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Environmental Justice Executive Order No. 23 Guidance

DRAFT 12.17.18

1.0 INTRODUCTION

This guidance is issued pursuant to the direction of Executive Order No. 23 (E.O. 23), signed by Governor Phillip D. Murphy on April 20, 2018. In E.O. 23, Governor Murphy recognized that, historically, New Jersey's low-income communities and communities of color have been exposed to disproportionately high and unacceptably dangerous levels of air, water, and soil pollution, with the accompanying potential for increased public health impacts. In addition, E.O. 23 recognized that communities that are disproportionately affected by environmental degradation often face other serious problems beyond environmental issues, including health risks and housing challenges.

E.O. 23 directed the Department of Environmental Protection (DEP), in consultation with the Department of Law and Public Safety and other relevant departments, to take the lead in developing a guidance document for all executive branch departments and agencies for the consideration of environmental justice in implementing their statutory and regulatory responsibilities. Following the publication of the final guidance, all Executive branch departments and agencies are directed to consider the issue of environmental justice and make evaluations and assessments in accordance with the guidance. In addition, E.O. 23 continued the role of DEP's Environmental Justice Advisory Council in providing advice, information and feedback regarding environmental justice concerns and issues.

This guidance document provides a framework for executive branch departments and agencies to incorporate environmental justice considerations (encompassing environmental, social, health and economic concerns) in implementing their statutory and regulatory responsibilities. Environmental justice considerations include reducing burdens on our vulnerable communities, as well as increasing benefits provided to those same communities. Achieving environmental justice goals will take the coordinated efforts of all of New Jersey's governments and regional entities to focus on environmental, social, health and economic opportunities to improve the quality of life for those within our overburdened communities.

2.0 DEFINING ENVIRONMENTAL JUSTICE

The U.S. Environmental Protection Agency (EPA) 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."¹ EPA has further explained that:

"Fair treatment" means that no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental and commercial operations or policies.

¹ U.S. Environmental Protection Agency, *Interim Guidance on Considering Environmental Justice During the Development of an Action*. Available at: <https://www.epa.gov/environmentaljustice/interim-guidance-considering-environmental-justice-during-development-action>.

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“Meaningful involvement” means that (1) people have an opportunity to participate in decisions about activities that may affect their environment and/or health; (2) the public's contribution can influence the regulatory agency's decision; (3) Community concerns will be considered in the decision-making process; and (4) decision makers will seek out and facilitate the involvement of those potentially affected.

While there can be other definitions and interpretations of “environmental justice,” the New Jersey DEP finds the EPA definition to be fair and helpful to understanding and guiding the purpose and goals of the directive set forth by Governor Murphy in E.O. 23. State agencies are encouraged to refer to and use this definition in implementing their obligations under E.O. 23 and this guidance.

In addition to the general definition of “environmental justice,” EPA and a number of states and other entities have developed various screening tools that facilitate evaluation of a number of factors, including environmental, health and social factors, that shed light on whether a community should be considered to be disproportionately burdened or “overburdened” by environmental or other stressors. EPA has developed a screening tool known as “EJSCREEN” to evaluate this information.

The New Jersey DEP does not have a separate screening tool for identifying environmental justice communities. Other state agencies use various tools and factors to identify vulnerable or overburdened communities for their own program purposes. For example, NJ Department of Community Affairs uses the Municipal Revitalization Index (MRI), which ranks New Jersey’s municipalities according to eight separate indicators that measure diverse aspects of social, economic, physical, and fiscal conditions in each locality.

DEP recommends that state agencies use EPA’s EJSCREEN as well as other available tools and state and community-level data, for the purpose of identifying environmental justice communities that are affected by or may benefit from state programs or actions. This guidance also provides for the establishment of a workgroup under the new Environmental Justice (EJ) Interagency Council to evaluate and make further recommendations on the use of screening tools to identify environmental justice communities, as described in Section 6 below.

