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JUST POLICIES? A MULTIPLE CASE STUDY OF STATE ENVIRONMENTAL  
JUSTICE POLICIES.

By

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ABSTRACT OF THE DISSERTATION

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Over the last two decades, more than thirty states have implemented explicit environmental justice policies and programs in response to a plethora of empirical research and grassroots advocacy focused on environmental burdens in low income and minority communities throughout the country. Despite this increasing trend towards state institutionalization of environmental justice issues, there is little research examining the relevance, effectiveness and general impact of state government responses on environmental justice. Does this trend to implement state level policies make an impact in disadvantaged communities? Furthermore, how relevant are these state policies in terms of addressing the complex nature of environmental injustice? Using in depth and multiple case studies, the effectiveness and relevance of some of the leading state

environmental justice policies in the nation are examined including New Jersey, New York, California, Massachusetts, and Connecticut. The in depth case studies of New Jersey's policies reveal how the state's institutionalization of environmental justice drives the regionalization of the environmental justice movement and their articulation of broader social justice goals. The New Jersey cases also support the findings of the multiple state studies, which reveal a distinct process of implementation of environmental justice policies. In this implementation model, states begin by recognizing environmental injustice as a distributive problem in environmental management terms and then turn to largely symbolic, procedural mechanisms to respond to these problems without addressing the underlying structural inequalities that fuel environmental injustices. The case studies reveal that environmental injustice is tied to deeper forms of structural inequality that require more profound shifts in the way the state addresses economic and environmental problems in poor, minority communities. The existing state policies are inadequate to meet this task and will require recognition of and commitment to addressing the multi-dimensional nature of environmental injustice as a distributive, procedural and structural issue in order to effectively implement change.

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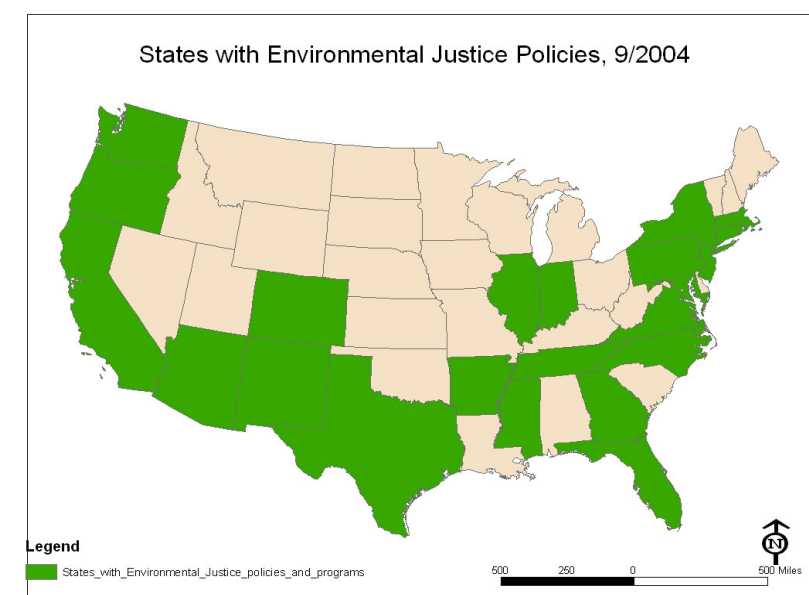
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**CHAPTER 1.**  
**INTRODUCTION**

Over the last two decades, a mounting body of empirical evidence has confirmed the existence of environmental injustice in low income and minority communities. Empirical research to date has focused on establishing the premise of environmental injustice while a burgeoning grassroots environmental justice movement emerged as a powerful voice for impacted communities. Environmental justice (EJ) activists in communities of color and low-income communities helped push environmental justice onto the government's environmental policy agenda. In response to this advocacy, the federal government and several states implemented some form of an environmental justice program or policy (Public Law Research Institute, 2007).

**Figure 1: States with Environmental Justice Policies as of 1994 (shaded)**



In 1994, President Clinton issued Executive Order 12892 mandating that all federal agencies consider environmental justice impacts resulting from any policy, law or regulatory decision. The US Environmental Protection Agency (EPA) also created the National Environmental Justice Advisory Council in 1994 to help develop guidelines and recommend policy actions to EPA. These federal actions together with increased

advocacy by environmental justice groups propelled some states to develop their own environmental justice policies. Many of the states initially feared that a new federal mandate on environmental justice would invalidate environmental regulatory decisions at the state level. While this threat of a new federal mandate never materialized under the Clinton or Bush administrations, many states forged ahead with their own policies.

Despite this increasing trend towards state institutionalization of environmental justice issues, there is little research examining the relevance, effectiveness and general impact of state government responses to environmental justice. Does this trend to implement state level environmental justice policies make an impact in disadvantaged communities? Furthermore, how relevant are these state policies in terms of addressing the complex nature of environmental injustice problems? This study contributes to a “third generation” of environmental justice research that goes beyond studying the extent of injustices to studying solutions, specifically government responses and policy outcomes. While a preponderance of research has been dedicated to empirical validations of distributive inequities in geo-spatial terms, this type of research tends to under-conceptualize the problem. Studies of environmental injustice require a deeper analysis of the both the problem and the corresponding responses.

Environmental justice activists in this new social movement have spent a significant amount of time and effort in fully conceptualizing the meaning of environmental injustice and justice in explicitly socio-economic, racial, cultural and historically relevant terms. In the principles of environmental justice adopted at the First National People of Color Environmental Leadership Summit (1991), activists articulated the racial and historical implications of environmental injustice and attempted to capture

the full breadth of the meaning of environmental justice beyond distributive justice goals: “...to secure our political, economic, and cultural liberation that has been denied for over 500 years of colonization and oppression, resulting in the poisoning of our communities and land and the genocide of our people.” In critically evaluating state policy responses to environmental injustice, this study aims to examine the multiple facets of environmental injustice as a distributive, procedural and structural problem.

The central proposition of this research is that state environmental justice policies fail to achieve environmental justice because they do not recognize or address the structural underpinnings of seemingly distributive environmental injustices. Instead, state policies focus their efforts on distributive injustices through largely rhetorical, procedural strategies that are narrowly constructed within environmental management agencies. These weak procedural policies are a form of symbolic politics that cannot mitigate the distributive manifestations tied to complex structural inequalities that impact low income and minority communities.

This study draws on four key case studies including; an in-depth analysis of New Jersey’s EJ movement, New Jersey’s EJ policies as well as their impacts in Camden, New Jersey; and a cross case comparison of five leading state EJ policies. Each of these cases enriches and informs the others. The Camden case serves as a revelatory case study, illustrating how distributive, procedural and structural forms of injustice are interlinked with urban development patterns. The case also reveals how the state is complicit in the development of these injustices and how the state’s EJ policies fail to recognize the depth and breadth of these problems. Thus this first case study serves to answer the first question: *How does environmental injustice manifest in the urban landscape and what is*

*the state's role in the origination and mitigation of these different forms of environmental injustice (distributive, procedural and structural injustice)?*

An environmental justice movement emerged in response to the problems illustrated by the Camden case. Increased state institutionalization of EJ has implications for this emergent grassroots movement as well as for conditions on the ground. I conducted an in depth participatory evaluation of the EJ movement in New Jersey, in order to answer the second central question; *How has the institutionalization of environmental justice by the state impacted the environmental justice movement in New Jersey?* The EJ movement is typically characterized by local, particularistic, struggles rooted in the mobilization of low income and minority people who are directly impacted by environmental injustices. In an era of new social justice movements where identity and class issues often fail to coalesce around a universal agenda, the EJ movement must find ways in which to effectively counter the tremendous political and economic forces that impact their communities. In order for state EJ policies and the EJ movement to be effective in achieving environmental justice, both must find ways to tackle structural injustice and make even incremental changes to the existing economic and environmental systems that perpetuate inequalities. This case study illustrates how the state's institutionalization drives the evolution of the movement to broader issue frames and organizing tactics and how this broader agenda can challenge structural injustice.

The third case study turns to the question of how state EJ policies evolve over time to address environmental injustices; *How do state EJ policies evolve in the implementation phase and what are the relevant policy factors in this process?* The case study of New Jersey's environmental justice policies over a ten year time period allows

for an in depth examination of policy factors that can impact the relevance and effectiveness of these policies. More specifically it illustrates how the state fails to address the root causes of environmental injustice in the implementation phase to achieve better policy outcomes. This case also serves to enrich the multiple state studies that follow.

The fourth case study compares five of the leading state environmental justice policies in order to answer the core question; *How do leading EJ policies in the nation (NJ, CA, NY, CT, MA) impact different dimensions of environmental injustice? What is the relevance of these policies in terms of distributive, procedural and structural forms of environmental injustice?* The multiple case studies complement and build on the more in-depth New Jersey case by looking at the policy context and implementation process across several states. This case study allows for the development of an environmental justice policy implementation model. This framework illustrates the evolution of EJ policies and key obstacles to and opportunities for policy implementation that can achieve distributive, procedural and structural environmental justice.

In the environmental justice policy implementation model I develop, states begin by recognizing environmental injustice as a purely distributive problem in environmental management terms and then turn to superficial procedural mechanisms to address these problems without ever challenging the underlying structural inequalities that lead to these injustices. What is also evident from the case studies is that environmental injustice is tied to deeper forms of structural inequality that require more profound shifts in the way the state addresses economic and environmental problems in poor, minority communities. The existing environmental justice policies are inadequate to meet this task as they stand and will

require recognition of the multi-dimensional nature of environmental justice and a commitment to redistributive, progressive actions in order to effectively implement change.

Chapters Two and Three review the relevant literature and methodologies employed in this study. Chapter Four explores the role of the state in shaping the patterns of urban development and environmental injustice that arise across several decades in Camden, New Jersey. Chapter Five explores how the institutionalization of environmental justice in the state's official policy agenda impacts the grassroots environmental justice movement in New Jersey. Chapter Six traces the evolution of environmental justice policies in New Jersey over a decade and compares how different policy factors influence policy outcomes in distributive, procedural and structural terms. Chapter Seven similarly examines the evolution of environmental justice policies but expands the examination across five leading state environmental justice policies and outlines a framework for EJ policy implementation. Chapter Eight uses cross case comparisons to examine the relevance and impact of the five policies with respect to distributive, procedural and structural forms of injustice. In this last chapter, I explore obstacles to achieving environmental justice and opportunities that can lead to more significant changes in EJ communities. In the final chapter, I summarize the key findings of the case studies and discuss their implications for policymaking, the environmental justice movement, and future research in this field.

**CHAPTER 2.**  
**LITERATURE REVIEW**



This study conceptualizes environmental injustice as a three dimensional and interlinked distributive, procedural and structural problem. This conceptualization lays the foundation for exploring how effectively states responded to the problems of environmental injustice and what implications these responses have on the environmental justice movement and communities. These three dimensions of environmental injustice build upon each other in a way that informs the way public policies and the EJ movement go about making real change. If state EJ policies fail because they turn to ineffectual procedural tactics that do not address structural problems giving rise to distributive injustices - what can the literature teach policy makers and activists about these different dimensions of environmental justice to produce more effective outcomes?

First this literature review will highlight the links between ecological degradation and human exploitation rooted in race and class discourses. This literature illuminates how distributive, procedural and structural forms of injustice are interlinked in the case of environmental justice and strategies to achieve EJ across these three dimensions of justice. The literature review will also turn attention to both the challenges and opportunities for the environmental justice movement and the state to address complex environmental justice problems through social movement organizing and the public policy process.

#### Environmental injustice as a distributive issue

The burgeoning environmental justice movement spurred academic researchers to gather empirical evidence of environmental injustices (Bullard, R.D. 1983; United Church of Christ, 1987). These studies showed a consistent pattern of disproportionate environmental burdens based on income and race. Empirical studies became more

sophisticated over the last two decades with researchers moving beyond crude proximity studies to analysis of exposure and multiple stressors (health outcomes, etc.) using more refined units of spatial analysis (Institute of Medicine, 1999). The mounting body of evidence suggests that poor, minority communities are vulnerable in a variety of ways to the problems of distributive injustice in the form of disproportionate environmental burdens (Morello-Frosch, Pastor, & Saad, 2001).

Environmental justice advocates rejected the race and class neutral terms of the ‘fair-share principles’, which maintain that environmental justice means everyone gets an equal share of environmental ‘goods’ and ‘bads’. Instead they adopted a more radical stance towards both the production and distribution of environmental burdens embodied in the precautionary principles that explicitly challenge the ‘right’ of industries and government to produce, sanction and then distribute environmental burdens. Activists call for the overall reduction or prevention of harm rather than just a simple redistribution,

*“Environmental Justice demands the cessation of the production of all toxins, hazardous wastes, and radioactive materials, and that all past and current producers be held strictly accountable to the people for detoxification and the containment at the point of production”*(First National People of Color Summit, 1991).

Although distributive issues seem to be at the heart of many environmental justice cases, both the movement and academics are increasingly focusing attention beyond the traditional Rawlsian notions of equity as distribution of “goods” and “bads”. According to Scholsberg (2003, p.84),

*“Material distribution and recognition are two absolutely key notions of justice in the contemporary political realm. But a third focus on justice as process, including demands for broader and more authentic public participation, is often seen as the tool to achieve both distributional equity and political recognition.”*

Consideration of strictly distributive issues alone is not sufficient for considering environmental injustice because it fails to raise issues of decision-making power and authority as issues of justice. A focus on distributive equity usually assumes institutional structures as given, and asks about principles and practices of distribution within them. But Hunold and Young (1998) argue that participatory democratic practices are the most likely to yield distributive, just outcomes.

*“Limiting questions of justice to the distribution of benefits and burdens fails to examine the justice of procedures for deciding such issues of distribution. We argue that justice requires a participatory communicative democratic process for siting hazardous facilities, in two respects. It is prima-facie unjust to impose a risk on citizens without their having participated in the siting process. Participatory communicative democratic procedures in facility siting, moreover, when structured according to specific norms of discussion and inclusion, are likely to yield the most just outcomes.”* (Hunold & Young, 1998, p. 82)

The cases presented in this study reveal how seemingly distributive inequities in EJ communities (disproportionate pollution burdens) are tied to procedural and structural injustices. The cases illustrate how the narrow conceptualization of environmental injustice by state policies as a simple distributive issue can serve to limit government intervention, particularly under the standard environmental practices of the state’s environmental regulatory systems. The cases also show how the environmental justice movement and states are beginning to recognize the interdependence of distributive and procedural as well as structural dimensions of environmental justice.

#### Environmental injustice as a procedural issue

Procedural justice is typically defined as the fairness of processes by which decisions are made. This is often evaluated directly via public participation practices – the more participation the fairer the process and ultimate decision. The centrality and

emphasis of public participation goals in all the environmental justice policies presented in the cases is not unexpected. In general, public participation, variously defined, has been a standard practice expected in democratic societies in which the government's legitimacy is rooted in the "consent of the governed." Public participation is perceived as performing critical functions in democratic societies,

*"Participation is seen as both morally and functionally integral to such fundamental democratic values as political equality, legitimacy and accountability of government, and social responsibility among citizens (Renn, Webler, & Wiedemann, 1995, p.26).*

In the case studies of state environmental justice policies, improved public participation of disadvantaged communities is a ubiquitous goal. But the implementation and underlying assumptions of public participation implicit in these policies is called into question in light of the outcomes associated with participation.

The universal appeal to public participation among activists and the state hides very real ideological and practical divergences in how public participation is carried out.

*"Government-sponsored public participation efforts have spanned these conceptual ladders of participation -- from instances in which agencies have already made their decisions and use public participation for window dressing to forums in which the public, the community, or involved stakeholders have been able to exert considerable influence on the decision outcome -- perhaps even reversing a government decision" (Ashford & Rest, 1999).*

One of the foundational models of participation is Arnstein's (1969) ladder of participation which translates power imbalance to various degrees of participation implicit in government actions and policies. In this ladder, participation is represented on a continuum from "Manipulation" at the bottom, to "Citizen Control" at the pinnacle. The model represents a continuum of power between the "haves and have-nots" where at the bottom there is no redistribution of power between the powerless and powerful. At the top, participation leads to a redistribution of power such that the have-nots share

power equally. At the bottom level of this ladder, participation is really “Non-participation” because the purpose of the participation is to educate or manipulate the public’s participation with no intention of sharing decision-making power. In the middle of the ladder at the “Informing” and “Consultation” stage, *“citizens may indeed hear and be heard but under these conditions they lack the power to insure that their views will be heeded by the powerful...at these levels, there is no follow-through, no muscle, hence no assurance of changing the status quo.”* (Arnstein, 1969, p.217) Further up the ladder at “Partnerships and Delegated Power”, the public finds increasing levels of power in the decision-making processes.

In the following case studies, Arnstein’s model is useful for distinguishing the level of political power related to EJ policy strategies focused on public participation. The proceduralist emphasis of EJ policies keeps citizens at a level of informing or consultation that masks deeper institutional and structural barriers to achieving environmentally just outcomes. The hollow calls for improved participation practices ultimately render EJ policies largely symbolic and rhetorical in practice. According to Edelman (1964, p.4)

*“Not only does systematic research suggest that the most cherished forms of popular participation in government are largely symbolic, but also that many of the public programs universally taught and believed to benefit a mass public in fact benefit relatively small groups.”*

Although much of the earlier environmental justice literature focused on the ideals of distributive justice, increasingly, the environmental justice movement and activists are emphasizing the interconnections between procedural and distributive equity. Lake contends that the EJ movement’s narrow conceptualization of procedural equity limits their participation to decision making in the distribution of environmental burdens

and benefits rather than decisions about production (Lake, 1996). He notes that the liberal appeals to public participation have resulted “*in a static public policy that can not move beyond cosmetic change in the distribution of environmental problems across communities and dares not challenge control of the decision to pollute, and thus produce, in the first instance*”(Lake, 1996, p.165). He proposes a notion of procedural justice that includes the process of decision-making as it pertains to the production of these benefits and burdens.

Environmental justice activists take on this challenge by directly addressing issues of capital production and state regulatory models that sanction this production in their appeals to the precautionary approach and the elimination of toxics production. Environmental justice activists also emphasize and articulate the ideals of public participation as a key to self-empowerment and the realization of socially just outcomes. “*Environmental Justice demands the right to participate as equal partners at every level of decision-making, including needs assessment, planning, implementation, enforcement and evaluation.*”(First National People of Color Summit, 1991) These procedural justice goals are linked to meaningful participation in decision making that impacts them directly (Faber, 1998). The movement’s insistence on “we speak for ourselves” is also linked to the goals of political recognition as a component of procedural justice, which includes political empowerment and self-representation. These ideals of procedural justice coincide with Schlosberg’s (2003, p.85) and other critical theorists, who view procedural justice as a vehicle for communicative democracy, “*increased public participation can address cultural norms, social discourses, and the role of institutions of power in issues of distribution and cultural misrecognition.*”

The lack of participation or rather procedural justice also results from the structural and institutional limitations weighing on minority and low-income communities, including less access to political, legal, scientific, financial and other resources. Procedural justice as public participation is not just dependent on the means of public interaction but also encompasses the material and institutional conditions that shape those interactions. The unequal political and economic conditions that impact EJ communities are often reproduced by many public participation practices. The role of a progressive state attempting to achieve environmental justice through procedural means, should encourage participation that can anticipate and counter these conditions:

*“...organizations in and with which they work will systematically reproduce sociopolitical relations that (1) ignore ways to socialize and democratize accumulation (2) discourage widespread participation and representation that might reveal the contradictions between private accumulation and public needs; (3) deter cooperative, well-organized, community-based organizations that might press to meet social needs to the detriment of concentrations of private capital; and (4) distract public attention from social needs and instead focus on the promotion of individual consumption.”*(Forester, 1989, p.79)

The challenge that John Forester sets out for planners and policy makers is how to be a progressive, deliberative practitioner and establish participatory practices that acknowledge and counter these structural forces. Turning to critical, communicative action theory he reveals ways that environmental justice program coordinators for example, could potentially help counter such structural and procedural forms of injustice.

1. Cultivate community networks of liaisons and contacts, rather than depending on the power of documents to provide and disseminate information
2. Listen carefully to gauge the concerns and interests of all participants in the planning process to anticipate likely political obstacles, struggles and opportunities
3. Notify less organized interests early in the policy making process affecting them
4. Educate citizens and community organizations about the policy making process and the rules of the “game”

5. Supply technical and political information to citizens to enable informed, effective political participation
6. Make sure that community and neighborhood, non professional organizations have access to public planning/policy making information, plans, notices, laws, relevant meetings and consultations with agency contacts
7. Encourage community based groups to press for open, full information about proposed projects and policy making possibilities
8. Develop skills to work with groups and conflict situations, instead of expecting progress to come from isolated technical work. (Forester, 1993, p.219)

In the case studies to follow, participation assumed in EJ policies is limited to technical or incrementalist notions of information – if people just know about the data or know how to get to data; if we have more meetings with community members (Forester, 1989). What these approaches miss is that by not recognizing inherent power imbalances in participatory processes, state EJ policies risk reproducing and even exacerbating these inequities. The case studies reveal that state EJ policies have produced very few if any real opportunities for deliberative, participatory processes that lead to procedural or distributive justice. An analysis of procedural justice thus considers ways in which the political economy of social relations are reproduced or countered.

#### Environmental injustice as a structural issue

Environmental injustice as a problem of structural injustice can be traced back to work by political economists focused on global capitalism and the associated problems of environmental externalities borne by vulnerable segments of society (Buttel, 1987). Pulido's article, "*Rethinking environmental racism: White privilege and urban development in Southern California*" (2000) presents one of the few studies with a structural examination of environmental injustices and environmental racism. In this study, Pulido demonstrates how various forms of racism contribute to environmental racism and particularly how hegemonic racism in the form of white privilege form urban



development patterns giving rise to environmental injustices in Southern California. This study places environmental justice research within the urban geography and broader urban social science literature on race and racism. *“It is important to recognize that both pollution and racism have structural underpinnings which will inevitably lead to racist outcomes unless affirmatively attacked and prevented.”*(Cole & Farrell, 2005, p. 276)

Also informing this work of political economists on environmental racism is a rich literature on the history of racialized patterns of urban development, housing segregation, and economic exploitation of racial and class minorities (Bullard, 1993, Massey and Denton, 1993). The concomitant patterns of industrial production and pollution that exploited vulnerable communities and the processes of economic disinvestments and racial discrimination were in part, supported by the state.

*“The infrastructure conditions in urban areas are a result of a host of factors including the distribution of wealth, patterns of racial and economic discrimination, redlining, housing and real estate practices, location decisions of industry, and differential enforcement of land use and environmental regulations... Clearly, economic development and environmental policies flow from forces of production and are often dominated and subsidized by state actors”* (Bullard, 1993, p.22).

Thus the groundwork for understanding environmental injustice as a product of these institutional and structural sources of injustice is clearly forged. But much of the environmental justice literature to date has focused uncritically on analysis of distributive outcomes. Likewise, environmental justice policies promulgated by the state continue in this vein, overemphasizing the distributive manifestations of what is in most cases the result of much more entrenched patterns of structural and institutional injustice.

David Pellow attempts to articulate the complexity of the structural elements of environmental injustice by developing a theoretical framework called the environmental

inequality formation that incorporates the notions of environmental racism and broader structural and institutional forms of environmental inequality.

*“Whereas the term environmental racism focuses on the disproportionate impact of environmental hazards on communities of color, environmental justice is focused on ameliorating potentially life-threatening conditions...environmental inequality addresses more structural questions that focus on social inequality and environmental burdens.”*(Pellow, 2000, p. 585)

While this framework is informative, it stops short of linking the different manifestations of environmental injustice to patterns of urban development and environmental policy.

*“Valuable studies have demonstrated the need for attention to contributing factors such as unjust zoning laws, undemocratic decision-making and planning structures, and disparate enforcement against polluters. However, no systematic theoretical models have been proposed that might link and explain these phenomena.”*(Pellow, 2000, p.598)

In the case studies of environmental justice policies, states fail to link distributive and procedural forms of justice to more profound recognition of structural problems and potential solutions to these problems. The evaluation of state policies dissects the impact and evolution of EJ policies based on this multi-dimensional understanding of environmental injustice and places it in the context of environmental management systems of the state and racialized urban development patterns of the U.S.

### Social Justice Movements and the EJ Movement

The role of social movements has always been considered a critical component for achieving social justice goals. Like many equity-based movements before it, the environmental justice movement faces serious obstacles and potential pitfalls in their quest for progressive, radical measures to address structural inequities. The EJ movement may also be presented with new opportunities for mobilizing action and learning from the victories and failures of movements before it who have taken up this challenge.

The environmental justice movement is a relatively new social movement that coalesced in the 1980s as African Americans in the South began to vigorously protest the increased siting of hazardous waste facilities in predominantly low-income communities. Many low income and minority communities began grassroots mobilization efforts with the aid of black churches rooted in Civil Rights experiences of the 1960s or in the Anti-Toxics movement of the 1970s. These early environmental justice cases raised awareness and interest in egregious instances of disproportionate environmental burdens in low income and minority communities. As the movement grew, the goals of environmental justice began to be developed and articulated by diverse stakeholders. The Citizens Clearinghouse for Hazardous Waste estimated that there were over 7,000 community or grassroots organizations involved with environmental justice by 1990 (Taylor, 1993). These local groups are increasingly organized at the regional, state and national level such as the Southwest Network for Environmental and Economic Justice (SNEEJ). They are also partnering with major environmental groups to help support larger scale protesting, lobbying and technical or administrative tasks (Bullard, 1990).

The environmental justice movement is comprised mainly of low income, minority, and usually female activists. These activists have increasingly brought EJ onto the government's agenda.

*“Though traditionally a movement built upon the grassroots organizing and activism characteristic of other social action movements, environmental justice advocates have of late been able to secure official government responses to their demands”*(Agyeman, Bullard, & Evans, 2003, p.7).

Government responses to environmental justice include the 1994, Clinton administration's Executive Order 12892 mandating that all federal agencies consider environmental justice impacts resulting from any policy, law or regulatory decision.

These actions along with the development of over thirty state environmental justice policies in the 1990s signaled significant government involvement in the growing environmental justice movement.

The civil rights movement discourse provides a master frame through which the environmental justice movement can articulate their concerns (Bullard, 1990, p.53).

*“In its quest for social justice, the environmental justice movement must overcome the same fundamental obstacle faced by the Civil Rights Movement: powerlessness of poor and minority communities, both economic and political. This powerlessness is the underlying cause of environmental injustice, manifesting itself in (1) the disproportionate siting of undesirable land uses in poor and minority communities, and (2) the inequitable enforcement of environmental laws in these communities.”* (Roberts, 1998, p. 234)

According to Roberts, the civil rights movement used four primary tactics: 1. litigation, 2. mass meetings for collective action, 3. mass protests, 4. establishment of citizenship schools. Of these tactics, Roberts suggests the most critical is community empowerment that can mobilize citizen efforts to pressure elected officials to address structural inequities.

But one of the key obstacles that face both the civil rights and the EJ movements is the articulation and sustained mobilization of diverse stakeholders around a set of universal goals like equity. According to Anner (1996, p.7),

*“The trajectory of the past few decades suggests that social justice movements start with broad, universalist goals (freedom, justice, equality) and gradually give birth to more specific struggles, often based on identity (gay rights, women’s rights, etc.)”*

These identity based or particularistic struggles can lead to a *“tendency towards elitism and assimilation in practice, coupled with a feigned dedication to solidarity with all the oppressed”* (Anner, 1996, p11). These movements also face tremendous counter-movements on the right, which seek to secure the current power and resource imbalances

in their favor. The challenge then for the EJ movement is to overcome this factionalization and appeal to strategies that can counter these powerful forces across a broad spectrum of society.

One way that the environmental justice movement directly responds to the potential for cooption and elitism is their clear identification of oppressive conditions. Critical theorist Iris Young identifies the EJ movement as a “*contemporary emancipatory social movement*” in which oppression is a central theme of political discourse that activists use to redefine the terms of oppression (Young, 1990). Frank Fischer describes this aspect of the movement:

*“Basic to the struggles of environmental justice activists – a majority of whom are women – is an effort to produce the conditions for social and environmental change, locally and nationwide, by reinventing socioeconomic terms and definitions, constructs of gender, race and class politics, notions of social movement history, forms of leadership, and strategies for coalitions.”*(Fischer, 2000, p.119)

This radical stance towards capital structures works against the elitist and assimilationist tendencies of larger social movement organizations that have been co-opted and factionalized.

Many mainstream environmental groups adhere to the tenets of the “ecological modernization thesis” as outlined by Harvey (1997), including the belief that: environmental regulatory schemes should be proactive to achieve “sustainability”; environmental problems are irreversible and risk levels are rising; and a rejection of the zero-sum tradeoff between the economy and the environment in favor of “win-win” solutions that improve both (Harvey, 1997, p.81). According to Hajer (1995), ecological modernization suggests that environmental problems can be addressed through mainstream institutions such as state environmental policy making, “*Environmental*

*management is seen as a positive-sum game: pollution prevention pays.*” (Hajer, 1995, p.3) Under this theory, distributive forms of environmental justice are important to integrate into sustainability strategies “*as a pragmatic adaptation to the internationalism of several key contemporary ecological issues...*”(Hajer & Fischer, 1999, p.167). While these organizations espouse commitment to themes such as sustainability and intergenerational equity, many are also criticized for being too easily co-opted by those with political and economic power. Geographer David Harvey argues that the environmental justice movement has the potential to radicalize the ecological modernization thesis by adhering to the ideals of sustainability and intergenerational equity but rejecting the economic and political co-optation for which the mainstream environmental groups are criticized.

These ideological divergences between mainstream and EJ groups pose some difficult challenges to the EJ movement as environmental justice becomes institutionalized into the state’s public policy agenda. While mainstream environmental groups have conformed to a pluralist model of interest group politics in order to influence the state’s decision making processes, the EJ movement with its grassroots model, faces the challenge of how to resist these hierarchal practices as they increasingly engage with the state. How does the EJ movement retain its radical, grassroots stance and push the government’s policy agenda forward? In *Freedom is an Endless Meeting*, Polletta (2002) draws upon concepts from work in participatory and deliberative democracy, and argues that grassroots participation is effective and important to retain for several reasons. (1) Legitimacy is strengthened - members are more likely to accept group decisions when they participate in making them, (2) More innovation in decisions (3) Improves

development of political skills and self-confidence of politically and socially marginalized people.

The environmental justice movement has built into it an adherence to grassroots participatory models.

*“It [the environmental justice movement] rejects government and broadly ‘bourgeois’ attempts at co-optation and absorption into a middle class and professional-based resistance to that impeccable economic logic of environmental hazards that the circulation of capital defines”*(Harvey, 1997, p.96)

The movement empowers marginalized individuals to take action and links environmental degradation to deeper social and political problems. In this way, the environmental justice movement has the ability to empower local citizens by shifting attention towards a more democratic relationship between the State and citizens (Fischer, 2001, p.119).

The environmental justice movement’s grassroots scale of action serves as both one of its greatest strengths - empowers marginalized people and resists co-optation - and greatest weaknesses - too fragmented to affect large scale changes needed to address the structural sources of injustices. Although the powerful and emotive grassroots nature of the movement has the potential of invigorating the movement from the bottom up, it can also make it difficult to address deeper issues that continually fuel local struggles. Thus there is an inherent tension from within the movement between the struggle to fight injustices at the local, grassroots level and addressing broader, more structural issues at a larger scale.

If the movement spends all its time grappling with the “big picture” it inherently must take on higher levels of decision-making and action at the national and even international scale to address the structural nature of environmental inequities. This may

mean that they weaken their grassroots base and thus fall prey to what they accuse the mainstream movement of – cooption. On the other hand, if the movement remains militantly grassroots and refuses to organize at higher levels or address issues at the scale of structural change then the local battles won today may resurface again tomorrow because the root cause of the problem has not been addressed. David Harvey (1997, p. 88) summarizes this challenge the EJ movement:

*“They [EJ movement] can either remain within the confines of their own particularist militancies – fighting an incinerator here, a toxic waste dump there – or they can treat the contradictions as a fecund nexus to create a more transcendent and universal politics. If they take the latter path, they have to find a discourse of universality and generality that unites the emancipatory quest for social justice with a strong recognition that social justice is impossible without environmental justice (and vice versa).”*

One of the most pressing issues for the future viability of the EJ movement is how to negotiate this tension between the local and universal scales without being co-opted or marginalizing their base. How to unite the goals of universal appeal and emancipation could be the greatest test of the movement’s ultimate success and survival.

How does the EJ movement avoid the factionalization and cooption of previous social justice movements while achieving some measure of success in the face of structural inequities? Low and Gleeson (1998, p.117) identify some of the key battles that are emerging to challenge the environmental justice movement in recent decades;

- (1) Opposition from Wise Use movement and Republicans backed by waste producing corporations, means the movement needs to better define its goals beyond questions of distribution to production of hazards and rethink the scale of political organizing from local distributional issues to the transnational scale
- (2) Economists and other technocratic utilitarianists have targeted their efforts to site facilities using discursive designs to quell community fears using technology to stifle community complaints
- (3) “Fair share” approach which sought to allocate risks equitably seemed to fail because people were still left out of the decision making processes and elites and powerful interests still resist the redistribution



- (4) Compensation measures based on utilitarian ethic reduces everything to money, compensating the poor for living with risks. But this ignores the fact that “preferences or tolerance is conditioned by social context and this context is infused with structural inequalities exploited by risk producers.”

Low and Gleeson (1998, p.131) suggest that such environmental risk can only be countered at a transnational scale and with particular attention to the role of the “administrative state” in balancing the immense power of multinational corporations.

*“The challenge of the new century, the challenge of environmental and ecological justice is nothing less than the transformation of the global institutions of governance, the reinstatement of democracy at a new level, the democratization of both production and its regulation.”* (Low & Gleeson, 1998, p.213)

According to Rochon and Mazmanian (1993), the best mechanism by which social movements can impact policy outcomes is by entering the policy process. In their article, the authors propose that there are three measures of a social movement’s “success” including: 1. policy change, 2. change in the policy process, and 3. changing social values. While they note that policy changes are rarely granted in direct response to social movement demands resulting in a perception of movement failure, few recognize the potential of more long term concessions made to social movements through policy process changes. Policy process changes can include; 1. greater consultation and opportunities for input by movements in decision-making processes, 2. expansion of the scope of political conflict, 3. decentralizing policy authority (Rochon & Mazmanian, 1993, p.78). One concern for the EJ movement is the potential for cooption related to long-term involvement in the policy process.

*“The fear of co-option makes many movement leaders, including those in the environmental movement, wary of becoming institutionally involved in decision making...The involvement of movement activists in the policy process has greatly expanded the range of interests and perspectives that are expressed in the making of environmental policy, with important implications for the quality of the democratic process.”* (Rochon & Mazmanian, 1993, p.87)

Despite the risk of cooption, the potential gains from sustained, robust participation in policy processes may expand the possibilities for long term, incremental improvements to public policy making and social justice goals.

When states begin to institutionalize social movement issues like environmental justice, it poses certain risks and opportunities for the nascent EJ movement. There is the potential for cooption of the movement's participants and dilution of issues and strategies. There is also the potential for this movement to move the state towards achieving more profound environmental justice goals via democratic practices and appeals to progressive social justice goals.

#### Environmental Degradation & Environmental Management

The role of the state is as central to the realization of environmental justice goals as the EJ movement's tactics. What is the state's role in the origination of environmental justice problems and how can the state counter or mitigate these problems? The origins of environmental pollution and degradation can be traced to research on the role of the capitalist economy and its impacts on the environment. One of the most recognized theories of the economy's impact on the environment is described by Schnaiberg (1994) as the "treadmill of production" in which environmental problems like pollution are created through a reinforcing mechanism of increasing production and consumption. Part of this treadmill consists of coalitions that include the state, industry and labor, all of which benefit from this cycle of production and consumption in some way. The treadmill of production essentially drives the creation of capital or wealth while also producing negative externalities like pollution in the process.

This pollution is externalized into the environment and most often onto the weakest segments of society to maximize profits. Thus negative externalities like environmental risk and pollution resulting from capitalist systems are distributed unequally in society (Brulle & Pellow, 2006). This idea of unequal risk distribution is further supported by Beck's (1986) thesis on the creation of a "risk society" in which industries create burdens that are then concentrated in "loser regions" where the stratification of power and wealth coincides with the stratification of risk – wealthy people at the top and poor at the bottom with the highest levels of risk. (Beck, 1986, p.29)

Harvey (1997, p.71) goes on to expand on the particular role of the state in relation to this capitalist system of production, describing a "standard view of environmental management". According to this view, the state typically only intervenes in environmental issues after an event or pollution has been produced leading to "end of pipe" solutions rather than preemptive measures. Hence we see modern environmental management practices, which focus on pollution regulation rather than pollution prevention. *"It then becomes the task of the state to evolve a regulatory structure that firms must meet with respect to resource management, occupational safety and health, environmental impacts and the like."* (Harvey, 1997, p.72) But this regulatory intervention is limited by quantitative evidence of market failure and cost benefit analysis of the environmental damage vs. economic growth.

Field (1998, p.95) concurs with this view of the state's limited role in relation to environmental risk distribution and the capitalist system of production. In the US as in many industrialized nations, the role of the state in regulating matters of health and safety are legitimized and bounded by concerns over private property rights.

*“Since the burden of proving risk is always on the regulator, such [environmental] laws are fundamentally compatible with traditional property concepts and the limited role of government...these laws are governed by two questions, what is the acceptable level of risk and what controls can be imposed to keep pollution within such limits? (Field, 1998, p. 85)*

This system of environmental regulation – capture and control or end of pipe solutions - leaves minority and low-income people vulnerable to exposures from environmental burdens for a variety of reasons (i.e. under-regulates contaminants, unable to capture multiple pollution sources, or new toxics, etc).

