THE Climate + Clean Energy EQUITY FUND

Defining Environmental Justice Communities in Policy

How can we establish mechanisms that prioritize environmental justice communities in public policy?

Identifying the communities most impacted by societal and environmental burdens is a critical first step for ensuring that these populations are prioritized in public policy. A concrete, clear definition is often the first step to ensuring that these communities are prioritized. Without a precise and transparent definition of who should benefit or where problems should be addressed, the program or policy's benefits will not go to those most in need, and disproportionate impacts will go unaddressed.

This brief covers best practices for defining environmental justice communities in policy. The brief then features examples of how states are using (or trying to use) codified definitions to further climate equity policies and other processes to ensure environmental justice is integrated into decision-making processes.

Key Highlights

- **Definitions should be developed and driven by communities and use the best available tools and information.** Screening tools that use the best available state and local data for a wide range of environmental, public health, and socioeconomic indicators have been effective for many states with definitions. They should be developed with extensive community engagement and allow impacted communities to self-identify, as the tool may not accurately reflect the lived realities of all impacted communities.

- **Clear and robust definitions, explicitly mentioned in legislation, lead to sharper prioritization.** States with robust criteria and upfront considerations of cumulative burdens and intersecting identities, such as Colorado, Illinois, and New York, have been more effective at making climate equity truly equitable.

- **Definitions should be dynamic enough to ensure that communities are not left behind.** Dynamic definitions may include self-nomination processes or be tailored toward a particular policy. For example, tribal and rural communities that often lack the data to be adequately

assessed could nominate themselves as an environmental justice community. While definitions provide initial parameters, they must be complemented by additional information to lead to informed decision making.

- **Strong definitions can only go so far. Other mechanisms must be put in place to truly center environmental justice in policy.** For example, decision makers should adhere to principles of procedural justice, transparency, and accountability. Some states have established environmental justice councils that can help ensure policies and programs are designed and implemented equitably, if they are granted decision-making authority.

- **Prioritization should lead to real, meaningful benefits.** At the end of the day, policies, projects, and programs intended for environmental justice communities are only successful if they make a positive impact, and prioritization alone is no guarantee. Meaningful oversight and feedback mechanisms can help ensure impact and also mitigate unintended consequences or further harm.

1 Processes and Tools for Defining Environmental Justice Communities

The first step in defining environmental justice communities is to look at the definitions currently applied in the state or locality of interest. Many states have already developed definitions that prioritize certain communities (see **Section 3** for examples). If no prioritization exists, it is important to develop a process for defining environmental justice communities. In this regard, the following resources are essential:

- **Screening and mapping tools:** Agencies should develop screening and mapping tools using a consistent dataset to combine environmental and demographic socioeconomic indicators. The combination of indicators helps identify environmental justice communities by clarifying which areas experience the highest cumulative burdens. These tools must be combined with a policy that decides how environmental justice communities will be defined, the indicators that will be included, and the percentage of communities that will be thus classified. This tool from the Urban Institute compares existing screening tools for environmental justice communities.[1]

- **Community-led development:** The definition and eventual tool should be developed through a community-led process in which the impacted community's expertise is valued and prioritized. The tool should be developed through an iterative process that allows for continued community input from impacted communities and integration of best available information. There are different ways to ensure that a community is effectively engaged:

  - *Environmental justice advisory councils:* Several states have created advisory groups that include community representation to inform the development of a disadvantaged community definition and tools. These groups, however, have had issues with being chronically underfunded and undervalued. Advisory councils should be compensated for their expertise and time.

  - *Public workshops:* Several states have also used public workshops to develop tools. These workshops should be accessible and in the language of the community and should also ensure availability of transportation, child care, and other resources to facilitate participation. If the workshop is online, the state should account for disparities in Internet access to ensure all interested community members are able to participate.

- *Iterative process:* Tools and decisions related to defining environmental justice communities should be ongoing to consider new and better information as it becomes available.

- *Self-nomination process:* Not all impacted communities will necessarily match the definition of a disadvantaged community. Illinois provides a way for communities to self-nominate as an identified community. This type of process should be examined in other states and communities.

- **Data sources:** The best available state and local data should be considered, including information on environmental and public health, public health burdens, socioeconomic factors, demographic factors, and climate vulnerabilities.

Box 1: Terminology

This brief uses the term "environmental justice communities," but laws and policies may also call them *historically underserved communities* or *vulnerable communities*. Common terminology includes:

- **Disadvantaged communities:** Federal and some state tools use the term "disadvantaged communities" to refer to communities that are marginalized, underserved, and overburdened by pollution (see, e.g., Executive Order 14008, CalEnviroScreen). Tools often use this term interchangeably with "environmental justice communities."

- **Environmental justice communities:** This term often refers to low-income communities and communities of color that suffer from disproportionate cumulative burdens of environmental risks and hazards.

- **Frontline communities:** This term often refers to communities that experience climate and environmental impacts first and worst. They are most often communities of color.

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1   https://www.urban.org/research/publication/screening-environmental-justice-framework-comparing-national-state-and-local

2 Indicators for Defining Environmental Justice Communities

Another important step in defining environmental justice communities is to determine what indicators should be considered in their definition. Communities and regulators should determine which considerations should be included to best ensure that the most vulnerable and impacted communities are identified and prioritized in different programs. It is generally best to include a combination of these considerations. **Table 1** summarizes the types of considerations that can be included when defining disadvantaged and environmental justice communities.

