





Environmental Justice in Virginia

Blazing a Trail into the Future

Jeffery Steers

Virginia Department of Environmental Quality

August 5, 2020

AGENDA

- Historical Perspective of Environmental Justice in Virginia
- Identifying EJ Communities and “Hot Spots”
- The Role of EJ in permitting/compliance/monitoring
 - Siting criteria and local government certifications
 - Targeted risk-based inspection planning
 - Ambient air and water quality monitoring in EJ communities
- Stakeholder Engagement

Environmental Justice

- “The fair and meaningful involvement of all people regardless of race, color, faith, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies”
 - Executive Order 73 (2017)
- Objective of the Commonwealth to develop “energy resources and facilities in a manner that does not impose a disproportionate adverse impact on economically disadvantaged or minority communities”
 - Va. Code 67-101.12
- “DEQ’s existing obligations to ensure that all regulated entities comply with health-based standards will continue in all permitting activities to reduce public health burdens on all populations”
 - 2018 Virginia Energy Plan

Historical Perspective

- In 2007, DEQ's assigned an EJ coordinator, working with agency program managers and EPA
- In 2008, DEQ worked with EPA Region 3 to develop the first Risk Based Inspection Strategy in the Country; EJ played a role in that strategy and EPA's approval
- In 2008, DEQ introduced EJ into the agency's inspection strategy for all of the core programs: water, solid waste, air, and hazardous waste
- In 2009, DEQ entered into a partnership with EPA, Norfolk State University, and Hampton University and signed a Memorandum of Understanding to share resources in an effort to attract minorities into the natural resource profession

Historical Perspective

- Since 2009, DEQ recruited students for paid summer intern positions from both Norfolk State University and Hampton University to work along environmental professionals in the air program. This has been a huge success.
- In 2014 and 2019, DEQ partnered with EPA, Norfolk State University, and Hampton University again to re-sign the Memorandums of Understanding.
- Proactive community engagement and education with civic organizations and faith-based organizations
- Until recently, environmental justice was not part of the regulatory discourse nor part of the permitting process

2020 General Assembly Session

Two Environmental Justice Bills were introduced:

- SB 406/HB 704 - Provided that it is the policy of the Commonwealth to promote environmental justice, defined in the bill, and to ensure that it is carried out throughout the Commonwealth.
- SB 883/HB 1042 - Establishes the Virginia Council on Environmental Justice, consisting of 27 members, to advise the Governor and provide recommendations intended to protect vulnerable communities from disproportionate impacts of pollution as well as provide such communities meaningful involvement in the decision-making process
- Both Bills passed into law and became effective July 1, 2020

Defining EJ Communities- EJSCREEN

- EJSCREEN developed by EPA as an environmental justice mapping and screening tool with nationally consistent dataset and approach for combining environmental and demographic indicators
- Incorporates recommendations from National Environmental Justice Advisory Council (NEJAC)
- Should be used *only* as screening tool and indicator if further investigation warranted
- Does not define neighborhoods
- Helps DEQ with doing targeted community outreach

EJSCREEN

6 Demographic Indicators

- Percent low income
 - Less than/equal twice federal poverty level
- Percent minority
 - Other than single-race non-Hispanic white
- Less than high school education
 - % over age 25
- Linguistic isolation
- Individuals under age 5
- Individuals over age 64

EJSCREEN

11 Environmental Impact Indicators

- NAAQS
- National Air Toxics Assessment (NATA) diesel PM
 - NATA = EPA ongoing evaluation of national air toxics exposure
- NATA cancer risk (risk per mm)
- NATA respiratory hazard index
- Traffic proximity and volume (daily traffic count/distance to road)
- Lead paint indicator (% pre-1960 housing)
- Superfund proximity (site count/km distance)
- Risk Management Plan proximity (facility count/km distance)
- Hazardous waste proximity (facility count/km distance)
- Wastewater discharge indicator

EJSCREEN

Presentation of Data for Studied Areas

- Data for 6 demographic indicators presented as % of population of a studied area
 - Compared to %'s for state, EPA region, and nation
- Data for 11 environmental indicators presented as an impact value unique to each indicator
 - Each impact value for a studied area also presented as percentiles comparing risk in studied area with state, EPA region and nation
 - Higher the percentile, higher the relative risk
 - >50 percentile means risk posed to population of studied area by that indicator greater than risk posed to population of state as a whole
 - <50 percentile means risk posed to population of studied area by that indicator less than risk posed to population of state as a whole

Environmental Justice and Local Government Zoning

- Typically local citing criteria and zoning for proposed projects decided before permit applications submitted to DEQ
- Recent examples include a natural gas compressor station, a new landfill and a 401/404 wetland permitting application
- Generally DEQ does not have the legal authority to consider communities of color and economically challenged communities in its decision-making
- However.....