What strategies can EJ advocates and progressive governments pursue to counter these forces of production and pollution? Field (1998, p.98) suggests a political response that can move states towards mandatory pollution prevention rather than pollution controls as well as greater participation in the administrative processes that decide not just the location but also the conditions of production. This concept of pollution reduction complements one of the key emerging tenets of the EJ movement, the precautionary principles.

Precautionary principles include four key components described by Kriebel, et. al. (2001, p.871), *“...taking preventive action in the face of uncertainty; shifting the burden of proof to the proponents of an activity; exploring a wide range of alternatives to possibly harmful actions; and increasing public participation in decision making.”*

According to these principles the following questions must be asked by the state and EJ activists, *“How much contamination can be avoided? What are the alternatives to this product or activity, and are they safer? Is this activity even necessary?”* (Tickner & Raffensperger, 1999, p.4) Thus the focus of state environmental management agencies would shift to solutions that seek out more environmentally sensitive or sustainable

practices rather than just redistributing risk. Various groups from the European Union to the City of San Francisco are adopting these principles in an effort to prevent environmental and public health harm in the face of contested uncertainty.

In line with pollution prevention and the precautionary approach is the increasing emphasis on joining up sustainability and environmental justice goals. Agyeman (2003) posits a critical challenge for achieving this “joined up thinking” both for the state and social movement organizing. He suggests that the EJ movement must build coalitions and networks of vulnerable communities throughout the world who face similar sources of environmental and economic exploitation via a global system of production and consumption. This also means the US EJ movement requires an expanded agenda for solutions that includes environmentally sustainable practices like toxics use reduction; waste reduction; guaranteed public access to information and public involvement; sustainable and equitable consumption patterns (Agyeman, Bullard, & Evans, 2003, p.3). This expanded agenda would also translate to new demands on the nation-state that would shift the burden of pollution mitigation and elimination onto industry rather than the public or weak systems of environmental regulation.

Finally, one of the most critical mechanisms by which to shift state paradigms and achieve environmental justice at multiple scales is the ability of EJ communities to engage in democratic and meaningful forms of decision-making and dialogue. Theorists such as Brulle posit that deliberative, discursive forms of democracy can be a viable alternative for achieving goals such as environmental sustainability and justice. Brulle argues that creating democratic organizations that facilitate free communication among participants will foster social learning, offset market influences, and establish an

ecologically responsible ethic. *“If an ecologically sustainable society is to be created social learning must be rapidly expanded, resistance must be overcome and intentionally directed social change must be accelerated”* (Brulle 2000, p.7). According to Brulle (2000, p.65)

1. Solutions to ecological problems require both technical knowledge but also input from all citizens to inform a comprehensive understanding of the issues,
2. Norms are legitimated and accepted through debate and participation
3. Ecological ethic requires the active participation of citizens

This ethic of participation will require different norms of participation than those currently established by the state’s EJ policies and regulatory agencies.

#### Expert vs. Popular Discourse

One of the key obstacles the EJ movement faces in opening up this enhanced ethic of participation and implementing the precautionary approach via the state’s regulatory systems is the manner in which the state utilizes science and technical expertise. The standard view of environmental management relies heavily on a technocratic model of policy making in which the role of government is to intervene in the market system as scientific experts (Williams & Matheny, 1995, p.12). Amy (1984) depicts state bureaucrats and policy analysts as risk averse, avoiding explicit ethical analysis because, *“it increases the appearance of political legitimacy and presents the fewest political risks.”* But decision-making within bureaucracies is highly contingent with bureaucrats often considering two models of policymaking, one rationalistic and the other, politically contextual. The author concludes that the high degree of ideological hegemony in US politics and politicians’ risk aversion, generally lead analysts and politicians to fall on technical justifications for policy decisions (Amy, 1984).

Policy makers' strict adherence to positivist approaches forces the public to either reframe their positions in technocratic terms in order to engage decision makers in a debate regarding policy outcomes or risk being dismissed from the decision-making process altogether. The policy makers are able to frame the debate into a more narrow technical discussion that ultimately leads the public to accept the normative framework implicit in the empirical analysis used by those in power. When the public adopts these empirical techniques and its related normative framework, policy makers can control and limit the nature of policy solutions and further marginalize any group without the resources to engage in such analysis.

According to Williams and Matheny (1995), federal environmental legislation often assumes the existence of technical experts that will allow regulators to determine things such as safe exposure levels, and other details of broad legislation. Administrative policymakers increase their autonomy by using essentially political approximations to make these important, seemingly neutral technical distinctions. But environmental justice has uncertain or contested scientific and technical characteristics (e.g. what are acceptable levels of pollution burden.) and value claims (e.g. social and economic justice, etc). Even when there is an abundance of technical and scientific data around environmental burdens and their impacts, the terms of environmental regulation and state intervention are still the subject of ethical and political valuations. Fischer (2000, p.129) suggests that substantive processes such as those reflected in the standard view privilege expert knowledge and thus do not adequately address the normative aspects of social policy issues like environmental justice. Consequently, minority and low-income communities are marginalized from the policy-making processes that impact their lives.

Standard environmental management practices follow a scientific model of policy design described by Larson and Ingram (1997) wherein: goals and problems are framed in the language of scientific and professional communities. When the public is involved in goal setting, their participation is highly structured and alternatives are framed with the professionally preferred solution placed favorably. In this model, quantitative decision-making procedures that discourage public mobilization are favored and scientific, technocratic criteria substitute for open, democratic discussion in the policy formulation process (Larson & Ingram, 1997, p.195). State environmental management has turned increasingly to this “new model of scientific regulation” to develop policies:

*“In effect, federal statutes thrust on governmental agencies the burden of scientifically defining acceptable levels of pollution, pollution abatement, and risk of exposure to environmental pollutants. For this purpose, federal and state environmental protection agencies have developed extensive mechanisms for generating scientific information, from internal expertise to external advisory boards.” (Fischer, 2000, p.91)*

Thus most environmental policies privilege scientific discourse, usually the domain of industry and state experts while questioning alternative sources of knowledge used by disadvantaged communities. Environmental justice activists increasingly call into question the determination of how knowledge is valued and who can be considered an “expert” in the state’s model of environmental decision making (Corburn, 2003). Environmental justice activists are engaging in various forms of knowledge creation and popular science tactics in which they collect and interpret data (bucket brigades, community based monitoring, etc.) and set the boundaries for environmental protection. This form of knowledge creation opens up the state’s traditional scientific discourses to more democratic practices and input from the community. Researchers like Corburn (2003) have demonstrated the value of community based participatory research models in



enriching and informing government decision-making. These models also open up opportunities for communities to shape not only the outcomes of policy but research agendas and the scope of interventions. While technical and scientific knowledge is critical to combating environmental injustices, the manipulation of this expertise must be countered and balanced by democratizing the process and recognizing the underlying normative considerations implicit in environmental justice cases.

One of the primary mechanisms by which to strike this balance is via democratization of science practices. Such practices encourage,

*“... institutions and practices that fully incorporate principles of accessibility, transparency, and accountability. It means considering the societal outcomes of research at least as attentively as the scientific and technological outputs. It means insisting that in addition to being rigorous, science be popular, relevant, and participatory.”* (Guston, 2004, p.25)

Guston (2004) suggests some of the mechanisms for this increased democratization: (1) more fully include laypersons in review of funding applications such as "extended peer review", (2) increased support for community-initiated research, (3) restructuring programs in the ethical, legal, and societal implications of research. These recommendations would lead to participatory practices such as citizens' panels and citizen juries that can increase the opportunities for public deliberation and input into scientific decision-making.

### EJ Policies and the Federalist System

State environmental justice policies within the framework of a federalist system of policymaking raise questions regarding the role of the state in responding to different forms of environmental injustice. Modern environmental regulation represents a shift of power from states to the national level (Plater, 1998, p. 316). While the federal

government plays a central role in environmental management, states hold an important role in implementing laws and policies. The relationship between states and the national government is called, “cooperative federalism”. Under cooperative federalism, the federal government has the scientific and technical expertise to set standards and can address issues of national importance while states are usually delegated the responsibility for implementing federal programs.

The central debate regarding devolution centers on whether to favor state or federal primacy on important environmental issues. Since the 1970s the federal government was seen as a much more effective way to deal with environmental problems in contrast to inefficient and ill equipped states. There was a fear that leaving important environmental issues in the hands of vastly differing state approaches would lead to a ‘race to the bottom’. This perception of states’ roles in environmental protection has changed greatly. *“In more recent years the tables have turned - so much so that the conventional wisdom now berates an overheated federal government that squelches state creativity and capability to tailor environmental policies to local realities.”*(Rabe, 2000, p.33)

In the case of environmental justice policies, what began with the enactment of a federal executive order under the Clinton Administration in 1994, quickly spurred state action on the issue. States responded both defensively and proactively with the enactment of their own environmental justice policies. While the federal government backed away from aggressively pursuing environmental justice cases, states increasingly took up the issue via various policy mechanisms. Some of these state responses were

perceived as leading edge policy makers and were touted for their innovation in light of the federal government's inaction (National Academy of Public Administration, 2002).

The case studies of "leading" state environmental justice policy makers examines the ability of states to muster significant resources and commitments to impact environmental injustice problems on a variety of scales. Sapat suggests that states enact innovative state initiatives under a system of devolution based on four factors,

*"...the severity of the problem, the importance of institutional factors, the role played by interest groups, and contextual factors. Institutional factors, such as state wealth and administrative professionalism, are important determinants of innovation adoption."* (Sapat, Vos, & Thai, 2004, p.141).

The question still remains whether states are the most effective levels of policy making to achieve environmental justice goals. The structural nature of environmental injustices suggests the need for more integrated government policies across multiple scales – from the nation state – states –local governments to international agreements.

Despite the need for higher levels of government intervention, it is clear that states are at the forefront of EJ policy making with more than thirty states initiating environmental justice policies or programs. There have been some preliminary studies examining the emergence of EJ policies and why states have increasingly adopted such policies. Ringquist (2002) provides an analysis of environmental justice policy activity at all levels of government and focuses specifically on state government responses to EJ. He describes state policy efforts as attributable to three major factors that together produce policy change at the state level, *"external political factors (i.e. national mood); internal political factors (i.e. socio-economic characteristics of the state); and policy specific factors (i.e. severity of the problem)."* (Ringquist, 2002, p. 351) The author concludes that these factors produce a mixed picture and no one factor or group of factors clearly

accounts for the development of these policies. He suggests that the unclear definition of environmental justice may hinder clear policy formulation and that most of the state policies reflect this indecision with a hybrid of redistributive and protective types of policies.

Although the emergence of EJ policies is critical to understanding the impetus for state action, little research has critically evaluated the impact of these actions.

*“Although several of these studies show how the policies and actions of federal, state, and local government institutions contributed to patterns of inequality, none have delved deeply into the effects of recent government environmental justice programs themselves. Have environmental justice grants, policies, and lawsuits begun to change the landscape of urban development? Have they expanded or constrained the possibilities for grassroots environmental justice activism?” (Holifield, 2001, p.86)*

How well have states responded to the problems of environmental injustice – how relevant and effective are they in terms of achieving EJ on the ground? This is the primary focus of this research.

### Public Policy & Implementation

One of the primary mechanisms for states to mitigate environmental injustices is via the public policy making process. How can states best utilize this process to achieve environmental justice? While environmental justice policies fall largely within the state’s standard environmental management frameworks, the policies themselves follow various policy trajectories, from agenda setting to implementation. According to Cobb and Elder (1972), once an issue like environmental justice gets on the state’s policy agenda, it must pass through five stages of policy development:

1. Policy formulation (designing and drafting policy goals and strategies for achieving them, which may involve extensive use of environmental science and policy analysis)
2. Policy legitimation (mobilizing political support and formal enactment by law or other means)

3. Policy implementation (putting programs into effect through the provision of institutional resources and administrative decisions)
4. Policy evaluation (measuring results in relation to goals and costs)
5. Policy change (modifying goals or means, including termination of programs)

The model suggests the continuous nature of the policy process where short-term forces or events can profoundly affect the course of policy outcomes. The evaluation of state environmental justice policies focuses particular attention on the implementation phase of the policy process.

Generally, policies are not implemented exactly as decision makers intended due to a variety of factors that arise in the policy process:

*“For a variety of reasons relating to the nature of problems, the circumstances surrounding them, or the organization of the administrative machinery in charge of the task, policies may not be implemented as intended”* (Howlett & Ramesh, 1995, p.154).

Mazmanian and Sabatier (1989) outline some of the basic rules for successful implementation according to their traditional “top/down” policy implementation model. These include: making policy goals clear, limiting the extent of change necessary and placing implementation in the hands of a sympathetic agency. In addition to these basic principles, they also explore how political factors such as public support, political leadership support, resources and agency commitments can influence implementation.

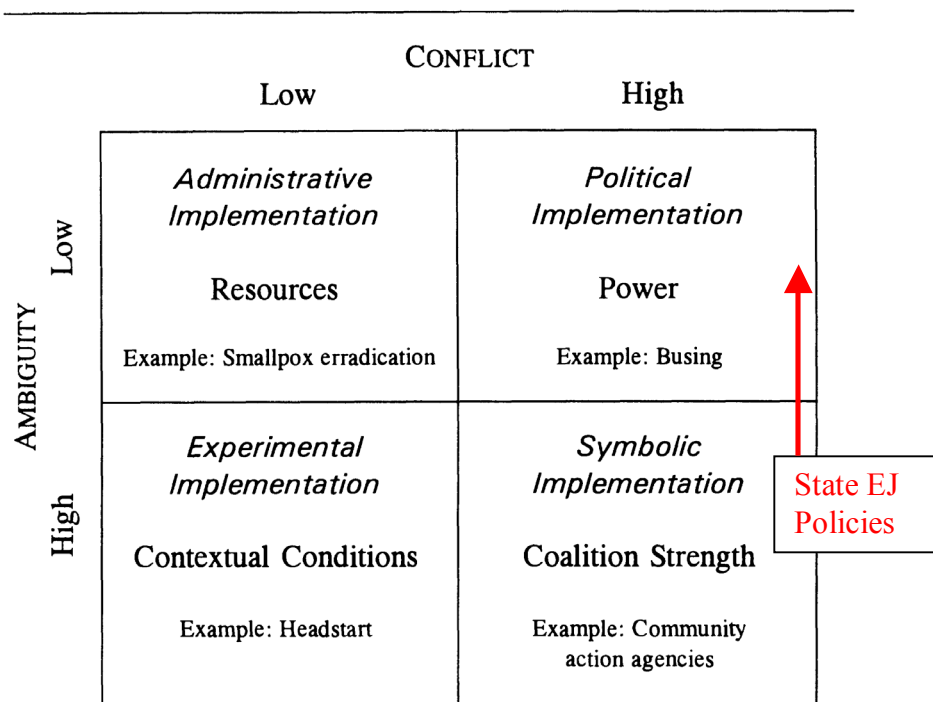
According to Pressman and Wildavsky, (1984) implementation is most effective as an evolution where we learn from experience what is feasible and what is preferable, we correct the errors of the original plan by seeking to influence the policy design and incorporate this learning into the next policy formulation. The multiple case studies of EJ policies presented in this study pay special attention to the potential for policy innovation and learning in the implementation process. How can the EJ movement and the state

learn from the implementation process, what opportunities were lost, what alternative vehicles are yet to be explored for future policy designs?

In addition to learning and innovation, there are other critical factors that can shape effective policy implementation. Matland (1993) summarizes the major theories (top/down and bottom/up) about how policy implementation occurs based on two key conditions – the level of conflict and ambiguity associated with policies. Matland suggests a typology for categorizing policies according to these two factors called the Ambiguity-Conflict Matrix.

**Figure 2:**

**Ambiguity-Conflict Matrix: Policy Implementation Processes**



EJ policies fall within a continuum from policies that involve both high levels of conflict and ambiguity to policies that are less ambiguous but still highly contentious (Matland, 1993, p.160). At the level of symbolic implementation where most EJ policies

begin (these policies typically represent important values and are aimed at redistribution of power or goods), implementation is closely linked to the strength of coalitions like EJ advocates. The central actors, like the state agencies and the EJ movement, will have to use strong coercive or bargaining powers to influence resources and incentives in order to successfully implement EJ policies. At this stage with high levels of ambiguity, successful implementation also requires explicit attention to learning and evaluation. EJ policies that build in this learning, experimentation and evaluation into their implementation process can lessen the ambiguity and move towards improved policies in the future.

Once policies have been in place for some time, the level of ambiguity regarding policy instruments decreases with learning and sustained pressure from policy actors. With less ambiguity but still high levels of contention, EJ policies fall within the realm of “political implementation”. In this phase, high levels of authority are required to implement policies because the issues are highly contentious thus making political factors such as the support of political leaders and commitments by implementing agencies critical. At this level, implementation is very dependent on power. Thus, it is critical for EJ advocates to closely monitor the implementation phase and build in accountability measures into the process. In the model of EJ policy implementation I develop, policies move along a continuum from symbolic implementation to political implementation. The policies go beyond these implementation scenarios by feeding back into the larger policy process with new rounds of policy design and implementation based on the learning and social movement involvement in the process over time.

## Policy Evaluation

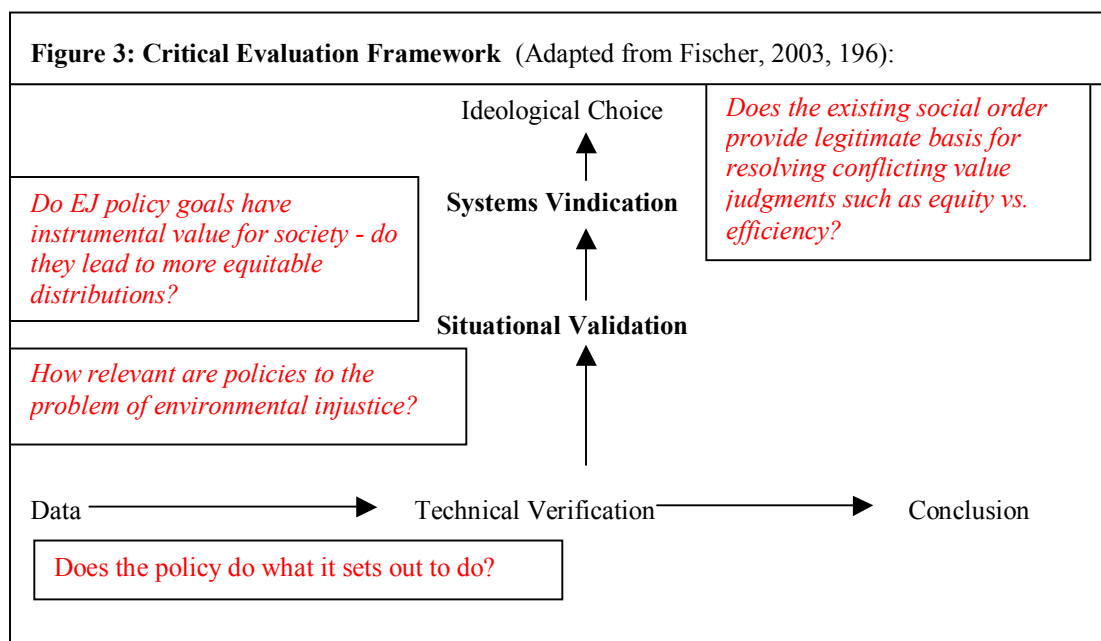
The task of policy evaluation poses some difficult questions regarding standards and models of evaluation for complex issues like environmental justice. Fischer outlines a useful model with four levels of policy discourse that can serve as a starting framework to evaluate environmental justice policy outcomes. First he suggests that policy evaluation works on two levels, at the micro and macro levels.

*“The logic of policy evaluation thus works on two fundamental levels, one concretely concerned with a program, its participants, and the specific problem situation to which the program is applied, and the other concerned with the more abstract level of the societal system within which the programmatic action takes place.” (Fischer, 2003, p.192)*

Starting at the bottom of this framework, in the *Technical Verification* phase, policy evaluation focuses on questions such as whether the policy fulfills its stated objectives and whether these objectives are met efficiently relative to alternative means. The next level up from “first order policy evaluation” is validation where the policy objectives are examined to determine whether they are relevant to the problem situation. *“Validation examines the conceptualizations and assumptions underlying the problem situation that the program is designed to influence.” (Fischer, 2003, p.194)* Policy evaluation in this phase involves an interpretive process usually incorporating qualitative methods to examine the underlying belief systems. The next level of policy evaluation, *Systems Vindication*, examines whether policy goals have instrumental value for a society and lead to equitably distributed outcomes. Lastly, at the highest order of policy evaluation, *Ideological Choice*, questions focus on whether “*fundamental ideals that organize the accepted social order provide a consistent basis for a legitimate resolution*



of conflicting judgments” (Fischer, 2003, p.195)? At this level, one must consider how to resolve value conflicts that arise from a policy’s underlying assumptions and beliefs.



Although policy evaluation typically focuses on technical verification, a critical evaluation of environmental justice policies can also consider other levels of the model. According to Fischer (2003, p.196), “*The starting point for an evaluation generally depends on the particular policy at issue and the debates that it has generated...In policy issues that are highly contentious, however, there can be arguments emerging at all levels at the same time.*” In the case of environmental justice, policies tend to be extremely contentious and have far reaching implications for both the target population and the broader society since it relates to basic questions of how to achieve more equitable outcomes for marginalized groups. Thus policies are examined at the first and second order levels of policy evaluation (Fischer, 2003, p.192).

In the case studies presented here, EJ policies are specifically evaluated at the level of situational validation and systems vindication. Under the rubric of situational

validation I examine how *relevant* EJ policies are with respect to my three dimensional definition of environmental justice. Are these policies actually addressing the multi-faceted problem of environmental injustice? I also explore EJ policies at the level of systems vindication by examining the type of structural impact such policies have on society. Are these EJ policies actually making society more just in terms of distributive, procedural and structural dimensions? By honing in on these two specific levels of Fischer's framework, I am able to evaluate EJ policies in a manner that is useful for determining both the policies' potential relevance and impacts on the problem of environmental injustice.

## **CHAPTER 3:**

## **METHODS**

This study incorporates several case study designs. In the first chapter I outline several central questions regarding the impact and relevance of environmental justice policies promulgated by states on environmental justice communities. Since I am primarily interested in a critical appraisal of policy impacts I employ qualitative methods for data collection and analysis in order to gain deeper insight into these questions of policy relevance and efficacy. The primary research strategy is a multiple, embedded case study of environmental justice policy outcomes from five leading policy states (Yin, 2003, p.13). The states selected include: New Jersey, New York, California, Massachusetts, and Connecticut. In addition to the multiple state case studies, three in depth case studies are explored in New Jersey.

Camden, NJ serves as a single case study tracing the role of the state in shaping the historical urban development patterns and the impact of EJ policies over a decade (1995-2005). The second case study examines New Jersey's environmental justice movement using a participatory action research (PAR) framework to explore the co-evolution of the movement with the institutionalization of state policies. Finally, a third case study focuses on New Jersey's environmental justice policies over the course of a decade from 1995 until 2005. In this case study, the formulation of two divergent environmental justice policies is compared to reveal the potential impact of different policy contexts. These three New Jersey case studies offer a rich and more in-depth examination of many of the same questions examined in the multiple state studies. The New Jersey cases enrich the multiple state studies and allow for a deeper exploration of the environmental justice movement and policy impacts.

### Case Selection

Although there are some selected studies of why states decide to enact environmental justice policies and surveys of policy typologies, there has been no in depth examination of how these relatively new policies are implemented and what relevance or impact they have on the problem of environmental injustice. I argue that a more in depth examination of the leading environmental justice policies in the nation will advance our understanding of these policy strategies. The cross case comparison of leading state policies gives a comprehensive overview of the challenges and gaps in how states approach the problem of environmental injustice through policy making. The more in depth analysis of several New Jersey cases enriches this view by looking specifically at how these challenges to policy relevance and impact manifest in specific scenarios.

The Camden case study explores the state's complicity in the creation of environmental injustice throughout the city's history until present day. Camden has some of the nation's most striking examples of environmental injustice issues and historical urban blight. These historical urban development patterns together with the state's explicit attention to environmental injustice over a decade make it a unique case study to examine EJ policy impacts. The Camden case allows for a deeper and historical analysis of structural links to the state. The case study of New Jersey's environmental justice movement was also selected because of my direct involvement with the movement and thus the unique access afforded me to explore how state policies influence the movement.

My direct involvement in New Jersey's EJ movement came at a critical juncture in the movement's evolution when state policies were gaining momentum and new organizational changes in the movement were afoot. This gave me a unique window from

which to observe how state EJ policies influence the environmental justice movement strategies. Using the Participatory Action Research (PAR) framework, I worked within the environmental justice movement with the explicit goal of aiding the movement while also observing the effects of our interactions with the state. Thus, this portion of my research stands as a strong form of PAR (Whyte, Greenwood, & Lazes, 1989). Although I assume the institutionalization of environmental justice influences the environmental justice movement across all the states, I was not able to replicate this analysis of the impact on the EJ movement in the other four states because of the unique access and participatory nature of this research. Nevertheless, the New Jersey EJ movement case reveals the strategies employed and struggles faced by the movement as it matured and responded to increasing state institutionalization.

The selection of the New Jersey environmental justice policy case study is based on the fact that the state is considered an environmental policy innovator. New Jersey enacted two distinct environmental justice policies over a decade, which allows for comparisons across different policies, political administrations and implementation strategies over a decade. Although I conducted a similar analysis in each of the other four states through a chronological analysis of environmental justice policies, the New Jersey case is more in depth because I was able to access interviews and detailed data from across the policies' evolution across the ten year timeline.

The five states selected for the multiple case studies are considered leaders in terms of environmental policy innovation in the nation. Case selection was based primarily on replication logic and serves to strengthen both construct validity (multiple sources of evidence) and internal validity (data analysis) (Yin, 2000, p.34). In order to

evaluate the process and outcomes of implementation, it was necessary to select states in the more advanced stages of policy implementation, thus, only states with an environmental justice policy in place for more than five years were selected.

In the interest of replication logic, states were also selected based on the presence of similar external and internal political factors. For example, Ringquist's (2002, p.375) study found that "*More liberal state governments are more likely to adopt environmental justice policy than their conservative counterparts.*" The cases selected for this study are all classified as "liberal" according to the Berry indicator (1998). Additionally, three of the five states (NY, NJ, CT) received special funding (\$100,000) from the US EPA, explicitly to support the development of state environmental justice policies.

Furthermore, three of the states (CA, NJ, NY) were recognized as having leading environmental justice policies (National Academy of Public Administration, 2002).

The following were key factors considered in the case selection of the five policies:

1. *Maturity of Policy Cycle*
  - a. All five states instituted environmental justice policies or programs for more than five years.
2. *External factors*
  - a. Three of the states received substantial federal grants to establish their policies through the *States Environmental Justice Grants* (STEJ) from the US EPA
  - b. All five states are considered policy "leaders" in the field of environmental policy making. All five states rank in the top ten for the strongest environmental protection measures with California and New Jersey in the top three (Meyer, 2002).
3. *Internal factors*
  - a. *Policy Advocates* - All five states have substantial environmental justice advocacy groups organized at the local, regional and state levels.
  - b. *Social context* - Each state has a high degree of urbanization, industrialization and racial diversity (US Census Bureau, 2004)
  - c. *Economic context* - All five states rank in the Top 20 for Gross State Product and Median household income (US Census Bureau, State rankings for GSP 2004)
  - d. *Political Ideology* - All five states have a relatively liberal ideological bent, environmental issues rank high on the political agenda even with Republican Governors in power. "*The Northeast region and the Pacific region are ideologically highly liberal*" (Medoff, 1997)

### Data Collection

Data collection began in 2003 with my increasing interaction with the environmental justice movement in New Jersey. I began by observing meetings in environmental justice communities such as Camden and Newark where the state was holding hearings or interacting with activists on a range of environmental justice issues. I began with purposeful sampling, interviewing the director of the state's environmental justice program while the state was in the midst of adopting a new environmental justice policy. In 2003 and 2004, I also began to collect interviews with other key state staff within the New Jersey Department of Environmental Protection (NJDEP) involved with the implementation of the environmental justice policies past and present. I conducted some initial non-participant or direct observations of environmental justice meetings with activists and the state present.

In 2005, I became more actively involved with the environmental justice movement in Newark and New Jersey in general. Later that year, I was appointed to the New Jersey Department of Environmental Protection's Environmental Justice Advisory Council as a representative of an environmental justice community in Newark. I also joined the statewide coalition of EJ activists, the New Jersey Environmental Justice Alliance (NJEJA), as an EJ advocate from northern New Jersey. During this time I transitioned from my "outsider" role as a graduate student to an active participant in environmental justice activities. At this time I began participant observations and interviews with the EJ alliance members and other environmental justice activists. Prior to my direct involvement in the environmental justice movement, in 2004-2005, I interviewed key state staff involved with the development and implementation of New



Jersey's environmental justice policies and programs. In 2005, I also began interviews and document analysis for the other four states included in the study starting with key state staff (i.e. EJ program coordinators) with purposeful and snowball sampling for other key state staff. I also interviewed environmental justice activists in each state beginning with key environmental justice activists sitting on each state's EJ advisory council or leading statewide or regional environmental justice alliances and snowball sampling for more environmental justice activists from these key interviews.

The case studies are comprised of multiple qualitative data collection methods including, elite, semi-structured interviews, document (archival) and chronological analysis, and participant as well as direct observations. The in depth interviews were conducted with policy actors including government officials and activist leaders in each of the states. The interviews explore how environmental justice policies were or were not implemented, the relevance of policies in terms of different conceptualizations of environmental injustice and the direct or perceived influence of state policies on the ground in environmental justice communities. Ethnographic observations were used primarily in the New Jersey case studies to explore interactions between environmental justice activists and the state.

The participant observations focused on those interactions in which I participated with environmental justice movement activists in New Jersey and with the state explicitly as an EJ activist from Newark, New Jersey. Document analysis was used as a means to examine: (a) the political and policy context within which implementation took place, (b) how the movement responded to the state's involvement and policies (c) the tensions within the movement (d) the state's implementation strategies and corresponding

movement responses to these state interventions. I triangulated multiple methods for each case and multiple cases for the multiple state study, to strengthen the overall construct validity (Yin, 2000, p. 92). Both purposeful and snowball sampling techniques were used to select individuals within the environmental justice movement and in state government for interviews.

The interview guide administered to participants was similar in content, reviewing their respective role in the environmental justice policy either as a target of the policy as an EJ activist or through the implementation process in the state. The respondents were asked to reflect on their views of the state's EJ policy development and implementation and finally on their view of the impact of the EJ policy in terms of different aspects of environmental injustice. A semi-structured format was used so that interviewees could reflect on their experiences fully and I could use probing questions to follow up on any new or relevant lines of questioning that arose. All respondents were provided with a consent form that outlined the project purpose and the assurance of confidentiality. In the case of phone interviews, this consent was offered verbally. Interviewees were also asked if they would consent to voice recordings for research purposes. All the respondents consented to their interviews. In the cases where the respondent declined to be recorded, I used field notes to record interview highlights and wrote up a post interview report in more detail to recall details of the conversation.

**Table 1: Interviews**

<b>Interviews</b>	<b>Units of Analysis</b>	<b>Data Collection</b>
NJ (N=31)	1. NJ Department of Environmental Protection (10 staff): EJ program staff and other policy relevant staff 2. EJ activists from NJ Environmental Justice Alliance and representatives from NJDEP's Environmental Justice Advisory Council and activists who petitioned the state under the state's EJ Executive Order (21 activists)	1-2 hour interviews  Interviews taped and transcribed
MA, CA, CT, NY (N=26)	<u>Other States:</u> State EJ coordinators, supporting staff & Environmental justice activists – from EJ Advisory Group to the state, EJ activists from key EJ organizations (CA = 10, NY = 6, CT= 5, MA = 5)	Interviews coded and categorized (confidential interviews coded to remove ID)
US EPA (N=3)	Regional EPA staff, EJ Program directors for Region 1, 2, and 9 where case states are located.	

The ethnographic observations included two distinct types of observations, participant and non-participant (or direct). I began my data collection early on as an outside observer at key meetings between the state and environmental justice activists. In these meetings I did not participate in meetings, but simply observed the interactions and dialogue between and among participants. As I became more active in the environmental justice movement locally in Newark, New Jersey, my role in these meetings began to shift from observer to participant and representative of an environmental justice community. In this role, I gained special access to meetings and membership to groups such as New Jersey's Environmental Justice Advisory Council (EJAC) and the New Jersey Environmental Justice Alliance (NJEJA) where I helped shape the issues and strategies being discussed. It is important to note that I conducted my state staff interviews early in my field research prior to becoming an active participant in the EJ movement. This allowed me to access state staff as a relatively unknown outsider so as to not bias their responses to questions regarding EJ communities.

**Table 2: Ethnographic Observations**

<b>Ethnographic Observations</b>	<b>Units of Analysis</b>	<b>Data Collection</b>
Participant (N= 25)	<ol style="list-style-type: none"> <li>1. Public hearings/meetings hosted by the state on EJ issues</li> <li>2. NJDEP EJ Advisory Council (EJAC) meetings (6/2005-6/2006)</li> <li>3. Quarterly environmental roundtables with NJDEP commissioner (2006)</li> <li>4. NJ Environmental Justice Alliance (NJEJA) <ul style="list-style-type: none"> <li>o People's Assembly (10/2006)</li> <li>o Retreat (1/15/2005)</li> <li>o Quarterly statewide meetings (2005-2006)</li> <li>o Regional NJEJA meetings, (2005-2006)</li> </ul> </li> </ol>	Field notes recorded on laptop
Non-Participant (N=14)	<ol style="list-style-type: none"> <li>1. NJ Environmental Justice Alliance (NJEJA) <ul style="list-style-type: none"> <li>o Retreat, 12/11/03</li> <li>o Quarterly statewide NJEJA meetings (2003-2004)</li> <li>o South Jersey meeting, 1/23/04</li> <li>o Northern NJ EJA meeting, 2/13/04</li> <li>o Central NJ EJ meeting, 1/28/04</li> </ul> </li> <li>3. NJDEP EJAC meetings (8/4/04 – 5/2005)</li> <li>4. EJ Roundtable, 10/21/2003</li> <li>5. Public hearings/meetings hosted by the state on EJ issues</li> </ol>	<p>Tabulating frequencies</p> <p>Pattern matching</p>

Document analysis was another mechanism to verify interview and observational data. In addition to the actual state EJ policy documents such as the environmental justice executive order, documents included environmental justice studies and reports carried out by the state in the course of implementation, memos, letters and emails from the state and environmental justice activists pertaining to the environmental justice policies. Finally, the use of newspaper and other archival documents was critical to the development of chronological analysis in the Camden case study and the multiple state studies.

**Table 3: Document Analysis**

<b>Document analysis</b>	<b>Units of Analysis</b>	<b>Data Collection</b>
State Agency Documents	<ol style="list-style-type: none"> <li>1. EJ Legislation, Executive orders or administrative orders, etc.</li> <li>2. EJ Reports, program updates, letters, memos, strategy documents</li> <li>3. EJ related regulations</li> <li>4. Participatory rules and regulations</li> <li>5. EJ models or technical documents i.e. GIS screening models</li> <li>6. Agency advisory group or workgroup reports, recommendations</li> <li>7. Public hearing minutes, powerpoint presentations</li> <li>8. EJ Legislation</li> </ol>	Documents catalogued in an electronic, annotated database
EJ grassroots organizations	<ol style="list-style-type: none"> <li>1. Mission &amp; vision statement</li> <li>2. Policy documents</li> </ol>	

US EPA          Chronological analysis	<ol style="list-style-type: none"> <li>3. Websites</li> <li>4. Reports – studies</li> <li>5. NJ &amp; CA EJ email list serves</li> <li>6. Meeting minutes and agendas</li> </ol> <ol style="list-style-type: none"> <li>1. Region II EJ Guidelines</li> <li>2. Cumulative Risk Framework</li> <li>3. EJ Public Participation guidelines</li> <li>4. STEJ grant reports</li> </ol> Newspaper articles – Star Ledger, The Courier, New York Times, etc.	
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### Policy Evaluation

In all the case studies I use a critical, interpretive framework to evaluate different data sources. The critical interpretive framework is grounded in critical inquiry, which is *“committed to engaging oppressed groups in collective, democratic theorizing about what is common and different in their experiences of oppression and privilege”* (Greene, 2001, p.332). This interpretive approach is conducted through qualitative methods, document analysis, open ended interviews with main actors, and participant observations. Such a framework takes an explicitly normative approach to policy evaluation that involves asking key stakeholders, such as EJ activists, about the impacts of the policy.

This approach complements Fischer’s critical evaluation framework that I apply to the environmental justice policies in the case studies. I use two key stages of Fischer’s framework, situational validation and systems vindication. Situational validation is a first order measure of the EJ policies’ relevance to the problem of environmental injustice as a distributive, procedural and structural problem. Systems vindication is a second order measure that examines how EJ policies influence power and resource inequalities in EJ communities. Through the New Jersey and multiple state studies I return to these two levels of evaluation – relevance to the problem of environmental injustice and impact based on redistributive value.

**CHAPTER 4.****A TOXIC LEGACY: A DECADE OF STATE INTERVENTION IN  
CAMDEN, NJ**

Camden, New Jersey has been the focal point for many significant environmental justice cases in the state. The city suffered from devastating economic and environmental degradation for decades and community activists mobilized grassroots environmental justice campaigns for over twenty years in response. At the same time, the state played a central role in the origination of and intervention into environmental justice struggles in this community. Camden thus serves as an excellent revelatory case study, illustrating the ways in which different forms of environmental injustice, particularly distributive injustice, manifest as a result of structural inequalities in the urban development patterns of the city. The case also reveals the state's complicity in the origination of these injustices and the procedural mechanisms used as a result of environmental justice policies. This case study follows the evolution of the city's environmental and economic demise over several decades and the impact of the state's environmental justice strategies over the last decade (1995-2005).

