

SECTION 2.0 STAKEHOLDERS PERSPECTIVES

2.1 FEDERAL PERSPECTIVES

Office of Environmental Justice

In November 1992, the Environmental Protection Agency created an Office of Environmental Justice (originally named the Office of Environmental Equity) to examine and integrate environmental justice concerns into EPA's existing environmental programs. The Office of Environmental Justice (OEJ) serves as the focal point for environmental justice concerns within EPA and provides coordination and oversight regarding these concerns to all parts of the Agency. The OEJ also coordinates communication and public outreach activities, provides technical and financial assistance to outside groups investigating environmental justice issues, and serves as a central environmental justice information clearinghouse. The OEJ provides technical support to environmental justice research and demonstration projects examining whether EPA programs contribute to disproportionate risks faced by some low-income and minority populations, as well as responding to inquiries from Congress and other interested parties. Additional activities undertaken by the OEJ include:

- Establishing EPA environmental equity programs;
- Working with Regional EPA and local state offices to establish environmental equity programs;
- Tracking the implementation of EPA environmental equity efforts;
- Serving as a clearinghouse for the dissemination of environmental equity information to EPA staff and the public;
- Providing interagency coordination on environmental equity issues;
- Participating in interagency task forces established to address environmental equity issues;
- Enhancing equity outreach, training, and educational programs for the public through conferences, symposia, and other meetings;
- Providing sponsorship for the EPA summer intern program for undergraduate students from minority institutions;
- Supporting consultation between EPA and outside environmental equity organizations;
- Supporting key research on environmental risk education;
- Providing minority and low-income communities with technical and financial assistance for community/economic development activities to address environmental equity issues;
- Providing economic development opportunities for unemployed residents of public housing through a memorandum of understanding signed on May 7, 1993 with the Department of Housing and Urban Development, the Department of Commerce, and the Government of the District of Columbia;

While several federal bills, which addressed environmental justice were introduced between 1980 and 1999, on February 11, 1994, President Clinton issued an Executive Order 12898 "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" in which he established the need for Federal agencies to address EJ issues.

The Executive Order states "we will develop strategies to bring justice to Americans who are suffering disproportionately. We will develop strategies to ensure that low-income and minority communities have access to information about their environment—and that they have an opportunity to participate in shaping the government policies that affect their health and environment."

In response to this Executive Order, on April 11, 1994, the USEPA formed the National Environmental Justice Advisory Council (NEJAC) with 23 representatives from academia, business and industry, state, tribal, and local governments, environmental organizations, and community groups. The NEJAC collaborated to provide advice to EPA's Steering Committee and Policy Workgroup to develop an EJ strategy, which currently contains five environmental justice mission topics:

1. Public Participation, Accountability, Partnerships, Outreach, and Communication with Stakeholders
2. Health and Environmental Research
3. Data Collection, Analysis, and Stakeholder Access to Public Information
4. American Indian and Indigenous Environmental Protection
5. Enforcement, Compliance Assurance, and Regulatory Reviews

In addition, the EPA has developed Interim Guidance procedures for investigating Title VI administrative complaints challenging permits to which states must acquiesce in order to receive funding. In an effort to finalize this guidance EPA created the Title VI Federal Advisory Council Agency (FACA) which developed a state EJ Program Template. This template recommended that a state program:

- Be community based and able to identify key EJ issues and address them proactively;
- Be accurate and inclusive of all elements of pollution sources affecting a community, taking into consideration cumulative health and environmental effects;
- Be able to differentiate among types and degrees of impact in a community;
- Should use a variety of tools and methods (GIS, census, etc.) to identify the boundaries of an impacted community;
- Should identify and create incentives for all stakeholders to participate voluntarily in such programs in order to address community concerns;
- Should provide constant communication between all stakeholders and dissemination of information in a manner clearly understandable to community members;
- Should build enforcement and monitoring capacity in the community, as well as educating the community on the state agency's regulatory processes;
- Should inform and involve all relevant levels and types of state and local government entities in the process of reviewing activities that may have EJ implications;
- Should establish a transparent, accessible, honest and accurate process for public participation;
- Should expand existing decision making processes to incorporate EJ issues, rather than creating a new and separate process, while ensuring that decision makers are able to address issues in a timely, efficient and predictable manner;

