

# **Historical Overview of DEP's Environmental Justice Program**

## **Background**

In 1998, under the leadership of former Commissioner Robert Shinn, the New Jersey Department of Environmental Protection (DEP) obtained a \$100,000 grant to create an Environmental Equity Task Force, later to be known as the Environmental Justice Advisory Council (EJAC). This Task Force (May 1998) had over 30 members and was comprised largely of representatives from DEP and environmental justice advocates.

This Task Force was originally created in response to the environmental justice (EJ) work taking place at the federal level by the U.S. Environmental Protection Agency (EPA) and its National Environmental Justice Advisory Council (NEJAC). The two overriding mandates to the Task Force at the time were: (1) to create a state EJ policy and (2) to develop a new pollution permit process which would address EJ concerns and allow for earlier and expanded public participation in the permit process.

The EJ policy was adopted in February 2000 through an Administrative Order issued by Commissioner Shinn. The new permit process was developed as a new regulation/rule in 2002 and entitled the "Expanded Community Participation Process for Environmental Equity. A screening formula to determine whether a community was suffering from "disproportionate pollution burdens and discrimination" due to the location and operation of polluting facilities, i.e., facilities located and operating in communities with large numbers of people of color and low-income residents, was created by the DEP to be incorporate in the proposed new rule. Disparate health and health impacts, as well as environmental indicators, were to be taken into consideration within the context of the new rule.

An unprecedented three evenings of public hearings were held on the rule in each region of the state, during which hundreds of people testified, and large amounts of written testimony was received. Because the formula to determine environmental injustice was not user-friendly and it would require another rule to fix it, Commissioner Campbell withdrew the rule in May 2002 and began work on a new EJ Initiative, part of which resulted in the 2004 Environmental Justice Executive Order No. 96.

## **Formalization of the DEP EJ Program**

Under former Commissioner Campbell, the EJ Program was moved from within the Office of Equal Employment Opportunity to the Office of Policy, Planning and Science in the Office of the Commissioner. This reorganization has enabled the program to successfully access and engage all levels of staff, from senior management to staff in implementing EJ activities.

In 2003, the EJ Program was formalized at DEP. Activities focused on identifying key EJ advocates throughout New Jersey and establishing program information, including a

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program brochure for the general public and municipalities, and a program website. In addition, the lead senior policy advisor developed and vetted policy ideas with EJ advocates.

The Environmental Equity Task Force continued to meet throughout 2003. Commissioner Campbell conducted an enforcement strike in Camden to ensure that regulated facilities throughout Camden, were complying with environmental laws. In 2003, the EJ Program, co-sponsored two roundtables working with the Association for New Jersey Environmental Commissions. Roundtables were held in the cities of Newark and in Camden, to discuss the issues of land use and environmental justice.

Commissioner Campbell appointed the first director of the Office of Environmental Justice. The director's primarily responsibility was to draft an EJ Executive Order. The Environmental Equity Task Force was changed to the EJAC by Commissioner Campbell.

When the Advisory Council was still a task force, its members, along with relevant DEP staff, drafted the "Guide to Administering an Effective Environmental Equity Stakeholder Process." The primary goal of the guidance was to create an outreach and communication system between environmental permit applicants and communities to increase public participation in environmental decision-making. The guidance could also be used internally by DEP, as well as others. It was created as a companion to the proposed rule.

## **Executive Order No. 96**

### ***Mission Statement***

*The Environmental Justice Advisory Council (EJAC) to the New Jersey Department of Environmental Protection (DEP) is appointed by and shall serve as an advisory body to the Commissioner of the DEP and the New Jersey Environmental Justice Task Force in accordance with Executive Order No. 96. The EJAC is committed to the basic tenet set forth by the Environmental Justice Movement that all communities, regardless of their racial, ethnic, or economic composition, are entitled to equal protection from the consequences of environmental hazards. The EJAC will make recommendations to the DEP Commissioner and the New Jersey Environmental Justice Task Force to ensure that the Department develops effective communication programs, implements and enforces environmental laws, regulations, and policies so that such actions do not unfairly burden any New Jersey population of people with a disproportionate share of environmental pollution. Further, the EJAC will strongly encourage the Department to provide mechanisms for outreach to and direct community participation in environmental decision making.*