The in-depth case study of Camden will focus on the following central questions: *How does environmental injustice manifest in the urban landscape and what is the state's role in the origination and mitigation of the different forms of environmental injustice?* More specifically, how did the state's two different environmental justice policies impact different forms of environmental injustice in Camden? (Equity policy vs. EJ Executive Order)

#### Background – Environmental and Economic Decline in Camden, NJ

The City of Camden has a population of 87,500 and is the fifth-largest city in New Jersey. A third of the area is comprised of industrial sites and close to half of these industrial sites are contaminated and abandoned. The city's population is 87% minority

and has a per capita income of \$9,815. Based on 2006 data from the US Census Bureau, 44% of the city's residents live in poverty with a median household income of \$18,007, the lowest of all U.S. communities with populations of more than 65,000 residents, making it one of America's poorest cities.

**Table 4: Camden Demographics**

Compared with Camden County and the state as a whole, Camden households are less likely to have a car or telephone service, and more likely to live in housing built before 1939. Only about half of Camden's adult residents have completed high school. Nearly 1 in 5 Camden housing units are vacant and median home values in Camden are \$65,000, while the state average is above \$300,000. Economic segregation is evidenced by the fact that the poverty rate in Camden is 35-40%, while surrounding towns, average between 4-10%. Racial residential hyper-segregation is also apparent

Census	Pop.	%±
1900	75,935	30.2%
1910	94,538	24.5%
1920	116,309	23.0%
1930	118,700	2.1%
1940	117,536	-1.0%
1950	124,555	6.0%
1960	117,159	-5.9%
1970	102,551	-12.5%
1980	84,910	-17.2%
1990	87,492	3.0%
2000	79,318	-9.3%
2006	80,010	0.9%

with Camden having much higher proportions of low income and minority residents than the rest of the County and State.

**Table 5: Comparative Camden Socio-Economic Demographics**

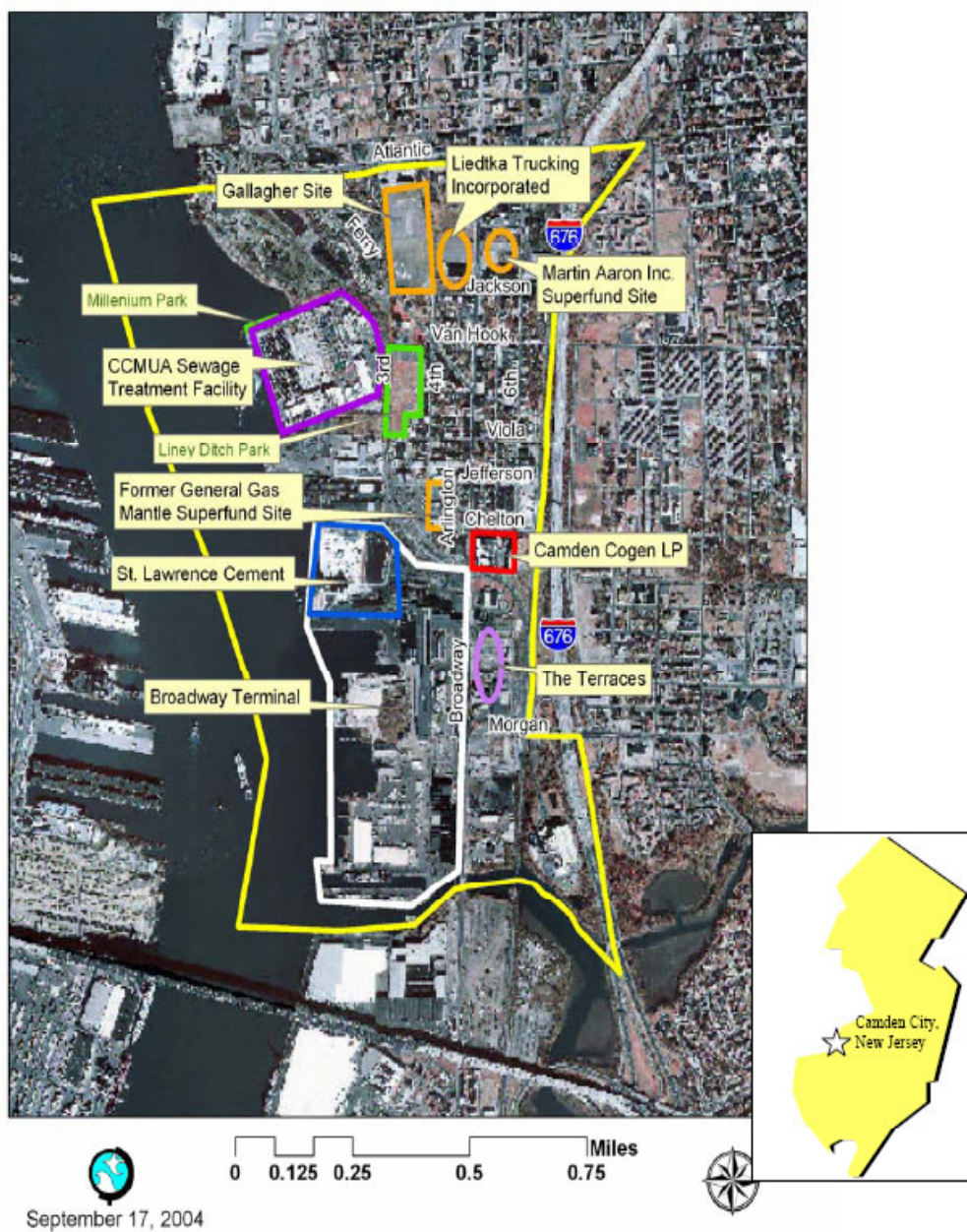
Geographic Level	Ethnicity			Income	
	Black	Hispanic	Non-White	Median Household Income	Individuals Below Poverty
State	13.6%	12.5%	27.4%	\$55,136	8.5%
Camden County	18.1%	9.7%	29.1%	\$48,097	10.4%
Camden City	53.3%	38.8%	82.5%	\$23,421	35.5%
Waterfront South (Census Tract 6018)	57.8%	27.2%	85.4%	\$22,417	33.8%

Source: U.S. Census 2000



The Camden case study focuses particular attention on the South Camden section of Camden City in a neighborhood called Waterfront South adjacent the Port of Camden.

**Figure 4: Waterfront South, Camden, NJ** (NJ EJ Task Force, 2006)



This neighborhood is less than one square mile near the Delaware River and is highly industrialized with a relatively small residential community (2100 people). The community developed late in the 19th century as a residential location for many of the area's port and industrial workers. Although the Port of Camden is still operational, the bulk of the industrial base left the city by the 1950s and 60s. From 1899 to 1967, Camden was the home of New York Shipbuilding Corporation, which at its World War II peak was the largest and most productive shipyard in the world. During this time, 10,000 workers were employed at RCA, while another 40,000 worked at New York Shipbuilding. RCA had 23 out of 25 of its factories inside Camden and Campbell Soup was also a major employer. The decline of the economic base in this community also corresponded with and gave rise to increasing environmental degradation resulting from abandoned industrial sites, mass out migration of the population and the incursion of large polluting facilities that serviced the greater region.

Today this neighborhood is home to several regional service facilities, polluting industries and contaminated sites including; the Camden County Municipal Utilities Authority, the Camden County Resource Recovery facility, the Camden Co-Gen Power Plant, four Superfund sites, over 100 contaminated sites, and 350 permitted facilities. Adding to the pollution burden are an estimated 77,000 truck trips generated in this industrial area annually with 900 trucks per day. Socio-economic factors make this community particularly vulnerable to environmental pollution.

*“Low socioeconomic status is also associated with many other stressors, including inadequate or nonexistent health care; urban blight; poor health and nutritional status; low education level; pesticide exposures; and lack of information on how risk-promoting lifestyles and behavior effect health.” (NJDEP, Camden Waterfront South Air Toxics Pilot Project, 2005)*

Camden residents suffer from a variety of health issues related to their poor socio-economic status and environmental conditions. Lung cancer and asthma rates in Camden are the state's highest. In Waterfront South, 62% of residents suffer from asthma and other breathing disorders. Camden residents in general have a higher rate of asthma hospitalizations, HIV/AIDS and higher percentages of children with elevated blood lead levels (NJDHSS, Annual Report, 2001). Further exacerbating these health and environmental conditions is inadequate access to health care with less than a third of Camden's residents having access to health insurance.

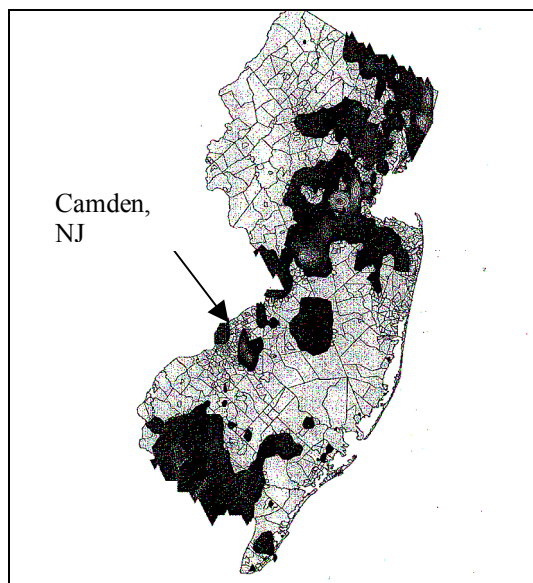
#### Distributive Manifestations of Structural problems

Evidence of distributive injustice in the form of disproportionate environmental burdens abounded in Camden. A project carried out by the USEPA called the National-Scale Air Toxics Assessment (NATA) predicted that the highest carcinogenic risk from air toxics in the entire continental United States was concentrated in the City of Camden. The Associated Press analysis of government data found seven Camden neighborhoods rank among the top one percent in the nation in the long-term health risk posed by industrial air pollution (Pace, 2005). All seven are majority black and hispanic neighborhoods. The majority of the more than 700 air emission permits in the city are concentrated in the Waterfront South neighborhood (NJDEP, Camden Waterfront South Report, 2006).

Mennis (2005) found a positive correlation between the concentration of African American populations and the density of Toxic Release Inventory sites in Camden. The NJDEP created a risk screening model as a part of their early efforts to develop an environmental equity policy. This Environmental Equity Screening tool identified

Camden as a hotspot for air pollution. The areas shaded darker represent areas of the state where the pollution burden is calculated to be higher than the state average (NJDEP, EE Screening Model, 2001).

**Figure 5: NJDEP Environmental Equity Screening Model Result**



In 2005, the NJDEP embarked on an Air Toxics Pilot Project in Camden, which found that the Waterfront South neighborhood indeed suffered from elevated levels of risk associated with air toxics emissions.

*“These results lead to the general conclusion that Waterfront South is an area with relatively high particulate levels; and that some of this particulate matter contains significant quantities of toxic metals, such as arsenic, cadmium, lead, manganese and nickel. It is expected that this will be a common finding as the DEP investigates exposure to multiple air pollution sources in other urban neighborhoods around the state. Further review of the modeling results revealed that the relatively high air concentrations can be attributed to emissions from ten different facilities in and near Waterfront South.”* (NJDEP, Air Toxics Pilot Project, 2005)

In the mid to late 1990s, residents and activists from the South Camden area began to organize opposition to specific cases of distributive injustice. One of the most significant of these environmental justice struggles in Camden, was the siting of a cement processing plant. Residents in the South Camden Citizens in Action (SCCIA) group

mobilized fierce grassroots and legal opposition to the permitting of this facility while at the same time the NJDEP developed its first “environmental equity” policy. This case, involving the St. Lawrence Cement Company, illustrates how both the EJ movement and the state focused initially on distributive manifestations of environmental injustice. But the cement case, like so many instances of distributive injustice are linked to structural inequalities that developed in the city over time. Over the course of several decades, both the state and the EJ movement mobilized to tackle distributive problems via a variety of mechanisms. The following is a chronological description of significant environmental justice events in Camden.

**Table 6: Environmental Justice Events in Camden, NJ**

DATE	EVENT
<b>1972</b>	Decision made by Camden County Freeholders to establish Camden County Municipal Utilities Authority (CCMUA) in Camden City
<b>1975</b>	Puchak Wells (#6) shut down due to contamination
<b>1981</b>	DEP finds radioactive ‘hot spots’ in the area of the General Gas Mantle Manufacturer
<b>1986</b>	Molins Machine Company site contaminated and suggested as a Superfund site.
<b>1989</b>	Camden County approves and builds a Trash-to-Steam incinerator in South Camden
<b>1991</b>	NJDEP issues warning to City Water Authority regarding contamination associated with contaminated well field (Puchak Well)
<b>1995</b>	County Freeholders approve & build \$66 million sewage-sludge composting plant in Camden
<b>1994</b>	President Clinton Issues Executive Order on Environmental Justice
<b>1997</b>	South Camden Citizens in Action mobilize efforts to correct the odor problem from the Sewage Treatment Plan (CCMUA) –petitioning the NJDEP to investigate odor complaints
<b>1998</b>	Puchack Well Field in Pennsauken which feeds into drinking water supply for Camden is closed and declared a Superfund Site
<b>1998</b>	South Camden Citizens in Action sue the CCMUA over odor violations
<b>3/1999</b>	CCMUA shuts down sludge composting plant in South Camden. The St. Lawrence Cement Group signs a lease with the South Jersey Port Corporation (operators of the Port of Camden) for a 14 acre site in the Waterfront South community for the operation of a facility that will grind and process granulated blast furnace slag (GBFS) as an additive to cement. The permit was deemed “administratively complete”
<b>11/1999</b>	Settlement reached with CCMUA to fix odor problems with more than \$4 mill
<b>7/2000</b>	NJDEP held public hearings regarding the St. Lawrence Cement air permits. Residents voiced strong opposition to the plant’s opening and fear negative environmental and health impacts stemming from plant operations. South Camden Citizens in Action partner with the Camden Regional Legal Service and Public Interest Law Center of Phil. to fight the permit.
<b>8/2000</b>	NJDEP issued the draft permit to the cement plant and issued formal response to public comments received at public hearings.
<b>9/2000</b>	South Camden Citizens in Action request a grievance hearing with NJDEP alleging that NJDEP’s permit review procedures violated Title VI of the Civil Rights Act of 1964 because the procedures did not include an analysis of the racially disparate adverse impact of the

	facility. At the same time, the group files an administrative complaint with the U.S. EPA.
<b>8/2000</b>	NJDEP issues an Environmental Equity Policy under Administrative Order No. 2000-01 Policy includes provision of a “Permit Screening Tool”
<b>10/31/2000</b>	NJDEP issues the final air permit to the cement company and does not respond to the grievance-hearing request.
<b>2/13/2001</b>	SCCIA filed a complaint in the U.S. District Court against NJDEP and the commissioner, Robert Shinn, alleging violation of Title VI of section 601, 42 U.S.C. section 2000d, by issuing air permits
<b>4/19/2001</b>	U.S. District Judge, Stephen M. Orlofsky, rules in favor of the plaintiffs stating that the NJDEP violated the U.S. Civil Rights Act by issuing operating permits for construction and operation of the Cement Co. A preliminary injunction was issued to the plant.
<b>4/2001</b>	The US Supreme Court issued a decision on Alexander v. Sandoval holding that private citizens cannot sue state for policies that discriminate, unless they can demonstrate the state engaged in intentional discriminatory acts (American Lawyer Media, December 31, 2002).
<b>5/2001</b>	Judge Orlofsky re-instates the injunction and remands the permits, recommending that the complaint be brought under Section 1983 of the Civil Rights Act for violation of Title VI regulations. This is appealed to the Third Circuit Court of Philadelphia and the court summarily suspends the injunction and allows the facility to open and operate.
<b>6/2002</b>	The U.S. Supreme Court decides not to hear an appeal from environmentalists, letting stand the Court of Appeals decision that environmentalists could not use Section 1983 to enforce Title VI of the Civil Rights Act of 1964. This ruling ends legal action on the case. Camden Citizens Against Contaminated Water file lawsuit against Camden and Water companies for delivering contaminated water to residents for 24 years
<b>7/2002</b>	Governor McGreevey signs the Camden Revitalization Act, which allocated \$175 million to revitalize Camden. That initiative has generated approximately \$135 million in private investments that will bring new offices, restaurants and retail to the waterfront.
<b>9/2002</b>	NJDEP launches the Camden Waterfront South Air Toxics Pilot Project funded by the USEPA. This pilot project was designed to develop tools that can be used to quickly assess air quality (especially air toxics) problems in a community.
<b>10/2002</b>	NJDEP Compliance and Enforcement conducted its first ever, week-long, multi-media enforcement sweep in Camden. Working with county officials, the New Jersey State Police, and the U.S. Environmental Protection Agency (EPA), the DEP mobilized more than 70 inspectors and conducted 764 investigations. Ninety eight facilities were found in violation
<b>1/2004</b>	Bucket brigades start taking samples in the community as part of the Air Toxics Pilot Project
<b>2/2004</b>	Environmental Justice Executive Order is signed by Governor J. McGreevey
<b>3/2004</b>	NJDEP holds hearings regarding the issuance of an operating permit to a garbage incinerator
<b>4/2004</b>	South Jersey Environmental Justice Alliance, Inc. submits one of the first environmental justice petitions under the EJ Executive Order
<b>4/2004</b>	Air Toxics Pilot Project Final Report issued by the NJDEP
<b>6/2004</b>	Initial meeting of petitioners with the NJDEP staff
<b>9/2005</b>	EJ Action Plan Draft released
<b>11/2005</b>	Comments received from public, public meetings, revisions to action plan made
<b>1/2006</b>	Final Camden Waterfront South Report and Action Plan issued

### The Root of the Problem – Procedural and Structural Injustice

How do distributive, particularistic environmental injustices like the siting of a cement plant relate to larger urban development patterns of the city and reveal both the state’s complicity and the complex nature of environmental justice problems? The City of Camden has a long, unfortunate history of environmental, economic and physical

degradation fueled in part by corrupt political practices, government negligence and structural and institutional racism. Almost any environmental justice issue facing Camden residents today can be traced back to some form of structural injustice tied to the state through government neglect or outright corruption at multiple levels (city, county, state, federal). These distributive problems can also be tied to economic development patterns in the city. Like many inner cities in the 1950s and 60s, Camden's fortunes turned as the industrial base waned and a combination of white flight and white privilege combined to yield devastating impacts (Pulido, 2000).

After the Second World War, the major ship building industry shut down and white veterans returning home moved out to newly created suburbs for cheaper housing not available to minorities due to discriminatory housing practices backed by the state. Housing in Camden was heavily segregated and political leaders in the 1960s resisted efforts at desegregation and equal housing opportunities for minorities. *"Most of the housing in the city was segregated, and "there was a lot of resistance in the political structure to embrace the rights-based demands" of minorities"* (Shralow, 2000). Racial tensions and economic decline continued into the 1970s and 80s. In 1971, Hispanic and African American residents rioted for three days amid accusations of police brutality. Cuts in federal and state aid to Camden coincided with rampant political corruption in the city. In 2000, the Mayor was indicted for corruption and in 2002 the city was taken over by the state.

Beneath this layer of local political corruption and decline were many outside triggers that fueled the demise of the City over decades. In an assessment by the Annie E Casey Foundation, the City's decline is summarized:

*“The post-war exodus of businesses and middle income residents also triggered a devastating fiscal cycle in Camden. Falling property values and a shrinking tax base made it difficult for the city to cover its costs and soon led to a structural deficit. The two cycles were exacerbated by a number of government actions at the state, county, and local level that were not in Camden’s best interest. New Jersey state policies, such as the state’s tradition of home rule and the loopholes built into the Mount Laurel decision, often had a suburban bias. A number of moves by the state and the county to improve their own financial and operating performance ended up hurting Camden. Undue County influence over city decision making, the lack of an effective two-party system, and widespread civic disengagement made it difficult for the city to defend itself.” (Annie E. Casey Foundation, 2001, p.6)*

In 2002, Governor McGreevey signed legislation that committed \$175 million dollars in aid to the city and created the position of Chief Operating Officer that trumped the elected City Council and Mayor. This state takeover was viewed suspiciously by many residents who saw outside forces vying for the power to govern the city without any local public oversight. *“Sloan El [Camden councilman] says too much of the Camden aid plan would go to hospitals, universities, the New Jersey State Aquarium and other institutions that serve the city’s suburbs” (Guenther, 2003).* Residents still see political corruption draining the city’s resources and further disenfranchising them from the political process. Much of the state aid is dedicated to regional development projects that benefit people living outside the city rather than neighborhood improvement projects for example. In the Annie E Casey Foundation Report (2001, p.7), researchers noted that Camden’s problems stemmed from corrupt political patronage in the region, *“The County’s power over the city is rooted to a large degree in the fact that most of the city’s leaders work for the county, the schools, or the hospitals. Many of these positions are patronage jobs and as such require connections and command loyalty.”*

State and county influence not only impacted the fiscal conditions of the city but also the environmental and public health of residents. Many of Camden’s environmental



ills stem from state aid packages, which concentrated noxious regional facilities in the area's poorest, minority community. Councilman El points to several of these projects *"...that would cause revolts in the suburbs, a state prison on prime waterfront property, a county sewage treatment plant in South Camden, a county-built incinerator, belching mercury and other pollutants, on city property"* (Guenther, 2003). The county freeholders approved the incinerator's construction in Camden against fierce opposition from local residents and with little in the way of compensation to residents or the city via property taxes or community benefits agreements.

Economic decline and political disenfranchisement in Camden underlie many of the distributive environmental injustices that activists go on to fight in cases like the St. Lawrence Cement case. The state is complicit in the development of these structural inequalities yet their EJ policies barely recognize this role. The following analysis examines how two distinct state environmental justice policies, the Environmental Equity Policy and the EJ Executive Order, address the multiple dimensions of environmental injustice in Camden. What impact or relevance do these two policies have on environmental injustice?

#### Impacts of Environmental Equity Policy

The NJDEP Environmental Equity (EE) policy adopted in 1999-2000 defined environmental equity as

*"the fair and equitable treatment in environmental decision making of the citizens of New Jersey communities regardless of race, color, income or national origin. Fair and equitable treatment means that no population should bear disproportionate amounts of adverse health and environmental effects."* (NJDEP, Administrative Order 2000-01)

Although the policy refers to equitable distribution of adverse health and environmental effects, the policy did not address disproportionate environmental burdens such as those identified in Camden. Instead the EE policy focused specifically on voluntary participation measures as part of the NJDEP's standard permitting process. *"The most significant legal and policy issue is whether the expanded community participation process [NJDEP EE Policy] goes far enough to begin to meet the mandates of the Civil Rights Act"* (NJDEP, Administrative Order 2000-01). The procedural mechanisms built into this policy did little to mitigate the distributive manifestations of environmental injustice, particularly those related to the controversial permitting case of the St. Lawrence Cement Company.

In 1999, the St. Lawrence Cement Company signed an agreement with the operators of the Port of Camden to build a multi million-dollar cement and slag processing plant in Waterfront South. When St. Lawrence filed for Clean Air Act permits with the NJDEP, residents saw this moment as the last straw in a long list of disproportionate burdens already borne by the low income, minority community. Residents mounted a vigorous campaign against the permitting of the facility on the grounds of environmental racism. Activists used a multitude of strategies similar to those of the Civil Rights Movement in their efforts to oppose this facility including grassroots organizing, street protests, petitions, and administrative channels of review within the state (public hearings, written comments, pleas to elected officials and formal complaints to the state and the US EPA).

When the NJDEP issued air permits to the cement company despite these efforts, residents mounted a groundbreaking legal case against the NJDEP invoking the

discriminatory impact of the permitting decision under Title VI of the Civil Rights Act. During this same time period, the NJDEP was in the midst of crafting their first environmental equity policy. This seemingly local siting decision, characterized by some as a classic case of NIMBY (Not In My Backyard) opened the door to a much broader discussion of disproportionate impacts in low income and minority communities throughout the state and called into question the standard environmental permitting practices of the state. It also uncovered how a distributive problem of disproportionate impacts was really rooted in structural problems. These structural problems include the marginalization of residents from land use, environmental, and economic decision making impacting their communities and the poverty and blight making them particularly vulnerable to environmental burdens from this facility.

Furthermore, the state explicitly supported the creation of these injustices. In the case of the St. Lawrence Cement Company, the project had the support of county freeholders and Governor Whitman who in 2001 cut the ribbon for the facility citing the economic benefits of the plant.

*“During rain-soaked groundbreaking ceremonies last March, Governor Christie Whitman proclaimed a plant that will grind out a component of concrete on the South Camden Waterfront to be ‘brick-and-mortar’ proof that the impoverished city is rebounding. She hailed the \$60 million plant as something to lift the urban wasteland of rundown row homes intermingled with gritty industries-- known as Waterfront South -- from the depths of despair.” (Hajna, 2001)*



The siting decision, usually left to local land use planning and zoning boards, was bypassed altogether because the facility was located on Port property overseen by a

quasi-governmental authority led by powerful county and state powerbrokers. Again, regional powers bypassed local oversight and impacted Camden residents without allowing them any input in the decision making process.

Residents attempted to counter the industry's claims of economic benefits with their own claims of disparate, discriminatory environmental burdens through the administrative channels of the state and federal environmental agencies. South Camden Citizens in Action requested a grievance hearing with NJDEP alleging that the agency's permit review procedures did not include an analysis of the racially disparate adverse impacts of the facility. When these efforts failed and the NJDEP granted the final air permit, residents pursued a legal strategy using Title VI of the Civil Rights Act. The ensuing legal battle proved to be a groundbreaking case in the EJ movement as communities nationally grappled with how to tackle the distributive problems of disproportionate, disparate impacts resulting from government's regulatory decisions.

### ***Distributive injustice***

The NJDEP's environmental equity (EE) policy left the question of whether disproportionate impacts actually existed up to a permit-screening model. If this model found distributive injustices, the state's responses were limited to voluntary public outreach efforts by permit applicants. The state's regulatory system that permitted pollution and thereby helped distribute environmental pollution disproportionately was left untouched by the EE policy. NJDEP noted the limited power of the EE policy:

*“the DEP has been developing a plan to address inequities stemming from past siting of polluting facilities in areas with large minority populations for three years, DEP Chief of Staff Gary Sondermeyer said. The DEP likely will develop voluntary protocols to help industry inform communities about polluting facilities before they are built, he said. The department also will likely become a mediator for disagreements between communities and industries. Sondermeyer doesn't expect any*

*further safeguards preventing siting of pollution-causing facilities, however. If neighbors and plant operators are unable to resolve their differences, the DEP will fall back on its standard method of determining whether facilities meet environmental standards, he said. The DEP did not implement an environmental justice review for the St. Lawrence project because formal rules are 'still way off, 'Sondermeyer said''(Hajna, 2001).*

This lack of accounting for disparate impacts stems in part from the state's framework for environmental management. In this system of environmental protection, state agencies like NJDEP are legally and politically bound to technical standards. According to Harvey, the state's role is limited by evidence of market failure that requires strong scientific evidence of damage and measurement of cost (Harvey, 1997, p.71). These constraints keep environmental management under the purview of scientific and bureaucratic experts that privilege scientific evidence, economic efficiency and capital accumulation generally over the interests of justice or fairness (Harvey, 1997). The distributive injustice of placing another major polluting facility in a community already facing dire public health and environmental consequences from existing pollution seems to privilege the industry's profit motivated interests over the equity and public health concerns of residents.

The St. Lawrence Cement case demonstrates how the state limits their intervention to the review of technical standards that do not account for disparate impacts that are unequally concentrated in a disadvantaged community. The disproportionate presence of pollution sources was well established and the Cement Company only promised to add to this cumulative and disproportionate pollution burden. The Cement facility would emit sixty additional tons of air pollutants per year. A majority of these emissions would be in the form of toxic particulate matter that has been linked to negative public health impacts including respiratory illnesses and asthma.

The state regulatory system lends legitimacy to the activities of polluting industries, giving companies like St. Lawrence a stamp of state approval that claims protective standards. EJ activists question the right of industry to produce and concentrate pollution in this way and the legitimacy of a system that claims to protect public health and environmental safety. Activists and a host of scientists weighed in during the St. Lawrence Cement permit review process to raise questions about the protectiveness of the permit standards. *“Even if a company meets state requirements, what good is it if eight or nine other companies in the same area are also putting the same amounts of pollutants into the air we breath and the water we drink?”* (Lounsberry, 2002).

In the litigation that ensued, Judge Stephen Orlofsky ruled in favor of activists, enjoining the cement company and ruling that the NJDEP violated Title VI regulations by failing to consider the disparate impacts of pollution borne by the low income and minority community. Judge Orlofsky wrote that the plaintiffs had, *“established a prima facie case of disparate impact discrimination based on race and national origin in violation of the EPA’s regulations”* (New York Times, 4/21/2001). Judge Orlofsky’s ruling set a legal precedent because it was the first time the courts overturned an environmental permit on the grounds of environmental justice. Although groundbreaking, the ruling was soon tested and eventually overturned. A week after issuing the injunction, the Supreme Court ruled in a different case called the Sandoval decision, that only the federal government could enforce Title VI provisions not private citizens.

Although the NJDEP issued an administrative order on environmental equity, it had little impact on distributive injustice via their permitting decisions. *“But state officials say they did not follow the proposed environmental equity process last October,*

when they approved the air pollution permits for the St. Lawrence plant (McNichol, 2001). Judge Orlofsky pointed to the state's failure to adhere to its own EE policy.

*"It is the Court's understanding that none of the policies or procedures referred to [by lawyers for the State] have been implemented... Indeed, when asked if she had any understanding of New Jersey's Environmental Equity Program, Dr. Atay, chief of the NJDEP's Bureau of Air Quality Control and Hearing Officer for the SLC permit, stated that she had 'none.'" (Orlofsky, 2001)*

This is the most direct evidence of the EE policy's ineffectiveness in addressing one of the most egregious cases of distributive environmental injustice in the state.

The NJDEP had prior knowledge of a statewide pattern of disproportionate environmental burdens in Camden. It issued the St. Lawrence Cement permit because it adheres to a conservative view of their regulatory authority, intervening only when there is insurmountable scientific evidence of harm (that is legally defensible or established by technical standards). In contrast, the environmental justice movement including Camden residents, propose a paradigm shift in state regulation reflected in the precautionary principles. The precautionary approach *"...requires governmental entities and companies to foresee and forestall problems, develop new ways of operating to avoid problems, and to set goals for health, well-being and justice"* (Appendix A). In this model, the onus falls on the state and industry to prove that their actions are not harmful and thus to hold back permits or actions in cases where the potential harm is severe and the scientific uncertainty is high.

The precautionary approach is an alternative to the standard environmental management approach that NJDEP employed and which failed to address distributive justice in this case. Instead of narrowly regulating burdens according to very limited technical risk assessments, states could intervene in the industrial production processes,

preventing burdens rather than redistributing or permitting them. If the state had adopted the precautionary approach as part of their environmental equity policy, the fate of a permit like St. Lawrence would have been entirely different. The state would be intervening in a more meaningful way to consider not just the distribution of burdens but also their creation. This would have resulted in an entirely new way of considering risk and the role of the state in relation to industry and the public.

### ***Procedural injustice***

Procedural justice is a critical component of achieving distributive justice. The EE policy in the form it was proposed and finally initiated, failed to address distributive injustice in the St. Lawrence Cement case in part because it proved to be ineffective at achieving a meaningful level of procedural justice as well. The EE policy relied heavily on symbolic and superficial procedural mechanisms to achieve equity goals.

Procedural justice in the form of public participation processes conducted by the state is often guilty of subverting rather than supporting real, democratic, deliberative decision-making. NJDEP's EE policy emphasized participation via these traditional participation mechanisms of public hearings and meetings, without considering alternatives to these standard practices. The EE policy focused almost exclusively on a community outreach process and public hearings to ensure community input. These processes did not result in any meaningful involvement of the impacted community because they were not tied to any decision making power. In the St. Lawrence Cement case, the NJDEP exacerbated public frustrations over a lack of attention to their grievances by channeling limited community input through the status quo public hearing process or administrative channels (filing formal complaints, etc). The NJDEP also met



first with industry representatives to work out the terms of a permit and followed their standard operating procedures by constraining public input to public hearings months after meeting informally with permit applicants.

Residents perceived this inability to enter into the state's regulatory process until most of the conditions of the permit were already set as a deliberate and detrimental blow to their "meaningful" involvement and input. The statewide EJ alliance (NJEJA) including Camden activists called on the government to include them at the 'earliest possible stages' of decision making and to "...use the very best practices for finding out what citizens want. This means using consensus conferences, citizen juries, study circles, and other modern techniques for making democracy really work" (Appendix A). When the NJDEP met privately with company representatives in Camden, residents protested in front of the facility, citing their inability to secure a similar informal meeting with the NJDEP regarding their concerns,

*"Thanks for protecting us, yelled one protester. 'You look like a bunch of jerks behind that locked door' said another. Jerome Balter, a lawyer with the Public Interest Law Center of Philadelphia who drafted the complaints, solemnly stated the obvious: 'The South Jersey office of the DEP does not want visitors' he said. The DEP is deliberating whether to grant a clean air permit to the St. Lawrence Cement Co., a subsidiary of the world's largest cement maker." (Stillwell, 2001)*

The NJDEP set up public hearings regarding the contested air permits well after the company negotiated permit terms and had a good portion of their facility already built. Residents felt their input in the public hearing process would be in vain because the project was already far along in the permitting and construction process. *"Protesters said their input was not solicited until an Aug. 23<sup>rd</sup> public hearing. By then, the company had completed 75 percent of the plant construction"* (Stillwell, 2001). The St. Lawrence Cement Company set up another mechanism for capturing community participation

through a Community Advisory Board. The company saw this board as an opportunity to convince community members that the facility was not harmful according to their scientific experts and also to allow for some community negotiated concessions (i.e. community park, relocation of housing, etc.).

*“Morris Smith, a spokesman for St. Lawrence, said he was concerned that the cement company was taking the rap for a long history of what could be considered environmental racism. He said he has met with community groups numerous times, but the South Camden Citizens in Action group chose to drop out” (Stillwell, 2001)*

The citizens opposed to the plant quickly left this group because they felt the company would not consider other alternatives to locating in the area and used their participation as a way to manipulate the public perception of the plant’s acceptance. *“I dropped out because the company used participation in the meetings as some kind of tacit approval of the project,” said Olga D. Pomar, a lawyer with Camden Regional Legal Services” (Stillwell, 2001).* Despite the communities’ protest of this Advisory Board, the NJDEP endorsed the group as part of their EE policy goals: *“A DEP report did say [Commissioner] Shinn was satisfied St. Lawrence Cement had engaged in ‘an active community outreach program’ that would meet the standards envisioned for the proposed equity program” (McNichol, 2001).*

The NJDEP could have engaged the community and industry in alternative mechanisms for public input, examples include inviting residents to early, informal discussions regarding the plant permit or requiring the plant to enter into a mediated dialogue with residents. Instead, the NJDEP’s environmental equity policy narrowly conceptualized community involvement and participation. In the NJDEP’s guidance document for implementing the voluntary participation process in EJ communities, the state stipulated that the permit applicants and the state agency would identify the “Key

community leaders”. “*Key community leaders means a group of individuals identified by a permit applicant, in consultation with the Department*” (NJDEP, 2001). This allowed the permit applicant to essentially limit participation and hand pick participants to a process, which they could structure.

The state also relied on standard public hearing forums to capture “public input” which did not sufficiently notify or engage meaningful input from residents. One example of these poorly constructed meetings is the hearing set up by the NJDEP in Camden to get input on the EE policy. Although this meeting was held in the community rather than at NJDEP’s headquarters, it lasted more than 3 hours into the evening and left many residents frustrated:

*“Although 44 people signed up to testify Tuesday at the second of three public hearings across the state on the [EE] proposal, only 32 stayed for the 3-1/2-hour session...Some residents left because they thought they were facing a brick wall with the state DEP... Other residents were concerned about the way the public meeting was advertised and said the state should have made a better effort to get out the message to the community”* (Lounsberry, 2002).

Again, the state missed an important opportunity to engage the community in more meaningful participatory processes, including, for example, inviting stakeholders and residents to help shape and develop the policy collaboratively rather than just getting pro-forma input after developing a policy entirely on their own.

One of the main obstacles to effective communication in the state’s decision-making processes stems from the state’s reliance on scientifically based standards and technical permit requirements. Legal mandates like the Clean Air Act set technical parameters for regulatory agencies to follow and agencies are reluctant to step outside these requirements to consider alternative mechanisms of decision making. NJDEP like most environmental management agencies thus follows a scientific model of policy

design that narrows alternatives by using numerical standards, quantitative decision aids, and standard operating procedures” (Larson and Ingram, 1997). These technocratic values emphasize technical standards without a broader, democratic discussion of the policy formulation process.

In the St. Lawrence Cement case, the NJDEP uses the Clean Air Act standards to determine whether the cement plant should be allowed to operate in South Camden and the broader range of community concerns is not brought to bear in this decision-making process. What this framework misses is the heart of many environmental justice complaints and conflicts, normative appeals to broader community concerns regarding justice, public health or even the cumulative impacts of multiple pollution sources not captured by individual permitting standards. Camden residents voiced this frustration and challenged the state’s scientific assertions that the cement plant would have a negligible impact on the community in a letter to the NJDEP Commissioner:

*“The members of South Camden Citizens in Action and the Camden Environmental Justice Coalition cordially invite you to spend a night in the Waterfront South community of Camden. If there is no "disparate (health) impact" on the residents of Waterfront South from the St. Lawrence Cement Company, and the many other polluting facilities in our community, as the NUDE’s [NJDEP’s air permitting model] impact analysis claims, then you should feel free to accept our invitation. Perhaps those who prepared the impact analysis ought to join you as well. If you and your staff accept our invitation, we hope that you won't have to sit up in bed until exhaustion forces you to go to sleep, as our children have to do because they can't breathe well at night and are kept awake coughing”* (Letter from South Camden Citizens in Action, October 30, 2001).

