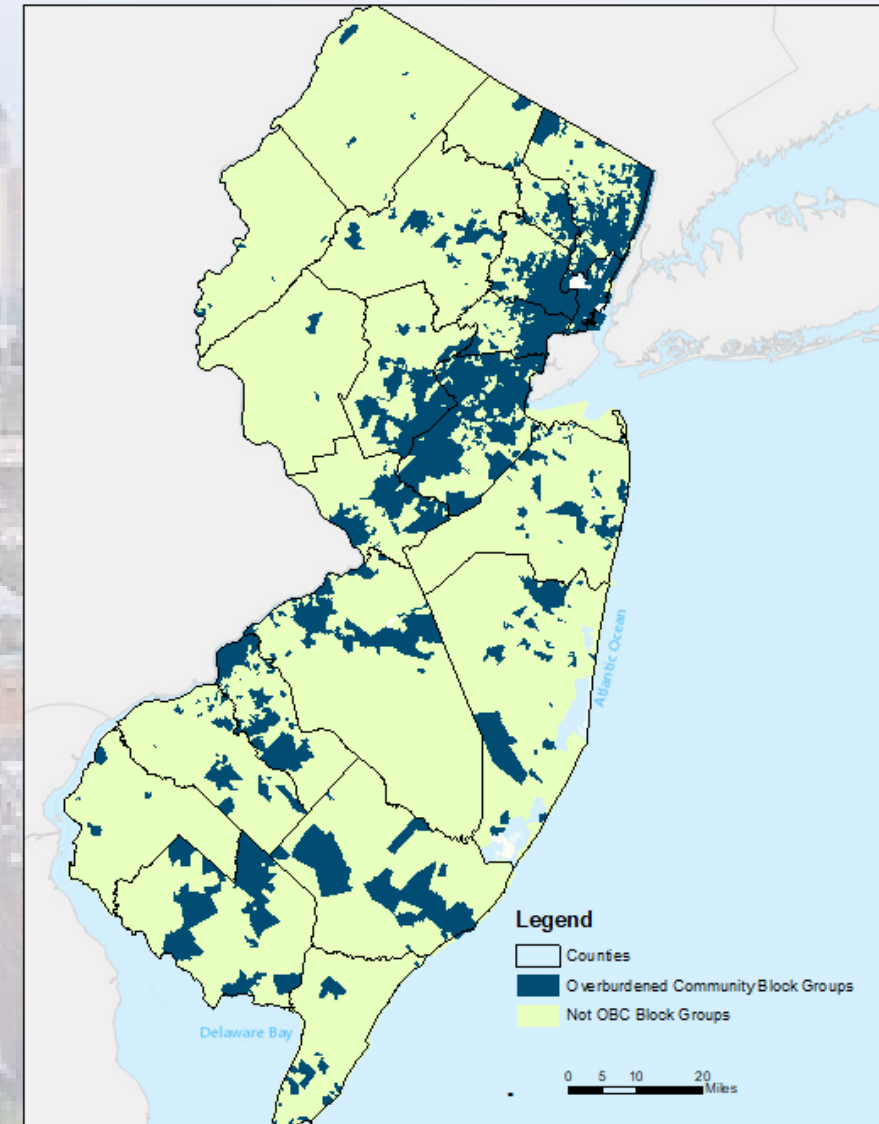
- This is analysis based on data made available 12/10/2020
- Information can be found on the NJDEP Environmental Justice website
 - Excel Spreadsheet listing Overburdened Communities (OBCs) block groups with town names
 - PDF maps
 - GIS file and simple GIS Tool

Overburdened Community Criteria	# Block Groups	Population
Minority	1,670	2,405,859
Low Income and Minority	1,165	1,637,572
Low Income	197	274,412
Low Income, Minority, and Limited English	122	185,828
Minority and Limited English	12	11,972
Low Income and Limited English	2	2,574
	3,168	4,518,217



Geographic Points of Comparison

- The EJ Law requires the DEP to determine whether environmental or public health stressors are higher than those borne by other communities within the state, county or other geographic unit of analysis as determined by the department.



