State of Oregon Environmental Justice Task Force

Environmental Justice: Best Practices for Oregon's Natural Resource Agencies

Identifying Environmental Justice Issues and Engaging in Capacity Building for Environmental Justice Communities

Bringing Government Closer to Community

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INTRODUCTION

In response to mounting evidence and awareness of racial environmental health disparities, environmental justice (EJ) grew out of community action nearly three decades ago as a continuation of the Civil Rights Movement. President Clinton established the federal government's position on environmental justice in February 1994 through Executive Order 12,898. In the intervening decades, communities of color and low-income communities disproportionately impacted by environmental burdens and health risks, nonprofit advocacy organizations, academic institutions, and government municipalities have struggled to achieve environmental justice by ensuring fair treatment and opportunities for meaningful involvement for all people and all communities.

Despite this federal, state, and local attention, communities of color and low-income communities continue to bear disproportionate risk of adverse health impacts as a result of government decision-making. Among the reasons for these disparities are policies and practices that fail to incorporate appropriate methodology to achieve equitable outcomes and do not adhere to best practices in outreach and engagement to overcome barriers to participation for disenfranchised communities.

The Task Force Definition

Environmental Justice is "equal protection from environmental and health hazards, and meaningful public participation in decisions that affect the environment in which people live, work, learn, practice spirituality, and play."

In coming years, Oregon will experience a more diverse and aging population, as well as a continuing concentration of low-income communities. These changing demographics will require more intentional consideration on the part of our state agencies and community partners. A primary goal of Oregon's Environmental Justice Task Force is to provide guidance to the state natural resource agencies in integrating EJ concerns into agency programs, actions and decisions. The purpose of this handbook is to provide specific tools and approaches to better identify potential disparate impacts and

engage in intentional, targeted outreach to all stakeholders to ensure equitable outcomes and equal opportunity for meaningful participation.

Definition of Environmental Justice

The 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 development, implementation, and enforcement of environmental laws, regulations and policies."[1] Environmental justice goes beyond traditional civil rights laws by including low-income communities along with communities of color as populations needing additional consideration due to disparate impacts.

EJ Communities Include:

- Minority communities
- Low-income communities
- Tribal communities
- Underrepresented communities, such as youth, elderly, or mental disabled

Oregon's Environmental Justice Task Force defines EJ as *equal protection from environmental and health hazards, and meaningful public participation in decisions that affect the environment in which people live, work, learn, practice spirituality, and play. EJ communities include minority and low-income communities, tribal communities, and other communities traditionally underrepresented in public process. Underrepresented communities may include those with significant populations of youth, the elderly, or those with physical or mental disabilities*."[2]

1. Fair Treatment and Equal Protection

Environmental justice is predicated on the notion of fair treatment and equal protection, meaning a just distribution of the benefits and burdens of decisions and actions. According to EPA, "fair treatment" means:

[1] http://www.epa.gov/compliance/environmentaljustice/index.html
[2] http://www.oregon.gov/Gov/GNRO/environmental_justice.html

"No group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies."[1]

To effectively ensure fair treatment, agencies must incorporate a disparate impact analysis – based on the best science and current demographic data – into all programmatic and policy decision-making, as appropriate.

2. Meaningful Involvement

Self-determination is also a fundamental principle of environmental justice. All stakeholders, particularly those from communities impacted by environmental health risks, must have an opportunity for meaningful involvement in all decisions that may affect their immediate lives. Agencies should take care to provide more than the minimum notice and comment particularly where barriers to participation exist. According to EPA, "meaningful involvement" means:

1. Potentially affected community residents have an **appropriate opportunity** to participate in decisions that will affect their environment and/or health;

2. The potentially affected community can **influence** the agency's decision;

3. The decision-making body will **consider the concerns of all participants** before making a final decision; and

4. The decision makers **seek out and facilitate** the involvement of those stakeholders potentially affected by a decision, specifically those communities traditionally underrepresented in decision-making.[3]

To ensure fair treatment and meaningful involvement in decision-making, agencies must identify potentially impacted communities and work to build capacity around the pertinent issue(s) so the opportunities to participate are accessible and genuine.

Legal Background

Although environmental justice was borne from and continues to live within community action, policymakers have developed a federal and state framework to guide the scope and implementation of relevant policies and regulations.