Table 1: Indicators to Consider When Defining Disadvantaged Communities

Consideration	Reason for Inclusion	Example
Low-Income and Poverty Indicators	Low-income households face many barriers to transition and generally have higher energy, environmental, and public health burdens.	Households equal to or less than 80% of area median income and 200% of the federal poverty line.
American Indian and Alaska Native Households and Communities	Tribal communities face disproportionately high energy burdens, disparate environmental burdens, and lack access to transitional resources.	Definitions in **Washington** and **New Mexico** specifically include Tribal Nations.[2]
Black, Indigenous, People of Color (BIPOC) Communities	BIPOC communities are disproportionately on the frontlines of climate change, environmental degradation, adverse public health impacts, and economic crises.	**Virginia** frames this consideration as "a community in which a majority of the population are people of color."[3] **New York** frames it as "members of groups that have historically experienced discrimination on the basis of race or ethnicity."[4]
Unemployment	Unemployment has been shown to have a wide range of effects on health, which contribute to the burden that households and communities face.	The definition used in **California** includes areas with "high unemployment."[5]
Housing Burden	High rent burdens and low homeownership can be an overarching indicator.	The definition used in **Washington** includes "high housing and transportation costs relative to income."[6]
Linguistic Isolation / Languages Spoken at Home	Linguistic isolation raises concerns about access to information and services.	The definition used in **Washington** includes linguistic isolation.[7] The definition used in **New York** includes "limited English proficiency."[8]
Education Levels	Lower levels of education have been associated with higher levels of environmental burden.	**California's** definition includes "low levels of educational attainment."[9]

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2 See Revised Code of Washington, 19.405.020 (defining highly impacted community), https://app.leg.wa.gov/RCW/default.aspx?cite=19.405.020; New Mexico, Senate Bill 112, https://www.nmlegis.gov/Sessions/21%20Regular/final/SB0112.pdf.

3 Virginia 2020 Clean Economy Act & Clean Energy and Community Flood Preparedness Act, HB 1526.

4 New York Envtl. Conserv. Law Section 75-0111.

5 California Health & Safety Code Section 39711.

6 See Revised Code of Washington, 19.405.020 (defining vulnerable populations), https://lawfilesext.leg.wa.gov/biennium/2021-22/Pdf/Amendments/House/5141-S2.E%20AMH%20ENGR%20H1522.E.pdf.

7 Ibid.

8 https://climate.ny.gov/-/media/project/climate/files/Technical-Documentation-on-Disadvantaged-Community-Criteria.pdf

9 California Health & Safety Code Section 39711.

Environmental Burden Considerations, (Air, Water, and Toxic Pollution and Proximity to Certain Facilities)	A consideration of cumulative environmental burdens will reflect the overall health risks that a community faces due to its environment.	**New York** prioritizes areas burdened by cumulative environmental pollution and other hazards that can lead to negative public health effects. **Illinois** prioritizes communities "where residents have historically been subject to disproportionate burdens of pollution, including pollution from the energy sector."[10]
Climate Vulnerability Considerations	Certain communities are more vulnerable to the impacts of climate change due to where they live or the resources that they must adapt to climate changes.	The definition used in **New York** frames this consideration as: "Areas vulnerable to the impacts of climate change such as flooding, storm surges, and urban heat island effects."[11]
Public Health Considerations	Public health indicators can be important in reflecting the overall vulnerability of a community.	**Washington** frames this indicator as "limited access to nutritious food and adequate health care."[12]
Other Potential Considerations	Additional considerations should be made to ensure consideration of rural communities as well as communities impacted by fossil fuel extraction and production. Other considerations may also apply in different states.	**New Mexico** prioritizes low-income rural communities, formerly incarcerated people, people with disabilities, and lesbian, gay, bisexual, transgender, and queer people.[13]

Some of the best state examples relied on a robust community process to develop their definitions, considered multiple indicators, and developed a clear, accessible tool to prioritize communities. See **Figure 1** for a summary of indicators used across 14 states. **Section 3** offers a deeper dive into national and state-level examples.

Figure 1: Summary of Indicators Used for 14 State Definitions of Environmental Justice Communities (or the Equivalent)

Indicator Category	AZ	CA	CO	CT	IL	MA	ME	NJ	NM	NY	OR	VA	VT	WA
Race and Ethnicity	X		X			X	X	X	X	X	X	X	X	X
Socioeconomic	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Environmental Burdens	X	X	X		X					X		X		X
Climate Vulnerabilities			X				X			X				
Public Health	X	X	X						X	X	X			X

Key:
Degree of Comprehensiveness of Indicators

Robust: Most indicators included

Moderate: Some indicators included

Low: Few indicators included

None: No indicators

Criteria unspecified, pending, or in draft form

Source: Based on analysis for the Equity Fund's *Policy Playbook on Defining Environmental Justice Communities,* 2022.

Note: For more detail about each state's definition and the indicators used, please refer to the Equity Fund's *Policy Playbook on Defining Environmental Justice Communities.* To access this document, please submit a request here: www.theequityfund.org/policy-playbooks.

10 New York Envtl. Conserv. Law Section 75-0111.

11 Ibid.

12 See Revised Code of Washington, 19.405.020 (defining vulnerable populations), https://lawfilesext.leg.wa.gov/biennium/2021-22/Pdf/Amendments/House/5141-S2.E%20AMH%20ENGR%20H1522.E.pdf.

13 New Mexico, Senate Bill 112, https://www.nmlegis.gov/Sessions/21%20Regular/final/SB0112.pdf.

Best Practices

Based on an analysis of state and federal definitions for environmental justice communities, the following best practices should be considered:

What to Consider When Developing a Definition

- Race should be considered because Black, Indigenous, and People of Color (BIPOC) communities are disproportionately on the frontlines of climate change, environmental degradation, adverse public health impacts, and economic crises. However, including race can be contentious and more susceptible to legal challenges (see **Section 7**, FAQ #3). Thus, race can also be considered through other indicators, such as historical redlining.[14]

- The best available state and local data should be considered. Such data could include information on climate vulnerabilities as well as the impacts to rural and mining communities.

- The definition should include information on environmental and public health burdens in addition to socioeconomic and demographic factors.

- The eventual prioritization should be tied to the purpose of the program to ensure that the communities most in need benefit from the program.

Process for Development

- The definition and eventual tool should be developed through a community-led process in which the impacted community's expertise is valued and prioritized.

