

## VIRGINIA

### **How Does Virginia Define Environmental Justice and Environmental Justice Communities?**

#### Environmental Justice Definitions:

The Virginia Environmental Justice Act defines<sup>1</sup> the following:

- “Community of color”:
  - “any geographically distinct area where the population of color, expressed as a percentage of the total population of such area, is higher than the population of color in the Commonwealth expressed as a percentage of the total population of the Commonwealth. However, if a community of color is composed primarily of one of the groups listed in the definition of “population of color,” the percentage population of such group in the Commonwealth shall be used instead of the percentage population of color in the Commonwealth.”
- “Environment”:
  - “the natural, cultural, social, economic, and political assets or components of a community.”
- “Environmental justice”:
  - “the fair treatment and meaningful involvement of every person, regardless of race, color, national origin, income, faith, or disability, regarding the development, implementation, or enforcement of any environmental law, regulation, or policy.”
- “Environmental justice community”:
  - “any low-income community or community of color.”
- “Fair treatment”:
  - “the equitable consideration of all people whereby no group of people bears a disproportionate share of any negative environmental consequence resulting from an industrial, governmental, or commercial operation, program, or policy.”
- “Fenceline community”:

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<sup>1</sup> Va. Code Ann. § 2.2-234 (West).

- “an area that contains all or part of a low-income community or community of color and that presents an increased health risk to its residents due to its proximity to a major source of pollution.”
- “Low income”:

  - “having an annual household income equal to or less than the greater of (i) an amount equal to 80 percent of the median income of the area in which the household is located, as reported by the Department of Housing and Urban Development, and (ii) 200 percent of the Federal Poverty Level.”

- “Low-income community”:

  - “any census block group in which 30 percent or more of the population is composed of people with low income.”

- “Meaningful involvement”:

  - “the requirements that (i) affected and vulnerable community residents have access and opportunities to participate in the full cycle of the decision-making process about a proposed activity that will affect their environment or health and (ii) decision makers will seek out and consider such participation, allowing the views and perspectives of community residents to shape and influence the decision.”

- “Population of color”:

  - “means a population of individuals who identify as belonging to one or more of the following groups: Black, African American, Asian, Pacific Islander, Native American, other non-white race, mixed race, Hispanic, Latino, or linguistically isolated.”

- “State agency”:

  - “means any agency, authority, institution, board, bureau, commission, council, or instrumentality of state government in the executive branch of government.”

The Virginia Council on Environmental Justice shares the same definitions of environmental justice, fair treatment, and meaningful involvement and further defines resilience “as it pertains to climate change, the ability to anticipate, prepare for, and adapt to changing conditions and to withstand, respond to, and recover rapidly from disruptions through adaptable planning and climate solutions.”

*Environmental Justice Mapping Tools:*

Virginia had a [What's in my Backyard?](#) tool that lacks the option to add layers to locate environmental justice populations. This tool was retired on April 1st, 2021 and replaced with the Virginia DEQ Environmental Data Mapper<sup>2</sup> - which is certainly more expansive, but also lacks the option to add layers that would help locate environmental justice communities.

The Virginia Department of Environmental Quality (VDEQ) did authorize an [Environmental Justice Study](#) for the explicit goal of obtaining “independent recommendations to DEQ on how to incorporate environmental justice goals into DEQ strategic planning and phased program implementation.” The study report includes many recommendations on information sharing, data availability, and mapping tools. According to the study report, the development of a mapping tool would be part of phase two of implementation.

### **How Does Virginia Consider Environmental Justice in its Substantive Actions<sup>3</sup>?**

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

The Virginia Environmental Justice Act establishes that it is the policy of the Commonwealth to "promote environmental justice and ensure that it is carried out throughout the Commonwealth, with a focus on environmental justice communities and fenceline communities."<sup>4</sup>

#### *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”:*

Virginia Environmental Impact Report Procedure (VAEIR)<sup>5</sup> is Virginia’s state-equivalent to NEPA; however, it does not explicitly reference cumulative impacts. This law “requires state agencies to prepare and submit an environmental impact report identifying and evaluating the

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<sup>2</sup> ArcGIS, VDEQ, Environmental Data Mapper, <https://apps.deq.virginia.gov/EDM/> (last visited July 7, 2022).

