

MONTANA

How Does Montana Define Environmental Justice and Environmental Justice Communities?

Environmental Justice Definitions:

N/A.

Environmental Justice Mapping Tools:

N/A.

How Does Montana Consider Environmental Justice in its Substantive Actions¹?

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

Montana's code establishes that it is state policy

to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which humans and nature can coexist in productive harmony, to recognize the right to use and enjoy private property free of undue government regulation, and to fulfill the social, economic, and other requirements of present and future generations of Montanans.²

Consideration of Environmental Justice in Permitting:

Montana's Major Facility Siting Act prohibits construction, operation, or maintenance of most energy generation or transmission facilities without first obtaining a Certificate of Environmental Compatibility and Public Need from the Montana Department of Natural Resources and Conservation (DNRC).³ The Act was passed in implementation "of [Montana's] constitutional obligations under Article II, section 3, and Article IX of the Montana Constitution."⁴ Among its many purposes, the act is meant to ensure consideration of socioeconomic impacts, and provide citizens with opportunities to participate in facility siting decisions.⁵ Before the issuance of a certificate, DNRC must find "that the facility will serve the public interest, convenience, and necessity," including an assessment of the "effects on public health, welfare and safety."⁶ While this statute does not explicitly reference "environmental

¹ 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 30, 2022).

² Mont. Code Ann. 75-1-103.

³ Mont. Code Ann. 75-20-102.

⁴ Mont. Code Ann. 75-20-102(1).

⁵ Mont. Code Ann. 75-20-102(5)(b) and (c).

⁶ Mont. Code Ann. 75-20-301(1)(f) and 2(d).

justice,” it presents significant opportunities for environmental justice communities to participate in the decision making process.

Consideration of Environmental Justice in Enforcement:

The Montana Department of Environmental Quality (DEQ) has issued a *Supplemental Environmental Projects Policy*, which encourages environmental “violators to take actions that reduce the risk of further pollution, benefit public health, restore and protect the environment, and/or promote environmental compliance.”⁷ As with other states, Montana defines a Supplemental Environmental Project (SEP) as an otherwise not required project that “a violator agrees to undertake in settlement, in lieu of paying a portion of a cash penalty assessed for an environmental violation.”⁸ In determining the amount of credit for each dollar spent on a SEP, among other factors, Montana DEQ may consider how well SEPs may “mitigate damage or reduce risk to minority or low-income populations that have been disproportionately exposed to pollution, or are at environmental risk.”⁹

Consideration of Environmental Justice in Land Use:

N/A.

State Environmental Policy Act “Mini-NEPA”:

Montana law requires that state agencies “... must conduct an environmental review when making decisions or planning activities that may have an impact on the environment.”¹⁰ Additionally, “[t]he environmental review process applies not only to actions initiated by the agency, but also to the issuance of state permits and licenses.”

Dedicated Funding to Environmental Justice Communities:

N/A.

Consideration of Cumulative Impacts:

N/A.

Prohibitions on Disparate Impact Discrimination:

N/A.

Established Environmental Rights:

⁷ MDEQ, *Supplemental Environmental Projects Policy* (March 2017) at p.1, available at: https://deq.mt.gov/files/DEQAdmin/ENF/Documents/SEP_Policy_Final.pdf (last accessed June 2022).

⁸ *Id.*

⁹ *Id.* at p.11.

¹⁰ Montana Code Ann. § 75-01-101.

Montana’s Constitution commits the state to “maintain and improve a clean and healthful environment in Montana for present and future generations.”¹¹ The Montana Supreme Court ruled unanimously in 1999 that this right to a clean and healthful environment was a fundamental right, and one that is meant to be preventative in nature.¹² The state legislature is required to provide adequate remedies for the protection of “the environmental life support system” from degradation, and the prevent unreasonable depletion of natural resources.¹³

Montana has also has general established protections for the environment.

The legislature recognizes that each person is entitled to a healthful environment, that each person is entitled to use and enjoy that person's private property free of undue government regulation, that each person has the right to pursue life's basic necessities, and that each person has a responsibility to contribute to the preservation and enhancement of the environment. The implementation of these rights requires the balancing of the competing interests associated with the rights by the legislature in order to protect the public health, safety, and welfare.¹⁴

How Does Montana Address Environmental Justice in its Procedures¹⁵?

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:*

The Montana Department of Transportation’s (MDT) environmental manual provides “guidance and procedures for identifying minority and low-income populations that MDT projects potentially may affect and for addressing environmental justice principles in accordance with Title VI, Executive Order 12898, DOT Order 5610.2, DOT

¹¹ Mont. Const., art. IX, § 1.

¹² *Mont. Env’t Info. Ctr. v. Dep’t of Env’t Quality*, 988 P.2d 1236 (Mont. 1999) (original suit challenged Montana DEQ’s allowing the pumping of millions of gallons of arsenic-tainted water into the Landers Fork and Blackfoot Rivers); *See also* Mont. Env’t Info. Center, “Montana’s Right to a Clean & Healthful Environment,” <https://meic.org/issues/constitution-of-montana-and-mepa/clean-healthful-environment/#:~:text=In%20a%201999%20landmark%20decision,to%20be%20preventative%20in%20nature> (last visited June 30, 2022).

¹³ Mont. Const., art. IX, § 1.

¹⁴ Mont. Code Ann. 75-1-103(3).

¹⁵ 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 30, 2022).

Order 6640.23”¹⁶ The manual sets out procedures to ensure compliance with federal mandates through preliminary information gathering, analysis and the identification of mitigation measures.¹⁷

- *Grievance Procedures:*

N/A.

- *Enhanced Public Participation and Information Access:*

N/A.

- *Language Access:*

N/A.

- *Consultation with Indigenous Communities and Tribal Nations:*

N/A.

Governmental Environmental Justice Structures, Positions, and Funding Streams;

- *Environmental Justice Coordinating Agency:*

N/A.

- *Environmental Justice Coordinator:*

N/A.

- *Environmental Justice Advisory Board:*

N/A.

- *Funding for Environmental Justice:*

N/A.

Additional Montana Environmental Justice Provisions?

N/A.

Montana Environmental Justice Contacts?

N/A.

¹⁶ Mont. Dept. of Transp., *Environmental Manual* (Oct. 2010), ch.24, <https://www.mdt.mt.gov/publications/docs/manuals/env/Chapter%2024%20ENVIRONMENTAL%20JUSTICE.pdf> (last accessed June 2022).

¹⁷ *Id.* at pp.24-8 to 24-11.

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

Constitutional Provisions:

- Montana Constitution, art. IX, § 1.

Executive Orders:

N/A.

Legislation and Statutes:

- Montana Code Ann. 75-20-102 (1), (5)(b) and (c).
- Montana Code Ann. 75-20-301(1)(f) and 2(d).

Regulations:

N/A.

Policies/Guidance:

- Supplemental Environmental Projects Policy (March 2017):
https://deq.mt.gov/files/DEQAdmin/ENF/Documents/SEP_Policy_Final.pdf.

Mapping Tools:

N/A.

Other:

N/A.