3.0 ENVIRONMENTAL JUSTICE ISSUES IDENTIFIED BY STAKEHOLDERS

This guidance document was developed through both interagency coordination and a public stakeholder process. An interagency team was formed to provide input on the guidance document, as well as share experiences and program successes to address environmental justice. A public stakeholder process was developed to receive and incorporate input from various stakeholders, including members of environmental justice communities, conservation and planning organizations, business and industry, and municipal and legislative elected representatives. Multiple meetings with public stakeholders were held at DEP and in various communities during the evening to maximize stakeholder availability.

Input from stakeholders identified many challenges for environmental justice communities, including:

1. Excessive and disproportionate exposure to pollution, such as
 - Excessive air pollution from stationary and mobile (vehicle) sources
 - Lead contamination in housing, drinking water and soils
 - High number of sites contaminated with hazardous substances
 - Pesticide exposure

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2. Cumulative health impacts from exposure to many sources of pollution
3. Underlying social conditions that contribute to cumulative health effects, such as
 - Lack of affordable housing in environmental justice communities
 - Lack of access to health care
 - Lack of access to healthy food
 - Lack of access to safe and clean public transportation
 - Inadequate access to green areas
4. Vulnerability to effects of climate change such as increased flooding

Stakeholders also identified a number of opportunities for state agencies to improve conditions for environmental justice communities, including through:

1. Better community engagement by state agencies
2. Capacity building assistance for communities
3. Promoting clean energy in environmental justice areas to reduce air pollution
4. Increasing urban green spaces
5. Supporting and promoting urban agriculture

4.0 GOALS AND PRINCIPLES OF GUIDANCE

In order to carry out E.O. 23 and respond to the challenges and opportunities for addressing environmental justice issues identified by stakeholders, this guidance is intended to assist and guide all state agencies to achieve the following goals:

1. State agencies will have a common understanding of environmental justice.
2. State agencies will routinely consider environmental justice impacts of their programs when developing and implementing program plans, regulations and policies.
3. State agencies will work together, through an inter-agency environmental council and cross-agency workgroups, to develop and carry out targeted action plans to address environmental justice challenges and to leverage opportunities for improving conditions in environmental justice communities.
4. State agencies will coordinate their activities to provide effective communication and collaboration with environmental justice communities.

5.0 STATE AGENCY ACTION PLANS

To carry out the purpose and direction of E.O. 23, each state department or agency that has one or more programs affecting environmental justice communities will develop an EJ Action Plan that includes the components described below and participate in the EJ Interagency Council described in Section 6 below.

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Based on initial meetings and collaboration with other state departments and agencies, DEP identifies the following departments, agencies and other state entities that have one or more programs affecting environmental justice communities and the environmental justice issues identified by stakeholders during the outreach conducted for this guidance:

Department of Health
Department of Community Affairs
Department of Children and Families
Department of Education
Department of Law and Public Safety
Department of Transportation
Department of Motor Vehicles
Board of Public Utilities
Office of Emergency Management
Department of Agriculture
Department of State, including the Business Action Center
Economic Development Authority
Department of Human Services
Labor and Workforce Development
Office of Homeland Security and Preparedness

Each of these departments or agencies, in collaboration with DEP, should prepare an EJ Action Plan that includes:

1. A plan for educating and training department or agency staff about environmental justice and their role in advancing environmental justice goals.
2. Identification of existing programs that have a significant impact on environmental justice communities.
3. Description of the methods and procedures currently used to provide information about its programs to environmental justice communities and to solicit community feedback and collaboration.
4. Identification of opportunities to improve engagement and collaboration with environmental justice communities and to improve conditions in those communities.
5. Identification of opportunities to work with other state departments or agencies to improve the consistency and effectiveness of communications with environmental justice communities and to leverage program and funding opportunities to maximize benefits for environmental justice communities.

To assist state departments or agencies with developing their Action Plans and carrying out their responsibilities under E.O. 23 and this guidance, DEP will:

1. Develop training for agencies to assist employees in understanding and identifying environmental justice issues.

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2. Identify tools and best practices for identifying and collaborating with environmental justice communities. This effort will identify and build on tools and programs that state departments and agencies already have, as well as tools and programs that have been developed by EPA or other federal agencies.

