

NEW MEXICO

How Does New Mexico Define Environmental Justice and Environmental Justice Communities?

Environmental Justice Definitions:

New Mexico Environmental Department (NMED) defines environmental justice on its webpage as “the fair treatment and meaningful opportunities for involvement of all New Mexicans regarding the development and enforcement of environmental laws and regulations.”¹

The NMED Final Report on Environmental Justice in New Mexico (2004) defined environmental justice as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.”²

The Albuquerque-Bernalillo Air Quality Control Board defines environmental justice as “the fair treatment of all residents (in the city of Albuquerque and Bernalillo county), including communities of color and low income communities, and their meaningful involvement in the development, implementation and enforcement of environmental laws, regulations and policies regardless of race, color, ethnicity, religion, income or education level.”³

Environmental Justice Mapping Tools:

New Mexico has an environmental justice mapping tool that shows different facilities, permits, pollution, demographic data, and tribal lands. Available at <https://gis.web.env.nm.gov/oem/?map=egis>.

The 2021 Environmental [Database Act](#) requires that a website be built with all publicly available information from state agencies.⁴ This will compile all of the already publicly available information into one, easy-to-search location. As of yet, (6/16/21) the database is not yet available to the public.

How Does New Mexico Consider Environmental Justice in its Substantive Actions⁵?

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

¹ See NMED, *Equity*, <https://www.env.nm.gov/general/environmental-justice-in-new-mexico/> (last visited July 1, 2022).

² NMED, Final Report on Environmental Justice in New Mexico (2004), available at <https://www.env.nm.gov/wp-content/uploads/sites/10/2019/10/NMEDFinalReport-Dec07-04.pdf>

³ 20.11.82.7.F NMAC.

⁴ N.M. Leg. 2021 HB 51 (N.M. 2021) available at <https://www.nmlegis.gov/Legislation/Legislation?chamber=H&legtype=B&legno=51&year=21>.

⁵ 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 July 1, 2022).

N/A.

Consideration of Environmental Justice in Permitting:

Executive Order 2005-056 requires all agencies to utilize public health and environmental data to address impacts in low-income communities and communities of color and in determining permitting, compliance, enforcement, and remediation of industrial and commercial facilities.⁶

In addition, owners and operators of landfills in the state must be trained every 3 years in environmental justice.⁷ Further, if an applicant seeks an initial permit for a landfill or a transformation facility, or a permit modification involving a lateral or vertical expansion, (excluding an on-site scrap tire monofil) in a vulnerable area, certain additional requirements apply.⁸ A vulnerable area is defined as an area within a four mile radius from the proposed facility that (1) has a percentage of economically stressed households greater than the state percentage within any square mile within the four mile radius surrounding the facility or proposed facility; (2) at least 50 people within any square mile within the four-miles that is in New Mexico, and (3) three or more regulated facilities not including the applicant's facility.⁹

If the application is for a vulnerable area and the area has not been designated for the proposed use as the result of a land-use zoning process conducted by the local government that requires a quasi-judicial public hearing, with the opportunity for public participation, the applicant must follow certain procedures, including: enhanced notice, a community meeting, and a 60-day comment period.¹⁰ If there is significant community opposition to the application, the applicant must prepare a community impact assessment, hold additional meetings, and take additional public comment. The community impact assessment must address 46 factors in the four-mile radius around the facility, including socioeconomic impacts, litter, noise, health and safety, cumulative impacts, the area's demographics for environmental justice purposes, and any environmental justice mitigation measures they will take.¹¹ The applicant must demonstrate that the permit will not have a disproportionate impact on the health and environment of a particular socioeconomic group in a vulnerable area.¹²

Consideration of Environmental Justice in Enforcement:

⁶ N.M. Exec. Order 2005-056, available at https://www.env.nm.gov/wp-content/uploads/sites/10/2019/10/EO_2005_056.pdf.

⁷ 20.9.7.8 NMAC.

