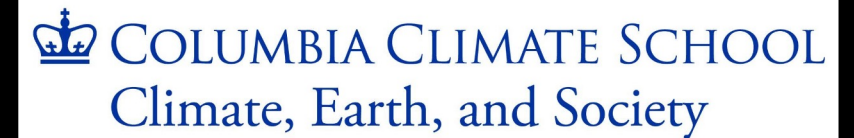


WE ACT Thriving Communities Technical Assistance Center (TCTAC)

EPA Region 2: NY & NJ

*An Overview of Federal
and State (New Jersey
and New York)
Environmental Justice
Laws and Policies*



Presenters:

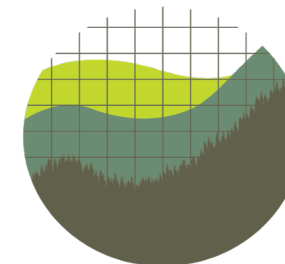
Al Huang (he/him)

Michelle Fleurantin (she/her)

Guest:

Kim Gaddy (SWEA)(she/her)

August 22, 2024

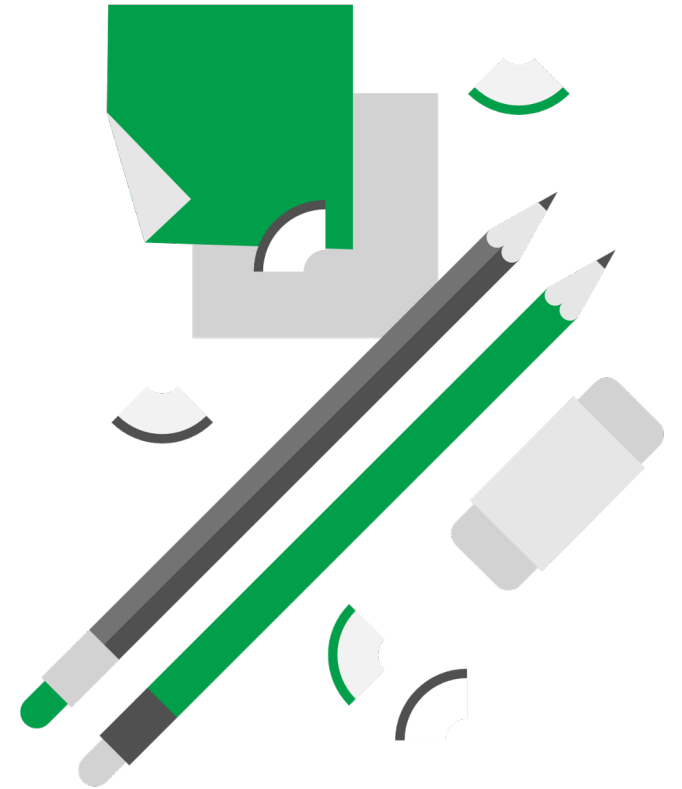


Institute for
Policy Integrity

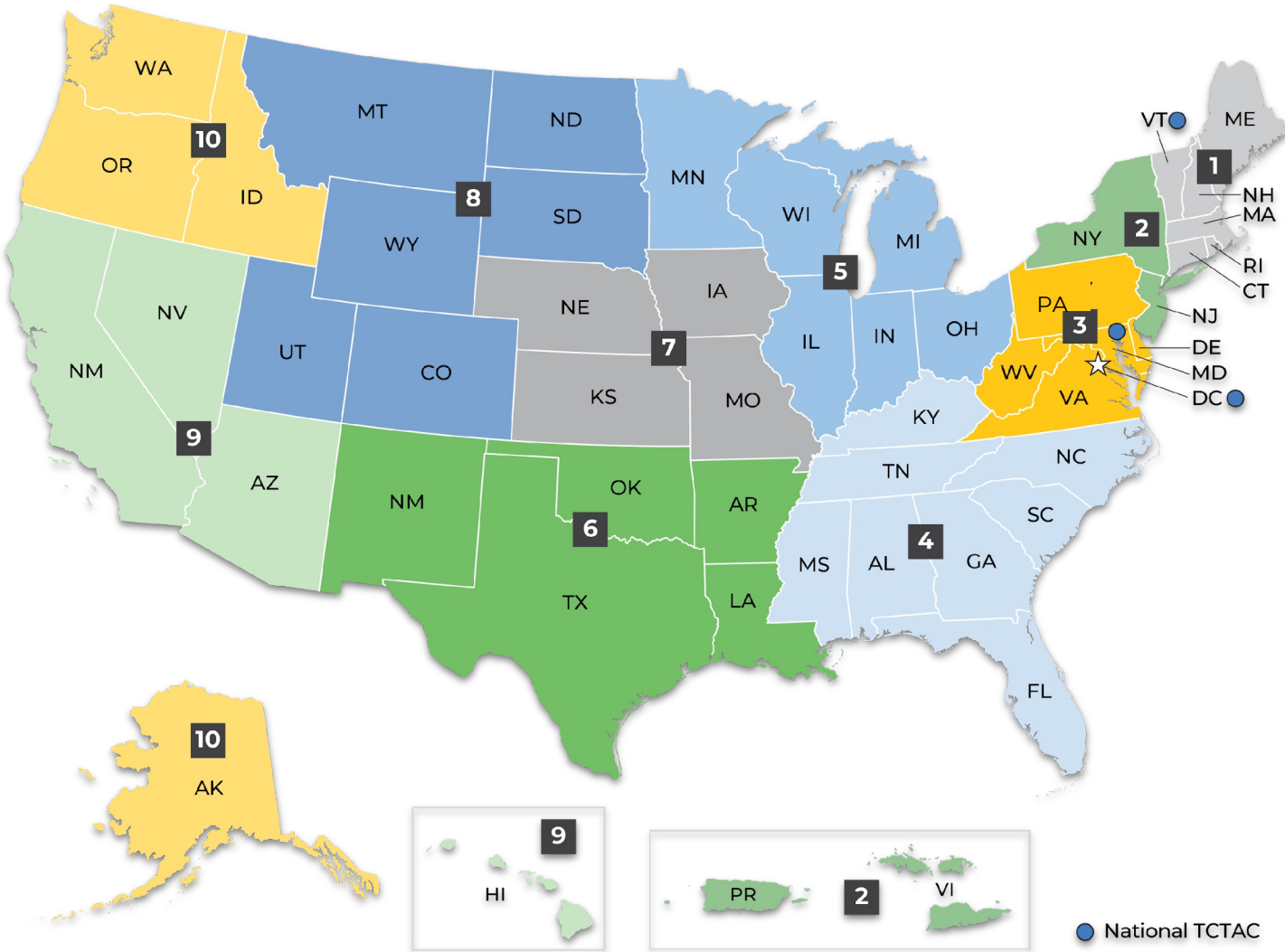
NEW YORK UNIVERSITY SCHOOL OF LAW

Logistics

- **This meeting is being recorded. The recording and slides will be shared on our TCTAC website and sent to everyone who registered.**
- **Please keep yourself muted while presenters are speaking.**
- **If you have a question prior to the Q&A portion of this session, please drop it in the chat.**
- **During the Q&A section, we will be answering questions from the chat, or you can use the “raise hand” reaction in Zoom.**



Thriving Communities Technical Assistance Center (TCTAC) Regions



There are 18 TCTACs:

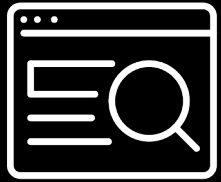
• **3 National TCTACs**

• **15 Regional TCTACs**

- Region 1** CT, ME, MA, NH, RI, and VT
- Region 2** NJ, NY, Puerto Rico, the U.S. Virgin Islands and 8 federally-recognized Indian Nations (2 TCTACs)
- Region 3** DE, DC, MD, PA, VA, WV and 7 federally-recognized tribes
- Region 4** AL, FL, GA, KY, MS, NC, SC, and TN (2 TCTACs)
- Region 5** IL, IN, MI, MN, OH, and WI (2 TCTACs)