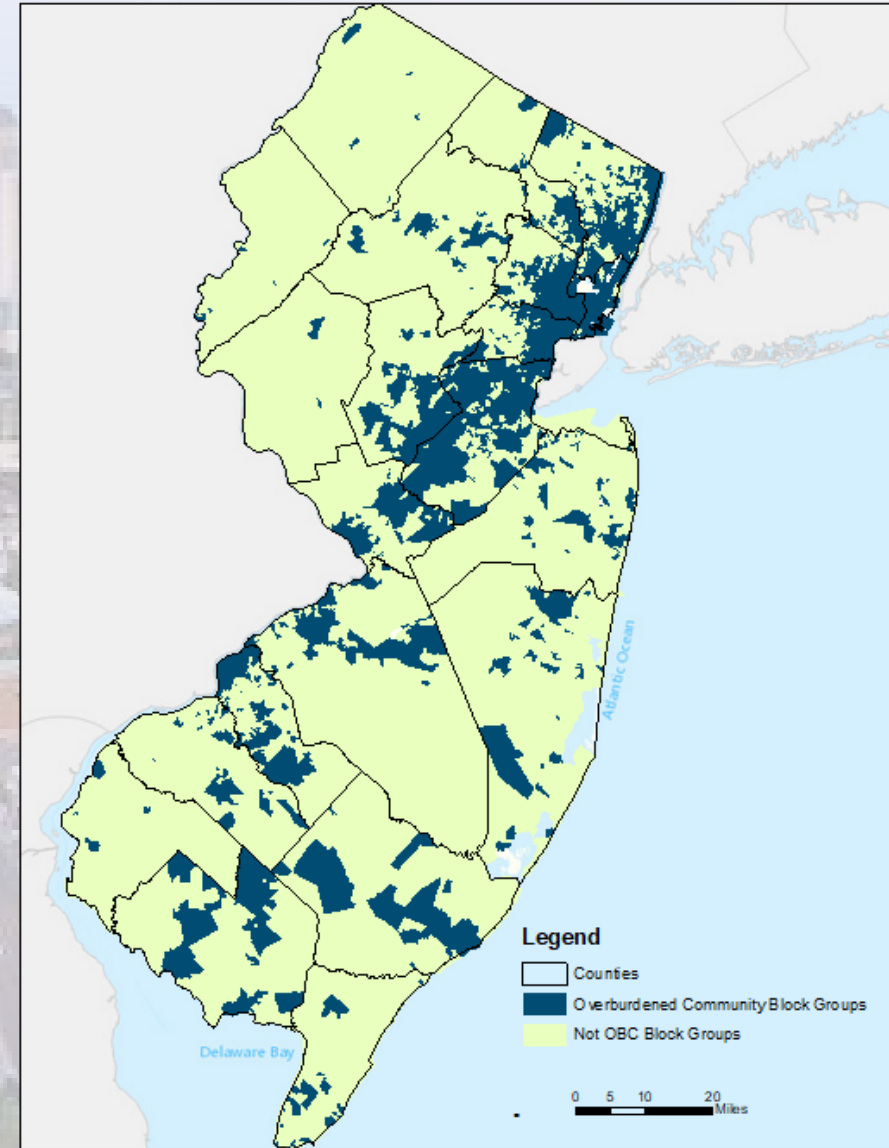
Geographic Points of Comparison

Comparing stressors within an affected block group to:

- State
- State Non-Overburdened Areas
- County
- County Non-Overburdened Areas
- Hybrid of above approaches (most like USEPA, which uses multiple geographic areas)

Proper Comparison Percentile

- 50th (higher than)
- 80th (USEPA uses as a flag for initial screening)



Environmental & Public Health Stressors

After considering data availability, data quality, appropriate geographic scale, quantifiability and marginal value, we are now considering 31 stressors.



Requirements for DEP and Applicants

- Requires the submission of an environmental justice impact statement and public hearing for any application for a permit to expand, construct or renew the authorization to operate a covered facility.
- NJDEP reviews the environmental justice impact statement, along with other relevant information, to determine environmental and public health stressors' impact on overburdened communities that cannot be avoided through additional controls.
- If there is a disproportionate impact that cannot be avoided for a new facility, DEP shall deny applications for new facilities in overburdened communities unless there is a compelling public interest.
- For renewals and expansions, DEP may apply additional conditions, but cannot deny a permit

Hopes...and Limitations

- Does not require absolute denial of environmental permits for new facilities.
- Does not allow DEP to deny facility expansions or permit renewals under any circumstances.
- Does not promote delay of permits and projects; requires parallel processes.
- Does not reach beyond covered facilities.
- Does not contravene local land use authority.



