

INDIANA

How Does Indiana Define Environmental Justice and Environmental Justice Communities?

Environmental Justice Definitions:

As discussed in the Hastings Report, a majority of Indiana’s environmental justice actions occur within the Indiana Department of Environmental Management (IDEM).¹ The department uses the term “environmental stakeholder inclusion” (ESI) to refer to initiatives that involve components of environmental justice. The ESI program centers on enhanced customer service to all stakeholders.² The ESI policy of IDEM is to “provide fair treatment and meaningful involvement to all people, regardless of race, color, gender, national origin, geographic location or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies within the agency’s jurisdiction.”³

IDEM generally defines EJ populations on the following sensitivity demographics: low income, low education level (less than high school education), linguistically isolated, and minority.⁴ IDEM uses the US EPA EJ Screen and values exceeding the 80th percentile on these demographics.⁵ IDEM also uses criteria provided by the Climate & Economic Justice Screening Tool.⁶

Records of the environmental justice plans and documents discussed in the Hastings Report, such as the 2001 Environmental Justice Strategic Plan and the 2008 Environmental Justice Policy can no longer be located on the IDEM’s website, nor have there been updated initiatives and regulations focused specifically on environmental justice or environmental stakeholder inclusion initiatives.⁷

Environmental Justice Mapping Tools:

IDEM uses US EPA EJScreen 2.0 and the Climate & Economic Justice Screening Tool for mapping.⁸

How Does Indiana Consider Environmental Justice in its Substantive Actions⁹?

¹ See *Environmental Justice for All: A Fifty State Survey of Legislation, Policies, and Cases* (Steven Bonorris ed., 3th ed. 2010) note 1 at p.82 [*hereinafter* Hastings Report].

² Survey response from Robert Lugar, Assistant Commissioner, IDEM, to Vt. L. Sch. Env’t Justice Clinic, at p.1 (July 11, 2022) (on file with author).

³ IDEM, Nondiscrimination Policy, No. A-008-AW-18-P-R5 (rev. Sept. 13, 2018), available at https://www.in.gov/idem/health/files/idem_policy_A-008-AW-18-P-R5.pdf.

⁴ Lugar, *supra* note 2.

⁵ *Id.*

⁶ *Id.*

⁷ Hastings Report, *supra* at pp.82-83.

⁸ Lugar, *supra* note 2, at p.2.

⁹ 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 29, 2022).

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

N/A.

Consideration of Environmental Justice in Permitting:

N/A.

Consideration of Environmental Justice in Enforcement:

N/A.

Consideration of Environmental Justice in Land Use:

N/A.

State Environmental Policy Act “Mini-NEPA”:

While Indiana does not have laws explicitly addressing or defining environmental justice, the state does have the Indiana Environmental Policy Act (IEPA).¹⁰ IEPA is a state version of the National Environmental Policy Act (NEPA) and requires state agencies to follow many of the same actions that federal agencies must follow under NEPA.¹¹

IEPA mirrors NEPA’s language and procedural focus in many sections. However, IEPA does not require public comment during the preparation of Environmental Assessments (“EA”) and Environmental Impact Statements (“EIS”) as is required under NEPA.¹² Instead, IEPA requires the preparing authority to solicit comments from all state agencies with “jurisdiction by law or special expertise” before making an EIS.¹³ The resulting statement must be made available to the public as must information “useful in restoring, maintaining, and enhancing the quality of the environment.”¹⁴ An EIS under IEPA should include the adverse impacts of an action, alternatives to the action, an analysis of short-term benefits compared with the costs of long-term maintenance and impact of long-term effects, as well as any irreversible consequences of the action.¹⁵ IEPA also includes exceptions, categorical exclusions, does not require an EIS for licenses or permits issued by state agencies, and is not required in situations where NEPA already applies.¹⁶ Furthermore, IEPA does not require agencies to give preference to the least impactful alternatives, contrasting from some state level NEPA laws.¹⁷

IEPA has been recognized as being vague, failing to outline exactly what actions or what

¹⁰ See Ind. Code § 13-12-4.

¹¹ See 42 U.S.C. §§ 4321-4370; Ind. Code § 13-12-4.

¹² See Ind. Code § 13-12-4-5.

¹³ See *Id.*

¹⁴ See *Id.*

¹⁵ See *Id.*

¹⁶ See *Id.* §13-12-4-8.

¹⁷ See Ind. Code § 13-12-4-5.

definitions of “environment” are covered by the act.¹⁸ Further research indicates that the act has not yet been litigated, and thus its usefulness in an environmental justice context is unclear. Without the ability for public participation, IEPA only serves as a public record of information gathered and alternatives considered after a state action has occurred. This information may be useful for advocates or practitioners working on future cases or policies, but is not necessarily helpful to those impacted by the decision discussed and evaluated under IEPA.

Dedicated Funding to Environmental Justice Communities:

N/A.

Consideration of Cumulative Impacts:

N/A.

Prohibitions on Disparate Impact Discrimination:

N/A.

Established Environmental Rights:

N/A.

How Does Indiana Address Environmental Justice in its Procedures¹⁹?

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:*

IDEM does have a non-discrimination policy to “ensure that the agency and agency staff treat all members of the public equally and fairly with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies within the agency.”²⁰

¹⁸ Jeffrey L. Carmichael, The Indiana Environmental Policy Act: Casting a New Role for a Forgotten Statute, 70 IND. L.J. 613, 655 (1995).