- Region 6** AR, LA, NM, OK, and TX
- Region 7** IA, KS, MO, and NE
- Region 8** CO, MT, ND, SD, UT, and WY
- Region 9** AZ, CA, HI, NV, American Samoa, Commonwealth of the Northern Mariana Islands, Federated States of Micronesia, Guam, Marshall Islands, and Republic of Palau (2 TCTACs)
- Region 10** AK, ID, OR, WA and 271 native tribes (2 TCTACs)

● National TCTAC

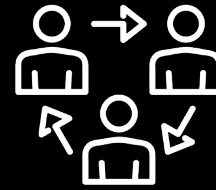
Goals of the WE ACT TCTAC



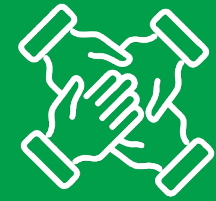
Identify grant opportunities.



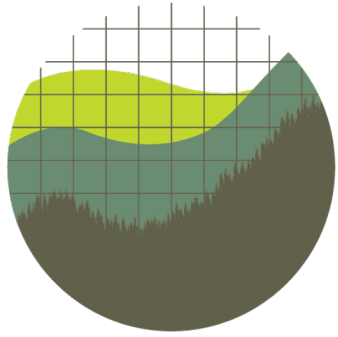
Assist in preparing grant applications and **managing** grant funding.



Build capacity to effectively engage with decisionmakers.



Develop collaborative community-based networks and partnerships.

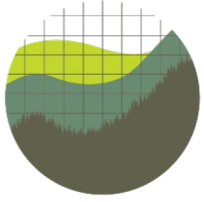


Institute *for*
Policy Integrity

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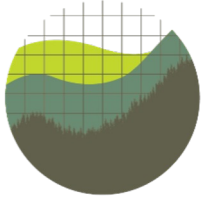
An Overview of Federal and State (New Jersey and New York) Environmental Justice Laws and Policies

August 22, 2024



Goals for Today's Training

- A brief overview of how government is structured – Executive, Legislative and Judicial – and how it makes laws and advances policies.
- An overview of the legal authorities requiring government (at federal and state levels) to consider EJ in their decisions.
- Possibilities and limitations of EJ laws and policies.
- Explore ways communities can engage government on EJ issues.



