None of the conservation efforts detailed in this publication can be realized without an equitable and inclusive government. Our work cannot be considered a success unless our policies and programs represent and benefit all Virginians and do not cause disproportionate harm to low-income communities and communities of color. In order to accomplish this, we need greater regulatory oversight and enforcement, as well as robust public participation. We must also ensure that we are building stewards of our environment through equitable and inclusive environmental education.
EXECUTIVE SUMMARIES AND CONTACT INFORMATION

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PRIORITIZING ENVIRONMENTAL JUSTICE IN STATE GOVERNMENT

At its core, environmental justice is about equity. Communities of color and low-income areas should not bear the brunt of pollution from energy, industrial, and agricultural development while others enjoy the economic gains. In 2020, the General Assembly began to develop an essential procedural framework to address and prevent new cases of environmental injustice. However, this work remains incomplete until legislators reform Virginia’s environmental permitting and public participation standards so they are equity-based, ensuring the benefits and burdens of natural resource development and protection are justly distributed across all communities in the state.

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EDUCATING FOR EQUITABLE ENVIRONMENTAL LITERACY

Creating an environmentally literate populace in the Commonwealth requires coordinated leadership, systemic requirements for public schools’ graduating seniors, and equitable, substantial investment in programs across Virginia. With the current challenges of climate change and environmental injustice, Virginia has an opportunity now to prioritize the tools needed to develop environmentally literate citizens who understand issues and the systems that influence the environment, and make responsible decisions regarding their impact.

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IMPROVING ENVIRONMENTAL ENFORCEMENT & TRANSPARENCY FOR A CLEANER, HEALTHIER VIRGINIA

Environmental laws are meaningless without adequate enforcement measures to back them up. Together our recommendations look to address the status quo enforcement approaches in Virginia and increase the public’s understanding of pollution in their communities. Fenceline communities across Virginia are overburdened with pollution from facilities in violation of their pollution limits. By providing DEQ adequate funding, authority, and capacity to pursue enforcement and compliance actions, especially in or near environmental justice communities, Virginians can have a cleaner and healthier environment in which to live.

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ENSURING ROBUST CITIZEN REPRESENTATION THROUGH VIRGINIA’S CITIZEN BOARDS

Virginia’s regulatory citizen boards give the people of the Commonwealth a meaningful voice in protecting our natural resources. These volunteers devote time and effort to uphold Virginia’s environmental statutes and engage the public in decision-making. This system has many benefits but can be improved through greater transparency, independence, public engagement, and representation from environmental justice and fenceline communities. Yet, the boards’ inherent value as independent authorities over regulatory programs must be retained. Virginia policymakers must defend the boards’ independence and scope of authority, while they help improve public participation and give the boards better access to information.

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MODERNIZING PUBLIC ACCESS TO GOVERNMENT DECISION-MAKING & ENSURING ROBUST PARTICIPATION

The challenge of governing during a pandemic invited useful innovations that exemplified how technology can remotely connect constituents with their state government. The return to business in person does not have to mean a return to business as usual. It is imperative that the General Assembly, State Agencies, and Boards continue to provide virtual access to proceedings — retaining and improving upon opportunities for virtual testimony. Additionally, status quo board and agency policies have limited or locked out community voices in vital public processes. Reforms to these barriers would ensure meaningful inclusion and broader engagement with diverse and more representative perspectives, especially those most directly affected by government action.

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PARTICIPATION

Modernizing public access to government decision-making and ensuring robust participation

The challenge of governing during a pandemic invited useful innovations that exemplified how technology can remotely connect constituents with their state government. The return to business in person does not have to mean a return to business as usual. It is imperative that the General Assembly, State Agencies, and Boards continue to provide virtual access to proceedings — retaining and improving upon opportunities for virtual testimony. Additionally, status quo board and agency policies have limited or locked out community voices in vital public processes. Reforms to these barriers would ensure meaningful inclusion and broader engagement with diverse and more representative perspectives, especially those most directly affected by government action.

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EXECUTIVE SUMMARY
At its core, environmental justice is about equity. Communities of color and low-income areas should not bear the brunt of pollution from energy, industrial, and agricultural development while others enjoy the economic gains. Historically, the burdens of pollution have disproportionately affected communities who are predominantly people of color and low-income and the impacts of climate change add new challenges for geographically and economically vulnerable populations.