2.2 STATE PERSPECTIVES

For the most part the States have not been latecomers on the issue of environmental justice. However, for some, the fear of layering additional bureaucracy that could result from institutionalizing EJ, has inadvertently made them less proactive in developing EJ policies. Some states prefer to view EJ as a public participation and outreach strategy and others view it as an opportunity to develop strategies to reduce pollution in distressed communities (some through their permitting processes). Additionally, some states view the environmental justice agenda as a mechanism to encourage broad discourse about environmental ills, historically and contemporary, try to distill from dialogues and various discourses a path toward reconciliation and protection against environmental pollution.

In recent years many states have invested considerable resources into streamlining permit processes with the emphasis on customer services. The emphasis in permit streamlining has been to get those permits out quick so we can attract and keep businesses. Perhaps the concerns of all our communities, not just EJ communities, have been lost in the process. Very little has been done in looking at historic patterns or complaints and coming up with plans to help our communities.

In response to Federal activities, the states have begun EJ initiatives within their own programs. As of 1998, twenty-three (23) states had proposed environmental justice legislation and eight (8) states including Maryland have enacted legislation. In order to determine further descriptions of state EJ activities, Delaware disseminated a survey requesting response to specific question. These included, whether states have EJ programs and what areas the EJ programs are addressing? What facets of EJ programs are most and least effective? What criteria are used to identify areas of disproportionate nature? What type of evaluation criteria is used to address EJ program efforts? And how do we define and provide recourse to EJ communities.

Eleven (11) states including Maryland responded to this survey. Seven (7) states reported having official programs (AZ, CA, CT, FL, LA, MD, TX) and the other four (4) (MA, MI, NJ, TN) have environmental justice workgroups or are in the process of developing EJ programs. Areas addressed by EJ in each state ranged from public participation, community involvement, community-industry relations, best available science practices, and risk assessment to all regulatory and conservation activities including permitting, compliance, and enforcement for air, water, and waste programs.

The majority of effective environmental justice programs nationally are grounded with community involvement and public participation as well as early consideration of environmental projects and local land use. Where EJ programs are less effective, they are often plagued by lack of staff and funding, EJ efforts are made after major investments or decisions, and minimum commitment is observed from policy makers to their constituencies. Criteria to identify disproportionality are primarily in the development phase for all states, and two (2) states cited establishing Geographic Information Systems (GIS). Again, while the majority of states have no established criteria for evaluating EJ program efforts, four (4) states included such factors as number of community cleanups, demographics, and number of EJ workshops and conferences.

Other State Environmental Justice Activities

- Twenty-three states to date have proposed environmental justice legislation. Only eight of these states have actually enacted legislation (Arkansas, Florida, Louisiana, Pennsylvania, Maryland, Michigan, North Carolina, Tennessee, and Virginia). Most of the legislation has either proposed or encouraged studies and/or established task forces.
- Arkansas' House Bill 1263 (Act 1263) enacted in 1993 prohibited the location of high-impact solid waste management facilities within 12 miles of each other. Additionally it stated that if a project is to progress, then the community in which it is sited must receive economic benefits.
- New Hampshire enacted an environmental equity policy in 1994. This policy commits the New Hampshire Department of the Environment to ensuring fair and equitable treatment for all its citizens in carrying out its environmental authorities. In implementing this policy the State seeks to incorporate its policy into its daily decision and actions, annual work plans, grant applications and the departmental strategic plans. They are in the process of performing an audit of how well their program has worked.
- Texas has established an environmental equity office and has a policy statement. Their program emphasizes providing opportunities for productive communications between the agency, local communities and neighboring industries. An important component in their program is the use of alternative dispute resolution techniques.
- New Jersey Department of Environmental Protection is in the process of developing its environmental equity program. They have created an internal work group and established a stakeholder taskforce to assist in developing policy and recommendations. Generally their proposed program will include the use of flexible environmental equity focus areas as opposed to redlining communities and revisions to their community outreach process including extensive communication at all phases of the permitting process. The most unique feature in their proposed program would be the inclusion of Quality of Life issues in addressing new permits and the negotiation of memoranda of understanding between the department, the community and industry specifically geared to address EJ concerns.