A Path Toward Implementation

10/22/20 – Initial EJ Rulemaking Public Information Session (Introduction)

01/20/21 – Stakeholder: Geographic Points of Comparison/Facility & Permit Definitions

03/11/21 – Stakeholder: Environmental & Public Health Stressors

04/07/21 – Stakeholder: Compelling Public Interest/Renewal Conditions

05/20/21 – Stakeholder: Environmental Justice Impact Statement

06/24/21 – Final EJ Rulemaking Public Information Session (Summary and Path Forward)

Summer 2021: Public feedback review, analysis and rule-writing

Fall 2021: Formal Rule Proposal

Spring 2022: Adoption

For more information
and updates, visit
NJ.Gov/DEP/EJ



NEW JERSEY
DEPARTMENT OF
ENVIRONMENTAL
PROTECTION

NEW JERSEY'S ENVIRONMENTAL JUSTICE LAW: A POTENTIAL NATIONAL MODEL?

SARA COLANGELO

GEORGETOWN UNIVERSITY LAW CENTER



Outline

- **Contextualize New Jersey's law with a review of current state environmental justice legislation**
- **Discuss the scope, structure, and substance seen across various models**
- **Share regulatory benefits and shortfalls of differing state regimes vs. centralized, single federal policy**



New Jersey's Law in Context



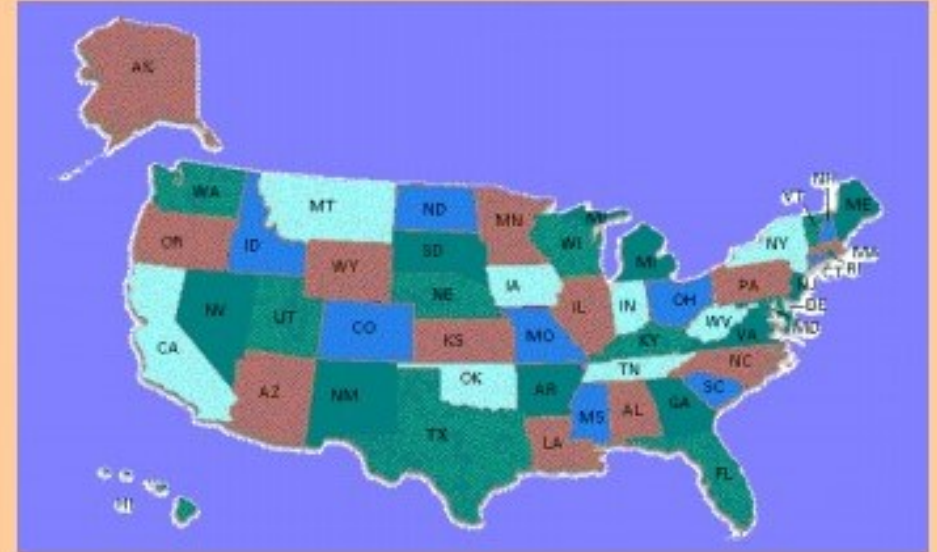
- Drivers of recent state action
 - Society-wide focus on systemic racial disparities, including civil rights and public health
 - Increased social awareness of communities overburdened with multiple environmental stressors
 - Data-driven advancements in mapping, visualization, and open access information
 - Federal inertia

New Jersey's Law in Context - con't

- History of state actions
- States becoming leading, trailing, or lagging drivers of novel policies
 - Early actors
 - New Jersey helps raise the bar
- Rapidity with which states joining this larger policy advancement
 - Approximately 20 separate pieces of environmental justice state legislation proposed in 2021
 - Approximately five enacted in 2020 and approximately ten in 2021

Environmental Justice For All

A Fifty-State Survey Of Legislation, Policies, and Initiatives



Section of Individual
Rights & Responsibilities
American Bar Association

Public Law Research Institute
Hastings College of the Law
University of California