In 2020, the General Assembly began to develop an essential procedural framework to address and prevent new cases of environmental injustice. However, this work remains incomplete until legislators reform Virginia’s environmental permitting and public participation standards so they are equity-based, ensuring the benefits and burdens of natural resource development and protection are justly distributed across all communities in the state.

CHALLENGE
Environmental justice means the fair treatment and meaningful involvement of all people “regardless of race, color, national origin, income, faith, or disability, regarding the development, implementation, or enforcement of any environmental law, regulation, or policy.” According to the U.S. EPA, environmental justice (EJ) will be achieved when 1) all people enjoy the same levels of protection from health and environmental threats, and 2) people have equal access to decision-making processes impacting the health of the places they live, work, play, and worship.

Virginia took significant steps forward in 2020 by making environmental justice the official policy of the Commonwealth, creating a body for citizens to have an EJ advisory role within the Governor’s administration, and requiring state agency efforts to coordinate the implementation of EJ statewide.

However, the hard work of integrating EJ into government decision-making and realizing the goals of EJ has only just begun. When the U.S. Court of Appeals for the Fourth Circuit rejected an air permit issued by Virginia regulators for a polluting compressor station proposed to be located in the majority-Black community of Union Hill in Buckingham County, the court famously admonished that “environmental justice is not merely a box to be checked,” and that disproportionate impacts must be considered in any siting analysis.

Moreover, a long history of siting polluting resources and extractive industries in communities of color, low-income communities, and rural areas has created a culture in which Virginians possessing the least political and economic power are consistently targeted for new sources of pollution. For example, as recently as 2020, proposals for two new large gas-fired power stations were pending within the same small radius in Charles City County. The same community already houses several other industrial facilities including a large landfill, a smaller gas-fired power station, and an electric transmission substation. Charles City County is majority non-White, rural, and experiences a poverty rate higher than the state average. This is merely one instance of environmental injustice, as examples persist in communities from Southwest, Southside, Hampton Roads, and across the Commonwealth.

“Environmental justice is not merely a box to be checked” - U.S. Court of Appeals, Fourth Circuit

To achieve equitable health and environmental outcomes, as well as access to decision-making in these matters for all Virginians, legislators should follow the example of President Biden’s new executive order on environmental justice and provide more direction to state agencies, clarifying exactly how to implement EJ in accordance with the Commonwealth’s EJ policy. This is particularly important for agencies with the largest environmental regulatory footprints, such as the Department of Environmental Quality (DEQ), which recently established an EJ Office and Director.

As a minimum foundation to move beyond merely “checking the box,” any agency whose decisions and actions might impact public or environmental health should be required to develop and publish an official EJ policy. These policies must

• require meaningful consideration of EJ, climate change, and potential cumulative impacts of agency actions,
• require the consistent identification of communities that may be disproportionately impacted using community-sourced data whenever possible,
• consider the economic development and infrastructure needs of EJ and frontline communities, and

PRIORITY POLICY RECOMMENDATIONS

1. Require key state agencies, such as the DEQ, the Department of Conservation and Recreation, the Department of Energy, and the Department of Transportation, to develop environmental justice policies and authorize those agencies to promulgate regulations and guidance to implement them.
2. Require pre-application notice, public meetings, and meaningful community involvement in the environmental permitting processes.
3. Require agencies to conduct environmental justice and cumulative impacts analyses in environmental permitting processes.
4. Provide agencies the necessary authority to deny applications for new permits whenever disproportionate or cumulative impacts are likely.

See also Ensuring Robust Citizen Representation Through Virginia’s Citizen Boards, pg 131.
EXECUTIVE SUMMARY
Creating an environmentally literate populace in the Commonwealth requires coordinated leadership, systemic requirements for public schools’ graduating seniors, and equitable, substantial investment in programs across Virginia. With the current challenges of climate change and environmental injustice, Virginia has an opportunity now to prioritize the tools needed to develop environmentally literate citizens who understand issues and the systems that influence the environment, and make responsible decisions regarding their impact.

CHALLENGE
Despite the efforts of many individuals and organizations across the Commonwealth, environmental literacy remains a challenge for much of the state, especially those from traditionally disadvantaged communities. The closure of the Virginia Office of Environmental Education in October 2016 removed coordinated leadership by which to promote environmental literacy and focus on equitable access for all Virginia students in quality environmental education. The state agencies are now faced with vacancies in key roles which, without immediate action, puts progress toward the goal of an environmentally literate Commonwealth in even further jeopardy.

