

Virginia Advisory Council on Environmental justice

DECEMBER 24, 2018

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NOTE: Organizational affiliations are for identification of members only. Members are individually appointed using a framework of regions of the state as well as academic, environmental and grassroots affiliations.

I. Introduction

Historically the term environmental justice has meant ensuring that vulnerable populations including low income and/or minority populations are not disproportionately affected by environmental exposures that have known adverse effects. The Environmental Protection Agency defines 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. The term has its roots in Civil Rights law, specifically Title VI of the 1964 Civil Rights Act, which prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance. For states like Virginia with significant racial, economic, and ethnic diversity, it is necessary to examine the use of state-level policy mechanisms, such as eminent domain, to ensure their use does not result in discriminatory acts against its citizens.

Recommendation Summary

Policy

- We recommend that environmental justice and social equity be incorporated into the development of the “Coastal Resilience Master Plan” as directed by EO #24 and that a robust public participation effort focusing on equitable representation of affected communities and an environmental justice review of the planned adaptation actions be conducted.
- We recommend a social vulnerability review be conducted of the “Know Your Zone” statewide phased evacuation plan with recommendations for local emergency management best practices to assure equitable evacuation and sheltering.
- We recommend DEQ conduct a full and robust analysis of existing and potential hot spots and environmental justice communities, because of the importance of corrective remediation where there are already problems in existence (e.g., addressing mercury contamination near coal-fired power plants, asthma in urban communities).
- We recommend that the state of Virginia move away from fossil fuels and examine the economy, capacity, infrastructure, and resilience of those communities that have been completely coal dependent for 100 years or more and that examination should include input from local communities.
- We recommend that the Governor explore hot spots in the state and develop strategies to better identify and address hot spot issues.

Structural

- We recommend that the Governor create another executive order to continue the work of the Advisory Council on Environmental Justice.
- We recommend consultation with the Governor to review the annual report and future work.

- We recommend every state agency have an office/officer initiative that will help to integrate environmental justice concerns.
- We recommend that the Governor request a designated point of contact and regular participation in Council regular meetings from each of the Secretariats.
- We recommend a sustainable resource base to enable participation by members, fund travel to regions of the state and to provide support for staff to assist with identifying issues and providing background materials regarding those issues.
- The Council recommends that we identify and implement mechanisms to improve the process so that EJ communities can play a more substantive role in the formation, monitoring and upgrading of policies.
- We recommend the diversity of the Council be maintained in the future.
- We recommend the Governor increase the representation of grassroots and/or community-based organizations on the Council.
- We recommend that we continue to be able to respond to environmental justice issues raised by Council members and by members of the public who have provided public comment.

II. Events Leading to the Formation of the Virginia Advisory Council on Environmental justice

The 2015 proposal for a state environmental justice advisory body came from Southeast CARE Coalition (Angela Harris, Dr. Erica Holloman), New Virginia Majority (Quan Williams), Appalachian Voices (Kate Boyle), and WE ACT for Environmental justice (Dr. Jalonne White Newsome) to the Secretary of Natural Resources, Molly Ward (Figure 6). In 2015, these same nonprofit organizations established a Virginia Environmental justice Collaboration (VEJC), which has since grown to include 19 member organizations.^[1] VEJC in turn proposed the creation of the state advisory body. The formal proposal for an environmental justice advisory body occurred as part of the Executive Order #57 public comments made by Virginia Environmental Justice Collaborative (VEJC) representatives Reverend Dr. Faith Harris (Virginia Interfaith Power and Light) and Dr. Mary Finley-Brook (University of Richmond).^[2] Subsequently, Governor Terry McAuliffe identified ACEJ as one of five key recommendations to pursue from the EO #57 consultative processes. The council members appointed to ACEJ met for the first time on December 17, 2017.

Advisory Council on Environmental justice (ACEJ) Creation Timeline; VA unless noted

1988 Creation of WE ACT for Environmental justice (NY)

1993 Creation of the National Environmental justice Advisory Council (DC)

1994 Passage of Presidential Executive Order #12898 (DC)

2015 Formation of the Virginia Environmental justice Collaborative

2017 An environmental justice advisory body during EO #57 comment period

- Selection of the Governor’s Advisory Council on Environmental justice as an EO #57 action item
- Virginia EO #73 creating ACEJ
- Governor appoints 15 councilors from the 6 Department of Environmental Quality (DEQ) districts across the state
- Energy Foundation Grant pays for UVA Institute for Environmental Negotiation (December 2017-May 2018)^[3]

Former Governor McAuliffe announced ACEJ’s creation on October 31, 2017, stating “This Environmental justice Advisory Council will work to ensure that every Virginian has a voice in protecting the quality of our air and water,” and “This Council will provide critical advice on how to protect our natural resources and address environmental pollution in a way that is both inclusive and action-oriented.”^[4]

Executive Order #73 creating ACEJ further states that “To ensure that all people and perspectives have a voice, the Commonwealth needs a sustained conduit for recommendations on environmental justice. While some state agencies incorporate environmental justice into their review process, there is currently no consistency in how these issues are evaluated within the Executive Branch.”^[5]

Council members were selected to assure representation from the six DEQ districts across the state as well as representation from grassroots and faith-based organizations, business, and academia. The Councilmembers appointed to ACEJ met for the first time on December 17, 2017. Upon entering office, Governor Northam affirmed support for ACEJ, noting this work would “continue under his leadership, ensuring the protection of all Virginians and our natural resources.”^[6]

Timeline of Virginia Advisory Council Events (in 2018):**Four Committee Meetings**

December 17

March 20

May 30

August 2

December 18

Formation of Four Subcommittees

ED #11 Subcommittee

Pipeline Subcommittee

Southwest Virginia Subcommittee

Hampton Roads Subcommittee

Five Subcommittee Meetings

ED #11 (1)

Pipeline (2)

Southwest Virginia and Hampton Roads (1)

Annual Report drafting (1)

Two Subcommittee Letters with Recommendations

ED #11 letter submitted to the Governor on April 9

Pipeline letter submitted to the Governor on August 16

As the Advisory Council on Environmental justice continues some consideration is recommended to be given to innovative models from other states. There also should be some discussion and acknowledgement of the limits and constraints of government advisory councils that are set up to make recommendations to state level officials. Non-governmental organizations (NGOs) often step in after a process of discussion and recommendations by Advisory Councils to use those recommendations to advocate for improved policies and programs to benefit state residents. That NGO role is necessary and essential to complement the work of state environmental justice councils.

III. Work in Year One

The Council held its first meeting in Richmond in December 2017. Duties of ACEJ are set forth in EO #73 and include providing advice and recommendations to the Governor to improve equity in decision-making and improving public health in marginalized communities.

ACEJ Comments on Proposed Carbon Trading Rule

The Council was tasked with providing comments on ED #11. A subcommittee was formed to research environmental justice issues associated with ED #11, Virginia's regulatory rule-making capping carbon pollution from power plants and linking to the Regional Greenhouse Gas Initiative. The subcommittee met on March 20 with Ms. Navarro, Ms. Lockwood, and one member of the public to review issues pertaining to ED #11 that the Council should weigh in on.

Virginians are already experiencing climate change impacts, such as heat waves, seasonal drought, sea level rise, and intensification of storms. Climate disruption often exacerbates inequalities, creates and reinforces environmental injustice, and causes the greatest harm to

poor and vulnerable populations.¹ Climate justice advocates assert harm from climate change disproportionately affects communities of color, low-income populations, and the elderly and children.

At the outset the Council wanted to make clear that the comments it provides about ED #11 do not represent an attempt to speak for environmental justice communities. The governor assembled the ACEJ to provide advice and counsel to the governor on environmental justice issues affecting communities in the Commonwealth. However, the ACEJ is not a substitute for engaging directly with members of ENVIRONMENTAL JUSTICE communities. It is with the background and knowledge of the limits of executive authority that we support creative efforts to address climate change. In doing so, two guiding principles must be adhered to: (1) understanding that the government must first do no harm; and (2) prioritizing environmental justice communities in decision making..."

