

ENVIRONMENTAL JUSTICE AND THE CWA 303(d) PROGRAM

**PRACTICES AND IDEAS FROM
CONVERSATIONS AMONG STATE, TERRITORIAL, AND TRIBAL STAFF**



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I. Introduction

Environmental Justice (EJ), as defined by the U.S. Environmental Protection Agency (EPA), refers to the “fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.”¹ According to the EPA, considerations for environmental justice include: equal protection from environmental and health hazards; and equal access to the decision-making process for healthy environments. Charles Lee, a Senior Policy Advisor for Environmental Justice at the EPA and one of the leaders of the environmental justice movement, highlighted during a presentation at the *2021 National CWA 303(d) and Data Management Training Workshop* another definition of EJ by Professor Bunyan Bryant: “those cultural norms and values, rules, regulations, behaviors, policies, and decisions to support sustainable communities where people can interact with confidence that the environment is safe, nurturing, and productive.” Combined, these definitions provide an understanding of EJ as both an institutional and socio-cultural endeavor that encompasses a wide variety of issues, including but not limited to climate, food, housing, and water.

In 2021 and 2022, the Environmental Law Institute (ELI) hosted three workshops that, in part, addressed how States, Territories, and Tribes have considered and could consider EJ in CWA 303(d) listing, TMDL development, TMDL implementation, and related activities and products. This document is a brief summary of the practices and ideas conveyed in those forums. Most of the information included here originated from registration responses and in-session discussions of State, Territorial, and Tribal staff [hereinafter “staff”] as part of the *2021 National CWA 303(d) and Data Management Training Workshop*, as well as presentations and discussions in the *Environmental Justice and the CWA 303(d) Program: Opportunities for Progress* workshop and the *2022 National Training Workshop on Water Quality Data, Assessment, and Plans*, each of which was convened by ELI through a cooperative agreement with the EPA. Follow-up conversations and independent literature reviews by ELI staff supplement those materials.

The information provided here is not intended to be comprehensive. It is intended to facilitate communication among water quality programs, especially CWA 303(d) programs, and help generate new ideas in this evolving area. With the 2022 CWA 303(d) Program Vision’s focus on EJ,² this is an opportune time to consider more thoroughly how to account for EJ in CWA 303(d) Program activities and products as well as include it in communications and collaborations with other programs and stakeholders.

II. TMDL Prioritization and Implementation

Staff indicated that the scope of the CWA 303(d) Program can be limiting when it comes to addressing EJ concerns. Some TMDL staff noted that they do not have authority or capacity to

¹ See <https://www.epa.gov/environmentaljustice>.

² See www.epa.gov/tmdl/vision.

do much more than simply develop TMDLs. Yet, there are still opportunities for integrating EJ into the prioritization of TMDLs, revisions to TMDLs, and implementation of TMDLs.

Staff from Montana explained that they had tended to prioritize TMDL development where there is existing local engagement that would increase the likelihood of implementation, which is a common prioritization strategy. The watersheds that have “momentum,” such as public attention and an active watershed group, are then tracked toward restoration plan development (which is not funded through the EPA) and access to restoration project funding (i.e., CWA 319). Montana realized that this approach was unintentionally benefiting more affluent areas of the State — communities with more time to attend meetings, participate in reviews, do volunteer monitoring, seek out local donors, and write grant applications or hire consultants — activities that are unequally burdensome on the time and local resources of underserved populations. In this way, prioritizing TMDLs with a greater likelihood of completion and/or implementation can result in racial and socioeconomic disparities in water quality planning, implementation, and ultimately restoration.