Site Suitability Va. Code §1307E

- Section 1307E.3 of the Virginia Code requires DEQ to consider the “suitability of the activity to the area in which [the proposed facility] it is located” when issuing air permits

Site Suitability – Local Zoning Authority Under Virginia Air Statute

- Va. Code §15.2-2200, et seq., confers zoning authority on local jurisdictions
 - Encourage localities to improve the public health, safety, convenience and welfare of citizens and take into consideration of needs of agriculture, industry and business in future development
- 15.2-2212 requires planning commissioners to be residents of the locality, qualified by knowledge and experience to make decisions on community growth and development
- 15.2-2280 provides localities may regulate and determine the use of land, buildings and structures for agricultural, business, industrial, residential and other specific uses

Balancing Economic Growth With Community Concerns

- Early engagement with communities on a local level
 - Local government, applicant, concerned citizens and state permitting authority coordination
- Breakdown barriers and spread of misinformation
- Perceived EJ issues used by opponents of permitting action
 - Work with facts

Compliance & Monitoring Programs

- DEQ's Risk Based Inspection Strategy recognizes EJ communities when developing compliance/inspection planning
- Identifying potential “hot spots” to address ambient air and water quality monitoring in EJ communities
- Working with Virginia's newly recognized Tribes
 - Outreach to tribes on DEQ projects
 - Coordinating with Region 3 to educate tribes on roles of EPA and DEQ
 - Federal consultation on permitting and proposed water quality standards

The Future of Environmental Justice in Virginia

- DEQ seeks input from stakeholders through Executive Order 6 in 2018
- DEQ hires a consultant (SKEO) to chart a path forward
- Earlier outreach to EJ communities on significant projects prior to the official public comment period

EJ Study Purpose

- To provide independent recommendations to DEQ on how to incorporate environmental justice principles into DEQ strategic planning and a phased program implementation.
- Anticipated recommendations include regulatory actions within existing DEQ authority and potential regulatory and statutory changes that clarify or expand state authority to promote equity in environmental decision making. The study will also result in a plan to further enhance DEQ's education, communication and outreach.



Stakeholder Perspectives:

What does “Environmental Justice” mean?

- Regulations are administered fairly, without discrimination based on demographics
- Meaningful community involvement
- Engaging vulnerable communities in decisions that affect them
- Recognizing and considering past harms and inherent inequities in decision-making
- Avoiding cumulative and disproportionate negative impacts on vulnerable communities
- Distributing program benefits equitably; to meet the priorities of vulnerable communities
- Ensure all people have access to nurturing environments



Stakeholder Perspectives:

Considerations regarding the concept of EJ

- Concerns that..
 - Some communities have not been treated equally under the law
 - EJ might be limited to race, and not consider other factors
 - EJ may be manipulated or used as a tool to stop projects for “outside” agendas
 - Define a disadvantaged population may be challenging
 - Defining and evaluating “impact” and “disproportionate” maybe challenging
- EJ is a response to environmental injustice which occurs where communities bear all the burdens, share none of the benefits, don’t have a place to be a part of the process



Stakeholder Perspectives: What is DEQ's role in advancing EJ?

- Focus solely on environmental regulations
- Facilitate permit applicants through the permitting process
- Consider EJ, public health, social and economic considerations as part of environmental regulation
- Prevent pollution and injustice; drive an increase in use of renewable energy
- Neutral arbiter, providing guidance on environmental justice
- Thought leader in advancing environmental justice
- Develop accurate and trustworthy data to support decision-making
- Everyone has equal access to the agency; treat everyone fairly
- Recognize and address inequities
- Both permittees and communities know what to expect

Stakeholder Perspectives:

What are DEQ's biggest challenges in advancing EJ?