A major concern the Council expressed in its comments to the proposed rule is the process itself. The ACEJ asked for and would have welcomed a presentation from a DEQ official focused on equity and ENVIRONMENTAL JUSTICE issues for the department. Additionally, we feel that a 90-day comment period is simply not enough time to study this very complicated issue and provide relevant feedback to the DEQ in order to best support underserved communities.

A lengthier comment period may have also allowed the ACEJ to invite professionals and community representatives who are experts on the impact of carbon trading in environmental justice communities to speak to the council and the public before final comments are due. We hope that more open dialogue and a more intentional public effort to study impacts on ENVIRONMENTAL JUSTICE communities will be undertaken throughout the final rulemaking and into program implementation.

There is an opportunity for ACEJ to continue involvement in Virginia's ED #11, which continues to be an important topic with a public comment period beginning early in 2019. Thus, the ACEJ will be likely to hear from a broad group of stakeholders, including impacted communities.

Atlantic Coast Pipeline, Mountain Valley Pipeline, and Buckingham County Compressor Station

From its inception, the Council heard concerns from community members who would be impacted by the Buckingham compressor station, as well as concerns related to the environmental justice impacts of the Atlantic Coast (ACP) and Mountain Valley Pipelines (MVP). During ACEJ's March 20th meeting, a number of community members from Buckingham County asked the Council to address the potential health, safety, and environmental concerns posed by

¹ *United Nations News*. 2016. Inequalities Exacerbate Climate Impacts on Poor and Vulnerable Populations. <https://news.un.org/en/story/2016/10/541743-inequalities-exacerbate-climate-impacts-on-poor-vulnerable-populations-new-un>; Leichenko, R. and O'Brien, K. 2008. *Environmental change and globalization: Double exposures*. Oxford University Press.

the compressor station. The Council decided to research further and formed a subcommittee specifically to work with the community to report on the issues related to the Buckingham Compressor Station and with the ACP and MVP. On August 16, ACEJ sent a letter to the Governor advising him of those significant concerns and making specific recommendations to the pipelines. The issues addressed in the Council's August 16th letter are summarized here.--

Regarding racial disparities, the ACP plans for a massive natural gas compressor station in the Union Hill community of Buckingham County. To be located adjacent to a former plantation.

The Council formed a subcommittee to work with the community to research and report on those issues and related issues with the ACP and MVP. On August 16, ACEJ sent a letter to the Governor advising him of those significant concerns and making specific recommendations related to the pipelines.

In rural counties in the path of the ACP and MVP pipelines, there is widespread concern that residents shoulder disproportionate risks because of their rural residency. State decisions for infrastructure with significant social and ecological risks, like compressor stations, should never be rushed, particularly in places like Union Hill where the everyday experiences of residents are shaped by historical experience of racial injustice for populations whose ancestry is rooted in slavery.

ACEJ recognizes clean water is part of the public trust. UN Resolution 64/292, passed in 2010, acknowledged that clean drinking water is essential to the realization of all human rights. Several United States acts, including the Clean Water Act and the Safe Drinking Water Act, protect access of American citizens to clean drinking water. Disruption or contamination of water supply is an environmental justice issue because low-income populations can least afford to purchase water or filtration systems and cannot pay higher taxes for improved infrastructure.

Individualized analysis of current conditions and expected impacts is important at every crossing, but especially in areas where water quality is already impaired, in areas of seismic activity or geologic instability, and in zones that are sources of drinking water. In rural areas like Bath, Buckingham, and Nelson Counties, where residents rely on wells, streams, rivers, and reservoirs, citizens are highly concerned about groundwater pollution from pipeline construction and use.

A controversial aspect of pipeline construction in Virginia involves interpretation of public good for property takings under eminent domain. There is considerable activity in local, state and federal courts and examination of current policies appears necessary. The Council urges the Governor and state agencies to engage in a public dialogue on this important issue and the environmental justice implications of it.

In counties with pipeline surveying and pre-construction, many property owners lack certainty about landowner rights, since eminent domain taking is negatively viewed by most landowners. Stress is amplified by concerns over property value and the potential for a negative impact on public health. Homeowners who may feel that their quality of life has been negatively impacted may be unable to find a buyer, if they wish to leave.

Monitor Energy and Climate Policy Relevant to Environmental Justice Communities

There is a series of state laws and policies with explicit environmental justice implications, such as review of environmental justice relevant issues associated with EO #6[1], potential legislation joining Virginia to RGGI, and implementation of the Grid Transformation and Security Act (GTSA). The GTSA commits utilities to spend over \$1 billion in energy efficiency investments that could be directed to assist to low-income populations with high energy burdens, meaning households could save a significant share of their income formerly spent on electricity. ACEJ needs to develop a procedure to respond to on-going policy development and the administration should work with the ACEJ to identify energy solutions that could benefit environmental justice populations.

IV. Upcoming Issues and Regions

At the Council's inaugural meeting on December 17, 2017, the group identified a number of pressing environmental justice concerns in the Commonwealth. Some occur all over Virginia, others are region-specific. As part of the first meeting's discussion, the Council voted to prioritize environmental justice concerns in the regions of Southwest Virginia and Hampton Roads. ACEJ created two subcommittees to do research and outreach in those areas. We present here the Council's initial research regarding issues to be addressed at Council meetings in Southwest Virginia and Hampton Roads in 2019.

A. Hampton Roads

The region in southeast Virginia known as Hampton Roads encompasses the metropolitan area including the seven cities of Hampton, Newport News, Portsmouth, Norfolk, Virginia Beach, Suffolk and Chesapeake. The region is named after the channel which links the James, Elizabeth and Nansemond Rivers with the Chesapeake Bay. The planning district commission, one of 21 in the state includes 17 independent cities and counties, stretches from Surry and Southampton County in the south to Gloucester and James City County in the north. The older term "Tidewater" is sometimes used to describe the region, although the name typically encompasses a larger area including all of the coastal plain, east of the fall line, including the Middle Peninsula, Northern Neck and Eastern Shore, as well as northeastern North Carolina.

Flooding

Flooding is major issue facing almost all of the East Coast and Gulf Coast. Virginia is located in a hotspot of sea level rise, facing the highest rate on the East Coast. Since climate change has also increased precipitation rates 20%, increased rainfall, higher sea levels and the flat coastal plain has combined into a high flood risk across the region for both large and moderate storms. The location of a neighborhood, its proximity to tidal waters, groundwater levels, and elevation determine the physical risk of flooding, while the social risk of flood impacts depend on the characteristics of the inhabitants. In Hampton Roads, the most vulnerable people to the impacts of flood within the localities most at risk of flooding are the poor, the medically fragile, the elderly, children and people of color. A tool to assess social vulnerability tool is available in the ADAPT VA portal - http://cmap2.vims.edu/SocialVulnerability/SocioVul_SS.html. According to this analysis, neighborhoods in Newport News, Hampton, Norfolk, Virginia Beach, Portsmouth, Suffolk and Gloucester County experience both high flood hazard and high social vulnerability.