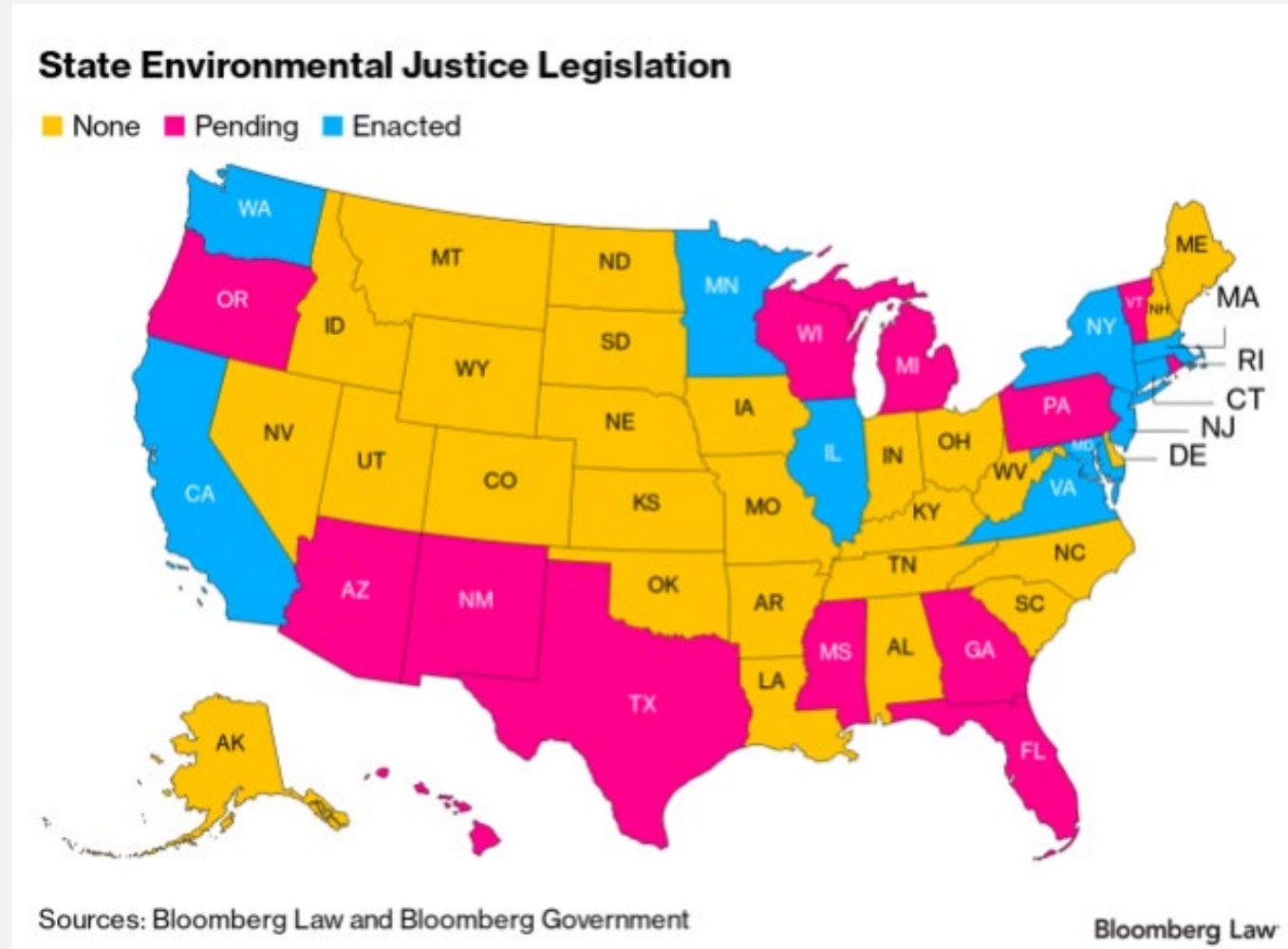
Section of Environment,
Energy, and Resources
Co-Sponsor

Steven Bonorris, et al.