Federal Legal Framework

In response to mounting evidence that communities of color and low-income communities faced a disproportionate share of adverse environmental consequences, President Clinton signed **Executive Order 12,898** on February 11, 1994: *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income*

[3] http://www.epa.gov/compliance/ej/basics/

Populations. The Order was created to ensure that "all communities and persons across this Nation live in a safe and healthful environment."[4] Among other initiatives, this Order directs each federal agency to develop a strategy to ensure its actions do not have "disproportionally high and adverse human health or environmental effects" on low-income and minority populations.

> *"[E]ach Federal agency shall make achieving environmental justice part of its mission by identifying and addressing … disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations."*
>
> Executive Order 12898

Additionally, the Order was designed to promote nondiscrimination in Federal programs substantially affecting human health and the environment, and to provide minority and low-income communities access to public information and an opportunity for public participation in matters relating to human health or the environment.

The Order lays out the framework for integrating environmental justice considerations within Federal actions by requiring agencies to do the following:

- ***Analyze environmental effects***, including human health and socio-economic impacts of Federal actions on minority and low-income communities
- ***Provide opportunities for early and continuous input*** by communities potentially affected by action, including opportunity to review and discuss environmental and/or health impacts, alternatives and mitigation measures

Further, the Order explicitly incorporates environmental justice considerations into Federal agency compliance with Title VI of the Civil Rights Act of 1964 and the National Environmental Policy Act (NEPA).

Title VI

Title VI provides that "no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."[5]

The Order directs Federal agencies to act in accordance with Title VI by ensuring that all programs or activities receiving Federal funding that affect human health or the environment do not use criteria, methods, or practices that discriminate on the

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[4] William J. Clinton: "Memorandum on Environmental Justice," February 11, 1994, http://www.epa.gov/compliance/ej/resources/policy/clinton_memo_12898.pdf
[5] 42 U.S.C. § 2000(d) (1964).

basis of race, color or national origin.[6] Additionally, section 602 of Title VI authorizes federal agencies to create regulations to prevent disparate impacts.[7]

NEPA

NEPA requires Federal agencies to conduct an Environmental Impact Statement (EIS) for all federal actions that may significantly affect human health and the environment.[8] The EIS must consider ecological, health, historical, cultural, aesthetic and cumulative impacts.[9]

The Executive Order instructs agencies to analyze the human health, economic and social effects of Federal actions on minority and low-income communities where NEPA applies, and to consider mitigation measures where appropriate.[10]

State Legal Framework

Oregon is among several states that have responded to growing awareness of environmental injustice.[11] In 1993, The Oregon Environmental Equity Citizen Advisory Committee (Committee) was formed under Governor Barbara Roberts to assist Department of Environmental Quality (DEQ) and Oregon Health Division to investigate how the State's environmental programs may contribute to environmental discrimination. In 1994, DEQ made a series of recommendations for immediate action to incorporate equity considerations into agency programs.[12]

In 1997, The Governor's Environmental Justice Advisory Board (GEJAB) was created when Governor Kitzhaber issued Executive Order 97-16. The GEJAB's mission was to determine how the state's natural resource agencies were implementing the directives from the 1994 recommendations. It concluded limited progress had been made toward implementing the directives, and plagued by inadequate demographic data, non-committal agencies and limited resources, EJ work within state government slowed.[13]

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[6] Clinton Memo, *supra* note 4.
[7] 42 U.S.C. § 2000d-1 (2006). The Department of Justice promulgated regulations under section 602. *See* 28 C.F.R. § 42.104 (2011).
[8] 42 U.S.C. §4332(C) (1969).
[9] 42 U.S.C. §4331(b)(1)-(6) (1969).
[10] Clinton Memo, *supra* note 4.
[11] Environmental Justice for All: A Fifty State Survey of Legislation, Policies and Cases, Public Interest Research Institute, Hastings College of the Law, University of California, (3rd Ed. 2007).
[12] Robert W. Collin, *Environmental Justice in Oregon: It's the Law*, Environmental Law Review, (38:2 Mar. 2008).
[13] *Id.*

In 2007, Senator Avel Gordly (D-23) championed SB 420 to reinvigorate state progress toward environmental justice.[14] The bill, codified as ORS 182.538 *et seq*., established Oregon's Environmental Justice Task Force to advise the Governor and state natural resource agencies on environmental justice concerns. The Task Force meets with EJ communities across the state, reports directly to the Governor about environmental justice concerns those communities are facing, and works with agencies to address those concerns while meeting EJ goals.[15] Additionally, the law requires state natural resources agencies address environmental justice issues as part of standard operations and report directly to the Governor on progress.[16]

ORS 182.545

In order to provide greater public participation and to ensure that all persons affected by decisions of the natural resource agencies have a voice in those decisions, each natural resource agency shall:

1. In making a determination whether and how to act, consider the effects of the action on environmental justice issues.
2. Hold hearings at times and in locations that are convenient for people in the communities that will be affected by the decisions stemming from the hearings.
3. Engage in public outreach activities in the communities that will be affected by decisions of the agency.
4. Create a citizen advocate position that is responsible for:
   a. Encouraging public participation;
   b. Ensuring that the agency considers environmental justice issues; and
   c. Informing the agency of the effect of its decisions on communities traditionally underrepresented in public processes.