<sup>3</sup> 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](https://www.law.cornell.edu/wex/substantive_law) (last visited July 5, 2022).

<sup>4</sup> VA ST § 2.2-235.

<sup>5</sup> V.A.. Code Ann. §§ 10.1-1182 to 10.1-1187.

environmental effects of proposed state facilities."<sup>6</sup> Virginia does use state law and the regulatory process to incorporate cumulative impact assessments. Virginia has formally recommended that state environmental justice efforts include cumulative impact assessments but has not acted on those recommendations to include such assessments in laws, regulations, executive orders, or other policies. Currently, a cumulative impact analysis is only required in specific scenarios and is a non-binding factor in the decision-making process—a decision maker may decide that other factors outweigh the cumulative impacts, no matter how severe, and allow a project to proceed. See section “*Consideration of Cumulative Impacts*” below for more.

#### *Dedicated Funding to Environmental Justice Communities:*

The Virginia Brownfields Restoration and Economic Redevelopment Assistance Fund, V.A. Code Ann. § 10.1-1237, provides grants or loans to local governments to promote restoration and redevelopment of brownfield sites and to address environmental problems or obstacles to reuse so these sites can be effectively marketed to new economic development prospects.<sup>7</sup>

#### *Consideration of Cumulative Impacts:*

The Virginia Environmental Justice Collaborative submitted recommendations<sup>8</sup> for different task forces to respond to separate cumulative impact risks.

The Virginia Department of Transportation examines environmental justice in the 2012 [cumulative impacts report](#).<sup>9</sup>

#### Water Quality Law:

- Water quality monitoring and reporting: Va. Code Ann. § 62.1-44.19:5
  - "Include an assessment, conducted in conjunction with other appropriate state agencies, for the attribution of impairment to point and nonpoint sources. The absence of point source permit violations on or near the impaired water shall not conclusively support a determination that impairment is due to nonpoint sources. In determining the cause for impairment, the Board *shall* consider the *cumulative impact* of (i) multiple

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<sup>6</sup> Memorandum, CEQ, Introducing Federal National Environmental Policy Act Practitioners to the Virginia Environmental Impact Report Procedure (Nov. 9, 2015), *available at* [https://ceq.doe.gov/docs/laws-regulations/state\\_information/VA\\_NEPA\\_Comparison\\_9Nov2015.pdf](https://ceq.doe.gov/docs/laws-regulations/state_information/VA_NEPA_Comparison_9Nov2015.pdf).

<sup>7</sup> V.A. Code Ann. § 10.1-1237.

<sup>8</sup> V.A. Env't Justice Collaborative, Carbon Reduction Strategies for Electric Power Generation Facilities and Environmental Justice in Virginia (Feb. 2017), *available at* <http://vaipj.org/wp-content/uploads/2017/06/Virginia-Environmental-Justice-Collaborative-EO-57-Recommendations.pdf>.

<sup>9</sup> VDOT, Indirect and Cumulative Effects Technical Memorandum (Nov. 30, 2012), *available at* [https://www.virginia.gov/projects/resources/hampton\\_roads/HRBT\\_EIS/TechReports/Indirect\\_and\\_Cumulative\\_Tech\\_Memo.pdf](https://www.virginia.gov/projects/resources/hampton_roads/HRBT_EIS/TechReports/Indirect_and_Cumulative_Tech_Memo.pdf).

point source discharges, (ii) individual discharges over time, and (iii) nonpoint sources."

#### Permitting Law:

- Regulation of Mining Activity: Va. Code Ann. § 45.1-238
  - "B. No permit or revision application *shall* be approved unless the application affirmatively demonstrates, and the Director finds in writing on the basis of the information set forth in the application or from information otherwise available which will be documented in the approval and made available to the applicant, that: . . . 3. The assessment of the probable *cumulative impact* of all anticipated mining in the area on the hydrologic balance has been made by the Director in accordance with regulation and the proposed operation has been designed to prevent material damage to hydrologic balance outside the permit area . . .