January 2004

State Environmental Justice Regulatory Modalities

- Frameworks for structure, substance, and scope of proposed and enacted legislation vary by state
- Approximately five regulatory strategies employed across various pieces of legislation:
 - Development of information clearinghouses
 - Funding for remediation or projects such as deployment of clean energy
 - Enhanced public participation
 - Agency and/or permittee mandates
 - Linkages with greenhouse gas reduction strategies
- Examples



<https://news.bloomberglaw.com/bloomberg-law-analysis/analysis-state-laws-are-codifying-environmental-justice> – as of March 9, 2021, legal analyst Dylan Bruce



Information Scaling

Effective regulation can require vast amounts of information to be collected and processed; centralized governmental bodies often better positioned



Transaction Costs

If establishing or influencing policies requires collective or coordinated action, can disadvantage underrepresented demographics due to resource/influence asymmetry



Pollution Mobility

Pollution is an externality that can move across borders through multiple media; lack of incentives to abate interstate pollution



Free Rider

Policy makers may hope others take the laboring oar in generating information and solutions, leading to lack of innovation and action



Race to the Bottom

Potential for competitive deregulation due to dependence on local tax base and concern about disadvantaging key employers

Common Rationales for Centralized, Government-Wide Policies and Legislation



Policy Laboratories

More effective innovation through policy experimentation, as states pursue diverse strategies



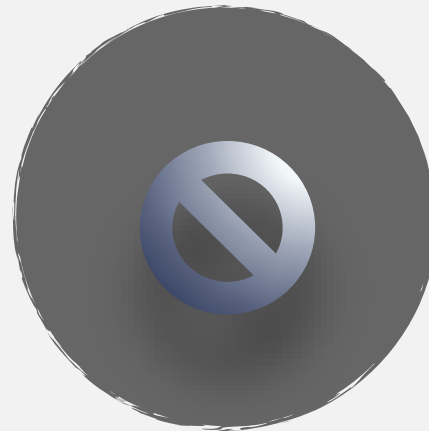
Geographic Variability

States take account of local perspectives and policy preferences



Information Sharing

Decentralized action generates greater diversity and quantity of information with innovating states informing other states



Federal Inertia

State laws overcome federal gridlock, regulatory inertia, and/or status quo bias to prevent policy vacuum

Rationales for Decentralized, State-generated Policies

“It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country”

New State Ice Co. v. Liebmann, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting)

CONCLUDING THOUGHTS

THANKYOU

National Association of
Environmental Professionals

Chris Whitehead

Distinguished co-panelists

CONNECT: 