*Adopted Thursday, May 22, 2003  
Adopted with Revisions: December 18, 2003  
Revised Version: February 2005*

On February 18, 2004, Governor James E. McGreevey signed Executive Order No. 96, as a call to all executive branch State Departments, agencies and authorities to consider the impacts of decision-making on health and the environment and periodically review policies

to ensure they do not create disproportionate adverse effects. The EO created an Interagency Group, the Environmental Justice Task Force (EJTF) to oversee the process. In addition, the Executive Order formally established the EJAC, with 15 members from diverse sectors and grassroots representation, to advise the DEP and the EJTF.

The EO also established a process whereby community residents and workers may submit petitions to the EJTF to seek action to address environmental and public health concerns. Petitions were submitted to the EJTF and had to have at least 50 signatures from adults and be signed by at least 25 residents from the petition area of concern.

In 2004, EJTF received its first petitions from concerned residents and workers in Long Branch and Camden. At the EJTF first meeting, in May 2004, it voted to further both the Long Branch and Camden's petition. The EJTF subsequently met several times to approve program development plans and guidance created by the EJ Program and the Camden petition. In the 2<sup>nd</sup> half of 2004, the Task Force officially had its first open call for petitions, known as 2004 cycle 1. The Task Force received petitions from Linden, Roselle, Newark, Ringwood and Jersey City. In June 2005, the EJTF voted to further petitions from Newark, Linden and Ringwood. The EJTF decided not to advance petitions from Jersey City and Roselle, concluding that the railroad concerns raised in the petitions were under the authority of federal agencies, and therefore not within the scope of State Executive Order #96.

In 2004 and 2005, the EJ Program continued to work with petitioners and stakeholders from the five municipalities of Camden, Long Branch, Newark, Ringwood and Linden; however, only Camden and Long Branch received Action Plans to address the concerns raised in their petitions.

#### *Other policy developments to address Environmental Justice*

In 2003, the National Academy of Public Administrators identified a key obstacle to adequately addressing potential environmental injustice. NAPA found that there is a major gap between State authority and local land use planning. In 2004, DEP successfully lobbied the Office of Smart Growth, an affiliate of the Department of Community Affairs, to include Environmental Justice Inventory provisions in its guidance to municipalities seeking planning endorsement from the State. Under New Jersey's State Planning Commission, "Plan Endorsement Guidelines" (April 28, 2004), there are several stages of plan endorsement. The following outlines how the State will work with planning petitioners to address potential EJ issues. In furtherance of this policy, DEP's EJ Program provides environmental, demographic information and consultation to municipalities in order to address potential EJ issues at the local level.

For the first stage, Initial Plan Endorsement, a petitioner submits the fundamental planning documents, which most municipalities and counties will have already prepared, including the master plan, to the State Planning Commission. These planning documents will be reviewed by the Office of Smart Growth, which, after consultation with other State agencies, will make a recommendation to the State Planning Commission as to the consistency of the petitioner's plan with the State Plan. Normally a municipality will often have a meeting with the Office of Smart Growth, prior to submitting its petition for plan endorsement. After this meeting, DEP prepares a "Municipal Environmental Justice Inventory" with an inventory of the following sites that are known to either emit pollution

or be contaminated, for reference, review and consideration during comprehensive planning efforts:

- Facilities that submit a Release and Pollution Prevention Report under the Worker and Community Right to Know Act 34:5A and the Worker and Community Right to Know Regulations N.J.A.C. 7:1G;
- Facilities that submit an Emission Statement under the Air Pollution Control Act N.J.S.A. 26:2C-1 to -25.2 and N.J.A.C. 7:27-21;
- Facilities regulated under the Toxic Catastrophe Prevention Act (TCPA), N.J.S.A. 13:1K-19 to -35 and N.J.A.C 7:31;
- Facilities regulated under Spill Compensation and Control Act N.J.S.A. 58:10-23.11 and the Discharge Prevention Control and Countermeasure Regulations (DPCC) N.J.A.C.7:1E;
- Hazardous Waste Treatment Storage and Disposal (TSD) facilities under the Solid Waste Management Act 13:1E-1-48 and the Hazardous Waste Regulations N.J.A.C. 7:26G;
- Brownfields, as defined by Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 et. seq.; and
- The Known Contaminated Sites, as identified on the Department of Environmental Protection Known Contaminated Site List.