Overview of Basic Structure of Federal and State Governments

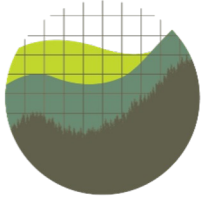
Executive Branch

President/Governor sets policy priorities for government through:

- **Executive Orders (EOs):** Have the weight of law and can be used to implement policies, manage the executive branch, or interpret existing laws. Can be revoked and are non-enforceable by citizens or through the courts.
- **Policy Directives/Memoranda:** Issued to outline specific policies or initiatives. While they may not have the same legal weight as EOs, they still guide the actions of government agencies and departments.
- **Budgeting:** Sets policy priorities by proposing government spending budgets. By directing spending towards certain programs or initiatives, the executive can effectively shape policy outcomes.
- **Appointing Officials:** Appointed officials lead government agencies and departments. These appointees play a significant role in shaping policy through their leadership and decisionmaking within their respective agencies.

Agencies/Departments are charged with:

- Implementing policy priorities of President/Governor.
- Creating regulations/rules to implement and enforce laws passed by the legislative branch.
- Creating guidance and tools to interpret and implement laws.
- Managing government- and/or public-owned resources, including land and minerals.



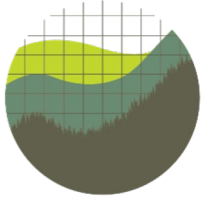
Overview of Basic Structure of Government

Legislatures

- The legislature is a branch of government responsible for making laws.
- In both federal and state governments, the legislature serves as a forum for representatives to debate, propose, amend, and enact legislation that addresses the needs and concerns of the public.
- Federally, Congress has the authority to pass laws and approve the national budget (power of the purse).
- State legislatures enact state laws, approve the state budget, and exercise oversight over state agencies and officials.

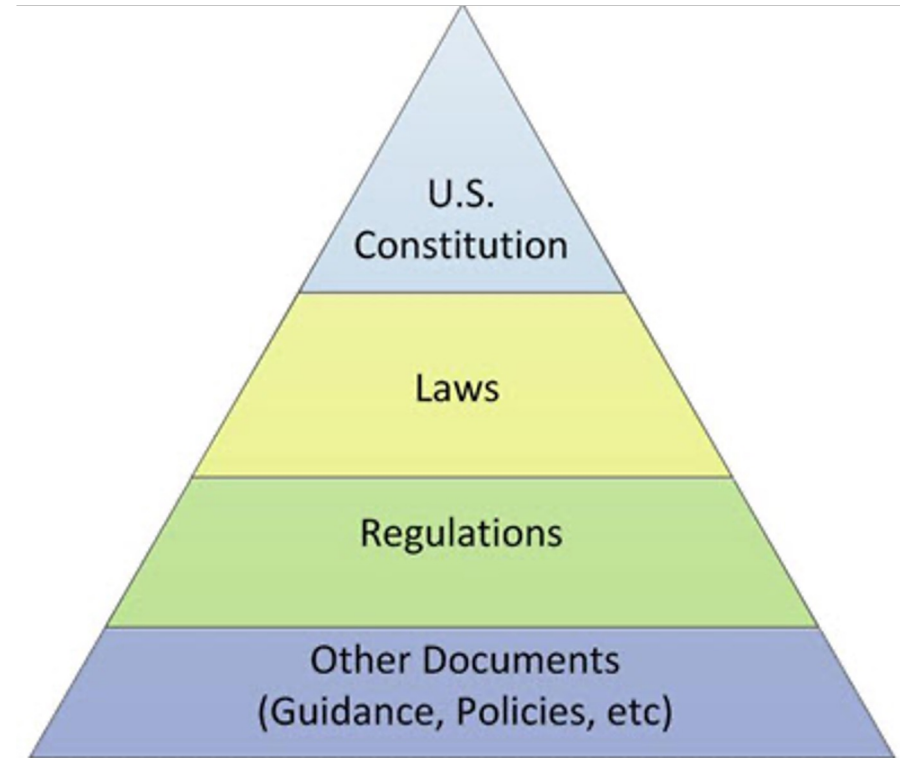
Judicial

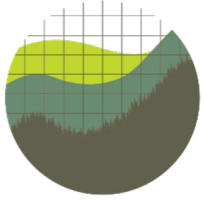
- Federal and state courts serve as the judicial branch of government, responsible for interpreting and applying the law.



Law vs. Policy – What’s the Difference?

- Laws are written and passed by the Legislative Branch, signed and implemented by the Executive Branch, and can be challenged through the Judiciary Branch.
- Laws establish requirements or prohibitions.
- Regulations are published by executive branch agencies to clarify their interpretation of a law and how a law will be implemented.
- Regulations also state requirements or prohibitions.
- Executive Branch agencies also publish guidance or other policy statements, which further clarify how an agency understands and implements existing laws and regulations. EO’s are a hybrid that live between “regulations” and “other documents.”
- Guidance and other policy statements describe suggested or recommended actions. Guidance and policy statements do not provide mandatory requirements unless they are incorporated into a regulation or mandated under terms and conditions of an agreement, such as a funding agreement.