ORS 182.550

All directors of natural resource agencies, and other agency directors as the Governor may designate, shall report annually to the Environmental Justice Task Force and to the Governor on the results of the agencies' efforts to:

1. Address environmental justice issues;
2. Increase public participation of individuals and communities affected by agencies' decisions;
3. Determine the effect of the agencies' decisions on traditionally underrepresented communities; and
4. Improve plans to further the progress of environmental justice in Oregon.

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[14] Senator Gordly was the first African American woman to be elected to the Oregon Senate.
[15] See ORS 182. 538; ORS 182.542.
[16] *See* ORS 182.545.

Oregon's natural resource agencies must comply with the above state statutory obligations as well as federal environmental justice requirements where appropriate. The purpose of this Handbook is to provide guidance to state agencies to comply with these obligations by considering disproportionate impacts and eliciting meaningful participation from affected environmental justice communities. What follows is a discussion of a number of techniques and strategies state agencies can employ to achieve environmental justice in their operations and programs.

Why Race Matters: Past, Present and Future

Historically, the best indicator of the location of hazardous waste sites is the racial composition of the host community. While factors other than race play a role in the location of facility citing, such as socioeconomic status and land use decisions, race is still the predominant correlating factor nationwide.[17]

Oregon, though established as a free state, outlawing slavery, nevertheless has a notorious history of racial exclusion. The first of the "Exclusion Laws" was passed in 1844, requiring all Blacks to leave the territory within three years. A 1849 law allowed existing black settlers and their children to stay, but prevented new black settlers from moving to the state.[18] Oregonians voted to ratify the State Constitution in November 1857, formally rejecting slavery but again prohibiting black settlers from residing in the State or voting. Two years later, Oregon became the only state admitted to the Union with an exclusion law in its Constitution. The law remained on the books for the next sixty-seven years until it was finally repealed in 1926. It wasn't only African Americans who suffered discrimination: in 1862, the Oregon Legislature imposed an annual tax on Asians and Pacific Islanders as well as Blacks, and outlawed "miscegenation" (interracial marriage).

But the disenfranchisement of black settlers ran deep. Despite passage of the 15th Amendment to the Constitution in 1870, giving black citizens the right to vote and superseding Oregon's constitutional ban on black suffrage, Oregon did not formally ratify the 15th Amendment until 1959.[19]

As illustrated by recent studies, Oregon is still far from achieving racial equity. The Coalition of Communities of Color (CCC) produced a series of reports that examined communities of color in the Multnomah County.[20] These reports highlight the stark disparities between white communities and communities of color in Multnomah

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[17] Toxic Waste and Race at Twenty: 1987–2007, United Church of Christ Justice & Witness Ministries, *available at* http://www.ucc.org/justice/pdfs/toxic20.pdf.
[18] Rutherford, Charlotte B., *Laws Of Exclusion*, 64-JAN Or. St. B. Bull. 29 (2004).
[19] Oregon Racial Laws and Events: 1844–1959
http://www.ode.state.or.us/opportunities/grants/saelp/orraciallaws.pdf
[20] http://www.coalitioncommunitiescolor.org/docs/AN%20UNSETTLING%20PROFILE.pdf

County. The CCC found significant disparities in income, education, poverty, access to jobs, and health, and determined that communities of color in Multnomah County suffer greater disparities than communities of color in other regions of the country.

The CCC identified specific trends within racial subpopulations, establishing that African-Americans, for example, consistently earn lower incomes, own fewer homes, and are underrepresented in most management and professional occupations.[21] Black students also have a lower graduation rate, are more likely to be expelled or suspended, and have lower test scores. Despite these disparities, the Oregon legislature has been slow to pass any proactive racial equity legislation to ameliorate racial health disparities. The 2011 and 2013 Oregon Racial Equity Report Cards determined that communities of color are still disproportionately excluded from decision-making.[22]

Even with this historical and present-day context of racial health inequity, the demographics across the state are changing rapidly. According to the 2010 Census, 21.5 percent of Oregonians belonged to a racial or ethnic minority group. While this percentage is lower than the national average of 36.3 percent, communities of color in Oregon are growing at a rate of 12 percent, faster than the national average of 9.7 percent.[23] As the state becomes more diverse, it is even more critical for agencies to ensure fair treatment and opportunities for prosperity and health for all Oregonians.

