

COLORADO

How Does Colorado Define Environmental Justice and Environmental Justice Communities?

Environmental Justice Definitions:

The Colorado Department of Transportation (CDOT) defines environmental justice¹ consistent with the definition established in EO 12898 as “the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws and policies.”²

Environmental Justice Mapping Tools:

Colorado Department of Public Health and Environment (CDPHE) developed its policy to address equity and justice in the administration of its programs has resulted in the development of a Community Health Equity Map (2013-2017 Data)³ containing socio-demographic and health data layers that identify specific geographic areas in Colorado with the most significant socio-economic and health-related disparities (i.e., “priority areas”).⁴ Further, CDPHE is working to incorporate Health Equity and Environmental Justice Principles⁵ into their work.

How Does Colorado Consider Environmental Justice in its Substantive Actions⁶?

Environmental Justice as a Policy of the Environmental Agency or Across All Agencies:

N/A.

Consideration of Environmental Justice in Permitting:

In June 2016 the CDPHE developed its policy to address equity and justice in the administration of its programs. Among other goals, this policy provided authority to integrate race, income, and health data into decision making and promoted collaboration with community partners. The policy requires environmental programs to consider equity and justice in

¹ CDOT, Appendix H: Environmental Justice (Aug. 20, 2020), available at https://www.codot.gov/programs/your-transportation-priorities/assets/appendixh_environmentaljustice.pdf.

² CDOT, *Environmental Justice*, <https://www.codot.gov/business/civilrights/titlevi/ej> (last visited June 28, 2022).

³ ArcGIS, CDPHE Community Health Equity Map (2013-2017 Data),

http://www.cohealthmaps.dphe.state.co.us/cdphe_community_health_equity_map/ (last visited July 8, 2022).

⁴ Env't Council of the States (ECOS), *Colorado's Incorporation of Environmental Justice in Permitting*, <https://www.ecos.org/news-and-updates/colorados-incorporation-of-environmental-justice-in-permitting/> (last visited June 28, 2022).

⁵ CDPHE, *Incorporation of Health Equity and Environmental Justice Principles* (June 2016), available at <https://drive.google.com/file/d/1wZzxB3z6g7tWPP4hVTOqsept-S05yCLZ/view>.

⁶ Substantive is defined as governing the original rights and obligations of individuals. Cornell L. Sch., LII, *Wex Legal Encyclopedia*, https://www.law.cornell.edu/wex/substantive_law (last visited June 28, 2022).

monitoring, permitting, compliance and enforcement, and technical assistance and voluntary programs. In order to support the goals of the policy, the environmental programs developed a set of guidance documents, one of which is the department’s plan to ensure stakeholders in areas with known socio-economic and health-related disparities are given a fair opportunity to participate in environmental permitting processes that may have public health or environmental impacts. This guidance was published in May 2017 and has resulted in the identification of a specific subset of permits considered “target permits,” which are those that have the highest potential for significant public health and/or environmental impacts and the development of a screening process to identify target permits within a priority area. Enhanced public outreach must be conducted for these permits.⁷

Consideration of Environmental Justice in Enforcement:

In 2020, Colorado increased both its civil and criminal penalties for air and water quality violations.⁸ Daily civil fines increased from \$10,000 to \$54,833⁹ while daily criminal fines increased from \$12,000 to \$25,000.¹⁰

Consideration of Environmental Justice in Land Use:

N/A.

State Environmental Policy Act “Mini-NEPA”:

The Colorado Department of Transportation (CDOT) has its own mini-NEPA that assists and supports the five CDOT regions in the state in preparation of high quality NEPA documents. This mini-NEPA builds and facilitates training and provides guidance for various entities to follow the national NEPA guidelines.¹¹

Dedicated Funding to Environmental Justice Communities:

N/A.

Consideration of Cumulative Impacts:

N/A.

Prohibitions on Disparate Impact Discrimination:

N/A.

⁷ ECOS, *Colorado’s Incorporation of Environmental Justice in Permitting*, <https://www.ecos.org/news-and-updates/colorados-incorporation-of-environmental-justice-in-permitting/> (last visited June 28, 2022).

⁸ Colo. Rev. Stat. Ann. §20-1143.

⁹ *Id.* (§ 2 25-8-608).

¹⁰ *Id.* (§ 3 25-8-609).

¹¹ CDOT, *NEPA*, <https://www.codot.gov/programs/environmental/nepa-program> (last visited July 8, 2022).

Established Environmental Rights:

N/A.

How Does Colorado Address Environmental Justice in its Procedures¹²?

Environmental Justice as Part of Environmental Agency's Mission:

N/A.

Environmental Justice as Part of Other Agency's Mission:

N/A.

Processes and Procedures (including Title VI):

- Non-Discrimination Policy:

N/A.

- Grievance Procedures:

N/A.

- Enhanced Public Participation and Information Access:

CDPHE developed its Community Participation Principles policy¹³ to address equity and justice in the administration of its programs has resulted in an enhanced outreach strategy, including: “mechanisms to purposefully identify and engage non-traditional community stakeholders; ways to encourage the regulated entity to engage with the community; improved processes to accept public comment; improved communication techniques; and ultimately, how to incorporate community input into a permit.” The policy has also pushed the agency to develop “mechanisms to evaluate the impacts of enhanced outreach including questionnaires that can be distributed to the community, the source, and internal staff.”¹⁴

- Language Access:

¹² Procedural is defined as rules and the methods used to ensure the rights of individuals. Cornell L. Sch., LII, *Wex Legal Encyclopedia*, https://www.law.cornell.edu/wex/procedural_law (last visited June 28, 2022).