⁸ 20.9.3.8 NMAC. See also NMED, *Env't Justice*, <https://www.env.nm.gov/solid-waste/environmental-justice/> (last visited July 1, 2022).

⁹ 20.9.2.7(V) NMAC.

¹⁰ 20.9.3.8 NMAC.

¹¹ 20.9.3.8(D) NMAC.

¹² 20.9.3.8(E) NMAC.

Executive Order 2005-056 directs all cabinet level agencies to utilize available environmental and public health data to address impacts in low-income communities and communities of color as well as in determining enforcement and remediation of existing and proposed industrial and commercial facilities.

Consideration of Environmental Justice in Land Use:

N/A.

State Environmental Policy Act “Mini-NEPA”:

N/A.

Dedicated Funding to Environmental Justice Communities:

N/A.

Consideration of Cumulative Impacts:

The New Mexico Environmental Department is organized by medium (air, drinking water, etc.). There is informal cumulative evaluation done within a department such as an analysis of the cumulative effects of air pollution. But there is not robust cumulative evaluation between mediums, such as the cumulative impacts of water and air pollution.

In 2005, the New Mexico Supreme Court issued a decision in *re: Application of Rhino Env't Services*¹³ ruling that NMED had to consider environmental justice factors, such as the socioeconomic status of the population, the cumulative environmental impacts borne by the community and the social impact of living in an area surrounded by waste sites – during solid waste facility permitting decisions.¹⁴

Prohibitions on Disparate Impact Discrimination:

Other than the waste siting regulation discussed above, New Mexico does not have a prohibition on disparate impact discrimination. Executive Order 2005-056 states that programs and policies to protect human health and the environment “shall be reviewed annually to ensure that program implementation and dissemination of information meet the needs of low-income and communities of color and seek to address disproportionate exposure to environmental hazards and risks.”

Established Environmental Rights:

¹³ *In re Application of Rhino Env't Services*, 117 P.3d 939 (N.M. 2005), available at <https://law.justia.com/cases/new-mexico/supreme-court/2005/7e09.html>.

¹⁴ Power Point, Albuquerque Bernalillo County Air Quality Control Board, *Local and State Efforts to Address Cumulative Impacts, Environmental Injustice and Health Inequity* (March 10, 2020), https://www.cabq.gov/airquality/documents/2021_03_10_final-aqcb-presentation-cumulative-impacts.pdf (last visited July 1, 2022).

N/A.

How Does New Mexico Address Environmental Justice in its Procedures¹⁵?

Environmental Justice as Part of Environmental Agency's Mission:

NMED's mission is to protect and restore the environment, and to foster a healthy and prosperous New Mexico for present and future generations. This does not specifically mention environmental justice.

Environmental Justice as Part of Other Agency's Mission:

N/A.

Processes and Procedures (including Title VI):

- *Non-Discrimination Policy:*

NMED's website states that the agency does not discriminate on the basis of race, color, national origin, disability, age or sex in the administration of its programs or activities, as required by applicable laws and regulations. NMED is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Parts 5 and 7, including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972.¹⁶

- *Grievance Procedures:*

The agency's website includes a link to its non-employee discrimination complaint policy¹⁷ to a form to be used to file non-employee civil rights complaints.¹⁸ The nondiscrimination coordinator is Kathryn Becker, New Mexico Environment Department 1190 St. Francis Dr., Suite N4050, P.O. Box 5469 Santa Fe, NM 87502 (505) 827-2855 nd.coordinator@state.nm.us.¹⁹

- *Enhanced Public Participation and Information Access:*

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 July 1, 2022).

¹⁶ NMED, *Non Employee Discrimination Complaint Page*, <https://www.env.nm.gov/non-employee-discrimination-complaint-page/> (last visited July 1, 2022).

¹⁷ NMED, Off. of the Sec'y, Policy and Proc. 07-09 (Aug. 18, 2017), *available at* <https://www.env.nm.gov/wp-content/uploads/2017/04/NMED-Policy-07-09Non-Employee-Discrimination-Complaint-081817.pdf>

¹⁸ NMED, Non-Discrimination Coordinator, NMED Non-Employee Discrimination Complaint Form, *available at* <https://www.env.nm.gov/wp-content/uploads/2017/04/NMED-Non-employee-discrimination-complaint-form-final.pdf>.

