

WEST VIRGINIA

How Does West Virginia Define Environmental Justice and Environmental Justice Communities?

Environmental Justice Definitions:

West Virginia has a policy concerning environmental justice titled “Environmental Equity Policy.” West Virginia broadly defines Environmental Equity as “[t]he 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.” The Policy went into effect on December 15, 2003. The Policy states that West Virginia will do everything within its power to ensure that minority and low-income communities do not as a result of their status as such bear a disproportionate share of environmental harms and ensure that such communities have equal access to environmental benefits.

West Virginia defines a low-income community as “[a] community that has a greater population of low-income families than does a statistical reference area as determined by the United States Census Bureau. According to the U.S. Census Bureau data of the 2000 Supplementary Survey for West Virginia, the estimated population that falls below the poverty level is 19.3%. A low-income community in West Virginia is any community with an estimated poverty population greater than 19.3%.” West Virginia defines a community of color as a “Minority Community.” A Minority Community is “[a] community that has a significantly greater population of minority individuals than does a statistical reference area as defined by the United States Census Bureau. The estimated percent of West Virginia's population that is minority is 5% and thus any community with an estimated minority population greater than 5% is a minority community.”

Environmental Justice Mapping Tools:

West Virginia has a fairly comprehensive mapping tool with GIS data related to a number of environmental issues. For example, with respect to mining, West Virginia has six sets of GIS Data. West Virginia tracks underground mining limits,¹ NPDES outlets,² mining permit

¹ “Data is taken from subsidence control plan maps. It represents the area within which mining may take place, for purposes of subsidence planning, and not the area which already has been mined.” *GIS data*, W. Va. Dep’t of Env’tl. Prot., <https://tagis.dep.wv.gov/site/GISData> (last visited July 14, 2020).

² “Mining related discharge outlets associated with the Clean Water Act's NPDES program.” *Id.*

boundaries,³ mining permit locations,⁴ mining refuse structures,⁵ and valley fills.⁶ To view GIS data, users need to download one of the following: QGIS, ArcGIS Earth, or Google Earth Pro.⁷ GIS data is updated daily Monday through Friday.⁸

How Does West Virginia Consider Environmental Justice in its Substantive Actions⁹?

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

N/A.

Consideration of Environmental Justice in Permitting:

West Virginia does not otherwise explicitly reference environmental justice in its laws, regulations, or agency actions, however, West Virginia has an Air Pollutant Emissions Banking & Trade program that incorporates environmental justice concerns into the permitting process. On the form for Emission Reduction Credit use or retirement, Question 54 asks "Will any disproportionate air quality impacts (for example, impacts to environmental justice communities) result from the proposed ERC use?" If the answer is "yes," then the use of the ERC is prohibited under WV administrative code W. Va. CSR § 45-28-4.4, which states "[t]he director may prohibit the use of emission reduction credits if he or she determines that such use would be inconsistent with the Code, the federal clean air act or protection of human health and welfare and the environment, including any disproportionate air quality impacts." It's not an environmental justice law in the strictest of terms, but it is environmental justice-related.

West Virginia requires some level of cumulative impact analysis in its Surface Mining Rule.¹⁰ The Rule defines a cumulative impact area as "the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface and groundwater systems."¹¹ Applicants must submit a statement of the "probably hydrological consequences" (PHC) on both the permitting area *and* the surrounding areas.¹² Both the applicant and the Secretary of the Department of Environment will complete separate cumulative hydrological impact assessments as well.¹³ However, the language of the Rule seems to make mining a priority as PHC findings that a water source will likely be

³ "Mining permit boundaries, representing areas of surface disturbance associated with coal and quarry mining operations." *Id.*

⁴ "Point locations of mining permits, from the WVDEP ERIS database. Includes many older, closed permits for which no permit boundary is available." *Id.*

⁵ "Locations of coal refuse fills and impoundment." *Id.*

⁶ "Extents of overburden fills associated with mining activity." *Id.*

⁷ *See Id.* (explaining that the mentioned programs are free or open source software).

⁸ *Id.*

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 July 5, 2022).

¹⁰ W. Va. CSR § 38-2.

¹¹ *Id.* § 38-2-2.37.

¹² *Id.* § 38-2-3.22.a.

¹³ *Id.* § 38-2-3.22.d-e.

negatively affected in some way, then lend themselves to further review to plan for remedial and reclamation activities.¹⁴

Both the West Virginia Groundwater Protection Act and the Groundwater Quality Standard Variances require that the cumulative impacts on groundwater resources from all facilities and activities be evaluated prior to granting any permits or deviations.¹⁵

The West Virginia Water Quality Standards requires that the secretary, when requested to establish a mixing zone, assess the potential human health risks of doing so by considering the cumulative effects of multiple discharges and mixing zones on the drinking water intake.¹⁶

The West Virginia Solid Waste Management Rule requires that the secretary consider the cumulative impacts on the groundwater in determining a point of compliance.¹⁷

The West Virginia NPDES Rule for Coal Mining Facilities allows the secretary to modify existing permits after receiving new information - including any information indicating that cumulative effects on the environment are unacceptable.¹⁸

Consideration of Environmental Justice in Enforcement:

N/A.

Consideration of Environmental Justice in Land Use:

See section “*Consideration of Cumulative Impacts*” for more on air pollution rules.

State Environmental Policy Act “Mini-NEPA”:

N/A.