There are many ways in which race and privilege play a role in determining fair treatment and meaningful participation. Using a culturally competent approach to capacity-building, acknowledging privilege, and fostering open communication will help build trust with traditionally underrepresented communities, who can then help avoid potential disparate impacts in agency programs and activities.

Other relevant considerations include:

- ***Cumulative Impacts*** – Environmental regulations and risk assessment policies tend to focus on single pollutants, single "bad actors" and single exposure pathways, yet communities of color tend to be disproportionately exposed to multiple pollutants, through multiple pathways, from multiple sources, on top of existing background pollution

- ***Cultural Competency*** – By ensuring that agency management and key staff meet established cultural competency standards and receive regular training, we can best protect against insensitivity to cultural values, norms, and behaviors different from dominant white culture

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[21] http://www.doj.state.or.us/victims/pdf/the_state_of_black_oregon.pdf
[22] *See* http://www.westernstatescenter.org/tools-and-resources/Tools/facing-race-2011-legislative-report-card-on-racial-equity.
[23] http://oregon.gov/DAS/OEA/docs/demographic/OR_pop_trend2011.pdf

The Promise of Collaborative Governance

Our ability to achieve environmental justice depends in large part upon an agency's style of governance. Communities facing disparate environmental health risks with insufficient resources are least able to advocate for their interests, while the stakeholders with resources – regulated entities and mainstream environmental conservation groups – are adverse to or do not represent environmental justice concerns, respectively.[24]

The most common governance style – the DAD approach (Decide. Announce. Defend.) – is adverse to environmental justice, and will inhibit trust and relations with impacted communities. Decisions under this approach are typically negotiated compromises between special interest stakeholders, without the full participation of traditionally underrepresented communities. Potentially impacted communities' first opportunity to engage in a decision often occurs after a decision has been made, in an oppositional posture, with little to no opportunity to change the outcome.

A more equitable approach is **collaborative governance**. Agencies strive to ensure all stakeholders – especially those from communities of color and low-income communities who are most potentially impacted by a decision – are at the table with capacity to meaningfully participate. Agencies commit to not moving forward with a process until those partners are at the table with capacity.

Agencies must involve the public throughout the entire process to ensure the affected community has ability to meaningfully participate.

Meaningful Participation Requirements

The AFFECTED COMMUNITY **must have**

1. access to full information in plain language
2. the ability to influence the outcome

The DECISION-MAKER **must**

1. consider public's concerns before deciding
2. seek out facilitate public involvement

Collaborative governance models can transform traditional public/private roles and partnerships by focusing on building trust, identifying and addressing shared problems, being flexible, and working toward consensus rather than compromise.[25]

[24] Gauna, Eileen, The Environmental Justice Misfit: Public Participation and the Paradigm Paradox, 17 Stanford Environmental Law Journal 3 (1998).
[25] Freeman, Jody, Collaborative Governance in the Administrative State, 45 University of California Los Angeles Law Review 1 (1997).

Early, continuous, and meaningful public participation for all potentially affected communities will result in a more inclusive consideration of a broader range of perspectives, leading to more equitable and sustainable decision-making and reducing the likelihood of disproportionate impacts.

Accountability Creating opportunities for meaningful involvement of potentially affected communities results in greater legitimacy of agency action through increased public trust and support.

Transparency Meaningful involvement requires increased awareness of agency actions and source information, which decreases the likelihood of mistakes, arbitrary or capricious decisions, and abuse of power.

Capacity Building Collaboratively working with community-based organizations and increasing community capacity to participate affords an agency the opportunity to take advantage of the knowledge and expertise of local communities while strengthening their partnership abilities.

Health-Oriented Ensuring full disclosure of potential health risks and providing technical assistance to EJ communities will help orient agency consideration of health-based considerations, especially those grounded in cultural differences that may otherwise be overlooked.

Equity Intentional engagement with all potentially affected communities will result in a more comprehensive analysis of potential impacts and is more likely to result in an equitable distribution of benefits and burdens. [26]

Engagement Meaningful involvement requires **early, frequent,** and **continuous public engagement** throughout the decision-making process, ensuring that impacted communities not only have the technical ability but also the resources to meaningfully participate.