Sara.A.Colangelo 

sac54@law.georgetown.edu 

<https://www.law.georgetown.edu/faculty/sara-a-colangelo/> 

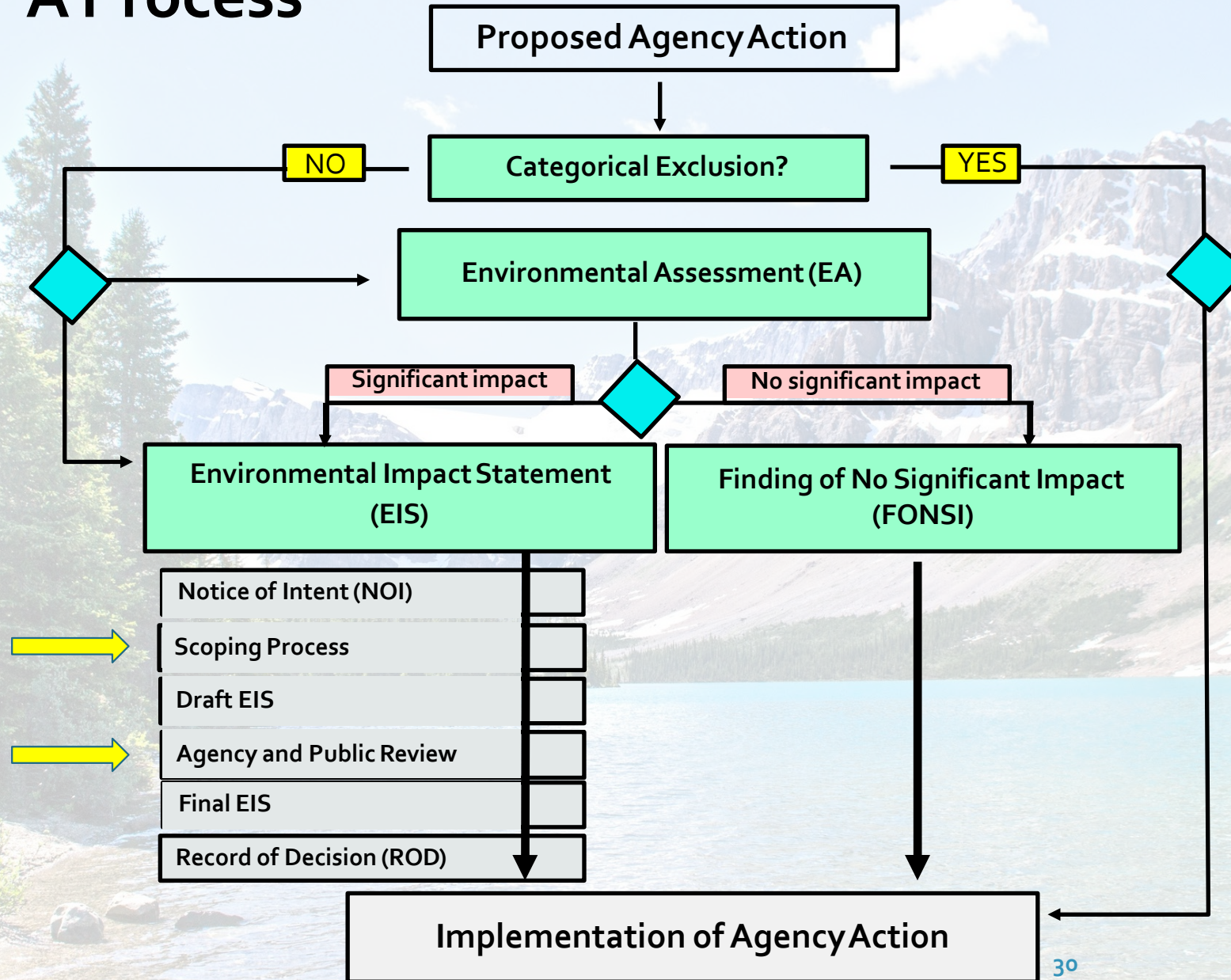
NEPA Overview and EJ Activities at EPA in 2021

Matthew Tejada, Director of the EPA Office of Environmental Justice

National Environmental Policy Act of 1969

- Establishes National Environmental Policy
- **Directs federal agencies to prepare publicly available "detailed statement" with every proposal for legislation or major Federal action significantly affecting the quality of the human environment** (Section 102(2)(c))
- Establishes Procedures for:
 - *Informed decision-making*
 - *Interdisciplinary/multi-agency approach*
 - *Public process*
 - *Opportunity for stakeholder/interested party involvement*
- Creates the Council on Environmental Quality

NEPA Process



EPA's Role in NEPA

- Review and comment publicly on EISs produced by other Federal agencies
- Serve as Cooperating Agency
- Prepare its own NEPA documents for compliance
- Filing responsibilities for EISs and publish Notices of availability in the Federal Register
 - EISs and EPA comment letters can be found here: <https://cdxnodengn.epa.gov/cdx-enepa-II/public/action/eis/search>

NEPA Limitations

- Applies only to Federal actions
- Imposes procedural, not substantive, requirements
- Offers transparency in decision-making and input from the public, but final decision is by lead agency
- NEPA has no penalty or enforcement provision



Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government

JANUARY 20, 2021 • PRESIDENTIAL ACTIONS

Executive Order on Tackling the Climate Crisis at Home and Abroad

JANUARY 27, 2021 • PRESIDENTIAL ACTIONS

MESSAGE FROM
THE ADMINISTRATOR

This email message is being sent to EPA employees.

To this end, I am directing my leadership team, including our Assistant Administrators, General Counsel, Associate Administrators, and Regional Administrators, to work with staff in their offices and the Office of Environmental Justice to identify ways to ensure that the country's environmental laws—and the policies implemented under them—deliver benefits to all individuals and communities. Specifically, I direct all EPA offices to do the following:

1. Strengthen enforcement of violations of cornerstone environmental statutes and civil rights laws in communities overburdened by pollution.
2. Take immediate and affirmative steps to incorporate environmental justice considerations into their work, including assessing impacts to pollution-burdened, underserved, and Tribal communities in regulatory development processes and considering regulatory options to maximize benefits to these communities.
3. Take immediate and affirmative steps to improve early and more frequent engagement with pollution-burdened and underserved communities affected by agency rulemakings, permitting and enforcement decisions, and policies. Following President Biden's [memorandum](#) on strengthening the Nation-to-Nation relationship with Tribal Nations, EPA staff should engage in regular, meaningful, and robust consultation with Tribal officials in the development of federal policies that have Tribal implications.
4. Consistent with the Administration's Justice 40 initiative, consider and prioritize direct and indirect benefits to underserved communities in the development of requests for grant applications and in making grant award decisions, to the extent allowed by law.

