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Environmental Justice – State law, Community Voices, and Port Action

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Topics

What is EJ?

Washington's EJ Laws

State EJ Efforts

What is Environmental Justice?

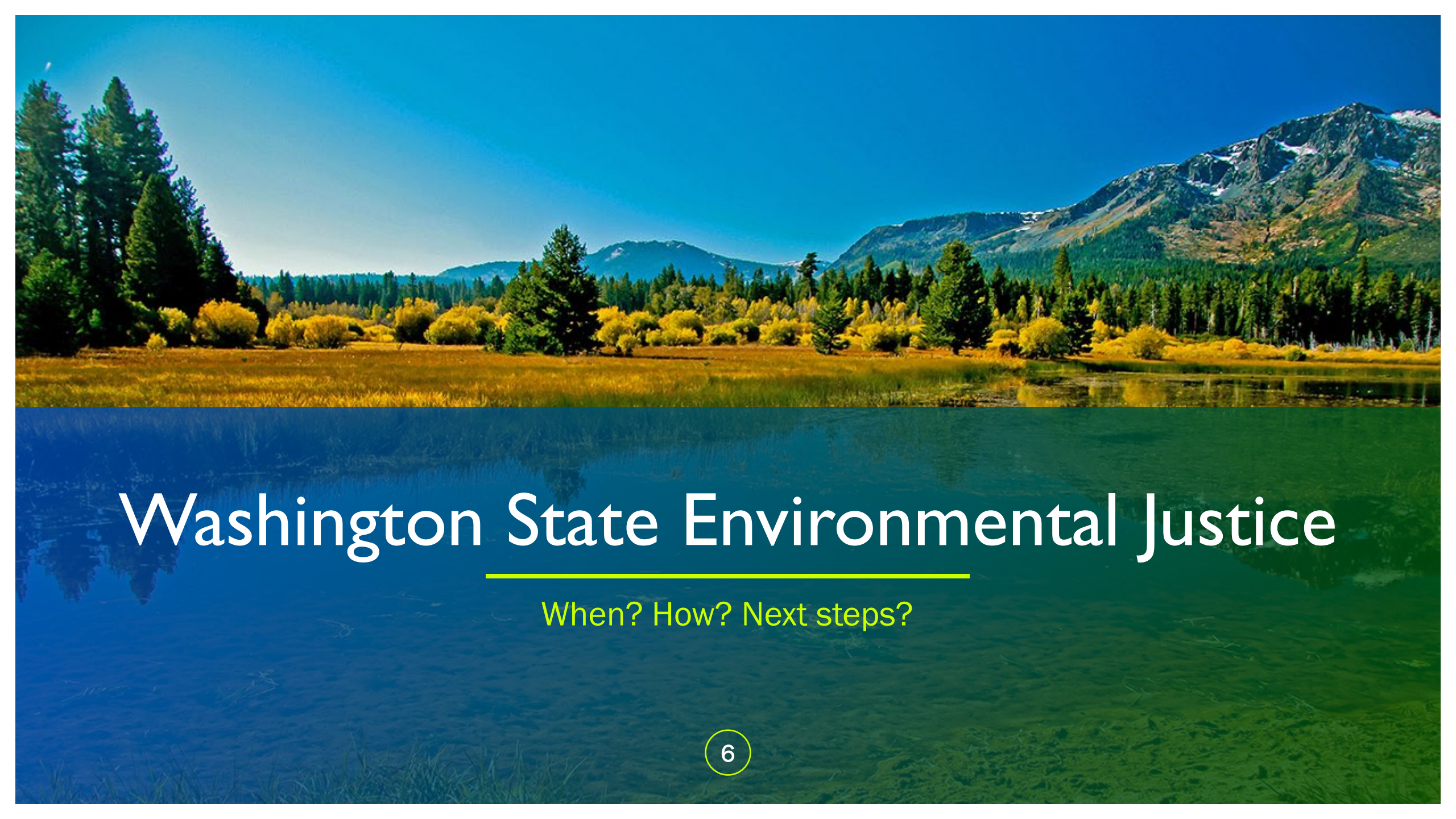
- EJ historically began with the Civil Rights efforts and formally adopted in policy by the first Bush Administration
- EJ is the just treatment and *meaningful involvement* of all people,
 - in agency decision-making and other government activities that affect human health and the environment
 - protect people from disproportionate and adverse human health and environmental effects (including risks) and hazards, and
 - equitable access to a healthy, sustainable, and resilient environment

Engagement

- **Meaningful engagement** means:
- providing timely opportunities for the public to share information or concerns and participate in decision-making processes;
- fully considering public input provided as part of decision-making processes;
- seeking out and encouraging the involvement of persons and communities potentially affected by government activities
- providing technical assistance, tools, and resources to assist in facilitating meaningful and informed public participation

How does it work?