#### Siting Law:

- Impact of electric generating facilities: Va. Code Ann. § 10.1-1186.2:1
  - "The Department and the State Air Pollution Control Board have the authority to *consider* the *cumulative impact* of new and proposed electric generating facilities within the Commonwealth on attainment of the national ambient air quality standards."

#### Mini-NEPA:

- Va. Code Ann. § 10.1-1188 *et. seq.*
  - *No requirement for cumulative impact analysis.*
  - "All state agencies, boards, authorities and commissions or any branch of the state government *shall prepare* and submit an environmental impact report to the Department on each major state project. . . . Such environmental impact report *shall include*, but not be limited to, the following:
    - The environmental *impact* of the major state project, including the impact on wildlife habitat;
    - Any adverse environmental *effects* which cannot be avoided if the major state project is undertaken;
    - *Measures* proposed to minimize the impact of the major state

project;

- Any *alternatives* to the proposed construction; and
- Any irreversible environmental *changes* which would be involved in the major state project."

Coal mining permitting regulation:

- Review of Permit Application: 4 Va. Admin. Code 25-130-773.15
  - "Written findings for permit application approval. No permit application or application for a significant revision of a permit *shall* be approved unless the application affirmatively demonstrates and the division finds, in writing, on the basis of information set forth in the application or from information otherwise available that is documented in the approval, the following: . . . The division has made an assessment of the probable *cumulative impacts* of all anticipated coal mining on the hydrologic balance in the *cumulative impact* area and has determined that the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area."

Solid Waste Variance Application Regulation:

- Variance to location of the groundwater monitoring system: 9 Va. Admin. Code 20-81-740
  - "The applicant may request a variance to the location for the groundwater monitoring system other than at the disposal unit boundary as required by 9 VAC 20-81-250 A 3 a if he can demonstrate that the response time is sufficiently long to identify and remediate or otherwise contain groundwater that may become impacted before it reaches the facility boundary. . . .The application *shall* provide information on . . .The existing quality of the groundwater, including other sources of contamination and their cumulative impacts on the ground water and whether groundwater is currently used or reasonably expected to be used for drinking water."

Solid Waste Regulation:

- Misc. Facilities: 9 Va. Admin. Code 20-81-395
  - "A miscellaneous unit shall be located, designed, constructed, operated, maintained, and closed in a manner that will ensure protection of human health and the environment . . . . Protection of human health and the environment includes, but is not limited to . . . . Prevention of any releases

that may have adverse effects on human health or the environment due to migration of waste constituents in the ground water or subsurface environment, considering . . . The existing quality of groundwater, including other sources of contamination and their *cumulative impact* on the groundwater . . . . Prevention of any releases that may have adverse effects on human health or the environment due to migration of waste constituents in surface water, or wetlands or on the soil surface considering . . . . The existing quality of surface waters and surface soils, including other sources of contamination and their *cumulative impact* on surface waters and surface soils . . . . Prevention of any release that may have adverse effects on human health or the environment due to migration of waste constituents in the air, considering . . . The existing quality of the air, including other sources of contamination and their *cumulative impact* on the air."

*Prohibitions on Disparate Impact Discrimination:*

N/A.

*Established Environmental Rights:*

N/A.

**How Does Virginia Address Environmental Justice in its Procedures<sup>10</sup>?**

*Environmental Justice as Part of Environmental Agency's Mission:*

As stated in the Virginia Environmental Justice Act, "it is the policy of the Commonwealth to *promote* environmental justice and *ensure* that it is carried out throughout the Commonwealth, with a focus on environmental justice communities and fenceline communities."<sup>11</sup>

*Environmental Justice as Part of Other Agency's Mission:*

N/A.

*Processes and Procedures (including Title VI):*

- *Non-Discrimination Policy:*

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<sup>10</sup> 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](https://www.law.cornell.edu/wex/procedural_law) (last visited July 5, 2022).

<sup>11</sup> Va. Code Ann. § 2.2-235 (West).