Environmental literacy in Virginia is an equity issue. Many communities don’t have the resources to provide quality environmental education programs that emphasize field experiences and practical applications, which tie directly to Virginia’s emphasis on STEM education. In some cases these are the same communities that lack adequate access to green spaces, which poses both physical and mental health challenges. These are often the same communities that fall victim to environmental injustices because they lack the basic understanding of the systems at work, both natural and civic. Furthermore, these rich learning experiences benefit academic achievement, student engagement and must be available to all.

As a Commonwealth, we are facing pressing environmental challenges and a rapidly changing climate. To respond to these challenges, Virginia needs an engaged citizenry equipped with the knowledge and motivation to conserve our natural resources and protect our public health. Virginia’s next generation of environmental stewards begins with meaningful and inclusive environmental education.

SOLUTION
Environmental education leadership at the state-level would ensure better coordination between school districts, nongovernmental organizations, and state agencies, promoting a more holistic and comprehensive plan for improving environmental literacy throughout the Commonwealth. State leaders should partner with organizations that have experience with providing environmental education and are intentional about bringing these educational opportunities to low income communities and communities of color.

Additionally, increased state funding can help provide every Virginia K-12 student — regardless of race, ethnicity, region, sexual orientation, income, faith or disability — with a quality place-based, outdoor, experiential learning curriculum, such as a meaningful watershed education experience. Such an investment will ensure that all communities across the Commonwealth have an active role in finding equitable and sustainable solutions to environmental challenges, especially those impacting the health and welfare of environmental justice communities. Furthermore, these rich learning experiences should be available to all.

By instituting an environmental literacy graduation requirement, the Commonwealth would ensure that all of its students graduate high school with the basic knowledge needed to understand issues related to the environment. Currently, there is an optional environmental literacy diploma seal students can choose to earn. This approach is not at the level of widespread adoption and can be difficult for students from under-resourced communities.

POLICY RECOMMENDATIONS

Fund $1.5M in competitive grants through the general fund to be managed by Department of Conservation and Recreation (DCR), prioritizing underserved communities, to provide every student across the entire Commonwealth — regardless of race, color, national origin, income, faith, disability or region — a meaningful environmental education experience.

Direct the Department of Education to conduct a study on environmental literacy graduation requirements to assess the status of environmental literacy and develop a plan to ensure all graduating Virginia public school students are environmentally literate.

Fund an FTE to coordinate and oversee environmental literacy goals across the state.
EXECUTIVE SUMMARY

Environmental laws are meaningless without adequate enforcement measures to back them up. Together our recommendations look to address the status quo enforcement approaches in Virginia and increase the public’s understanding of pollution in their communities. Fenceline communities across Virginia are overburdened with pollution from facilities in violation of their pollution limits. By providing DEQ adequate funding, authority, and capacity to pursue enforcement and compliance actions, especially in or near environmental justice communities, Virginians can have a cleaner and healthier environment in which to live.

CHALLENGE

Over the last two decades, the Department of Environmental Quality (DEQ’s) budget has been cut by $37 million per year and the number of agency staff has reduced by a third. A majority of the permit fees are outdated, set in statute, and do not cover the increased volume and complexity of permits for polluters. A lack of adequate funding, staffing, and statutory authority to robustly pursue enforcement actions (including inspections, sampling, and monitoring), hold polluters accountable, process permits, and engage the public has jeopardized the health of Virginia’s air, land, and water. In turn, the health of fenceline communities – oftentimes communities of color and low-income communities who are overburdened by a disproportionate number of pollution sources – suffer as a result. Without necessary legislative changes, DEQ will not be able to fulfill its mission of protecting and enhancing Virginia’s environment while promoting “the health and well-being of the citizens of the Commonwealth.”

Likewise, unlike other Bay states in the region, Virginia does not require any annual enforcement and compliance reporting from DEQ. The annual reports serve as an important tool to not only inform the public about DEQ’s enforcement activities, putting a spotlight on pollution trends and noncompliant sectors, but to build awareness among state legislators about DEQ’s enforcement needs. Without this information, legislators, scientists, and other stakeholders will not be able to access key information about the state’s response to illegal pollution in their communities.

SOLUTION

Virginia’s DEQ needs adequate funding to ensure the agency has the capacity to pursue enforcement measures and bolster existing monitoring and compliance programs, with a focus on protecting frontline communities. In order to do so, DEQ must have the authority to respond to its budgetary and programmatic needs by increasing permit fees and having the ability to pursue certain enforcement actions, like issuing on-the-spot fines for minor violations. DEQ should have the authority to issue deterrent-based penalties that result in changed behavior from bad actors, or polluters who consistently violate the law or their permit terms.