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[26] Office of Neighborhood Involvement, City of Portland, "Public Involvement Task Force Report: A Strategic Plan for Improving Public Involvement in the City of Portland, p. 3 (Oct. 2006)

Environmental Justice in Action

A Guide for Agencies to Implement Environmental Justice

Identifying EJ Issues and Impacted Communities

Before addressing best practices in outreach and engagement, agencies must first conduct a demographic analysis and environmental risk overlay to identify both environmental health concerns and potentially impacted communities.

Step One: Examine proposed action and determine scope of impact

As a first step, agencies must understand the likely area of impact resulting from the policy, action, or decision. By mapping both likely and potential impacts, relying on the best available science and protective risk-screening levels that include a sufficiently precautionary margin of error, agencies can identify the geographic scope of impacts potentially resulting from its decision.

Example: Permitting
In the context of issuing a permit that will allow for a certain level of pollution, it is crucial to understand the distribution of health risks associated with that pollution. Agencies should spatially map the likely pollution migration, along with risk levels, to establish the likely impact area of the permitted activity.

Example: Rulemaking
In the context of rulemaking, it is crucial to understand the areas likely impacted by the implementation of the rule. Agencies should determine the activity type the rule implicates and, based on past and present impacts, spatially map the areas that will likely be impacted by the proposed rule.

Example: Monitoring and Enforcement
In the context of monitoring and enforcement actions, it is crucial to understand the allocation and geographic distribution of monitoring resources and enforcement actions. Agencies should spatially map the distribution of monitoring activities and enforcement actions, along with consideration of any mitigating factors and relative size of enforcement awards, to determine whether resources are equitably allocated.

A Note about Cumulative Impacts

While current agency practice is to address single pollutants across a single medium, environmental justice communities often experience cumulative impacts, from multiple pollutants across multiple media, or due to existing pollution levels.

Cumulative impact assessment offers the opportunity to consider both quantitative and qualitative concerns. While agencies are adept at considering quantitative risk, quality of life impacts can be more difficult, in part because they require subjective input from potentially impacted communities. U.S. EPA has developed a matrix[27] that incorporates a list of factors to consider, including:

- Known pollution sources in the area;
- Existing health problems and conditions;
- Unique exposure pathways;
- Potential quality of life impacts (i.e., noise, odor, stress);
- Social/cultural traditions and conditions;
- Existing social capital and community capacity

While the state of scientific understanding may not yet provide for an understanding of synergistic impacts of cumulative exposure to multiple pollutants, these factors can help agencies balance potentially disadvantageous assumptions that are built into most standard risk assessment models.

Step Two: Identify community demographic data within impact area

Once an agency has identified an action's geographic scope of impact, the agency must then overlay current demographic information, preferably using Geographic Information Systems (GIS) mapping, to determine if there are communities of color and low-income communities within the impact area that are experiencing disparate impacts relative to whiter and/or more affluent communities. The purpose of this assessment is to determine whether "host" populations (those at risk within the area of impact) are disproportionately people of color or low-income relative to "non-host" populations (those not at risk of impacts).

There are several key decisions to be made in developing an appropriate methodology:

- ✓ Determine the appropriate data set
- ✓ Determine the appropriate unit of analysis and comparison population
- ✓ Determine demographic thresholds for communities of concern

[27] http://www.epa.gov/environmentaljustice/resources/policy/ej-toolkit.pdf

<u>Decision</u>: What data set should be used? [28]
Multiple data sources are available to identify demographic data. For racial and ethnic demographic data, the best practice is to rely on U.S. Census data, which is updated every ten years. For socioeconomic data, the best practice is to rely on the American Community Survey (ACS), which are five-year averages. School district data, particularly racial/ethnic data and free-and-reduced lunch data (which correlates to the federal poverty standard), is considered reliable because of the annual reporting requirement. School data can be a useful way to test the accuracy of Census and ACS data, though it should not be the sole data source.

<u>Decision</u>: What unit of analysis and comparison population should be used?
In order to ensure that the EJ assessment is accurate, agencies must choose the appropriate unit of analysis and comparison population.