General Recommendations From Other States That Could Be Applied In Maryland

- Effectively integrating environmental justice concerns into a state or local regulatory agencies business functions rather than setting up separate programs is key. State environmental agencies need to determine how to regularly factor an analysis of demographics into its permitting decision processes.
- States need fully articulated policies and procedures governing environmental justice that are understandable to the public. A key component of this should be some sort of expanded public participation process.
- The substance of how a state conducts its business in this area should be included in any performance partnership agreement with EPA so that they are aware of how the state will conduct itself when presented by environmental justice problems. It should also be incorporated in state agency performance indicators and in managing for results.

- States need to develop and maintain a comprehensive database of community profiles. Such profiles should at a minimum include demographic information, Toxic Release Inventory (TRI) data, and issues of concern to that community and who the community leadership is. This system should be able to interface with a GIS system in order to be able to map out a given geographic area. It is not suggested that EJ communities be identified up front, but that a system is put in place for an agency to quickly identify and evaluate an area.
- Community profiles should be provided to industry in order for them to better understand prevailing community concerns and assist them in developing community outreach programs. MDE could also provide workshops or training to companies on how to set up effective community outreach programs. In the case of smaller companies lacking sufficient resources to have their own outreach programs an agency could work with trade associations or the Chamber of Commerce to help such businesses.
- State agencies should solicit suggestions on ways that they can provide communities with greater access to information by providing them with GIS information and integrated profiles of the permitting and enforcement activities in their area. Additionally, states should be looking for ways to provide awareness training for community groups on agency functions such as environmental assessments, inspection programs and enforcement activities.
- States should seek suggestions on how they can work with local governments to address EJ issues at the local level.
- States should make recommendations on how to involve the academic community in an effort to begin the discussion on exactly how to address the very difficult problem of the multiple, cumulative, and synergistic impacts on communities.
- States should develop formal policy statements on EJ and their commitment to compliance with Title VI.
- States should provide community groups with greater access to information, including placing GIS systems on the Internet, and/or providing them with integrated profiles of the permitting activity in their area.
- States should provide some sort of extra notification to community groups in the case of public meetings concerning permits of interest and promote the use of non-traditional means of getting notices out to the public. Selection of location and timing of public meetings should be considered carefully to maximize accessibility for affected citizens.
- States should ensure that printed and oral materials are developed in a manner more understandable to the public and presented in a manner fully considerate of the diversity of the audience, including translations into other languages.
- States should require companies to establish formal community outreach programs in settlement of enforcement actions. In the case of smaller companies their respective trade association may be used, since small companies may not have the resources to establish an ongoing program.
- States should conduct internal training of staff on community relations, communications and the use of alternative dispute resolution techniques.

- In the permitting area states should begin to:

1. Develop an internal agency process to flag all permits that involve EJ issues.
2. Explore the possibility that a general requirement that some analysis of demographics be included in the permit application or that it is regularly factored into the decision process.
3. Consider requiring some sort of certification of the efforts that the applicant has taken to meet with the surrounding community and address their concerns.
4. Development of memoranda of understanding/quality of life agreements between the facility and the community that would a part of the permit package.

2.3 LOCAL GOVERNMENT PERSPECTIVES

In Maryland, land use decisions are largely entrusted to local government. Each county and each municipality is required to prepare a Comprehensive Land Use Plan for the development of its community. Addressed in the comprehensive plan are such issues as goals and objectives, land use, transportation, community facilities, mineral resources and critical and sensitive areas.

