

# ENVIRONMENTAL JUSTICE ON MY MIND: MOVING GEORGIA'S ENVIRONMENTAL PROTECTION DIVISION TOWARD THE CONSIDERATION OF ENVIRONMENTAL JUSTICE IN PERMITTING

David Deganian

## ABSTRACT

*Under the Obama Administration, the Environmental Protection Agency (EPA) is leading efforts to incorporate environmental justice measures into its inner-workings. So, too, are numerous other federal agencies. These efforts, however, have little practical effect at the state level where sources of pollution, such as coal-fired power plants and other industrial facilities are granted permits to pollute. Under the cooperative federalism framework that exists today, the federal government cannot directly compel states to consider environmental justice unless such action is required by federal law. Thus, federal guidance pertaining to environmental justice will do little to prevent the pattern of siting pollution sources in low-income and minority communities in Georgia—one of only a few states that have not independently adopted environmental justice measures.*

*This article summarizes environmental justice efforts at the national level and in Georgia. It also explores the relationship between federal environmental justice policies and the absence of such policies from Georgia's delegated environmental programs. This article then provides recommendations for indirect action to be taken by the federal government to encourage Georgia to incorporate environmental justice into permit decision-making.*

# ENVIRONMENTAL JUSTICE ON MY MIND: MOVING GEORGIA'S ENVIRONMENTAL PROTECTION DIVISION TOWARD THE CONSIDERATION OF ENVIRONMENTAL JUSTICE IN PERMITTING

David Deganian\*

## I. INTRODUCTION

It has been thirty years since hundreds of men, women, and children in Warren County, North Carolina banded together to protest the siting of a toxic-waste dump in their community. This demonstration has been dubbed “as the spark that lit the environmental justice movement”<sup>1</sup> –a movement focused on “the rights of people, regardless of their race, class or social status, to be protected from carrying an unfair burden of environmental pollution and polluting industries.”<sup>2</sup> In the three decades since the Warren County protests, the environmental justice movement has slowly transformed from a grassroots to a national level movement, changing corporate practices and transforming government policies.<sup>3</sup>

---

\* David Deganian is the University of Georgia School of Law’s Public Interest Fellow and a staff attorney at GreenLaw. The author would like to thank Justine Thompson, Midge Sweet, Denise May, and Brandon Ettelman for their assistance with this article.

<sup>1</sup> See, e.g., ROBERT D. BULLARD, *DUMPING IN DIXIE: RACE, CLASS AND ENVIRONMENTAL QUALITY* 38 (1st ed., 1990); Dollie W. Burwell & Luke W. Cole, *Environmental Justice Comes Full Circle: Warren County Before and After*, 1 *GOLDEN GATE U. ENVTL. L. J.* 9, 10 (2007).

<sup>2</sup> Tendai Chitewere, *Equity in Sustainable Communities: Exploring Tools from Environmental Justice and Political Ecology*, 50 *NAT. RESOURCES J.* 315, 323 (2010).

<sup>3</sup> Kevin DeLuca, *A Wilderness Environmentalism Manifesto: Contesting the Infinite Self-Absorption of Humans*, in *ENVIRONMENTAL JUSTICE AND ENVIRONMENTALISM: THE SOCIAL JUSTICE CHALLENGE TO THE ENVIRONMENTAL MOVEMENT* 27, 28 (Ronald Sandler & Phaedra C. Pezzullo eds., MIT Press, 2007).

The year 2011, particularly at the federal policymaking level, was a banner year for proponents of the environmental justice movement in the United States. Among other developments, the United States Environmental Protection Agency (EPA) released Plan EJ 2014, a three year comprehensive plan to advance the agency's environmental justice efforts<sup>4</sup> and the Department of Justice announced environmental justice to be a "high priority" for its Environmental Division.<sup>5</sup> The same year, heads of the EPA, Department of the Interior, Department of Transportation, and other federal agencies agreed to issue updated environmental justice strategies and to reconvene the Federal Interagency Working Group on Environmental Justice, a group that had not assembled at the cabinet-level since the Clinton Administration.<sup>6</sup>

Although certainly significant, the federal government's support of environmental justice and accompanying efforts to incorporate the movement's principles into federal decision-making will not prevent the pattern of siting polluting facilities in low-income and minority communities in Georgia. This is because the Georgia Environmental Protection Division (EPD), Georgia's state environmental permitting agency, does not have environmental justice laws or policies in place requiring it to consider environmental justice in decision-making.<sup>7</sup> In fact, it has no staff dedicated to environmental justice concerns, no enhanced public

---

<sup>4</sup> Environmental Justice Blog, Plan EJ 2014, released by the EPA, <http://environmentaljusticeblog.blogspot.com/2011/09/plan-ej-2014-released-by-epa.html> (last visited Feb. 5, 2012).

<sup>5</sup> U.S. Department of Justice, Justice News, <http://www.justice.gov/enrd/opa/pr/speeches/2011/enrd-speech-110113.html> (last visited Feb. 5, 2012).

<sup>6</sup> Gabriel Nelson, White House Meeting Yields 'Environmental Justice' Pledges from Agencies, N.Y. TIMES (Sept. 22 2010) *available at* <http://www.nytimes.com/gwire/2010/09/22/22greenwire-white-house-meeting-yields-environmental-justi-22568.html>

<sup>7</sup> GA. CONSERVATION VOTERS, GEORGIA CONSERVATION BRIEFING BOOK: 2009-2010 33 (Ga. Conservation Voters Educ. Fund, 2009), *available at* <http://gavoters.com/documents/GeorgiaConservationBriefingBook.pdf>.

participation processes in place when permitting polluting activities in low-income or minority areas, and no dedicated process through which citizens can raise environmental justice concerns.<sup>8</sup>

Take as an example the proposed siting of coal-fired power plants in Georgia. Already home to the two largest carbon polluting coal-fired power plants in the nation,<sup>9</sup> three additional plants have been planned for construction in Georgia in recent years.<sup>10</sup> The corporations behind these plants plan to site them in or near low-income and minority communities in middle and southern Georgia. These plants will emit thousands of tons of pollutants known to cause respiratory illness, heart attack, birth defects and premature death.<sup>11</sup> Longleaf Energy Station, received approval from Georgia's Environmental Protection Division (EPD) in 2007 for construction in Early County, Georgia.<sup>12</sup> According to 2010 U.S. Census results, 49.6 % of Early County's residents are black, while only 30.5 % of Georgia's general population is black.<sup>13</sup> Moreover, 28.9 %

---

<sup>8</sup> See A.B.A. & HASTINGS COLL. OF THE LAW, ENVIRONMENTAL JUSTICE FOR ALL: A FIFTY STATE SURVEY OF LEGISLATION, POLICIES AND CASES (Steven Bonorris ed., 4th ed. 2010) *available at* <http://www.uchastings.edu/public-law/docs/ejreport-fourthedition.pdf> [hereinafter Environmental Justice for All].