- The tool should be developed through an iterative process that allows for continued community input from impacted communities and integration of best available information.

- The tool should include a process by which impacted communities can self-nominate, given that the ranking process may leave out certain communities that should be identified as disadvantaged, such as rural communities.

Checks to Ensure Prioritization Reaches Intended Population

- There must be meaningful oversight, reporting, and tracking related to how agencies use the definition.

- Impacted communities should be able to provide input to improve how the tool is used in programs.

- States and the federal government should clearly define how to determine whether programs benefit the intended communities.

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14 Historical redlining refers to the process by which banks and other institutions refused to offer mortgages or offered worse rates to customers in certain neighborhoods based on their racial and ethnic composition. It was introduced in 1934 by the Federal Housing Administration and then outlawed by 1968.

3 Examples of Defining Environmental Justice Communities in Practice

Clear definitions and designations can enable decision makers to identify burdens and equitably distribute the benefits of climate and clean energy investments and programs. The following section presents examples of how the federal government and states have defined environmental justice communities (or the equivalent) and how these definitions are influencing policies, programs, and investments.

National: The Justice40 Initiative, A Historic Commitment
Defining Disadvantaged Communities

In early 2021, President Joe Biden signed Executive Order 14008: Tackling the Climate Crisis at Home and Abroad. The Order recognized the climate crisis as a central element of foreign policy and national security and outlined a government-wide approach to addressing the climate crisis. A key element of the Order was the announcement of the **Justice40** Initiative, which establishes a goal to direct 40 percent of the overall benefits from federal climate and clean energy investments towards *disadvantaged communities*. Though the Order did not define the term "disadvantaged communities," it directed the White House Council on Environmental Quality (CEQ) to develop a geospatial **Climate and Economic Justice Screening Tool (CEJST)** to identify these communities.[15]

In November 2022, the CEQ released version 1.0 of the CEJST, reflecting recommendations from the White House Environmental Justice Advisory Council as well as feedback from the public.[16] The CEJST currently recognizes 24,251 communities as disadvantaged or partially disadvantaged—a more than sevenfold increase in the number of communities from the beta version released in February 2022.[17] A community is considered disadvantaged if it is located in a census tract that is at or above the threshold for one or more environmental, climate, or other burdens and at or above the threshold for an associated socioeconomic burden. These burdens include indicators under the categories of climate change, energy, health, housing, legacy pollution, transportation, wastewater, and

workforce development. There are currently 16 agencies and more than 400 programs that comply with the Justice40 Initiative.[18]

The CEJST complements EJScreen, the current environmental justice and mapping screening tool of the U.S. Environmental Protection Agency (EPA). While it similarly combines environmental and demographic indicators, the EPA did not intend for EJScreen to identify frontline communities. The EPA has previously used this tool to inform outreach and engagement practices, implement programs, develop reports, and enhance geographically based initiatives.[19]

The Justice40 Initiative is a historic step for prioritizing environmental justice at the federal level: it's the first time we've seen a firm commitment for money and resources towards the most impacted communities. However, there also needs to be accountability, reporting, and a clear requirement that investments provide direct benefits to communities. At the time of writing, the details of Justice40 and its impact are still unclear. Many groups continue to track Justice40 and the development of the CEJST.[20]

Colorado: A Strong Definition in Legislation, Inclusive of Cumulative Impacts
Defining Disproportionately Impacted Communities

Colorado's 2021 Environmental Justice Act (HB21-1266) prioritizes environmental justice and pollution reduction in *disproportionately impacted communities*.[21] This legislation applied a comprehensive definition to identify disproportionately impacted communities, using indicators of race and ethnicity, socioeconomic variables, environmental burdens, climate vulnerabilities, and public health. The statutory language is notable for its explicit recognition of historical harms based on racism and cumulative impacts. focusing on communities with:

> ...a history of environmental racism perpetuated

15 https://www.energy.gov/sites/default/files/2021/02/f83/eo-14008-tackling-climate-crisis-home-abroad.pdf
16 https://screeningtool.geoplatform.gov/en/#3/33.47/-97.5
17 https://www.whitehouse.gov/ceq/news-updates/2022/11/22/biden-harris-administration-launches-version-1-0-of-climate-and-economic-justice-screening-tool-key-step-in-implementing-president-bidens-justice40-initiative/
18 https://www.wri.org/insights/tracking-justice40-environmental-justice-initiative#:~:text=To%20date%2C%2016%20agencies%20have,and%20the%20Bipartisan%20Infrastructure%20Law
19 https://screeningtool.geoplatform.gov/en/frequently-asked-questions
20 https://www.policyinnovation.org/blog/j40-qual-research; https://www.policyinnovation.org/blog/cejst-simple-map-big-implications
21 https://legiscan.com/CO/bill/HB1266/2021

through redlining, anti-Indigenous, anti-immigrant, anti-Hispanic, or anti-Black laws; or [communities] where multiple factors, including socioeconomic stressors, disproportionate environmental burdens, vulnerability to environmental degradation, and lack of public participation, may act cumulatively to affect health and the environment and contribute to persistent disparities.[22]

In June 2022, the Colorado Department of Public Health and Environment (CDPHE) launched the Colorado EnviroScreen tool to identify and map disproportionately impacted communities based on the statutory definition.[23] Disproportionately impacted communities will be prioritized for:

- Environmental justice grants;
- Participation opportunities in air quality rulemaking and permitting decisions;
- Emissions cuts during greenhouse gas reduction rulemakings;
- Additional monitoring and modeling for air pollution permits; and
- Enforcement and compliance initiatives.