EJ activists effectively contrast the two divergent perspectives of environmental burden – with the NJDEP interpreting the impact of the cement permit narrowly using technical modeling techniques (“NUDE” system) and deeming it benign - while residents express the trauma of experiencing that facility in a larger context of multiple

environmental and social burdens. If the EE policy had a process of deliberation built into it that allowed for consideration of both of these perspectives before making a determination on a permit, perhaps a greater degree of procedural and distributive justice could have been achieved.

Although the environmental equity policy used enhanced community outreach efforts as the cornerstone of their policy, it fell short of any meaningful engagement or participation in Camden. It left in place processes for participation that were not inclusive, not linked to decision making power and did not offer opportunities for discussion of alternatives.

### ***Structural injustice***

In the St. Lawrence Cement case, structural inequalities led to the manifestation of distributive injustice in the form of disparate environmental impacts stemming from the plant's operations. Earlier in this chapter I outline the political and economic forces that worked to degrade the City of Camden in the decades since de-industrialization. Historical evidence points to various ways in which overt government policies divested from the city and invested in suburbs, racially segregated residential communities and concentrated regional polluting facilities that served wealthier, whiter suburbs to the detriment of largely minority and low income people in Camden.

Pulido (2000, p.20) uses Southern California in a case similar to Camden's to illustrate how these seemingly non-racialized patterns of urban and economic development are a reflection of deeper structural inequalities. Camden, like many older industrial cities, attracted many industries because of easy access to major northeast cities, populations and transportation routes. Residential neighborhoods existed close to

the facilities for workers in the city but many whites fled the city for various reasons, including; factory closings during economic recessions, more desirable housing became accessible to whites (but not to blacks due to redlining, etc.) outside the central city and social upheaval in the 1960s drove many whites into surrounding suburbs. While whites exerted their ‘privilege’ to move away and also to exclude people of color from their new suburbs, African Americans and low-income people were concentrated in the inexpensive, segregated housing closer to the abandoned and polluting facilities. Racial minorities became increasingly racially and economically segregated from the rest of the region, while also becoming more politically disenfranchised and environmentally vulnerable to facility sitings in these abandoned industrial zones.

The land in Waterfront South seemed prime for development like the St. Lawrence Cement Company from the rational, market perspective because the land was relatively cheap and there was easy access to Port facilities and transportation. But this seemingly unbiased economic choice to site and permit the facility in Waterfront South was made possible because of the racist patterns embedded in the market system.

*“A polluter locates near a black neighborhood because the land is relatively inexpensive and adjacent to an industrial zone. This is not a malicious, racially motivated, discriminatory act. Instead, many would argue that it is economically rational. Yet it is racist in that it is made possible by the existence of a racial hierarchy, reproduces racial inequality and undermines the well-being of that community.”* (Pulido, 2000, p.16)

By “permitting” the St. Lawrence Cement Company in this neighborhood, the NJDEP reinforces the racialized status quo that works to further disadvantage Camden residents. Pollution is “permitted” rather than prevented so that capital can be allowed to function without hindrance from those that are impacted by the externalities. The permit approval then becomes a state endorsement of capital hegemony and racialized hierarchies. In the

St. Lawrence Cement permitting decision, an expanded notion of racism is relevant because the siting and permitting decisions go beyond individual acts of intentional discrimination on the part of NJDEP or St. Lawrence. Racism is exerted at different scales including a form of racism called ‘white privilege’.

*“...refers to the hegemonic structures, practices, and ideologies that reproduce whites’ privileged status. In this scenario whites do not intend to hurt people of color but because they are unaware of their white-skin privilege and because they accrue social and economic benefits by maintaining the status quo, they inevitably do.”* (Pulido, 2000, p.13)

The state supports these structural inequalities via their standard environmental management processes including the Environmental Equity policy. The NJDEP’s approach is to intervene or regulate industry only enough to allow capital to be profitable while balancing community demands for environmental protection. The Environmental Equity policy reflects this attempt at ‘balance’.

*“The Department’s Environmental Equity policy is to support and advance, to the extent permitted by law, a proactive approach to environmental decision making that is sensitive to a community’s environmental needs and life experiences, while at the same time recognizing the interests of the entities seeking permits.”* (NJDEP, Administrative Order, 2001).

The state’s regulatory process in fact favors capital interests by leaving in place material imbalances unquestioned. Whereas a facility like St. Lawrence has tremendous access to political and economic resources, along with technical expertise, communities like Camden are resource poor and lack political power to counter the company’s claims of economic benefits and no environmental burdens. The St. Lawrence Cement firm claimed that the plant would not contribute significantly to pollution and would create jobs in a community facing dire poverty and unemployment. But the multi-million dollar facility was highly automated with less than ten jobs, none guaranteed to local residents.

The residents in the community felt that the economic arguments in favor of the plant were a distraction from the much larger environmental impacts the facility would bring.

*“We don't want it because we have too many polluters already in our midst. We have a right to clean air and this will only make our air dirtier. And for what? They pay no property taxes and offer only a handful of jobs. Yet, they tear up our streets and pollute our kids' lungs”* (Lounsberry, 2002).

Furthermore, because the facility was located on state owned land run by a quasi-governmental agency (South Jersey Port Corp.) the project bypassed any public or municipal review and was exempt from paying local taxes. Residents had little input into the decision making processes that determined the economic, land use and environmental outcomes related to this case. Ultimately, residents rejected the zero-sum claims of the economy vs environment, in favor of alternative economic plans that might result in both economic and environmental benefits. For example, activists suggested that the state and city invest in training and development programs in which local residents could be trained and hired to remediate and redevelop brownfield sites for light industrial or commercial purposes. This type of community development and investment program would lessen the environmental burden in the community and also counter economic blight by creating employment opportunities. Unfortunately the NJDEP's EE policy did not consider the structural sources of environmental injustice nor did it counter these powerful forces to any degree.

*“Much of what this case is about is what the NJDEP failed to consider. It did not consider the pre-existing poor health of the residents of Waterfront South, nor did it consider the cumulative environmental burden already borne by this impoverished community. Finally, and perhaps most importantly, the NJDEP failed to consider the racial and ethnic composition of the population of Waterfront South”* (Orlofsky, 2001).



### Impacts of EJ Executive Order – Waterfront South Action Plan

After losing the legal battle over the St. Lawrence Cement Company, Camden residents faced the prospect of another environmental justice policy ushered in under the newly elected administration of Governor McGreevey. In 2002, Bradley Campbell was appointed NJDEP Commissioner and shortly thereafter took a tour of Camden.

*“We're walking into this as a new administration bringing a new attitude, Campbell told a small group at Our Saviour Episcopal Church on South Broadway. ‘This is a situation where there has been a lot of neglect and a lot of work hasn't been done to address the concerns of the community’” (Hajna, 2002)*

The new NJDEP administration attempted to separate itself from the previous environmental equity policy. In a community forum on environmental justice, a NJDEP assistant commissioner stated, *“This administration did not continue the previous EJ policy because it was too restrictive, currently the EJ program includes more options and opens up DEP to more community issues”* (Non participant observation, Jeanne Herb, Assistant Commissioner for NJDEP, at the ANJEC EJ Roundtable, Camden, 10/21/2003). Despite the prospect of a more receptive administration, Camden residents were still reeling from the legal defeat over the permitting of the St. Lawrence Cement Company and the continued deterioration of conditions on the ground. At an EJ forum held in Camden in 2003, one of the activists vented her deep distrust of government,

*“I’m Mad! I’m getting madder and more frustrated...DEP doesn’t do a damn thing – they sit up here and have these fancy brochures about what they supposedly do about EJ - but look around – everything is the same! I’m tired of going to meetings and talking, talking about these issues and things get worse every year.”* (Non-participant observation, Linda Selby, ANJEC EJ Roundtable, Camden, 10/21/2003).

In 2004, Governor McGreevey signed an Environmental Justice Executive Order that was developed by the NJDEP Environmental Justice Office. Prior to the issuance of

the order, the statewide Environmental Justice Alliance, wrote to the NJDEP

Commissioner urging for a more aggressive approach to EJ.

*“The state must help impacted communities build capacity for informed environmental decision-making by providing local groups financial support and information that is timely and complete. Create a State Environmental Justice Policy that responds to communities' concerns and incorporates an inter-agency approach to environmental decision-making. Ensure that analysis of cumulative impacts from multiple pollution sources must be part of facility siting, permit processes, and other land use decisions, including agricultural.”* (Letter to Commissioner Campbell from the New Jersey Environmental Justice Alliance, 12/12/2003)

Although the resultant EJ Executive Order encompassed some of the demands articulated by EJ activists such as the inclusion of multiple agencies, it left unclear how to deal with more complex issues such as cumulative impacts of pollution. The central mechanism of the executive order was a petitioning process leading to an Action Plan in which individual EJ communities petition the state to address their concerns. Despite this new process available to EJ communities, significant regulatory and legislative actions would still be necessary to change the outcome of a case like that of St. Lawrence Cement. The executive order was thus received by the EJ movement with a measure of skepticism because it lacked this regulatory or legislative authority.

*“Activists were careful not to overstate the benefits of the order, as many used the term ‘starting point’. Olga Pomar, an attorney handling a discrimination lawsuit against the state for its decision to permit a cement factory to open in an already polluted Camden neighborhood, said she was not convinced the order would change permitting decisions. ‘Unfortunately, I don't see that this executive order in and of itself would have made a difference[in the cement case],’ Pomar said.”* (Lane, 2004).

Despite their skepticism, South Camden residents were among the first to test the executive order's commitment to EJ via the petitioning process and action plan (South Jersey Environmental Justice Alliance Newsletter, March 2004)

Putting the Governor's Environmental Justice Order to work. The Governor just signed an Order that promises that if communities petition the state, NJ DEP will work with residents to develop "action plans" to improve the environment. We are circulating a petition so the Governor will be sure to include Camden City.

The following analysis examines how environmental justice was addressed in Camden via this newly instituted petitioning and action plan process. The Executive Order itself recognizes the distributive and even the procedural and structural nature of environmental injustices. But its implementation via the petitioning and action plan process produces similar results as the EE policy in Camden. The state employs largely rhetorical procedural fixes together with targeting existing resources to produce very few opportunities that address structural inequalities or achieve environmental justice.

### ***Distributive injustice***

The environmental and demographic information presented earlier show that the low income and minority residents of Camden and Waterfront South bear a disproportionate burden of environmental pollution and lack the environmental amenities that surrounding towns enjoy. The EE policy failed to consider the cumulative and disproportionate nature of environmental burdens like air pollution in their permitting processes. The Executive Order on the other hand recognized these distributive problems more explicitly.

*"WHEREAS, New Jersey's communities of color and low-income communities have historically been located in areas of the State having a higher density of known contaminated sites as compared to other communities, with the accompanying potential for increased environmental and public health impacts; and WHEREAS, the cumulative impact of multiple sources of exposure to environmental hazards in low-income and people of color communities, and the roles of multiple agencies in addressing the causes and factors that compromise environmental health and quality of life in these communities require an interagency response"* (Appendix B)

The first test of the Order's ability to address distributive justice problems came one month after its enactment with the NJDEP review of the Camden incinerator's

operating permit. At a public hearing held in South Camden regarding this permit renewal, residents again voiced their opposition to the continued disproportionate impact from pollution sources like the incinerator. The state maintained that they had no “*Legal authority to modify the emission limits in the permit*” rather they could “*tweak the monitoring requirements*”( Meeting minutes, NJDEP Hearing Officer Sam Wolf, NJDEP public meeting in Camden, NJ, March 3, 2004.). The permit for the incinerator was issued without any modifications to the pollution standards and the same happened in June with the review of the local Gypsum plant’s air permits. Despite recognizing the problem of disproportionate pollution in Camden, a newly minted Environmental Justice Executive Order and many public meetings, the state did not veer from its standard regulatory approach to permitting. In an article reflecting on the hearings, a member of the statewide EJ alliance wrote:

*“Governor McGreevey said. ‘In New Jersey, we are seeking justice to make every community safe, healthy and attractive places in which to raise our families.’ As I was listening to residents of Waterfront South testify about their pain, anger and fear for their health, I kept trying to square Governor McGreevey's words with what the DEP is writing into the incinerator permit...Later in the hearing he [NJDEP officer] made the point again and again that DEP has no authority to prevent the incinerator from raining millions of pounds of deadly toxics down upon the residents of Waterfront South, year after year. As I was driving home, I couldn't help thinking, if this incinerator permit is the first test of the Governor's commitment to environmental justice, it is, so far, ringing hollow.” (Montague, 2004)*

In April 2004, the South Jersey Environmental Justice Alliance submitted one of the first environmental justice petitions to the state under the provisions of the EJ Executive Order. In the letter submitted with the petition, South Camden residents and activists refer specifically to their concerns over distributive injustice,

*“An opportunity exists right now to demonstrate the integrity of the Executive Order and to take a first step in reducing the disproportionate pollution burden Camden residents bear. The Title V permit for the Camden incinerator is pending... we need*

*comprehensive remediation of air water, and soil and a stop to the permitting of any further pollution sources.”* (South Jersey Environmental Justice Alliance Petition letter, April 29, 2004)

After submitting their petition, activists met with agency officials several times to review their demands for the Action Plan. Residents were frustrated that it took more than a year for the Draft Action Plan to be issued and they had little input into crafting or deciding on action items.

Camden residents identified several major deficiencies in the resultant action plan. First, the plan effectively narrowed the focus area from the entire City of Camden or even South Camden to the much smaller area of Waterfront South.

*“Faced with the daunting task of addressing the entire City of Camden through the petition process (as requested by the SJEJA), the EJTF recognized early on that in order to develop an effective action plan, the Task Force had to use its resources initially on one of Camden’s most disadvantaged neighborhoods rather than the entire city.”*(NJ EJ Task Force, 2006, p. IV-V)

This narrowing of the project area angered the petitioners because they perceived it as a limitation to the strategies state agencies could use to address environmental injustice.

Second, the action items proposed under plan’s many categories were perceived largely as a regurgitation of existing activities rather than new commitments or more aggressive actions. The major categories outlined by in the Action Plan included:

1. Funding Initiatives – accessing Camden Economic Recovery Board financing
2. Community participation, outreach, & education
3. Compliance & Enforcement
4. Air quality
5. Site remediation & waste management
6. Water quality
7. Greening & open space
8. Economic development
9. Community health
10. Quality of life

Actions under these categories included, resources for tree planting and anti-idling sweeps, monitoring water quality in schools, enforcement sweeps and dedicated resources for pilot studies of air quality and brownfields projects. Although some of these initiatives were welcome new resources, they did not represent significant changes to the conditions on the ground in Camden.

The South Jersey Environmental Justice Alliance compared the Action Plan commitments to the community's requests and identified several important gaps. The following is a list of the key demands that were not satisfactorily addressed and they mostly relate to issues of distributive justice (Memo from SJEJA, March 4, 2006):

1. No more polluters in Waterfront South, moratorium on any new major permits
2. Permit review that takes into consideration cumulative effects, discriminatory burden already present in community, demographics and health conditions
3. Reduce dust/PM and other air pollutants, enclose open piles, stricter permits
4. Fully clean up most hazardous contaminated sites
5. More inspections and stricter enforcement penalties

One of the petitioners' top priorities was to place a moratorium on permitting major facilities until conditions improved in Camden or until new laws could be implemented that would reduce pollution burdens via a reformed regulatory system. The Action Plan's introduction includes a statement from Commissioner Campbell in which he acknowledges the community's concerns regarding distributive injustice in the form of disproportionate, cumulative environmental pollution.

*"While the litigation [referring to the St. Lawrence Cement Co.] arose over a single permit for one facility, the community was clearly affected by a broad range of pollution burdens from many sources unrelated to that facility, from truck traffic to toxic waste sites"*(NJ Environmental Justice Task Force, 2006).

Although acknowledging the problem of distributive injustice, the Camden Action Plan does not consider the possibility of prohibiting (via a moratorium) or significantly

reducing (via regulatory reforms to permit standards) the disproportionate environmental burdens. In the public meetings held in Camden, NJDEP officials said they'd take the moratorium proposal "under consideration" but the issue was never incorporated into the Action Plan.

Petitioners called on the state to revisit their permitting standards to make them stricter with the consideration of additional factors such as cumulative impacts. NJDEP promised to conduct "enhanced" permit review processes but was not clear how this enhanced review would be conducted or how it would reduce pollution burdens. Camden petitioners also questioned whether this enhanced review was the same process the NJDEP undertook in the St. Lawrence Cement case in which the agency ultimately deemed the plant safe and granted the permit because it did not include cumulative impact analysis. For cumulative impacts, the agency only agreed to hold a workshop to learn more about the issue but would not commit to any form of cumulative impact analysis in permitting. Petitioners attempted to meet with the NJDEP to review their permitting process and propose possible changes but charged that the agency was not willing to deny permits on an EJ basis

*"We asked for very specific things that have to be done," said Pomar. "I can't see how this plan differs from what they already do... Before the meeting, members of two community groups -- South Camden Citizens in Action and South Jersey Environmental Justice Alliance -- called on Campbell to rule out the addition of more heavy industry in Waterfront South... Campbell said he did not have the authority to impose a moratorium on industrial uses. But he said the DEP could make the approval process more rigorous for future applications."*(Walsh, 2005)

NJDEP continued to cite their inability to go beyond standard operating procedures without greater legal or regulatory mandates and claimed that many of the communities' concerns were beyond their jurisdiction.

*“...it became apparent that many of the concerns raised by the community are beyond the scope of not only the EJTF authority but also the authority of local agencies. During the development of this Action Plan, these regulatory gaps served as an obstacle to addressing all of the concerns raised by the community in their EJ petition and expressed in various correspondence and meetings.”(NJ EJ Task Force, 2006, p.67)*

The Executive Order essentially sidesteps the issue of new mandates by suggesting future research and action. *“The Task Force shall identify and make recommendations concerning legislative and regulatory changes appropriate to achieve the purposes of this Order as well as the purposes of any particular Action Plan.”* (Appendix B)

The state missed critical opportunities to seek out innovative approaches to the problem of distributive injustice. The NJDEP together with the health department could have experimented with new approaches to their regulatory functions by examining multiple sources of pollution together with health impacts to inform their decisions like permitting or health interventions. The action plan could also have used a precautionary approach to pollution burdens in Camden by requiring mandatory pollution reduction technologies and more stringent standards for major polluters, toxics prevention programs that substituted toxic materials in production processes, and a revised protocol for new permits that would put the onus on polluters to prove no harm. The Action Plan and the Executive Order fail to connect environmental permitting decisions with other relevant levels of government such as local and state land use planning efforts that can impact siting decisions and thereby impact distributive inequities. The Action Plan process could have encouraged the inclusion of county and municipal governments in crafting commitments and action items that would impact Camden positively. For example, the Department of Economic Development could have coordinated a pilot



project for brownfields reclamation and job training with NJDEP and the local municipality.

Short of new legislation being proposed, state agencies could have exerted their combined and coordinated efforts in concert with other levels of government to make more profound commitments to redistributing the benefits and burdens in Camden. These measures are just a few examples of the ways in which the state could have exercised its discretion in the Action Plan process to produce more just outcomes in the production and distribution of environmental burdens.

These opportunities and others were not explored, primarily due to the closed nature of the Action Plan process and the lack of accountability built into the Executive Order to require agencies to achieve more substantive EJ goals. Although the executive order acknowledges the disproportionality problem of environmental pollution, it does not build mechanisms into the state's systems of resource distribution or environmental management to address these problems directly. Ultimately, the Action Plan produced under the Executive Order minimally impacted distributive injustices in Camden.

### ***Procedural injustice***

Like most other environmental justice policies, the EJ Executive Order relies heavily on the improvement of public participation processes as a key contribution to environmental justice.

*“WHEREAS, the State of New Jersey is committed to ensuring that communities of color and low-income communities are afforded fair treatment and meaningful involvement in decision-making regardless of race, color, ethnicity, religion, income or education level”* (Appendix B).

Although the executive order emphasized the importance of participation and meaningful involvement of disadvantaged communities, the action plan process itself suffered from

some of the same problems associated with participation processes under the original EE policy. The petitioning and action plan process seemed to incorporate more extensive participation practices because it increased community interaction with and access to state agencies. Camden residents noted this increased access to agency staff and information but still expressed frustration with the outcome of these participation processes.

Camden residents were critical of the petitioning process because they felt it was not transparent and did not offer an opportunity to fully engage with the state in meaningful, iterative dialogue around their petition demands and subsequent state responses. The process of developing an Action Plan was an entirely internal process with agency staff. The state missed a crucial opportunity to develop a deliberative process that could lead to more just outcomes. As part of the Action Plan process, the state could have established a deliberative body of petitioners and state agency officials to develop collaborative action items in response to the EJ petition. Through such a mediated process, stakeholders hold one another accountable and develop shared goals and understandings of action items. Instead, the items were developed internally and then presented to residents as a completed package. Petitioners in Camden were therefore suspicious and frustrated with the outcomes of a process in which they had little input and which seemed to promise little in the way of real EJ outcomes.

Another missed opportunity for procedural justice is reflected in the public participation processes that the Action Plan process fostered. The state turned to public hearings in the community to review the draft action plan once it was issued rather than meeting with petitioners throughout the process. Petitioners complained of having to

attend public meetings with state agencies without being able to review agency commitments prior to the meetings, effectively curtailing their ability to engage in meaningful dialogue or question the items in the action plan with agency leaders. Here you have a unique opportunity for communities to gain valuable access to agency leaders, but this access is rendered useless because of the petitioners' inability to engage in meaningful dialogue with these actors around real outcomes.

*We had two meetings in Camden, the first one was attended by a bunch of fairly senior people from NJDEP but they weren't able to tell us whether or not NJDEP was going to make any additional commitments beyond what was in the plan...then there was the meeting with the two commissioners Jacobs [NJDHSS] and Campbell [NJDEP] which was a public relations nightmare...we told them we don't want another meeting until you tell us in writing what additional commitments you are or are not making. They ignored our requests and said we're going to have the meeting anyway, and basically we should be so honored because the two commissioners were coming. Campbell gets up there and he's totally unprepared, he's reading from a crib sheet a staff member prepared, and he asks the community for input again on the same issues we had spent 4 hours giving to his staff at the last meeting. So that was a disaster and some people were really upset and stormed out in disgust, and then [Commissioner] Jacobs gets up there and says basically I'm very concerned about environmental health, I think we really need to address people's smoking and obesity...so that really didn't go over well...we're concerned about environmental health and safety and he's transferring it back to - it's your fault, you're fat and you smoke. (OP/NJ interview, 4/4/06)*

The descriptions of public meetings with the state highlight several problems in the state's approach to public participation. On the one hand, the agency is extending its agency leaders in a way that perhaps they might not have done in the past – going to an evening meeting in the community to review the action plan. But on the other hand, the discussion and agenda for these meetings is entirely controlled by the state. In the first meeting, residents' substantive questions are deferred because the staff claims no authority and in the second meeting with the Commissioners, the state is unwilling to share information and open up the dialogue so residents can discuss substantive

commitments with agency leaders. The Commissioners' meeting points to a serious lack of understanding of the issues and sensitivity to the residents' on the part of the state. Disadvantaged residents, sit through hours of meetings and the Commissioners are not prepared to answer questions, do not respect residents' time and rather than acknowledging the responsibility of the state, turn the problems around to blame residents for their plight.

The Action Plan process seems to promise a great deal in the way of public input and outreach but fails to provide any alternative mechanisms by which to truly institutionalize meaningful participation in state decision-making processes. There are few opportunities to explore alternatives, negotiate or mediate differences between the state and community residents or come to some consensus around action items. The Waterfront South Action Plan includes a great many action items devoted to enhanced public notice and participation, increased education and outreach initiatives, and greater access to agency information and staff. But there is little in the way of mechanisms by which communities and the state can engage in joint decision-making. The following are the procedural action items included in the Waterfront South Action Plan. There are approximately 20 action items out of 50 explicitly focused on procedural issues.

**Table 7: Procedural Action Items from Waterfront South Action Plan**

<p><b>Under Air Quality</b> 12. NJDEP will develop an early public notification process for significant air permit applications received from facilities in or near Waterfront South. This process will include:</p> <ul style="list-style-type: none"> <li>a. Electronic notification to community members that sign up for notification.</li> <li>b. Mailing of paper documents to community members that sign up without access to email.</li> </ul>
<p>13. NJDEP will develop a fact sheet and hold an availability session on how the public participation process works as well as other areas of opportunity for public input.</p>
<p>14. NJDEP will provide community awareness training to permit writers to increase their understanding of the community stressors. This training could include a community tour and discussion with community groups and other stakeholders</p>

15. NJDEP will develop enhanced public participation for air permits with significant public interest. One objective of this enhanced process is to seek community input on possible emission reduction measures. Under this process, the public can: Call with questions. Review applications. Comment on the applications informally. Request an informal availability session. Request a formal public comment period, and/or public meeting, pursuant to our existing rules.
<b>Under Community Outreach and Education</b> 18. NJDEP will insure that residents are informed about environmental issues and decisions that will impact their community.
20. NJDEP supports the efforts of Camden advocacy groups toward neighborhood improvement, especially as these relate to the cleanup of contaminated sites and potential impacts from these sites to residents in the area. To this end, the Site Remediation and Waste Management Program (SRWM) is developing an inventory of all sites under its purview in the Waterfront South area d. SRWM's Office of Community Relations (OCR) can provide a workshop on Site Remediation basics and interpretation of the information on the list in b above.
<b>Under Site Remediation</b> 23. While state law precludes a formal public role in remedy selection, NJDEP will facilitate interaction between local groups and the remediating party during the remedial process, esp. in residential areas.
24. SRWM is committed to conducting outreach, assistance and education regarding available tools to assist in site remediation at Waterfront South.....At the request of Waterfront South, SRWM can conduct outreach on such topics as the tools available to characterize properties, funding opportunities including HDSRF, federal sources, and research funds, etc.
<b>Community Outreach and Education</b> 25. NJDEP's Site Remediation and Waste Management Program has selected a single point of contact on Camden Waterfront South from its Office of Community Relations (OCR) to facilitate communication regarding the collective group of cases.
26. NJDEP will set up a community bulletin board to be updated with events at Waterfront South
<b>Under Water Quality</b> 28. The Bureau of Nonpoint Pollution Control (BNPC) is actively engaged in modifying the existing Scrap Metal General Permit (GP). Prior to proposing these modifications, the BNPC will tour the permitted facilities located in the Waterfront South community to better understand the needs of the community and observe the operations of these facilities.
30. The BNPC will identify a point of contact within the Bureau to address any issues, concerns and questions that may arise as a result of this permit.
<b>Under Health</b> 33. NJDEP will coordinate with NJDHSS and the county health agencies to provide educational materials to residents, community leaders and school officials about how they can improve water quality to reduce potential exposure to lead contamination.
<b>Environmental Health Programs:</b> 44. The NJDHSS, in coordination with the Puchack Wellfield Health Study Task Force, will develop and distribute materials describing the cancer incidence analyses completed, and provide information on environmental and other risk factors for these cancers.
<b>Under Transportation</b> 48. Design a public outreach program that will encourage the community to partner with the Department to adequately identify the transportation issues and decide on potential solutions.

While there are a number of participation and outreach efforts included among the action items, it is interesting to note how this participation is uncoupled from the state's decision-making processes. For example, under air quality, the NJDEP commits to training their permit writers on the EJ issues in Waterfront South but then doesn't have any recourse for those permit writers to incorporate that training into their permit decision making. Also under site remediation, the state notes that the law does not allow

for public involvement in the selection of clean up strategies for contaminated sites, “23. *While state law precludes a formal public role in remedy selection, NJDEP will facilitate interaction between local groups and the remediating party during the remedial process, esp. in residential areas*” The state commits to engaging the community in these decisions without specifying a mechanism for incorporating that input into their decision making. Petitioners thus question the purpose of so much participation when the outcomes remain unchanged.

*“They are doing the PR thing trying to get along with EJ communities and the awareness of EJ issues is growing in the agency but the standard operating procedures are the same because of the economic and business interests are so entrenched...”* (SF/NJ interview, 3/26/06)

Another problem with the participatory measures listed in the action plan is the limited scope of participation promised under the plan. The action items make specific commitments, some of which are one-time workshops or information sessions, without institutionalizing the meaningful participation of residents. For example, commitments to increase information and agency access are limited to the residents of and cases in Waterfront South. The action plan process does not institute any systematic changes within agencies to offer this level of access to all EJ communities in the state. Thus participatory measures offered in the plan would not apply to similar EJ communities in other parts of the state. *“Well they [NJDEP] made it easier to get meetings in the community and get inside the agency but I’m not sure if that was an agency wide change or just for us [South Camden] because of the petition...”* (JN/NJ interview, 3/28/06)

The action plan also highlights increased and improved community meetings and educational materials targeted to the Waterfront South community. They extend a new opportunity for informal meetings, which communities did not have under the St.

Lawrence Cement Case and which industry typically enjoys. These informal venues hold great potential for fostering more productive and substantive lines of communication with state agencies. This did not seem to occur in the Camden case because petitioners were not given access to agency officials during the creation of the action plan. The state also promises to make information available in new ways through community bulletins and through single points of contact within the agency. But there are no proposed alternatives to decision making input beyond the same public meetings and comment periods. The existing public meetings in Camden highlight the inherent problem of participation that is not linked to substantive decision-making power. Residents express frustration and anger at these meetings rather than empowerment and relief.

*“We can get hearings on permits and request information but the agency still can’t deny the air permit... they just meet us to death, and people are so good, they are tired and beat up but they still come out to these night meetings over and over again and sit there for hours listening to the boring DEP techno-speak, they endure all this to have their say but in the end we see little back from the agency.”* (EV/NJ interview, 3/31/06)

Under the Health action items, the state promises to distribute information and conduct more studies to inform residents of potential health risks associated with poor air quality for example. These studies and information distribution sessions do not include an important component, which describes how the state and industry should contribute to reducing these risks. Many EJ activists viewed studies wearily because of the lack of connection to mitigation strategies, *“...And these studies – we’re tired of being poked and prodded and studied and when it’s all over – we’re still sick and being poisoned.”* (LS/NJ interview, 10/21/2003) Studies that confirm poor health and environmental conditions without offering any recourse particularly frustrate residents.

*“...all these studies are great but in the end, they always end up putting it back on us somehow...it’s like when we had breast cancer screenings offered to us for free by the medical school, we said great! But they would do the screenings, tell someone they had cancer and then not offer any way for that person to get the necessary medical attention they needed...people don’t have health insurance, they’re sick and it’s not enough to tell us we’re sick...needless to say we refused to allow them to do anymore health screenings unless it came with a promise of treatment or follow-up ...it’s the same with all these asthma studies, we know we have an asthma problem but they tell people to stop smoking or not go outdoors when the air is bad...why not fix the air problem instead of telling us not to breathe it...it’s crazy! (CJ/NJ interview, 4/2/05)*

Although the Action Plan focuses on several measures for improved participation, procedural justice is only minimally served through these measures. The action items focus on extending the agency’s normal participation processes and activists recognize this greater access to the agency as a marked improvement in community – state relations. But these improvements are not accompanied by more far reaching mechanisms to sustain procedural justice.

The Action plan process could be improved in a variety of ways so that EJ communities can be better represented in key decision-making processes of the state. Some of the potential improvements include: the creation of citizen review boards; greater representation on existing policy-making bodies within agencies; requiring community input in key decision-making processes such as permitting or site remediation decisions; offering technical assistance grants or other funding resources to EJ communities to balance the power of participants in these processes; requiring alternative mechanisms for public dialogue and decision-making, such as third party mediation or facilitated stakeholder processes. Finally, the institutionalization of these procedural justice goals in the EJ Executive Order would give all EJ communities an opportunity for meaningful public involvement in decision-making.



### ***Structural injustice***

The Camden environmental justice petition challenges the state to address decades of blight and neglect leading to a multitude of environmental ills facing Camden residents. The response to this call for action from the state comes in the form of an Action Plan with various commitments from a wide variety of state agencies. The *Waterfront South Action Plan* opens with an introduction that focuses on the historical factors that led to the environmental and economic decline of Camden. The introduction includes an explanation of discriminatory housing and zoning laws that worked to concentrate residents in inner cities close to industry. It also touches on the social and economic upheaval of the 1960s when industry shut down and white, middle class residents fled Camden. Despite this acknowledgment of structural problems in Camden, the plan narrows the focus of state action to Waterfront South rather than the whole city.

*“How does a Camden’s Waterfront South neighborhood, faced with decreasing population, blight, prostitution, under-development, and a mix of industrial facilities create a sustainable, enclave that meets the needs and ensures the health of its residents and workers? The answer is not an easy one. However, the EJTF acknowledges the role of its agencies in helping to ensure the protection of public health and the environment.”* (NJ EJ Task Force, 2006)

The Executive Order and more specifically, the Waterfront South Action Plan, goes beyond the former environmental equity policy by acknowledging structural forms of racism and injustice linked to environmental degradation. The Action Plan and the Executive Order also go further than the previous policy in that it attempts to include several functions of the state beyond just the environmental management agency. The Executive Order pulls multiple state agencies into the environmental justice action plan process thereby allowing broader social and economic issues to be addressed in environmental justice cases like Camden. Despite the ability of these agencies to broaden

the scope of action in EJ communities, the Executive Order does not have any measures built into the Action Plan process to hold these agencies accountable to EJ goals. The EJ Order also lacks provisions for agency funding or new legislative or regulatory avenues by which to tackle the problems in EJ communities.

Although several agencies were tasked with working on the action plan, it was clear that the environmental management agency (NJDEP) was the only agency with dedicated staff focused on action plan commitments. According to the petitioners, much of what the other agencies committed to in the action plan were existing projects. For example, many of the state's ongoing economic initiatives were included in the plan:

- New Jersey Environmental Infrastructure Financing Program provided several million dollars in grants and mostly loans for sewer and water main improvements
- New Jersey Housing and Mortgage Finance Agency has been involved in the Waterfront South Relocation Project. The Department of Community Affairs Division of Codes and Standards coordinated with NJHMFA on this project through their administration of a \$1.26 million Demolition Bond Fund.
- NJ Redevelopment Authority has financed a large number of projects in Camden. \$1.5 million in financing for the remediation of the Nipper Building (downtown), a \$250,000 grant to the Delaware River Port Authority to invest in Admiral Wilson Boulevard, and new residential investments on the ABC Barrel site. While NJRA has not executed any projects within the Waterfront South area, the agency is a long-standing member of the Waterfront South Task Force (NJ EJ Task Force, 2006, p.57-59)

These economic projects reflect the limited investment of state agencies in the Waterfront South community in particular and also the lack of more progressive, community based development projects that can address the structural inequalities facing poor, minority residents in Camden. For example, the housing investment is limited to demolition and relocation of residents from Waterfront South rather than the rehabilitation or provision of quality housing for low-income residents. This “investment” could potentially wipe out the very neighborhood that was petitioning the

state for improvements. Furthermore, the issue of relocation and demolition was highly contested in the community and raised ethical questions about the level of input from residents in planning and deciding the ultimate fate of their community. Also the NJ Redevelopment Authority notes its' investments in the City but these are private development projects concentrated downtown not in neighborhoods which are in desperate need of revitalization.

Most troubling about these economic investments is the lack of connection between redevelopment decisions and the impacted communities. In the past, state and federal aid entering the City of Camden often found its way into the hands of local or regional political interests rather than benefiting the most distressed neighborhoods. These regional investment decisions were made with little local or legitimate public oversight. There was minimal, if any, public input into political decision-making because the state took over city leadership and even prior to that, residents suffered under corrupt political leadership. Thus decisions regarding the allocation and use of state aid occurred without any community oversight, allowing structural inequalities to fester. Greater democratic decision making related to the manner in which this aid is appropriated and implemented is key to the fulfillment of structural justice and the action plan does not include mechanisms by which EJ communities can influence the distribution or application of this aid in their communities.

The Action Plan also does not call into question the concentration of regional polluting facilities in Waterfront South nor does it mention mitigation measures or financial restitution for the economic and environmental burden placed on residents.

*“Although the CCMUA has made some attempts to compensate Camden for hosting this facility, it is not clear that the amount is appropriate in light of the plant’s*

*significant downside for surrounding neighborhoods. Similarly in 1987, the Pollution Control Financing Authority (PCFA), an independent authority created by the county, purchased land in Camden, for \$1.7 million, to build a trash-to-steam plant. Trucks carrying 1,500 tons of garbage enter the city each day from the suburbs. This move enabled other areas in the county to tear down their unattractive incinerator facilities. Although the PCFA pays Camden approximately \$2 million a year to host the facility, it is not clear that this payment offsets the plant's impact on neighboring property values.” (NJ EJ Task Force, 2006, p.15)*

The concentration of these regional facilities directly reflects the racialized patterns of facility siting prevalent in environmental justice communities. These facilities benefit thousands of white, well off residents living far from the facility while they burden the most disadvantaged people living in close proximity. The Action Plan does not address or attempt to counter these regional investment decisions. For example, the plan could have instituted a tax or penalty against these facilities to create a community benefits fund controlled by local impacted residents to make physical improvements and attract new, less polluting economic investments. For Camden residents, the links between their community's environmental degradation and the deeply rooted structural injustices that accompanied industrialization and economic development are clear:

*“The industrialization broke the will of the people. They kept dumping and dumping and dumping and as they dumped on the people you got less and less and less city services. And people saw that, they saw the dumping, they saw the trash to steam plant, they saw the electrification plant. That's dumping on people. See, the people know that, and the people know that the people downtown don't care. No, we're not gonna stay in this neighborhood. I see the train on the track. I don't foresee a good ending to this situation. I like this neighborhood. I've lived here for ten years. My family's here - But the resources are not available, the priorities are not here. It's the city and it's the state and it's the federal policy makers who have decided to kill this neighborhood.” (National Public Radio broadcast, Reverend Stewart, 2004)*

There are a variety of strategies the Action Plan process could have incorporated to address structural injustice in Camden, including: infrastructure improvements in neighborhoods; initiatives to attract sustainable, employment opportunities for low

income residents (i.e. green collar jobs); community development funding; direct funding for capacity of resident groups; provision of housing and health care services; guidelines for land use planning and zoning decisions that reverse and mitigate environmental burdens and segregation; precautionary environmental management practices that reduce or eliminate environmental burdens; community benefit agreements to compensate impacted residents directly; institutionalization of citizen boards or other mechanisms of citizen led decision making bodies; and political empowerment of residents to make decisions about their community. These strategies are just some examples of how the state could address decades of public and private disinvestment, political disenfranchisement and environmental degradation in Camden.