¹³ CDPHE, Incorporation of Community Participation Principles (Oct. 17, 2018), available at https://drive.google.com/file/d/1uW3Oj06pfMUeBKGLMP71_57aBjq-HkLc/view (last visited July 8, 2022).

¹⁴ ECOS, *Colorado's Incorporation of Environmental Justice in Permitting*, <https://www.ecos.org/news-and-updates/colorados-incorporation-of-environmental-justice-in-permitting/> (last visited June 28, 2022).

The CDPHD has a policy enacted for Communicating with People with Limited English Proficiency.¹⁵

- *Consultation with Indigenous Communities and Tribal Nations:*

The Colorado Commission on Indian Affairs has published and maintains a State-Tribal Consultation Guide that strives to achieve meaningful tribal consultation¹⁶ through State-Tribal Consultation Agreements. Currently, CDPHE has signed a Tribal Consultation Agreement in 2011 to work on a government-to-government basis with the Ute Mountain Ute and Southern Ute Indian Tribes on health and health care related issues.¹⁷ The two main requirements of the consultation agreement are (1) Tribes and State agencies meet at least one fiscal year and (2) that each State agency provide a Programmatic Action Log Update on a bi-monthly basis.¹⁸ The full agreement is also available.¹⁹

Governmental Environmental Justice Structures, Positions, and Funding Streams:

- *Environmental Justice Coordinating Agency:*

N/A.

- *Environmental Justice Coordinator:*

- Nondiscrimination: Title VI of the Civil Rights Act - <https://www.codot.gov/business/civilrights/titlevi> - Nondiscrimination: Title VI of the Civil Rights Act: 2829 W. Howard Pl. Denver Colorado, 80204, (303) 757-9234; (800) 925-3427; dot_civilrights@state.co.us.

- *Environmental Justice Advisory Board:*

An Environmental Justice Advisory Board, resides within the Department of Public Health and Environment.²⁰ Pending review, the board will cease to exist on Sept.

¹⁵ ECOS, *Dep't Policy 9.8 Communicating with People with Limited English Proficiency* (rev. Aug. 2013), available at <https://cdphe.colorado.gov/department-policy-98-communicating-with-people-with-limited-english-proficiency> (last visited July 8, 2022).

¹⁶ Colo. Comm'n of Indian Affairs, *State-Tribal Consultation Guide: An Introduction for Colorado State Agencies to Conducting Formal Consultations with Federally Recognized American Indian Tribes* (July 2014), at p.8 (“Meaningful Tribal Consultation” is defined as consultation that is the open and mutual exchange of information integral to effective collaboration, participation, and informed decision making, with the ultimate goal of reaching consensus on issues. Consultation is the development of a relationship based on trust, an effort to understand and consider any effects an undertaking may have on the consulting parties. Meaningful consultations are typically based on mutually agreed-upon written protocols for timely communication, coordination, cooperation, and collaboration.)

¹⁷ *Id.* at p.13.

¹⁸ *Id.*

¹⁹ *Id.* at pp.14-19.

²⁰ Colo. Rev. Stat. Ann. § 25-1-134(2)(a).

1, 2027.²¹ While there are no community seats, there is an environmental justice ombudsperson position within the department who serves as chief staff to the advisory board and advocates for environmental justice communities.²² This committee also recommends environmental mitigation projects which avoid, minimize, or mitigate the adverse effects of a violation or alleged violation of the air quality or water quality laws.²³

- *Funding for Environmental Justice:*

CDOT has published Title VI Requirements for FHWA Subrecipients²⁴ which outlines how subrecipients should submit a Title VI plan, provide a language assistance plan, identify and address environmental justice issues, and general compliance requisite for receipt of funds.

Additional Colorado Environmental Justice Provisions?

While there are no explicit mentions of environmental justice, Colorado has recently enacted legislation to restrict and regulate PFAS.²⁵

Colorado Environmental Justice Contacts?

N/A.

Where to Find Colorado Environmental Justice Laws, Policies, and Tools?

Constitutional Provisions:

N/A.

Executive Orders:

N/A.

Legislation and Statutes:

- Environmental Justice Advisory Committee, CO HB1143 (2020).
- PFAS, CO HB1345 (2022).

Regulations:

²¹ Colo. Rev. Stat. Ann. § 25-1-134(2)(h).

²² Colo. Rev. Stat. Ann. § 25-1-134(1).

²³ Colo. Rev. Stat. Ann. § 25-1-134(2)(g)(VII).

²⁴ CDOT, Title VI Requirements for FHWA Subrecipients (Aug. 2020), available at <https://www.codot.gov/business/civilrights/titlevi/title-vi-assets/fhwa-subrecipient-guidance-final-2020.pdf>.

²⁵ CO HB 1345 (2022), <https://leg.colorado.gov/bills/hb22-1345>.

- ECOS Colorado’s Incorporation of Environmental Justice in Permitting, <https://www.ecos.org/news-and-updates/colorados-incorporation-of-environmental-justice-in-permitting/>.
- CODOT Environmental Justice, <https://www.codot.gov/business/civilrights/titlevi/ej>.

Policies/Guidance:

N/A.

Mapping Tools:

N/A.

Other:

N/A.