6.0 ENVIRONMENTAL JUSTICE INTERAGENCY COUNCIL

DEP will form an EJ Interagency Council composed of the departments and agencies identified in Section 5, as well as other executive branch departments, agencies or offices that may be invited to participate from time to time. The EJ Interagency Council is intended to provide a forum for interagency collaboration to ensure interagency consistency, sharing of information and best practices, and leveraging of opportunities to support and assist environmental justice communities.

Each department or agency that participates on the EJ Interagency Council shall be represented by its agency head or a senior official designated by the agency head. The designee shall have the appropriate decision-making authority for participation in the Council.

The EJ Interagency Council will collaborate and meet periodically with DEP's Environmental Justice Advisory Council to identify environmental justice community concerns, develop priorities and action plans, and facilitate collaboration with environmental justice communities.

The EJ Interagency Council will establish a process to incorporate public input on environmental justice issues, challenges and opportunities.

State departments and agencies participating in the EJ Interagency Council will:

1. Identify areas in which their programs overlap, interrelate, or service the same environmental justice communities.
2. Identify opportunities to coordinate existing programs and leverage funds and resources to improve environmental and health conditions for environmental justice communities.
3. Identify opportunities to coordinate their future interactions and collaboration with environmental justice communities to improve consistency and efficiency of communications.
4. Form workgroups to develop and implement action plans to address particular environmental justice issues, challenges and opportunities identified by stakeholders, including those described under Section 3 above, and any additional issues, challenges or opportunities identified in the future.

The first workgroups to be established under the EJ Interagency Council will address:

1. Use of screening tools and methodologies to identify environmental justice communities. This workgroup, led by DEP, will evaluate currently available screening tools, including EPA's EJSCREEN, the Department of Community Affairs' Municipal Revitalization Index, and other appropriate screening tools and, in consultation with the Environmental Justice Advisory Council, develop recommendations for state departments' and agencies' selection of tools, methodologies and data sets to be used in identifying environmental justice communities for purposes of particular agency programs. The workgroup will seek to maximize consistency among departments and agencies, while allowing appropriate flexibility to reflect programs' various purposes and goals.

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2. Assessment of cumulative health risk. This workgroup, led by DEP and DOH, in consultation with the Environmental Justice Advisory Council, will evaluate currently available tools, and methodologies and data sets to assess cumulative health risk in communities. The workgroup will make recommendations how to promote access to data to help departments, agencies and communities prioritize concerns, include health and environmental data in planning efforts, shape policy decisions, guide public health actions and educate residents and local businesses.
3. Lead exposure. This workgroup will evaluate and develop cross-agency solutions to address disproportionate exposure to lead contamination in environmental justice communities, including exposure from lead paint in housing, in drinking water pipes, and in soil. Members shall include representatives of the DEP, Department of Health, Department of Community Affairs, Department of Children and Families, the Department of Education, and other appropriate departments and agencies.
4. Disproportionate exposure to the effects of climate change. This workgroup will identify special vulnerabilities of environmental justice communities to the effects of climate change, such as increased heat in urban areas, flooding, sewer overflows, lack of access to transportation and special evacuation needs during more frequent and intense storm events. State agency members may include, but are not limited to, DEP, Board of Public Utilities, Department of Community Affairs, Department of Health, Department of Transportation, Office of Emergency Management, and Economic Development Authority.

Each EJ Interagency Council workgroup should develop action plans with deliverables and milestones that includes a focused community and stakeholder engagement strategy.

7.0 EVALUATION

The EJ Interagency Council shall establish a transparent process for regular evaluation of executive branch departments' and agencies' implementation of this guidance.

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Appendices

Template for State Agency Action Plan

Success Stories of current interagency collaboration (e.g., NJDOH and NJDEP collaboration to expand the New Jersey Environmental Public Health Tracking Network).

Examples of capacity building and place-based planning assistance (e.g., Community Collaborative Initiative, Groundwork Elizabeth, etc.).

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