In terms of structural injustice, the Executive Order and its related Action Plan go further than the former environmental equity policy in that they recognize the connections between environmental degradation, economic disinvestments, and the racialized urban development patterns that unfolded in cities like Camden. This acknowledgement brings to the forefront the deeper institutional and structural sources of environmental problems in Camden and the state's complicity in tackling these issues. Unfortunately, the Executive Order and the related Action Plan process don't go far enough to address structural environmental injustices in Camden.

### Conclusion

The Camden case study illustrates how distributive injustices like a polluting facility are the result of deeper procedural and structural inequalities afflicting low income, minority communities. The case also highlights the state's complicity in the development of environmental injustices and the failure of subsequent environmental

justice policies to address these injustices. The state's original environmental equity policy did not recognize structural inequalities but focused on superficial procedural fixes to distributive injustices. The state's second attempt at an environmental justice policy went further in recognizing the complexity of environmental injustice and its structural roots but again relied on weak procedural fixes to address distributive injustices. Although the two policies differed extensively in content, their ultimate impact was not dramatically different.

It took decades of government intervention to decimate Camden and it will take similar efforts to revive the city and achieve environmental justice. States must seek broader regulatory mandates; increase political cooperation at multiple levels of government in order to influence a wider range of issues including economic development projects, affordable housing and land use planning efforts; clarify and expand legal, regulatory mandates to address existing and future environmental burdens; deepen participatory, democratic practices; adopt the precautionary approach; and finally redistribute resources and decision making power to disadvantaged communities.

**CHAPTER 5.**

**PROMISE AND PERIL OF STATE INTERVENTION:  
THE ENVIRONMENTAL JUSTICE MOVEMENT IN NEW JERSEY**

The environmental justice movement emerged in the United States in the 1980s as fierce local opposition grew to the siting of hazardous waste facilities in poor, African American communities in the South. These local battles grew into networks of grassroots organizations throughout the nation under the rubric of environmental justice. According to Clark Atlanta University's Environmental Justice Research Center, there are more than 1400 organizations nationwide working on environmental justice. Today the environmental justice movement is organized loosely around local, regional, state and national networks of community non-profit organizations and grassroots activists similar to South Camden Citizens in Action. As the environmental justice movement matured, it focused increasing attention on the government's role in perpetuating and addressing environmental injustices. Consequently the government evolved responses to environmental justice issues with the enactment of federal and state policies. The co-evolution of the environmental justice movement and the development of state policies raises interesting questions about the ways in which the movement impacts state policy making and vice versa.

This in depth, participatory case study of New Jersey's environmental justice movement explores how the goals and strategies of the EJ movement are shaped by the states' increasing institutionalization of environmental justice issues. I propose that the increased state institutionalization of EJ drives local, grassroots activists to articulate goals and organize at increasing scales of action beyond their local communities. The environmental justice movement in New Jersey also leverages these particularistic, local concerns to expand their influence and link to more universal goals of social justice. Thus, the movement incorporates "militant particularities" into a framework for more



universal scales of action (Harvey, 1997). I propose that the state's institutionalization of EJ, in part contributed to the EJ movement's increasing scales of organization and action. I first examine how the EJ movement articulates goals and organizes strategies, according to particularistic and universal scales of action. This articulation of environmental justice goals by activists reveals how the movement holds true to the tenants of emancipatory social politics of self-empowerment while also challenging capital and cooption by the state. I then go on to explore how the EJ movement is itself impacted by the enactment of environmental justice policies.

The exploration of the environmental justice movement in this participatory case study is limited to the environmental justice movement as defined by the participation of groups and individuals in the statewide and regional environmental justice alliances in New Jersey. I recognize that there are environmental justice activists and segments of the movement that may in fact not be captured by participation in these alliances and thus this one of the limitations of this study. As stated in the methods section, I began my research as a non-participant and gradually transitioned to a participant in the movement as I became increasingly involved with the statewide EJ alliance and a local EJ group in Newark, New Jersey.

#### Evolution of the Environmental Justice Movement in New Jersey

In a 1992 New York Times article (Peterson), the headline read, "New Jersey Is the Garbage State No More". This article goes on to articulate an image of the state as a haven for environmental degradation in the previous decades:

*"...as the ingenuity of environmental offenders has increased, so has the determination of state agencies to see that the Garden State does not regain its grim reputation as the Garbage State of a decade ago, when the waste dumps smoked and*

*smoldered, waterways were glazed with gunk and Federal officials identified more toxic clean up sites per square mile than in any other state.” (Peterson, 1992)*

This environmental degradation coincided with the economic and environmental plight of mostly urban communities throughout New Jersey. In the 1970s and 80s New Jersey’s inner cities were some of the hardest hit in terms of environmental disasters and toxic spills. During this time, there were many local struggles around toxics and waste facility sitings that brought low income and minority residents and non-profit groups into the environmental justice movement. Some of the earliest EJ activists were citizens concerned about the discovery of superfund sites (Interfaith Community Organization, Ironbound Community Against Toxic Waste, etc.) or fighting incinerators or other unwanted hazardous facilities in their communities (i.e. Coalition Against Incineration, United Passaic Organization).

These groups relied on a rich history of organizing grounded in the Civil Rights and Anti-Toxics movements before the term ‘environmental justice’ was coined. After decades spent organizing around local issues, the environmental justice movement in New Jersey began to coalesce and organize regionally and then statewide. In 1995, the Community University Consortium for Regional Environmental Justice formed to create an information and research infrastructure for environmental justice groups in New Jersey, New York, & Puerto Rico. Local groups also began to interact with national and international EJ networks through participation in national conferences such as the First (1991) and Second (2001) National People of Color Summit. The following are some of the key milestones in New Jersey’s EJ movement.

**Table 8: New Jersey Environmental Justice Milestones**

Year	NJ EJ movement Milestones
1981	Local residents in Camden learn of radioactive hot spots
1985	Ironbound Community Against Toxic Waste forms in response to dioxin contamination in Newark
1989-1991	Environmental justice and racism invoked by local activists fighting incinerator sitings in Newark and Camden
1991	First National People of Color Summit – residents from Newark, Camden, Trenton participate
1993	Community University Consortium for Regional EJ brought together communities in Newark, New York and Puerto Rico
1994	Federal EJ Executive Order issued by the Clinton Administration
1995	Local permit denied by NJDEP for sludge plant in Newark on EJ grounds, due to ambiguity over EJ mandate emanating from the Federal EJ Executive Order. State was unclear how this order would impact state permitting decisions in EJ communities.
2000	Environmental Equity policy enacted by NJDEP
2001	Camden sues NJDEP for St. Lawrence Cement Permit
2002	Second National People of Color Summit, participants from all over New Jersey
2003-2004	New Jersey Environmental Justice Alliance formed with 3 regional groups
2004	Governor McGreevey signs EJ Executive Order

In 2001, many local groups and EJ activists throughout New Jersey came together to discuss their participation in the Second National People of Color Summit. Shortly thereafter, many of these individuals and groups decided to form a loose coalition to support and share the environmental justice work occurring throughout the state. The group formed three regional groups, South, Central and Northern EJ alliances and the statewide New Jersey Environmental Justice Alliance (NJEJA), comprised of over forty organizations and activists from around the state. NJEJA is not incorporated as a non-profit, but rather organizes itself loosely as a volunteer coalition of groups and individuals interested in pursuing the goals of environmental justice as articulated in their mission statement and in the Principles of EJ outlined at the National People of Color Summit (1991). The organization's mission statement describes their mutual purpose, *"...to identify, prevent, and reduce and/or eliminate environmental injustices that exist in communities of color and low-income communities."* (Appendix A)

### Growing Pains - Organizing from the local to statewide levels

The formation of the statewide New Jersey Environmental Justice Alliance (NJEJA) was a keystone moment filled with challenges and opportunities for the EJ movement and EJ communities. Could this movement grow to regional and statewide proportions and still maintain their grassroots, participatory stance? Could the EJ movement in New Jersey unite diverse stakeholders in solidarity to achieve more universal goals of social and environmental justice? The diverse groups of the alliance worked on EJ via a variety of avenues, from grassroots organizing in local communities to statewide policy making. In addition to a diverse set of geographies, strategies for advocacy and organizing, and issues, the group also contained a broad representation of participants including professional non-profit workers, academics, lawyers, organizers and individuals. A majority of the members were representatives of non-profit organizations focused in different parts of the state. This diversity posed special challenges to the formation of the statewide alliance.

One of the first challenges faced by the group was establishing the statewide group's organizational structure. Members found it difficult to come to an agreement about how to make decisions as a statewide body, with some members wanting to rely on a steering committee model in which representatives from each region would be empowered to make decisions for the whole region in statewide decisions. Other members fiercely opposed this model as being undemocratic and representative of the hierarchal models that the EJ movement was suppose to oppose.

*Should we follow a corporate decision making model that's oppressive or come up with a model grounded in activism and civil rights? Part of our strength of this group is that we will organize and challenge business's decision making. We need a model*

*that works really democratically, not one that just looks democratic.* (Participant observation, NJEJA meeting, 1/15/05)

Some members felt that the steering committee model was important because it was the only way to make decisions efficiently and thus enable the EJ communities to be included and influence statewide decision making where mainstream environmental interest groups were already exerting their influence effectively. The pro-steering committee members felt an urgency to form such a decision making body partially in response to pressure from the state to engage more directly in policy making and also in response to urgent public health needs of communities.

*Sometimes, this organization has to move fast and we have to figure out ways to deal with issues. There are times when we need to act quickly, and with a long process, it may be difficult to move quickly. But we can't allow lives to be lost in the process because we can't decide quickly enough.* (Participant observation, NJEJA meeting, 1/15/05)

Other members favored a model of decision-making based on a consensus-based model of collaboration. Many of the South Jersey alliance members favored this consensus-based approach and were already using it in their regional alliance as a form of decision-making. They felt confident that the consensus-based model would produce more representative and democratic decision-making. The pro consensus-based members rejected the drive to respond on demand to state policy making or political processes.

*“Every decision is a political decision and we have to recognize that we work within an oppressive system. We live with a level of violence and the challenges we face are often life and death situations. Environmental racism forces us to link to other people in order to fight it. We lack a model to challenge this oppressive system and structures where we end up repeating or mimicking the corporate/capitalistic model within our own group. That's why I don't support the majority voting decision-making process because it reflects this oppressive system we are trying to fight. The model that works is building consensus to work within our group. This is a political issue.”* (Participant observation, NJEJA meeting, 1/15/05)

The issue of decision making and related issues of voice, representation, collaboration and trust were tackled at a two day retreat called by members from all three regions in an effort to avert dissolution of the statewide alliance. An activist makes a plea for a consensus building effort that will align all the regions:

*“There are critical issues that need still to be addressed such as sense of direction, unity, leadership, accountability and the communication process. All of which are under what we have already agreed upon in the Mission and Principles, in order to move the EJ agenda forward. My understanding was that we would work toward achieving a consensus driven process and that it would be driven by grassroots participation.”* (North Jersey EJ Alliance member in an email correspondence to NJEJA list-serve, 1/15/04)

Additionally, the questions of how the body would be organized surfaced other contentious issues of how the group would seek funding for project and capacity building support - should they incorporate as a 501 c3, should they do so only at the regional level? The issue of autonomy for regional and local groups also became an important point of debate as the group negotiated their relationship between the statewide, regional and local affiliations. Entangled in these debates about structure were also questions of voice and representation. Who would be empowered to speak, make decisions and raise money to work for environmental justice? Similar to other social justice movements, the EJ movement in New Jersey grapples with how to unite a diverse set of participants under the rubric of social and environmental justice goals.

*“One of the issues is tension that may exist between the regions of the Alliance. We need an open, honest and thorough discussion concerning the relationship between the regions. Another issue is the relationship between grassroots professionals, mainstream professionals and academics within the Alliance. Again, I sense a tension here that needs to be addressed. I should also note that these geographical and professional tensions are not unique to NJEJA but seem to exist to some extent in the larger environmental justice community as well. An environmental justice organization that unites grassroots professionals, mainstream professionals, academics and advocates from different areas of the state on a sustained basis would be a victory in and of itself and hopefully would lead to concrete triumphs on*

*environmental justice issues in New Jersey.*” (SJEJA member email correspondence to NJEJA list-serve, 2/5/04)

The two day facilitated retreat tackled three of the most critical issues facing the statewide group that members identified from a very long list of issues.

1. Decision making process
2. Balancing statewide vs. grassroots membership
3. Building trust & fighting environmental racism

For the first item, decision-making, members of the South Jersey EJ Alliance argued in favor of a consensus based decision-making framework as an alternative to traditional majority voting or a hierarchical steering committee. They defended the consensus-based model from accusations that it would be too complicated and unmanageable to come to a consensus around contentious issues. Members explained how a consensus model could more effectively address and resolve contention rather than a steering committee model that they felt would simply obfuscate debate. To make their case, SJEJA members circulated simple literature on how consensus-based decision-making works from a textbook, “The Team Handbook” (Scholtes, et. al, 2003). In order to reach consensus, all the active members of the alliance would have to agree in principle to the decision being made. If someone in the group did not agree, a small side quorum would be formed to discuss the points of disagreement with the respective dissenting members. If at the end of that quorum the members still did not consent, the statewide alliance would not be able to fully support the decision and then the individuals or groups or even regions could take independent positions on the decision.

The chair-people from South Jersey facilitated the first few consensus-based meetings for the group to illustrate how meetings could be conducted efficiently and

fairly using these techniques. At the end of the retreat, members resolved to pilot the consensus based model of decision-making on a provisional basis for a period of six to twelve months at which time they would jointly evaluate the process. The Alliance has continued to utilize this consensus-based model to develop and implement statewide campaigns, respond to state and industry actions and secure funding for the statewide group. Surprisingly, what was a hotly contested form of decision-making became a non-issue once the consensus model was adopted. Members found it easy to open up discussion and share ideas freely without feeling pressured to vote on decisions. Instead, decisions flowed naturally from the group as a result of the discussion. One of the major impacts of adopting this consensus-based model was that it heightened the groups' awareness of membership in the Alliance. Consensus worked well because members in the Alliance were familiar with each other and had been through a trust building period at the statewide retreat. As a result, the Alliance scrutinized new members to ensure that they were working in good faith and in line with shared principles of EJ.

The second goal of the retreat was to address the balance between grassroots and statewide EJ goals. Alliance members were committed to securing and increasing their grassroots organizing capacity and bring more grassroots voices to the forefront of the statewide collaboration. To this end, the statewide alliance hosted its first "People's Assembly" in which residents from impacted communities throughout the state that were not members of the alliance were invited to share their stories of struggle. This event was organized to increase the capacity of the regional and statewide alliances to organize and mobilize more activists but also to prioritize and address issues raised by the stories of those struggling on the ground.



*The primary purpose of the People's Assembly is to develop a working agenda for NJEJA based on the needs of the communities directly affected by environmental racism. The Assembly also serves as an organizing tool for NJEJA and the regional groups so that we can begin to identify, work with and attract more members from impacted communities into the Alliance. Finally, the Assembly helps identify and prioritize the issues that matter most to the people suffering from environmental injustices so that we in the Alliance can better respond to and work with local people in their struggles against injustice. (NJEJA, 2005)*

The statewide alliance is still struggling to recreate the assembly and increase their grassroots and organizational capacity. The statewide alliance has also opted to not incorporate as a non-profit organization and remain a loose coalition of groups and individuals while the South Jersey regional group has incorporated as a 501-c3. More recently, NJEJA has for the first time agreed to put forth a statewide funding proposal that would help staff the statewide alliance and support regional projects and capacity building efforts. The statewide alliance has also gone on to articulate goals for representation, voice and fundraising. Ultimately, the retreat managed to refocus the group on the value and purpose of a statewide alliance to meet the third goal of the retreat, which was to work together to fight environmental racism.

*"We feel that NJEJA is an effective way for communication and facilitates us to be in solidarity. The work on the ground is done in the regions. Most of us have our own hands full with all the work we are doing. In that respect, we agree that for NJEJA be an effective instrument, it will be by becoming a communication and solidarity instrument, where we can be informed of the work that we are doing and provide solidarity when needed. At a minimum this can be effective and will enable us to gather our strength when needed." (SJEJA member email to NJEJA list-serve, 2/8/05)*

The environmental justice literature suggests that the EJ movement represents a break from the mainstream environmental groups in the way they resist cooption by the state and adhere to a model of self-empowerment and representation. The tensions surfaced in the organizing strategies of NJEJA reveal the difficulties of balancing the need to respond effectively to statewide issues while also maintaining a grassroots,

participatory structure. The state's institutionalization of EJ issues placed increased pressure on NJEJA to respond in the traditional model of interest group politics adopted by mainstream environmental groups in the state. But NJEJA members rejected this hierarchical model of decision-making and remained committed to more democratic practices rooted in grassroots organizing. Although the statewide group engaged the state on larger policy issues, they selected a more democratic and deliberative model of collaboration by which to advocate for more universal EJ goals.

In addition to the statewide and regional environmental justice alliances, the State's Department of Environmental Protection (NJDEP) created an Environmental Justice Advisory Council (EJAC) with a broad range of stakeholders to advise the department on EJ issues. This group was first created in the late 1990s prior to the development of the EE policy. Membership on the council was determined solely by appointments made by the NJDEP Commissioner and was thus closed off to a great majority of EJ activists and communities. Originally this group over-represented state staff and the few EJ community representatives on the council voiced opposition to the agency's weak EE policy.

With the enactment of the EJ Executive Order in 2004, the council was reconfigured and formalized. Again, the issue of representation and voice on this body was contentious. This time, EJ activists in NJEJA were asked to suggest representatives for appointment to the Council. A member of the Central Jersey group writes in an email exchange with regards to nominating representatives to the Advisory Council:

*"I have not weighed in on the EJ Council until now, but I am concerned that NJEJA might put forward slates of folks who are well meaning but are not grass-roots EJ activists. For those of you who don't know me I am a white middle class woman who grew up in a working class family. I am a staff person in an environmental*

*organization that serves grass-roots organizations and activists around the country. I believe that NJEJA should be putting up a slate of candidates that are: grass-roots environmental activists who live in or have lived in impacted communities AND are people of color or low-income whites. Otherwise, I believe we will do a great disservice to the spirit and intent of the EJ activists who have struggled to have their voices heard.”* (CJEJA member email correspondence to NJEJA list-serve, 2/3/04)

NJEJA nominated three grassroots EJ activists, one from each region to the advisory council. This decision by NJEJA illustrates how the statewide group can implement more democratic decision-making by working in collaboration instead of as individual local groups. The statewide alliance, rather than suppressing grassroots emancipatory politics from the bottom up, has the ability to refocus members’ attention to those very issues of grassroots voice and representation that may have been overlooked with dispersed groups working independently in isolation.<sup>1</sup>

#### Impacts of state institutionalization on EJ movement

The NJDEP’s Environmental Justice Advisory Council is one way in which the state began to institutionalize environmental justice along with the enactment of explicit EJ policies. With this increased institutionalization, the EJ movement increasingly interacted with the state in a variety of ways, both cooperatively, in the Advisory Council, and oppositionally, through litigation and protests. Traditionally, the two groups interacted using oppositional frameworks in which grassroots EJ activists fought specific cases of environmental injustice in local communities such as contentious permitting cases (e.g. St. Lawrence Cement Co. in Camden).

But the EJ movement and the state came to a crucial point in their relationship at the time the state shifted to a more liberal Democratic administration in 2002. Under this new political administration, the agency seemed more amenable to EJ goals and hired its

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<sup>1</sup> I currently serve on EJAC as a representative of the Ironbound Community Corporation in Newark (since 2005). I along with four other EJ community representatives also represent the statewide EJ alliance.

first high profile environmental justice program director to develop an EJ policy. It was also at this time that the statewide alliance began to form and establish itself as a statewide group. The interviews for this case study reveal that the EJ movement's perceptions and expectations of the state shifted as the political leadership of the state shifted. For example, under the earlier Republican administration, activists perceived low levels of political receptivity or understanding of EJ concerns. When a new Democratic administration took over state government, they were perceived as being more sympathetic to environmental justice concerns. One activist reflects on this shift.

*"...environmentalism for him [former NJDEP Commissioner Shinn] was keeping the places that were relatively pristine keeping them pristine but everything else suffered. I think since naming Commissioner Campbell our relationship with the DEP has improved greatly."* (MG/NJ interview, 3/16/2004)

The NJDEP EJ coordinator further supports this view of a more receptive state.

*Our Commissioner believes in EJ. At the higher levels of the agency, it's a Democratic administration now and the management level reflects the administration currently, and as far as the upper management, people are very supportive of EJ.* (MD/NJ interview, 4/6/03)

The selection of a strong EJ advocate for NJDEP's EJ program was also perceived by the movement as an indication of the state's increased attention to EJ issues.

*"...having her [new program director] come in from the EJ perspective to work at DEP was great and you could tell that she was taken seriously by the administration because of her background as a lawyer and such ...she really had access to the top [commissioner] and could push for some real changes."* (MG/NJ interview, 3/16/2004)

The NJDEP EJ program director also reflects new expectations and perceptions of the EJ movement that are more sympathetic and cooperative. The director identifies with the EJ movement even while she works for the state and identifies the statewide alliance in particular as an ally in a collective effort for environmental justice.

*“I’m really going to rely on the NJ EJ alliance. I’m really going to rely on their help to get information out there and to let me know some of the things I should be doing. Part of the reason why I was able to get stuff done was because we worked cooperatively. I’m hoping that the alliance and my program can have that type of relationship.”* (MD/NJ interview, 4/6/03)

Despite this increased receptivity of the state, some activists remained wary of the ability of the state to make substantive strides toward environmental justice. The improved receptivity seem to open up the dialogue between the two sides but the outcome of this increased receptivity seemed uncertain.

*“...oh sure, we’re maybe a little better off with the new administration but how willing are they to make some real changes to the way they do business...look at the executive order, it has no teeth in it – so really, is there any difference, I’m not sure...we certainly feel more welcome in the agency but I’m not sure where that really gets at the end of the day.”* (MP/NJ interview, 5/22/05)

One of the key tests of the relationship between the EJ movement and the state came with the proposal and passage of the EJ Executive Order (EJEO) in 2004. The EJ coordinator at NJDEP worked on the development of the Order with selected input from the EJ Council and the Governor’s Office for almost two years. Alliance members debated whether or not to support the passage of the Order. Some members felt it represented a good faith effort to begin to address environmental justice issues systematically within the state while others saw it as too weak to make substantive changes on the ground.

*“We understand that this EJEO is very weak and clearly does not address all the issues we would like however, if we do not support the EJEO what does this say about our group and the necessity of an EEJO to hold the Governor and departments accountable to EJ issues.”* (NorEJA member email correspondence to NJEJA list-serve, 2/13/04)

A South Jersey activist responds:

*“We’re not sure it’s in our best interest to stand with the NJDEP on this EJEO, especially because we think its weak and won’t have any impact really. Wouldn’t it be better to keep trying to push them for improvements rather than just settle for the*

*present version of the Order?”* (SJEJA member email correspondence to NJEJA list-serve, 2/14/04)

Ultimately, the alliance did not reach a consensus on supporting the Order but they did agree to hold the state accountable to do more than what the Order promised and some of the regional groups attended the signing to show their support for the state’s efforts.

The diversity within the EJ alliance means that different members draw on different experiences of interacting with the state. For grassroots activists, their perceptions are largely built on decades of struggle with the state over local environmental injustices that pitted government and industry interests against local residents. While some members are working within statewide or established non-profit groups accustomed to negotiating with the state, grassroots activists may be more suspicious of working with the state. The government is thus perceived from a variety of lenses - as perpetrator of injustices, as a public servant with a public interest mandate, as mediator between competing interest groups (industry and the public good), as constrained and controlled by larger political forces, and as a captured tool of capital and industry interests.

It follows then that the EJ alliance reflects these divergences in the way they responded to the state’s EJ Executive Order. One of the most cogent manifestations of these divergences surfaced at a forum on environmental justice hosted in Camden, New Jersey where the community had a long and painful history of struggle with the state. At this meeting, the NJDEP made a presentation regarding the draft EJ Executive Order. In response, an EJ activist from Camden angrily responds to the presentation:

*“...EJ is just a buzzword – it’s something to make everyone sound like they’re doing nice things...Government is not your friend – we should not believe what they say*

*because government does not represent us!”* (Non-participant observation, Linda Selby, ANJEC EJ Rountable, Camden, 10/21/2003)

Another EJ activist from Central Jersey responds to these comments:

*“DEP can’t do everything. People need to understand that there are laws that need to be changed in order to protect people in Camden. We need to get legislators involved in passing changes from above, it can’t all be DEP. The state also has limited ability to shape local decisions because of all the emphasis on home rule in NJ.”* (Non-participant observation, Valorie Caffee, ANJEC EJ Roundtable, Camden, NJ, 10/21/03)

The Camden resident is a grassroots activist that is very cynical about the ability of government to bring about change or serve the public interest. The Central Jersey activist works for a statewide non-profit focused on government policies thus she draws attention to multiple the levels of government required to achieve environmental justice in Camden (municipal control and legislative control). This exchange reflects both the movement’s radical critique of the state while also pointing to larger scales of action and accountability necessary to achieve EJ.

*“Our government agencies have to be accountable and responsible for helping to provide solutions to problems they helped create and that address the common good, the public good. That’s what they’re there for.”* (VC/NJ interview, 4/4/2004)

Members of the statewide organization like NJEJA may articulate broader environmental justice goals whereas a local grassroots based activist may be more focused on locally specific issues. One EJ activist describes how people consider environmental justice goals differently at the local and state level:

*“I think other people will have different goals in other areas of the state and also depending on kind of work that they do. If I’m just a real grassroots volunteer and I’m just working in my neighborhood, then whatever that problem is in my neighborhood that’s what I’m going to be most concerned about and that’s what I’m going to focus on whereas I might not be focused on the bigger picture. But that little picture is important to me because that’s where I live. If I don’t interact at all with any type of government then I wouldn’t think too much about them. But here [Central Jersey] we try to look at the big and little pictures.”* (VC/NJ interview, 4/4/04)

Although the activist suggests grassroots activists tend to focus more on local, particularistic issues, the regional alliance attempts to deal with both scales of action – linking the grassroots issues with state level policy making.

The tension between the grassroots scales of action and tackling issues at broader levels weighs on EJ activists. *“I participate in the statewide and regional groups but I have to be honest, it takes a lot of time and effort which I can barely afford to give to it because I am so busy just handling things here...”* (MG/NJ interview, 3/12/04) One EJ activist describes the difficulties of working across these various scales of action.

*“What I feel like EJ activists end up doing is - each local battle is a totally separate issue that doesn’t seem to relate to all the other battles we’re fighting. So you finish one battle – you win it or you lose it, and then you have to move on to the next battle. It’s a never ending cycle of case by case scenarios instead of saying - lets stop, lets think about it and lets try and fix the bigger problems - let’s do it right in the beginning.”* (MG/NJ interview, 3/12/04)

This tension between the big picture and the little picture is suggestive of that critical decision Harvey (1997) describes between the “particularistic militancies” and “universal politics” that face environmental justice activists. The different scales of action and levels of sophistication in dealing with the state also reflect the maturation of the EJ movement. As the movement evolved and matured, it was able to incorporate both locally based, grassroots groups as well as state level advocates and non-profit organizations. NJEJA activists thus serve as a vehicle for linking particularistic issues with universal EJ goals. These universal goals go beyond the traditional distributive issues typical of the EJ movement and address deeper structural and procedural forms of environmental justice.



### Environmental Justice from Particular to Universal Goals

As the state increasingly institutionalizes environmental justice goals, the EJ movement also expands their strategies and goals from particularistic to more universal goals. This co-evolution is evidenced by EJ activists' articulation of environmental justice goals and strategies. Although grassroots EJ activists have traditionally been concerned with geographically bounded or "particularistic" problems in their local environment, this case reveals that activists were increasingly focused on higher scales of action and strategies beyond their local communities. One activist from Camden stated:

*"I came to this organization, but I didn't learn about environmental racism until I got involved with fighting the cement company. And the court said we had to prove environmental racism. There's racism in lots of areas in the US and in other issues like housing, education, not just the environment."* (Participant observation, LP/NJ NJEJA meeting 1/15/05).

As the movement organized at regional and statewide levels it resulted in greater attention to universal scales of action. Furthermore, activists concerned with seemingly "particularistic" local injustices were able to organize strategies and actions that linked some of these particularistic issues with more universal goals through the statewide alliance. The statewide alliance thus becomes a vehicle for challenging the state in more structural and institutional terms by linking local struggles to deeper patterns of environmental injustice. The following analysis reveals how the EJ movement moves from more particularistic, often distributive manifestations of environmental injustice to greater attention to structural and procedural forms of environmental justice.

### Distributive Justice and NJEJA

The problem of distributive injustice in EJ communities is a central concern of EJ activists. Many of the strategies articulated by the EJ movement focus on reducing and

eliminating disproportionate and cumulative impacts in EJ communities. The following are statements reflecting these distributive concerns (Appendix A)

- *NJEJA will draft new regulations, laws, and public policies that seek to eliminate and prevent the disproportionate imposition of environmental hazards on and the violation of the civil rights of low-income and communities of color.*
- *Challenge government entities (federal, state and local), corporations and mainstream organizations to be more accountable for reducing environmental pollution; remediation of contaminated sites;*
- *Push for adoption of new regulations regarding facility siting and pollution permits. The analysis of cumulative impacts from multiple pollution sources must be part of the siting and permit processes.*

EJ activists in New Jersey are focused on ways to mitigate the distributive problem of cumulative and disproportionate impacts in their communities. Although EJ activists identify with distributive problems in their local communities (asthma, air pollution, lead poisoning, etc.), they turn to statewide policies, and larger scales of action to address these seemingly particularistic concerns.

*“SJEJA aims to build alliances and coalitions with other activists in our region, the nation, and around the globe who are fighting similar struggles. We are united in a progressive vision for society based on social and environmental justice, which is grounded in the deeply held conviction that “another world is possible.” (SJEJA, Mission Statement, [www.sjenvironmentaljustice.org](http://www.sjenvironmentaljustice.org))*

The formation of the statewide and regional alliances reflects an attempt to link distributive concerns typically manifest at the local level with higher scales of action and universal goals of social justice. This attempt to address distributive injustices beyond the local level is articulated in NJEJA’s goals: (Appendix A)

- *Promote the “Precautionary Principles.” The Precautionary Principle requires governmental entities and companies to foresee and forestall problems, develop new ways of operating to avoid problems, and to set goals for health, well-being and justice.*
- *Advocate for and support mechanisms that empower communities (affected by disproportionate pollution burdens) to be part of environmental decision-making.*
- *Challenge government entities (federal, state and local), corporations and mainstream organizations to be more accountable for reducing environmental*

*pollution; remediation of contaminated sites; enforcing, creating and implementing laws, regulations and policies fairly; respecting the right of residents in communities of color and low-income communities to enjoy a safe, healthy, productive, and sustainable environment.*

To achieve distributive justice, EJ activists call not just for a redistribution of environmental burdens but the elimination and reduction of these burdens from all communities. The EJ movement is increasingly focused on promoting the precautionary approach as a way to tackle distributive injustices at their source. EJ activists could also emphasize pollution prevention, sustainability and toxics reduction measures rather than focusing solely on permitting practices or regulatory fixes within environmental management systems.

### Procedural Justice and NJEJA

Procedural justice is a central tenet of the environmental justice movement and is reflected in NJEJA's goals and principles of collaboration.

*"NJEJA advocates true democracy and empowerment. The Alliance will respect the rights to self-determination of and take guidance from the communities most affected by environmental and health disparities and risks." (Appendix A)*

EJ activists are careful to promote forms of participation that empower communities to "speak for themselves" and engage in meaningful processes that lead to more just outcomes. The EJ movement refers specifically to forms of participation that are linked to all levels of decision-making and address the material imbalances that often limit the participation of disadvantaged EJ communities. The following are three of the ten goals emphasizing participation adopted by NJEJA: (Appendix A)

- *Advocate for and support mechanisms that empower communities (affected by disproportionate pollution burdens) to be part of environmental decision-making."*

- *Support community-based capacity building and the EJ Movement in New Jersey. To build capacity, government must provide groups with power, money and information. Power means setting up decision-making so local groups have more weight in decisions that will affect them and their constituencies. Money means cash to really participate in decisions. And information means getting information to people at all stages of decisions (including the earliest possible stages, when alternatives are being considered.)*
- *In addition to building the capacity of local groups to participate in decisions, government must use the very best practices for finding out what citizens want. This means using consensus conferences, citizen juries, study circles, and other modern techniques for making democracy really work.*

NJEJA also reflects these ideals of democratic participation in their internal organizing strategies as discussed earlier in the consensus-based model of decision making adopted by NJEJA. NJEJA's goals also make explicit alternative decision making models like citizen juries and participation in the earliest stages of decision making. Despite the procedural justice goals set out by the movement both internally and externally, very few gains were achieved via procedural mechanisms in the state's EJ policies. This failure to achieve procedural justice via state policies may reflect the inability of the movement to push the state to connect procedural and structural justice goals effectively.

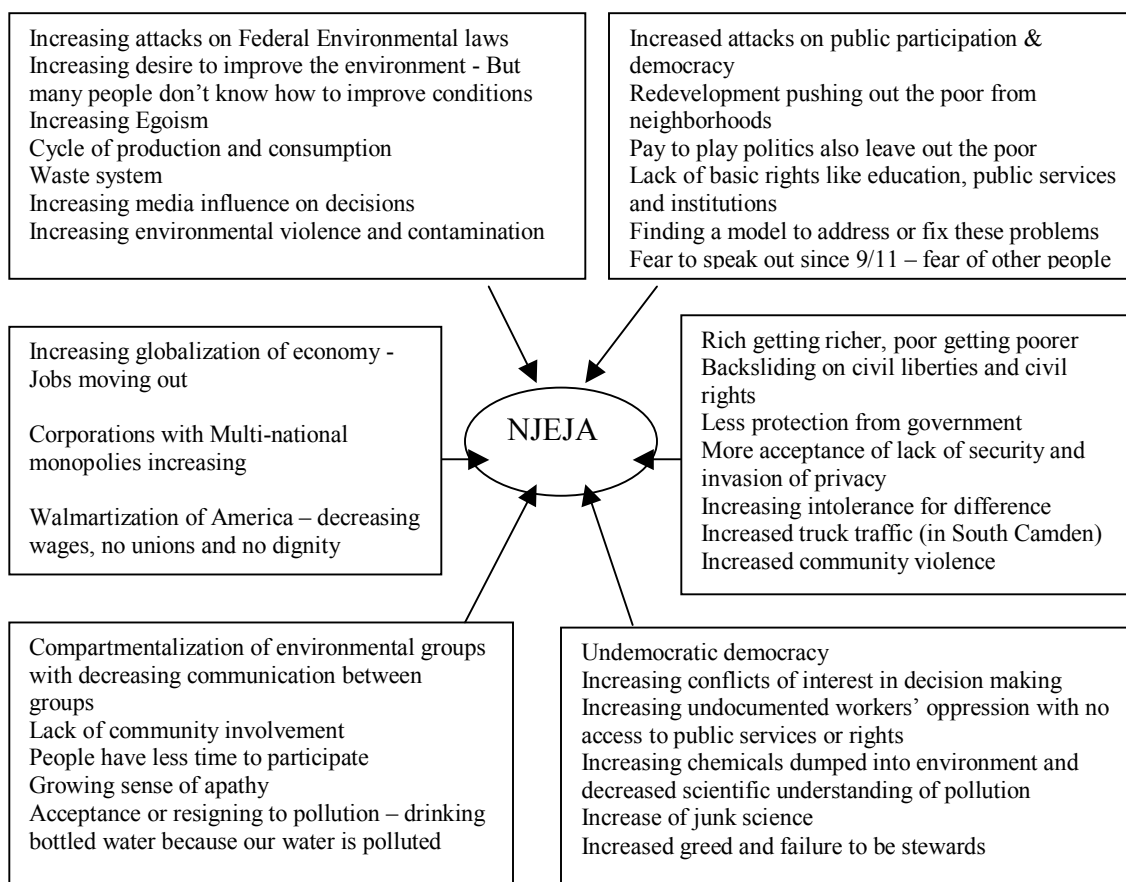
To achieve procedural justice, the EJ movement in New Jersey must capitalize on their newfound access to the state's policy-making processes. They should leverage the political and administrative opportunities that have arisen from existing policies to open up more of the state's processes to dialogue around EJ concerns. They can also take advantage of both oppositional and cooperative strategies to force the state to adopt more progressive, deliberative participatory practices similar to the ones they've adopted internally. Finally, one of the most critical ways in which the movement can link procedural mechanisms to environmental justice goals is to maintain a long-term

presence in the policy making process. This sustained engagement with the state may lead to increased opportunities for more meaningful participatory processes.