<sup>9</sup> See ENVIRONMENTAL INTEGRITY PROJECT, GETTING WARMER: US CO2 EMISSIONS FROM POWER PLANTS EMISSIONS RISE 5.6% IN 2010, [http://www.environmentalintegrity.org/documents/CO2Report\\_2011RJD21811final.pdf](http://www.environmentalintegrity.org/documents/CO2Report_2011RJD21811final.pdf)

<sup>10</sup> GreenLaw, Coal Plant Proposed for Washington County, <http://www.greenlaw.org/PlantWashington> (last visited Feb. 5, 2012).

<sup>11</sup> GreenLaw, The Georgia Clean Air Project, <http://greenlaw.org/CleanAir> (last visited Feb. 5, 2012).

<sup>12</sup> GreenLaw, Coal Plant Proposed for Washington County, *supra* note 10. (On December 12, 2011, LS Power announced that it was cancelling plans to build the Longleaf Energy Station in Blakely, Georgia).

<sup>13</sup> U.S. Census Bureau, State & County Quickfacts, Early County, Georgia, <http://quickfacts.census.gov/qfd/states/13/13099.html> (last visited Mar. 7, 2012).

of the county's population lives below federal poverty levels, while only 15.7 % live in poverty statewide.<sup>14</sup> Yet, when it approved the application for the construction and operation of Longleaf Energy Station, EPD did not provide evidence that it had made any inquiry into the disproportionate impacts on residents that could be felt by siting it in a low-income and minority area.<sup>15</sup>

In contrast, the federal government is actively encouraging the consideration and advancement of environmental justice, and the majority of states are moving independently to dedicate significant resources in efforts to ensure that their poor and minority citizens are not disproportionately harmed by pollution.<sup>16</sup> In fact, Georgia is one of only five states that do not have some mechanism in place for the consideration of environmental justice in environmental decision-making.<sup>17</sup>

This article explores the relationship between federal environmental justice policies and the absence of such policies from Georgia's delegated environmental programs. Part II of this article provides a brief history of environmental justice in the United States. Part III summarizes environmental justice in Georgia, both past and present. Part IV and V examine the largely benign impact of federal environmental justice policies in Georgia. Finally, Part VI provides recommendations that could be implemented in Georgia for the incorporation of environmental justice in permit decision-making.

---

---

<sup>14</sup> *Id.*

<sup>15</sup> Georgia Environmental Protection Division, Prevention of Significant Air Quality Deterioration Review of the Longleaf Associates, LLC Longleaf Energy Station to be located in Early County, Georgia, <http://www.gaepd.org/air/airpermit/downloads/permits/psd/dockets/longleaf/permitdocs/0990030fd.pdf>.

<sup>16</sup> *See Environmental Justice for All, supra note 8.*

<sup>17</sup> *Id.*

## II. RESPONSE TO INJUSTICE: THE ORIGIN OF THE ENVIRONMENTAL JUSTICE MOVEMENT

The environmental justice movement arose thirty years ago as a direct reaction to environmental inequities, threats to public health, and differential enforcement practices.<sup>18</sup> These inequities were not a new phenomenon, but they first received national attention in 1982 with the planned siting of a poly-chlorinated biphenyl (PCB) landfill in Warren County, North Carolina, where African-Americans composed sixty-five percent of the population.<sup>19</sup> Though unsuccessful in thwarting plans for siting the landfill, the demonstration of over 500 protestors prompted the U.S. Government Accountability Office (formerly the General Accounting Office) (GAO) to undertake a study examining the link between minorities and the siting of hazardous waste landfills.<sup>20</sup>

In that study, produced in 1983, researchers concluded that African-Americans comprised the majority of the population in three out of four communities where southeastern offsite hazardous waste landfills were located.<sup>21</sup> In 1987, the United Church of Christ followed up the GAO report with *Toxic Waste and Race*, finding race “to be the most potent variable in predicting where these facilities were located—more powerful than household income, the value of homes and the estimated amount of hazardous waste generated by industry.”<sup>22</sup>

---

<sup>18</sup> See generally Robert D. Bullard, et.al, TOXIC WASTE AND RACE AT TWENTY: 1987-2007 (2007), available at <http://www.ucc.org/assets/pdfs/toxic20.pdf>.

<sup>19</sup> ROBERT D. BULLARD, DUMPING IN DIXIE: RACE, CLASS, AND ENVIRONMENTAL QUALITY 31 (3d ed., 2000).

<sup>20</sup> Robert D. Bullard, *Environmental Justice in the 21<sup>st</sup> Century*, in THE QUEST FOR ENVIRONMENTAL JUSTICE: HUMAN RIGHTS AND THE POLITICS OF POLLUTION 20 (Robert D. Bullard ed., 2005).

<sup>21</sup> U.S. General Accounting Office, *Siting of Hazardous Waste Landfill and Their Correlation with Racial and Economic Status of Surrounding Communities*, GAO-RCED-83-168, B-211461 (1983), available at <http://archive.gao.gov/d48t13/121648.pdf>.

<sup>22</sup> Bullard, et.al, *supra* note18, at 1.

Later research revealed that the federal government was punishing polluters in white neighborhoods with higher penalties and requiring faster removal actions for hazardous waste contamination in these areas than in minority communities.<sup>23</sup>

As evidence of environmental injustice mounted, citizen groups across the country formed defenses against facilities they suspected were contaminating their communities. In 1988, the residents of West Harlem formed West Harlem Environmental Action (WEACT) to mobilize against water quality and air pollution violations occurring at their neighborhood's North Ridge Sewage Treatment Plant.<sup>24</sup> A year later, residents living in "Cancer Alley," Louisiana's infamously polluted corridor, organized "The Great Louisiana Toxic March" to bring attention to the living conditions of those living in close proximity to the area's numerous industrial plants.<sup>25</sup>

In 1990, three years after the release of *Toxic Waste and Race*, the Congressional Black Caucus met with EPA officials to discuss increasing evidence that disenfranchised communities were being exposed to environmental harm more than others.<sup>26</sup> In response, the EPA created the Environmental Equity Workgroup.<sup>27</sup> The Workgroup released a report supporting the Congressional Black Caucus's assertions and produced ten recommendations to address those inequalities.<sup>28</sup> In

---

<sup>23</sup> Joseph Ursic, *Finding A Remedy for Environmental Justice: Using 42 U.S.C. § 1983 To Fill In A Title VI Gap*, 53 CASE W. RES. L. REV. 497, 500 (2002).