Coal Dust, Coal Ash

Hampton Roads is home to the United States biggest coal exporting port which is brought by rail from Central Appalachia and then loaded onto ships at the Norfolk Southern Pier in Norfolk and the Kinder Morgan and Dominion Terminal Associates Piers in Newport News. Most of the coal, 22 million in 2016, is metallurgical coal that is exported internationally. Coal dust blown from piles of stored coal or generated during transfer affects nearby communities in Norfolk and Newport News, both of which are historically African American. Some monitoring and dust suppression efforts have taken place at the Norfolk Southern terminal area, but concerns persist. In Newport News, citizen air monitoring was implemented. In 2015, an extensive EPA project, called Making Visible Difference, was implemented in the southeast community of Newport News including training, education and assistance to address air quality and other environmental justice issues (attached).

https://pilotonline.com/business/ports-rail/article_ae12b94a-375c-5127-80fc-76c9df648456.html

https://pilotonline.com/news/local/environment/article_b8920d05-0312-587c-b3fe-08be5ab52341.html

ACP and Southside Connector Pipelines

Dominion Energy's now closed Chesapeake Energy Center along the southern branch of the Elizabeth River in Chesapeake has an unlined landfill and former ponds containing coal ash, the waste product of coal-burning power plants. It extremely toxic, containing arsenic, cadmium, hexavalent chromium, lead, mercury and selenium. In March 2017, a judge found that arsenic

had discharged into the river but did not order the ash to be moved or levy a civil penalty. The stored coal ash is located where 53,955 residents live within a 3-mile radius and 1,311 within a one-mile radius. Within the 3-mile radius, 43.3% of residents are non-white with a per capita income of \$16,751, below the U.S. per capita income of \$21,587.

https://pilotonline.com/news/local/environment/article_1f3e5082-78bf-53fa-8dd3-05e7bd6ad529.html

https://www.sourcewatch.org/index.php/Chesapeake_Energy_Center

The Atlantic Coast Pipeline and the Southside Connector pipeline are controversial construction projects slated for areas in Hampton Roads. The Southside Connector is a Virginia Natural Gas Pipeline intended to bring gas to the South side of Hampton Roads for distribution to individual customers. It is a 9-mile pipeline from Norfolk to Chesapeake that will cross beneath the Elizabeth River at a depth of at least 3 feet. The project, which was slated to be completed by January 2019, passes through heavily populated residential areas of Norfolk and Chesapeake with proximity to a number of public schools, medical facilities, churches, and senior centers. <https://www.13newsnow.com/article/news/local/mycity/norfolk/town-hall-focuses-on-concerns-over-virginia-natural-gas-pipeline/291-613557782>

The Atlantic Coast Pipeline is proposed to pass through Suffolk on its way to North Carolina from West Virginia. In 2018, Norfolk granted an easement for the pipeline to pass beneath its reservoirs and Suffolk granted permission to build and operate within the city limits.

<https://virginianaturalgas.com/residential/work-in-your-neighborhood/southside-connector>

https://pilotonline.com/news/local/environment/article_2d55d578-f147-564b-8c3e-a0f395dd5369.html

https://pilotonline.com/news/local/environment/article_c007f13c-26db-11e8-9c46-6fac482af94d.html

<https://www.wavy.com/news/local-news/suffolk/suffolk-gives-atlantic-coast-pipeline-permission-to-build-through-city/1460777344>

Transportation

Transportation is an important environmental justice issue in the Hampton Roads region due to diesel emissions and particulate matter from highway infrastructure. Transportation by rail and by ship, occurring throughout the Port of Virginia, appears to have disproportionate impact on environmental justice communities and will be considered by the ACEJ.

The Hampton Roads Region is served in planning capacity by the Hampton Roads Transportation Planning Organization (HRTPO) and for public transit by the Hampton Roads Transit (HRT). HRTPO complies full with Title VI of the Civil Rights Act of 1964 and has a public participation plan that explicated addresses environmental justice and limited English

proficiency (LEP). HRTPO has convened two environmental justice roundtables- in 2012 and 2015 and has an Office of Community Affairs and Civil Rights.

<https://www.hrtpo.org/page/title-vi-and-lep-guide/>

HRT serves much of the Hampton Roads region with bus and light rail in Norfolk. HRT has submitted a Title VI Program for 2017-2020 which is currently under review.

<https://gohrt.com/contact/title-vi-program/>

B. Southwest Virginia

Virginia DEQ's rural Southwest region is a large, mostly rural area comprising 14 counties. Several environmental justice issues have come to the fore in ACEJ's discussions of that region. The westernmost counties in the region have been dominated by coal extraction for the last century. As the region transitions away from coal, there are significant environmental justice concerns about what is left behind. A second issue in the southwest region is the pollution from the Radford Army Ammunition (*not arsenal*) Plant (RAAP).

Coal Mining

As more than a century of the coal industry's dominance in far Southwest Virginia comes to an end, thousands of acres of scarred land and miles of polluted streams remain. Southwest Virginia environmental justice advocates are very concerned that the pleas to ensure a just transition away from coal and toward a sustainable future for the region are not being heard, and that whatever economic transition the region undergoes will fail to address the significant burdens of legacy pollution from coal mining.

The failure to reclaim current coal mine sites is a major problem in far Southwest Virginia. The 1977 Surface Mining Control and Reclamation Act (SMCRA) is designed to ensure adequate bonding for each coal mine, so that if a company defaults on its obligations, the state has sufficient funds to reclaim the mine. Rather than require full surety bonds for each mine in Virginia, Virginia's Division of Mined Land Reclamation ("DMLR") allows companies to opt into pool bonding, under which they can elect to pay into a centralized fund that covers the risk of forfeiture for all mine sites in the state. A 2012 actuarial study of the fund found that it was undercapitalized against the risk of forfeiture by larger companies, which may forfeit multiple permits simultaneously. (See Pinnacle Actuarial Resources, Inc., May 29, 2012. Pdf attached) The Virginia legislature responded to the study by raising the pool bond fund cap in 2014. However, there remains serious concern that the fund, as it stands today, is insufficient to withstand forfeitures. (See OSMRE's 2017 Virginia Oversight Report, at 30-31. Pdf attached.) And, of course, as the industry continues to decline, such forfeitures become more likely.

The inadequacy of Virginia’s bond pool fund is particularly concerning given Virginia Division of Mined Land Reclamation’s (“DMLR”) poor enforcement against one of Virginia’s largest mine owners, West Virginia’s Governor Jim Justice. The Justice companies are responsible for 36 coal surface mining permits in the state, including 20 permits held by A&G Coal Corporation, for which the company has insured its liabilities to Virginia’s bond pool through self-bonding. See OSMRE 2017 Report, at 31. See also, <https://www.huffingtonpost.com/entry/coal-tycoon-governor-jim-justice-uses-loophole-to-leave-us-5ab8dc8be4b0bf1a4e3e04d4>. For the most part, those mines are idled, or in “temporary cessation.” The mine sites are not being reclaimed, and many are out of compliance with SMCRA’s environmental regulations. See e.g., DMLR Reclamation Fund Advisory Board Minutes, Apr. 19, 2017 and Mar. 14, 2018. Even more troubling, DMLR has, again and again, allowed the company to violate the terms of the multiple enforcement actions the agency has taken. It appears that DMLR is treating the Justice companies with kid gloves out of fear that the company will ultimately default on its obligations and leave reclamation of thousands of acres of mined land and miles of streams to the state’s inadequate bond pool fund.

DMLR’s concerns and those of the environmental justice community are well-founded. Jim Justice’s companies have a well-documented record of shirking liabilities. See e.g., <https://www.kentucky.com/news/state/article216884340.html>. And, according to a March 2018 report, Virginia’s A&G mines, which are owned by Jim Justice, have clean-up liabilities in the state that are 15 times more than the entire bond pool fund. <http://www.climatechangenews.com/2018/03/14/us-coal-hasnt-set-aside-enough-money-clean-mines/>. The problem, of course, for those living in or around those mine sites is that as DMLR allows the companies to continue to defer reclamation, the on-the-ground situation gets worse and the ultimate cost of reclamation increases.

Radford Army Ammunition Plant

According to DEQ data, the Radford Army Ammunition Plant (RAAP) is the single largest polluter in the Commonwealth. For years, lower income and minority residents in adjacent and surrounding neighborhoods have expressed concerns about perceived and potential public health impacts, including asthma, cancer rates, miscarriages and birth defects.

Other environmental justice issues in SW

Another environmental justice in southwest Virginia is deforestation and erosion/flooding from logging. Exposure to hazardous conditions in industries like poultry farming remains a concern with little awareness outside the region about the extent of the problem.