- Authority to consider and address EJ concerns when:
 - Setting standards
 - Permitting facilities
 - Making grants
 - Issuing licenses or regulations
 - Reviewing proposed actions of other agencies
- Consider a variety of factors that generally include one or more of the following:
 - Public health
 - Cumulative impacts
 - Social costs
 - Welfare impacts
- Can direct the agency to target or consider vulnerable populations in providing assistance or setting standards.
- Agencies' choices on how to implement and enforce its authority can have substantial effects on the achievement of EJ



Washington State Environmental Justice

When? How? Next steps?

Healthy Environment For All Act

- Passed in 2021, the state implemented many of the recommendations from the Washington Environmental Justice Task Force to reduce the environmental and health disparities of its low-income and people of color residents.
- Established the EJ Council
- The Health Disparities Map
- Seven of the state's agencies are required to
 - Create community engagement plans and
 - Conduct an “environmental justice assessment” for a significant agency action

Planning

Agency Strategic Plans

- EJ Implementation Plan—Within agency strategic plan
 - Goals to reduce impacts
 - Performance goals/measures
 - Coordination with federal laws
- Community Engagement Plan
 - Identifying and prioritizing communities
 - Best practices to overcome barriers
 - Processes to provide equitable access (i.e. child care and travel reimbursement)



Tribal Consultation

Broad benchmarks and framework for best practices, protocols, and collaboration

Planning

- Inclusion or updating of EJ Implementation Plan
- Creation and adoption of the Community Engagement Plan
- Identification of significant agency actions
- DOH when developing the EHD Map

Project

- Identification of impacts to tribal rights and resources (treaty, EO, or federal law)
- Specific community input on impacts
- Mitigation or explanation of why none

Budgets/Funding

EJ Principles must be incorporated as follows:

- During budget development, when making expenditures, and granting or withholding environmental benefits.
- Equitably distribute funding and expenditures related to programs that address or may cause environmental harms or provide environmental benefits towards overburdened communities and vulnerable populations.
- When making expenditure decisions or developing budget requests to OFM and the legislature for programs that address or may cause environmental harms or provide environmental benefits

EJ Assessments

- Significant Agency Actions that trigger EJ Assessments are limited in scope (initially)
- Agencies must file notices with OFM for all actions undergoing an assessment, and OFM must post weekly

Statutory Triggers:

- significant legislative rule adoption;
- the development and adoption of new grant and loan programs;
- capital projects, grants, or loan awards of at least \$12 million and transportation projects, grants, or loans of at least \$15 million; and
- the development of agency request legislation.

EJ Assessment Requirements

- Inform and support agency consideration of overburdened communities and vulnerable populations.
- To assist with the equitable distribution of benefits, the reduction of environmental harms, and the identification and reduction of environmental and health disparities

EJ Assessment Requirements

Examine:

- Aspire to complete assessments without delaying the completion of the underlying agency action.
- Assessments do not require novel quantitative or economic analysis or a comprehensive or exhaustive examination of potential impacts.
- The obligation of a covered agency to conduct an assessment is satisfied by the completion of a checklist developed by each agency.



EJ Assessment Requirements

Results:

- Seek to reduce or eliminate harms and maximize any benefits to overburdened communities and vulnerable populations.
- Consider specified mechanisms for reducing impacts or equitably distributing benefits.
- If no ability or authority to avoid or reduce any estimated EJ harm, the agency must provide a clear explanation of that determination.

Legal specifics

- Agencies can avoid an assessment or the budgeting obligations when/if:
 - Significant threat to human health or the environment, or is likely to cause serious harm to the public interest;
 - Would delay a significant agency decision related to administration of state taxes or revenue;
 - Conflict with federal law or federal program requirements; or
 - Conflict with constitutional limitations or fiduciary obligations, including those applicable to state lands and state forestlands.

Appeals

Actions and duties set forth in the act are not subject to appeal independently

- WHAT?
- Decisions related to the designation of significant agency actions by a covered agency; and
- Assessments by agencies for actions that are appealable under the APA
- No new private right of action
- HOW?
- Appeals of assessments must be done with the appeal of the accompanying agency action.

Task	Council Deadline	Agency Deadline
Community Engagement Plan		July 1, 2022
Reporting to EJ Council		Sept 1 (annually)
Review of Health DM	Nov 1, 2022	
Strategic Plan/EJ Implementation Plan		Jan 1, 2023
Budgeting EJ principles implemented		July 1, 2023
EJ Assessments/Reporting		July 1, 2023
Guidance on SAA and EJ Assessments	Nov 30, 2023	
Reporting on agency progress (annual)	Dec 1, 2023	
Defining additional SAA		July 1, 2025 (annually)

Climate Commitment Act

Washington's comprehensive climate law passed in 2021

- Ecology developing rules to implement a cap on carbon emissions, including mechanisms for the sale and tracking of tradable emissions allowances, along with compliance and accountability measures.
- Aligns with the requirements of HEAL and includes provisions to promote environmental justice and equity



CCA Tribal Consultation (ESHB 1753 (2022))

- Agencies allocating in funds from certain accounts must offer consultation to federally recognized tribes whose tribal resources may be affected.
- Requires applicants for funding to engage in a preapplication process with all federally recognized tribes within the project area.
- Pauses permitting decisions that advance the proposed project during the pendency of the preapplication process
- Governor's Office of Indian Affairs, in coordination with the Department of Archaeology and Historic Preservation, to develop an agency tribal consultation process and preapplication process.