On a similar front, the legislature must establish an Environmental Justice Enforcement Division within the Virginia Attorney General’s office to pursue enforcement actions in pollution hot spots in or near environmental justice communities. This division should work with DEQ’s recently-established Environmental Justice Office to pursue initiatives such as increased community-based air monitoring, restored ambient air toxics monitoring, and the expanded air quality monitoring for particulate matter and ozone — positively impacting Virginia’s environmental justice enforcement. DEQ can also ensure its environmental justice goals are better met by seeking out and utilizing a Virginia-based Environment Justice screening tool, similar to those utilized in other states in the region.

Lastly, the legislature must also ensure that DEQ has full funding to produce the required annual enforcement and compliance reports. These reports will allow the Virginia General Assembly and the public to better understand DEQ’s enforcement needs and compliance levels across certain pollution sectors.

POLICY RECOMMENDATIONS

Restore funding to DEQ to pre-recession levels and provide DEQ authority to periodically increase permit fees and maximum assessed penalties (on an inflation-based scale) to cover program implementation costs, issue stipulated penalties, and collect on-the-spot fines for minor violations.

Ensure DEQ has clear authority to regulate certain types of pollution and pursue enforcement actions for unlawful pollution discharges.

Direct DEQ to submit annual enforcement and compliance reports to the General Assembly highlighting the agency’s annual performance results, and the amount of collected penalties, fines, and fees.

Create a dedicated Environmental Justice Enforcement and Compliance division within the state Attorney General’s office.

Volunteers Install New Living Shoreline - Irvington, Va

Image credit: Carleigh Starckston
ENSURING ROBUST CITIZEN REPRESENTATION THROUGH VIRGINIA’S CITIZEN BOARDS

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EXECUTIVE SUMMARY
Virginia’s regulatory citizen boards give the people of the Commonwealth a meaningful voice in protecting our natural resources. These volunteers devote time and effort to uphold Virginia’s environmental statutes and engage the public in decision-making. This system has many benefits but can be improved through greater transparency, independence, public engagement, and representation from environmental justice and fenceline communities. Yet, the boards’ inherent value as independent authorities over regulatory programs must be retained. Virginia policymakers must defend the boards’ independence and scope of authority, while they help improve public participation and give the boards better access to information.

CHALLENGE
Virginia’s regulatory citizen boards, including the State Air Pollution Control Board, State Water Control Board, Waste Management Board, and Marine Resources Commission, play critical roles in ensuring that representatives of residents of the Commonwealth have a meaningful voice in protecting Virginia’s natural resources. Through their role in approving, denying, or modifying major environmental issues. However, unneeded access to relevant information from members of the public and affected communities will go a long way to overcoming any agency blinders or limitations that can narrow the options for Board consideration and even lead to industry-tied decisions that give short shrift to the community or endanger the resource. Similarly, boards have limited ability to seek counsel or expert opinions on issues they face.

SOLUTION
While Virginia’s regulatory boards make decisions on behalf of the residents of the Commonwealth, they often do so without the full benefit of hearing from affected members of the public and non-agency issue experts. Board proceedings are open to the public and many proceedings before regulatory boards enable the public to provide meaningful, substantive feedback for the boards to consider in their decisions regarding major environmental issues. However, unnecessary constraints on the ability of the boards to hear from the general public, including a prerequisite for speaking on a regulatory or permitting issue that a person has previously submitted written comments, can hinder boards’ abilities to fully understand the implications.

While Virginia’s regulatory boards make decisions on behalf of the residents of the Commonwealth, they often do so without the full benefit of hearing from affected members of the public and non-agency issue experts.

In order to improve the public’s access to the boards and the boards’ ability to benefit from that public engagement, regulatory boards’ procedures for soliciting and considering public input should be enhanced. Consideration should be given to increasing language accessibility for board meetings, adding an environmental justice community representative to the board membership, scheduling meetings at times and in locations that maximize the opportunities for public participation, and using both in-person and remote meeting options. Special efforts should be made to include parties most directly affected by a proposed action. Likewise, the boards should be empowered to exercise their statutory authority by receiving information well enough in advance of meetings for board members to adequately review and consider agency recommendations. Agency recommendations to the Boards for regulatory actions must include assessments of environmental justice issues in every case.