¹⁹ 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 29, 2022).

²⁰ IDEM, Nondiscrimination Policy, No. A-008-AW-18-P-R5 (rev. Sept. 13, 2018), available at https://www.in.gov/idem/health/files/idem_policy_A-008-AW-18-P-R5.pdf.

- Grievance Procedures:

The IDEM does maintain a contact list with numbers and emails of agency employees that can respond specifically to environmental justice focused inquiries.²¹

- Enhanced Public Participation and Information Access:

- N/A.

- Language Access:

See section on “*Environmental Justice Coordinator*.” Additionally, web pages can be translated via the Google Translation app.

- Consultation with Indigenous Communities and Tribal Nations:

In 2016, the Bureau of Indian Affairs (BIA) returned 166 acres of homeland to the Pokagon Band of Potawatomi.²² This land, located in South Bend, Indiana, is the first sovereign tribal land in the modern state of Indiana.²³ South Bend border borders Michigan and the tribe is active in both states.²⁴ The tribe plans to use the land to provide healthcare, housing, support, and educational opportunities for its members.²⁵ Additionally, the Pokagon Band of Potawatomi allows members to directly submit suggestions and comments to its Department of Natural Resources via an online form on its website.²⁶

Governmental Environmental Justice Structures, Positions, and Funding Streams;

- Environmental Justice Coordinating Agency:

The environmental justice coordinating agency in Indiana is IDEM.

- Environmental Justice Coordinator:

IDEM has an environmental stakeholder inclusion coordinator.²⁷ IDEM's environmental stakeholder inclusion coordinator arranges for requested accommodations, such as arranging for translation and interpretation services, compliance with the ADA,

²¹ IDEM, *Contact*, <https://www.in.gov/idem/ops/2284.htm> (last visited June 29, 2022).

²² See Pokagon Band of Potawatomi, *Indiana Land Restoration*, <https://www.pokagonband-nsn.gov/government/indiana-land-restoration> (last visited June 29, 2022).

²³ See *Id.*

²⁴ See *Id.*

²⁵ See *Id.*

²⁶ Pokagon Band of Potawatomi, *Natural Resources*, <https://www.pokagonband-nsn.gov/government/departments/natural-resources> (last visited June 29, 2022).

²⁷ See IDEM, *Environmental Stakeholder Inclusion*, <https://www.in.gov/idem/health/environmental-stakeholder-inclusion/> (last visited June 29, 2022).

or providing explanatory documents in simplified English.²⁸ The coordinator also arranges assistance as requested by IDEM or “external stakeholders.”²⁹

- *Environmental Justice Advisory Board:*

N/A.

- *Funding for Environmental Justice:*

Community Development Block Grants (“CDBG”) is a program through the Indiana Office of Community and Rural Affairs (“OCRA”).³⁰ These grants are given out on a quarterly basis to help communities with economic development, COVID-19 response costs, blight clearance, infrastructure improvements, and other needs and initiatives that the community would require outside financial assistance with.³¹ The CDBG program is an offshoot of a federal funding program and requires the area to have majority low- and moderate-income residents, as defined by the federal program’s guidelines.³² Each round of funding seems to target a different issue, such as water quality improvement, but the underlying goal of the grants are to prevent blight and improve community conditions.³³ Additionally, the CDBG website links users to various environmental mapping and environmental justice tools hosted on the Environmental Protection Agency’s website, although it does not require them to use these tools to prepare a grant application.³⁴

Additional Indiana Environmental Justice Provisions?

As discussed in the Hastings Report, there is still A Citizen’s Guide to IDEM available online which provides a comprehensive overview of public participation, permitting, remediation, environmental procedures and laws.³⁵ The Guide also contains a list of resources for stakeholders, contact information for various departments, and links to permit or policy specific webpages.³⁶ This guide is available in both English and Spanish online and is specifically designed to show “how citizens can participate when IDEM makes decisions.”³⁷

Indiana Environmental Justice Contacts?

²⁸ See *Id.*

²⁹ See *Id.*

³⁰ See generally Ind. Off. of Cmty. & Rural Aff., *Community Development Block Grants*, <https://www.in.gov/ocra/cdbg/> (last visited June 29, 2022).

³¹ See *Id.*

³² See *Id.*

³³ See *Id.*

³⁴ See *Id.*

³⁵ See IDEM, *Citizens’ Guide to IDEM [ZIP]*, <https://www.in.gov/idem/resources/citizens-guide-to-idem/#:~:text=The%20Citizens'%20Guide%20to%20IDEM,law%20to%20develop%20a%20rule> (last visited June 29, 2022).

³⁶ See *Id.* at 69-82.

³⁷ See *Id.*

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

Constitutional Provisions:

N/A.

Executive Orders:

N/A.

Legislation and Statutes:

N/A.

Regulations:

N/A.

Policies/Guidance:

N/A.

Mapping Tools:

N/A.

Other:

What was most notable when updating research was the amount of state environmental justice information and documents that are no longer available online. This suggests that there may have been a regression of state environmental justice policies over the past ten years. It also appears that the Indiana government changed websites. It is possible that these documents just did not make the transfer. Whatever the reason, the lack of these documents suggest that they are

no longer representative of the government's stance on environmental justice and are no longer used. Additionally, Indiana seems to follow the minimum federal environmental justice requirements for implementing federal programs.