Dedicated Funding to Environmental Justice Communities:

N/A.

Consideration of Cumulative Impacts:

West Virginia has no state-level NEPA but requires cumulative impact assessments to be considered in decisions involving groundwater protection, surface coal mining, air pollution from waste disposal, and solid waste management facilities. None of the cumulative impacts considerations directly relate to environmental justice impacts, but they could be used to help further an environmental justice argument.

¹⁴ *Id.* § 38-2-3.22.b.4.

¹⁵ W. Va. Code Ann. § 22-12-5, W. Va. Code R. § 47-57-5.

¹⁶ W. Va. Code R. § 47-2-5.

¹⁷ W. Va. Code R. § 33-1-4.

¹⁸ Modification, Reissuance, Suspension, Release, and Revocation of Permits: W. Va. Code R. § 47-30-8.

The West Virginia Voluntary Remediation and Redevelopment Rule lists a potential exists for indirect or cumulative impacts to ecosystems of concern as a condition which may indicate the need for an ecological risk assessment.¹⁹

The West Virginia Toxic Air Pollution Rules (TAPR) require that all BAT programs fully consider the additive or cumulative health and environmental impacts of multiple pollutant and multiple unit emissions."²⁰

Additionally, The West Virginia TAPR requires that all landfills and related facilities be “located, designed, constructed, operated, maintained, and closed” in a manner that is consistent with the protection of human health and the environment - which includes the prevention of adverse or cumulative effects on air quality or the potential health risks associated with human exposure to waste.²¹

Prohibitions on Disparate Impact Discrimination:

N/A.

Established Environmental Rights:

N/A.

How Does West Virginia Address Environmental Justice in its Procedures²²?

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 West Virginia Department of Transportation has Title VI policies and procedures for each of their divisions.²³

- Grievance Procedures:

¹⁹ W. Va. Code R. § 60-3-9.

²⁰ Chemical Processing Units: W. Va. Code R. § 45-27-3.

²¹ W. Va. Code R. § 45-25-4.

²² 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 5, 2022).

²³ W.V. DOT, Div. of Highways, Title VI Program FY 2020 Implementation Plan (2020), available at <https://transportation.wv.gov/crc/TitleVI/Documents/Title%20VI%20Program%20FY%202020.pdf>.

The forms and procedures for filing a Title VI complaint with the DOT may be found [here](#) or through the DOT [website](#).

- *Enhanced Public Participation and Information Access:*

West Virginia Department of Environmental Protection has a "Citizen's Guide" which provides summary information on various offices within DEP, administrative law principles, FOIA requests, etc.²⁴ The last version of the Citizen's Guide is from 2018.²⁵

- *Language Access:*

The [West Virginia Judiciary](#), under Title VI of the Civil Rights Act of 1964, provides foreign language interpreters and translation services to all LEP persons "West Virginia state courts provide foreign language interpreters and interpretation: "including parents of non-LEP minors, in criminal or civil settings during all hearings, trials and motions, and in important interactions with court personnel" at no cost. The West Virginia Courts also provide this service for certain preparatory meetings.

- *Consultation with Indigenous Communities and Tribal Nations:*

N/A.

Governmental Environmental Justice Structures, Positions, and Funding Streams:

- *Environmental Justice Coordinating Agency:*

West Virginia has the Office of the Environmental Advocate within the Department of Environmental Protection.²⁶ While the Advocate does not deal exclusively with environmental justice issues, the Advocate's role is to provide assistance to the public in navigating state environmental and administrative law issues as well as helping the public get attention to community issues.²⁷ [SB 616](#) proposes to abolish the Office of Environmental Advocate, as of 6/11/2021, the Bill has been referred to the committee on energy, industry, and mining.

- *Environmental Justice Coordinator:*

²⁴ W. Va. Dep't of Env't Prot., Citizens Guide (2018) at p.1, available at <https://dep.wv.gov/environmental-advocate/Pages/depcitizensguide.aspx>.

²⁵ *Id.*

²⁶ W. Va. Dep't of Env'tl. Prot., *Off. of Environmental Advocate*, <https://dep.wv.gov/environmental-advocate/Pages/default.aspx> (last visited July 5, 2022).

²⁷ *See Id.*

The current Environmental Advocate is Ed Maguire, and he began his tenure on February 1, 2017. The Office can be reached by phone number at either (304) 926-0441 or (866) 568-6649.

- Environmental Justice Advisory Board:

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- Funding for Environmental Justice:

West Virginia does not have much, but through the DEP website links may be found to Environmental Justice Grants issued by the EPA.³⁰

Additional West Virginia Environmental Justice Provisions?

N/A.

West Virginia Environmental Justice Contacts?

N/A.

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

Constitutional Provisions:

N/A.

Executive Orders:

N/A.

Legislation and Statutes:

N/A.

²⁸ *Id.*

²⁹ *See Id.*

³⁰ W.V. DEP, Watershed Improvement Branch, Funding Sources for W.V. Watershed Groups at p.9, *available at* https://dep.wv.gov/WWE/getinvolved/WSA_Support/Documents/Alternative_FundingSources.pdf (Applicants submit through grants.gov website).

Regulations:

N/A.

Policies/Guidance:

N/A.

Mapping Tools:

- <https://tagis.dep.wv.gov/site/GISData>
- <https://mapwv.gov/interactiveMaps.html#Environmental>

Other:

N/A.