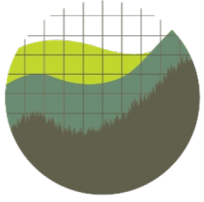
Presidential Executive Orders on EJ

12,898 - Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (1994)
(still in effect)

- Requires agencies to **identify** and **address** disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority and low-income populations.
- Requires that agencies **meaningful involve** potentially affected communities in decisionmaking processes.
- Requires that agencies **collect, maintain, and analyze data** on the demographic characteristics of populations affected by their programs and policies to **assess potential impacts** on people of color and low-income communities.

14,008 - Tackling the Climate Crisis at Home and Abroad
(2021)

- Sets major climate policy goals for the Biden Administration.
- Creates an Interagency Advisory Committee (IAC) on EJ that reports to the White House.
- Creates the White House Environmental Justice Advisory Committee (WHEJAC).
- Creates Justice40, which establishes a goal that at least 40% of the benefits of certain federal investments flow to disadvantaged communities.
- Creates an EJ Scorecard to evaluate and track the progress of federal agencies in advancing EJ and J40.



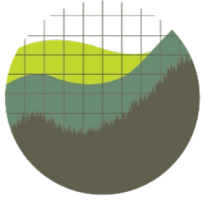
Presidential Executive Orders on EJ

14,096 - Revitalizing Our Nation's Commitment to Environmental Justice for All (2023)

- Establishes that EJ is “central to the implementation of our bedrock civil rights and environmental laws.”
- Requires agencies to identify and address **cumulative impacts** of pollution, climate change, and other burdens on EJ communities.
- Requires agencies to update and implement EJ strategic plans.
 - Should contain the agency's vision, goals, and actions to advance EJ and be updated every 5 years.
- Creates a White House Office of Environmental Justice.
- Creates a new federal definition for EJ.

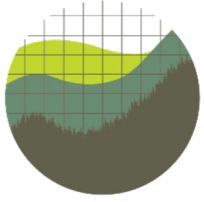
Environmental justice means the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, Tribal affiliation, or disability, in agency decision-making and other Federal activities that affect human health and the environment so that people:

- are fully protected from disproportionate and adverse human health and environmental effects (including risks) and hazards, including those related to climate change, the cumulative impacts of environmental and other burdens, and the legacy of racism or other structural or systemic barriers; and
- have equitable access to a healthy, sustainable, and resilient environment in which to live, play, work, learn, grow, worship, and engage in cultural and subsistence practices.



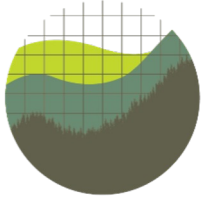
Federal Laws Related to EJ

- Executive Orders are the primary source of law on EJ.
- **Environmental laws** (Clean Air Act, Clean Water Act, Safe Drinking Water Act, etc.) sometimes have provisions related to considering vulnerable populations (i.e. children, elderly, disabilities, etc.) or cumulative environmental burdens, but do not specifically have EJ requirements in them.
 - When agencies implement environmental laws through rulemaking and guidance, they often incorporate the directives in EOs to include EJ considerations.



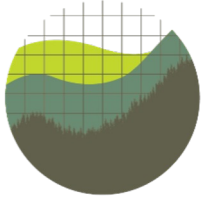
Federal Laws Related to EJ

- **Civil rights laws** (Title VI of the Civil Rights Act of 1964, Fair Housing Act of 1968, Americans with Disability Act) provide some limited protections to EJ communities.
 - None of the laws specifically focus on EJ.
 - Prohibit discrimination based on race and/or disability.
 - All have been applied in EJ contexts with some limited success.
- Recent **funding laws** provide substantial funding for EJ, “disadvantaged,” and/or “overburdened” communities.
 - **Bipartisan Infrastructure Law (Infrastructure Investment and Jobs Act)** and **Inflation Reduction Act (IRA)**: Both have provisions allocating billions of dollars towards “disadvantaged” and “overburdened” communities.



EJ Guidances

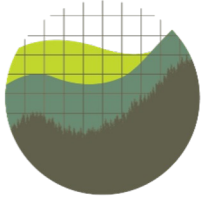
- **White House Council on Environmental Quality (CEQ)**
 - Environmental Justice National Environmental Policy Act (NEPA) Guidance (1997)
 - CEQ has oversight on how agencies implement NEPA.
 - NEPA requires agencies to assess the environmental effects of proposed major actions.
 - Provides specific recommendations on how to consider EJ in the NEPA processes.
 - In 2024 CEQ issued updated regulations on NEPA, which contained several new EJ provisions.
- **Environmental Protection Agency (EPA)**
 - Guidance on Considering Environmental Justice During the Development of a Regulatory Action (2010)
 - Step-by-step guide that helps EPA staff ask questions and evaluate EJ considerations at key points in the rulemaking process.
 - Technical Guidance for Assessing Environmental Justice in Regulatory Analysis (2016)
 - How staff should assess EJ issues in rulemaking in an analytical fashion.



Federal Tools for Identifying EJ Communities

- Agencies have developed various tools to help the general public and agency staff analyze EJ issues.
- **EJ Screen** (EPA) is a publicly available mapping and screening tool that combines environmental and socioeconomic data. Some agencies use EJ Screen as a tool when performing EJ analyses as part of their regulatory actions.