- Unit of Analysis: the generally accepted best practice is to use Census tracts as the de facto unit of analysis; Census tracts contain similar population numbers and are based on political boundaries, but vary in physical size and population density. Larger (zip codes) or smaller (Census building blocks) units may be appropriate where the scope of impact is broader or narrower

- Comparison Population: the generally accepted best practice is to compare the demographics within the area of impact to the demographics outside the area of impact, within the entire geographic area that the decision could potentially implicate; if a permitted activity could occur throughout a county, the comparison population is the demographics within the county but outside the area of impact from the permitted activity

<u>Decision</u>: What demographic thresholds should be used?
Even after representing existing demographic data, agencies must apply thresholds to determine which units of analysis comprise communities of color or low-income communities. Put another way, agencies must determine whether concentrations of people of color or low-income people within a certain area are sufficient to warrant special consideration. Threshold comparisons are the tool to make this decision.

As a general rule, agencies should use demographic data at the geographic level consistent with the scope of decision. If an agency decision is regional in scope, the demographic thresholds should be based on regional population data. If a decision is local in scope, city or county data may be appropriate. For example, transportation investments are typically regional in nature, while brownfields are local in nature.

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[28] OEJTF's intention is for a central agency (i.e. DAS) to house regularly updated demographic data sets for each agency to ensure consistency and efficiency.

Assuming a decision that is regional in scope, the appropriate threshold would be the average regional population of people of color or low-income people. Agencies have discretion (and are encouraged) to go above this minimal threshold to be more protective and inclusive. When using a data set that is outdated at the decision-making point (at least five years old), agencies should look to other data sets where available to assist in adjusting the thresholds to account for demographic changes.

Identifying Communities of Color:
Consider the Portland metropolitan area as an example. As of the 2010 Census, the Portland metro area was 76.3% (non-Hispanic) white, and 23.7% people of color. This means that the minimum threshold for communities of color should be 23.7%. Each Census tract in the region that has at least 23.7% people of color should be identified as a community of color (for purposes of EJ & Title VI assessments).

Identifying Low-Income Communities:
Socioeconomic percentages should be based on regionalized data where available; otherwise, 200% of the federal poverty line is a standard best practice for low-income designation. As of the 2010 ACS, [XX%] of metro area residents lived at or below the 200% of the federal poverty line designation. Each Census tract in the region that has at least [XX%] of people living at or below 200% of the federal poverty line should be identified as a low-income community (for purposes of EJ assessments).

Advanced Lens:
For advanced analysis, agencies should plot the individual Census tracts by race and socioeconomic status along a line graph, with the threshold marked along the x-Axis. Sometimes there are Census tracts that fall just below the threshold, and agencies are encouraged to use their discretion in applying a margin of error (within one standard deviation) to include those units within EJ community designation.

Additional Demographic Considerations:
The Task Force has defined environmental justice communities as including other demographic characteristics indicative of vulnerability or underrepresentation, such as tribal communities, as well as those with significant concentrations of elderly, youth, and those with physical or mental disabilities.[29] To the greatest extent practical, agencies should seek out information to determine whether any such vulnerable subpopulations are within the scope of impact of a particular action.

[29] In Oregon between 2010 and 2020 the percentage of people ages 65-74 is expected to increase by 63%, and the percentage of people ages of 75-84 will increase by 35%, whereas the overall population will grow by only 11.2%.

Step Three: Contact community-based representatives to verify

Once an agency has determined the area of impact, the demographics of the population within that area of impact, and a potential disparate impact on those communities of color and/or low-income communities, relative to the rest of the population, agencies should engage in *groundtruthing*. By establishing contact with representatives within potentially impacted communities, agencies can both verify the demographic assessment and get a head start on outreach and engagement.

Each community of color or low-income community across the state may face distinct health risks or environmental concerns. *Groundtruthing* is an opportunity for agencies to built trust with environmental justice communities by proactively identifying community concerns, technical capacity, and agency resources and partnerships needed to address those concerns and build community capacity.

Outreach Techniques to Ensure Meaningful Participation

Informal Outreach: before agency action begins
Formal Outreach: after administrative process begins

When to Use Formal vs. Informal Process

Agencies must utilize both formal and informal outreach in order to improve communication with stakeholders and gather meaningful public input.

Informal outreach is appropriate before agency action begins. Agencies should engage potential stakeholders well in advance of a planned agency action. Even when an agency predicts minor impacts from an action, community members may provide insight into potential impacts unforeseen by the agency. Establishing an early and consistent relationship facilitates public outreach when the formal process begins.

Formal outreach is appropriate once an administrative process begins. The degree to which an agency has conducted early and consistent informal outreach will determine the community capacity and trust to meaningfully participate during a formal public participation process.