¹⁹ NMED, *supra* note 16.

Pursuant to Executive Order 2005-056, all cabinet level positions and boards and commissions that make decisions that affect environmental quality and public health must provide meaningful opportunities for public participation.²⁰ Programs are reviewed annually to ensure that information is being disseminated to low-income communities and communities of color.²¹

Solid waste permit applications for facilities in vulnerable areas or areas not zoned for landfills must have enhanced public notice and comment.²² Notice of the permit application must be published in newspapers, given to property owners close to the property, mailed to local governments, posted in eight nearby public places, and translated if needed.²³

- Language Access:

Pursuant to Executive Order 2005-056, all cabinet level positions and boards and commissions that make decisions that affect environmental quality and public health must ensure all publicly disseminated information is available in English and Spanish, and tribal languages and dialects as appropriate for the region.²⁴

- 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:

The Environmental Justice Task Force was established by Executive Order 2005-056 and is led by NMED.²⁵ Members include the State Engineer's Office, Department of Agriculture, Department of Health, New Mexico Department of

²⁰ N.M. Exec. Order 2005-056, available at https://www.env.nm.gov/wp-content/uploads/sites/10/2019/10/EO_2005_056.pdf.

²¹ *Id.*

²² 20.9.3(G) NMAC.

²³ 20.9.3(G) NMAC.

²⁴ N.M. Exec. Order 2005-056, available at https://www.env.nm.gov/wp-content/uploads/sites/10/2019/10/EO_2005_056.pdf.

²⁵ *Id.*

Transportation, Energy, Minerals, and Natural Resources Department, Department of Public Safety, Department of Labor, and Department of Education. The Task Force advises state agencies on how to address environmental justice and has procedures on how communities can request it to address environmental justice issues in their area. This task force has not been active or called upon since Governor Bill Richardson left office.

- *Funding for Environmental Justice:*

N/A.

Additional New Mexico Environmental Justice Provisions?

Under New Mexico’s State-Tribal Collaboration Act (STCA) each agency must develop and implement policies to collaborate with Tribal leaders.²⁶ NMED prepares a yearly report detailing its collaborative plans and actions.²⁷ All Tribal Leaders may meet with NMED officials about proposed actions provided they request a meeting in writing.²⁸ By executive order NMED must also plan to preserve Tribal cultural property and access to sacred spaces.²⁹ Executive Order 2005-004 created a Pilot Tribal Consultation Plan that directed 17 agencies to create tribal consultation plans to address a specific and single area of the agency’s operations that involve interaction with tribal governments, communities, and/or tribal members.

In 2005, the Navajo Nation adopted the [Diné Natural Resources Protection Act](#), which banned uranium mining and processing on Navajo land.

The Albuquerque-Bernalillo County Air Quality Control Board regulations require that in its rulemakings the board “give weight it deems appropriate” to all facts and circumstances, including “the public interest, including the social and economic value of the sources and subjects of air contaminants, with due consideration for environmental justice principles.”³⁰

New Mexico Environmental Justice Contacts?

Kathryn Becker (Attorney)
New Mexico Environment Department Lead Environmental Justice Contact
Assistant General Counsel and Tribal Liaison

²⁶ N.M.S.A. 1978, § 11-18-3(1), *available at* <https://www.env.nm.gov/wp-content/uploads/sites/10/2016/08/20171019143449932.pdf>.

²⁷ NMED 2020 annual STCA report, *available at* <https://www.env.nm.gov/general/wp-content/uploads/sites/10/2016/08/2020-07-29-NMED-2020-State-Tribal-Collaboration-Act-Annual-Report-final.pdf>

²⁸ NMED, Policy and Proc. 07-16 (Jan. 27, 2020), *available at* <https://www.env.nm.gov/general/wp-content/uploads/sites/10/2016/08/2020-01-27-NMED-Tribal-Policy-2020-final-signed.pdf>.

