

NORTH CAROLINA

How Does North Carolina Define Environmental Justice and Environmental Justice Communities?

Environmental Justice Definitions:

There is no statutory or formal regulatory definition of environmental justice in North Carolina. The North Carolina Department of Environmental Quality (DEQ) utilizes the US EPA definition of environmental justice – ‘no person shall, on the ground of race, color, national origin, sex, age or disability be excluded from participation in, be denied the benefits of or be subjected to discrimination under any Civil Rights Act of 1964, the civility Rights Restoration Action of 1987, the Rehabilitation Act of 1973, and all other related nondiscrimination laws and requirements.’¹ Further, “[t]he Environmental Justice Program at DEQ works to ensure 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

Environmental Justice Mapping Tools:

DEQ has created the North Carolina Community Mapping System (NCCMS), with a goal of “provid[ing] an environmental justice tool (Tool) that allows all users to understand the sociodemographic and health characteristics of communities across North Carolina.”³ The tool includes public health data, as well as permitting data.⁴

How Does North Carolina Consider Environmental Justice in its Substantive Actions⁵?

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

The North Carolina Department of Environmental Quality (DEQ) observes that “[t]he challenge ahead of the department is integrating this perspective into the core mission of the department, along with the legal and scientific lens guiding how DEQ employees pursue their

¹ NCDEQ, *Environmental Justice*, <https://deq.nc.gov/outreach-education/environmental-justice> (last visited July 1, 2022).

² *Id.*

³ NCDEQ, *North Carolina Community Mapping System and Environmental Justice Tool* at p.2, available at <https://files.nc.gov/ncdeq/EJ/nccms/DEQ-NC-CommunityMappingSystemEJ-Tool-1FINAL.pdf> (last visited July 1, 2022). The tool uses census block group level demographic data. *Id.* at p.5.

⁴ NCDEQ, “Frequently Asked Questions,” <https://files.nc.gov/ncdeq/EJ/nccms/NCCMSV1-FAQ.pdf> (last visited July 1, 2021).

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).

work now.”⁶ DEQ’s mission “can only be accomplished if fighting for Environmental Justice is part of every DEQ activity.”⁷

More recently, Gov. Cooper’s Executive Order No. 143 reinvigorates DEQ’s engagement with environmental justice issues. Specifically, DEQ shall:

1. Lead the State's effort to create a common discourse on environmental justice,
2. Identify communities of concern for purposes of all State related actions.
3. Coordinate with Executive Agencies on how to integrate environmental justice considerations into existing and future policies, programs, and procedures; and
4. Create lasting institutional structures for agencies to address equality, equity and justice for all North Carolinians.⁸

Consideration of Environmental Justice in Permitting:

North Carolina law prohibits issuing a permit for a solid waste management facility if

... the cumulative impact of the proposed facility, when considered in relation to other similar impacts of facilities located or proposed in the community, would have a disproportionate adverse impact on a minority or low-income community protected by Title VI of the federal Civil Rights Act of 1964. This subdivision shall apply only to the extent required by federal law.⁹

Moreover, North Carolina law requires additional analysis and process before permitting a new sanitary landfill proximate to an existing facility: the governing board of a city “consider alternative sites and socioeconomic and demographic data” and “hold a public hearing prior to selecting or approving a site for a new sanitary landfill that receives residential solid waste that is located within one mile of an existing sanitary landfill within the State.”¹⁰

⁶ North Carolina Dept. of Environmental Quality, “Environmental Justice,” <https://deq.nc.gov/outreach-education/environmental-justice> (last visited July 1, 2022).

⁷ *Id.*

⁸ Gov. Cooper, Executive Order No. 143, “ADDRESSING THE DISPROPORTIONATE IMPACT OF COVID-19 ON COMMUNITIES OF COLOR” (June 4, 2020), § 4 at p. 8, *available at* <https://files.nc.gov/governor/documents/files/EO143-Addressing-the-Disproportionate-Impact-of-COVID-19-on-Communities-of-Color.pdf> (last accessed July 1, 2022).

⁹ North Carolina General Statutes § 130A-294(a)(4). A bill pending in the North Carolina legislature’s current session, H864, would amend this subdivision, striking out the restriction about federal law. H864 contains other provisions regarding cumulative impact on already adversely affected communities, including heightened analysis of remediation procedures for projects affecting those communities as well as a ban of permits for animal waste management systems with disproportionate impact on low-income communities.

¹⁰ North Carolina General Statutes § 160A-325(a).