Box 2: How Colorado's Definition Informs Prioritization of Electric Vehicle Investments

As part of its 2022 Electric Vehicle (EV) Equity Study, the Colorado Energy Office (CEO) developed several tools to support equitable access to transportation electrification in the state.[24] The CEO developed the EV Equity Dashboard to provide a geographic representation of areas with greater need for EV interventions. It models population characteristics by incorporating disproportionately impacted communities as defined in the state's Environmental Justice Act, as well as more comprehensive indicators from the study's EV Equity Community Prioritization Index.[25]

Illinois: Informing the Implementation of the Climate Equitable Jobs Act
Defining Equity-Focused Populations, Equity-Investment-Eligible Communities, and Environmental Justice Communities

In 2021, Illinois passed into law the Climate and Equitable Jobs Act (CEJA) (SB2408), a comprehensive bill that mandated a state goal of achieving 100-percent clean energy by 2050. The legislation did not create a broad statewide definition for frontline communities, but does include definitions for *equity-focused populations, equity-investment-eligible communities*, and *equity-investment-eligible persons*, as these terms pertain to workforce and business development opportunities.

- *Equity-focused populations*, most notably, refers to a comprehensive list of the most impacted groups:

    … individuals navigating low-incomes and people of color […] and groups including individuals formerly convicted of crimes; people who are or were in the child welfare system; energy workers; dependents of displaced energy workers; women, LGBTQ+, transgender, or gender-nonconforming people; people with disabilities; and members of any of these groups who are also youth.[26]

- *Equity-investment-eligible communities* refers to areas in the state that would most benefit from equitable investments and, specifically, communities harmed by violence, excessive incarceration, and economic disinvestment, as well as the Illinois Power Agency (IPA) designation of environmental justice communities.[27, 28]

- *Equity-eligible-investment person* similarly recognizes people who would most benefit from equitable investments and specifies individuals residing in equity-investment-eligible communities, individuals who are graduates of or currently enrolled in the foster care system, and individuals who were formerly incarcerated.

22 https://legiscan.com/CO/text/HB1266/2021
23 https://cdphe.colorado.gov/enviroscreen
24 https://energyoffice.colorado.gov/sites/energyoffice/files/documents/FINAL%202022-CEO-CO%20EV%20Equity%20Study-2022-08-06.pdf
25 Ibid.
26 https://legiscan.com/IL/text/SB2408/id/2433158
27 Ibid.
28 https://www.ilga.gov/legislation/ilcs/ilcs4.asp?DocName=041007050HArt%2E+10&ActID=3992&ChapterID=35&SeqStart=2000000&SeqEnd=3000000

The 2007 Illinois Power Agency Act (amended by CEJA) loosely established the definition of environmental justice communities as areas "where residents have historically been subject to disproportionate burdens of pollution, including from the energy sector," but referred to the IPA to formalize the definition.[29]

Through the Illinois Solar for All program, the IPA identified environmental justice communities based on a framework established in their Long-Term Renewable Resources Procurement Plan,[30] which utilized the EPA's EJScreen tool, described earlier in this brief.[31] This designation includes indicators for pollution exposure, environmental effects, sensitive populations, and socioeconomic factors. Notably, communities are also able to "self-designate" by requesting to be identified as an environmental justice community through the Illinois Solar for All Program. **Box 3** highlights some examples from CEJA that prioritize environmental justice communities. The retirement of fossil fuel facilities will also be prioritized for environmental justice communities.

One way to clearly identify who to target (and how to serve them) is to establish and codify definitions of "environmental justice communities" in policy. While the official term may vary depending on the region and include alternative phrases like disadvantaged communities, frontline communities, *or* historically underserved communities, *a codified definition helps provide accountability to ensure that the most impacted communities will benefit.*

Box 3: Innovative Workforce Developments Programs Through Illinois' Climate and Equitable Jobs Act

The Climate and Equitable Jobs Act is set to dedicate almost $100 million per year towards business and workforce development and Illinois' Solar for All Program, with prioritization of individuals from equity-focused populations and environmental justice communities. These opportunities include a number of programs:

1. **The Clean Jobs Workforce Network Program** establishes 13 workforce hubs throughout the state to be run by community-based organizations. The hubs are mostly located in or near environmental justice communities and will provide services such as outreach, job training, recruitment activities, and career development.

2. **The Clean Jobs Curriculum** uses a comprehensive stakeholder process to create career pathways and training curriculum needed for participants to be skilled, work-ready, and able to enter clean energy jobs.

3. **The Clean Energy Primes Contractor Accelerator Program** provides support to selected contractors who exhibit a substantial and demonstrated commitment of investing in and partnering with individuals and institutions in equity-investment-eligible communities, among other requirements. Participants will benefit from business coaching, grant opportunities, mentorship, access to the Clean Energy Contractor Incubator Program, and assistance preparing bids and request for proposal (RFP) applications.

4. **The Climate Works Pre-Apprenticeship Program** creates a network of hubs that will recruit and train participants to prepare them for jobs in construction, building, and clean energy. Participants will be able to attend free of charge and receive a stipend.

5. **The Returning Residents Clean Jobs Training Program** establishes a job training program in solar and efficiency sectors for incarcerated individuals within 36 months of their expected release.[32]

29 https://www.ilga.gov/legislation/ilcs/ilcs5.asp?ActID=2934&ChapterID=5
30 https://ipa.illinois.gov/content/dam/soi/en/web/ipa/documents/2022-long-term-plan-23-august.pdf
31 https://ejscreen.epa.gov/mapper/
32 https://smartenergy.illinois.edu/clean-energy-workforce/