V. Framework for Future Work

Monitor Policies and Permitting Process

There are a series of state laws and policies with explicit environmental justice implications. ACEJ needs to develop procedures and policies to respond to ongoing policy development and requests from the public.

Improve ACEJ Education about Native American Concerns to Prepare for Future Role

On May 30th ACEJ received an educational presentation from Chief Adkins of the Chickahominy nation. The year has been significant for Virginia Native American populations as six tribes received federal recognition. In spite of recent gains, there is often inadequate consultation or collaboration on natural resource management, whether pertaining to state or federally recognized tribes. Virginia could learn from state Native American leaders as well as experts in other state and other state environmental justice agencies where there have been practices implemented to respect the rights of Native American and to expand cultural literacy in collaboration with Native American populations. There is a role for the Virginia Advisory Council on Environmental justice in developing and implementing these processes in Virginia.

Statewide Recycling Policy

The Council is also interested in researching and developing what might become the Virginia Universal Recycling Policy to transition Virginia's waste system. Without organic waste bans or waste recycling policies at the state level, resources that could be utilized end up in landfills. Landfilling recyclable materials contributes to loss of resources and climate change, many of which produce methane, a potent greenhouse gas (GHG). Wasted food could have been donated to emergency kitchens to feed the nearly 900,000 people in Virginia who struggle with hunger. Organic waste could be converted into animal feed, or composted to improve soil health.

This work would be based on the Vermont Universal Recycling Law, also known as Act 148, as well as the similar programs in 24 states across the country. It will have key environmental justice benefits including increased food for vulnerable populations, reduction in greenhouse gases, and increased green jobs and green infrastructure.

Utilize Public Comments to Identify Issues for Future Work

The ACEJ has used the public comment period to identify work in the Buckingham/Union Hill community. We are working to establish a mechanism for regularly and systematically evaluating public comment to allow the issues raised to guide our future work. Public comments received so far are included as an appendix to this report.

VI. Constraints & Goals

Planning and conducting fruitful Public Meetings requires significant resources. To maximize ACEJ's service to the Governor and Commonwealth, we need adequate time, travel funds,

clerical/IT support, and administrative presence to facilitate our functioning prior to, during, and after our Public Meetings.

To date, we have worked diligently on a limited budget. Consequently, not all ACEJ members have been able to attend full meetings of the Council and its sub-committees. Most unfortunately, time and financial constraints preclude allotting more than a handful of minutes to host aggrieved citizens, hear their stories, visit their impacted neighborhood or workplace, and brainstorm/explore solutions. It is embarrassing and challenges our credibility to cut speakers off after four or five minutes. Public trust is essential.

Dialogue with local, state, and federal officials, advocacy organizations, industry liaisons, faith bodies, academic/scientific consultants, and other concerned stakeholders is critical. Record-keeping, internal communications, and public relations are vital and costly; otherwise, we seem to “start over” each time we meet in person or via conference call. Timely and transparent communication with the Governor’s office enhances our mutual goals, morale, and effectiveness.

We could achieve much more with adequate and stable funding. For example, we are currently planning 2019 ACEJ visits to alleged ENVIRONMENTAL JUSTICE sites in the Hampton Roads and Southwest regions of Virginia. To adequately explore the issues in these regions, we need to conduct background research, enable members’ complete attendance, partner with local citizens, and collaborate with the Governor’s office.

ACEJ Goals include:

- Making Virginia a safer habitat for all, especially under-represented citizens;
- Prioritizing Council Agendas and workload
- Requesting and obtaining a budget from the General Assembly
- Facilitating identification and collaboration with frontline (environmental justice) communities
- Increasing attendance and the number of Council meetings (whole and sub-committees)
- Significantly improving Council internal communications in accord with FOIA
- Soliciting external grants and financial support, if necessary

VII. Lessons for the Commonwealth from Other State Advisory Councils on Environmental justice

Research submitted to the Virginia Governor’s *Advisory Council on Environmental Justice*
by Mary Finley-Brook and Carter Ayers, University of Richmond

December 18, 2018

The 2017 creation of an environmental justice advisory body in Virginia followed national efforts across decades (Figure 1). Notable federal level precursors include the creation of the National Environmental Justice Advisory Council (NEJAC) in 1993 and 1994 passage of Presidential Executive Order No. 12898 on Federal Actions to Address Environmental Justice.² Seventeen federal agencies have since signed a Memorandum of Understanding (MOU) to Executive Order No. 12898.³ In 2012, agencies across the federal government wrote and released environmental justice strategies.⁴ The Environmental Protection Agency (EPA) maintains an Office of Environmental Justice that coordinates interagency environmental justice work and organizes a series of grant programs.⁵

At the state level, environmental justice councils started to emerge by 2001.⁶ More than a dozen states have created councils. We compare these state initiatives and contextualize Virginia's emergent council within national trends.

National Environmental Justice Advisory Council

The National Environmental Justice Advisory Council (NEJAC) is a robust body with active representation throughout the country, including Virginia.⁷ NEJAC provides recommendations to the Environmental Protection Agency (EPA) to:

- (1) Integrate environmental justice considerations into Agency programs, policies and activities.
- (2) Improve the environment or public health in communities disproportionately burdened by environmental harms and risks.
- (3) Address environmental justice by ensuring meaningful involvement⁸ in EPA decision-making, building capacity in disproportionately burdened communities, and promoting collaborative problem-solving for issues involving environmental justice.
- (4) Strengthen its partnerships with other governmental agencies, such as other Federal agencies and State, Tribal, or local governments, regarding environmental justice issues.

² Clinton, W. J. (1994). Executive Order No. 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. *Federal Register*. 59(32) <https://www.archives.gov/files/federal-register/executive-orders/pdf/12898.pdf>.

³ Maryland Department of Environment. (n.d.). What is Environmental Justice? <https://mde.maryland.gov/programs/Crossmedia/EnvironmentalJustice/Pages/WhatisEJ.aspx>.

⁴ Ibid.

⁵ EPA (Environmental Protection Agency) (2018). Environmental Justice. <https://www.epa.gov/environmentaljustice>.

⁶ Gross, H., Shafsky, H., Brown, K. (2001). Environmental Justice: A Review of State Responses. *Hastings West-Northwestern Journal of Environmental Law & Policy*. 8(1) <http://gov.uchastings.edu/public-law/docs/envirjustice.pdf>; Bonorris, S. and Targ, N. (2010). Environmental Justice in the Laboratories of Democracy. *Natural Resources & Environment*. 25(2): 44-49.

⁷ EPA (Environmental Protection Agency). (2016). National Environmental Justice Advisory Council. <https://www.epa.gov/environmentaljustice/national-environmental-justice-advisory-council>.

⁸ EPA (Environmental Protection Agency). (2018). Learn about Environmental Justice. <https://www.epa.gov/environmentaljustice/learn-about-environmental-justice#meaning>.

- (5) Enhance research and assessment approaches related to environmental justice.

The three main goals of NEJAC's 2020 Action Agenda⁹ appear relevant to Virginia:

- (1) Deepen environmental justice practice within environmental justice programs to improve the healthcare and environment of overburdened communities in regards to rulemaking, permitting, compliance and enforcement, and science.
- (2) Work with partners to expand our positive impact within overburden communities, including states and local governments, federal agencies, communities, and tribes and indigenous people, and
- (3) Demonstrate progress on significant national environmental justice challenges, such as disparities in lead, in air and water quality, and in the location of hazardous waste sites in the proximity of vulnerable communities.

State-level Environmental Justice Advisory Councils

There are at least twelve active environmental justice advisory councils: California, Delaware, Illinois, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New York, North Carolina, Pennsylvania, and Virginia (Table 1).¹⁰ These are sometimes called commissions or task forces; however, for this report we use 'council' as the standard identifier. The development of environmental justice councils and their successes are discussed below. States like Massachusetts and New York that have environmental justice offices were also included in this analysis. States continue to add environmental justice bodies: councils in Minnesota, North Carolina, and Virginia emerged in the past two years.