Municipalities are asked to ensure that its planning efforts do not cause any populations, especially low-income and minority sub-populations, to be placed in or relegated to locations that could have the affect of adversely exposing them to known adverse or disproportionate environmental and/or health impacts.

#### *Suggested 2006 Work Plan*

In 2006 the EJ Program continued to play a key role to administer the work of the EJTF, DEP and the EJAC to address issues of EJ. In 2006, the EJ Program objectives were to:

- Serve as a liaison to constituents through submitted petitions and outreach
- Pursue funding opportunities for technical assistance to communities and environmental education training programs
- Develop and implement training curriculum for State agencies on EJ
- Conduct expanded outreach to the Hispanic communities, especially focusing on pesticide use issues
- Work with the EJAC to implement its 2005 recommendations, which are due December 2005.
- Review policy issues to address unique concerns for the urban and rural environments.
- Work with appropriate programs and agencies to ensure that current commitments for finalized Action Plans are implemented
- Provide quarterly reports on Action Plan progress
- Identify EJ proponents in various sectors, including government, academia, health, faith-based, business and industry and grassroots.
- Further development of internal policy guidance to address potential issues of EJ
- Administer the EJTF and the EJAC.

## **Initial Responsibilities for the EJAC**

Executive Order No. 96 outlined the Advisory Council's role and the composition of the members. While the Advisory Council's Mission reaffirmed the council's over-arching role as an advisory body that makes recommendations to the DEP, it also expanded the Advisory Council's role in the following ways:

- In addition to making recommendations to the DEP, the Advisory Council shall also make recommendations to the (State interagency) EJ Task Force;
- The Task Force shall consult with the Advisory Council to identify a set of communities, from the petitions filed, with which they will work;
- The Task Force shall develop an Action Plan for the selected communities in consultation with the Advisory Council.

### **Other areas of responsibility include:**

- Working in partnership with the DEP EJ Office;
- Helping develop criteria to be used to define an "EJ community;"
- Serving as liaisons to the DEP for the constituencies we represent, including reporting relevant information back to our constituents, and raising issues of concern to the DEP from our groups;
- Supporting local/state EJ struggles as appropriate & making recommendations to the DEP & EJTF regarding them;
- Making recommendations to the DEP about ways it can enhance its public participation protocol for programs, such as EJ and Site Remediation, in which increased public participation is essential;
- Helping provide "EJ 101 & Beyond" education to the EJTF;
- Making structural changes to the council, i.e., Bylaws, Mission, creation of an expanded Ex. Committee, etc.
- Educating members of the Advisory Council, as necessary, about the issue & the related problems around the state;
- Sharing information with other Advisory Council members, including solutions that are working in other parts of the state/country;
- Working with the DEP, NJEJ Alliance Diesel Committee, & Clean Air Council on the pending diesel emissions reduction legislation;
- Serving as spokespersons for the Advisory Council, when appropriate.

## **Executive Order No. 131**

In February 2009 Governor Jon S. Corzine issued Executive Order No. 131 which mandated that Executive branch departments, agencies, boards, commissions, and any and all other bodies of the State's executive branch, including but not limited to the Department of Community Affairs (DCA), the Department of Environmental Protection (DEP), the Department of the Public Advocate, the Department of Health and Senior Services (DHSS), and the Department of Law and Public Safety (DL&PS), which are involved in

decisions that affect environmental quality and public health shall provide appropriate opportunities for all persons, regardless of race, ethnicity, color, religion, income, or education level to participate in decision-making. Programs to promote and protect human health and the environment shall be reviewed periodically to ensure that they: (a) meet the needs of persons living in low-income communities and communities of color; and (b) address disproportionate exposure to environmental hazards.