How to Reach Stakeholders

First, in reaching potential stakeholders, agencies should always use **plain and concise language** and be aware of any **potential language barriers** that might otherwise preclude participation. For example, English may not be the primary language within immigrant and refugee communities, while issues of literacy may also be a factor in many low-income communities. Agencies should translate crucial public documents and notices when appropriate.[30]

Where EJ communities have been identified, agencies must go beyond standard notice and comment procedures otherwise prescribed under the Administrative Procedures Act or environmental laws and regulations. Agencies have a broad array of media and technological tools for reaching community stakeholders.

Best Option: Partner with Community-Based Organization

The first step an agency should take when seeking to initiate outreach within an EJ community is to contact an established community-based organization (CBO) in the area.[31] CBOs likely have existing networks and relationships with residents of the area, and partnering with CBOs can be efficient, effective, and mutually beneficial for both the agency and organization. Agencies can also engage formally recognized neighborhood associations, but they should be mindful of the likelihood that these associations may not adequately represent the demographics most at risk.

CAUTION: Risks and Opportunities

Agencies should not presume that CBOs will perform their outreach duties for them, especially without compensation. Some CBOs (particularly service agencies) are established and resourced, and may have capacity to support the agency's outreach efforts, while other CBOs (particularly advocacy organizations), may have fewer resources and will likely require compensation to support outreach activities. The risks of partnering with CBOs are that they may have a different work culture and practice than standard government procedure, requiring flexibility and patience. The opportunities of partnering with CBOs are that it can establish trust in the agency, obtain a more authentic and legitimate result, and help build capacity.

Second Step:

Whether or not an agency has identified and partnered with a CBO in the target area, agencies should utilize traditional and new media to augment outreach to the community. Examples of outreach media for EJ communities include: local and culturally specific newspapers and radio, email listservs, organizational newsletters, faith centers, health clinics, and social service, senior, and community centers. [32]

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[30] Executive Order 12,898 (Feb. 11, 1994).
[31] See Appendix [X] for list of known CBOs across Oregon.
[32] See Appendix [Y] for list of known media/association options across Oregon.

Public Outreach Event Planning:
Agencies often convene public information meetings or events as a way to solicit the public to learn about a potential agency action and provide informal feedback. If interested in organizing such an event, consider the following questions:

- ✓ Have you sought to partner with a CBO to provide legitimacy and ensure the meeting/event incorporates local culture, customs, and knowledge?
    - Co-hosting an event with a local CBO or two is a great way to gain a foothold in a community and ensure participation
- ✓ Is your meeting/event held at a time and place that is accessible and most conducive to the participation of low-income residents and people of color?
    - is it nearby target residential areas and safe to get to;
    - are there transportation options (transit, bike/ped, and parking);
    - is it appropriately sized and comfortable for participants?
    - is it in the evening or weekend so working families can attend?
- ✓ Are you providing the holy trinity of translation, food, and childcare?
    - Working families, single parents, and immigrants face significant barriers to participating in public meetings/events
- ✓ Have you developed culturally appropriate and accessible informational materials and visuals for the meeting/event?
    - Informational materials must be accessible (plain & concise language, translated if appropriate); use visuals, graphs, and pictures over text
    - Power point presentations are disfavored, as are "programs" where agency staff are talking (down) to community members
- ✓ Are you prepared to retain community contact information and follow up with participants in a consistent, comprehensive, and timely manner?
    - Be careful not to tokenize community participation by not being prepared to stay engaged and follow up with community members

Practice Active Listening:
Active listening is a simple and effective way to engage in communication that acknowledges emotion, demonstrates empathy, and diffuses tension. Active listening is especially important when there are differences in power and privilege.

Step One: Listen for feelings, pay attention to body language, and do not interrupt. Set aside your own feelings and opinions and accept what you hear as legitimate.

Step Two: As appropriate, periodically validate the speaker by repeating back their points and ideas but in your own words, without judgment or comment.

Step Three: Listen and look for verbal or physical confirmation that you have accurately understood what the speaker is trying to communicate.

Step Four: Ensure the speaker has an opportunity to correct, clarify, or supplement their points and that you have a full appreciation for what they are trying to say.

Step Five: Continue cycling through this process with multiple points until it is appropriate for you to respond, contributing your own feelings, opinions, and ideas.