Federal Tools for Identifying EJ Communities

- **Climate and Economic Justice Screening Tool (CEJST)** is a geospatial tool designed by CEQ for agencies to identify disadvantaged communities who should benefit from Justice40 programs.

Climate and Economic Justice Screening Tool

Explore the map Methodology & data About Contact

Share data sources with CEQ

Explore the map

Census tracts that are overburdened and underserved are highlighted as being disadvantaged on the map. Federally Recognized Tribes, including Alaska Native Villages, are also considered disadvantaged communities.

Zooming in and selecting shows information about each census tract.

Get the data

Download the data with documentation and shapefile from the [downloads](#) page.

Search for an address, city, state or ZIP

How to use the map:

Zoom in , search , or locate yourself and select to see information about any census tract.

Things to know:

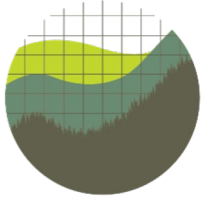
The tool uses census tracts . Census tracts are a small unit of geography. They generally have populations of between 1,200 - 8,000 people.

Communities that are disadvantaged live in tracts that experience burdens. These tracts are highlighted on the map.

The tool ranks most of the burdens using percentiles . Percentiles show how much burden each tract experiences when compared to other tracts.

Thresholds , or cutoffs, are used to determine if communities in a tract are disadvantaged. Certain burdens use percentages or a simple yes/no .

Land within the boundaries of Federally Recognized Tribes and point locations for Alaska Native Villages are highlighted on the map. These communities are also considered disadvantaged.



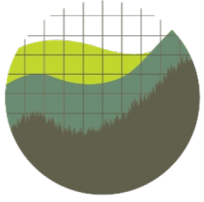
State EJ Laws & Policies

New Jersey & New York



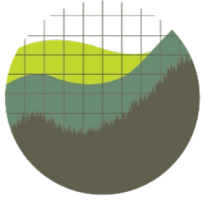
Kim Gaddy

Founder and Executive Director
South Ward Environmental Alliance



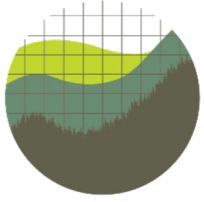
Key State EJ Laws and Policies in NJ and NY

- This training is a brief overview of NJ's and NY's EJ laws and policies.
- Today we will cover:
 - Executive EJ actions by Governors
 - Agency EJ actions
 - State EJ Laws



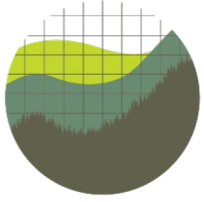
New Jersey

EJ Laws & Policies



New Jersey EJ Laws & Policies

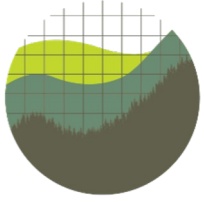
- Today we will cover:
 - New Jersey Governor's EJ Executive Order 23
 - Relevant state agencies/entities that make decisions affecting EJ communities
 - NJ's EJ Law (Cumulative Impacts Law)



NJ EJ Executive Order

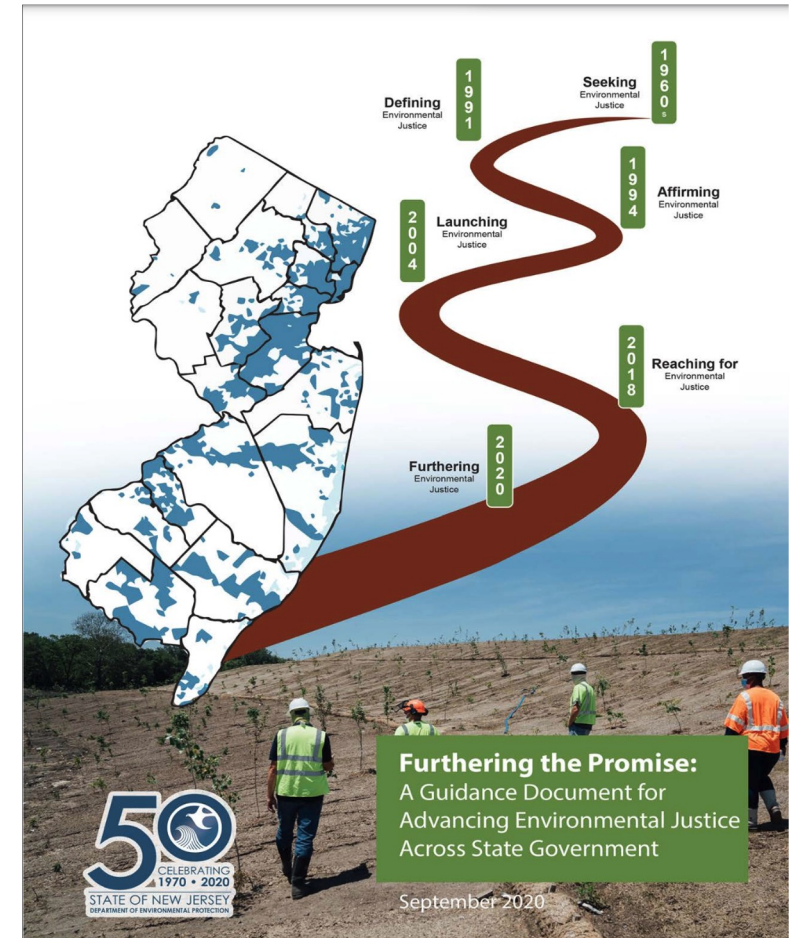
- Gov. Murphy's Executive Order 23, signed in 2018, ordered the Dept. of Environmental Protection (DEP) to create a guidance directing executive branch departments and agencies on how to consider EJ in implementing their statutory and regulatory responsibilities.