Washington: A Comprehensive Set of Definitions

Defining Vulnerable Populations and Overburdened Communities

In 2021, Washington passed the Healthy Environment for All (HEAL) Act (SB5141), landmark environmental justice legislation intended to reduce environmental and health disparities by implementing recommendations from the state's Environmental Justice Task Force[33] and establishing a goal to direct 40 percent of grants and expenditures that create environmental benefits to frontline communities.[34] The law is celebrated by environmental justice groups for its comprehensive codification of environmental justice in agency actions. Notably, the HEAL Act formalized a definition for "environmental justice"[35] and further defined both vulnerable populations and overburdened communities. Both definitions include indicators for race and ethnicity, socioeconomic variables, environmental burdens, and public health:
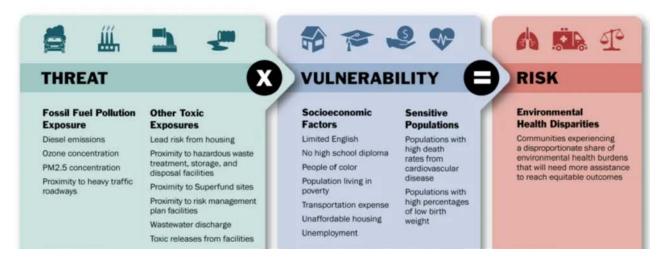
- *Vulnerable populations* means population groups that are more likely to be at higher risk for poor health outcomes in response to environmental harm due to: (i) adverse socioeconomic factors, such as unemployment, high housing and transportation costs relative to income, limited access to nutritious food and adequate health care, linguistic isolation, and other factors that negatively affect health outcomes and increase vulnerability to the effects of environmental harms; and (ii) sensitivity factors, such as low birth weight and higher rates of hospitalization.

- *Vulnerable populations* includes, but is not limited to: (i) racial or ethnic minorities; (ii) low-income populations; (iii) populations disproportionately impacted by environmental harms; and (iv) populations of workers experiencing environmental harms.

- *Overburdened community* means a geographic area where vulnerable populations face combined, multiple environmental harms and health impact and includes, but is not limited to, highly impacted communities as defined in RCW 19.405.020.[36]

The legislation also required the Washington State Department of Health to develop and maintain an environmental health disparities map to identify cumulative environmental health impacts and overburdened communities. The map incorporates 19 indicators that represent a selection of environmental exposures, environmental effects, sensitive populations, and socioeconomic factors represented in **Figure 2**.

Figure 2: Indicators in the Washington Environmental Health Disparities Mapping Tool

Source: Washington State Department of Health, 2022.

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33 https://lawfilesext.leg.wa.gov/biennium/2021-22/Pdf/Bills/Session%20Laws/Senate/5141-S2.SL.pdf?q=20230222082554

34 https://app.leg.wa.gov/billsummary?BillNumber=5141&Year=2021&Initiative=False

35 Environmental justice as defined in the HEAL Act: "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, rules, and policies. Environmental justice includes addressing disproportionate environmental and health impacts in all laws, rules, and policies with environmental impacts by prioritizing vulnerable populations and overburdened communities, the equitable distribution of resources and benefits, and eliminating harm" (Ibid.).

36 https://app.leg.wa.gov/RCW/default.aspx?cite=19.405.020

New Jersey: No New Facilities Near Overburdened Communities
Defining Overburdened Communities

In New Jersey, the definition of overburdened communities applies specifically in the context of siting polluting industrial, commercial, and governmental facilities. In 2020, New Jersey passed the Environmental Justice Law (SB232), requiring the Department of Environmental Protection (DEP) to include in their permit review a comparative analysis of the impacts that a proposed facility would have on overburdened communities. If approval of a proposed permit application would "cause or contribute to adverse cumulative environmental or public health stressors in the overburdened community that are higher than those borne by other communities within the State, county, or other geographic unit of analysis," the DEP has the authority to deny the permit for a new facility or the expansion of an existing facility.[37]

The definition of "overburdened community" in the legislation is limited in scope, only including consideration of income, race, and limited English proficiency. To determine whether the impacts of a proposed facility impact an overburdened community, the DEP developed the Environmental Justice Mapping, Assessment and Protection (EJMAP) tool.[38] The EJMAP includes 26 environmental and public health indicators used to help determine whether a permit causes or contributes to an adverse environmental or public health stressor. The indicators fall under a wide range of categories: concentrated areas of pollution; mobile sources of air pollution; contaminated sites; transfer stations or other solid waste facilities; recycling facilities, scrap metal facilities; point sources of water pollution; potential public health impacts; density/proximity stressors; and social determinants of health.[39]

Strengthening Law Enforcement to Protect Environmental Justice Communities

As states have codified environmental justice in statute, several state Attorneys General's Offices have also established environmental justice sections or initiatives to ensure accountability for frontline communities. Their involvement is key because enforcement, if there is any, has largely led to problematic results for environmental justice communities. In 2018, California became the first state to establish an environmental justice section in the Attorney General's Office with the establishment of the Bureau of Environmental Justice.[40]

In 2018, the Attorney General of New Jersey created the Environmental Enforcement and Environmental Justice Section within the Division of Law. The Environmental Enforcement and Environmental Justice Section works in coordination with New Jersey's Department of Environmental Protection to enforce and promote environmental justice in overburdened communities.[41] The Attorney General's Office has brought lawsuits against polluters across the state. Seven enforcement actions were filed in six overburdened communities in August 2022.[42]

In Illinois, New Mexico, and Washington, the Attorneys General's Offices established initiatives to support frontline communities. In Illinois, the Attorney General's Environmental Justice Initiative was launched in 2021 and builds upon legal action the office has pursued against polluters in environmental justice communities.[43]

In New Mexico, the Attorney General's Office is partnering with several state and federal agencies for the Environmental Crimes Task Force. The goal of the task force, which was launched in 2022, is to increase cooperation between federal, tribal, and state governments in the prosecution of environmental law violations and to advance civil rights and environmental justice in underserved communities.[44]

In 2020, the Washington Office of the Attorney General (OAG) established an Environmental Justice Initiative to "strengthen environmental policies and enforcement with meaningful involvement from the people most affected by environmental issues."[45] Through the Environmental Justice Initiative, the Counsel for Environmental Protection Unit was renamed the Environmental Protection Division, becoming a permanent legal division at the OAG. When the HEAL Act passed in 2021, the OAG further committed to environmental justice by voluntarily opting to integrate environmental justice into agency practices and implementing requirements of the HEAL Act.[46]

