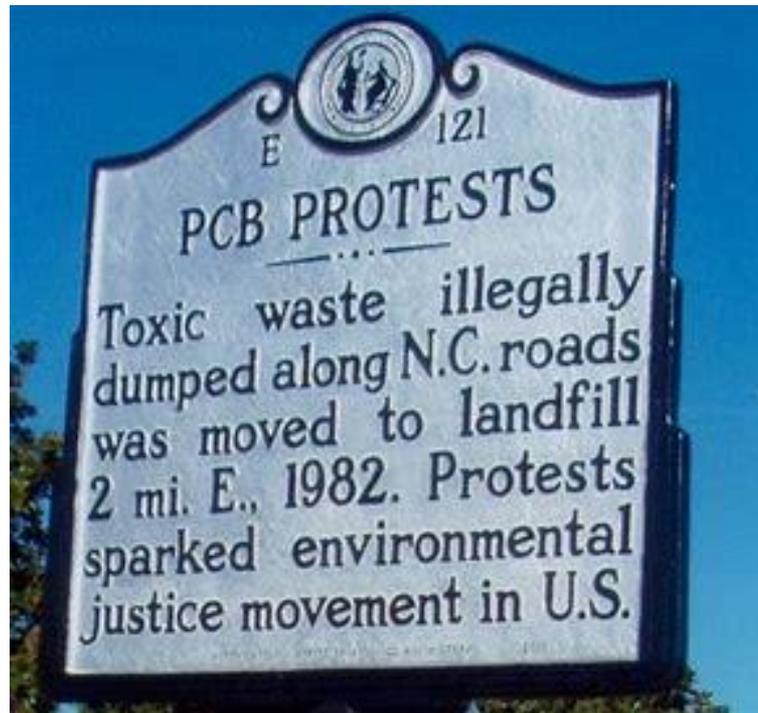


Environmental Justice and Other Virginia Developments

Provided to Virginia Asphalt Association

April 2022

Environmental Justice Origin



Environmental Justice Origin



Environmental Justice Origin – Executive Order



EPA:

Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.

Other Statutes:

- NEPA
- Title VI of the Civil Rights Act

Environmental Justice Origin

No Federal Statute

No Federal Regulation

Implemented primarily through Guidance

Current focus

- **Funding**
- **Public Participation**
- **Enforcement**

Step 1: Identification of environmental justice communities in proximity to the project.

- Tools to identify
- Proximity to project



Environmental Justice in Virginia

Friends of Buckingham v. State Air Pollution Control Bd., 947 F.3d 68 (4th Cir. 2020)

State Air Pollution Control Law:

E. The Board . . . in approving . . . Permits . . . shall consider facts and circumstances relevant to the reasonableness of the activity involved and the regulations proposed to control it, including:

3. The suitability of the activity to the area in which it is located Va. Code § 10.1-1307.E.

From the Opinion:

“To be clear, if true, it is admirable that the Compressor Station 'has more stringent requirements than any similar compressor station anywhere in the United States,' and that residents of Union Hill 'will be breathing cleaner air than the vast majority of Virginia residents even after the Compressor Station goes into operation.' But these mantras do not carry the day. What matters is whether the Board has performed its statutory duty to determine whether this facility is suitable for this site, in light of EJ and potential health risks for the people of Union Hill. It has not.”

Virginia Environmental Justice Act – enacted 2020

- Definitions
- Policy Statement

**But See Advisory Opinion Issued by Attorney General Herring,
December 2021**

2021 General Assembly Session

- **Numerous bills introduced**

- Public participation
- Assessment of impacts
- Role of local governments
- Consideration in permitting process
- Formalization of interagency working group

NGOs were not successful in getting this legislation passed.

2022 General Assembly Session

- **SB 657**
 - Strips Air Board and Water Board of permitting authority (only have authority to approve regulations)
 - Amends Va. Code 10.1-1307.E to give greater weight to local government zoning decision
 - ***But*** allows Boards to provide “commentary” on “controversial permits”
- **HB 1261**
 - Goes further to change how Board members are appointed
 - Currently in conference
- **No comprehensive environmental justice legislation proposed.**

Site Suitability Regulatory Advisory Panel

- Consensus was not reached
- NGOs attempted to weave in legislative proposals
- Unclear whether any regulatory changes will be enacted

DEQ Implementation of Environmental Justice Strategic Plan

- New mapping tool expected this summer
- Guidance under development to incorporate environmental justice into permitting process
- Increased coordination with communities/environmental justice groups

Other Developments / Themes

Flood Protection / Coastal Resiliency

- **Includes requirement to address socioeconomic inequities in the adaptation and protection measures developed (See, e.g., HB 516)**

Wildlife Corridor Action Plan

- **Original focus was addressing impacts to wildlife from vehicles**
- **Expanded to address habitat fragmentation**
- **2022 budget includes almost \$5 million to implement the plan and provide grant funding for projects (including projects that improve habitat connectivity). Budget is still in conference.**

Role of Tribes

- **Tribal consultation on environmental permits proposed in 2022 General Assembly but failed to pass (see, e.g., HB 715, SB 482)**

Other Developments / Themes

Protection of Cultural Resources

Small Business and Supplier Diversity

- **See, e.g., HB 814, requiring annual review of state agency plans for goals and strategies for increasing awards/spending on small, women-owned or minority-owned businesses.**

Greenwashing

- **Heightened focus on environmental marketing, particularly as it relates to climate impacts**