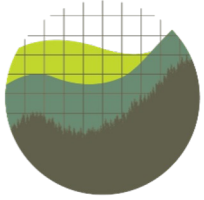




DEP Guidance on EJ

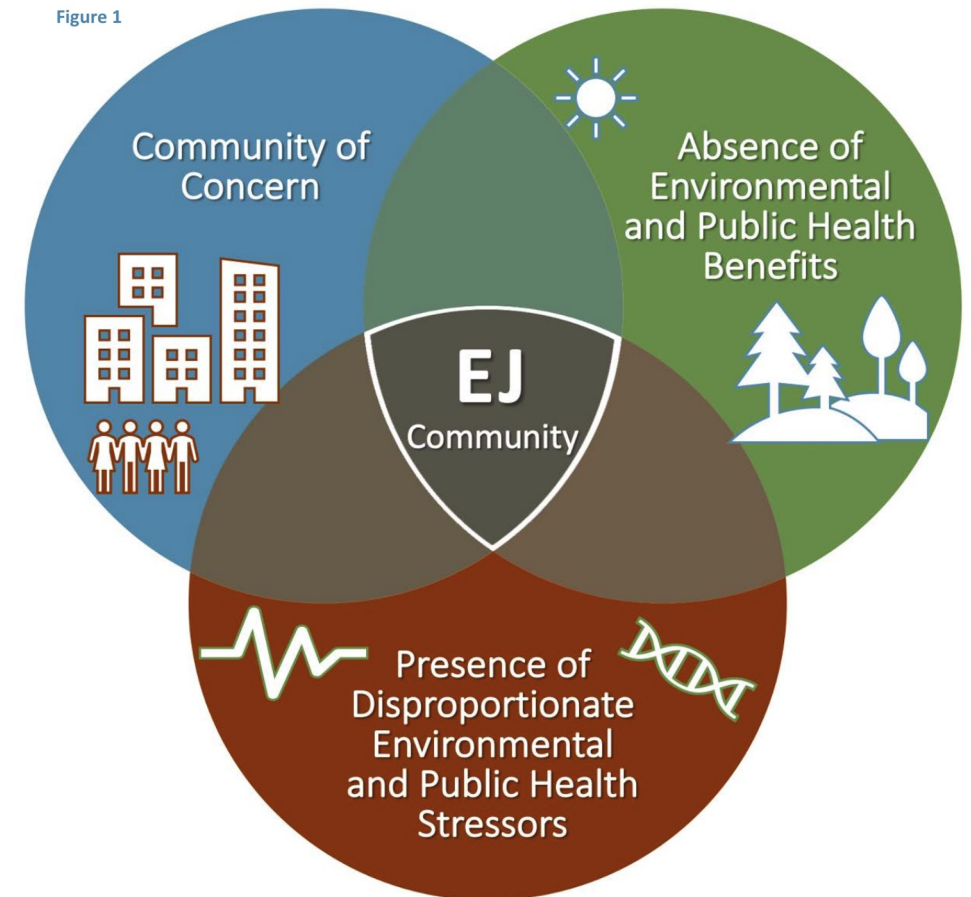
- In response to Executive Order 23, DEP issued an EJ guidance in September 2020 called *Furthering the Promise: A Guidance Document for Advancing Environmental Justice Across State Government.*

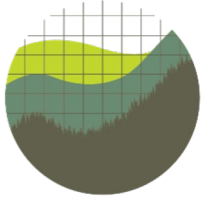




DEP Guidance on EJ

- The first step to ensuring EJ consideration across government is properly identifying EJ communities.
- Furthering the Promise identifies **three criteria** for identifying EJ communities.
 1. Presence in a community of concern;
 2. Presence of disproportionate environmental and public health stressors; and
 3. Absence or lack of environmental and public health benefits.
- New Jersey's Environmental Justice Mapping, Assessment, and Protection Tool (EJMAP) provides information on the presence of stressors and absence of benefits.

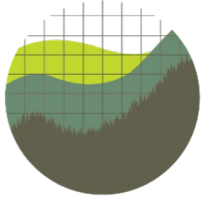




Which NJ Entities Do Work that Implicates EJ?

Statewide

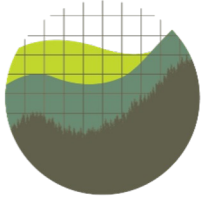
- New Jersey Department of Environmental Protection (NJDEP or DEP)
 - EJ Enforcement Initiative
 - Environmental Justice Advisory Council
 - NJ-GeoWeb
- New Jersey Board of Public Utilities (BPU)
- New Jersey Economic Development Authority (NJEDA)
- Department of Community Affairs (e.g. lead remediation & abatement, utility & energy bill assistance, home weatherization assistance)
- Department of Health (e.g., environmental and occupational health surveillance & assessment)



Which NJ Entities Do Work that Implicates EJ?