Staff from a couple of States conveyed approaches that they have taken that could lead to greater equity in prioritizing TMDL development and implementing plans. Staff from Connecticut noted that, using information from the EPA, the State has developed maps of the assessment status of waterbodies (impaired, attaining, not assessed) with an overlay of Connecticut EJ screening layers that include distressed municipalities, low-income areas, and Tribal areas, as well as key community landmarks, including schools.³ In Virginia, the majority of the State's TMDL projects spatially overlap EJ areas, and the State has three PCB TMDL studies underway associated with subsistence fishing. More broadly, the Minnesota Pollution Control Agency (MPCA), on an agency-wide scale, prioritizes communities with EJ concerns under the guidance of an EJ policy,⁴ an Environmental Justice Framework⁵ that addresses water quality issues, and an EJ Advisory Group that advises the MPCA Commissioner on implementation of the agency's EJ framework. The MPCA identified areas statewide with: at least 40 percent of people with reported income at or less than 185 percent above of the federal poverty level; 50 percent or more people of color; and federally recognized Tribal areas. The MPCA requires prioritization of these areas in annual plans, as each program within the agency must address the following two questions: (1) in what ways does the program's work have the potential to impact or improve the health and quality of life of low-income people and people of color; and (2) what strategies will the program employ to ensure that low-income people and communities of color benefit from the program's work and are not disproportionately impacted by pollution.

In addition, the content and implementation of TMDLs and other restoration plans can incorporate EJ concerns. Staff from Connecticut described the role of EJ in their “alternate restoration plans,” most of which focus directly on implementation. Using community knowledge, the State was able to better identify the ecological and human health risks of different polluted waterbodies. According to Connecticut staff, understanding which waterbodies were used by local communities for subsistence and cultural practices resulted in more accurate

³ See, <https://portal.ct.gov/DEEP/Environmental-Justice/Environmental-Justice-Communities>.

⁴ See, <https://www.pca.state.mn.us/about-mpca/mpca-and-environmental-justice>.

⁵ MINN. POLLUTION CONTROL AGENCY, ENVIRONMENTAL JUSTICE FRAMEWORK (May 2022), <https://www.pca.state.mn.us/sites/default/files/p-gen5-05.pdf>.

risk assessments and risk-based clean-up goals for remediation processes. Staff from North Carolina noted that they have incorporated EJ considerations into their Watershed Action Plans and have worked with local governments in the implementation of these plans to ensure that EJ is being considered in the prioritization of projects. Staff from Missouri and Montana described how their States have incorporated EJ and equity into the scoring criteria used for ranking CWA 319 grant applications, adding points for projects that have potential EJ concerns or will benefit socially disadvantaged populations, respectively. These CWA 319 efforts can influence TMDL implementation, when the projects concern waters with a TMDL.

III. EPA Technical Resources

Several of the EPA's technical resources offer support for integrating EJ considerations into water quality planning and plan implementation. The data library [Watershed Index Online \(WSIO\)](#) includes three new categories of indicators that relate to social determinants of health and EJ: community context, hazardous waste and wastewater, and water quality. Staff have used these indicators to better understand which communities may be more susceptible to pollutant exposure, which can help with prioritizing where to monitor and where to develop new restoration plans. The [Recovery Potential Screening \(RPS\) Tool](#) provides EJ-relevant indicators for watershed comparison, helping inform planning and prioritization for water quality activities. These indicators can be used to identify communities that potentially have EJ concerns; for example, using tax data by zip code in combination with data on access to waterbodies.

The EPA's [EJScreen](#) tool combines environmental and demographic indicators in maps and reports, including the ability to generate a standard report for a selected area as well as analyses showing how a selected area compares to the State, the EPA region, or the nation. The EPA's [How's My Waterway](#) tool, which draws information from many databases to provide the general public easy access to details on the condition of their local waters, includes EJScreen as a layer labeled Demographic Indicators.