²⁹ EO 2005-003, at (4), *available at* https://www.env.nm.gov/wp-content/uploads/sites/10/2019/10/EO_2005_003.pdf.

³⁰ 20.11.82.32 NMAC. The state statute setting out requirements for local air boards does not include the provision about “due consideration of environmental justice principles.” N.M. Stat. Ann. § 74-2-5.

505-231-9983

kathryn.becker@state.nm.us

NM Solid Waste Bureau Environmental Justice contact:
(Formerly George Schuman at 505-699-8779).

However, the current position is unfilled; call bureau chief Joan Snyder at 505-660-2209.

Where to Find New Mexico Environmental Justice Laws, Policies, and Tools?

Constitutional Provisions:

N/A.

Executive Orders:

- EO 2005-056
https://www.env.nm.gov/wp-content/uploads/sites/10/2019/10/EO_2005_056.pdf - Mandating agencies consider environmental justice and community input, creating an environmental justice task force.
- EO 2005-003
https://www.env.nm.gov/wp-content/uploads/sites/10/2019/10/EO_2005_003.pdf - Mandating agencies work with Tribes to preserve access to cultural property and sacred spaces.
- EO 2005-004
https://www.env.nm.gov/wp-content/uploads/sites/10/2019/10/EO_2005_004.pdf - Statewide adoption of Tribal Consultation Plans

Legislation and Statutes:

- N.M. Stat. Ann. 1978, § 11-18-3
<https://www.env.nm.gov/wp-content/uploads/sites/10/2016/08/20171019143449932.pdf> - State Tribal Collaboration Act.
- N.M. Stat. Ann. § 74-14 (LexisNexis 2021). [Environmental Database Act](#).

Regulations:

- N.M. Code R. § 20.9.3.8(D)(2)(b) - Requiring a community impact assessment with environmental justice considerations if there is enough community opposition to a waste facility.
- NM ADC 20.9.7.8 – Requiring environmental justice training for landfill operators

- N.M. Admin. Code 20.11.82.32
<http://164.64.110.134/parts/title20/20.011.0082.html> - Requiring environmental justice considerations in Albuquerque Air Quality Board rulemaking

Policies/Guidance:

- NMED 2020 annual STCA report
<https://www.env.nm.gov/general/wp-content/uploads/sites/10/2016/08/2020-07-29-NMED-2020-State-Tribal-Collaboration-Act-Annual-Report-final.pdf>.
- NMED policy and procedure 07-16 (5.1)
<https://www.env.nm.gov/general/wp-content/uploads/sites/10/2016/08/2020-01-27-NMED-Tribal-Policy-2020-final-signed.pdf>.
- Environmental Justice Summary:
<https://www.env.nm.gov/general/environmental-justice-in-new-mexico/>.
- Title VI procedures:
<https://www.env.nm.gov/non-employee-discrimination-complaint-page/>.
- Non Discrimination Guidance:
<https://www.env.nm.gov/non-employee-discrimination-complaint-page/>;
<https://www.env.nm.gov/wp-content/uploads/2017/04/NMED-Policy-07-09Non-Employee-Discrimination-Complaint-081817.pdf>;
<https://www.env.nm.gov/wp-content/uploads/2017/04/NMED-Non-employee-discrimination-complaint-form-final.pdf>;
<https://www.env.nm.gov/non-employee-discrimination-complaint-page/>.

Mapping Tools:

- <https://gis.web.env.nm.gov/oem/?map=egis>.

Other:

- NMED, Final Report on Environmental Justice in New Mexico (2004), <https://www.env.nm.gov/wp-content/uploads/sites/10/2019/10/NMEDFinalReport-Dec07-04.pdf>. Contains a report on listening sessions.
- A [list](#) of environmental statutes and regulations in New Mexico (not environmental justice specifically, but still a comprehensive list).