37 https://legiscan.com/NJ/text/S232/id/2213004
38 https://experience.arcgis.com/experience/548632a2351b41b8a0443cfc3a9f4ef6
39 https://www.nj.gov/dep/ej/ejmap-tg.pdf
40 The Bureau of Environmental Justice focuses on the protection of individuals and communities that face a disproportionate share of environmental and public health injustices by ensuring compliance with the California Environmental Quality Act and land use planning laws, enforcement of illegal discharge to air and water, mitigating exposure to lead and other toxins in the environment and consumer products, remediating contaminated drinking water, and challenging federal actions, see https://oag.ca.gov/environment/justice.
41 https://www.law.nyu.edu/sites/default/files/Expanding%20AG%20EJ%20%E2%80%94%20A%20Resource.pdf
42 https://www.njoag.gov/acting-ag-platkin-dep-commissioner-latourette-announce-seven-new-environmental-enforcement-actions-six-in-environmental-justice-communities/
43   https://ag.state.il.us/pressroom/2021_11/20211110.html
44 https://www.env.nm.gov/wp-content/uploads/2022/11/2022-11-09-COMMS-Environment-Crimes-Taskforce-Launched-Final.pdf
45 https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/2022%20EJ%20Report.pdf
46 Ibid.

Box 4: How Local Agencies and Municipalities Prioritize Environmental Justice Communities

Local governments play an active and unique role in advancing environmental justice through planning, zoning, siting, resource allocation, enforcement, and transportation.[47, 48] Against a backdrop of historically unequal and racist urban planning,[49] local governments are now increasingly implementing strategies that center climate and environmental justice. For example, a 2022 study found that 40 of the 100 largest U.S. cities are attentive to justice in their climate action plans, presenting justice and/or equity as a goal or explicitly embedding justice into the design of policies.[50] Examples of how cities have embedded justice in climate and environmental efforts can be seen in:

Columbus, Ohio

In 2021, the City of Columbus launched its Climate Action Plan, which established goals to reduce greenhouse gas emissions 45 percent by 2030 and establish carbon neutrality by 2050. The plan centers a "leading with equity'" approach, recognizing the disproportionate climate impacts on marginalized communities. The plan outlined strategies and actions with expected benefits related to climate justice, environmental quality, human health, and economic prosperity.[51]

Philadelphia, Pennsylvania

In 2022, the City of Philadelphia established the inaugural Environmental Justice Advisory Committee (EJAC) and the Interagency Working Group on Environmental Justice to address past and present environmental harms. Seventeen Philadelphia residents were selected to serve on the EJAC and will collaborate with the working group to foster equitable outcomes in city practices, programs, and policies.[52]

Fulton County, Georgia

In 1996, the Fulton County Board of Commissioners adopted a policy in the comprehensive plan to ensure that siting of environmentally adverse facilities was not concentrated in low-income communities or areas with high percentages of racial and ethnic minorities. In 2010, the board established the Environmental Justice Initiative to develop policies preventing any demographic group from being disproportionately impacted by adverse environmental conditions.[53]

Key Takeaways

One strategy for ensuring that the most vulnerable members of society are considered in environmental and climate-related decision making is through explicit recognition in statute. By defining frontline communities and their key indicators, legislation can result in meaningful benefits to these communities (e.g., targeted allocation of investments, consideration of burdens in permit applications).

States have taken different approaches to defining frontline communities in statues. Some states, including Colorado and New York, have incorporated robust criteria (e.g., upfront consideration of cumulative burdens, intersecting identities) directly into legislation. Requiring a comprehensive suite of indicators in legislation is a best practice as this alternative safeguards a more inclusive and protective approach to those impacted.

Different policies will require distinct definitions depending on the purpose of the program. Prioritization must balance inclusivity without being overly broad. For example, programs designed to reduce energy burdens should prioritize low-income households with the highest energy burdens, while programs designed to address existing environmental burdens should prioritize communities with the highest pollution burdens.

47 https://www.eli.org/vibrant-environment-blog/environmental-justice-your-city
48 http://www.usmayors.org/wp-content/uploads/2018/01/USCM_Alliance-Survey-September-2017.pdf
49 The link between urban planning and structural racism is well documented; see: https://www.lse.ac.uk/research/research-for-the-world/society/reclaiming-the-streets-addressing-the-link-between-urban-planning-and-structural-inequality; https://www.sierraclub.org/articles/2021/07/deep-dive-redlining-racism-and-urban-planning.
50 https://www.nature.com/articles/s41467-022-33392-9
51 https://www.columbus.gov/sustainable/cap/
52 https://www.phila.gov/2022-02-02-city-launches-environmental-justice-advisory-commission/
53 https://fultondekalb.ga.networkofcare.org/ph/model-practice-detail.aspx?pid=5695

A strong definition is only one step to ensuring that the needs of vulnerable and underserved communities are integrated into the decision-making process. Beyond developing a robust definition in legislation, decision makers can maximize benefits to frontline communities by adhering to principles of procedural justice, transparency, and accountability. Procedural justice concerns the participation of stakeholders in decision-making processes and can be integrated into environmental justice policies and program implementation in several ways. Communities can be effectively engaged through:

- **Environmental Justice (EJ) Councils:** Several states have created advisory groups that include representation from frontline community members to inform development of disadvantaged community definitions and tools. Examples include California's Environmental Justice Advisory Committee,[54] Colorado's Environmental Justice Action Task Force[55] and Just Transition Advisory Committee,[56] and Maryland's Commission on Environmental Justice and Sustainable Communities.[57]

  To ensure their success, such councils need to:

  - *Be adequately resourced:* Many EJ councils have had issues with being chronically underfunded and undervalued. Councils should be compensated for their expertise and time if they help develop policies.

  - *Be given authority to affect decision making:* Many EJ councils have only been advisory, which limits their effectiveness. A better practice is to ensure that EJ councils are part of the decision-making body. Examples can be seen in the Air Resource Boards in Los Angeles and San Diego, which by law require that a certain number of their members represent communities.