Virginia DEQ has partnered with the EPA to incorporate EJ considerations into CWA 303(d) and water quality monitoring programs through studies and tools, including the EPA's [EJScreen](#) and DEQ's [Virginia EJScreen+](#), mapping and screening tools that combine environmental and demographic indicators in maps and reports. Specifically, the EPA and DEQ staff plan to conduct EJ analyses on DEQ's fish tissue monitoring program in the coming year and in other programs in the future. Michigan has developed a [draft EJ screening tool](#) using multiple indicators of pollution burden and population characteristics in the context of census tracts. Although it is still in draft form, this tool has the potential to help staff prioritize water quality monitoring in communities with EJ concerns. Lastly, Connecticut also has EJ screening layers, which are described above.

One Tribal staff member applauded the inclusion of traditional uses—such as harvesting wild rice—as designated uses in [ATTAINS](#), an online system for accessing information about the conditions of the country's surface waters.

IV. Outreach and Engagement

Staff indicated that, even with procedures and tools for considering EJ, communications and trust-based relationships with community members are often difficult to establish and maintain, which limits progress. Staff also noted distrust of government as well as social, technological, and linguistic differences as barriers.

Yet, staff identified many effective approaches to community outreach and engagement. One frequently cited approach was working with trusted entities, like local watershed groups and local leaders as liaisons to the community. For this to succeed, staff noted the importance of understanding who the community influencers are as well as what groups already are working on EJ issues in the community. Staff emphasized that, while these groups and individuals can invite agencies into communities, the connections and conversations should center around community members articulating their needs rather than agency staff primarily trying to communicate the program's needs. Staff also highlighted the value of engaging communities early and often in decision-making processes, including meeting with community members before planning begins to hear their concerns and hopes regarding a project. One recommended way to do this is to meet in places that are convenient for community members, like recreation centers or farming co-ops. Staff emphasized that these gestures, and genuine intentions, can go a long way toward building relationships and connections before the public notice stage, minimizing the potential for tensions later in the process.

Staff said that Tribal liaisons at the State help overcome the communication gap and improve collaboration with Tribes, nations, and pueblos. Michigan staff noted that their department's Tribal liaison has provided guidance to monitoring and TMDL staff regarding outreach to Tribes, including organizing meetings with Tribes prior to data collection. Minnesota staff referred to their Tribal liaison as an important bridge for sharing voices and concerns as well as helping understand what limitations the State and Tribal agencies are operating under and why those limitations exist. New Mexico staff noted that, in addition to the formal communication at high levels of government, coordination by the technical staff at the State and Tribe is allowed for monitoring, standards, CWA 319, and other on-the-ground activities, and this is where the Tribal liaison has been vital.

Red Lake Nation staff emphasized the importance of sending teams of Tribal and non-Tribal staff for outreach efforts, adding that it helps to alleviate distrust and closes cultural distance. The staff said that Tribal members have a unique ability to communicate with other Tribal members, facilitating the sharing of information in both a less formal and more efficient way. The Red Lake Nation staff added that including non-Tribal staff in outreach bridges communication challenges with members of Red Lakes' neighboring farm communities.

In efforts to overcome language barriers, Virginia and Connecticut staff mentioned translating fish-consumption advisories and harmful algal bloom materials into different languages to reach populations that may not speak English. Connecticut also coordinated with its EJ office to partner with trusted community leaders who could effectively and sensitively communicate the message. In addition, Connecticut began including more pictorial-based, rather than text-based, signage. These efforts are especially important for communities with greater dependence on the

waters for subsistence and cultural reasons. New Mexico staff explained that their department conducts an assessment of English proficiency in the area that a proposed amendment is likely to affect, and this assessment is built into a more comprehensive evaluation of community demographics to determine the most appropriate forms of communication for the public. Public Involvement Plans (PIP) combine these findings with EJScreen to decide what type of outreach is provided to communities and in what language. All of these plans are published on their website for feedback, and PIPs are developed for all TMDLs, Integrated Reports, water quality standards, and actions.