CCA Expenditures

Agencies with expenditures providing direct and meaningful benefits to vulnerable populations within overburdened communities.

Agency	2023-25 Biennial appropriation amount	FY 2024 total expenditure amount	Expenditure amount providing direct and meaningful benefits to vulnerable populations within overburdened communities	Percent of expenditure providing direct and meaningful benefits to vulnerable populations within overburdened communities
Department of Agriculture	\$12,737,000	\$977,651	\$285,087	29%
Department of Commerce	\$1,104,706,000	\$68,625,900	\$24,101,519	35%
Department of Ecology	\$160,829,000	\$21,124,682	\$5,543,092	26%
Department of Enterprise Services	\$27,200,000	\$7,628,657	\$2,450,000	32%
Department of Fish and Wildlife	\$9,146,000	\$4,404,430	\$2,531,825	57%
Department of Health	\$90,796,000	\$3,650,821	\$1,882,846	52%
Department of Natural Resources	\$219,010,000	\$79,561,145	\$13,780,853	17%
Department of Transportation	\$1,098,802,000	\$254,146,311	\$225,100,785	89%
Office of Financial Management	\$6,796,000	\$871,218	\$569,418	65%
Recreation and Conservation Office	\$136,591,000	\$2,034,811	\$550,930	27%
State Conservation Commission	\$86,473,000	\$5,034,277	\$705,396	14%
Superintendent of Public Instruction	\$51,700,000	\$7,571,583	\$7,513,576	99%
Transportation Improvement Board	\$19,067,000	\$67,501	\$41,263	61%
University of Washington	\$65,649,000	\$5,463,569	\$3,901,746	71%
Workforce Training and Edu. Coord. Board	\$904,000	\$71,435	\$60,574	85%
Other agencies	\$159,843,000	\$11,254,628	\$0	0%
Total	\$3,250,249,000	\$472,488,619	\$289,018,910	61%

EJ in Rule-Cleanups

- The rule changes reflect an increased commitment by Ecology to address environmental justice concerns associated with cleanup sites.
- Explicit consideration of potential impacts to “vulnerable populations and overburdened communities” throughout the contaminated site lifecycle, from initial listing to site investigation, and selection and implementation of the cleanup action.
- Increased communications and public comment periods, especially for Ecology-supervised and -conducted cleanups.
- Formalization of tribal engagement requirements for Ecology supervised-and-conducted cleanups.
- New requirements “to avoid, minimize, or mitigate adverse effects from remedial actions on archaeological and historic archaeological sites, historic buildings and structures, traditional cultural places, sacred sites, and other cultural resources”

EJ in Rule—MTCA Guidance

- In January 2024, Ecology released high-level methodological guidance, Implementation Memorandum No. 25: Identifying Likely Vulnerable Populations and Overburdened Communities under the Cleanup Regulations, on how to make these initial determinations.
 - The “potentially exposed population” will be assumed to include a “likely vulnerable population or overburdened community” if the population is located in a census tract with certain demographic criteria
 - Provides for the use of “site-specific information” to refine both the potentially exposed populations and their demographics.
 - Requires certain confidence levels in the data necessary to integrate these determinations into the agency’s strategic planning and site-specific cleanup decisions.

Ej at State Level



California:

- ✓ Must consider EJ in local planning,
- ✓ disadvantaged communities must be ID'd;
- ✓ OAG Bureau of EJ (compliance with CEQA, comment letters, affirmative litigation)

Colorado:

- ✓ In 2021 passed its Environmental Justice Act
- ✓ Created two environmental justice boards
- ✓ Defined disproportionately impacted communities

Illinois:

- ✓ Focused on three major components: enforcement and outreach, legislation, and regulation.

Massachusetts:

- ✓ Requires an environmental impact report for state projects that will “cause damage to the environment” and will affect an “environmental justice population.”

New Jersey:

- ✓ EJ Advisory Council, guidance for agencies on considering EJ
 - ✓ Identifying overburdened communities statewide;
 - ✓ OAG Environmental Enforcement and EJ Section

New York:

- ✓ Consideration of the cumulative impacts that proposed projects would have on “disadvantaged communities” and explicitly prohibits the approval or renewal of permits for projects that may impose additional inequitable and/or disproportionate environmental burdens on a disadvantaged community.

Vermont:

- ✓ OAG advisory council to make recommendations to AG for direct engagement of agencies to address issues of racism and equity in natural resources and environmental policy

Virginia:

- ✓ Environmental Justice Act (EJA), which established a statewide policy “to promote environmental justice and ensure that it is carried out throughout the Commonwealth, with a focus on environmental justice communities and fenceline communities.”



Questions?



THANK YOU!

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