Each division listed under the Virginia Department of Transportation (VDOT) has listed Title VI responsibilities.<sup>12</sup> Many of these divisions mention non-discrimination under their responsibilities.<sup>13</sup>

- *Grievance Procedures:*

Any person who believes they—or a specific class of persons—were subjected to discrimination on the basis of race, color, or national origin in the programs and activities of the Virginia Department of Transportation (VDOT)—a recipient of Federal financial assistance through the Federal Highway Administration—may file a complaint of discrimination under Title VI of the Civil Rights Act of 1964 (Title VI) and related statutes.

Complaints related to the Federal-aid highway program may be filed with VDOT, FHWA Division Office, the FHWA Headquarters Office of Civil Rights (HCR), the USDOT Departmental Office of Civil Rights, and the USDOJ.

A complaint should contain the following information, and may be sent to the above coordinators:

- A written explanation of the alleged discriminatory actions;
- The complainant’s contact information, including, if available: full name, postal address, phone number, and email address;
- The basis of the complaint (e.g., race, color, national origin);
- The names of specific persons and respondents (e.g., agencies/organizations) alleged to have discriminated;
- Sufficient information to understand the facts that led the complainant to believe that discrimination occurred in a program or activity that receives Federal financial assistance; and
- The date(s) of the alleged discriminatory act(s) and whether the alleged discrimination is on-going.
- Complainant’s signature and date of signature.<sup>14</sup>

- *Enhanced Public Participation and Information Access:*

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<sup>12</sup> VDOT, TITLE VI IMPLEMENTATION PLAN (2021) at pp.15-25, available at [http://www.vdot.virginia.gov/business/resources/Civil\\_Rights/title6/Title\\_VI\\_Implementation\\_Plan.pdf](http://www.vdot.virginia.gov/business/resources/Civil_Rights/title6/Title_VI_Implementation_Plan.pdf).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 36. A Title VI complaint form is attached in Appendix A, and may also be found on VDOT’s website ([http://www.vdot.virginia.gov/business/civil\\_rights\\_title\\_vi\\_of\\_the\\_civil\\_rights\\_act\\_of\\_1964.asp](http://www.vdot.virginia.gov/business/civil_rights_title_vi_of_the_civil_rights_act_of_1964.asp)).



The Virginia Department of Transportation has published a Public Participation in Virginia's Transportation Planning and Programming Process policy.<sup>15</sup> Additionally, Hampton Roads Transportation Planning Organization has published a 2017 Draft Public Participation plan.<sup>16</sup>

- Language Access:

The VDOT [Title VI Implementation Plan of 2021](#) mentions many policies and responsibilities for making sure LEP people are adequately informed and able to participate.

- Consultation with Indigenous Communities and Tribal Nations:

N/A.

Governmental Environmental Justice Structures, Positions, and Funding Streams:

- Environmental Justice Coordinating Agency:

The Virginia Department of Environmental Quality (DEQ) has established an Environmental Justice Office.<sup>17</sup>

- Environmental Justice Coordinator:

Sandra D. Norman  
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<sup>15</sup> VDOT & DRPT, Public Participation in V.A.'s Transportation Planning and Programming Process (2017), [https://www.virginiadot.org/projects/resources/Public\\_Participation\\_in\\_Transportation\\_Planning\\_and\\_Programming\\_Process.pdf](https://www.virginiadot.org/projects/resources/Public_Participation_in_Transportation_Planning_and_Programming_Process.pdf) (last visited July 5, 2022).

<sup>16</sup> HRTPO, Public Participation Plan (Oct. 2017), available at <https://www.hrtpo.org/uploads/docs/pppCompressed.pdf> (last visited July 5, 2022).

<sup>17</sup> VDEQ, *Environmental Justice*, <https://www.deq.virginia.gov/get-involved/environmental-justice> (last visited July 5, 2022).

<sup>18</sup> VDOT, TITLE VI IMPLEMENTATION PLAN (2021) at pp.15-25, available at [http://www.vdot.virginia.gov/business/resources/Civil\\_Rights/title6/Title\\_VI\\_Implementation\\_Plan.pdf](http://www.vdot.virginia.gov/business/resources/Civil_Rights/title6/Title_VI_Implementation_Plan.pdf).

- *Environmental Justice Advisory Board:*

The Virginia Council on Environmental Justice operated as a “temporary” council for two years, until Governor Ralph Northam signed a bill establishing the council as a permanent advisory body to the executive branch.