POLICY RECOMMENDATIONS
Retain the current board framework, authorities, and independence in state law and, where necessary, clarify the Board’s independent authority in regulatory and permitting processes.

Clarify board authorities under statute to seek alternatives to the Department of Environmental Quality recommendations, obtain independent legal advice, and get timely information ahead of Board meetings.

Amend the law to authorize board procedures, such as special committees, to enhance access and communication with affected communities with Environmental Justice concerns.

Remove requirements that prevent or limit the scope of public comments at meetings and specify that the record for a regulatory action or case decision under the Administrative Process Act remains open until final decisions are issued.
MODERNIZING PUBLIC ACCESS TO GOVERNMENT DECISION-MAKING & ENSURING ROBUST PARTICIPATION

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EXECUTIVE SUMMARY

The challenge of governing during a pandemic invited useful innovations that exemplified how technology can remotely connect constituents with their state government. The return to business as usual does not have to mean a return to business as usual. It is imperative that the General Assembly, State Agencies, and Boards continue to provide virtual access to proceedings — retaining and improving upon opportunities for virtual testimony. Additionally, status quo board and agency policies have limited or locked out community voices in vital public processes. Reforms to these barriers would ensure meaningful inclusion and broader engagement with diverse and more representative perspectives, especially those most directly affected by government action.

CHALLENGE

The COVID-19 pandemic highlighted — both the need for and practicality of — the integration of modern communications tools in Virginia’s legislative and agency-level public processes. This change, temporarily provided for through Executive Order 512 and a budget amendment, answered the calls of community members who wanted useful innovations that exemplified how technology can remotely connect constituents with their state government. The return to business in person does not have to mean a return to business as usual. It is imperative that the General Assembly, State Agencies, and Boards continue to provide virtual access to proceedings — retaining and improving upon opportunities for virtual testimony. Additionally, status quo board and agency policies have limited or locked out community voices in vital public processes. Reforms to these barriers would ensure meaningful inclusion and broader engagement with diverse and more representative perspectives, especially those most directly affected by government action.

Currently, the Virginia Administrative Process Act (APA) gives agencies the duty and responsibility to come up with their own participation rules. This significant grant of latitude to the agencies themselves cuts out the opportunity for better oversight and leaves the public at risk of narrowed opportunities to participate in vital public processes.

SOLUTION

- State agencies and the General Assembly should consider how continued use of remote participation in regulatory meetings brings broader engagement with diverse and more representative perspectives. The General Assembly should also retain and improve newly created opportunities for constituents to provide written testimony in advance of meetings and oral testimony by phone or video conference during committee and subcommittee meetings.
- During the declared state of emergency, state agencies were permitted to conduct many stakeholder engagement activities, like regulatory advisory panels and technical advisory committees, by video conference without a quorum of participants physically present. Remote participation in regulatory meetings enabled broader engagement by members of the public. With the lapse of the COVID-related emergency order on July 1st, 2021, lawmakers should consider revising state statute to retain and expand opportunities for virtual participation and ensure that the robust participation seen in 2020 and 2021 does not recede.
- Public notice procedures do not reach people with poor internet services and skills or people not traditionally involved with government processes. Procedures to allow public response to new material presented at board meetings, arbitrarily limit the scope and effectiveness of public comments. Additional forums must be used to distribute notices. Commenting forums must allow submitters to introduce new information and adequate time to respond to agency presentations.
- Agency public participation policies must include procedures to foster environmental justice.

POLICY RECOMMENDATIONS

Extend and codify remote options for Public Participation in legislative and agency processes.

Provide wider notice of agency actions, through media forums, contacts with community groups, and direct contacts to residents whose properties or interests are directly affected.

Remove restrictions on submittal of new information at board meetings to increase the public’s ability to respond to agency comment summaries.

Amend the APA to require that public participation policies ensure meaningful involvement of disadvantaged populations and include board committees to interact with affected communities and conduct fact-finding initiatives. These policies should include a provision to (a) fund the expenses of those who serve on state committees, commissions and panels, (b) hold meetings convenient via rail and public transit, and (c) work to expand broadband access in rural areas and frontline communities.

Make permanent the Environmental Justice Office within DEQ, and authorize the promulgation of regulations to implement the Department’s environmen- tal justice policy.

Virginia’s State Insect: Eastern Tiger Swallowtail Butterfly (Papilio glaucus) - Blue Ridge Parkway

Image credit: Michael Proechel
ENDNOTES