Table 1: US States with Environmental Justice Advisory Bodies in 2018

| State | Year formed | State has an Office/Bureau of Environmental Justice | Council provides advice to ____ | State natural resource agencies have one or more environmental justice officers | Council has framework, by-laws, and/or is codified in state law |
|-------|-------------|-----------------------------------------------------|---------------------------------|---------------------------------------------------------------------------------|-----------------------------------------------------------------|
|-------|-------------|-----------------------------------------------------|---------------------------------|---------------------------------------------------------------------------------|-----------------------------------------------------------------|

⁹ EPA (Environmental Protection Agency). (2016). Environmental Justice 2020 Action Agenda. <https://www.epa.gov/environmentaljustice/environmental-justice-2020-action-agenda>.

¹⁰ Additional research is advised. States with previous environmental justice advisory councils, tasks forces, or commissions are South Carolina, Oregon, and New Mexico. These bodies appear no longer active or web materials are not updated. States like Vermont and Hawaii have Environmental Courts with protections against discrimination. Hawaii's Environmental Council focused on environmental health with attention to vulnerable populations.

| | | | | | |
|----------------|-------------------------|-----|---------------------------------------------------------------|-----|---|
| California | 2001 | Yes | California Environmental Protection Agency and other agencies | Yes | X |
| Delaware | 2001 | | Department of Natural Resources and Environmental Control | | X |
| Illinois | 2004/2011 ¹¹ | | Environmental Protection Agency, General Assembly, Governor | Yes | X |
| Maryland | 1999 | | Department of the Environment | | X |
| Massachusetts | -- | X | Department of Environmental Protection | Yes | X |
| Michigan | 2017 | | Governor | | |
| Minnesota | 2016 | | Pollution Control Agency | Yes | X |
| New Jersey | 2009 ¹² | X | Department of Environmental Protection | | |
| New York | -- | X | Department of Environmental Conservation | | |
| North Carolina | 2018 | | Department of Environmental Quality | | |
| Pennsylvania | 2001 | X | Department of Environmental Protection | | X |
| Virginia | 2017 | | Governor | Yes | |

In many states, there was growing recognition of the need for environmental justice policies and protocols by the mid-1990s.¹³ Environmental justice advisory councils emerged in several states by 2001. In several of the cases under review, councils were increasingly incorporated within state institutions and mandates. The three states leading the incorporation of environmental justice into state structures are California, Massachusetts, and New York. In these states, environmental justice commitments are internal to state institutions and activities reach across many agencies rather than relying on a separate council. States like California and Massachusetts have gone on to develop an inter-agency work group, as the EPA did nationally.

¹¹ According to Chris Pressnall, Illinois Environmental Justice Officer, an EJ Advisory Group was created around 2004 (personal communication, December 11, 2018). In 2011, the Illinois General Assembly (2011) passed the Environmental Justice Act creating a Commission on Environmental Justice.

¹² New Jersey initiated an environmental justice council in 2009, dissolved it in 2013, and then re-initiated it in 2016.

¹³ Public Interest Law Center of Philadelphia. (1998). Environmental Justice Protocol.

http://www.mde.state.md.us/programs/Crossmedia/EnvironmentalJustice/Documents/www.mde.state.md.us/assets/document/environmental_justice/ejreport99/appendix_e.pdf.

Table 1 shows Virginia’s council recommendation to the governor provides a different structure than generally found in other states. Michigan also has a structure that reports to the governor but in 2018 added an interagency work group to assure broader implementation.¹⁴

Comparative Analysis

State councils have proven to have utility, as shown in comparative analysis in Table 3.

Table 3: State Environmental Justice Responsibilities

| State | EJ council helps shape state policy | EJ council helps administer funds to vulnerable communities | EJ council communicates directly with marginalized communities | State has an EJ grievance mechanism or ombudsman | EJ council disseminates information in events and publications | State uses environmental justice screening or mapping tools |
|----------------|-------------------------------------|-------------------------------------------------------------|----------------------------------------------------------------|--------------------------------------------------|----------------------------------------------------------------|-------------------------------------------------------------|
| California | X | X | X | X | X | X |
| Delaware | | X | X | X | | |
| Illinois | X | | X | X | | X |
| Maryland | | | X | | | |
| Massachusetts | X | | X | | X | X |
| Michigan | X | | X | X | | |
| Minnesota | | | X | X | | X |
| New Jersey | | | X | | X | X |
| New York | X | X | X | | X | X |
| North Carolina | | | | | | |
| Pennsylvania | X | | X | | | X |
| Virginia | | | X | | | |

The following sections describe successful elements of state initiatives that could be replicated in the Commonwealth to assure Virginia is not a laggard and continues to develop protections to assure there is disproportionate harm to environmental justice communities.

California Environmental Justice Initiatives

California was one of the first states to create an environmental justice agency. In 2002, the state legislature ordered CalEPA to develop an agency-wide strategy, which occurred within two years and sought meaningful public participation and community capacity building. An electronic collection of resources demonstrates the steady development of norms and institutions over time.¹⁵ An Environmental Justice Compliance Work Group targets enforcement

¹⁴ Office of the Governor. (2018). Environmental Justice. https://www.michigan.gov/snyder/0,4668,7-277-61409_61417-425790--00.html.

¹⁵ CalEPA (California Environmental Protection Agency). (n.d.). Resources: Environmental Justice Program. <https://calepa.ca.gov/envjustice/resources/>.

in environmental justice hotspots, where communities experience impacts from multiple sources of pollution.¹⁶ Today the Environmental Justice Task Force has permanent funding through the 2016 Budget Act.¹⁷ In 2018, California created Bureau of Environmental Justice with a team of lawyers.¹⁸

Key state successes and initiatives include:

- Passage of various laws directly addressing environmental justice (i.e., AB 2616, AB 2722, AB 1550, SB 32, AB 197, etc.)¹⁹
- Creation of a work group and strategy to facilitate intra-agency and inter-agency collaboration²⁰
- Establishment of the Environmental Justice Fund²¹ and the Environmental Justice Small Grants Program²²
- Utilization of the CalEnviroScreen, which is now in its third version, as a participatory mapping, screening and planning tool²³

Californian civil society organizes through the independent Environmental Justice Alliance (EJA) and engages with state agencies directly.²⁴ EJA publishes an annual report assessing state agencies on their implementation of environmental justice policies, drawing attention to agencies that have made significant progress or those to monitor.²⁵ EJA also produces an environmental justice scorecard for legislation and a voter guide.

¹⁶ CalEPA (California Environmental Protection Agency). (2016). Policy Memo: CalEPA Environment Justice Compliance and Enforcement Task Force. <https://calepa.ca.gov/wp-content/uploads/sites/6/2016/10/EnvJustice-IWG-2013yr-PolicyMemo.pdf>.

¹⁷ CalEPA (California Environmental Protection Agency). (n.d.). <https://calepa.ca.gov/enforcement/environmental-justice-compliance-and-enforcement-task-force/>.

¹⁸ Fimright, P. (2018). California AG launches environmental justice unit focused on lower income communities. *San Francisco Chronicle*. <https://www.sfchronicle.com/science/article/California-AG-launches-environmental-justice-unit-12646555.php>.

¹⁹ Funes, Y. (2016). California Governor signs new legislation which brings greater environmental justice to communities. <https://www.colorlines.com/articles/california-governor-signs-new-legislation-which-brings-greater-environmental-justice>.

²⁰ Office of the Governor. (2003). Environmental Justice in California State Government. http://opr.ca.gov/docs/OPR_EJ_Report_Oct2003.pdf.

²¹ State of California, Assembly Bill 2636. (2018). Attorney General: Environmental Justice Fund. https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB2636.

²² CalEPA (California Environmental Protection Agency). (n.d.). Environmental Justice Program. <https://calepa.ca.gov/envjustice/>.