North Carolina has a parallel mechanism for proactively assessing whether proposed solid waste and electrical generating facilities might affect environmental justice communities, through the production of environmental justice snapshots and environmental justice reports documenting the demographics and socioeconomics of the area surrounding the proposed facility.¹¹ Here is a description of the process from a 2021 Environmental Justice report:

An environmental justice report will be conducted at the beginning of the permit application process when requested by the appropriate [DEQ] Division Director. This will be distributed to interested community members (if known) and posted to the DEQ website with the relevant permit application before the close of the public comment period. The primary goal is to encourage Environmental Justice Report comments and suggestions from the surrounding community, industry, and environmental groups throughout the comment period, and to inform specific outreach methods.¹²

A full catalog of Environmental Justice Reports appears on the North Carolina DEQ website.¹³

Consideration of Environmental Justice in Enforcement:

N/A.¹⁴

Consideration of Environmental Justice in Land Use:

N/A.

State Environmental Policy Act “Mini-NEPA”:

¹¹ North Carolina Dept. of Environmental Quality, “Asheville Steam Electric Plant, Environmental Justice Snapshot,” available at <https://files.nc.gov/ncdeq/Coal%20Ash/documents/Asheville-EJ-Snapshot-final.pdf> (last accessed July 1, 2022) (“An environmental justice snapshot will be conducted at the beginning of the application process when a full Environmental Justice Report is requested or to determine the need for a full Environmental Justice Report.”).

¹² Align RNG, “Align RNG Environmental Justice Report” (January 6, 2021), available at <https://files.nc.gov/ncdeq/EJ/Align-Energy-EJ-Report.pdf> (last visited July 1, 2022).

¹³ North Carolina Dept. of Environmental Quality, “Environmental Justice Reports,” <https://deq.nc.gov/outreach-education/environmental-justice/environmental-justice-reports> (last visited July, 1 2022).

¹⁴ In 2015, US EPA began an investigation of North Carolina DEQ for Title VI violations stemming from lax enforcement of hog operations in North Carolina, with disproportionate impact on communities of color. Press Release, Phillip Ellis, EPA Launches Investigation of North Carolina for Civil Rights Violations, EarthJustice (Feb. 25, 2015), <https://earthjustice.org/news/press/2015/epa-launches-investigation-of-north-carolina-for-civil-rights-violations-0> (last visited July 1, 2022).

The North Carolina Environmental Policy Act was originally adopted in 1971¹⁵ and has been revised subsequently to encompass a broader range of projects. The statute and its implementing regulations make no mention of environmental justice or impacts on low-income communities, but both authorities reference cumulative impacts. The regulations define “environmental effect” to include “direct, indirect, and cumulative impacts for the project or program.”¹⁶

Dedicated Funding to Environmental Justice Communities:

N/A.

Consideration of Cumulative Impacts:

The Division of Water Quality issued a Cumulative Impact policy for cumulative impacts on water quality, although the policy is silent as to cumulative impacts on environmental justice populations.¹⁷

Prohibitions on Disparate Impact Discrimination:

N/A.

Established Environmental Rights:

N/A.

How Does North Carolina Address Environmental Justice in its Procedures¹⁸?

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):

¹⁵ North Carolina Environmental Policy Act, available at http://www.ncleg.net/EnactedLegislation/Statutes/HTML/ByChapter/Chapter_113A.html (last visited July 1, 2022).

¹⁶ 01 North Carolina Administrative Code § 25.010(b)(2); DEQ provides guidance for addressing secondary and cumulative impacts. See NCEQ, *General Information*, <https://deq.nc.gov/permits-regulations/sepa/general-information> (last visited July 1, 2022).

¹⁷ Division of Water Quality, North Carolina Dept. of Environmental Quality, “DWQ Cumulative Impact Policy” (Apr. 10, 2014), available at https://files.nc.gov/ncdeq/Water%20Quality/Surface%20Water%20Protection/401/Policies_Guides_Manuals/CumulativeImpactPolicy.pdf (last accessed July 1, 2022).

¹⁸ 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).

- *Non-Discrimination Policy:*

The North Carolina Department of Environmental Quality (DEQ) acknowledges that it administers its policies and programs in compliance with Title VI and other federal nondiscrimination laws.¹⁹ DEQ’s Anonymous Comment tool affords an opportunity to lodge environmental grievances, although the tool is not specific to environmental justice considerations.²⁰

- *Grievance Procedures:*

Title VI and its implementing regulations require federal recipients like DEQ to take reasonable steps to ensure meaningful access to agency programs and activities for LEP persons. There is no prescriptive method for accomplishing this goal. Instead, North Carolina agencies are encouraged to determine the extent of their Title VI LEP obligations by performing an individualized assessment in accordance with a four-factor analysis described in the DOJ Guidance.²¹

