

Draft of Washington's Environmental Justice Definition

During the May 18th meeting, the EJ Task Force will continue the discussion on creating a State definition for environmental justice; this conversation may last beyond a single meeting. In order to prepare for this discussion, Task Force staff and Co-Chairs have prepared a draft definition for your review and feedback.

ACTION ITEM DUE 5/14: Please send all comments/track changes to Elise (elise.rasmussen@sboh.wa.gov) by COB Thursday May, 14th. Staff will compile all edits and comments for members to further discuss on 5/18.

Guiding Feedback Questions **WSDOT RESPONSE**

Please respond to the following questions that are most pertinent to you by EOD May 14th

1. Would this definition impede your current obligations under the federal definition of EJ? If so, how?

The draft state definition goes beyond the Federal definition. In talking with the Federal Highway Administration (FHWA) Washington Division, the "in a manner that prioritizes communities" concept may create a problem with federal compliance. Title VI of the Civil Rights Act is the legal authority behind the EJ Executive Order.

- First concern is: Title VI ensures protection and equal benefits, but does not contain any provision to address the past harm. There is potential for our federal funding lead to disallow certain expenses if they are not required by federal law.
- Second: It is unclear at this time if the state's definition would create new requirements. The EJ Presidential Executive Order and EPA's definition do not have their own enforceable rights. If certain criteria are met, federal agencies (and WSDOT) may proceed with a project even if a determination that the project will have a disproportionately high and adverse impact on an EJ population. (For reference see: Title VI 42 U.S.C. § 2000d.)

The Task Force should consider SEPA implications. WSDOT would be concerned if the state definition would create a different, more stringent environmental review process for EJ. We would hope that SEPA would allow a similar approach to the federal agencies. Worst case would be that this definition results in more EIS's being required when otherwise a DNS would suffice, and possibly more litigation. We recommend any new definition be reviewed by the Attorney General's Office before being endorsed by the task force.

2. What is missing from this definition? N/A

3. What doesn't make sense? The proposed definition attempts to add past harms – this is a separate concept. It is not directly tied to environmental law, reg, policy. We feel the EJ definition should remain focused on identifying and addressing the equitable distribution of benefits to prevent future harm. We do not think the use of the term "burdens" refers to past harms (as suggested in the explanation provided with the draft). Benefits and burdens are part of the impacts from a current proposed action.

The draft definition's phrase about prioritizing communities feels disjointed and possibly even contradictory. On the one hand it requires equitable distribution, but then goes on to imply an inequitable process. It introduces confusion – and detracts from a clear definition. What is being prioritized? How is this tied to the implementation of environmental laws? We understand the genesis

of this (climate grant making) but that is for one type of action, it is not transferrable to all the many activities that would be using this EJ definition.

To be clear, WSDOT recognizes that the state may need a mechanism to address past harms, but we think it should be outside of the EJ definition. Past harm is a separate concept and one that should be evaluated and discussed by another legislative study/task force.

4. Do you have other general comments or concerns? If so, please elaborate.

Question 1: What problem are we trying to solve with this new definition?

Question 2: Where will the new definition be housed? If it is added to state law, would it be appropriate to include all the protected classes under WA law?

Washington Law Against Discrimination (specifically, RCW [49.60.030 \(1\)](#)) states: *“The right to be free from discrimination because of race, creed, color, national origin, sex, honorably discharged veteran or military status, sexual orientation, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability is recognized as and declared to be a civil right.”* (Note that income level is not in the state law or in Civil Rights Act, which is why it is important to include it in the EJ definition.)

Draft EJ Definition:

WSDOT agrees with the first 2/3 of the draft which reads:

“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, with a focus on the equitable distribution of resources, benefits, and burdens, ~~in a manner that prioritizes communities that experience the greatest inequities, disproportionate impacts, and have the greatest unmet needs.”~~

WSDOT suggests deleting the last phrase because it alters the overall intent. See our answer to question 3 above. We believe the focus is on what we do today to improve the future by following these EJ Guiding Principles (USDOT):

- To ensure the full and fair participation by all potentially affected communities in the transportation decision-making process;
- To avoid, minimize, or mitigate disproportionately high and adverse human health and environmental effects, including social and economic effects, on minority or low-income populations; and
- To prevent the denial of, reduction in, or significant delay in the receipt of benefits by minority or low-income populations.

Is there a need for a definition of “Equitable Distribution”? That is something the Task Force needs to discuss. Clearer terms will help with implementation.

Regarding the process -- WSDOT recommends WA State follow the path outlined in the Presidential EO. Specifically that each agency develop their own EJ strategies. The Task Force might look at how the federal interagency working group facilitates the involvement by all Federal agencies to implement EJ. See <https://www.epa.gov/environmentaljustice/federal-interagency-working-group-environmental-justice-ej-iwg>

Explanation of Draft Definition:

- This definition is meant to guide institutions, including Washington State agencies, with identifying environmental justice issues in addition to the EPA's definition that has a procedural equity focus.
- In an effort to avoid contradicting the EPA and to keep important EJ considerations intact, the full EJ definition from the EPA is embedded within this proposed definition for EJ in Washington.
- This enhanced definition adds a distributional equity component in the second sentence.
- This enhanced definition adds a reference to past harms to communities by explicitly naming the distribution of "burdens".
- This definition does not replace the purposes that an EJ mission statement, EJ goals, or EJ principles serve.

Explanation of the process we used to draft the WA definition of EJ:

STEP 1. We looked at the EPA's definition on EJ and identified strengths & gaps in that definition.

EPA Definition: *"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."*

EPA Definition Strengths:

- Includes underlying structural and institutional systems
- Addresses procedural equity

EPA Definition Gaps:

- The EPA's definition lacks the acknowledgement of disproportionate impacts on communities with high levels of pollution.
- The EPA's definition does a good job addressing procedural and structural equity, but lacked language on distributional equity.

STEP 2. We used the language in these [Equity Objectives](#) from the Urban Sustainability Directors Network's "Guide to Equitable Community-Driven Climate Preparedness Planning" document to address these gaps:

Figure 4: Equity Objectives



Source: https://www.usdn.org/uploads/cms/documents/usdn_guide_to_equitable_community-driven_climate_preparedness-high_res.pdf

STEP 3. We created a draft definition of EJ for Washington

“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; with a focus on the equitable distribution of resources, benefits, and burdens in a manner that prioritizes communities that experience the greatest inequities, disproportionate impacts, and have the greatest unmet needs.”