

PRIORITIZING ENVIRONMENTAL JUSTICE IN STATE GOVERNMENT

Peter Anderson // Appalachian Voices // peter@appvoices.org
Jay Ford // Chesapeake Bay Foundation // jford@cbf.org
Tyneshia Griffin // New Virginia Majority // tgriffin@newvirginiamajority.org
Queen Shabazz // Virginia Environmental Justice Collaborative // qshabazz@vaejc.org

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.”¹ 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.²

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.³

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.⁵

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

SOLUTION

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 justice⁶ 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.⁷

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 fenceline communities, and

- provide robust public participation plans for agency actions, emphasizing outreach and community participation.

To achieve equitable environmental outcomes and fair access to decision-making, project permitting must be revamped. There are multiple past examples where impacted community members have found out about a proposed project only after the close of public comments on a key permit.⁸ It is essential that permitting agencies and companies seeking permits be required to coordinate pre-application notices and community outreach so that community input is meaningfully considered before any permits are granted.

In addition, the historic pattern of siting multiple pollution sources in the same vulnerable communities will only stop when regulators are required to conduct robust analyses of environmental justice, cumulative impacts, and climate vulnerabilities in the permitting process. Regulators must study both potential environmental justice impacts from proposed new sources and the combined health effects of existing sources with potential new pollutants. They should have the authority to deny applications for new permits whenever disproportionate or cumulative impacts are likely.⁹

POLICY RECOMMENDATIONS

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.

Require pre-application notice, public meetings, and meaningful community involvement in the environmental permitting processes.

Require agencies to conduct environmental justice and cumulative impacts analyses in environmental permitting processes.

Provide agencies the necessary authority to deny applications for new permits when disproportionate or cumulative impacts would lead to adverse health hazards.

See also *Ensuring Robust Citizen Representation Through Virginia’s Citizen Boards*, pg 131.