  - *Be codified in law:* Many EJ councils are only enacted through Executive Order, which limits their effectiveness to the current administration. Codifying the requirements in law is important for continuity of the committee and its authority over decisions.

- *Beware of conflicts:* Some EJ committees include industrial representatives who are likely to be in direct conflict with some of the community priorities. A robust conflict check and disclosure process can help protect the integrity of the decision making and lead to greater transparency.

- **Public Workshops:** Several states have also utilized public workshops to develop tools. These workshops should be accessible and available in the prevalent languages of the community. These workshops should also ensure that there is transportation, child care, and other resources to facilitate participation. If the workshop is online, the state should account for disparities in Internet access to ensure all interested community members are able to participate. An example is the Environmental Justice Symposium hosted by the Washington State Attorney General's Office in 2021.[58]

- **Iterative Process:** Tools and decisions related to defining environmental justice communities should be iterative to consider new and better information as it becomes available. Both New York State and California have engaged in interactive processes as they have developed criteria and tools for identifying disadvantaged communities. The federal government has also adopted this principle in the development of its Climate and Economic Justice Screening Tool.

- **Self-Nomination Process:** Not all impacted communities will necessarily match the definition of a disadvantaged community. Illinois provides a way for communities to self-nominate for inclusion in screening tools and programs. This type of process should be examined in other states and communities.

Continued and thoughtful engagement can also ensure that false or misaligned climate "solutions" are not pushed on communities. This concern is particularly relevant for policies pushing for "clean" energy sources that increase pollution burden, expand fossil fuel reliance or infrastructure, or exacerbate health risks.[59] Such energy sources include nuclear energy, bioenergy, and hydrogen, as well as carbon capture, utilization, and storage (CCUS).[60]

54 https://ww2.arb.ca.gov/environmental-justice-advisory-committee
55 https://cdphe.colorado.gov/environmental-justice
56 https://cdle.colorado.gov/offices/the-office-of-just-transition/about-the-just-transition-advisory-committee#:~:text=The%20Just%20Transition%20Advisory%20Committee%20(JTAC)%20includes%20representatives%20of%20coal,Assembly%20and%20the%20Governor's%20Cabinet
57 https://msa.maryland.gov/msa/mdmanual/26excom/html/13envju.html
58 https://www.gonzaga.edu/news-events/events/2021/3/23/environmental-justice-symposium
59 https://www.weact.org/wp-content/uploads/2022/09/EJLF-False-Solutions-in-Justice40-Letter-091922.pdf
60 For more information, see: https://www.theequityfund.org/energy-transition-concerns.

For example, the federal Justice40 Initiative currently does not protect against such false or misaligned climate solutions. Today, a federal agency may attempt to count these harmful technologies as a Justice40 program if they are sited in or near an environmental justice community. If a new CCUS or hydrogen facility provides job benefits, for example, the agency may try to count such an investment as part of the 40-percent requirement of clean energy investments directed towards environmental justice communities. The Justice40 designation should only be given to projects that confer meaningful benefits to communities and do not perpetuate disproportionate environmental burdens in frontline communities.

5 Other Considerations for Accountability

Once environmental justice communities have been identified, three basic requirements should be met to ensure that the prioritization produces positive results.

1. **Ensure that prioritized resources go to what the community wants and needs.** Policies should include provisions to ensure that projects are consistent with community-identified priorities. Identifying community priorities could look like running meaningful outreach and organizing a public process before receiving proposed prioritization from a government agency or third-party program. Strategies include ensuring that information and meetings are accessible to all, providing financial compensation and other resources to ensure that environmental justice communities can meaningfully participate, and establishing a process that requires regulatory decision makers to respond to feedback.

2. **Do not cause further harm.** Prioritized areas should be the first to be protected from pollution and other climate and environmental hazards. Such hazards include climate technologies and energy resources that increase local pollution, like biomass-fueled power plants or biofuels and hydrogen facilities. Projects should be evaluated for such consequences (even if unintended) and denied based on environmental justice prioritization.

3. **Show real benefits to the community.** Projects designed for environmental justice communities should ensure that meaningful benefits accrue to those communities, in addition to having verifiable emission reductions and reductions in pollution. These benefits can be reflected in provisions for local hires, training of workers, training and hiring of returning citizens, provisions for community ownership, and other provisions to ensure the benefits of such projects accrue to the intended community.

Program administrators should provide data demonstrating that these benefits are accruing in the intended communities, and federal and state agencies should provide oversight to ensure accountability. At a minimum, federal and state accountability mechanisms for tracking community benefits should: 1) define the relevant benefit metrics; 2) set specific time-based targets; and 3) build in reoccurring program evaluations with public input.

In addition, environmental justice programs need adequate accountability mechanisms, given that plans have historically failed to meet their targets.

6 Conclusion

A robust definition of environmental justice communities (disadvantaged communities, frontline communities, historically underserved communities, etc.) can have a substantial and positive impact in policy. Similarly, screening tools that identify who and what communities qualify can have big implications. And having environmental justice stakeholders adequately integrated into decision-making procedures can make or break the efficacy of programs, policies, and investments. These components are all important ways policymakers can make climate equity truly equitable. Though not the full solution, defining and centering environmental justice communities will certainly help accelerate us towards an equitable and just transition.

7   Frequently Asked Questions

1. If my state does not have a strong definition for environmental justice communities, what can I do?

You could work to develop a stronger definition of environmental justice communities (or the equivalent) using the best practices from different states and recently available federal and state tools. In recent years, many tools and best practices have been developed that can be used to make the definition stronger. You could also look at available federal tools and definitions to see if a current tool provides a stronger definition and metrics for your state.

2. If my state does not have any definition for environmental justice communities at all, what can I do?

If you are in a state that does not have a codified definition for environmental justice communities (or the equivalent), you can advocate for your state to use the federal Climate and Economic Justice Screening. You can also advocate for your state to establish a definition for environmental justice communities, though sometimes this approach may involve a longer process. For example, some states may mandate a study or assessment be conducted first. In the short-term, you could advocate for a self-nomination process that can help identify potential gaps within a federal definition.