Be Open, Honest, and Transparent:
Ensure that all communication with community stakeholders is done openly, honestly, and transparently, acknowledging any uncertainties and assumptions. Make clear distinction between facts and conclusions, opinions, or judgments. If unable to adequately respond to a question from a community member, do not guess; rather tell the community member you will get back to them (and make sure you do). When discussing potential health risks, agencies should take pains to clearly articulate the assumptions those risk assessments are based on and the scientific uncertainties (both positive or negative) that are present.

Improving the Quality of Decision-Making

A. Building Agency-Community Partnership

Agencies should seek to **foster a culture of listening, hearing, and acting on public input.** In order to build a trusting relationship with a community, agencies must truly value public input and actually **use the information gathered from communities to shape decision-making**. Agency staff can proactively build trusted relationships by attending community events and CBO meetings.

B. Building Agency Capacity

Agencies should develop initial capacity by establishing cultural competency standards and developing training tools staff on environmental justice best practices. This requires a commitment from the agency to **provide resources and training to agency staff**. These resources can in part be common to all agencies, with sections tailored to an agency's specific scope of work.

Each agency must establish and staff the **Citizen Advocate** position.[33] Citizen Advocates are responsible for encouraging public participation, ensuring the agency considers environmental justice concerns, and informs the agency of the impacts, if any, of its decision on EJ communities. Ideally, each agency's Citizen Advocate will be a full-time staff with strong cultural competency and outreach experience.

[33] ORS 182.545(4).

Each agency Citizen Advocate EJ Coordinator should be charged with:

- Educating and training appropriate agency staff
- Ensuring consistent and proper demographic overlay analysis for all decisions
- Leading efforts to adopt best practices around outreach and engagement
- Developing relationships with key stakeholders within impacted communities
- Serving as a point of contact for communications with community
- Coordinating inter-agency collaborative efforts

C. Building Community Capacity

People of color, low-income people, and other vulnerable or underrepresented populations must feel empowered to meaningfully participate in agency decisions. While CBOs often work to provide resources and tools to foster community capacity and empowerment, those organizations often lack the resources to meet this need. Agencies have an opportunity to provide CBOs with resources and access to technical information that can greatly increase their capacity to both partner in agency decision-making as well as be more self-determinative.

Citizen Advisory Committees:
Agencies often turn to Citizen Advisory Committees (CACs) to promote public participation and validate agency process. CACs can be meaningful opportunities for citizens, but for people of color or representatives of vulnerable or underrepresented populations, it is all too often tokenizing. Agencies must take care to ensure that diverse communities are adequately represented and avoid at all costs a situation where a particular member is expected to speak on behalf of an entire demographic. Most important is the need for technical assistance for EJ representatives, especially those who have been most directly impacted from agency decisions. Seeking CAC representation from established CBOs in the area is one way to ensure capacity.

D. Reporting

Each agency subject to ORS 182.535 must submit an annual report to the Task Force and Governor's office summarizing agency actions toward achieving environmental justice.[34] The report must document the results of the agency's efforts to address environmental justice issues; increase public participation of individuals and communities affected by the agency's decisions; determine the effect of the agency's decisions on traditionally underrepresented communities; and plans to further the progress of environmental justice in Oregon. [35]

Annual reporting is key because it helps monitor any progress within each agency in addressing environmental justice and provide learning opportunities to reconsider and refine these best practices.

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[34] ORS 182.550.
[35] *Id.*

E. Transparency of Governance and Processes

Agency decision-making processes should be accessible and transparent. In order to meaningfully participate, agencies must disclose all information that serves as the basis for any decision. EJ communities and advocates should not have to resort to Oregon Public Records laws to access important documents and information. Relevant documents and information should be provided promptly and proactively.

When making environmental justice-related decisions, it is critical that agencies follow up with community stakeholders and provide a rationale for how the agency considered environmental justice issues in deciding whether and how to act.[36]

INTER-AGENCY ENVIRONMENTAL JUSTICE DATABASE

Oregon's natural resource agencies, working with the Environmental Justice Task Force, are encouraged to develop a shared database to collectively manage relevant information about environmental justice communities and issues in order to more effectively engage communities and make more equitable decisions.

This database should consist of contact information for:

- Agency citizen advocates
- Neighborhood associations
- Public interest groups
- Advocacy Commissions office(s)
- Religious organizations
- Community leaders

This database should also include:

- Demographic maps identifying communities of color and low-income areas
- Environmental health risks and concerns
- Location of existing permitted facility sites
- ESL areas and language-translation needs
- Location of community centers and assets
- Traditional and alternative media outlets
- Case studies showing successful EJ engagement

[36] ORS 182.545(1).