<sup>24</sup> Anhtu Hoang, *Warren County's Legacy for Federal and State Environmental Impact Assessment Laws*, 1 GOLDEN GATE U. ENVTL. L.J. 91, 109 n.134 (2007).

<sup>25</sup> Clark Atlanta University Environmental Justice Resource Center, *Environmental Justice Timeline-Milestones 4* (2006), <http://www.ejrc.cau.edu/summit2/%20EJTimeline.pdf>.

<sup>26</sup> U.S. Environmental Protection Agency, *What is the Origin of Environmental Justice at EPA?*, <http://compliance.supportportal.com/link/portal/23002/23009/Article/32786/What-is-the-origin-of-Environmental-Justice-at-EPA> (last visited Feb. 5, 2012).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

1992, largely as a result of those recommendations, the federal government created the Office of Environmental Equity as part of the EPA,<sup>29</sup> and a year later, the EPA established the National Environmental Justice Advisory Council (NEJAC) to “provide advice, consultation and make recommendations . . . directed at solving environmental equity problems.”<sup>30</sup>

Growing attention brought with it efforts to pass groundbreaking environmental justice legislation at the federal level but these efforts were unsuccessful.<sup>31</sup> However, in 1994 President Clinton issued Executive Order 12898 (E.O. 12898) compelling federal agencies to make environmental justice part of their missions by developing a strategy “that identifies and addresses disproportionately high and adverse human health or environmental effects of its programs, policies, or activities on minority populations and low-income populations.”<sup>32</sup> Federal agencies, including the EPA, have struggled to find ways to integrate E.O. 12898 into their procedures.

Legal challenges to environmental permitting decisions have also been an important part of the environmental justice movement. To make claims of discrimination in the siting of polluting facilities and the disparate enforcement of environmental laws, advocates employed Title VI, Section 601 of the Civil Rights Act of 1964.<sup>33</sup> However, Section 601 requires a showing of discriminatory intent in decision-making—a showing that is extremely difficult for a plaintiff to make. As a result, these legal theories have had little success.<sup>34</sup>

---

<sup>29</sup> Jeanne Marie Zokovitch Paben, *Approaches to Environmental Justice: A Case Study of One Community’s Victory*, 20 S. CAL. REV. L. & SOC. JUST. 235, 238-39 (2011).

<sup>30</sup> FENG LIU, ENVIRONMENTAL JUSTICE ANALYSIS: THEORIES, METHODS, AND PRACTICE 4 (2001).

<sup>31</sup> See 138 CONG. REC. S7480-02 (1992); 139 CONG. REC. E1106-02 (1993).

<sup>32</sup> Exec. Order No. 12,898, 59 Fed. Reg. 7629 (Feb. 16, 1994).

<sup>33</sup> Civil Rights Act of 1964 § 601, 42 U.S.C. § 2000d (2000).

<sup>34</sup> See *East Bibb Twiggs Neighborhood Ass’n v. Macon-Bibb Cnty. Planning & Zoning Comm’n*, 706 F.Supp. 880 (M.D. Ga. 1989).

In light of this high standard, lawyers honed in on Title VI Section 602, requiring only a showing of discriminatory impact, to make environmental justice claims.<sup>35</sup> This strategy proved successful in 2001 when a New Jersey district court held that an agency receiving federal funding is obligated under Title VI to consider impacts based on race when determining whether to issue a permit.<sup>36</sup>

This victory, however, was short-lived. The U.S. Supreme Court decided two years later in *Alexander v. Sandoval* that there is no private right of action to enforce agency regulations promulgated under Section 602.<sup>37</sup> This foreclosure of legal claims under Title VI sent lawyers seeking to challenge decisions of state environmental agencies back to the drawing board. They now rely, for the most part, on traditional federal environmental laws, such as citizen suit provisions of the Clean Water Act and Clean Air Act, as well as increasingly available state environmental justice laws and policies.<sup>38</sup>

### III. ENVIRONMENTAL JUSTICE TODAY

Environmental inequalities are, in many ways, as pervasive as they were three decades ago. In 2007, a follow-up study by the United Church of Christ researchers discovered that racial disparities in the distribution of commercial hazardous wastes were actually greater than they were twenty years earlier.<sup>39</sup> Specifically, it was found that fifty-six percent of the populations of those neighborhoods with commercial hazardous facilities were of color whereas thirty percent

---

<sup>35</sup> Civil Rights Act of 1964, § 602, 42 U.S.C. § 200d-1 (2000).

<sup>36</sup> See *South Camden Citizens in Action v. New Jersey Dept. of Env. Protection*, 145 F. Supp. 2d 446 (D.N.J. 2001).

<sup>37</sup> *Alexander v. Sandoval*, 532 U.S. 275, 278-79 (2001); see also *Paben*, *supra* note 29, at 241-42.

<sup>38</sup> See *Paben*, *supra* note 29, at 245.

<sup>39</sup> *Bullard, et.al*, *supra* note 18, at 152.

of people were of color in non-host areas.<sup>40</sup> Further, poverty rates in the host neighborhoods were 1.5 times greater than non-host areas.<sup>41</sup> Even more alarming, areas with multiple facilities had an average minority rate of sixty-nine percent, well above the national average.<sup>42</sup>

Since President Clinton's E.O. 12898, the federal government has struggled to create tangible improvements in how federal agencies evaluate the siting of facilities in minority and low-income communities. In 2004, ten years after E.O. 12898 was first signed, an audit by the EPA Office of Inspector General revealed a number of failures by the EPA, including no identification of a clear definition of environmental justice, no guidance to allow for consistent implementation of environmental justice programs across regions, and a failure to identify the minority and low-income populations addressed in E.O. 12898.<sup>43</sup> A year later, the EPA received complaints when it proposed dropping "race" and "class" as "factor[s] in identifying and prioritizing populations that may be disadvantaged" in its draft Environmental Justice Strategic Plan.<sup>44</sup> More recently, outside auditors concluded that the EPA's Office of Civil Rights had not adequately adjudicated complaints addressing discrimination against communities of affected citizens.<sup>45</sup>

---

---

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 55.

<sup>42</sup> *Id.* at 54.

<sup>43</sup> OFFICE OF INSPECTOR GENERAL REP. NO. 2004-P-00007, EPA NEEDS TO CONSISTENTLY IMPLEMENT THE INTENT OF THE EXECUTIVE ORDER ON ENVIRONMENTAL JUSTICE 7 (2004), <http://epa.gov/oig/reports/2004/20040301-2004-P-00007.pdf>; see also Paben, *supra* note 29, at 239-241.