To increase community participation and improve outreach, staff also emphasized tailoring communication to local circumstances, not just by ensuring that the information is in the appropriate language, but also by presenting it in ways that will reach and ideally engage members of that community. For example, staff noted that livestreaming and recording presentations or proceedings make the content and participation accessible to more people, providing flexibility in location and time. Staff also said that web-based engagement does not reach everyone, whether because of comfort with a computer, access to one, or availability of high-speed internet. New Mexico staff explained that some of their communication efforts are via radio because that is the best way to reach members of some communities.

V. Internal DEI Efforts

Staffs' collective backgrounds as well as their familiarity with and understandings of the concerns of various communities can be important to effectively including EJ in CWA 303(d) decision-making and activities, especially for outreach and engagement. Staff noted that having a community represented within the agency helps to better understand its needs and concerns as well as identify practical solutions. Also, as indicated in the Red Lake Nation example above, personal connections with a community can make a deeper level of engagement possible.

Building a diverse staff could require varied approaches. Staff recommended examining hiring practices, such as looking at who the agency is hiring, how position descriptions are written, and how minimum qualifications are established. Even with more inclusive hiring practices, applicants may not have the technical skills and experience desired. It could be valuable to provide training and other support that prepares people from varied backgrounds to be qualified candidates. For example, staff from the Red Lake Nation have a tiered mentoring internship program, with positions for Tribal members at the high school-, college-, and graduate-level, all of whom work together and gain experience within the agency. The program helps Tribal members build confidence to pursue higher education, provides students critical workplace skills, and begins to build a network of mentors within the agency. The program has resulted in one tribal member becoming a full-time hydrologist and two more being offered technician positions while they work to finish their degrees.

Staff also highlighted the value of training programs that educate existing and incoming staff on historical context or diversity, equity, and inclusion topics. For example, Michigan held an all-staff training on EJ in 2020, and the District of Columbia's training includes "Origin Stories: Race, Racism and the Anacostia River." Some Minnesota staff have taken the Tribal-State

Relations Training designed and presented by the University of Minnesota Duluth's Indian Studies Program, which helps State staff learn the history of the Tribes, the treaties, and some of the nuances of working with Native American cultures, as well as understanding that no two Tribes are the same.

In addition, staff suggested consulting with external groups familiar with EJ concerns. For example, Virginia contracted with a nationally recognized leader in environmental planning and community engagement to conduct a study and include independently recommended EJ strategies and principles into program implementation.

Staff also noted the value of designated positions and committees with a focus on equity. For example, the District of Columbia has a program analyst position specific to equity and also has an equity committee. The goal of the committee is to operationalize a commitment to diversity, equity, inclusion, and justice across the agency. The Chesapeake Bay Program has a Diversity Workgroup whose mission includes identifying stakeholder groups not currently represented and creating meaningful opportunities to engage them in the Bay Program's efforts. EPA Region 4 has a three-tiered Environmental Justice Advisory Council, which was established to integrate EJ, climate justice, and equity into day-to-day operations. The tiers consist of an EJ board of senior leadership, an advisory council, and "Tiger Teams," which are ad-hoc groups for specific purposes.

VI. Conclusion

The CWA 303(d) Program can play a role in correcting and proactively working against environmental inequality. This compendium of examples from States, Territories, and Tribes show that EJ considerations can be better incorporated into CWA 303(d) Program decisions and activities in the following ways, among others:

- Identifying and prioritizing the waters of communities overburdened with current and historical pollution for TMDL and other restoration plan development;
- Requesting and working with monitoring staff to get more water quality data in and around communities with EJ concerns;
- Conducting outreach to communities with EJ concerns through local community leaders and liaisons;
- Building trust and relationships with communities with EJ concerns by taking the time to adequately understand the needs and barriers those communities face; and
- Including more underrepresented community voices and perspectives in decision-making through agency hiring practices, trainings, dedicated positions, and committees.

Through these approaches and more, the CWA 303(d) Program can advance EJ. For additional information and ideas, see the 2022 CWA 303(d) Program Vision.