Authority: Questions regarding DEQ's authority to consider EJ in regulatory decisions

Direction: Setting a new direction amid conflicting stakeholder perspectives

Guidance: Lack of clear methods, guidance, and tools to evaluate EJ impacts

Resources: Limited funding and staff; especially with new state budget crisis under COVID-19

Trust: Lack of trust between DEQ and EJ communities and some regulated communities

Stakeholder Perspectives:

What is DEQ's relationship to various stakeholders?

Industry: Positive working relationship; neutral, fair, consistent

Small Agriculture: Ranges; unsure of DEQ's role and what programs impact them

Local government: Neutral to positive

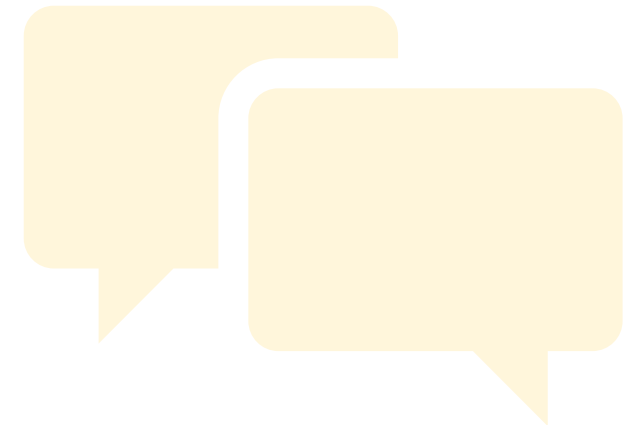
Environmental Organizations: Neutral to positive

EJ Communities and Activists: Very strained, deep lack of trust



Legal Authority - Stakeholder Perspectives

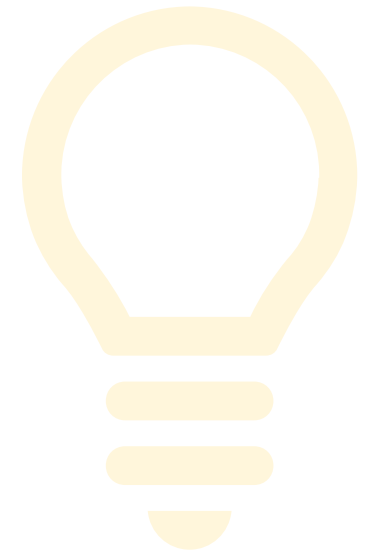
- Different understandings of DEQ's authority related to EJ and civil rights enforcement
- Does DEQ have authority to...
 - consider siting after a local land use approval?
 - be more protective than the standards?
 - consider cumulative, disproportionate impacts?
 - consider past inequities?
 - consider sensitive populations?
- How much of the permit review is discretionary?
- How can EJ impact findings influence a permit decision?





Legal Authority - Stakeholder Ideas

- Review all legal pronouncements and summarize current legal authority
- Clarify the social and economic considerations in DEQ's mission/title
- Leverage constitutional requirement for environmental conservation
- Set higher standards for community engagement
- Designate EJ communities across the state
- Provide a visual aid of DEQ authority and programs



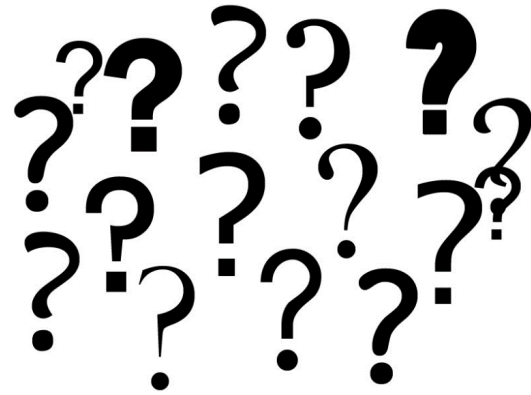
Next Steps

- Review findings of SKEO study
- Alignment of recommended outcomes with needed resources
- Evaluate potential statutory changes to incorporate recommendations into permitting programs
- Development of community outreach plan based on SKEO recommendations
- Long term sustainable commitments to EJ (beyond this administration)

Future Steps Continued

- Work to enhance EJ education and training - Possible creation of EJ Academy
- Research the development of a Virginia specific EJ GIS Screening Tool
- Reach out to localities to partner on EJ matters (to include education & training)
- Work toward funding EJ programs, projects, and positions
- Examine expanding EJ partnerships

Questions



Jeffery Steers

VA DEQ

804-698-4079

jeffery.steers@deq.virginia.gov