The Council has the following powers and duties<sup>19</sup>:

- Advise and provide recommendations to the Governor regarding the development of policies and procedures, focusing on equality and equity, to ensure that environmental justice issues are heard and addressed as the Commonwealth evolves, as impacts of climate change increase, and as new environmental justice issues emerge—and specifically on issues of:
  - Integrating environmental justice considerations throughout the Commonwealth's programs, regulations, policies, and procedures;
  - Strengthening partnerships on environmental justice among governmental agencies, including federal, tribal, and local governments;
  - Incorporating potential solutions to environmental justice issues related to stakeholder communication, local governments, climate change and resilience, transportation, clean energy, outdoor access, and cultural preservation;
  - Enhancing research and assessment approaches related to environmental justice and identifying potential risks or disproportionate public health impacts related to environmental pollution, particularly those that threaten or could threaten low-income and historically underserved communities;
  - Receiving comments, concerns, and recommendations from individuals throughout the Commonwealth; and
  - Recommending statutory, regulatory, or executive action, or relevant improvements or additions, for consideration to better address environmental justice issues.
- Submit an annual report to the Governor and the General Assembly for publication.
- Apply for, accept, and expend gifts, grants, or donations from public, quasi-public, or private sources, including any matching funds designated in an appropriation act, to enable it to better carry out its objectives.

Additionally, the Interagency Environmental Justice Working Group<sup>20</sup> was formed

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<sup>19</sup> Va. Code Ann. § 2.2-2699.12 (West).

<sup>20</sup> Va. DEQ, *Environmental Justice*, <https://www.deq.virginia.gov/get-involved/environmental-justice> (last visited July 21, 2022).

to assess and provide recommendations regarding agency improvements to meaningfully engage environmental justice communities and fenceline communities in decision-making activities. The working group is made up of 10 environmental justice coordinators representing each of the Governor’s secretariats. The Working Group shall conduct an assessment of the processes and resources required of state agencies to develop agency-specific environmental justice policies.”

- Funding for Environmental Justice:

N/A.

### **Additional Virginia Environmental Justice Provisions?**

N/A.

### **Virginia Environmental Justice Contacts?**

N/A.

### **Where to Find Virginia Environmental Justice Laws, Policies, and Tools?**

#### Constitutional Provisions:

N/A.

#### Executive Orders:

- [EO 6](#) (2018)
  - Acknowledges that Virginians in low income and minority communities do not enjoy clean and air water
  - Orders DEQ to:
    - Review DEQ’s permitting, monitoring, and enforcement activities across the air, water, and solid waste programs
    - Evaluate every proposed federal regulatory or guidance modification released after January 20, 2017, regarding air, water, and solid waste to determine the impact on public health, drinking water supplies, and land and water protection.
    - Work with stakeholders to improve communication with the public and the regulated community and provide more opportunities for proactive education, especially among underserved and lower income populations.

- [EO 29](#) (2019)
  - Establishes the Virginia Council on Environmental Justice.
- [EO 43](#) (2019)
  - Order directing a focus on clean energy and equitable access. The Virginia Clean Economy Act incorporated this EO.

Legislation and Statutes:

- The Environmental Justice Act;
  - Va. Code Ann. § 2.2-234 (West).
    - Watch [HB 2074](#) (Omnibus Environmental Justice Bill) and [SB 1318](#) (Virginia Environmental Justice Act) which are aimed at adding onto the 2020 EJA.
- [Virginia Clean Economy Act; Summary.](#)
- [The Clean Energy and Community Flood Preparedness Act](#)
  - 50% of the revenue is to support low-income energy efficiency programs
- Virginia Mini-NEPA:
  - Virginia Environmental Impact Report Procedure (VAEIR) VA. CODE ANN. §§ 10.1-1182 to 10.1-1188

Regulations:

N/A.

Policies/Guidance:

- [VDEQ EJ Study.](#)
- [2020 Environmental Justice Interagency Working Group Report.](#)

Mapping Tools:

- [What's in my Backyard?](#)
- [Virginia DEQ Environmental Data Mapper.](#)

Other:

N/A.