Actual decisions on the use of the land are made through the local zoning process. The comprehensive plan is to serve as a guide for these zoning decisions. Before any private development may proceed, the local government must have the appropriate zoning in place. Local governments also make many other decisions impacting the use of the land. The local governments must site many needed facilities, which may not be welcomed by neighbors. Examples of these types of facilities include landfills and other solid waste facilities, jails, water and sewage treatment plants, or alcohol and drug rehabilitation centers. For example, one of the leading court decisions on environmental justice, *Chester Residents for Quality Living v. Seif*, 132 F.3d 923 (3d Cir. 1997) judgment vacated 119S.Ct. 22 (1998), involved a state decision on a waste permit. Without local government zoning approval, such a facility could not proceed. In making each of these land use decisions, local government may confront an environmental justice issue. Any one of these decisions could have a disproportionate environmental or public health impact on people of the same race, income, culture and social class. Potential claims could be raised if there are violations of the Civil Rights Laws such as Title VI of the Civil Rights Act of 1964, 42 U.S.C; Section 2000d and following.

Title VIII of the Civil Rights Act of 1968 also prohibits racial discrimination "against any person in the sale or rental of a dwelling or in the provision of services or facilities in connection therewith," and the refusal "to sell or rent or otherwise make unavailable, or deny, a dwelling to any person because of race." In addition, 42 U.S.C. § 1982 states that all U.S. citizens "shall have the same right . . . to inherit, purchase, lease, sell, hold, and convey real and personal property." A Title VIII claim does not require proof of intentional discrimination; disparate impact is sufficient. A Title VIII claim thus follows the same general pattern as a Title VI claim: a plaintiff establishes a prima facie case of disparate impact, the defendant rebuts with nondiscriminatory justification(s), and the plaintiff responds with evidence of less discriminatory means that adequately satisfy the legitimate reason(s) for the defendant's action. Although Title VIII, unlike Title VI, does not require a federal funding nexus, it does require that the impact relate to fair housing opportunities. Some advocates have suggested that building on Title VIII's application to local government zoning, environmental justice advocates could use Title VIII to attack land use decisions, such as the siting of Locally Unwanted Land Uses (LULUs) in minority neighborhoods, that have the effect of increasing segregation by triggering "white flight." Title VIII has rarely been used in environmental justice cases so far. Section 1982 has also not been widely used in environmental justice suits, but some advocates have

suggested that environmental justice advocates could use it to challenge government actions that depreciate the value of property owned by minority citizens.

Education of both elected and appointed local government officials on environmental justice issues is important. Local government officials' knowledge of environmental justice issues varies widely. Some local government officials are very knowledgeable while others are totally unfamiliar with environmental justice concepts. An increased knowledge of environmental justice issues would allow local governments to more effectively deal with these issues. Local government would be better positioned to more effectively deal with these concerns by addressing environmental justice issues early in the process.

2.4 COMMUNITY PERSPECTIVES

The inequitable distribution of environmental hazards and locally unwanted land uses (LULUs) by race and class in the United States has received much study, reaction, and opposition. MACEJ has observed that siting of LULUs is a major issue in low-income and minority communities, a core focus of the environmental justice movement, and is ripe for new ideas about harm prevention, especially through land use planning and new regulation. Nevertheless, environmental injustice as noted by the community is a problem that requires political commitment in part because people of color and low-income people have not played a role in developing the general policies that govern the siting of LULUs, pollution standards, community participation, and neighborhood land use patterns, etc. As Senator Joan Carter Conway, a MACEJ member noted,

"Communities that are ill-prepared to handle environmental risks are often economically disenfranchised and lack the tools needed to oppose possible unethical activities.... Too often, incidences of environmental pollution issues/activities... which range from respiratory illnesses, air pollution, increase in rodent population, rock crushing, cell phone towers, possible radioactive emissions from some gadgets, etc., whether substantiated or unsubstantiated, pose questions of unethical behavior toward low income communities.