<sup>44</sup> Robert D. Bullard, *Toxic Wastes and Race at Twenty: Why Race Still Matters After all These Years*, 38 ENVTL. L. 371, 383 (2008); see also Chasid M. Sapolu, *Dumping on the Waianae Coast: Achieving Environmental Justice Through the Hawaii State Constitution*, 11 ASIAN-PAC. L. & POL'Y J. 204, 210 (2010).

<sup>45</sup> DELOITTE CONSULTING, LLP, FINAL REPORT ON THE EVALUATION OF THE EPA OFFICE OF CIVIL RIGHTS 8 (2011), available at [http://www.epa.gov/epahome/pdf/epa-ocr\\_20110321\\_finalreport.pdf](http://www.epa.gov/epahome/pdf/epa-ocr_20110321_finalreport.pdf).

Despite these gaps, under the Obama administration, the EPA has renewed its environmental justice efforts. In 2009, the EPA's Administrator, Lisa Jackson, stated broadly that "[w]e must include environmental justice principles in all of our decisions."<sup>46</sup> In addition, the EPA made "Expanding the Conversation on Environmentalism and Working for Environmental Justice" an agency priority.<sup>47</sup> To implement this commitment, the agency launched Plan EJ 2014 which, like E.O. 12898, does not grant any legally enforceable rights, but requires the EPA to integrate environmental justice considerations into its programs.<sup>48</sup> It is expected that the EPA, as part of its push for increased consideration of environmental justice issues, will soon require discussion of environmental justice impacts in the preamble of proposed rules, a move that could require the agency to reach out to potentially affected communities during the proposal process.<sup>49</sup>

Beyond the federal realm, a number of cities and states recently adopted environmental justice policies aimed at ensuring that proper procedures are in place to prevent the continued siting of polluting industries and waste sites in minority and low-income communities. California's "EJ Action Plan," implemented by the California Environmental Protection Agency, is an example of state action to increase public participation and to develop guidance for the consideration of environmental justice communities in permitting.<sup>50</sup>

---

<sup>46</sup> U.S. Environmental Protection Agency, Seven Priorities for EPA's Future, <http://blog.epa.gov/administrator/2010/01/12/seven-priorities-for-epas-future/> (last visited Feb. 5, 2012).

<sup>47</sup> U.S. ENVIRONMENTAL PROTECTION AGENCY, PLAN EJ 2014 1 (2011), <http://www.epa.gov/compliance/ej/resources/policy/plan-ej-2014/plan-ej-2011-09.pdf>

<sup>48</sup> *Id.*

<sup>49</sup> Frank Deale, *Barack Obama and the Public Interest Law Movement: A Preliminary Assessment*, 10 CONN. PUB. INT. L. J. 233, 283 (2011).

<sup>50</sup> See CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY, ENVIRONMENTAL JUSTICE ACTION PLAN (2004),

Michigan<sup>51</sup> and Illinois<sup>52</sup> also recently made efforts to incorporate environmental justice into decision-making. At the local level, Cincinnati passed the first-in-the-nation environmental justice ordinance in 2009; requiring new or expanding industrial facilities to receive an environmental justice permit prior to beginning operation.<sup>53</sup>

#### IV. IGNORING A PRESSING NEED: ENVIRONMENTAL JUSTICE IN GEORGIA

A review of the 2010 publication, *Environmental Justice for All: A Fifty State Survey of Legislation, Policies and Cases*, by the American Bar Association and the University of California, Hastings College of the Law reveals that many states consider neighborhood demographics in environmental decision-making and are seeking new ways to ensure equal protections from environmental harm.<sup>54</sup> Currently, twenty-seven states have an employee, working group, or taskforce dedicated to environmental justice.<sup>55</sup> Also, eighteen states have some policy or law in effect that directly addresses environmental justice.<sup>56</sup>

---

---

<http://www.calepa.ca.gov/envjustice/ActionPlan/Documents/October2004/ActionPlan.pdf>

<sup>51</sup> See ENVIRONMENTAL JUSTICE PLAN FOR THE STATE OF MICHIGAN AND DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENT (2010), [http://www.michigan.gov/documents/deq/met\\_ej\\_plan121710\\_340670\\_7.pdf](http://www.michigan.gov/documents/deq/met_ej_plan121710_340670_7.pdf)

<sup>52</sup> Illinois Environmental Protection Agency, Environmental Justice Policy, <http://www.epa.state.il.us/environmental-justice/policy.html> (last visited Feb. 5, 2012).

<sup>53</sup> Cincinnati, Ohio, Municipal Code, § 1041-7, *available at* [http://www.cincinnati-oh.gov/cmgr/downloads/cmgr\\_pdf37622.pdf](http://www.cincinnati-oh.gov/cmgr/downloads/cmgr_pdf37622.pdf)

<sup>54</sup> See *Environmental Justice for All*, *supra* note 8.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

In fact, all of Georgia's neighboring states, Alabama,<sup>57</sup> Florida,<sup>58</sup> Tennessee,<sup>59</sup> North Carolina<sup>60</sup> and South Carolina,<sup>61</sup> have an environmental justice initiative, program or dedicated employee at the state level. These measures were implemented in the last fifteen years and came about through a number of mechanisms, including legislative action, executive order, and state agency internal workings.<sup>62</sup> Most recently, South Carolina's legislature formed the South Carolina Environmental Justice Advisory Committee in 2007.<sup>63</sup> There, representatives from thirteen state agencies and three universities were "charged with finding the current status of programs and policies that pertain to environmental justice within state agencies; and making recommendations as it [sic] pertains to environmental justice, economic development, and revitalization."<sup>64</sup> Three years later, the Committee assessed state agencies and put forth recommendations for the implementation of environmental justice at the state level.<sup>65</sup>

Yet, Georgia has not moved to require the Environmental Protection Division (EPD), which issues

---

<sup>57</sup> Alabama has an Environmental Justice Coordinator. *See id.*

<sup>58</sup> The Florida legislature created the Center for Environmental Equity and Justice in 1998. *Id.* at 61.

<sup>59</sup> Tennessee's Department of Environmental and Conservation has an Environmental Justice Program. *Id.* at 188.

<sup>60</sup> North Carolina has an Environmental Justice Coordinator and an Environmental Equity Initiative. *Id.* at 158.

<sup>61</sup> South Carolina has an Environmental Justice Coordinator and the South Carolina created the South Carolina Environmental Justice Advisory Committee in 2007. *Id.* at 184-86.