County- and Municipal-Level

- Counties and municipalities might have various agencies and departments that provide services that affect conditions in EJ communities. These entities could include:
 - Public works departments
 - Utility authorities
 - Entities overseeing water quality
 - Waste management entities
 - Housing and economic development departments
- For more examples, NJ has a searchable database of county, municipal, and local government services information. And EPA has a [list of some relevant city and county level agencies](#).

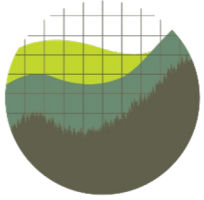


NJ EJ Law (Cumulative Impacts Law)

NJ's EJ Law was signed into law in 2020, and regulations that implement this law were finally adopted in 2023.

NJ's EJ Law has specific requirements:

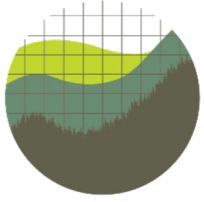
- Permit applicants must:
 - Prepare an EJ impact statement
 - Engage directly with members of their proposed host community
 - Collect all public comments and respond to them in writing
- DEP must:
 - Evaluate whether pollution from the proposed facility would **cause or contribute to environmental and public health stressors at levels disproportionate to those in less burdened communities**
 - Where disproportionate impacts are not avoidable, DEP could limit **certain new facilities or subject existing facilities to additional permit conditions** that reduce environmental and public health stressors affecting the community



NJ EJ Law (Cumulative Impacts Law)

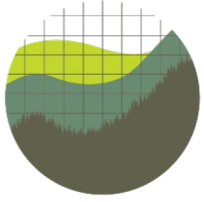
- **Eight types of facilities are covered by NJ's EJ Law:**
 - Major sources of air pollution (i.e., gas fired power plants and cogeneration facilities)
 - Resource recovery facilities or incinerators
 - Sludge processing facilities
 - Sewage treatment plants (with a capacity of more than 50 million gallons per day)
 - Transfer stations or solid waste facilities
 - Recycling facilities (at least 100 tons of recyclable material per day)
 - Scrap metal facilities
 - Landfills
 - Medical waste incinerators (except those attendant to hospitals and universities)
- Advocates, permit applicants and DEP can use DEP's Environmental Justice Mapping, Assessment and Protection (EJMAP) tool to identify OBCs.





New York

EJ Laws & Policies

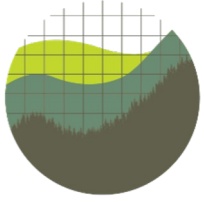


New York EJ Laws & Policies

- Today we will cover:
 - Climate Leadership & Community Protection Act
 - Relevant state agencies/entities that make decisions affecting EJ communities
 - NY's EJ Law

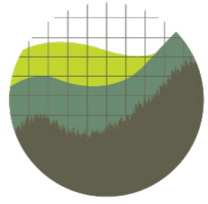


STAND WITH FRONTLINE COMMUNITIES IN OUR FIGHT FOR ENVIRONMENTAL JUSTICE, AGAINST THE RAVAGES OF TOXIC CHEMICALS AND CLIMATE CHANGE.



NY Climate Leadership & Community Protection Act (CLCPA)

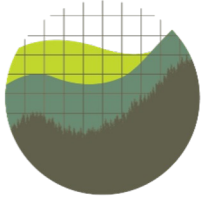
- In 2019, Gov. Cuomo signed New York’s CLCPA into law, which sets ambitious requirements for reducing statewide greenhouse gases.
- CLCPA includes provisions to ensure a more equitable approach to distributing energy investments and associated benefits.
- Benefits of Spending Goal: 35%, with a goal of 40%, of benefits of spending on clean energy and energy efficiency programs, projects, or investments shall flow to “disadvantaged communities” (DACs).
- Clean energy and energy efficiency issue areas include:
 - Housing
 - Workforce development
 - Pollution reduction
 - Low-income energy assistance
 - Energy
 - Transportation
 - Economic development



NY Climate Leadership & Community Protection Act (CLCPA)

CLCPA tasked a Climate Justice Working Group to develop criteria for determining DACs. DACs should be based on geographic, public health, environmental hazard, and socioeconomic criteria, including but not limited to:

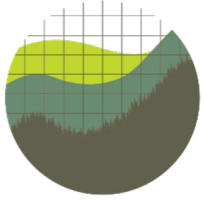
1. Areas burdened by cumulative environmental pollution and other hazards that can lead to negative public health effects.
2. Areas with concentrations people that are of low income, high unemployment, high rent burden, low levels of home ownership, low levels of educational attainment, or members of groups that have historically experienced discrimination on the basis of race or ethnicity.
3. Areas vulnerable to the impacts of climate change such as flooding, storm surges, and urban heat island effects.



Which NY Entities Do Work that Implicates EJ?

Statewide

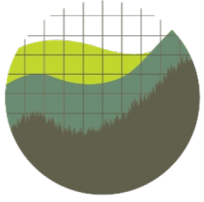
- Department of Environmental Conservation (DEC)
- New York State Environmental Research and Development Authority (NYSERDA)
- Department of Public Service (DPS)
- New York Siting Board
- New York Public Service Commission (NYPSC)



Which NY Entities Do Work that Implicates EJ?