²³ Finley-Brook, M. and E. L. Holloman. (2016). Empowering Energy Justice. *International Journal of Environmental Research and Public Health*. 13(9): 926. doi:10.3390/ijerph13090926.

²⁴ The Commonwealth of Virginia also has an independent network of environmental justice organizations in the Virginia Environmental Justice Collaborative (VEJC). ACEJ could collaborate with VEJC to improve communication and outreach with grassroots organization and communities.

²⁵ California Environmental Justice Alliance. (2017). Environmental Justice Agency Assessment. <https://caleja.org/2018/05/2017-environmental-justice-agency-assessment/>.

Delaware Community Involvement Advisory Council

Although the Delaware council's goal is to "address adverse environmental impacts on communities" and it focuses on "community involvement," it is not identified as an environmental justice council per se.²⁶ Delaware's Community Involvement Advisory Council (CIAC) was codified in state law in 2001.²⁷ A Community Ombudsman was also established at the same time. Together the council and ombudsman help identify and lift barriers to underserved populations, improve access to goods and services, and increase public safeguards and participation.²⁸ Nonetheless, environmental injustice continues to be a problem in Delaware, as shown in a Union of Concerned Scientists 2017 report on New Castle County.²⁹ Hotspot analysis in New Castle drew attention to marginalized environmental justice communities with disproportionate toxic burden.

CIAC reviews Community Environmental Protection Fund (CEPF) proposals from non-profit organizations and oversees and monitors projects once approved. Delaware legislation allows use of 25% of penalty funds from violations of environmental regulations for CEPF. Tax-exempt organizations are eligible to apply for up to \$20,000.³⁰ Since 2005, seventy projects have received over three million dollars in total funding from the CEPF.³¹

Illinois Environmental Justice Advisory Group

From 2004-2016, the Illinois Environmental Justice Advisory Group met regularly and carried out outreach meetings to engage with public directly.³² As an interesting model, the Illinois Advisory Group adopted Ground Rules for engagement (Figure 1).

²⁶ DNREC (Delaware Department of Natural Resources and Environmental Control). (n.d.). Community Involvement Advisory Council. <https://dnrec.alpha.delaware.gov/community-services/advisory-council/>

²⁷ Delaware Code. § 8016A Community Involvement Advisory Council and Community Ombudsman. <http://delcode.delaware.gov/title29/c080/sc01/index.shtml#8016A>.

²⁸ Global Environmental Resources, Inc. (2001). Report of the Community Involvement Advisory Committee. <http://www.dnrec.delaware.gov/CIAC/Documents/ciacreport.pdf>.

²⁹ Union of Concerned Scientists. (2017). Environmental Justice for Delaware: Mitigating Toxic Pollution in New Castle County Communities. <https://www.ucsusa.org/our-work/center-science-and-democracy/connecting-scientists-and-communities/environmental-justice-for-delaware#.XAKRTkc0F4c>.

³⁰ DNREC (Delaware Department of Natural Resources and Environmental Control). (2018). Community Environmental Project Fund. <https://dnrec.alpha.delaware.gov/community-services/environmental-project-fund/>.

³¹ Lauria, M. (March 4, 2018). Dwindling DNREC funds: Fewer fines or fewer polluters to blame? *Delaware Online*. <https://www.delawareonline.com/story/news/local/2018/03/05/dwindling-dnrec-funds-fewer-fines-fewer-polluters-blame/378648002/>.

³² Illinois EPA (Environmental Protection Agency). (n.d.). Environmental Justice Outreach. <https://www2.illinois.gov/epa/topics/environmental-justice/Pages/outreach.aspx>.

Figure 1: Illinois Environmental Justice Advisory Group Ground Rules³³

1. We will be as open as possible but honor the right of privacy.
2. What is discussed in our group will remain confidential.
3. We will respect differences. We won't discount others' ideas.
4. We will be supportive rather than judgmental.
5. We will give feedback directly and openly, it will be given in a timely fashion, and we will provide information that is specific and focuses on the task and process and not personalities.
6. Within our group, we have the resources we need to solve any problem that arises. This means that we will all be contributors.
7. We are each responsible for what we get from this team experience. We will ask for what we need from our facilitator and the other group members.
8. We will try to get better acquainted with each other so we can identify ways we can develop professionally.
9. We will start on time and end our meetings promptly.
10. We will keep our focus on our goals, avoiding sidetracking, personality conflicts and hidden agendas. We will acknowledge problems and deal with them.

While the Advisory Group has been dormant for the past two years and its future is uncertain,³⁴ Illinois established a Commission on Environmental Justice in 2011.³⁵ Illinois has developed grievance mechanism for violations of civil rights (Title VI) or Illinois EPA's Environmental Justice Policy.³⁶ Public reports on the work of the commission show proceedings and settlements.³⁷ Like many other states, Illinois has developed protocols and software for environmental justice mapping.³⁸ Another noteworthy initiative in Illinois is the Solar for All Program with specific targeting mechanisms for making benefits accessible to environmental justice communities.³⁹

Maryland Commission on Environmental Justice and Sustainability Communities

³³ Illinois EPA (Environmental Protection Agency). (n.d.). Illinois Environmental Justice Advisory Group. <https://www2.illinois.gov/epa/topics/environmental-justice/advisory-group/Pages/default.aspx>.

³⁴ Illinois Environmental Justice Coordinator, Chris Pressnall (personal communication, December 11, 2018).

³⁵ Illinois General Assembly. (2011). Environmental Justice Act. <http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=3372&ChapterID=36>.

³⁶ Illinois EPA (Environmental Protection Agency). (n.d.). Grievance Procedure. <https://www2.illinois.gov/epa/topics/environmental-justice/Pages/grievance-procedure.aspx>.

³⁷ EPA (Environmental Protection Agency). (n.d.). Environmental Justice Grievances and Resolutions. <https://www2.illinois.gov/epa/topics/environmental-justice/Pages/grievances.aspx>.

³⁸ Illinois EPA (Environmental Protection Agency). (n.d.). Illinois EPA EJ Start. <http://illinois-epa.maps.arcgis.com/apps/webappviewer/index.html?id=f154845da68a4a3f837cd3b880b0233c>.

³⁹ Illinois Solar for All Program provides incentives for community solar and solar development and job training opportunities for economically disadvantaged individuals and environmental justice communities. Illinois Solar Energy Association. (2018). Illinois Solar for All Resources. <https://illinoissolar.org/Illinois-Solar-for-All>.

Maryland's Environmental Justice Advisory Council was codified and established by-laws in 1999.⁴⁰ The council's structure and its name were later changed to the "Commission on Environmental Justice and Sustainability Communities."

For many years, the State of Maryland and environmental justice leaders and communities advocated for consideration of multiple exposure and cumulative impacts in environmental policy and decisions. SB 706/HB 1210 sought to address these concerns during the 2014 legislative session, but it did not pass. Thus, the Maryland Department of the Environment (MDE) established a Cumulative Impact Work Group to explore how to incorporate into policies and procedures.⁴¹ They compiled a report following years of study that is still one of the first of its kind.⁴²

Today there is an EJ Internal Work Group at the MDE doing education and outreach, as demonstrated with infographics on environmental justice for state officials,⁴³ local governments, businesses, communities,⁴⁴ and the general public.

Massachusetts Environmental Justice Initiatives

The Commonwealth's Executive Office of Energy and Environmental Affairs (EEA) established an Environmental Justice Policy, which was revamped and extended in 2017.⁴⁵

Key state initiatives include:

- The 2014 Executive Order on Environmental Justice⁴⁶
- The 2010/2017 Environmental Justice Policy (draft policy translated into five languages)⁴⁷
- Creation of an Interagency Environmental Justice Working Group⁴⁸

⁴⁰ MDE (Minnesota Department of the Environment). (1999). Environmental Justice Report. http://www.mde.state.md.us/programs/Crossmedia/EnvironmentalJustice/Documents/www.mde.state.md.us/assets/document/environmental_justice/ejreport99/appendix_b.pdf.