3. Race and ethnicity are not always included as an indicator in screening tools. Why?

Some programs that rely on race and ethnicity have been legally challenged. Courts analyze statutes that rely on racial and ethnic considerations under a standard called "strict scrutiny," where the law's consideration of race must be shown to serve a compelling government interest and be narrowly tailored to meet that interest. This requirement sets a high bar, and several laws considering race have been struck down on these grounds.[61] Consideration of a different indicator, such as historical redlining, which is not overtly based on race, may not be subject to the same level of scrutiny and may be a way to include consideration of similar communities if there are concerns about a legal challenge.

4. Is there a way to prioritize characteristics that make up a disadvantaged community? How should different characteristics (such as income level, race, etc.) be prioritized?

Yes, prioritized characteristics (or indicators) can be given more weight in screening tools. The identification of priorities should come from meaningful outreach with frontline communities and other experts in environmental justice.

5. How do you incorporate cumulative impacts into a definition for environmental justice communities?

There are a few strategies to ensure that the effect of cumulative impacts—how stressors all add up and multiply each other—is incorporated into a definition. The best way is to include the concept of "cumulative impacts" directly in legislation. Colorado and New York have used this approach. Another strategy is to ensure that the screening tool addresses cumulative burdens. For example, CalEnviroScreen uses objective scoring across more than 20 indicators and then adds up the score. These scores are then ranked across all census tracts to determine which communities face the most significant burdens.

6. What is the relationship between the federal definition and a state definition? What if my state has a definition of environmental justice communities that differs from the federal definition?

In general, state definitions have historically been used for state programs, and federal definitions have been used for federal programs. If your state has a definition of environmental justice communities (or the equivalent), you may be able to advocate that federal agencies use that definition instead of the federal definition. Some statutes give flexibility to federal agencies to consider other definitions, while some statutes define how environmental justice communities have to be defined. For example, the Inflation Reduction Act includes a program for a tax incentive adder for solar in low-income communities.[62] This program requires the use of a definition of low-income communities that is in the Tax Code, so there may not be flexibility to request that the Department of Treasury to use a different definition.

7. How geographically granular do these definitions get?

Identifying environmental justice communities typically relies on screening tools and may depend on the availability of local data. The most geographically detailed that screening tools get is usually the census tract level, such as CalEnviroScreen.

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61   See, e.g., Wynn v. Vilsack, 545 F. Supp. 3d 1278 (M.D. Fla. 2021); Greer's Ranch Café v. Guzman, 540 Supp.3d 638 (N.D. Tex. 2021)

62   The tax incentive adder for this low-income solar program means that qualifying projects may receive up to a 50-percent investment tax credit, while a general project only receives up to a 30-percent investment tax credit, see https://www.cleanegroup.org/what-nonprofits-need-to-know-about-the-investment-tax-credit/.

8. What are the benefits of labeling a whole area as an environmental justice community, as opposed to focusing on households?

Labeling whole areas as environmental justice communities (or the equivalent) can allow for meaningful targeting and prioritizing of funding, enforcement, and other programs that help lower overall environmental burdens. For example, targeting environmental justice communities could help an agency determine where to prioritize additional air monitors and enforcement. Targeting environmental justice communities can also help ensure that households facing the most significant environmental burdens receive priority for beneficial programs, such as community solar. Some programs, nevertheless, may be better targeted toward individual households if the focus is on reducing the economic burden of the household.

9. What if my community is not identified by the screening tool?

You can advocate for your state to allow communities to self-nominate similar to Illinois. No data set can completely reflect the conditions of a community and, therefore, allowing communities to self-nominate can help ensure that deserving communities are not left out. In addition to including a self-nomination process, you can also provide additional data to your state to ensure that the best information is considered.

10. How can definitions for environmental justice communities ensure that rural communities are included?

Scoring and ranking processes may leave out certain communities, such as rural communities and areas where there is little data. One way to combat this shortcoming is to include a self-nomination process with robust outreach for rural communities. Another possibility is to see whether your state will consider information beyond the census tract level. Rural census tracts are often large and encompass several different communities. More granular rural data can help ensure that deserving rural communities are included.

11. Should a state use different definitions for different programs?

Generally, yes. Prioritization should align with the program purpose to ensure that the communities most in need of the program benefit from it. Prioritization must balance inclusivity without being overly broad. For example, programs designed to reduce energy burdens should prioritize low-income households with the highest energy burdens, while programs designed to address existing environmental burdens should prioritize communities with the highest pollution burdens.

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8 Additional Resources

Historical Context
- Columbia University – Urban Planning Department, n.d. A Brief History of Environmental Justice & EJ Definitions.
- Perls, 2020. EPA Undermines its Own Environmental Justice Programs.

General Overviews
- The Urban Institute, 2022. Screening for Environmental Justice: A Framework for Comparing National, State, and Local Data Tools.
- Indiana University, n.d. Mapping for Environmental Justice: An Analysis of State Level Tools.
- National Conference of State Legislatures, 2022. State and Federal Environmental Justice Efforts.

Federal Overviews
- Initiative for Energy Justice, n.d. Justice40 and Community Definition: How Much of the U.S. Population Is Living in a "Disadvantaged Community"?

- Lawyers for Good Government, n.d. Will $2 Trillion in Climate and Infrastructure Investments Go Where It's Needed Most?
- Department of Transportation, n.d. Federal Tools to Determine Disadvantaged Community Status.
- Environmental & Energy Law Program, Harvard, n.d. Federal Environmental Justice Tracker.

Useful Tools and Indexes
- Agency for Toxic Substances and Disease Registry's Environmental Justice Index.
- U.S. Government's Climate and Economic Justice Screening Tool.
- U.S. EPA's EJScreen: Environmental Justice Screening and Mapping Tool.