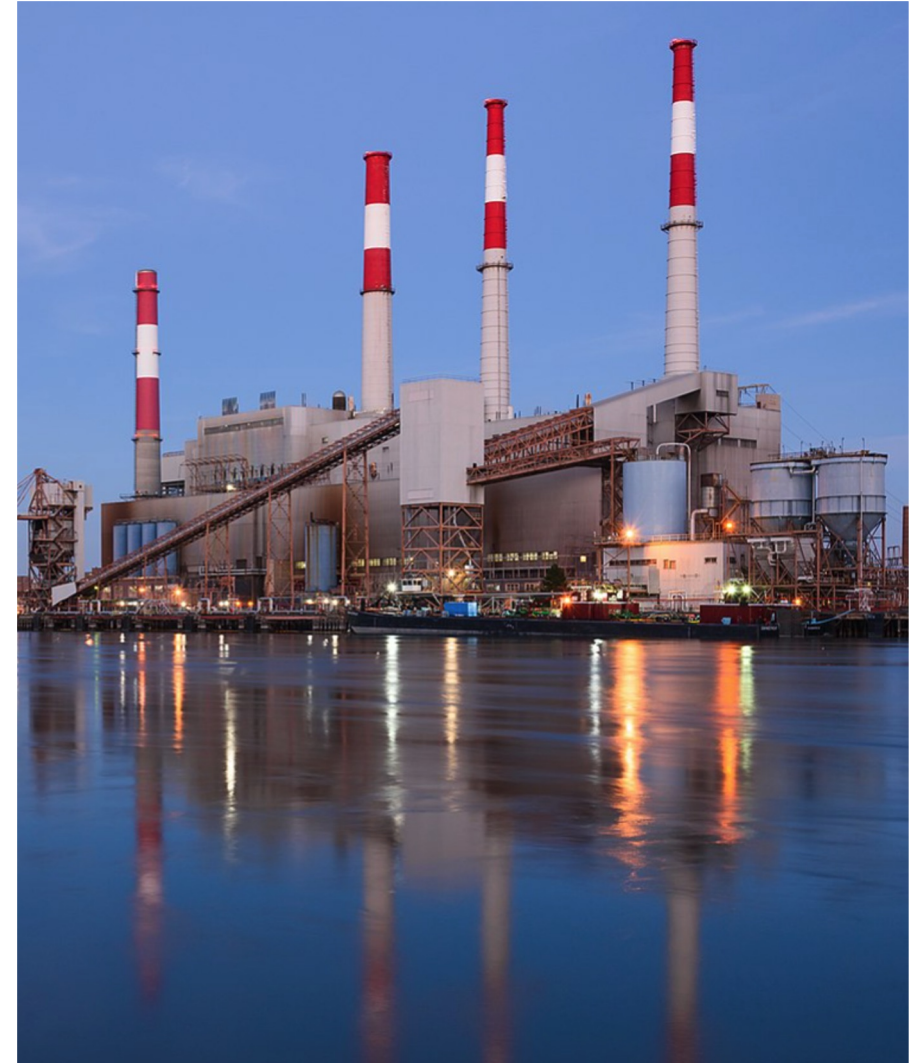
County- and Municipal-Level

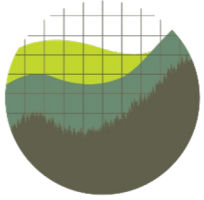
- Counties and municipalities might have various agencies and departments that provide services that affect conditions in EJ communities. These entities could include:
 - Public works departments
 - Utility authorities
 - Entities overseeing water quality
 - Waste management entities
 - Housing and economic development departments
- For more examples, NY has a [searchable database](#) of county, municipal, and local government services information. And EPA has a [list of some relevant NYC and county level agencies](#).



NY EJ Law

- In 2023, Gov. Hochul signed into law NY's EJ Law (2023), which requires analyzing and considering EJ issues when approving permit applications.
- NY's EJ Law:
 - Requires permit applicants to provide an existing burden report.
 - Grants DEC authority to deny new permits, permit modifications, and renewals if the project causes or contributes to a disproportionate pollution burden on the disadvantaged community.





Additional NY Laws, Policies, & Resources

- **Green Amendment to NY’s State Constitution**: In 2021, the people voted to amend the NY State Constitution to include environmental rights. This amendment states “[e]ach person shall have a right to clean air and water, and a healthful environment.”
- **New York State Environmental Quality Review Act (SEQRA or SEQR)**: An environmental review law that requires all local, regional, and state agencies to follow evaluate the environmental impacts and social and economic considerations for certain project actions.
- **Article 10 of New York’s Public Service Law**: Requires EJ considerations in the permitting of Major Electric Generating Facilities.
- **DEC Commissioner Policy 29 (CP-29)**: DEC must identify potential EJ areas during the permit review process.
- EJ Mapping & Tracking Tools
 - DEC’s Mapping Data
 - ArcGIS Webmap of Potential EJ Areas
 - Map developed through the Climate Justice Working Group’s work

Questions & Answers

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