Another member noted that,

"Too many of the environmental pollution details would be overwhelming. But some features are important to note, almost forty thousand vacant homes, ...concentrations of homelessness, high unemployment.... The inequities - of opportunities.... are growing by leaps and bounds... Life expectancy is one of the lowest in the nation...Baltimore ranks second in the nation in respiratory illnesses related to hospital emergency admissions....Indoor air pollution is becoming more dangerous...Ambient concentration levels are becoming more unattainable. The suburbs and the boundaries of cities proliferate in an extraordinary unecological sprawl.... Some officials offer up this great blight of suburban conformity as a panacea for the breakdown and disintegration of urbanity first in the inner city and then, as the deadly blight spreads, the inner suburbs...."

Additionally, many of the communities expressed environmental justice concerns ranging from rat infestation, crime, brownfields, lead-paint poisoning, pesticide poisoning, chicken and other litter, ground-level ozone and the effect on respiratory illnesses, electricity deregulation and its possible negative environmental concerns, transportation and its associated ills (suburbanization, air pollution, too much investment in highways that run through low income neighborhoods, limited public participation in conception of transportation policies, etc.), lack of public participation in the states environmental decision-making processes, rubble landfills, chemical facilities and possibilities of

disaster, toxics and toxic dump sites, petroleum facilities, brownfields, the limited capacity or ability of low-income groups to affect decision-making processes, disproportionate distribution of wealth, low wages, high cancer levels, sanitation and waste, untreated sludge, garbage and trash, vacant homes, and dilapidated housing stock, etc.

It has been noted that siting of LULUs in minority neighborhoods, may have the effect of increasing segregation by triggering "flight." One issue receiving little attention in the literature on environmental justice or land use regulation is how low-income and minority communities lack resources including zoning to address the lack of control over LULUs or other undesirable commercial or industrial entities. An important point noted by the community is the need to better understand when an action can be "labeled" environmental injustice and when their communities can be "labeled" environmental justice communities.

In addition, empirical evidence shows that community advocates are beginning to move from reactive strategies--essentially an "opposition" model of environmental justice--to proactive planning and participation in policymaking. In this new mode of planning to address environmental justice, residents of minority and low-income neighborhoods identify not only the activities they wish to exclude from their neighborhoods, but also their visions for what they wish to include in their neighborhoods; in other words, their visions of the public good. A variety of tools to implement goals of low-income and minority communities must be incorporated. For instance, concerning land use issues, the tools must include changes to better understanding and determination of environmental justice issues, environmental justice communities, comprehensive plans, amendments to zoning codes and maps, and the use of sophisticated, specialized, and flexible zoning techniques like performance zoning, overlay zoning, conditional use permits, special districts, negotiated zoning, and exactions.

2.5 INDUSTRY PERSPECTIVES

Industry, in recent years, has been faced with additional environmental issues, that is, the location and proximity of plants and facilities to the community. The consideration of the effect of plant operations on the local community has added new dimensions to businesses and their interaction with local communities. Also, the location of new plant operations in existing industrialized areas has put businesses in another unusual predicament. While government is encouraging the use of former industrial properties (Brownfields) and discouraging the use of undeveloped land (Greenfields), claims of pollution intensity are rising in communities surrounding brownfields and other "polluted sites." These claims pose contradictions to all stakeholders involved in the process of reshaping our communities and environment. This is a new perspective for industry to consider in operating its business, expanding its operations and locating its facilities. It has created a dilemma, which adds new dimensions and different layers to an already complex business planning process.