### Structural Justice in NJEJA

The EJ movement clearly identifies environmental injustices with structural inequalities. During the 2005 NJEJA retreat, EJ activists articulated this broad conceptualization of environmental justice as a structural problem. As part of this retreat, NJEJA members were asked to articulate the most pressing problems facing environmental justice activists. The resultant “mind map” revealed the links between political, economic and environmental injustices that activists tackle as part of their environmental justice work (Meeting Minutes from NJEJA Retreat, Mind Map, 1/14/05).

**Figure 6: NJEJA Retreat Mind Map**



The Mind Map reflects activists' strong sense of the political and economic concerns tied to the environmental justice problems low-income and minority communities face. The majority of issues listed emphasize the more universal or broader concerns of the movement rather than particularistic or local problems. Some of these universal issues include: the cycle of production and consumption, globalizing economy, and civil liberties. There were also several mentions of the concern with a lack of democratic practice and community participation. There were a few mentions of more public policy issues or state level issues like polluted water or federal environmental laws but no mentions of the state's regulatory functions like permitting and enforcement. There was only one specific mention of a strictly locally based issue, Camden truck traffic. Activists focused less on the day-to-day, local or state level issues and more on a "the big picture" issues. The discussion that followed this mapping exercise surfaced feelings of being overwhelmed by these larger structural problems alongside more immediate struggles for survival.

*"What's crazy is how we really have so much on our plates...look at this thing [map], I can barely keep up with fighting the incinerator and participating in these meetings, but that is the reality our communities face, we have to fight on all these different levels just to survive..."*(MG/NJ interview, 1/14/05)

Racial and class discourse was prevalent in the discussions of EJ problems.

*"Institutionalized racism in society is prevalent and there are major power imbalances we collectively are aware of but once the powers that be saw a movement arise they started to co-opt it – even environmental racism, they co-opted it and called it environmental equity or justice"* (Participant observation, VC/NJ, NJEJA meeting, 1/16/05).

One member noted afterwards that it was important to make explicit the racial and class components of all the problems identified.

*"The exercise brought up an issue for me – we as a group did not identify*

*environmental racism in the mind map. We didn't articulate that explicitly and that was very surprising to me. We failed to say it and as environmental advocates, environmental racism, in terms of ethnic, class and racial components, we cannot fail to identify that as something that drives our agenda and to be effective as a group this is an important issue--environmental racism, with class and racial components."*  
(Participant observation, NC/NJ, NJEJA meeting 1/15/05)

These sentiments suggest that the New Jersey environmental justice movement is moving in the direction of a "universal politics" that identifies with broad social justice goals.

The EJ movement is moving away from a simple distributive understanding of environmental injustice and linking these injustices to deeper, structural inequalities in society. The real challenge for the EJ movement is how to develop strategies that can leverage particularistic, local successes on the ground to achieve more profound structural justice goals.

NJEJA's advocacy needs to focus more attention on strategies that tackle the economic and social inequalities underlying environmental burdens in all EJ communities, strategies like the promotion of community based economic development opportunities, sustainability measures and democratic practices. If they focus on particularistic issues, they run the risk of winning local victories at the expense of displacing burdens on other disadvantaged communities in other parts of the country or world. The nature of environmental injustice requires that activists consider organizing strategies that can unite social justice and ecological movements throughout the world in a network that challenges capital's production processes while still holding on to their grassroots empowerment model of self representation.

### Conclusion

The creation of NJEJA and the regional groups represents a new step in the evolution of the environmental justice movement in New Jersey away from small, locally

dispersed groups focused solely on “militant particularities”, to a coalition of groups focused increasingly on deeper solutions to the local manifestations of injustice. This case study reveals that the environmental justice movement employs a radical, emancipatory set of strategies in its quest for environmental justice. It is radical in that it challenges the state and industry’s complicity in originating environmental injustices and emancipatory in that it rejects traditional hierarchal models of organizing and advocacy in favor of democratic decision making, advocacy and organizing.

The state’s increasing institutionalization of environmental justice puts external pressure on the movement to organize at higher levels and articulate broader, universal goals for environmental justice. Thus state EJ policies have in fact impacted the EJ movement in New Jersey. This case study also reveals that increased state and regional organizing has led activists to make critical links between particularistic, distributive EJ issues (i.e. facility permit) to more universal goals related to economic and social justice. The broader range of issues identified by activists suggests that the EJ movement in New Jersey is moving toward the universal politics suggested by Harvey while still holding on to their grassroots, democratic practices. It also suggests the maturation of the movement as the state institutionalizes EJ issues; the movement also broadens its frame of reference to include issues and strategies ranging from the grassroots to the state level and beyond. Although state institutionalization has contributed to the movement’s maturation, it is unclear what strides this expanded agenda and coalition building has produced in terms of distributive, procedural and structural environmental justice in low income, minority communities. The EJ movement will need to translate their relatively new coalitions and agendas into more powerful drives for significant state action.



**CHAPTER 6.**  
**ON THE ROAD FROM EQUITY TO JUSTICE:**  
**EVOLUTION OF NEW JERSEY'S ENVIRONMENTAL JUSTICE POLICIES**  
**(1995-2005)**

The evolution of the environmental justice movement coincided with the development of New Jersey's environmental justice policies over a ten-year period, roughly 1995 to 2005. These policies spanned two distinct political administrations using divergent policy approaches. The examination of EJ policies reveals the impact that political ideology and leadership has in the development and implementation of policies. The evolution of New Jersey's two distinct EJ policies also allows for a comparative analysis of divergent policy contexts, frameworks and strategies in terms of their relative impacts on environmental justice. The following are central questions framing this in depth case study: *How have New Jersey's Environmental Justice policies evolved over time and what are the key policy factors impacting policy development and implementation? How do the state's divergent environmental justice policies address environmental injustice?*

The two EJ policies were developed under different political administrations in the state utilizing different problem definitions and policy tools. The first policy, called the Environmental Equity (EE) Policy, was enacted as a New Jersey Department of Environmental Protection (NJDEP) Administrative Order, while the Governor issued the second policy as an EJ Executive Order. The EE policy was developed under a Republican administration and was in part a reaction to the Federal government's newly developed Executive Order on Environmental Justice. New Jersey's EJ Executive Order was issued by an incoming Democratic administration with closer ties to the EJ movement. Thus the two policies represent the shifting political ideologies of the state.

The EE policy reflects the more conservative or "brown" approach to environmental justice that favored business interests and constricted the state's regulatory

intervention in the marketplace. The subsequent EJ Executive Order was a more liberal or “green” response to environmental injustice, framing the issues of EJ more broadly and encouraging increased state intervention (Potoski and Woods, 2002). The previous case study on New Jersey’s EJ movement revealed that members of the EJ movement perceived a more receptive political climate under the Democratic administration. Thus it is expected that the EJ Executive Order initiated under this administration would produce a policy that was more in line with the movement’s demands and would produce greater gains toward EJ than the EE policy. Despite their divergences, both policies follow a similar pattern of identifying environmental injustice as a primarily distributive problem and focusing policy efforts on largely procedural strategies to address these problems.

#### History of State Intervention

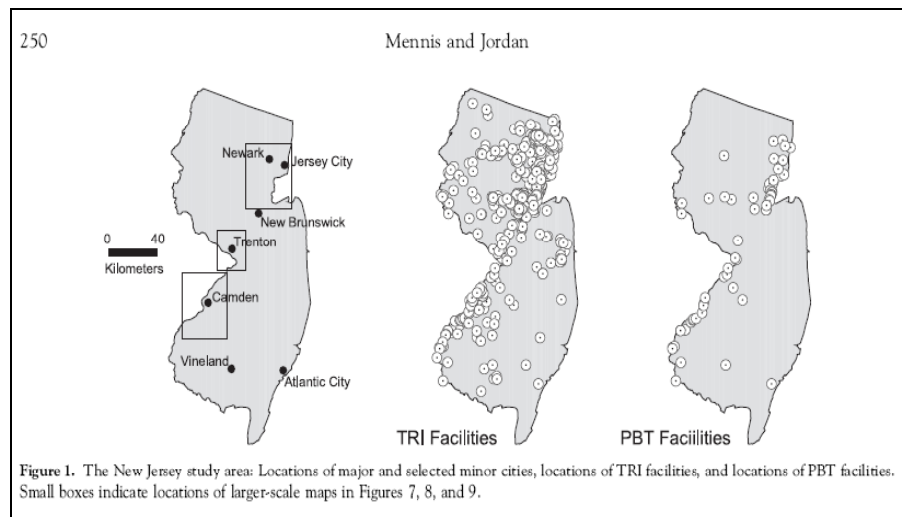
New Jersey has a long history of environmental pollution, the result of centuries of intense industrialization and urbanization. This environmental history also resulted in some of the most cogent examples of environmental injustice in the nation. The urban spine of the state connecting Philadelphia to New York was the industrial corridor of the state, with thousands of manufacturing plants lining rivers and highways. In the 1960s and 70s, industrialization waned across America’s Rust Belt while major cities like Newark, Trenton and Camden faced serious social upheaval. The commonly described “white flight” from cities resulted from rapidly spreading suburbanization that eased the exit of middle class whites from the inner city while Urban Renewal efforts concentrated minority and low income people within decaying urban centers. These concomitant historical patterns led to the creation of geographic “sacrifice zones” where

environmental pollution and the poorest, mostly minority populations were concentrated in the urbanized areas of the state (Bullard, 2005).

Several studies highlight these concomitant patterns of poverty, urbanization and the concentration of environmental pollution. Mennis and Jordan (2005) conducted a study showing the relationships among race, class, industrialization, and air toxic release density in New Jersey. Their research mapped the US EPA's Toxic Release Inventory (TRI) emissions and that database's accounting of "persistent bioaccumulative toxins" (PBTs). The study showed the linkages between the location of minority and low-income people, urban centers and areas of high industrialization and environmental pollution.

*"Generally, there is a positively significant relationship of minorities with air toxic releases over a large swath of urban and suburban New Jersey, although this pattern is not evident for all urban areas."* (Mennis & Jordan, 2005, p.250)

**Figure 7: Location of TRI and PBT Facilities in New Jersey (Mennis & Jordan, 2005)**



New Jersey developed some of the leading environmental protection policies in the country to respond to the complex environmental challenges it faced. The NJDEP was created in 1970 and many of this agency's policies are considered among the most progressive and innovative in the nation (Ringquist, 2002, p.351). New Jersey was

selected as a revelatory case study because it is a leader in environmental policymaking and has a long history of grappling with EJ issues. The following is a chronology of EJ related activities in the state over a decade.

**Table 9: Environmental Justice Events in New Jersey**

<b>Year</b>	<b>EJ Related Event</b>
<b>1994</b>	<ul style="list-style-type: none"> <li>▪ Republican Governor C.T. Whitman takes office</li> <li>▪ President Clinton issues Executive Order on Environmental Justice</li> </ul>
<b>1995</b>	<ul style="list-style-type: none"> <li>▪ Governor Whitman, appoints Robert Shinn to be the NJDEP Commissioner</li> </ul>
<b>1998</b>	<ul style="list-style-type: none"> <li>▪ Environmental Equity Task Force created by NJDEP in May 1998</li> <li>▪ Commissioner Shinn creates the NJDEP Advisory Council on EE by Administrative Order.</li> <li>▪ NJDEP receives EPA State Environmental Justice Grant for \$100,000 to develop EJ policy.</li> <li>▪ NJDEP drafts Environmental Equity Policy</li> </ul>
<b>1999</b>	<ul style="list-style-type: none"> <li>▪ NJDEP creates an Office of Equal Opportunity, Contract Assistance and Environmental Equity by Administrative Order No. 1999-05, on April 27, 1999.</li> <li>▪ This office was charged with “<i>development and implementation of an EE policy...</i>”</li> </ul>
<b>2000</b>	<ul style="list-style-type: none"> <li>▪ NJDEP issues an Environmental Equity Policy under Administrative Order No. 2000-01</li> <li>▪ NJDEP finalizes “Permit Screening Tool” as part of EE policy</li> <li>▪ South Camden Citizens in Action request a grievance hearing with NJDEP alleging that NJDEP’s permit review procedures violated Title VI of the Civil Rights Act. The group also files an administrative complaint with the U.S.EPA on this St. Lawrence Cement case.</li> <li>▪ NJDEP issues permit for St Lawrence Cement to operate in Waterfront South, Camden</li> </ul>
<b>2001</b>	<ul style="list-style-type: none"> <li>▪ Governor Whitman leaves to lead US EPA, Donald DiFrancesco (R) takes over temporarily</li> <li>▪ SCCIA file a complaint in the U.S. District Court against NJDEP and Commissioner Shinn, alleging violation of Title VI by issuing permits to St. Lawrence Cement</li> <li>▪ Judge, rules in favor of the plaintiffs stating that the NJDEP violated U.S. Civil Rights Act</li> <li>▪ The Supreme Court decision on Alexander v. Sandoval case invalidates the previous ruling in the South Camden case</li> </ul>
<b>2002</b>	<ul style="list-style-type: none"> <li>▪ Governor, James McGreevey (D), appoints Bradley Campbell to be NJDEP Commissioner</li> <li>▪ Commissioner Campbell retracts the existing environmental equity policy</li> <li>▪ NJDEP creates an environmental justice program and hires a full time senior staff person</li> <li>▪ St. Lawrence Cement Co. begins to operate with NJDEP air permits in Camden</li> <li>▪ NJ environmental justice activists attend the Second National People of Color Summit in Washington DC – begin to form a statewide alliance of environmental justice activists</li> </ul>
<b>2003</b>	<ul style="list-style-type: none"> <li>▪ Re-formed EJ Advisory Council to NJDEP – new members with more EJ representatives</li> <li>▪ New Jersey Environmental Justice Alliance forms with 3 regional subgroups across the state</li> </ul>
<b>2004</b>	<ul style="list-style-type: none"> <li>▪ Governor McGreevey issues an Environmental Justice Executive Order (Appendix B)</li> <li>▪ EJ petitioning process is open to EJ communities – 5 communities file petitions</li> <li>▪ EJ multi-agency task force formed</li> </ul>
<b>2005</b>	<ul style="list-style-type: none"> <li>▪ Governor Richard Codey (D) appointed Acting Governor</li> <li>▪ Three more communities file environmental justice petitions under the EJ Executive Order</li> <li>▪ Three petitions move to the Action plan phase – Long Branch, Camden, Linden</li> </ul>

#### Environmental Equity Policy (1994-2000)

In 1994, the federal government under the Clinton Administration issued the Environmental Justice Executive Order 12892. Many state governments feared that this

Executive Order could invalidate local and state environmental decisions that disproportionately impacted low income and minority communities. In a New York Times article, State and industry groups complain about the Federal EJ Order;

*“Business groups and state officials said their operations could become hobbled if the agency’s new guidance was left in place. Every time a permit comes up for review, they warned, a company could be held hostage by a civil rights complaint”* (Cushman, 1998).

The Environmental Council of States (ECOS), an organization of the states’ top environmental agency officials, went on record opposing the policy. New Jersey was among the states to formally write in opposition to the Executive Order and the US EPA’s subsequent EJ policy on the grounds that it conflicted with existing land use policies and economic interests. The federal government was slow to issue guidance to states regarding the full reach of the Executive Order on a variety of environmental mandates. Meanwhile, several state governments, including New Jersey, reacted to preempt these federal guidelines and mounting grassroots pressure by developing their own environmental justice policies.

New Jersey was one of the first states to develop an environmental justice policy in the 1990s in the form of an *Environmental Equity Administrative Order* in the New Jersey Department of Environmental Protection (NJDEP). This policy was instituted under the Republican Governor, Christine Todd Whitman and her appointee to the NJDEP, Commissioner Robert Shinn. The Governor’s environmental agenda at the time focused on cutting government bureaucracy to ease restrictions for businesses. Shortly after taking office, the Governor released a document called the STARR Report, *Strategy To Advance Regulatory Reform*, which eased environmental regulatory restrictions on industry (NJ Department of State, 1995). For example, a key component of the

Governor's reform included streamlined permitting processes for large industries with multiple permits. In addition to regulatory reform, the Governor also significantly cut the NJDEP's budget and made the largest personnel cuts in the agency's history, eliminating close to 300 positions. These policies reflect a "brown" political ideology in the state that favors business friendly policies by limiting the state's regulatory powers (Berry and Berry, 1991). The NJDEP developed their first environmental equity policy against this backdrop of conservative regulatory reforms.

Following Kingdon's (1995) Garbage Can theory of agenda setting, an issue comes onto the government's agenda when the three policy streams converge and a policy window opens, usually with the aid of policy entrepreneurs. Environmental justice came onto the New Jersey policy agenda when several factors coincided:

1. The federal executive order was issued in 1994 – politics stream
2. Policy entrepreneurs inside the NJDEP (deputy commissioners) and in the EJ movement push for EJ in the state – policy stream
3. Increasing pressure from EJ activists (St. Lawrence Cement Case) – problems stream

These events represent a "coupling event" which led to the development of the environmental equity policy. The St. Lawrence Cement case in Camden reached a boiling point through legal action that galvanized environmental justice activists against the state. The politics stream was shaping up for action with the development of a federal order, which had the potential to impact state action. The policy stream was also ripe for action with the NJDEP's Office of Research and Planning exploring ways to institutionalize EJ issues into the permitting system via a permit-screening tool. Finally, several state agency staff identified the presence of policy entrepreneurs within the NJDEP as key to pushing for the development of a policy. At the same time, members of the environmental justice

movement were increasingly organizing their efforts throughout the state on environmental justice in response to local environmental justice problems such as the St. Lawrence Cement Company in Camden.

After the federal government issued its Executive Order in 1994, NJDEP Commissioner Shinn initiated internal discussions regarding the development of an environmental “equity” policy. The first step the agency undertook towards this effort was to form an Environmental Equity Advisory Group comprised of various representatives from EJ communities, business and industry, municipal government, academia, and NJDEP staff to advise the agency on developing a policy. The Commissioner assigned staff from the Office of Equal Employment to lead the Advisory group while staff from the Office of Research and Planning was tasked with developing a mechanism to consider environmental equity in the permitting process. State regulators identified permitting as the primary target of the Environmental Equity Policy early in the policy development process.

One of the reasons permitting was a primary concern for the agency stemmed from the controversy over the St. Lawrence Company permit in Camden. Environmental justice also rose to prominence on the agency’s agenda because of the federal government’s EJ executive order. New Jersey’s Republican administration responded to EPA’s call for Title VI compliance in a letter describing the state’s EE policy:

*“For the purposes of development and implementation of this policy, Environmental Justice shall be defined as Environmental Equity. Environmental Equity means a fair and equitable treatment of all people regardless of race, color national origin or income...However, in compliance with Title VI of the US Civil Rights Act of 1964, the environmental permitting programs and activities of the NJDEP shall avoid any racial and ethnic discrimination by establishing a fair and equitable treatment of its New Jersey communities regardless of race, color or national origin.” (NJDEP, Draft internal document, Policy for Environmental Equity, 8/27/98)*



NJDEP specifically identifies discrimination in permitting activities but does not address the question of how discrimination would be construed in cases of disparate impacts in low income and minority communities.

The question of intentional discriminatory acts vs. disparate impacts with discriminatory effects was a central issue in the debate over how to interpret and apply the federal executive order. The order implied that the disparate impacts felt by minority and low-income communities were a valid basis for Title VI complaints regardless of discriminatory intent. States like New Jersey feared that this interpretation would invalidate their permitting structure, which issued a great majority of permits in the industrial urban areas of the state where minority and low-income communities are concentrated. Evidence that NJDEP's Environmental Equity policy initiatives were driven in part as a reaction to the US EPA's pursuit of Title VI compliance is revealed in correspondence from the NJDEP to the EPA's Office of Civil Rights. In these letters, NJDEP complains that the US EPA's Title VI guidance does not consistently define "disparate impact" and that it places too great a burden on NJDEP to prove that disparate impacts are not occurring as a result of permitted activities.

*"If there is no consistent definition of disparate impacts, how is a recipient, the EPA, the Courts and most importantly the community to know that discrimination has occurred...Section VI-C presents a methodology which appears to make a finding of disparate impact the inevitable outcome of any analysis."* (NJDEP Commissioner Shinn, R., letter to Yasmin Yorker, Title VI Team Leader, US EPA, Office of Civil Rights in Washington D.C., August 22, 2000)

The NJDEP feared that the Title VI guidelines would effectively invalidate any permit issued by the state in minority and low-income communities where a disproportionate concentration of permitted facilities existed.

*“What became very clear [from document reviews for legal case against DEP] was that Commissioner Shinn was very concerned about how Title VI and the EPA’s civil rights complaint system could be used to challenge and invalidate permits and he wanted to design an alternate system for New Jersey that would lead to more ‘finality’ in issuing the permits, so the public debate could happen at the front end, but the permit couldn’t be challenged at the end...so a lot of his [Commissioner Shinn’s] public participation stuff was a way to show the EPA that DEP was complying with Title VI regulations but it wouldn’t mean that permitting would be done any differently.” (OP/NJ interview, 4/4/06)*

The NJDEP defended their proposed environmental equity policy to EPA as a way to avoid blocking the issuance of permits in EJ communities.

*“As mentioned, New Jersey’s process advocates the evaluation of each permit application independently. This avoids the pre-identification of communities, a process that may be detrimental to urban revitalization, which is occurring in New Jersey at a record pace.” (Shinn, R. letter, August 22, 2000)*

Thus the federal executive order was a direct catalyst for the development of the Environmental Equity (EE) policy. The resultant EE policy explicitly positions its stance in relation to the federal Executive Order.

*“Whereas, in response to the Title VI Interim Guidance on Environmental Justice issued by the United States Environmental Protection Agency, the Commissioner of the New Jersey Department of Environmental Protection, Robert C. Shinn, Jr., in May 1998 created the Environmental Equity Task Force.” (NJDEP, Draft internal document, Policy for Environmental Equity, 8/27/98)*

Interviews with NJDEP staff who worked on the environmental equity policy in the mid 1990s cite the department’s interest in preempting any federal guidelines on environmental justice that might invalidate existing state permitting decisions.

*“Other states were being sued at that time and the EPA was going to have some kind of EJ policy...it was going to be that in retrospect you [the state agencies] could be found to be in violation of someone’s civil rights by your permitting decisions and after a lot of internal discussion about it – [we said] well it looks like we’re vulnerable as a state because of this legal issue so the Commissioner thought that the edict should be that maybe we [DEP] should be proactive instead of reactive, making decisions up front that are good so that you don’t get sued after the fact...and that’s what led to his approach to environmental equity.” (JH/NJ interview, 3/20/06)*

This fear of federal preemption and legal liability drove state regulators to seek out policy alternatives that would respond to environmental justice concerns.

Interviews also suggested that the development of the EE policy was partially driven by policy entrepreneurs within the NJDEP. Policy development began with several internal committees including a NJDEP “Management Team” that proposed an initial environmental equity process targeting the permitting process. The agency’s leadership was interested in pursuing an EE policy with the aid of an external advisory body and thus the state secured a federal grant to create an Environmental Equity Advisory Council (EEAC) and develop the EJ policy further. (PL/NJ interview, 3/29/06) NJDEP staff attended the first National Congressional Symposium on Environmental Justice in Washington D.C. NJDEP staff at an EEAC meeting noted that,

*“the FACA committee, a national forum on Environmental Equity, ended in March 1999 and Commissioner Shinn was one of five national representatives on the committee. Mr. Hogan said New Jersey’s Environmental Equity Policy and Process are light years ahead of the rest of the country...also the EPA is revising their Interim Guidance document using New Jersey’s Policy and Process as a template.”* (NJDEP, Environmental Equity Advisory Committee, Meeting Minutes, June 22, 1999)

Interviews with environmental justice activists revealed a more cynical view of the state’s motivation for developing an environmental equity policy.

*I thought it [EE policy] was weak because...I think this is a trend in all environmental agencies, including EPA, DEP and any other state, there was a reaction at that time that we had to do something to address environmental justice because it was a hot issue, it was being written about, cases were being brought, so there was this public pressure to do something but the desire was to do something that wouldn’t really change the way things operate, so it was kind of like - how can we [DEP] dress up the procedures and how can we make it look like we’re more community responsive, but not really do things that would make us stop issuing permits for communities like Water Front South.* (OP/NJ interview, 4/4/06)

The Environmental justice activists who served on the NJDEP’s Environmental Equity Advisory Group in the 1990s pressured the agency to change their stance towards

EJ beginning with the definition of key terms such as environmental “equity” versus “justice”. The minutes from these initial advisory group meetings reveal tensions and some level of skepticism regarding the agency’s commitment to addressing environmental injustices aggressively. *“James Harris expressed concern over the motivation and commitment by the department [NJDEP] to put a policy in place and requested a specific timeline for the adoption of an EE policy as a rule”* (NJDEP, EEAC, Meeting Minutes, June 22, 1999). EJ representatives on this body also pressed the state to reconsider their positions on specific issues such as controversial permits in environmental justice communities.

An example of how the federal EJ order influenced state permitting decisions was a permit application for a sludge treatment facility in Newark that was submitted to the NJDEP in 1995. Environmental justice activists in Newark vehemently opposed this permit on the grounds that it constituted a disparate impact in a minority, low-income community. This permit arose shortly following the federal executive order at a time when there was a great deal of uncertainty as to how it would impact state permitting processes. Due in part to this ambiguity and the strong response from the EJ community and the municipality, the NJDEP denied the permit on EJ grounds:

*“...without additional guidance from the USEPA as to their full basis for making this ‘environmental justice’ determination, the Department [NJDEP] is unable, at this time, to comprehensively evaluate the City of Newark’s denial of consent...Thus at this time, the Department cannot issue the TWA [permit] to Wheelabrator over the City of Newark’s express denial of consent”* (Letter from Dennis Hart, Director Division of Water Quality, NJ DEP, to Brooke Henderson, Wheelabrator Clean Water New Jersey, Inc., February 14, 1997).

This is the first and only time the state used EJ as the basis for denying an otherwise technically compliant permit application. NJDEP sought to clarify the ambiguity surrounding the EPA's EJ policies as it pertained to the rejection of this particular permit.

*“The Department is working with the USEPA to determine the criteria, which must be considered in an environmental justice claim in order to make a final determination in the Newark case”* (Correspondence from Dennis Hart, NJDEP staff, February 14, 1997).

New Jersey's initial development of an environmental equity policy seemed to be driven by a confluence of factors in the policy, politics and problem streams. The policy that was ultimately developed as a result of this agenda setting process went untested due to several factors in the politics and policy streams.

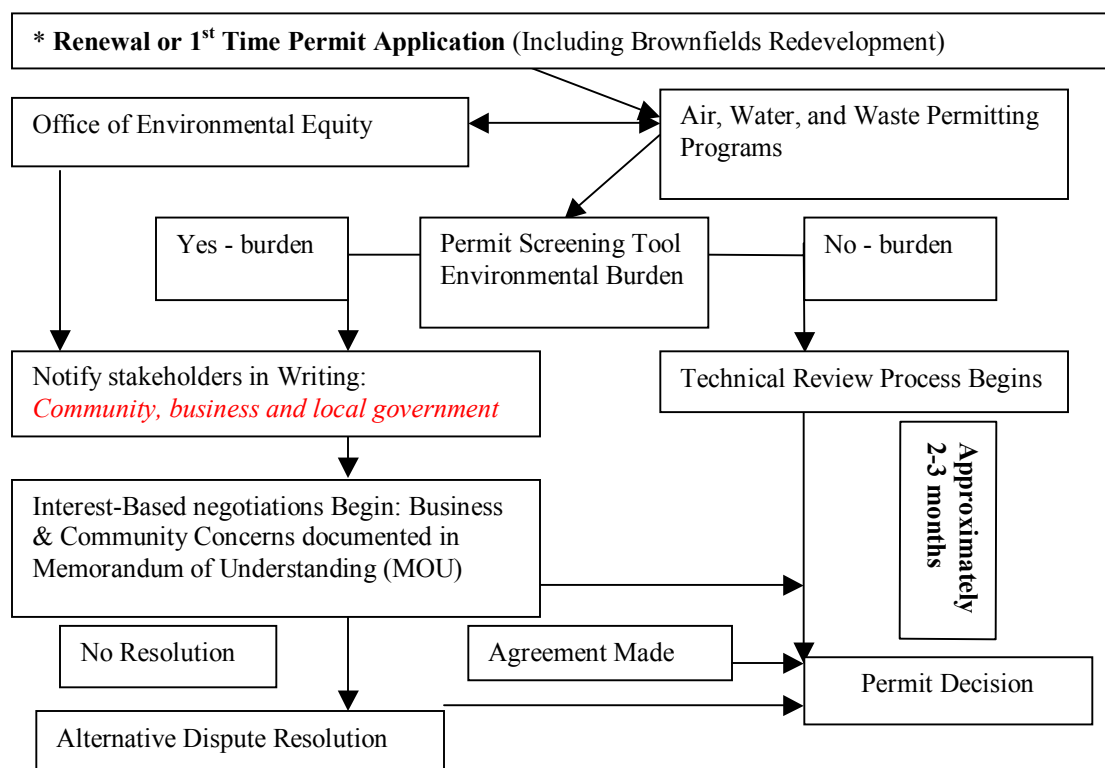
#### Environmental Equity Process

One of the central elements of the NJDEP's EE policy was a model for reconfiguring the permitting process. Figure 8 below is taken from an internal NJDEP document describing a proposed environmental equity review process. The process essentially creates an extra step in the permitting process by distinguishing permits in “environmentally burdened communities”. The delineation of “environmentally burdened” community was debated extensively within the department and among the members of the Environmental Equity Advisory Council. The US EPA did not have guidance to make such a determination based on demographic and spatial information and NJDEP staff experimented with different inputs, using different percentages of minority and low-income people at varying units of scale such as census tract or municipality. Environmental justice advocates on the Advisory Council feared that the determination of “burdened communities” might be narrowly construed by the state so as to effectively eliminate many communities from being considered “impacted”.

Another area of concern with respect to the proposed process was how aggressively the state would consider disproportionate burdens in EJ communities. The NJDEP proposed that as part of the new EE process, if any individual permit were deemed to represent a “disproportionate” burden in delineated EJ areas, the permit applicant would be asked to voluntarily conduct additional public notice and outreach in the impacted community. Thus the proposed policy did not make substantive changes to technical permit requirements (i.e. pollution amounts). Members of the Advisory Council and EJ advocates criticized this policy because of its voluntary stance:

*“Several council members pointed out that the EE process lacked incentive for an applicant to voluntarily participate in the process ... just having a process that is voluntary may not be sufficient and/or effective” (NJDEP, Environmental Equity Advisory Council Meeting Minutes, July 20, 1999).*

**Figure 8: Environmental Equity Process** (NJDEP, Draft Policy for Environmental Equity, 8/27/98)



### Environmental Equity Screening Model

According to the proposed Environmental Equity process, every permit application entering into the NJDEP permitting system would be reviewed according to the above protocol. The key component of the proposed process is at the decision point where the permit is reviewed to determine if it is in an “environmentally burdened community”. In order to make this determination, the Department developed a *Permit Screening Model*. The screening model was described as “*a model that relates census data to environmental toxics exposure data in order to determine environmental equity of specific subpopulations*” (NJDEP, Draft Final Report on the Environmental Equity Screening Model, p.1). Staff scientists Robert Hazen and Brandon Johnson developed the model with funding from the US EPA’s STAR grant. The screening tool,

*“applies a model that can indicate the potential of disparate impact of facilities within localized areas and would represent an initial way to screen potentially burdened communities”*(NJDEP internal memo, Proposed Environmental Equity Process, July 9, 1999).

Using this model, each permit would be analyzed based on the geographic location of the permit, the existing demographic background of the location (race, ethnicity, income), and four types of existing environmental stressors, compared to a statewide average. These factors were all translated into formulas and ratios that represented the individual permit’s “impact” in that particular location. If the model produced a ratio less than 1, it meant that the addition of that permit in that particular area would not significantly contribute to the area’s environmental burden. What constitutes “significant” was based on control measures from a statewide average and risk was based on an inhalation measure from major stationary sources of air emissions in the area.

*“...it [screening model] evaluates census data and exposure data from various stressors such as air pollutants and hazardous sites which are summarized at the census tract level. These data are combined and analyzed so that a statewide ethnic specific ratio can be determined. A ratio of greater than 1 indicates the ethnic group (subpopulation) under consideration is receiving more than the statewide average effect from the stressors and a ratio of less than 1 indicates less than the average statewide effect...A ratio of 1 will be used as the threshold value against which potential changes in exposure by race and ethnicity caused by new facilities will be evaluated”*(Hazen & Johnson, 2002. p.4).

When the model went out for public comment and review there was a great deal of controversy about how to set the model's thresholds for significant exposure and how those exposures were arrived at.

*“The Model was ultimately dropped because it was controversial. It was decided that perhaps it could be used internally instead. Criticism of the model focused on the fact that there were no satisfactory standards to assess cumulative impacts, in other words, How much is too much pollution and what pollutants can be input into the model. Thus there was no agreed upon threshold established.”* (PL/NJ interview, 5/22/06)

EJ advocates and even some NJDEP staff criticized the model as being too difficult to understand because it was so technically complex.

*Questions/ concerns were raised regarding the affected community's ability to comprehend scientific and technical jargon. It was suggested that the Management Team proposal be revised to include a process that would provide environmental experts to the community.”*(NJDEP, EEAC Meeting Minutes, July 20, 1999).

Many EJ advocates were suspicious of the state's complex model, fearing the potential for manipulation of the model to support controversial agency decisions. The technical nature of the model also served to exclude many EJ activists from discussion of controversial permits by privileging the scientific knowledge of experts inside the state and narrowing the discussion of permitting and risk to the technical merits of individual permits as interpreted by the permit-screening model. Typically citizens from EJ communities are left out of these technical debates because they lack the expertise to



engage the state in a formal dialogue regarding the merits and problems of such a model. Also, the movement's normative concerns regarding social justice and broader policy issues such as public health are marginalized from these technical debates.

The EE policy and permit screening process effectively narrowed the state's intervention into issues of environmental justice to a small subset of permit cases for which voluntary, procedural steps could be taken. This approach diverted debate and discussion to technical issues such as the merits of a complex screening model but it also focused the state's efforts on procedural remedies like dispute resolution methods which EJ communities complained privileged the more powerful industry groups;

*“The public participation and outreach guidelines were suppose to be voluntary and we pressured them to propose them as mandatory, they ended up as mandatory but it only applied to certain larger companies. It basically didn't change the way they [NJDEP] made decisions. They kept pushing dispute resolution but one party had all the power at the mediation table so that the community had no way to stop or change a permit decision.”* (OP/NJ interview, 4/4/06)

EJ activists feared the NJDEP favored industry interests in permitting decisions and thus they viewed the NJDEP's focus on procedural mechanisms in response to distributive injustices suspiciously. EJ communities also did not come to the dispute resolution process on an equal footing with industry because they generally did not have the same level of access to technical expertise, financial resources or informal agency contacts. Although procedural mechanisms were recommended in the EE policy, these measures were ultimately never tested.

The Environmental Equity Administrative Order was formally enacted when the political administration of the state was changing hands from a Republican Governor to a Democratic administration. When the McGreevey Administration came into power, the EE policy along with the permit-screening model was abandoned altogether. With

increasing mobilization of EJ advocates in the problems and policy streams and a shift in state leadership in the politics stream, a new policy window opened for EJ to again enter the state's agenda and forge a new path.

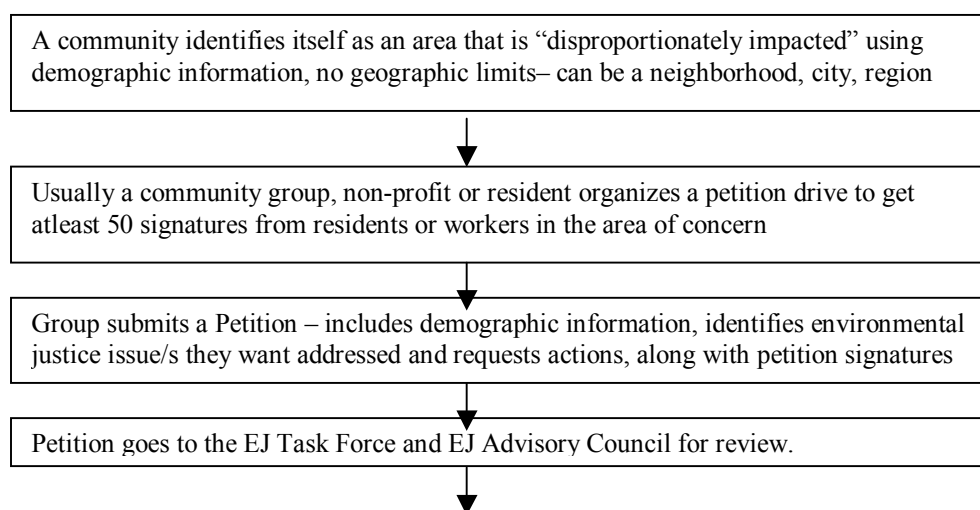
#### Environmental Justice Executive Order (2000-2005)

A year after the NJDEP issued the EE Administrative Order in 2000, Governor Whitman left her post to serve as the Administrator of the US EPA and an interim Governor was appointed. In 2002, a Democratic Governor was elected who then appointed a new NJDEP Commissioner, Bradley Campbell. Commissioner Campbell voided the EE Administrative Order and dismantled the existing program including the Permitting Screening Model and created a new EJ Program replacing the terms Environmental *Equity* with Environmental *Justice*. The program was moved higher within the Executive branch of the agency and a leading EJ advocate and lawyer was hired to run the program. The EJ Advisory Council was reconfigured with new members and with increased representation from EJ communities.