<sup>62</sup> *Id.*

<sup>63</sup> SOUTH CAROLINA LEGISLATURE, SOUTH CAROLINA ENVIRONMENTAL JUSTICE ADVISORY COMMITTEE FINAL REPORT 1 (2009), <http://www.scstatehouse.gov/reports/dhec/EJAdvisoryFinalReportCombined.pdf>

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

state and federal permits for the operation of facilities related to air emissions, water quality, hazardous waste, solid waste and water supply, to consider environmental justice when conducting activities related to permitting.<sup>66</sup> It now lingers in a minority of five states that are not directly addressing environmental justice.<sup>67</sup>

Georgia’s “anti-concentration” law is the only law on the books requiring some consideration of environmental justice principles.<sup>68</sup> The law, passed in 2004, restricts the number of solid waste facilities that may be sited within a two-mile radius of three or more other solid waste facilities.<sup>69</sup> Additionally, the law requires some public participation measures, including a requirement that there be “at least one public meeting to discuss waste management needs of the local government or region and to describe the process of siting facilities to the public.”<sup>70</sup> Though the law serves the important purpose of effectively preventing the clustering of landfills in Georgia, it does not directly address the demographics of the area where these facilities may be sited. Other legislative efforts containing environmental justice measures have been unsuccessful.

The Georgia Environmental Justice Act of 1995 is the only law proposed in Georgia’s legislature that would have required EPD to directly address the demographics of an area prior to permitting.<sup>71</sup> The bill would have created a 22-member Environmental Justice Commission charged with issuing reports on facilities permitted by the EPA or EPD “which pose a threat to human health to be concentrated in low-income neighborhoods and neighborhoods populated largely by African-Americans.”<sup>72</sup>

---

<sup>66</sup> Georgia Environmental Protection Division, About EPD, <http://www.gaepd.org/Documents/about.html> (last visited Mar. 7, 2012).

<sup>67</sup> Environmental Justice for All, *supra* note 8.

<sup>68</sup> GA. CODE ANN. § 12-8-25.4 (2011).

<sup>69</sup> *Id.*

<sup>70</sup> GA. CODE ANN. §12-8-26(a).

<sup>71</sup> GA H.B. 204 (1995-96).

<sup>72</sup> *Id.*

It also would have required specific pollution prevention goals and baseline studies prior to the approval of any permit for the construction of a facility in an area with a majority low-income or minority population.<sup>73</sup> The bill did not pass.

Presented two years later, the Environmental Justice Act of 1997 was also unsuccessful.<sup>74</sup> The bill would have mandated that EPD publish an annual state toxic release inventory report identifying the amounts of over 300 toxic chemicals that manufacturers “release to the air, land or water or that they inject underground.”<sup>75</sup> It also would have required EPD to perform risk assessments on reported releases deemed to have a high potential to affect the public health or environment of nearby communities and to reduce any release deemed by a risk assessment to be “unacceptable.”<sup>76</sup>

The Georgia Brownfields Rescue, Redevelopment, Community Revitalization and Environmental Justice Act, introduced nearly a decade later in 2006, would have promoted the revitalization of brownfields, including the “unacceptably high percentage” of brownfields occurring in low-income and minority communities.<sup>77</sup> It also did not pass.

## **V. THE IMPACT OF FEDERAL ENVIRONMENTAL POLICY AND LAW IN GEORGIA**

### **A. Federal Delegation of Environmental Enforcement Authority under the Cooperative Federalism Framework**

Considering that Georgia’s Environmental Protection Division’s has been said to have a “reputation for jealously guarding its independence from the U.S.

---

<sup>73</sup> *Id.*

<sup>74</sup> GA H.B. 385 (1997-98).

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> GA S.B. 646 (2006).

Environmental Protection Agency,” it is not surprising that it has not yet followed the EPA’s lead and adopted measures to consider environmental justice.<sup>78</sup> Nonetheless, if the EPA is making renewed efforts to require that federal agencies consider environmental justice in decision-making, why is Georgia’s EPD not forced to follow suit?

The answer is that environmental regulation in the United States uses a cooperative federalism model. Under the cooperative federalism framework, the federal government establishes national environmental standards through federal environmental laws that state authorities, like Georgia’s EPD, may administer and enforce.<sup>79</sup>

Federal statutes like the Clean Air Act (CAA) and Resource Conservation and Recovery Act (RCRA) require EPA to establish minimum national pollution standards.<sup>80</sup> In turn, the EPA delegates states the authority, and federal grant funding, to operate their own environmental programs if they meet the necessary qualifications.<sup>81</sup> For instance, under the CAA, states must submit a State Implementation Plan (SIP) that demonstrates how the state will achieve or maintain air quality that satisfies federal standards.<sup>82</sup> Delegated powers granted to states by the EPA include permitting, inspections, monitoring and enforcement.<sup>83</sup> More than seventy-five percent of

---

<sup>78</sup> DR. MALCOLM K. SPARROW, PIONEERS IN GEORGIA: THE STATE/EPA DATA MANAGEMENT PROGRAM (A) 1 (1990), *available at* [http://www.lnwprogram.org/publicfiles/download/GA\\_State\\_EPA\\_Data\\_Management\\_Program-A-case-Sparrow.pdf?file\\_id=314661](http://www.lnwprogram.org/publicfiles/download/GA_State_EPA_Data_Management_Program-A-case-Sparrow.pdf?file_id=314661)

<sup>79</sup> See Robert V. Percival, *Environmental Federalism: Historical Roots and Contemporary Models*, 54 MD. L. REV. 1141, 1171-78 (1995).

<sup>80</sup> *Id.*

<sup>81</sup> The Environmental Council of the States, Delegation by Environmental Act, [http://www.ecos.org/section/states/enviro\\_actlist](http://www.ecos.org/section/states/enviro_actlist) (last visited Feb. 5, 2012).

<sup>82</sup> 42 U.S.C. § 7410(a)(1)(2006); see also Emily Hammond Meazell, *Deference and Dialogue in Administrative Law*, 111 COLUM. L. REV. 1722, 1764 (2011).