⁴¹ MDE (Maryland Department of the Environment). (n.d.). Cumulative Impacts Work Group. http://www.mde.state.md.us/programs/Crossmedia/EnvironmentalJustice/Pages/Cumulative_Impacts_Workgroup.aspx.

⁴² Ulrich, M. (2014). States and Cumulative Impacts. http://www.mde.state.md.us/programs/Crossmedia/EnvironmentalJustice/Documents/Other_States_and_Cumulative_Impacts-Final.pdf.

⁴³ MDE (Maryland Department of the Environment). (n.d.). Environmental Justice for State Officials. http://www.mde.state.md.us/programs/Crossmedia/EnvironmentalJustice/Documents/EnvironmentalJustice_State%20Officials.pdf.

⁴⁴ MDE (Maryland Department of the Environment). (n.d.). Environmental Justice for Communities. http://www.mde.state.md.us/programs/Crossmedia/EnvironmentalJustice/Documents/www.mde.state.md.us/assets/document/environmental_justice/EnvironmentalJustice_People.pdf.

⁴⁵ Executive Office of Energy and Environmental Affairs. (n.d.) Objectives of Environmental Justice. <https://www.mass.gov/service-details/objectives-of-environmental-justice>.

⁴⁶ Commonwealth of Massachusetts. (2014). Executive Order on Environmental Justice. <https://www.mass.gov/files/documents/2016/08/su/eo552.pdf>.

⁴⁷ Commonwealth of Massachusetts. (2017). Environmental Justice Policy. <https://www.mass.gov/service-details/environmental-justice-policy>.

⁴⁸ Ibid.

- Establishment of a Director of Environmental Justice⁴⁹
- Environmental justice community identification and mapping⁵⁰

Michigan Environmental Justice Work Group

The Michigan Environmental Justice Work Group was established in 2017 following recommendations from the Flint Water Advisory Task Force and the Flint Water Interagency Coordinating Committee.⁵¹ In 2018, an Interagency Environmental Justice Work Group was established. The Environmental Justice Work Group also recommended creation of an ombudsman, which occurred in 2018.⁵²

Minnesota Pollution Control Agency Environmental Justice Advisory Group

Minnesota has an Environmental Justice Advisory Group within Pollution Control Agency. The state has developed a four-step process for tribal consultation and collaboration, including procedures for receiving input and providing follow up.⁵³ As an example of an effective communication tool, the Pollution Control Agency developed an interactive ArcGIS storymap demonstrating environmental justice concerns.⁵⁴

New Jersey Environmental Justice Advisory Council

The New Jersey Environmental Justice Advisory Council (EJAC), community organizations, and the Department of Environmental Protection (DEP) developed a screen tool for environmental justice communities. Identifying environmental justice areas makes it possible to target emissions reductions and other necessary resources toward heavily burdened communities.⁵⁵

EJAC has three working groups: air, land, and water. The Water Working Group conducted a pilot project in Irvington Township to teach residents to flush tap water systems after

⁴⁹ Commonwealth of Massachusetts. (2018). Environmental Justice Additional Information and Resources. <https://www.mass.gov/service-details/environmental-justice-additional-information-and-resources>.

⁵⁰ Commonwealth of Massachusetts. (2017). Environmental Justice Communities in Massachusetts. <https://www.mass.gov/info-details/environmental-justice-communities-in-massachusetts>.

⁵¹ Michigan Office of the Governor. (2018). Environmental Justice Work Group Report: Michigan as a Global Leader in Environmental Justice. https://www.michigan.gov/documents/snyder/Environmental_Justice_Work_Group_Report_616102_7.pdf.

⁵² Oakland Legal News. (2018). Ombudsman position created to address environmental justice issues. <http://legalnews.com/oakland/1462370/>.

⁵³ MPCA (Minnesota Pollution Control Agency). (2013). Minnesota Pollution Control Agency Policy on Consultation and Coordination with Indian Tribal Governments. <https://www.pca.state.mn.us/sites/default/files/p-gen5-06.pdf>.

⁵⁴ MPCA (Minnesota Pollution Control Agency). (n.d.). Environmental Justice in Minnesota. <http://mpca.maps.arcgis.com/apps/MapSeries/index.html?appid=f5bf57c8dac24404b7f8ef1717f57d00>.

⁵⁵ Sheats, N. (2017). Achieving Emissions Reductions for Environmental Justice Communities through Climate Change Mitigation Policy. *William & Mary Environmental Law & Policy Review*. 41(2): 377-402.

idleness.⁵⁶ They hope to replicate this process in every environmental justice community in the state and create a 9-point plan to inform citizens how to reduce exposure to lead in drinking water.⁵⁷

In 2017, the Land Working Group hosted an Urban Agriculture Symposium for grassroots organizations, academics, and community members. A subsequent white paper included environmental justice recommendations, such as an urban agriculture collaborative.⁵⁸

New York Environmental Justice Initiatives

In 1999, the state of New York created an environmental justice program, which has since been expanded to an Office of Environmental Justice.

Initiatives include:

- Establishment of environmental justice grant programs, like the Community Impact Grant⁵⁹
- Oversight of new consultation procedures with Native American populations⁶⁰
- Use of maps and Geospatial Information System (GIS) tools for environmental justice⁶¹
- Passage of environmental justice policy⁶²
- Use of Green Infrastructure (GI) in environmental justice communities⁶³
- Implementation of Operation ECO-Quality⁶⁴
- Issues regular environmental justice reports and newsletters⁶⁵

North Carolina Environmental Justice and Equity Advisory Board

⁵⁶ NJ DEP (New Jersey Department of Environmental Protection). (2017). Environmental Justice Advisory Council First-Year Report. <https://www.nj.gov/dep/ej/docs/ejac-first-year-report-2016-2018.pdf>.

⁵⁷ Statewide policy to reduce lead in all environmental justice communities is commendable. Based on consultation with Queen Zakia Shabazz, Executive Director, United Parents Against Lead (UPAL) on November, the recommended step for Virginia would be to replace lines, using the national line replacement service, which is more effective than flushing.

⁵⁸ NJ DEP (New Jersey Department of Environmental Protection). (2017). Environmental Justice Advisory Council First-Year Report. <https://www.nj.gov/dep/ej/docs/ejac-first-year-report-2016-2018.pdf>.

⁵⁹ DEC (New York State Department of Environmental Conservation). (2018). Environmental Justice Grant Programs. <https://www.dec.ny.gov/public/31226.html>.

⁶⁰ DEC (New York State Department of Environmental Conservation). (2009). Contact, Cooperation and Consultation with Indian Nations. https://www.dec.ny.gov/docs/permits_ej_operations_pdf/cp42.pdf.
⁶¹ <https://www.dec.ny.gov/public/911.html>.

⁶² DEC (New York State Department of Environmental Conservation). (n.d.). EJ Related Policy and Regulations. <https://www.dec.ny.gov/public/36929.html>.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ DEC (New York State Department of Environmental Conservation). (n.d.). Updates and News from the Office of Environmental Justice. <https://www.dec.ny.gov/public/65832.html>.

Since the North Carolina Environmental Justice and Equity Advisory Board was created this year, and has just begun to meet, it is too soon to report on impacts. However, the Director of the Department of Environmental Quality (DEQ) has taken a strong advocacy role stating that the new DEQ mission to “provide science-based environmental stewardship for the health and prosperity of all North Carolinians,” can only be accomplished if fighting for Environmental Justice is part of every DEQ activity.