In addition, the existing environmental regulatory structure does not address the synergistic effect of industrial operations on the community. The historical approach for industry was to file for the appropriate environmental permits (air, water, and waste) from the regulatory agency. The regulatory agency would issue the permit based on limitations established by federal, state or local laws and regulations. The synergistic effect of plant emissions, stormwater runoff from public streets, traffic congestion, emergency evacuation of the community, and vehicle emissions are just some of the items not taken into consideration when issuing individual permits. However, these issues do arise out of the community as environmental concerns. Community information and standards associated with plant operations are critical to business planning and decisions.

Therefore, the age-old adage – *proximity and risk based assessment*, concerning businesses and their operating procedures within low income communities with respect to environmental impacts – looms and warrants increasing urgency to afford better protection and economic vitality to all stakeholders. The importance of arriving at a systematic resolution concerning proximity and risk based assessment suggests a policy development that must include interactive and intense collaboration among businesses, communities, and all levels of government.

2.6 ENVIRONMENTAL GROUP PERSPECTIVES

While not authorized to speak for the entire environmental community, Chesapeake Bay Foundation (CBF) is certainly a representative stakeholder from that perspective. The Chesapeake Bay Foundation is the largest private, non-profit environmental organization dedicated to the protection and restoration of the Chesapeake Bay and its resources. CBF is a solid member of the environmental community in the State and an active participant within the Maryland Citizens' Campaign for the Environment. The Chesapeake Bay Foundation is involved with the State Environmental Leadership Program, a collection of unaffiliated state-level environmental groups from around the nation who actively lobby. CBF is also involved in various environmental coalitions at the national level.

The mission of Chesapeake Bay Foundation is: to restore and sustain the Bay's ecosystem by substantially improving the water quality and productivity of the watershed, with respect to water clarity, resilience of the system, and diversity and abundance of living resources, and to maintain a high quality of life for the people of the Chesapeake Bay region.

The last point in CBF's mission statement leads our organization to be advocates for strong and meaningful Environmental Justice policies in Maryland. The Chesapeake Bay must be protected and restored for the benefit of *all* Maryland citizens. And *all* citizens have a vital role to play in the Bay's clean up.

Increasingly, CBF has reached out to diverse communities in its capacity as a nonprofit citizen organization. Over the years we have provided tens of thousands of Maryland teachers and students from all races and income levels with solid, hands-on environmental education programs. We have built long-lasting partnerships with prominent institutions in communities of color, including the Baltimore Urban League, Morgan State University, and The Baltimore Afro-American Newspaper. We have worked with the interfaith community, business leaders, farmers, recreational and commercial fisherman, and poultry workers, among others.

The Chesapeake Bay, the most productive estuary in the world, is an incredible natural resource. Its watershed is vast, encompassing 64,000 square miles covering an area stretching from upstate New York to south through a large portion of Virginia. The State of Maryland is perhaps the greatest benefactor of this tremendous asset, blessed with miles of beautiful coastline and ready access to the economic bounty of the Bay's waters. The aesthetic and economic values of the Bay cannot be overstated, and studies have routinely shown that the Chesapeake and its well being are fundamental elements to the quality of life that Marylanders currently enjoy.

However, there is a problem. Minority, low-income and tribal populations nationwide and in this State often do not possess the same quality of life enjoyed by many "middle" and affluent Americans. Numerous national and state studies have shown that these populations suffer from disproportionately high and adverse human health and environmental impacts from decisions on land use and siting of industrial development.

At the federal level, President Clinton, in 1994, issued Executive Order 12898 and expressly stated that "All communities and persons across this Nation should live in a safe and healthful environment." The Executive Order directs federal agencies to develop environmental justice strategies to help them identify and address disproportionately high impacts resulting from their programs, policies and activities. The Order is beginning to take hold and it is hoped that positive effects will result with respect to federal actions. It is equally imperative that the State of Maryland address the concerns of these adversely impacted communities found in distressed urban and rural areas around the State.

CBF strongly endorses the Environmental Justice Guidelines and Recommendations contained in this report and the creation of an ongoing Environmental Justice Council and an Environmental Justice office within the Maryland Department of the Environment to continue the work begun by the Advisory Council.