<sup>83</sup> *Id.*

federal environmental programs are delegated to states,<sup>84</sup> and those states conduct about ninety percent of all enforcement actions taken by both states and the EPA.<sup>85</sup>

Prior to the passage of framework legislation like the CAA, enforcement was a voluntary state enterprise.<sup>86</sup> The states, without federal leadership, performed dismally.<sup>87</sup> Thus, Congress stepped in during the 1970s and began mandating minimum uniform federal standards.<sup>88</sup> The federal government delegated control of environmental enforcement to the states and moved into the cooperative federalism approach in which it sets standards and allocates funding to states to administer the programs.<sup>89</sup>

Georgia has been granted responsibility for all of the federal environmental programs that may be lawfully delegated.<sup>90</sup> As required by federal law, Georgia has adopted environmental legislation for all delegated programs that is at least as stringent as the federal

---

<sup>84</sup> JULIE SZE, ENVIRONMENTAL JUSTICE PROJECT, THE STATE OF THE STATES 1 (2004), [http://ej.ucdavis.edu/includes/docs/Sze\\_WhitePaper.pdf](http://ej.ucdavis.edu/includes/docs/Sze_WhitePaper.pdf)

<sup>85</sup> *Id.*

<sup>86</sup> Peter A. Buchsbaum, *Permit Coordination Study By The Lincoln Institute of Land Policy*, 36 URB. LAW. 191, 201 (2004).

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> One important exception is the National Environmental Policy Act (NEPA), which is largely non-delegable and does allow for the consideration of environmental justice in the analysis of major federal actions that may impact the environment. Importantly, this is a procedural statute and requires only consideration of impacts. It does not prevent those impacts from occurring. *See Strycker's Bay Neighborhood Council, Inc. v. Karlen*, 444 U.S. 223, 227-28 (1980).

standards.<sup>91</sup> EPA's Region IV has responsibility for supervising the state's delegated federal functions.<sup>92</sup>

Under this cooperative approach, the EPA cannot directly compel states to consider environmental justice unless such action is required by federal law.<sup>93</sup> Rather, states delegated to administer their own environmental programs are required to ensure that their programs conform to the minimums of federal environmental laws.<sup>94</sup> Although federal environmental laws can be used to pursue goals related to environmental justice, they have not been interpreted to directly require the EPA to take environmental justice issues into consideration in permitting. In one case, the Environmental Appeals Board found in *In re Chemical Waste Management of Indiana, Inc.*, that the EPA has the authority to address environmental justice issues under RCRA, but that the statute does not require it to do so.<sup>95</sup> Without a clear ruling that federal environmental statutes require the consideration of environmental justice, states are not required to meet their obligations as delegated bodies.

Still, many states, motivated by popular support for environmental justice and, to a lesser extent, the financial support provided by the federal government, have voluntarily adopted laws and policies that require the incorporation of environmental justice in permitting. This simply has not been the case in Georgia thus far.

---

<sup>91</sup> See 33 U.S.C. § 1342(o)(1); 42 U.S.C. § 300g-2(a); 42 U.S.C. § 6929.

<sup>92</sup> U.S. Environmental Protection Agency, State Partners, <http://www.epa.gov/region4/ead/states/index.html> (last visited Feb. 5, 2012).

<sup>93</sup> Percival, *supra* note 79, at 1171-78.

<sup>94</sup> *Id.*

<sup>95</sup> 6 E.A.D. 66, 1995 WL 395962 (June 29, 1995); see also ENVIRONMENTAL LAW INSTITUTE, OPPORTUNITIES FOR ADVANCING ENVIRONMENTAL JUSTICE: AN ANALYSIS OF U.S. EPA STATUTORY AUTHORITIES (2001), available at <http://www.epa.gov/compliance/ej/resources/reports/annual-project-reports/eli-opportunities4ej.pdf>

## B. EPA Policy and Environmental Justice

For those states that have not crafted their own environmental justice laws or policies, the EPA is now seeking ways to persuade them to do so. In its EJ Plan 2014, described by the agency as a “roadmap that will help EPA integrate environmental justice in the Agency’s programs, policies, and activities,” the EPA defines one of its five focus areas as “Considering Environmental Justice in Permitting.”<sup>96</sup> To effectuate this goal, EPA plans to “develop and implement tools to: (1) enhance the ability of overburdened communities to participate fully and meaningfully in the permitting process, and (2) *assist permitting authorities to meaningfully address environmental justice issues in permitting decisions to the greatest extent practicable.*”<sup>97</sup>

The EPA does not clearly describe in its EJ Plan 2014 how it will induce states to consider environmental justice in permitting and it is unlikely, based on EPA’s history of overlooking environmental justice problems that it will voluntarily follow EPA guidance. At present, EPA supports state-level environmental justice actions through policy and grants.<sup>98</sup> Should the federal government be inclined to move beyond policy and financial funding and seek to compel Georgia’s EPA to incorporate environmental justice in decision-making, a dramatic step would be required.

For example, under the Clean Air Act, EPA could choose to reject Georgia’s State Implementation Plan (SIP).<sup>99</sup> Amongst other requirements, the SIP must provide “necessary assurances that the State . . . is not prohibited by any provision of Federal or State law from carrying out such implementation plan or portion

---

<sup>96</sup> Plan EJ 2014, *supra* note 47, at i.

<sup>97</sup> *Id.* at 10 (emphasis added).

<sup>98</sup> U.S. Environmental Protection Agency, State Environmental Justice Cooperative Agreements, <http://www.epa.gov/compliance/ej/grants/ej-sejca-grants.html#factsheets> (last visited Feb. 5, 2012).

<sup>99</sup> *See* 42 U.S.C. § 7410.

thereof.”<sup>100</sup> Based on this provision, EPA could, although it has never done so, reject a state SIP if it finds that it violates Title VI’s disparate impact regulations. However, this action or any other action on the part of the federal government to tread into decision-making territory traditionally held by states is unlikely.

Under the current framework the federal government can and will only place so much pressure upon a state to incorporate environmental justice into decision-making. If the environmental justice movement is to make any headway in Georgia’s government, environmental justice policies and plans must be adopted at EPD, whether by its own actions or by the actions of the state legislature. The recommendations below provide a starting point for this to occur.

## **VI. RECOMMENDATIONS**

Meaningful change to remedy environmental injustice in Georgia can happen with the adoption of policies and laws integrating environmental justice concerns into the workings of Georgia’s state government. Integration can happen in many ways, including enhancing public participation measures and requiring Georgia’s EPD to consider whether a proposed facility will result in a disproportionate environmental impact when issuing permits to pollute. These recommendations provide a starting point and framework for this process.<sup>101</sup>

### **A. The EPA Should Provide Guidance to Georgia on its Ability to Properly Consider Environmental Justice in Permitting**

Georgia’s Environmental Protection Division has not acknowledged its authority to address environmental justice in permitting under its current environmental laws. Considering the framework of cooperative

---

<sup>100</sup> 42 U.S.C. § 7410(a)(2)(E); see Brian Crossman, *Resurrecting Environmental Justice: Enforcement of EPA’s Disparate-Impact Regulations Through Clean Air Act Citizen Suits*, 32 B.C. ENVTL. AFF. L. REV. 599, 624 (2005).