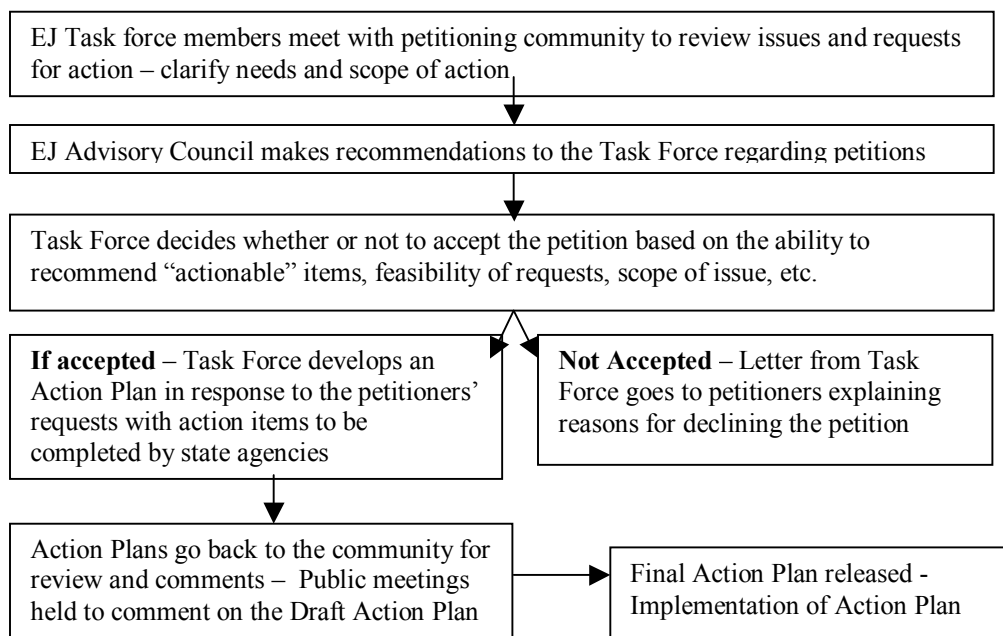
Following the reconfiguration of the program, the new EJ Coordinator along with EJ advocates lobbied for the enactment of a statewide EJ Executive Order. This executive order was developed over the course of a year and a half with the EJ program coordinator leading the effort with a handful of EJ advisory council members. Finally, Governor McGreevey signed an Environmental Justice Executive Order early in 2004. The Order detailed specific objectives including the formation of a multi-agency EJ Task Force and the formal establishment of the EJ Advisory Council to the NJDEP. The EJ Task Force is co-chaired by the NJDEP and the Department of Health and its primary role is to oversee the implementation of EJ Action Plans in response to community petitions.

The executive order established a petitioning process by which communities could bring EJ concerns to the Task Force for action. This mechanism, called the “petitioning process” allowed communities to self identify themselves as an “environmental justice” community, describe the environmental injustices they want addressed and proposed remedies. The multi-agency EJ Task Force and the EJ Advisory Council were tasked with reviewing petitions after which a determination would be made as to whether and how to act on the petition. If the petition were deemed within the scope of state action, then the respective state agencies would develop an Action Plan to address the EJ issues presented in the petition. Eight environmental justice petitions were filed with the state under the EJ Executive Order by the end of 2005.<sup>2</sup> Of the eight petitions filed, only two have reached the Action Plan phase while another four petitions are under review, and two were rejected due to their scope (because the cases were outside the state’s jurisdiction). The following is an overview of the EJ Petitioning Process:

**Figure 9: New Jersey Environmental Justice Petitioning Process**



<sup>2</sup> Petitioners; Long Branch Concerned Citizens Coalition, South Camden Citizens in Action, North Newark, Trembley Point Alliance (Linden), Ringwood Neighborhood Action Association, Millville, Coalition to Stop the Train (Roselle), Jersey City



### Equity vs. Justice: What’s in a name?

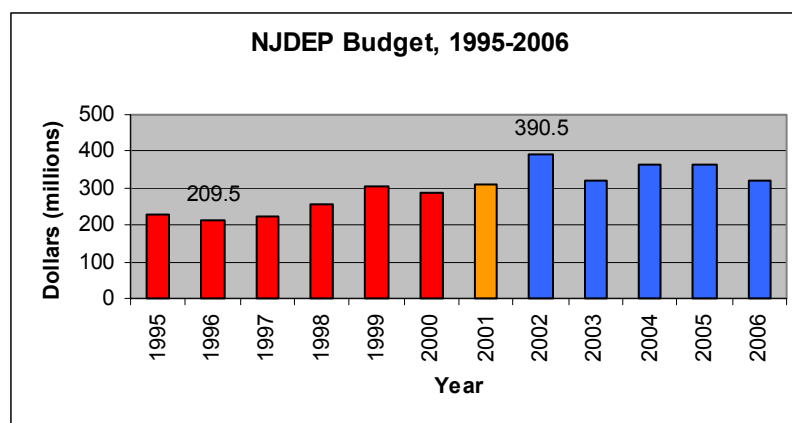
The Environmental Equity and Environmental Justice policies diverge on a number of critical points starting with problem identification reflected in the titles of the policies, to policy strategies and implementation tools. These differing policies result from divergent political administrations in the state and as such would be expected to have significantly different outcomes in terms of environmental justice. While the environmental equity policy reflects a more conservative stance towards environmental management and environmental justice in particular, the later environmental justice executive order reflects more liberal ideas about the state’s role in environmental management and aligns its policy more with the environmental justice movement. One would expect with such differing policy approaches, the implementation and perceived effectiveness of these two policies would also differ significantly. Interviews and evidence from the limited implementation of the two policies reveal that although the

context and intent of the policies differed significantly, the outcomes for environmental justice communities have not been dramatically different.

Evidence of the state's divergent approach to environmental management under different political administrations is reflected in the treatment of the NJDEP. As noted previously, under the Republican administration of Governor Whitman, the agency experienced the most significant cuts to staff and funding in its history. In a survey of NJDEP employees, the majority of staff complains of a systematic weakening of key department functions and the administration's ties to industry. One of the questions was: What is the biggest problem facing NJDEP? (PEER, Survey of NJDEP employees, 1997)

- *The governor cutting our budget by one third in three years.*
- *The governor's people rewriting regulations for enforcement that will make 'enforcement' an oxymoron."*
- *Governor and commissioner have policy of 'co-operation' with the regulated community, instead of enforcement of environmental laws and regulations by fines and penalties.*
- *Regulated community has too much influence in DEP policies and drafting regulations.*

The agency's budget also shifted with political administrations over time, reflecting the level of state support for NJDEP. The chart below tracks the grants allocated to the agency over the course of a decade. From 1995 until about 2001, the state was under Republican leadership and there is a generally lower level of funding than the second half of that ten-year period when the state was under a Democratic administration. The period of lowest funding dips in 1996 when Governor Whitman cut agency staff significantly while the highest levels of funding occurred when a new democratic administration took over in 2002 (New Jersey Office of Management & Budget, Fiscal budgets for DEP, 1994-2007).

**Figure 10: NJDEP Budget, 1995-2006**

State budgeting is subject to many influences beyond political motivations, like the state's overall fiscal health. But there is some anecdotal evidence that the dramatic dip in 1996 and the peak in 2002 were directly related to political decisions to support or undercut the agency. Regardless of the intent, the impact of budget cuts or increases are reflected in the agency's ability to intervene in cases of environmental protection, including environmental justice cases. Interestingly, none of the budgets describe direct allocations of state funding for environmental justice initiatives. In 1998, the budget shows a \$100,000 grant from the regional US EPA for the environmental equity-screening tool and in 2002 the budget reflects the creation of the new environmental justice office coordinator position (this funding represented shifting staff funding from another agency within the department, not a new source of funding).

One of the most obvious differences between the two EJ policies is reflected in the title of the policies, Environmental Equity vs. Environmental Justice. This difference in terminology reflects deeper ideological differences that underlie the state's assumptions and understanding of environmental injustices. The EE policy attempts to define the term without referring to past injustices or the processes by which some

communities are denied equal rights because of their race or income. *“Environmental equity means the fair and equitable treatment in environmental decision making of the citizens of New Jersey communities regardless of race, color, income or national origin.”*

The only mention of racial and economic disparities in the EE policy is referenced in relation to the creation of the Advisory Council and is worded so as to not definitively confirm such disparities:

*“The Council was specifically created to establish a permanent source of advice and counsel to the Department in recognition of state and federal concerns that minority and low income populations **may** [emphasis added] be experiencing a greater impact from pollution than other communities.”* (NJDEP, 2000).

Interviews with staff that worked in NJDEP at the time, confirmed that the policy was developed with the word equity purposefully as a more conservative term.

*“...we wanted to use the term equity because we saw it as a fairness issue rather than getting into messier issues of social justice which were much broader...”* (PL/NJ interview, 3/29/06)

The term equity rather than justice does not acknowledge the historical or structural basis for the disparate environmental conditions that low income and minority communities in particular experience. Thus distributive and structural injustices are scarcely recognized in this policy statement.

In contrast, the Environmental Justice Executive Order explicitly places the issue of race and class at the forefront of the policy:

*“WHEREAS, the State of New Jersey is committed to ensuring that communities of color and low-income communities are afforded fair treatment and meaningful involvement in decision-making regardless of race, color, ethnicity, religion, income or education level”* (Appendix B)

The EJ Executive Order also offers specific examples of ways in which minority and low-income communities are disproportionately impacted:

*WHEREAS, studies by the Centers for Disease Control and Prevention (CDC) and other federal agencies have documented that the prevalence of childhood asthma is increasing, and that this increase is linked in part to poor air quality, and that prevalence is far higher for Black and Latino/Hispanic communities (Appendix B)*

The Executive Order, unlike the Equity policy, explicitly reflects on the historical and structural basis for environmental disparities based on race and class in the state:

*“WHEREAS, New Jersey’s communities of color and low-income communities have historically been located in areas of the State having a higher density of known contaminated sites as compared to other communities, with the accompanying potential for increased environmental and public health impacts;” (Appendix B)*

This view of environmental injustice as a structural and distributive problem is more closely aligned with the definition of environmental injustice proposed by activists:

*“These injustices have their roots in racial and economic discrimination which force many populations of color and working class populations of all races to bear the disproportionate burden of negative environmental consequences from industrial pollution, at home and at work, and discriminatory regulations, laws, policies, and practices. These conditions are defined as “environmental racism” and economic injustice. (Appendix A)*

Another significant difference between the two policies is the level of government within which the policies were adopted and implemented. The level of government is critical to consider because it structures the scope of strategies the policies impact. The NJDEP Commissioner issued the *Environmental Equity* policy as an Administrative Order while the Governor issued the *Executive Order on Environmental Justice* for multiple state agencies. The Equity policy was limited to the NJDEP and thus could only impact those functions of the state under the control of the environmental agency. Even within this limited purview of the environmental agency, the EE policy was further limited to the permitting process.

The EJ Executive Order on the other hand came from the Executive Office of the Governor and enabled several state agencies and strategies to be coordinated to



implement the policy. The EJ petitioning process detailed in the EJ policy opened up review of EJ issues beyond NJDEP with the multi-agency Task Force.

*“The Commissioner of DEP and Commissioner of DHSS, or their appointed designees, shall convene a multi-agency task force, to be named the Environmental Justice Task Force, which will include senior management designees, from the Office of Counsel to the Governor, the Attorney General's office, the Departments of Environmental Protection, Human Services, Community Affairs, Health and Senior Services, Agriculture, Transportation, and Education.” (Appendix B)*

Thus the EJ Executive order significantly broadened the issues that could be considered by the state under the rubric of Environmental Justice.

The two policies also diverge with respect to how they define the scope of problems each policy aims to address. This stems partly from the definition of the problem and also the manner in which the policies were structured within the state bureaucracy. The *Equity* policy focused specifically on NJDEP's permitting mechanisms with a voluntary process to bring permits under review using a technical permit-screening tool. The EE Administrative Order outlines “Implementation Strategies” that include:

*“The Department, in conjunction with the Advisory Council, will develop guidance for permit applicants for the administration of an effective Environmental Equity community outreach process with local communities...The Department will utilize technical screening tools, its Geographic Information System, Toxic Release Inventory data, and other information resources to help permit applicants identify potential Environmental Equity issues at the earliest feasible stage of permit application process.” (NJDEP, 2000.)*

Of the eight implementation strategies outlined in the EE policy, seven of the strategies refer specifically to permit applicants and permitting processes (the eighth strategy refers to internal DEP training). Of the seven permitting related strategies, five of these involved procedural matters such as the development of a community outreach process for permit applicants, facilitating Alternative Dispute Resolution, developing guidance on effective community outreach processes, etc. The EE process was thus

criticized by EJ communities for limiting the discussion of environmental injustices to permitting issues. Even in the case of permitting related EJ cases, the role of the state was limited to requesting voluntary outreach efforts from permit applicants. EJ activists perceived this narrow focus as effectively rendering the state's policy weak in the face of strong industry pressures to obtain permits. *"The general sense from the public was that the policy didn't have any teeth because it was completely voluntary"* (PL/NJ interview, 5/22/06)

The EJ executive order on the other hand recognized a more complex set of problems associated with environmental injustice and thus employed a multi-faceted strategy to address these problems (Appendix B):

*"WHEREAS, the cumulative impact of multiple sources of exposure to environmental hazards in low-income and people of color communities, and the roles of multiple agencies in addressing the causes and factors that compromise environmental health and quality of life in these communities require an interagency response;"*

The executive order recognized a wide range of EJ issues and state functions beyond permitting including: public health, compliance, enforcement, remediation, siting, permitting, subsistence fishing, fine particulate pollution, cumulative exposures and transportation (Appendix B). The order also leaves the scope of EJ issues open to definition by EJ communities themselves and defines a broad set of factors that together reflect the complex nature of EJ problems:

*"The Task Force shall develop an Action Plan for each of the selected communities after consultation with the citizens, as well as local and county government as relevant, that will address environmental, social and economic factors that affect their health or environment."* (Appendix B)

Each policy is promulgated within a specific policy context that works to structure the field of solutions considered by the state. The EE policy, limited to the jurisdiction of NJDEP and then further defined in the *Implementation Strategies* as pertaining

specifically to permitting processes, prescribes the use of technical permitting tools and weak procedural mechanisms to resolve EJ cases. The permit-screening model further limited the debate over what constitutes an environmentally burdened community (ratios of ethnicity, race, income) and what constitutes an environmental burden (Toxic release air emissions, air emissions modeling) to technical parameters (ratio  $> 1$   $<$ ). The interpretation of model results was then turned over to permit applicants who could decide whether or not they would participate in a series of voluntary administrative measures such as a community outreach plan and Alternate Dispute Resolution. Thus many EJ advocates rejected the EE policy because it did not directly address distributive injustices or link distributive injustices to broader EJ claims such as cumulative impacts or public health concerns.

The petitioning process set out by the EJ Executive Order on the other hand allowed communities to self identify themselves and their issues of concern based on more flexible parameters set out in the Order; *“Please note that you do not have to be an organized group to qualify as a petitioner. Petitions must have at least 50 signatures from either residents or workers in the area of concern”* (NJ Environmental Justice Task Force, 2004, p.2). The EJ policy broadly defined burdened community according to percentages of minority and low-income people and left the determination of disproportionate burdens up to petitioning communities. In this way, the Executive Order effectively sidestepped the issue of formally defining EJ communities across the state.

Finally, while the EE policy relied on voluntary measures limited to permitting decisions within the NJDEP as the primary mechanism to respond to EJ concerns, the

Executive Order established an EJ Petitioning Process and accompanying Action Plan with proposed remedies.

*“Please identify possible solutions or needs that would help address the environmental concerns raised in this petition. For example, are you interested in planting trees, do you think there should be increased enforcement due to odor issues, etc.”* (NJ EJ Environmental Justice Task Force, 2004, p.3).

These action plans were also intended to identify more systematic changes to existing laws or regulations when agencies could not adequately address the petitioners’ concerns.

*“The Action Plan shall clearly delineate the steps that will be taken in each of the selected communities to reduce existing environmental burdens and avoid or reduce the imposition of additional environmental burdens through allocation of resources, exercise of regulatory discretion, and development of new standards and protections.”* (NJ EJ Environmental Justice Task Force, 2004, p.3).

Neither the Executive Order nor the EE policy granted any new powers to the state, nor did they lead to regulatory or legislative changes to address environmental injustices.

*“The actions mandated as a result of this Executive Order shall be accomplished within the bounds of, and consistent with, the legislative purpose supporting the relevant agency’s existing statutory and regulatory authority. 10. Nothing in this Executive Order is intended to create a private right of action to enforce any provision of this Order or any Action Plan developed pursuant to this Order.”* (Appendix B)

The substantive shifts reflected in the new language and approach to environmental justice under the EJ Executive Order seems to be directly linked to the shift in political ideology reflected in a new, more liberal political administration in the state. This shift was not a result of evolving implementation strategies, but rather a clear break from the previous political administration reflected in the Environmental Equity policy. This break is seen in the complete abandonment of the EE screening tool and EE administrative policy when the political administrations shifted.

Although the EJ Executive Order seems to be relatively better aligned with the EJ movement’s concerns and definitions of the problem, the implementation of the policy

has not produced more substantive EJ outcomes. Some activists suggested that the EJ policy would have been stronger had it been developed via a more public process where the EJ community could weigh in early in its development. The policy could also have been instituted as legislation rather than as an executive order, which would strengthen its mandate to state agencies and perhaps increase agency participation and commitment to EJ goals. EJ activists perceived the Executive Order as falling short of expectations.

*The Executive Order was disappointing because first it was made through the Governor rather than the Legislature where we could have had hearings and made recommendations. The policy was done by fiat instead of through a public process and therefore it was never really integrated into the structures of the state. (MP/NJ interview, 3/21/06)*

The EJ Order was suppose to broaden the number of agencies and thereby the scope of solutions that could be brought to bear in EJ cases. The experience of most petitioners was that the NJDEP was the only responsive agency in the Task Force with dedicated staff or policies. Other agencies have not been as active in committing to action items in the action plan process. The Executive Order does not allocate staffing or mandate internal policies that would institutionalize EJ in each of these agencies. The Order also has no mechanism by which to hold agencies accountable for carrying out EJ initiatives or making commitments in response to EJ petitions. Funding was not allocated to any of the state agencies mentioned in the Executive Order or EJ communities to build up their capacity to respond to EJ problems. Finally, EJ communities perceived the Action Plan itself as a regurgitation of existing policies or initiatives rather than new commitments to tackling environmental injustices.

*The Order only promises to do what it's supposed to do already. You shouldn't have to get a petition to get these things done by the state especially agencies like the Department of Health. They should be collecting data and responding to communities' concerns already. (PM/NJ interview, 3/21/06)*

Although the Executive Order seems to broaden the scope of issues EJ communities can bring to the state for action, thus far, the communities that have opted to participate in the petitioning process are generally responding to very site-specific issues. Six of the eight petitions refer specifically to a contaminated site in their respective communities. These six cases reflect more narrow, distributive, particularistic concerns whereas Camden's petition addresses more complex, distributive (cumulative pollution impacts), procedural (community empowerment in early decision making) and structural (economic blight and housing) issues facing their community. The resultant action plan did not seem equipped to handle the level of complexity reflected in Camden's petition and left Camden residents calling for more substantive commitments from the state. It seems that the petitioning process lends itself better to addressing narrower distributive, environmental justice issues for which the state can apply their existing regulatory authority in discrete ways. The petitioning process is less effective at addressing more complex EJ issues such as cumulative impacts that require the state to take fundamentally new approaches to environmental injustice.

The Executive Order also allows EJ communities to self identify themselves whereas the EE policy defines burdened communities according to a statewide formula. It would seem that this self-identification process is more in line with the EJ movement's principle of "we speak for ourselves." But the process of self-identification raises another problem, not all EJ communities have the material and organizational capacity to engage the state in an intensive petitioning process. Many EJ communities do not have the resources to pursue institutional remedies or articulate their needs and problems in a manner that requires a prolonged engagement with state actors. This process places the

burden of eliciting state action on already burdened and resource-strapped communities.

One EJ activist describes the inherent problem this petitioning process presents:

*“By setting up this petitioning process you put the burden on the communities to petition that are already disadvantaged – so you have to come up with the ability to actually do the petition and that’s why you see so few petitions are being filed. Many communities don’t even know about the petitioning process.”*(PM/NJ interview, 3/21/06)

This activist identifies the limited capacity of environmental justice communities and the way in which the petitioning process may further marginalize disadvantaged communities from state decision making. EJ petitioners in Long Branch also called on the state to commit resources to EJ communities statewide in need of technical expertise so as to give them the capacity to counter industry and state expertise in the petitioning process:

*“As part of the cleanup of contaminated sites in communities of color and low income communities, we request that the New Jersey State Government establish a ‘Technical Assistance Grant’ (TAG) program to provide funds to qualified community groups so that they can contract with independent technical advisors to interpret and help the community understand technical information about their [contaminated] site.”* (Long Branch Concerned Citizens Coalition, letter to EJ Task Force, March 6, 2004)

Environmental justice communities faced with limited capacity to investigate and organize around issues of concern must make critical decisions about whether or not to engage in an intensive process with the state which may deflect energy and resources from other strategies to achieve remedies in the community. Communities must weigh the benefits they think might come from engaging in a cooperative strategy with the state rather than a more grassroots, oppositional strategy. EJ communities also run the risk of cooption and diversion of resources and attention.

Although the petitioning process privileges EJ communities in identifying problems and remedies, the process highlights the inherent power imbalances in the relationship between the state and communities. The state agencies that are charged with

protecting the public good and receive public funds to this end, shirk some of their responsibilities to the most disadvantaged communities, relying on these burdened communities to trigger systematic state intervention and relief. The Executive Order relies on the petitioning process to address individual cases of environmental injustice but it does not systematically address environmental injustices across the state. Thus the overarching institutional and structural modifications needed to respond to EJ problems are not incorporated into the implementation strategies.

One example of this gap between individual petitions and institutionalized change is reflected in Long Branch case. This petition focused on site remediation issues where residents questioned the investigation of hazards, the lack of public input in the process, the protectiveness of remedial plans proposed and the resultant public health impacts emanating from long-term exposure at the site. In the mid 1990s, the site remediation program was significantly modified with the passage of less aggressive remediation regulations. These new regulations allowed developers to prescribe a clean up remedy and enter into the remediation process on a voluntary basis. The new regulations prohibited any public involvement or input in the site remediation process. The Long Branch petition echoed concerns about the overall site remediation process but the action plan was limited to the petitioning site. Thus the state's actions targeted ad hoc remedies rather than reforming problems in the site remediation process.

*“The EJTF recognizes that some of the issues raised in the EJ Petition fall outside the scope of State law and would require legislative changes, such as enabling increased public notification and participation in the site remediation process and establishing a State-level Technical Assistance Grant (TAG) program. Therefore, the EJTF strongly recommends that appropriate agencies work with the Environmental Justice Advisory Council to identify policy and possible legislative recommendations associated with the issues raised in this Environmental Justice petition that are not*



*addressed in this Environmental Justice Action Plan”* (NJ Environmental Justice Task Force, Long Branch Action Plan, 2006, p.14)

Both EJ communities and the state could have found unique opportunities for action via the EJ Executive Order and the petitioning process. If the state had set up an open process for negotiating and dialoguing around state actions and community expectations, the outcomes of a single petition may have been more satisfying to participants. Rather than relying on internal discussions to develop action plans and one-way communication with communities with few resources, the state could also have provided resources or independent technical assistance to these communities before engaging in an extended action plan process. Each task force agency would then be made to tour and meet with EJ communities to see first hand the problems and potential remedies on the ground. This could have been the first step towards developing new relationships with agencies that would otherwise never have connected their work to environmental injustices. The state could also have extended community based research opportunities to petitioning communities so that they could be part of crafting solutions to EJ problems over time.

EJ communities also need to find new ways to better leverage the executive order and local petitions as part of larger campaigns to institutionalize changes in the state. The EJ movement could focus on passing key EJ legislation that would institutionalize EJ goals and mandate state agency accountability to these goals. Singular petitions could take on much broader relevance for achieving environmental justice if each petitioning community were to identify similar communities with similar problems and then together request systematic changes necessary to remedy environmental injustices. EJ communities could also try to form alliances between poorer, more burdened

communities and nearby, wealthier communities in an effort to address disparities on a regional basis. While these possibilities for action and improvement were largely untapped in the petitioning process, future strategies may benefit from this experiment with a broader EJ mandate in state government.

### Conclusion

The state has experimented with different approaches to environmental justice rooted in contrasting political ideologies and policy contexts. While each of these policies diverged significantly in their content, intent, and implementation, their relatively short implementation seemed to produce similarly few substantive environmental justice goals.

The EE policy narrowly conceptualized the problem of environmental injustice as a distributive, permitting issue and the resultant strategies were consequently narrowly defined. Under this policy, the state relied on a conservative notion of state intervention in environmental management, whereby the state encouraged weak procedural fixes to resolve distributive problems. Although the EE policy was never fully implemented, EJ activists clearly viewed this policy as an attempt to quell opposition to agency permitting.

The EJ Executive Order broadly defined the problem of environmental injustice acknowledging distributive, procedural and structural dimensions of environmental injustice. But despite this broader definition, the state relied on largely weak procedural strategies to address the injustices identified in EJ petitions. The petitioning process also neglected more widespread institutional reforms necessary to address environmental injustice. Although the equity and justice policies diverged significantly, neither policy effectively addressed the full scope of environmental injustice.

**CHAPTER 7.**  
**A TYPOLOGY OF LEADING STATE ENVIRONMENTAL JUSTICE**  
**POLICIES**

The in depth case study of New Jersey's environmental justice policies over a ten year time span produced a detailed picture of the divergent policy contexts and instruments used by one state to implement environmental justice goals. The New Jersey case revealed that despite divergent political contexts and strategies, EJ policies produced few substantive changes on the ground and relied heavily on symbolic procedural adjustments to respond to environmental injustices. Does this pattern hold up when examining other EJ policies? The multiple case study will examine four of the leading state environmental justice policies in California, New York, Connecticut, and Massachusetts along with New Jersey's to further enrich this examination and answer the core question of how relevant and effective these leading policies were in terms of achieving distributive, procedural and structural forms of environmental justice. The purpose of this multiple case study is to gain a richer perspective on the mechanisms by which states implement environmental justice policies as well as a better understanding of what impact EJ policies have made thus far on the ground in EJ communities. The multiple cases also allow for a cross case comparison of implementation strategies that will inform a model of state environmental justice policy implementation.

This particular chapter focuses specifically on how the policy process evolved in each state, laying the groundwork for an analysis of impacts in the following chapter. This study focuses on the policy cycle after policy formulation until the implementation phase. The central propositions of this chapter include:

1. How does the political context of the state shape the initial scope and definition of EJ policies and how does it impact implementation and effectiveness of EJ policies? I expect that a more liberal, Democratic administration would be more amenable to EJ

- concerns and recognize the multi-dimensional nature of EJ problems whereas a more conservative, Republican administration would pull back the state's role in the marketplace and shy away from redistributive policies that challenge capital interests.
2. Environmental justice is a multi-dimensional issue that has distributive, procedural and structural facets. Effective environmental justice policies are those, which address these issues via a variety of state functions. Thus environmental justice policies developed too narrowly within state structures or limited to procedural fixes will not be as effective at addressing the distributive and deeper structural problems associated with environmental injustice.
  3. State EJ policies follow a distinct trajectory in the implementation phase beginning from a position of high ambiguity and high levels of conflict related to policy goals to one of less ambiguity but still high levels of conflict. As states and EJ advocates attempt to implement policies over time, they evolve responses in phases that roughly follow from distributive, to procedural to structural concerns.

Four states along with New Jersey were selected for comparative analysis because they represent the leading edge of environmental justice policy innovation. The in-depth New Jersey case study explored these questions in detail and the multiple cases follow a theoretical replication logic that works to strengthen the external validity of the study. As stated in the Methods Chapter, the five states have similar policy contexts: each state enacted an EJ policy for an average of five years; they each favor environmental protection policies generally; they are demographically diverse, highly industrialized, wealthy and urbanized; and they have a significant presence of organized environmental

justice activists. These five states thus provide a sound basis for comparative analysis of the evolution and impact of state environmental justice policies.

### State Policy Chronologies & Context

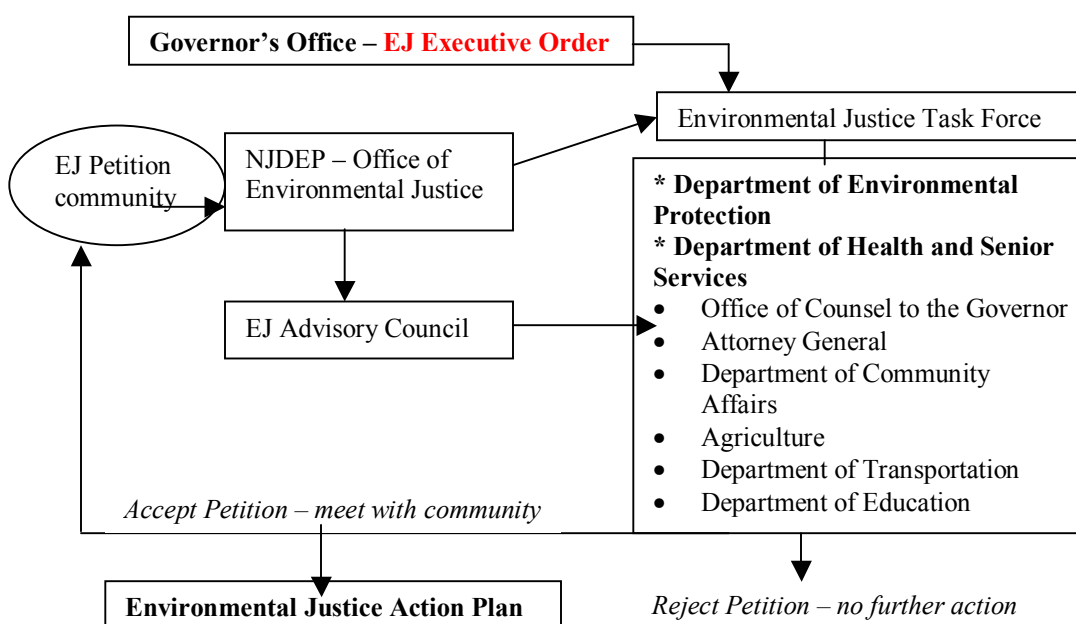
Each state's environmental justice policy is framed within different political contexts and administrative structures that evolved through the policy cycle over time. Comparison of the environmental justice policies' contexts and evolution can shed light on how the issue of environmental justice appeared on the states' agenda, how the problems of environmental injustice were defined and framed for state action and what policy tools were then developed to respond to these problems. The following is a detailed chronology of the development of each state's environmental justice policies.

#### New Jersey

As discussed in the previous chapter, New Jersey's current environmental justice policy is in the form of an Executive Order issued by Governor James McGreevey in 2004. The Executive Order defines the state's key goals with respect to environmental justice for multiple state agencies and departments. The order creates an EJ Task Force comprised of several state agencies with the Department of Environmental Protection (NJDEP) and the Department of Health and Social Services (DHSS) co-chairing the group. The Executive Order also mandates the reconstitution of an Environmental Justice Advisory Council to the NJDEP. The key strategy of the Executive Order is the administrative process called an "Environmental Justice Petition" by which communities can self identify themselves as an EJ community and request state action on specific environmental justice concerns. The petitions are submitted to NJDEP's Office of Environmental Justice. The petition then goes to the Advisory Council within NJDEP for

recommendation to the full Task Force. The Task Force considers each petition from the perspective of their respective jurisdictions and makes a recommendation on whether or not to accept the petition for action. If accepted, the Task Force agencies draft an Action Plan delineating the specific state interventions they commit to carrying out in response to the petitioners' requests. All the EJ petitions to date identify NJDEP as the primary state agency for action.

**Figure 11: New Jersey Environmental Justice Policy and Petitioning Process**



Although the current EJ policy is in the form of an Executive Order, the state originally enacted an Environmental Equity (EE) policy as an administrative order within NJDEP. When the political leadership in the state turned over so too did the EE policy. According to interviews with staff working in NJDEP at the time, the EE policy was prompted by the agency's leadership due to a general concern that the federal government was on the verge of developing an aggressive approach to EJ that could

impact New Jersey's permitting. Some activists attributed the state's actions as both a reaction to federal pressure and policy entrepreneurs inside the agency:

*"I have to say, even under old Commissioner Shinn, he kind of got caught up in doing more on EJ than he initially wanted to primarily because he had a staff person who helped develop what was then called the environmental equity advisory council to the DEP...and what she did, she did a smart thing, she really went around and tried to get people appointed to that Advisory Council who were actually interested in doing some real work on EJ not to just kind of window dressing...so, because he [the commissioner] didn't know very much about these groups and the needs at the time, he kind of let her put it together so then it became apparent that the group was comprised primarily by people who were concerned about this stuff and were willing to do some work on it, and it was like "uh-oh, what do we do now" How do we control this – so it kind of got out of his [Commissioner Shinn's] control, but it also benefited him a lot because then on a national level he could take it to EPA and they had a lot of meetings that he went to and stuff and in fact NJ was looked at as being a model state." (VC/NJ interview, 11/10/03)*

At the time the NJDEP was developing an EE policy, the agency was also grappling with contentious permitting issues in Camden. Eventually, Camden residents brought suit against the NJDEP based on Title VI of the Civil Rights Act, which prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance. During this administration in the late 1990s, the EJ community did not perceive the political climate as ripe for environmental justice policy making: *"Well, obviously before Governor McGreevy was on board we [EJ communities] had very poor relationships with the DEP Commissioner Shinn, he just was not interested in EJ..."* (MG/NJ interview, 3/16/2004) Environmental justice activists viewed the Shinn administration's EE policy with skepticism particularly because they saw a real disconnect between the policy and cases like the one in Camden.

Another driver for EJ policy development in the state was a grant to the NJDEP from the USEPA's State Environmental Justice Grant in the amount of \$100,000. This grant was to aid in the development of an environmental justice policy and permit-



screening tool. The model calculated a “population emission ratio.” Ratios greater than 1 indicated greater exposures for that race relative to the statewide population and ratios less than 1 indicated a lesser relative exposure. The model did not gain the widespread endorsement of staff or EJ communities because it was perceived as being difficult to decipher:

*“...there was a model, a screening tool to determine whether or not a community was an EJ community or an affected community...nobody understood that tool, nobody understood it on the Council, nobody understood it out in the public - when people saw the screening model, people couldn't get a handle on how they could really use it... only the person who developed it in the research and science office of the DEP got it, nobody else did so – we actually supported it [the EE policy] but we qualified our support by saying that the screening tool wasn't good, DEP should be able to say no to certain kinds of permits regardless...” (VC/NJ interview, 11/10/03)*

EJ advocates feared the model would be manipulated to justify new permits in overburdened communities. Permits found to exceed the thresholds were voluntarily asked to conduct a public participation process in the community rather than reduce pollution burden. The proposed model ultimately was not implemented because new DEP leadership took over and opted for a different approach altogether.

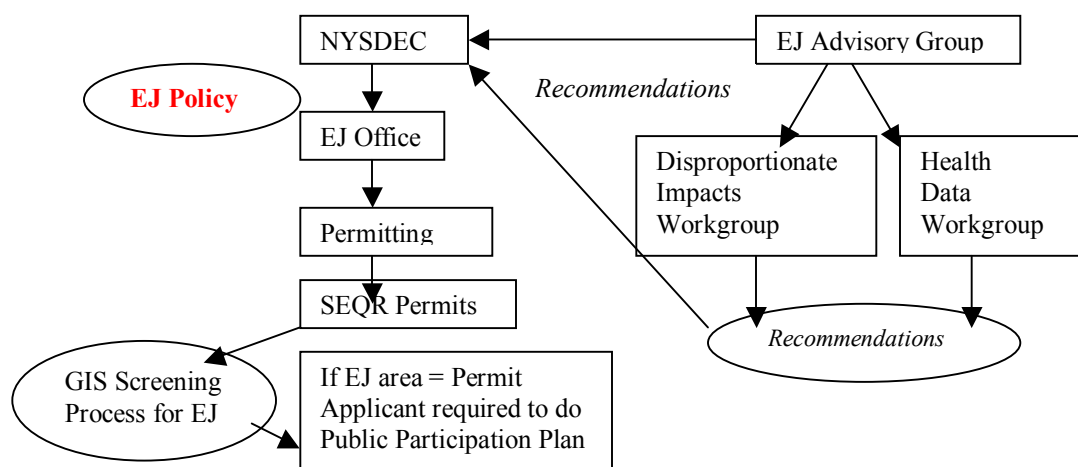
In 2002, a new Democratic Governor and agency leadership came to power and significant changes were made to the state's environmental justice policy stance. The policy was immediately changed from environmental equity to environmental justice. The new administration expanded the Environmental Justice policy to the level of an Executive Order with the ability to influence policies of several agencies including transportation, housing, and health. The major policy tool of this Executive Order focused on a petitioning process by which communities would self identify as EJ communities and request specific remedies from the state.

## New York

The New York State Department of Environmental Conservation (NYSDEC) created an environmental justice program in 1999. An environmental justice policy was formalized in the agency in 2003 as an administrative policy focused primarily on the agency's permitting process. The policy specifically inserts environmental justice in the State Environmental Quality Review Act (SEQR); *"The following procedure shall be incorporated into the DEC permit review process when the DEC serves as Lead Agency under the SEQR."* (NYSDEC, CP-29 Environmental Justice and Permitting, 3/19/03) The SEQR is the state's version of the National Environmental Policy Act (NEPA) in that it oversees the issuance of major environmental permits in the state.

The EJ policy also formalized the existing EJ Advisory Group and directed them to make recommendations and advise the department on EJ matters. The Advisory Group made recommendations for the development of an EJ policy and later formed two workgroups focused on disproportionate and health impacts.