“I challenge [the Environmental Justice and Equity] board, and all of you, to stand shoulder to shoulder with us and acknowledge that we all are responsible. You too must pledge to work for inclusion, demand equity and celebrate the diversity of the people of our great state. With that simple acknowledgment, together we will protect our natural resources, our economic interests, and our communities so that ALL North Carolinians will have clean air and clean water for today, tomorrow and future generations to come.” -Secretary Michael S. Regan, May 2, 2018⁶⁶

Pennsylvania Environmental Justice Advisory Board

Created in 2001, Pennsylvania’s Environmental Justice Advisory Board (EJAB)⁶⁷ established its by-laws in 2013.⁶⁸ EJAB played a role in policy formation when it engaged with the Department of Environmental Protection (DEP) during creation of the state Environmental Justice Policy.⁶⁹ EJAB oversees implementation of an Enhanced Public Participation Policy, which binds permit applicants to improved consultation practices when working in marginalized communities.⁷⁰

Virginia Governor’s Advisory Council on Environmental Justice

The Governor’s Advisory Council on Environmental Justice was created in 2017 and has not yet formalized or regularized its methods of state or community engagement. All meetings are open to the public can involve time for public comment.

This report demonstrates extensive opportunities to expand current efforts. The establishment of by-laws and passage of a bill in Virginia’s General Assembly would help institutionalize the responsibilities and roles of the councils, as many other states have done. Environmental justice rule-making an collaboration across state agencies is improved when there is intra-agency and

⁶⁶ NC DEQ (North Carolina Department of Environmental Quality). (2018). Environmental Justice. <https://deq.nc.gov/outreach-education/environmental-justice>.

⁶⁷ PA DEP (Pennsylvania Department of Environmental Protection). (2018). Environmental Justice Advisory Board. <https://www.dep.pa.gov/PublicParticipation/EnvironmentalJustice/Pages/default.aspx>.

⁶⁸ PA DEP (Pennsylvania Department of Environmental Protection). (2018). By-laws. https://www.dep.pa.gov/PublicParticipation/EnvironmentalJustice/Documents/Final_By-laws%20_5-7-2013.pdf

⁶⁹ PA DEP (Pennsylvania Department of Environmental Protection). (2018). Environmental Justice Public Participation Policy. http://files.dep.state.pa.us/PublicParticipation/Office%20of%20Environmental%20Advocacy/EnvAdvocacyPortalFiles/2018/05-29/EJ%20Public%20Participation%20Policy_DRAFT.pdf

⁷⁰ Ibid.

inter-agency coordination with a work group and planning and implementation strategy. The creation of an environmental justice or community involvement ombudsmen was found to be particularly useful in Delaware and was recently added in Michigan. Various environmental ombudsman positions also exist at the national level within the EPA and in several countries.

VIII. Recommendations

Policy

- We recommend that environmental justice and social equity are incorporated into the development of the “Coastal Resilience Master Plan” as directed by EO #24 and that a robust public participation effort focusing on equitable representation of affected communities and an environmental justice review of the planned adaptation actions be conducted.
- We recommend a social vulnerability review of the “Know Your Zone” statewide phased evacuation plan with recommendations for local emergency management best practices to assure equitable evacuation and sheltering.
- We recommend DEQ conduct a full and robust analysis of existing and potential hot spots and environmental justice communities, because of the importance of corrective remediation where there are already problems in existence (e.g., addressing mercury contamination near coal-fired power plants).
- We recommend that the state of Virginia move away from fossil fuels and examine the economy, capacity, infrastructure, and resilience of those communities that have been completely coal dependent for 100 years or more and that examination should include input from local communities.
- We recommend that the Governor explore hot spots in the state and develop strategies to better identify and address hot spot issues. Statewide data may fail to capture local exposures that contribute to adverse health for Virginia residents. For example, Richmond has been designated one of the asthma capitols of the nation by the Asthma and Allergy Foundation of America. Poor air quality has been linked to asthma in the city of Richmond. Yet asthma prevalence for the state is consistent with national averages.
- We recommend for the Buckingham community, as with other communities in Virginia, the Governor’s office examine the role of state agencies to ensure policies with the potential to negatively impact vulnerable communities take the

health of those residents into full and weighted consideration as permits are considered for issuance.

- We recommend the Governor appoint an environmental justice ombudsman to address public questions and concerns which consistent with Executive Order #6.
- We recommend the establishment of an interagency council to improve coordination and collaboration within the governor's staff and state agencies on the topic of environmental justice Consistent with other states with advisory councils.
- We recommend continuation of the environmental justice advisory justice council as we along with community members found this process valuable.

Structural

- We recommend that the Governor create another Executive Order to continue the work of the Advisory Council on Environmental justice. The existing Council members are recommended to be reappointed, and that the vacant seat to be filled. We have found this process has shown to be valuable to the Commonwealth.
- We recommend consultation with the Governor to review the Annual Report and future work.
- We recommend every state agency have an office/officer initiative that will help to integrate environmental justice concerns.
- We recommend that the Governor request a designated point of contact and regular participation in Council regular meetings from each of the Secretariats. The Council's original structure included Ex Officio membership from the seven Secretariats mentioned in the Order.
- We recommend a sustainable resource base be developed to enable participation by members, fund travel to regions of the state and to provide support for staff to assist with identifying issues and providing background materials regarding those issues. Please see attached budget for reference.
- The Council recommends that we identify and implement mechanisms to improve the process so that environmental justice communities can play a more substantive role in the formation, monitoring and upgrading of policies because of the difficulty environmental justice communities have participating in meetings of the ACEJ.
- We recommend the diversity of the Council be maintained in the future. The Council has benefitted from having representation from grassroots and academic institutions. There has also been representation from many differing regions of the state. We recommend the Governor increase the representation of grassroots and/or community-based organizations on the Council.
- We recommend that we continue to be able to respond to environmental justice issues raised by Council members and by members of the public who have provided public comment.

IX. Budget

Budget Justification Appendix

Travel for Council Members to Council meetings

- We estimate mileage for the current Council members to quarterly meetings at a rate of 54.5 cents per mile to be **\$ 10,294**
- Lodging is estimated based on state per diem guidelines at two room nights per meeting for a total of **\$5,014**

Facilitation/Research on Issues and Regions

- A graduate level student working part time to assist the Council with logistical arrangements for site visits, preliminary research on issues and regions, preparing briefing documents to update Council members on the work of the Subcommittees and taking meeting notes is estimated at \$2500 per quarter for an annual cost of **\$10,000**.

Logistical Costs for Quarterly Meetings

- This costs for room rental and other one-time logistical costs for quarterly meetings is estimated at \$1000 each for an annual cost of **\$4000**

Travel Cost for Council members to National Environmental Justice Advisory Council Meetings.

- Travel and lodging for Council members to travel to the Environmental Protection Agency National Environmental Justice Advisory Council Meetings is estimated at \$5,000

Travel Cost for Subject Matter Experts to travel to ACEJ meetings

- Using travel estimates for 7 subject matter experts to travel to Council meetings mileage is estimated at **\$5,147**.
- Using travel estimates for 7 subject matter experts to travel to Council meetings and state per diem guidelines lodging is estimated at **\$2,014**

Public Comment Appendix

Summary

Members of the public were encouraged to submit comments either over the phone or in person during each meeting. The ACEJ also accepted written comments throughout the year. Over the course of the first year of the ACEJ, the council received thirty-eight comments from the public. Of these comments, the overwhelming majority, twenty-eight comments, were in opposition to the Atlantic-Coast pipeline, raising concerns about the environmental justice impacts of the pipeline route and the location of the compressor station in Buckingham County.

Two public comments were made in support of the Atlantic Coast Pipeline, citing positive local economic development opportunities. Two public comments were made in opposition of the “Mega Landfill” in Cumberland County. Two public comments were made by members representing advocacy organizations, encouraging the council to better utilize resources non-profit organizations have that can support the council’s work.

One public comment was made regarding each of the following issues: encouraging more attention to the issue of sea-level rise in Hampton Roads, strengthening the authority of the ACEJ, support of the carbon trading rules being finalized by DEQ, and supporting increased oversight of the issue of lead in state buildings.

(Note: meeting minutes which include public comments for the full ACEJ meeting on August, 28 2018 have not been incorporated into the summary above as the meeting were unavailable at the time of drafting this report as well)

Public Comments from ACEJ Meetings