<sup>101</sup> This article does not address the many ways that local governments can utilize local planning and zoning powers in furtherance of environmental justice.

federalism that exists, the EPA should focus on Georgia as one of a small minority of states without an environmental justice program and directly encourage it to adopt environmental justice laws and policies. It can begin to do so by providing direct guidance to EPD addressing its authority to consider environmental justice in permitting.

According to a report by EPA's National Environmental Justice Advisory Council (NEJAC)<sup>102</sup> in 1999, state permit writers commonly expressed a belief that they lacked the legal authority to address environmental justice concerns in permitting decisions.<sup>103</sup> In that report, NEJAC recommended that the EPA's Office of General Counsel provide legal guidance to delegated states on "whether they have either a mandatory duty or discretionary authority to deny a permit, condition a permit, or require additional permit procedures on environmental justice grounds."<sup>104</sup>

One year later, the EPA's Office of General Counsel produced a memorandum, entitled "EPA Statutory and Regulatory Authorities Under Which Environmental Justice Issues May Be Addressed in Permitting."<sup>105</sup> There, an attorney from the EPA's Office of General Counsel conducted a thorough examination of the ways in which environmental justice may be addressed in permitting under the EPA's statutory and regulatory

---

<sup>102</sup> NEJAC is a federal advisory committee to EPA that provides advice and recommendations about broad, cross-cutting issues related to environmental justice, from all stakeholders involved in the environmental justice dialogue. See U.S. Environmental Protection Agency, National Environmental Justice Advisory Committee, <http://www.epa.gov/environmentaljustice/nejac/> (last visited Mar. 7, 2012).

<sup>103</sup> U.S. ENVIRONMENTAL PROTECTION AGENCY, OFFICE OF ENVIRONMENTAL JUSTICE, ENVIRONMENTAL JUSTICE IN THE PERMITTING PROCESS 9 (1999), <http://nepis.epa.gov/Adobe/PDF/P10008S9.PDF>

<sup>104</sup> *Id.* at 11.

<sup>105</sup> U.S. OFFICE OF GENERAL COUNSEL, EPA STATUTORY AND REGULATORY AUTHORITIES UNDER WHICH ENVIRONMENTAL JUSTICE ISSUES MAY BE ADDRESSED IN PERMITTING (2001), *available at* [http://www.epa.gov/compliance/ej/resources/policy/ej\\_permitting\\_authorities\\_memo\\_120100.pdf](http://www.epa.gov/compliance/ej/resources/policy/ej_permitting_authorities_memo_120100.pdf)

authorities such the Clean Air Act and the Clean Water Act.<sup>106</sup> The EPA released additional guidance in 2011 on this subject in its “EJ Legal Tools,” identifying legal authorities under federal environmental statutes and programs that the EPA can utilize to address environmental justice considerations.<sup>107</sup>

These documents are certainly useful for the EPA when conducting activities such as setting federal pollution standards, but they do not directly address a states’ ability to utilize environmental laws in permitting. Specifically, they do not address whether a state can deny or modify a permit on environmental justice grounds. In light of EPD’s reluctance to acknowledge its authority to address environmental justice in permitting, the EPA should provide specific guidance to EPD regarding the state’s authority to properly address environmental justice issues under law, including its authority to conduct a disparate impact review when permitting. This guidance is properly within the EPA’s purview as it is charged with the oversight of state environmental programs.

## **B. EPA Should Insert Measurable Environmental Justice Goals into Federal Grant Funding**

The EPA should insert meaningful environmental justice goals into federal grant funds provided to EPD for its operations. The EPA has the authority to insert measurable environmental justice goals into its grants and Georgia is subject to accountability and evaluation for the work that it does with these funds.<sup>108</sup> In fact, the EPA endorses the use of these funds for “multi-media

---

<sup>106</sup> *Id.* at 1.

<sup>107</sup> U.S. ENVIRONMENTAL PROTECTION AGENCY, PLAN EJ 2014, LEGAL TOOLS (2011), <http://www.epa.gov/compliance/ej/resources/policy/plan-ej-2014/ej-legal-tools.pdf> (last visited Apr. 17, 2012).

<sup>108</sup> NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL, ENHANCING ENVIRONMENTAL JUSTICE IN EPA PERMITTING PROGRAMS 18 (2011) <http://www.epa.gov/compliance/ej/resources/publications/nejac/ej-in-permitting-report-2011.pdf>

high priority strategies,” which includes environmental justice.<sup>109</sup>

In its *Enhancing Environmental Justice in EPA Permitting Programs* report from 2011, NEJAC recommends that the EPA use its power when crafting grant agreements to “require specific language describing what both EPA regional offices and the state/tribe are going to do during the agreement to protect and advance environmental justice.”<sup>110</sup> The EPA should use this strategy to require specific elements and goals regarding environmental justice in its grant funding. Several states have agreed to address environmental justice in their grant agreements, including listing environmental justice as a state priority and agreeing to protect at-risk populations, such as environmental justice communities, from disproportionate impacts of environmental hazards.<sup>111</sup>

Georgia’s EPD has previously committed to “incorporating Environmental Justice and Pollution Prevention in their targeting and planning activities,” for its Clean Air Act Stationary Source Enforcement Program,<sup>112</sup> but EPD still has not committed significant resources to integrate environmental justice into this or its other delegated programs. Should Georgia make a renewed commitment to environmental justice in its funding agreement, the EPA should hold the state accountable for its use of funds.

In addition, the EPA should encourage Georgia to apply for its State Environmental Justice Cooperative

---

<sup>109</sup> Performance Partnership Grants for State and Tribal Environmental Programs: Revised Interim Guidance, 61 Fed. Reg. 42887 (Envtl. Prot. Agency Aug. 19 1996), *available at* <http://www.gpo.gov/fdsys/pkg/FR-1996-08-19/pdf/96-21085.pdf>.

<sup>110</sup> *Enhancing Environmental Justice in EPA Permitting Programs*, *supra* note 108, at 19.

<sup>111</sup> See Hillary Gross, *Environmental Justice: A Review of State Responses*, 8 HASTINGS W. NW. J. ENVTL. L. & POL’Y 41 (2001).