- *Enhanced Public Participation and Information Access:*

DEQ’s 2020 Public Participation Plan sets out enhanced outreach protocols when a pending permit application or decision affects underserved communities: “the communication methods chosen will be project-specific and community-oriented to best fit the needs of the community.”²² The document defines “underserved communities” as those communities fitting U.S. EPA standards for racial composition and income of environmental justice communities: program staff utilize the North Carolina Community Mapping System as well as EPA’s EJSCREEN in making this determination.²³ The process culminates in a Final Environmental Justice Report, with an assessment of “the potential impact the proposed construction and operation of the facility under review has on the surrounding communities” and a “description of any enhanced engagement that was performed to communicate about the proposed facility to the surrounding community.” If the screening method evidences an underserved community, DEQ staff must also engage in enhanced engagement practices, including distributing flyers, translating documents and coordinating with local community organizations.²⁴

- *Language Access:*

¹⁹ North Carolina Dept. of Environmental Quality, “Title VI Compliance,” <https://deq.nc.gov/permits-regulations/title-vi-compliance> (last visited July 1, 2022).

²⁰ North Carolina Dept. of Environmental Quality, “N.C. DEQ Anonymous Comment Tool,” <https://deq.nc.gov/outreach-education/environmental-justice/nc-deq-anonymous-comment-tool> (last visited July 1, 2022).

²¹ North Carolina Dept. of Environmental Quality, “LIMITED ENGLISH PROFICIENCY LANGUAGE ACCESS PLAN,” available at <https://files.nc.gov/ncdeq/EJ/Limited-English-Proficiency-Plan.pdf> (last visited July 1, 2022).

²² North Carolina Dept. of Environmental Quality, *Public Participation Plan* (Dec. 2020), at p.5, available at <https://files.nc.gov/ncdeq/EJ/Public-Participation-Plan-12.2020.pdf> (last visited July 1, 2022).

²³ *Id.* at pp. 5-6.

²⁴ *Id.* at pp. 7-8.

As noted above, Instead, North Carolina agencies are encouraged to determine the extent of their Title VI LEP obligations by performing an individualized assessment in accordance with a four-factor analysis described in the DOJ Guidance, including an assessment of the likely number of and frequency of contact with LEP persons likely to be encountered, as well as the importance of the regulatory policy or program.²⁵

- *Consultation with Indigenous Communities and Tribal Nations:*
 - N/A.

Governmental Environmental Justice Structures, Positions, and Funding Streams;

- *Environmental Justice Coordinating Agency:*

DEQ has established an Office of Environmental Education to “provide environmental educators with better access to training in justice, diversity, equity and inclusion.”²⁶ The OEE created the Secretary’s Environmental Justice and Equity Board, charged with assisting DEQ in achieving and maintaining the fair and equal treatment.

- *Environmental Justice Coordinator:*
 - N/A.
- *Environmental Justice Advisory Board:*

In 2018, DEQ created the Secretary’s Environmental Justice and Equity Advisory Board, charged with assisting “DEQ in achieving and maintaining the fair and equal treatment and meaningful involvement of North Carolinians regardless of where they live, their race, religion or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.”²⁷ The Board’s internal operating procedures further note that the Board shall “advise the Department on the interests of Native American Indian Tribes as well as vulnerable, at-risk North Carolinians who face language barriers and disabilities.”²⁸

²⁵ North Carolina Dept. of Environmental Quality, “LIMITED ENGLISH PROFICIENCY LANGUAGE ACCESS PLAN” (2020) at pp.2-3, available at <https://files.nc.gov/ncdeq/EJ/Limited-English-Proficiency-Plan.pdf> (last visited July, 1 2022).

²⁶ North Carolina Dept. of Environmental Quality, “Environmental Education Program to Include More Environmental Justice, Equity, Diversity and Inclusion Offerings” (Aug. 6, 2020), <https://deq.nc.gov/news/press-releases/2020/08/06/environmental-education-program-include-more-environmental-justice> (last visited July 1, 2022).

²⁷ North Carolina Dept. of Environmental Quality, “Secretary’s Environmental Justice and Equity Board Members,” <https://deq.nc.gov/outreach-education/environmental-justice/secretarys-environmental-justice-and-equity-board-0> (last visited July, 1 2022).

²⁸ North Carolina Dept. of Environmental Quality, Secretary’s Environmental Justice and Equity Board, “Internal Operating Procedures” at p.1, available at <https://files.nc.gov/ncdeq/EJ/2020-proposed-amendments-to-EJE-Board-Operating-Procedures-Nov-23-2020.pdf> (last visited July 1, 2022).