Rolling Stone

Send a Tip

Menu Music TV Movies Politics Culture Charts Pro

HOME > POLITICS > POLITICS NEWS

JUNE 26, 2021 7:42PM ET

EPA Creates \$50 Million Fund For Environmental Justice Initiatives

"We know how important it is to put funding to work in environmentally overburdened, economically underserved areas," EPA Administrator Michael Regan said

By PETER WADE

f t w e +



EJ Activities at EPA in 2021



Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government

JANUARY 20, 2021 • PRESIDENTIAL ACTIONS

- All of Government approach to equity
- Not completely EJ, but significant overlap
- Significant public engagement

Executive Order on Tackling the Climate Crisis at Home and Abroad

JANUARY 27, 2021 • PRESIDENTIAL ACTIONS

- Justice40 – 40% of the resources of certain programs to benefit disadvantaged communities
- EJ Scorecard
- Significant public engagement



MESSAGE FROM THE ADMINISTRATOR

This email message is being sent to EPA employees.

To this end, I am directing my leadership team, including our Assistant Administrators, General Counsel, Associate Administrators, and Regional Administrators, to work with staff in their offices and the Office of Environmental Justice to identify ways to ensure that the country's environmental laws—and the policies implemented under them—deliver benefits to all individuals and communities. Specifically, I direct all EPA offices to do the following:

1. Strengthen enforcement of violations of cornerstone environmental statutes and civil rights laws in communities overburdened by pollution.
2. Take immediate and affirmative steps to incorporate environmental justice considerations into their work, including assessing impacts to pollution-burdened, underserved, and Tribal communities in regulatory development processes and considering regulatory options to maximize benefits to these communities.
3. Take immediate and affirmative steps to improve early and more frequent engagement with pollution-burdened and underserved communities affected by agency rulemakings, permitting and enforcement decisions, and policies. Following President Biden's [memorandum](#) on strengthening the Nation-to-Nation relationship with Tribal Nations, EPA staff should engage in regular, meaningful, and robust consultation with Tribal officials in the development of federal policies that have Tribal implications.
4. Consistent with the Administration's Justice 40 initiative, consider and prioritize direct and indirect benefits to underserved communities in the development of requests for grant applications and in making grant award decisions, to the extent allowed by law.

- Programs and Regions already working on EJ plans/strategies
- EJ integration priorities
- Significant public engagement

BUDGET OF THE U.S. GOVERNMENT

FISCAL YEAR 2022



- EJ as National Program with AA
- Significant increase in investment across EPA and within EJ program



Send a Tip

HOME > POLITICS > POLITICS NEWS

JUNE 26, 2021 7:42PM ET

EPA Creates \$50 Million Fund For Environmental Justice Initiatives

"We know how important it is to put funding to work in environmentally overburdened, economically underserved areas," EPA Administrator Michael Regan said

By PETER WADE



- Resources spread across numerous EPA activities and across all ten regions
- Significant opportunity to engage communities and other partners (states, tribes)



FY 2022-2026

EPA Strategic Plan

EJ as Goal 2 with cross-cutting integration

1. EJ Integration within EPA
2. Support for Communities
3. Support for partners (states, tribes, local gov.)
4. Civil Rights Enforcement

Useful EJ Resources

- A Citizen's Guide to NEPA. Having Your Voice Heard (2021). Council on Environmental Quality
- Data for Climate Risk Assessment in Vulnerable Communities. (2021) Center for Open Data Enterprise
- EJ Tools - <https://www.epa.gov/healthresearch/tools-support-environmental-justice>
- <https://www.epa.gov/environmentaljustice/environmental-justice-your-community>
- <https://www.nj.gov/dep/ej/>
- <https://www.nj.gov/dep/ej/docs/furthering-the-promise.pdf>