<sup>112</sup> U.S. ENVIRONMENTAL PROTECTION AGENCY, 2005 GEORGIA ENVIRONMENTAL PROTECTION DIVISION STATE REVIEW FRAMEWORK REPORT 8, (2005) <http://www.epa.gov/compliance/resources/reports/srf/srf-rd1-rev-ga.pdf>

Agreements, which provide funding for states to produce strategies, programs and activities to reduce disproportionate pollution impacts.<sup>113</sup> In the program's first year, 2009, the EPA selected five state applicants, Alaska, California, Illinois, Pennsylvania and South Carolina, to provide financial support to "improve environmental and public health in communities disproportionately exposed to environmental harms and risks."<sup>114</sup>

### **C. Georgia's EPD Should Incorporate Environmental Justice Principles into its Practices**

Georgia remains in a shrinking minority of states that have not adopted a policy or program to directly address environmental disparities. To move toward incorporating environmental justice principles into its practices, Georgia should: 1) enact an environmental justice policy requiring environmental equity in its practices; 2) enhance its public participation strategies to strengthen the involvement of minority and low-income Georgians in decision-making; and 3) identify and acquire the tools that it needs to incorporate environmental justice in its permitting and enforcement activities.

EPD should transform its current culture to one in which thoughtful consideration of the environmental impacts on low-income and minority communities is encouraged. This process should include the enactment of an environmental justice policy in which EPD commits to protecting all residents in Georgia from disparate environmental harm. These non-legislative plans generally set out an agency-wide commitment to environmental justice and include goals for achieving environmental equity.<sup>115</sup> For example, Illinois EPA, a

---

<sup>113</sup> U.S. Environmental Protection Agency, State Environmental Justice Cooperative Agreements, <http://www.epa.gov/compliance/ej/grants/ej-sejca-grants.html#factsheets> (last visited Mar. 7, 2012).

<sup>114</sup> *Id.*

<sup>115</sup> RHODE ISLAND LEGAL SERVICES, ENVIRONMENTAL JUSTICE FOR ALL STATES: A GUIDE FOR DEVELOPING ENVIRONMENTAL JUSTICE

delegated state environmental agency like Georgia's EPD, has done just this with its environmental justice policy. Its key goals are:

- to ensure that communities are not disproportionately impacted by degradation of the environment or receive a less than equitable share of environmental protection and benefits;
- to strengthen the public's involvement in environmental decision-making, including permitting and regulation, and where practicable, enforcement matters;
- to ensure that Illinois EPA personnel use a common approach to addressing EJ issues; and
- to ensure that the Illinois EPA continues to refine its environmental justice strategy to ensure that it continues to protect the health of the citizens of Illinois and its environment, promotes environmental equity in the administration of its programs, and is responsive to the communities it serves.<sup>116</sup>

EPD's policy should similarly make a clear statement that it will actively consider environmental justice in its operations and work to ensure that all residents, including those in minority and low-income communities are involved in all levels of environmental decision-making.

The policy should also include a commitment to enhancing public participation measures when conducting permitting activities in low-income and minority areas. Maintaining effective communication and public participation will require EPD to go beyond its current legal notice requirements. EPD should work directly with community groups and residents to develop relationships and ensure that they are informed of permitting actions and engaged in monitoring and enforcement. Particular efforts should also be made to develop the most effective measures to involve minority and low-income residents in decision-making.

---

PROGRAMS FOR STATE ENVIRONMENTAL AGENCIES 13 (2006), <http://www.dem.ri.gov/envequity/pdf/rilsrept.pdf>

<sup>116</sup> Illinois Environmental Protection Agency, Environmental Justice (EJ) Policy, <http://www.epa.state.il.us/environmental-justice/policy.html> (last visited Mar. 7, 2012).

In order to respond effectively to public concern about disparate impacts on minority and low-income communities, EPD must determine what tools are needed to address these concerns and implement them. For example, if citizens raise public concern about the siting of a coal-fired power plant in an environmental justice community, EPD should have the tools to respond effectively through an environmental justice grievance procedure or review process. Currently, it does not.

As part of those efforts, EPD should conduct robust research and data gathering including the mapping of environmental justice communities in Georgia. This identification allows data to be used in targeting public education campaigns, analyzing environmental disparities and triggering increased scrutiny. It has also been found to be helpful in order to encourage permitting staff to pay closer attention to potential environmental justice issues in low-income and minority communities.<sup>117</sup> Agencies and organizations in Georgia have already done this kind of mapping. The Georgia Department of Transportation (GDOT) analyzes all 598 census tracts in the state to identify areas with “EJ populations” to analyze how these populations can be involved in the transportation planning process.<sup>118</sup> Atlanta Regional Commission (ARC) has also used mapping technology to identify environmental justice communities in the 10-county metropolitan Atlanta region.<sup>119</sup> These

---

<sup>117</sup> NATIONAL ACADEMY OF PUBLIC ADMINISTRATION, MODELS FOR CHANGE: EFFORTS BY FOUR STATES TO ADDRESS ENVIRONMENTAL JUSTICE 41 (2002), <http://www.epa.gov/compliance/ej/resources/reports/annual-project-reports/napa-epa-model-4-states.pdf>

<sup>118</sup> GA. DEPARTMENT OF TRANSPORTATION, ENVIRONMENTAL JUSTICE IDENTIFICATION AND PROPOSED OUTREACH REPORT 5 (2006), [http://dot.ga.gov/informationcenter/programs/transportation/Documents/STIP/Previous%20STIPs/environmental\\_justice\\_outreach\\_report.pdf](http://dot.ga.gov/informationcenter/programs/transportation/Documents/STIP/Previous%20STIPs/environmental_justice_outreach_report.pdf)

<sup>119</sup> Atlanta Regional Commission, Minority Population and Poverty Map, [http://www.atlantaregional.com/File%20Library/Info%20Center/gis/GIS%20Maps/rs\\_Environmental\\_Justice\\_091008.pdf](http://www.atlantaregional.com/File%20Library/Info%20Center/gis/GIS%20Maps/rs_Environmental_Justice_091008.pdf).

methodologies could certainly be used by EPD to identify and reach out to environmental justice communities.

## **VII. CONCLUSION**

No matter the environmental justice policies touted by the EPA under the Obama Administration, the reality is that environmental justice advocates are struggling to gain ground in the environmental justice movement in Georgia. If Georgia is to get on track with the majority of other states in the country that are actively considering environmental justice in permitting and other activities, meaningful collaboration must occur between federal and state government.

For its part, the EPA must steadfastly encourage environmental justice policies and laws in the state. This can be done through targeted legal guidance and through the use of funding agreements that require the consideration of environmental justice when carrying out delegated programs. At the state level, Georgia should turn from its practice of ignoring environmental justice and begin to develop procedures to implement environmental justice and collaborate with the federal government to acquire funding for environmental justice programs. Such collaboration will surely move the state forward toward the consideration of environmental justice in permitting.