In the execution of the EO the Governor stipulated the following:

- The creation of the EJAC located in the Department of Environmental Protection.
- The members of the Advisory Council are to be appointed by the Commissioner of DEP, and shall consist of fifteen individuals, and shall meet not less frequently than quarterly. The Council shall annually select a Chairperson from its membership and shall have a minimum composition of one third membership from grassroots or faith-based community organizations. Additional membership shall include representatives from: academic public health, statewide environmental, civil rights and public health organizations; large and small business and industry; municipal and county officials, and organized labor. The chief of staff shall designate a representative from the Governor's Office to serve as a liaison to the Advisory Council and to assist it in accomplishing its mission.
- The Advisory Council shall be charged with making recommendations from time to time to the Commissioner of DEP about issues involving EJ in New Jersey.
- All recommendations submitted by the Advisory Council are to be reviewed and considered by the DEP; including recommendations for policy and regulatory changes that DEP can undertake to consider and incorporate cumulative impacts into its decision-making.
- The Advisory Council shall operate until December 31, 2013.

### **Administrative Order 2016-08**

Building upon the transformation efforts of the Department in 2012, the Office of Environmental Justice addresses EJ through strong collaboration with like-minded partners that demonstrates transformative change when people work together in pursuit of a common goal. The Office of Environmental Justice has established a comprehensive community environmental management approach to address complex multi-media issues.

On September 12, 2016, Commissioner Bob Martin, issued an Administrative Order, extending the work of the EJAC through until December 31, 2018. With the reorganizational meeting scheduled for November 2, 2016, the Commissioner outlined the Advisory Council's structure and responsibilities, as follows:

- The Council has been expanded to the appointment of 18 members who are representative of each of the geographical areas of the State;
- Comprise representatives of county and municipal governments; community-based groups/organizations; public health; academic and educational institutions; faith-based organizations; grassroots organizations; State and Federally recognized tribal governments and indigenous groups; non-governmental groups; environmental groups; and/or business and industry;
- Composition of the Council reflects the regional, racial, gender, religious, and ethnic diversity of New Jersey;

- Shall continue to provide advice and recommendations to the Commissioner;
- Create working groups to establish comprehensive strategies and identify best practices that address health disparities, sustainability, equitable development, community and economic revitalization, and resilience in overburdened communities;
- Make recommendations to encourage the unitization of community-based efforts to engage business and industry to promote sustainable practices beneficial to both businesses and communities;
- Focus on and a community-based approach with measureable goals and outcomes, similar to the Camden Collaborative Initiative, which approach DEP will be extending to other communities through its Community Collaborative Initiative; and
- Make recommendations for the Commissioner's consideration to incorporate EJ throughout the DEP's programs where appropriate and to the extent permitted by law, including providing assistance in developing effective communication programs, outreach to encourage direct community participation in environmental decision-making, and implementing and enforcing environmental laws.

### **Executive Order No. 23**

On April 20, 2018, Governor Phil Murphy signed Executive Order No. 23 directing the DEP to take the lead, in consultation with other departments, in developing guidance for all executive branch departments and agencies for the consideration of environmental justice in implementing their statutory and regulatory responsibilities.

The DEP is conducting a series of public stakeholder meetings and consultations with executive branch agencies, municipalities, legislators and EJ and environmental advocates to inform development of the guidance.

EO No. 23:

- Continues the Environmental Justice Advisory Council (EJAC)
- Requires the development of a guidance document as a framework for state agencies and departments to follow when considering EJ in their operations, decision-making processes, and actions
- Requires draft guidance to be submitted to the governor by October 20, 2018 and final guidance by January 19, 2019
- Directs all executive branch departments and agencies to consider the issue of environmental justice and make evaluations and assessments in accordance with that guidance, to the extent not inconsistent with law
- Does not establish regulatory, legislative, or statutory authority for environmental justice