Through Executive Order No. 143, Gov. Cooper established The Andrea Harris Social, Economic, Environmental, and Health Equity Task Force to promote economic stability, eliminate health disparities and achieve environmental justice.²⁹ The task force's mission includes enhancing public participation by environmental justice communities, advancing climate justice, and generally enhancing environmental justice, inclusion and equity education.³⁰ Members of the taskforce are drawn from a broad variety of environmental justice communities, including tribal interests.³¹

- Funding for Environmental Justice:

N/A.

Additional North Carolina Environmental Justice Provisions?

October 29, 2018 – Governor Roy Cooper's Executive Order 80 requires state agencies to integrate climate adaptation and resiliency planning into their missions, supporting communities vulnerable to the effects of climate change.³²

Announced on June 29, 2020 as a part of the Tribal Resilience Project, the Albemarle-Pamlico National Estuary Partnership (APNEP) partnered with the North Carolina Commission of Indian Affairs (NCCIA) and others to support Tribal communities in the Albemarle-Pamlico region in considering climate resilience during community planning.³³

Governor Roy Cooper's Executive Order 218: North Carolina is committing to an increase in offshore wind power. The Task Force created under this EO will endeavor to “advance opportunities for equitable access, particularly in underserved communities, to the economic benefits created by the offshore wind industry,”³⁴ raising the possibility that environmental benefits will accrue to historically disadvantaged communities.

²⁹ Executive Order No. 143, “ADDRESSING THE DISPROPORTIONATE IMPACT OF COVID-19 ON COMMUNITIES OF COLOR” (June 4, 2020) at p.3, *available at* <https://files.nc.gov/governor/documents/files/EO143-Addressing-the-Disproportionate-Impact-of-COVID-19-on-Communities-of-Color.pdf> (last visited July, 1 2022).

³⁰ *Id.*, § 1(B)(4), at p.4.

³¹ *Id.*, § 1(C), at pp. 5-6.

³² Gov. Cooper, Executive Order No. 80, “North Carolina’s Commitment to Address Climate Change and Transition to a Clean Energy Environment,” (Oct. 29, 2018) at ¶ 9, *available at* <https://files.nc.gov/governor/documents/files/EO80-%20NC%27s%20Commitment%20to%20Address%20Climate%20Change%20%26%20Transition%20to%20a%20Clean%20Energy%20Economy.pdf> (last visited July 1, 2022).

³³ North Carolina Dept. of Environmental Quality, “Albemarle-Pamlico National Estuary Partnership partners with NC Commission of Indian Affairs to strengthen climate resilience in coastal region Tribal communities” (June 29, 2020), <https://deq.nc.gov/news/press-releases/2020/06/29/albemarle-pamlico-national-estuary-partnership-partners-nc-com-mission> (last visited July, 1 2022).

³⁴ Gov. Cooper, Executive Order No. 80, “Advancing North Carolina’s Economic and Clean Energy Future with Offshore Wind” (June 9, 2021) section 3(B) at p. 2, *available at* <https://files.nc.gov/governor/documents/files/EO218-Advancing-NCs-Economic-Clean-Energy-Future-with-Offshore-Wind.pdf> (last accessed July 1, 2022).

North Carolina Environmental Justice Contacts?

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Where to Find North Carolina Environmental Justice Laws, Policies, and Tools?

Constitutional Provisions:

N/A.

Executive Orders:

- Executive Order No. 80, “Advancing North Carolina’s Economic and Clean Energy Future with Offshore Wind” (June 9, 2021):
<https://files.nc.gov/governor/documents/files/EO218-Advancing-NCs-Economic-Clean-Energy-Future-with-Offshore-Wind.pdf> (last accessed July 2021).
- Executive Order 143, “Addressing the Disproportionate Impact of COVID-19 on Communities of Color”:
<https://files.nc.gov/governor/documents/files/EO143-Addressing-the-Disproportionate-Impact-of-COVID-19-on-Communities-of-Color.pdf>.
- Gov. Cooper, Executive Order No. 80, “North Carolina’s Commitment to Address Climate Change and Transition to a Clean Energy Environment”:
<https://files.nc.gov/governor/documents/files/EO80-%20NC%27s%20Commitment%20to%20Address%20Climate%20Change%20%26%20Transition%20to%20a%20Clean%20Energy%20Economy.pdf>.

Legislation and Statutes:

- North Carolina General Statutes § 130A-294(a)(4).
- North Carolina General Statutes § 160A-325(a).

Regulations:

N/A.

Policies/Guidance:

N/A.

Mapping Tools:

- DEQ North Carolina Community Mapping System:
<https://deq.nc.gov/outreach-education/environmental-justice/deq-north-carolina-community-mapping-system>.

Other:

N/A.