**Figure 12: New York State Department of Environmental Conservation, EJ Process**



**Table 10: Environmental Justice Events in New York**

<b>Year</b>	<b>Political or Policy event</b>
<b>1998</b>	EJ constituents meet with DEC Commissioner to express concern over and pressure the agency to address EJ issues
<b>1999</b>	<ul style="list-style-type: none"> <li>• NYSDEC creates the Office of Environmental Justice and develops an EJ Program</li> <li>• NYSDEC hires EJ Coordinator &amp; two support staff for the EJ program</li> <li>• NYSDEC - EJ Advisory Group formed</li> <li>• NYSDEC receives \$100,000 US EPA STEJ Grant to form EJ Advisory Group and to develop an EJ permit policy with guidelines for addressing EJ issues in permitting, etc.</li> </ul>
<b>2002</b>	<ul style="list-style-type: none"> <li>• Advisory Group submits a report to DEC Commissioner with recommendations for creating an EJ program – they advised DEC to incorporate EJ into the State’s Environmental Quality Review Act (SEQR) permit review process.</li> <li>• The Report went out for public comment and a draft policy was published for comment</li> <li>• Funding from US EPA Region 2 awarded to form two workgroups from the EJ Advisory Group on (1) disproportionate impacts and (2) Health based impact studies</li> </ul>
<b>2003</b>	<ul style="list-style-type: none"> <li>• March 19, 2003, NYSDEC issued its environmental justice policy</li> <li>• The policy modifies DEC’s environmental permit process by providing that DEC will identify minority or low-income communities through census block data and GIS technology. The policy creates a new “enhanced” public participation requirement binding upon permit applicants for permits in EJ communities.</li> </ul>
<b>2004</b>	<ul style="list-style-type: none"> <li>• Disproportionate Impact Analysis Workgroup meets to work on recommendations</li> <li>• Health Outcome Data Workgroup meets to work on recommendations</li> </ul>
<b>2005</b>	<ul style="list-style-type: none"> <li>• January 1, 2005 – the 2 Workgroup reports were finalized with recommendations</li> <li>• DEC received a \$500,000 appropriation to start a new grant program that will give community groups up to \$25,000 for research and actions related to EJ</li> </ul>

New York’s environmental justice policy was produced as a result of increasing pressure from EJ advocates who met with the NYSDEC Commissioner to express their concerns. In particular, very vocal and organized EJ groups in New York City began to call on the state to take a more active stand on environmental justice issues in disproportionately impacted, low income and minority communities. The entire policy cycle evolved from enactment to implementation under the same Republican administration in the state. NYSDEC also received a US EPA State Environmental Justice Grant (STEJ) in the amount of \$100,000 to develop their environmental justice program. The funding helped train and hire DEC staff; support the EJ Advisory workgroups and other EJ program functions.

The EJ Advisory Group made significant recommendations to the DEC for policy implementation and expansion of the agency's earlier program. Once a policy was enacted, many stakeholders on the Advisory Group wanted the agency to do more than public outreach in cases of disproportionate environmental and health impacts. The Advisory group thus established two workgroups, the *Disproportionate Adverse Environmental Impact* Work Group and the *Health Outcome Data* Work Group. The workgroups researched these respective areas and produced a report with recommendations to the NYSDEC on ways to address these issues. The Disproportionate group suggested six methodologies for assessing disproportionate burdens in communities but could not reach a consensus on the optimal strategy. The Health group also suggested several sources of health indicators but could not reach consensus on how to correlate this data with environmental burdens, although they suggested this correlation would be possible with more data in the future. It is not clear how or if the NYSDEC will adopt any of the groups' recommendations.

The EJ policy's primary strategy is to screen permits via the State's Environmental Quality Review Act (SEQR) for impacts in EJ communities. If a proposed permit is found to be in an EJ community and trigger an adverse impact, the permit applicant is required to conduct enhanced public outreach in that community. Although the policy focuses on the permitting process under SEQR, the modifications to this process under the EJ policy guidelines are primarily procedural in nature.

*“DEC Division of Environmental Permits shall conduct a preliminary screen to identify whether the proposed action is in or near a potential environmental justice area(s) and determine whether potential adverse environmental impacts related to the proposed action are likely to affect a potential environmental justice area(s)”*  
(NYDEC Policy, 3/19/03, CP-29 Environmental Justice and Permitting)

This process is similar to the one proposed by the original NJDEP Environmental Equity policy in which permit applications are screened and then directed to conduct enhanced public outreach in EJ communities. But in New York, this process is required rather than voluntary, and permits in designated EJ communities trigger this enhanced participation process. Under the SEQRA, an environmental impact review is triggered in major permitting cases similar to the National Environmental Policy Act (NEPA) requirements. The environmental impact study opens up a window for the state to require broader measures from their applicants. The EJ policy only requires additional outreach measures for applicants in EJ areas. Thus far, the agency has not opted to modify their standards for regulatory decision-making within the SEQRA statutes. In other words, the EJ policy does not mandate more stringent standards or different technical permit requirements if the permit is in an EJ community with existing burdens.

New York's environmental justice policy is also limited to the DEC and thus the policy does not apply to the Department of Health or the Department of Transportation for example, even in cases where an environmental justice issue may arise that involves these agencies' actions. It remains to be seen how the State of New York will respond to the broader environmental justice issues that fall outside of the environmental regulatory system. The policy also does not address how to alleviate existing injustices in the form of disproportionate burdens already present in low income and minority communities. By focusing on permitting, the EJ policy applies only to new permit applications.

The limited purview of the policy poses a special problem in New York because of the unique nature and scope of environmental justice problems in New York City. Typically EJ cases revolve around the disproportionate concentration of environmental

burdens in low income and minority communities. But in New York City, permitting of new facilities is not always the driving factor in creating disproportionate burdens in disadvantaged communities. Heavy industry is no longer seeking permits in New York City because high land values have driven most of industries to locations outside the city. The major sources of disproportionate burden in the city result mostly from mobile sources of pollution like automobiles and trucks, large regional or city owned facilities like sewage treatment plants, waste transfer stations or transfer facilities for buses – none of which are captured by NYDEC’s permitting process. Thus, an EJ policy, which focuses solely on the permitting system under DEC, is not able to address many of the key distributive EJ issues facing New York City’s most disadvantaged residents. One of the EJ advocates on the Disproportionate Workgroup commented:

*“The most significant problem with this report [Recommendations Report from the Disproportionate Impact Analysis Workgroup] is that most of the methods it presents would not ensure that future permitting decisions reduce current disproportions and would not ensure that future decisions do not create new disproportions or exacerbate existing ones.”* (NYSDEC, Disproportionate Adverse Environmental Impacts Working Group, Final Report, August 2004, p.3)

### California

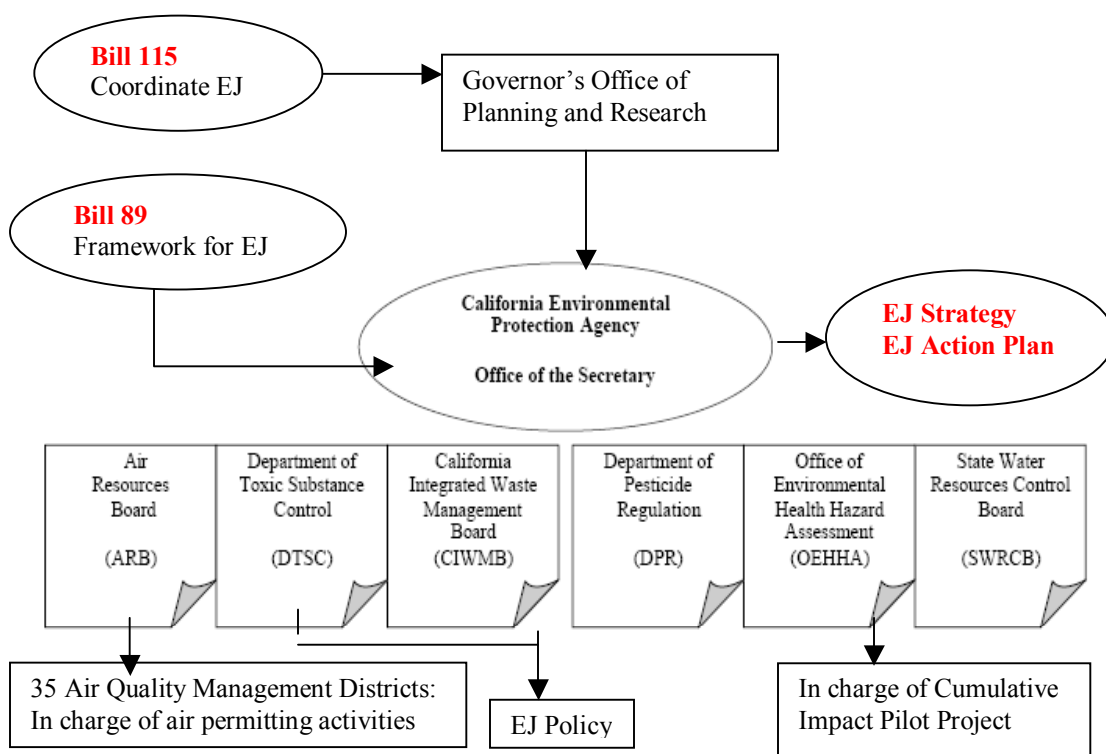
The California environmental regulatory structure and the development of environmental justice policies are more complex than most states. California created an umbrella organization called the California Environmental Protection Agency (Cal/EPA) in 1991 that oversees six boards, departments, offices and programs. The secretary of Cal/EPA provides the overall vision and leadership emphasizing the Governor’s goals and approving the budgets for the six agencies. Each agency in turn promulgates their own rules and implements programs within their respective jurisdictions. Under this model the Cal/EPA sets the basic environmental justice policy according to the Governor

and the legislature's mandates and then agencies develop their own EJ strategies. (National Academy of Public Administration, 2002, p.86).

The California Air Resources Board (CARB) is one of the agencies that falls under Cal/EPA. It is made up of 11 officials appointed by the Governor and representatives of the 35 local and regional air pollution control districts. CARB has responsibility for all statewide air policy issues, has rulemaking authority and conducts some inspections. The regional air districts manage most of the day-to-day permitting, inspection, and enforcement activities. The local districts regulate industrial air pollution sources, issue permits, develop local plans, and ensure industries adhere to air quality mandates. For example, the largest district, the South Coast Air Quality Management District (SCAQMD), has 800 employees, and a \$100 million budget. These two agencies led the state's initial EJ efforts, developing EJ strategies prior to Cal/EPA. The Governor's Office of Planning and Research was charged via legislation to provide guidance to local governments and state agencies on EJ issues.

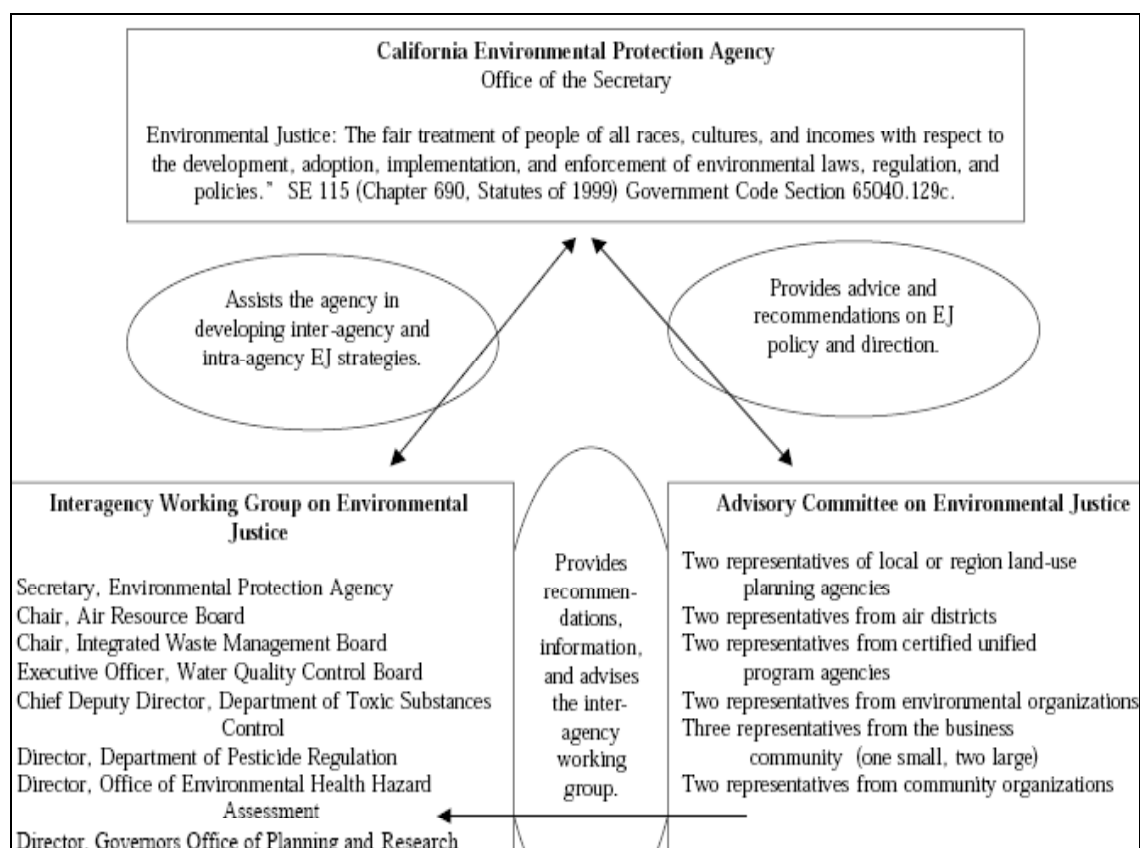
Cal/EPA works directly with an EJ Interagency Workgroup and an EJ Advisory Committee. The Interagency Workgroup is made up of state agencies charged with considering EJ issues and developing agency strategies. The EJ Advisory Committee is an external advisory body that advises Cal/EPA and its agencies on EJ matters. The Committee is made up of a variety of stakeholders including EJ advocates, industry representatives and local officials.

**Figure 13: Context of California Environmental Justice Policies**





**Figure 14: California Agencies Implementing Environmental Justice Policies** (Diagram modified from, National Academy of Public Administrators, 2002, p.107)



**Table 11: California Environmental Justice Events**

Year	Political or Policy event
Early 1990's	<ul style="list-style-type: none"> <li>Kettleman City hosts the largest toxic waste dump in the state and in 1988 another major waste incinerator is proposed in their area. In a subsequent lawsuit, the judge ruled that residents were precluded from meaningful involvement under the CEQA process.</li> <li>September 1993, the project proponent in Kettleman City, Chem Waste, withdrew its proposal for the toxic waste incinerator.</li> </ul>
1999	<ul style="list-style-type: none"> <li>The term "environmental justice" formally defined when Governor Davis signed Senate Bill 115, authored by Senator Solis. This bill designated the Governor's Office of Planning &amp; Research as the lead agency charged with coordinating the state's EJ efforts</li> <li>Cal/EPA is required to take actions in designing EJ programs, policies, and standards.</li> <li>Governor Davis appoints Winston H. Hickox Secretary for Environmental Protection.</li> </ul>
2000	<ul style="list-style-type: none"> <li>Governor Davis included a specific appropriation to Cal/EPA for its environmental justice program, and signed Senate Bill 89 authored by Senator Martha Escutia.</li> <li>Bill 89 establishes a procedural framework for pursuing environmental justice</li> <li>Interagency Working Group (IWG) on Environmental Justice is created – it includes the heads of Cal/EPA's Boards, Departments, and Office, and the Director of OPR</li> <li>Created EJ Advisory Committee, made up of external stakeholders, to assist Working Group in developing a strategy to identify and address EJ gaps in Cal/EPA programs</li> </ul>
2001	<ul style="list-style-type: none"> <li>Senate Bill 828 (Alarcon) established a deadline for the Cal/EPA to identify and address gaps in their programs that may impede the achievement of environmental justice.</li> </ul>

	<ul style="list-style-type: none"> <li>• Bill 1553 (Keeley, 2001) required OPR to establish guidelines for incorporating environmental justice into the general plans adopted by cities and counties.</li> <li>• Cal/EPA first convened the IWG and Advisory Committee in December 2001.</li> <li>• SB 32 (Escutia, 2001) authorized local governments to investigate and cleanup small contaminated properties</li> <li>• AB 1390 (Firebaugh, 2001) required air districts with more than 1 million residents expend specified emission reduction funds in communities with the most significant exposure to air contaminants and in communities of minority and/or low-income populations. Encouraged districts with less than 1 million residents to do the same.</li> </ul>
2002	<ul style="list-style-type: none"> <li>• SB 1542 (Escutia, 2002) required the Integrated Waste Management Board to provide EJ models and information to local jurisdictions for siting landfills. Also added four additional representatives to the EJ Advisory Committee from two EJ organizations; one federally recognized Indian Tribe, and one small business association.</li> <li>• AB 2312 (Chu, 2002) established an EJ Small Grant Program administered by Cal/EPA Provides grants of up to \$20,000 to community nonprofits for projects that address EJ issues. (In 2005, the fund was \$280,000 total)</li> </ul>
2003	<ul style="list-style-type: none"> <li>• The Advisory Committee presented its report <i>on Environmental Justice to the Interagency Working Group Report</i>, advising the IWG on the EJ strategy.</li> <li>• The IWG approved a resolution endorsing the Advisory Committee's report and committing to using the goals and recommendations contained therein</li> <li>• New Republican Governor takes over from Governor Davis who is recalled. Administrative changes made to Cal/EPA – OPR's role is diminished</li> <li>• Terry Tamien appointed as the new Cal/EPA secretary by Governor Schwarzenegger</li> </ul>
2004	<ul style="list-style-type: none"> <li>• Cal/EPA published its <i>Environmental Justice Action Plan</i>.</li> <li>• Finalized EJ Strategy - includes 6 pilot projects for each of the Action Plan's main goals.</li> <li>• December 2004, Governor Schwarzenegger appoints Alan C. Lloyd (D) from the Air Resources Board to replace Terry Tamminen (D) as the Cal/EPA secretary. Alan Lloyd was a considered a leading advocate for EJ at the Air Resources Board</li> </ul>
2005	<ul style="list-style-type: none"> <li>• February 16, 2005: The IWG approved six staff proposed pilot projects to begin implementation of Phase 2 EJ activities.</li> <li>• April 2005, CARB issues "Air Quality and Land Use Handbook: A Community Health Perspective." to advise air quality districts &amp; local land use planning organizations</li> </ul>
2006	<ul style="list-style-type: none"> <li>• Cal/EPA BDOs are conducting Phase 2 activities of the EJ Action Plan</li> <li>• Linda Adams, appointed by Governor Schwarzenegger in May as Cal/EPA Secretary</li> </ul>

California's environmental justice policies are important to examine because it has the most comprehensive and perhaps the strongest state level environmental justice policies in the nation. California has passed the greatest number of legislative actions related to environmental justice, they have the largest sources of funding allocated to research and grants for environmental justice issues and they have the greatest number of state staff and programs dedicated to environmental justice (National Academy of Public

Administration, 2002, p.99). Although the state has made significant investments in EJ policies, the resulting impact of these policies has not yet been determined.

California's EJ policies were initiated by legislative action prompted by intense grassroots organizing from EJ communities throughout the state. These EJ activists pressured State representatives to take legislative action at a time when they perceived the state administration was not receptive to EJ policies. State officials also noted that policy advocacy within certain state agencies like the Air Resources Board (CARB) was occurring prior to legislative action on a statewide level. EJ communities regularly challenged CARB and the South Coast Air Quality Management District (SCAQMD) in particular because these agencies frequently handled controversial EJ permitting cases. Unlike many states, California's EJ policies were initiated through legislative mandates that directed action in administrative agencies like Cal/EPA. While California's environmental justice legislation is unsurpassed, the programmatic and administrative implementation of the legislative goals has not been fully realized.

California's complex environmental regulatory structure, with Cal/EPA serving as an umbrella organization, presents unique challenges to implementing EJ policies. On one hand, establishing EJ priorities at the highest levels of government (in the Governor's Office of Planning and Research and in the Secretariat of Cal/EPA) can lend the powerful force of the state's leadership to pushing reforms through the massive administrative bureaucracy. On the other hand, because Cal/EPA is largely removed from the daily functions of its various regulatory arms, it may take longer and be more difficult to implement reforms at the local level. Additionally, if political changes occur at the highest levels of the state, which happened with the election of a new Republican

Governor in 2003, policy implementation is jeopardized if the new leadership does not have the same level of commitment to continue such policies.

There is some evidence that despite initiatives to institutionalize EJ issues across various state agencies and functions, little institutionalization occurred in the state beyond the state's environmental management agencies. In 2003, the Governor's Office of Planning and Research conducted a survey of all the state's boards, agencies, departments and commissions (130). Although many of the agencies acknowledged performing functions related to EJ, only one agency had a written EJ policy. Of the agencies that fall under Title VI laws, more than half (55%) responded that they make decisions that may impact the environment or EJ but only 6% had a written EJ policy. This lack of institutionalization of EJ issues statewide supports similar findings in New Jersey where despite having a broad mandate under the Executive Order, no other state agency developed an EJ policy or hired EJ staff.

**Table 12: Environmental Justice Survey Results,** (From CA Office of Planning and Research)

SUMMARY OF RESULTS			
<i>Does your agency perform functions or have involvement in activities that may have an effect on the environment or on environmental laws or policies?</i>	24% Make or fund land use decisions 19% Make Permitting Decisions 24% Write or produce regulations 37% Interact with public on the above issues 29% Make other decisions that may have an impact 59% No/Unsure		
<i>Does your agency have a written EJ policy?</i>	2% Yes (1)*	87% No (55)	11% Currently Developing (7)
<i>Has your Agency begun EJ initiatives?</i>	9% Yes (6)	83% No (52)	8% Currently Developing (5)
<i>Would your agency be interested in receiving staff training in EJ?</i>	22% Yes (14)	38% No (24)	40% Want to Learn More (25)
<i>Does your agency receive funding or have any obligations under Title VI?</i>	29% Yes (18)	59% No (37)	13% Not Sure (8)

\* The number in parentheses represents the number of respondents.

The following are the four major EJ goals identified by Cal/EPA's EJ Action Plan (Cal/EPA, Environmental Justice Action Plan, October 2004)

1. Develop guidance on precautionary approaches;

2. Develop guidance on cumulative impacts analysis;
3. Improve tools for public participation and community capacity-building; and
4. Ensure EJ considerations within the Governor's Environmental Action Plan.

The EJ Action Plan also calls for the implementation of these goals in several phases:

**Phase 1:** (projected to be completed in early-2005)

- Identify pilot project locations and define project parameters
- Develop definitions for precautionary approaches and cumulative impacts
- Inventory Cal/EPA's current public participation efforts and processes

**Phase 2:** (projected to be completed in mid-2005)

- Establish LAGs (Local Advisory Groups)
- Collect environmental emissions/discharge, exposure, and health risk data, and identifying data gaps for pilot projects
- Inventory current precautionary approaches and identify obstacles
- Inventory current science-based cumulative impact studies, protocols, and tools, and determine where gaps exist in current methodologies
- Develop common public participation guidelines

**Phase 3:** (projected to be completed in late-2005)

- Develop criteria and protocols for addressing EJ gaps in standard risk assessment
- Conduct preliminary cumulative impacts analysis for pilot projects
- Evaluate whether additional precaution may be warranted
- Identify reasonable, cost-effective approaches and mitigation strategies
- Develop Children's Environmental Risk Reduction Plan (ChERRPs)
- Complete activities to improve public participation and capacity building

As of 2005 Cal/EPA wrapped up Phase I of the implementation of strategies and was beginning Phase II activities such as setting up Local Advisory Groups (LAG) and doing an inventory of cumulative impact methodologies. The agencies have not yet decided on which method of cumulative impacts analysis to use in their pilot projects. Community opposition to strict risk based cumulative impact studies has left the process at an impasse. Communities want a more comprehensive approach that takes into consideration health stressors, demographic and socio-economic information on the population, which clash with the agencies' desire to follow a more traditional risk assessment model. Further exacerbating this conflict is the lack of funding from the state

to study alternative methodologies to cumulative impact assessments. The six pilot projects are the primary mechanism for policy implementation and are meant to serve as a basis for broader policy changes to be mandated across the Cal/EPA system. The pilot projects include:

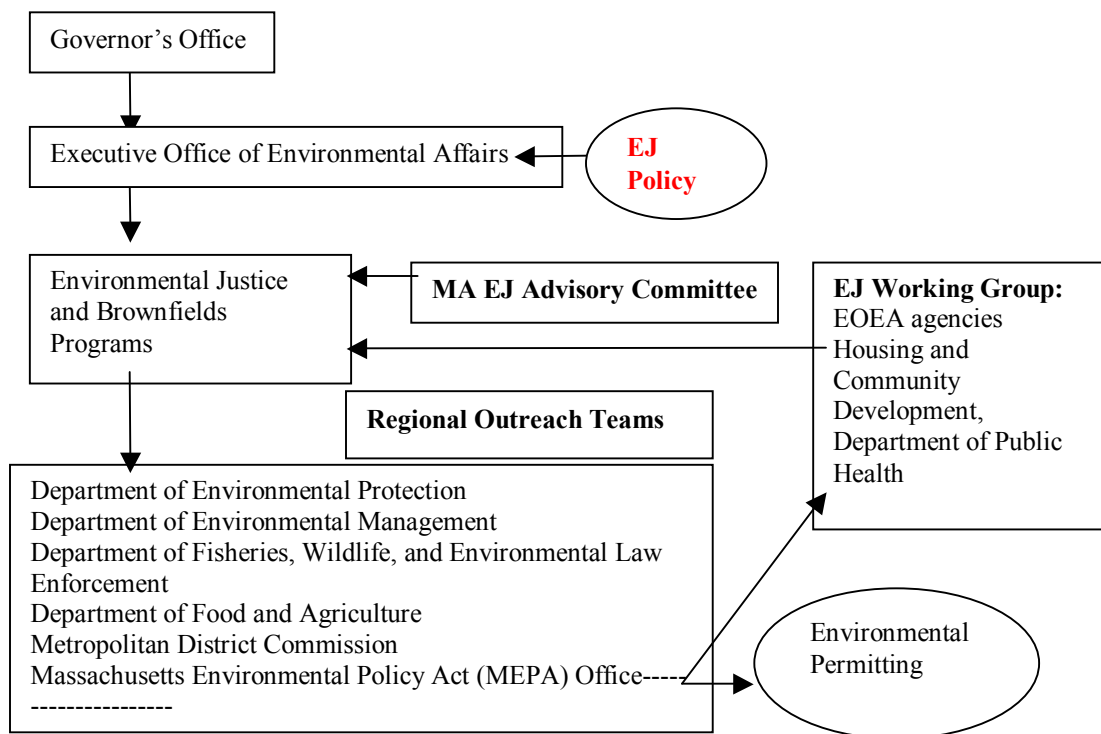
1. CARB project – Cumulative Impacts, Reduction of Air Pollution Exposure in Urban Communities in Southern California
2. DPR project - Air Monitoring for pesticides in a Central Valley Community
3. DTSC project - Illegal Drug Lab Risk Reduction Project in Oakland area
4. SWRCB project - Community Capacity Building – restore fishery habitat and fishery production in Klamath River watershed
5. SWRCB project - children’s risk reduction plan for pollutants in the New River
6. DTSC project -West Oakland Forum, Project will focus on projects related to Brownfields and children’s health in West Oakland

One of the central problems plaguing the pilot projects has been the manner in which these projects were selected and framed. The EJ Advisory group generally supported the pilot projects but Cal/EPA agencies closed the pilot project selection process to agency staff. Project selection was highly contentious due to the competition for potential funding and resources from the state. Furthermore, EJ communities where pilot projects were selected were disappointed that the subsequent design of projects and the Local Advisory Groups were not more inclusive of public input from EJ communities. Since the pilot projects were initiated, funding for these projects has been reduced and the resources needed to implement the project findings more widely are not available at this time. EJ constituents and advocates inside the agency view these cut backs as a reflection of the limited support for EJ initiatives within the current political administration. The success of these pilot projects may determine the extent to which the state institutionalizes EJ goals.

## Massachusetts

Massachusetts has a similar agency structure as California's with the Massachusetts Executive Office of Environmental Affairs (MAEOEA) serving as an umbrella organization overseeing a broad range of environmental agencies and departments including the Department of Environmental Protection (DEP) and the Massachusetts Environmental Protection Act (MEPA) Office. This umbrella organization is charged with setting out the environmental policy goals and priorities for the state. The Environmental Justice Director is positioned within the Secretary's Office and oversees EJ matters in all the agencies and departments, including staff EJ training. EOEA handles the overall policy issues while the individual departments and agencies carry out the environmental regulatory functions such as permitting, enforcement and compliance.

**Figure 15: Massachusetts Environmental Justice Policy Context**



**Table 13: Massachusetts Environmental Justice Events**

<b>Year</b>	<b>Political or Policy event</b>
1999	<ul style="list-style-type: none"> <li>• Governor signed Brownfields revitalization bill to aid urban communities</li> </ul>
2000	<ul style="list-style-type: none"> <li>• Office of Environmental Justice created within the EOE, EOE Secretary appoints Veronica Eady as the first Environmental Justice Director</li> <li>• Environmental Justice Advisory Committee (EJAC) created to advise EOE on the development of environmental justice policies</li> </ul>
2001	<ul style="list-style-type: none"> <li>• Draft Environmental Justice policy released for public comment</li> <li>• Bill S.1145, Established EJ designation for communities, bill introduced but never passed</li> <li>• MA EOE hosts seven month public input process with a series of public meetings hosted throughout the state to get community feedback on the Draft EJ Policy</li> <li>• Professor Daniel Faber releases a report outlining the disproportionate siting of environmental burdens in the state's EJ communities</li> </ul>
2002	<ul style="list-style-type: none"> <li>• On October 19, 2002 the Secretary of Environmental Affairs adopts an EJ Policy</li> <li>• MassGIS and the DEP developed three Environmental Justice maps that display the EJ areas and other environmental factors. (<a href="http://www.mass.gov/mgis/ej.htm">http://www.mass.gov/mgis/ej.htm</a>)</li> </ul>
2003	<ul style="list-style-type: none"> <li>• Republican Governor, Mitt Romney, takes over from the Democratic administration, appoints Ellen Herzfelder as the new Secretary of the EOE, new EJ coordinator hired</li> </ul>
2005	<ul style="list-style-type: none"> <li>• Stephen R. Pritchard appointed as the new Secretary at EOE</li> </ul>

The development of the EJ policy was carried out with the aid of the Massachusetts Environmental Justice Advisory Committee (MEJAC), with representatives from environmental justice communities, industry, and academia. The central strategy of the EJ policy focuses on major permitting and brownfields reclamation (MA EOE, EJ policy, 2002). The Massachusetts Environmental Policy Act (MEPA) Office is the lead regulatory agency in charge of major environmental permit reviews. The EJ policy is focused on the MEPA process and thus limits the regulatory capacity of the agency to look at EJ problems beyond large permitting projects such as power plants.

Similar to New York's policy, the key element of the EJ policy was a procedural modification to the permitting process under MEPA. MEPA, similar to CEQR in California and SEQR in New York, is the state level equivalent of the NEPA. If a project triggered a MEPA review, there were several procedural mechanisms for enhanced public participation and analysis of impacts and mitigation. But very few projects in the state



were large enough to trigger this type of review. In the past five years, there have been only a handful of MEPA reviews and of those only one triggered an EJ review.

MEOEA Administrator Robert Durand hired a leading EJ advocate and lawyer to take on the task of developing an EJ policy for Massachusetts. At the same time, EJ activists in low income, minority communities such as Dorchester and Roxbury pressured the state to address environmental injustices. These EJ communities launched several local campaigns aimed at bringing attention to environmental injustices such as contaminated brownfield sites and poor air quality. The state EJ coordinator began the process of developing an EJ policy at the same time that Professor Daniel Faber released an environmental justice study of Massachusetts that illustrated the disproportionate impacts in EJ communities throughout the state (Faber and Krieger, 2002). Following the release of this report, the state developed a draft policy and initiated an extensive public input process, traveling to EJ communities throughout the state to get feedback on the draft EJ policy. Armed with the Faber report, communities asked for a policy that addressed disproportionate siting of polluting facilities more aggressively. The resulting EJ policy added procedural provisions to the MEPA environmental permitting processes.

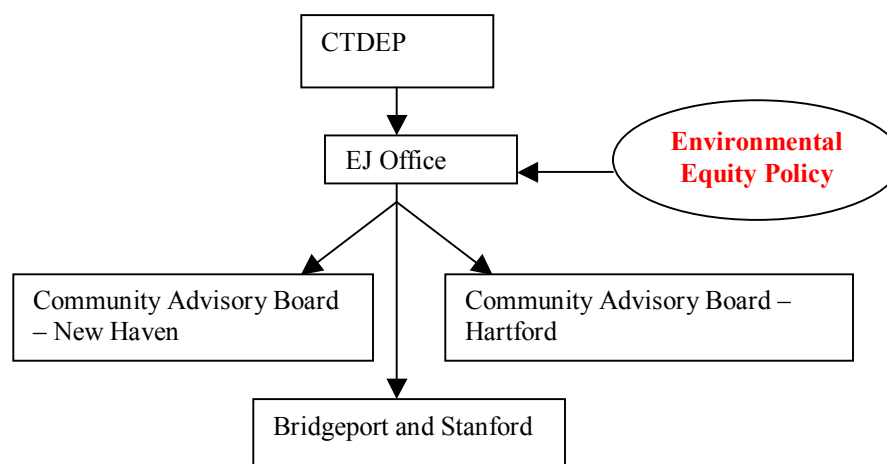
Similar to California, the Massachusetts EJ policy is higher up in the state's administrative structure but the policy's fate rests on the commitment of the changing state leadership to keep the policy a priority for implementation at lower levels of bureaucracy. In both states, the EJ policy was enacted under a more "green", Democratic political administration and the implementation was carried out under a more conservative, Republican leadership. Although the EJ policy and EJ Office were housed at the executive level of government with the potential to impact various state agency

functions, the policy was limited to the purview of the environmental management agency and even more narrowly, to major new permits.

The other major strategy the EJ policy targeted was brownfields redevelopment in urban, EJ communities. At the time of the policy's enactment, a state bill made funding available to help remediate and redevelop brownfields. It is not clear how many brownfields were remediated specifically in EJ communities under this provision. Additionally, EOEA targeted enforcement efforts in EJ areas and made small grants available for EJ related projects. Shortly after the EJ policy was finalized, a Republican administration replaced the Democratic Governor and new appointments were made to the secretariat of EOEA along with the EJ Office.

### Connecticut

The Connecticut Department of Environmental Protection (CT DEP) enacted one of the first environmental equity (EE) policies in the nation in 1993. The Department adopted a policy early on primarily in an attempt to preempt the federal Executive Order on Environmental Justice, which was released the following year. The CT DEP Commissioner created the position of environmental justice coordinator to serve as a liaison between EJ communities and the agency. Interestingly, this coordinator has served in her position for the entirety of the policy's life and she is the only EJ coordinator of the five states to hold this position from policy enactment through implementation. EJ policy coordinators typically change as political administrations change.

**Figure 16: Connecticut Environmental Equity Policy Context****Table 14: Connecticut Environmental Justice Events**

Year	Political or Policy event
1993	<ul style="list-style-type: none"> <li>CT DEP develops its environmental equity policy</li> </ul>
1994	<ul style="list-style-type: none"> <li>Office of Urban and Community Ecology becomes the Environmental Equity Program</li> </ul>
1998	<ul style="list-style-type: none"> <li>CT DEP and the Governor's Office for Urban Affairs created EJ Community Advisory Boards in Hartford and New Haven</li> </ul>
1999	<ul style="list-style-type: none"> <li>CT DEP receives \$100,000 from the US EPA's State and Tribal Environmental Justice Grants Program to make recommendations on how to increase public notice and participation among low-income and minority communities.</li> </ul>
2001	<ul style="list-style-type: none"> <li>Connecticut Coalition for EJ investigates feasibility of environmental justice legislation.</li> </ul>
2003	<ul style="list-style-type: none"> <li>CT DEP commissioner Art Rocque declared the English Power Plant in New Haven to be a health risk to residents if it re-opened and denied their permit to operate.</li> </ul>
2005	<ul style="list-style-type: none"> <li>CTDEP created a manual to help citizens understand the permitting process.</li> </ul>

Connecticut has one of the longest standing EJ policies in the nation spanning more than a decade. Since the policy was enacted, the political administrations have remained relatively stable with Republican Governors and the EJ program staff has also been unchanged. Due to the relatively stable political and administrative conditions in the state and their longstanding EJ policy, Connecticut serves as an interesting comparison to other nearby states such as Massachusetts and New Jersey where EJ policies shifted with political shifts. New York also had a politically stable climate, but

pressure from the vocal EJ communities in New York City and recommendations from the Advisory Council resulted in different environmental justice approaches.

The political stability in Connecticut may have served to quell expectations for significant policy shifts within the state. In this case, political stability led to a lack of political pressure to make significant advances to modify the EJ policy. Another key factor that limited Connecticut's environmental justice policy was its relatively conservative foray into EJ policy making. Both Connecticut and New Jersey started out in the early 1990s with a Republican administration and an EJ policy that emphasized environmental equity rather than justice, indicating a more conservative policy approach. Once New Jersey's administration changed to a more liberal, Democratic administration so too did the terminology and focus of the program. The shifting political context created a "focusing event" that opened a new policy window and allowed policy actors and interest groups to pursue more aggressive EJ policies in New Jersey. In Connecticut, a Republican Governor has been in power for the entire life of the EJ policy with little turnover in the DEP's leadership. This relative lack of shifting in the politics and policies streams lessens the likelihood that the streams will converge and shift policy making significantly.

CTDEP's environmental justice program focused primarily on increased public participation and outreach to EJ communities in major metropolitan cities. The EJ program also targets enforcement and compliance efforts in these areas. The policy does not address permitting the way New Jersey or New York's environmental justice policies attempted to do but rather focuses on general outreach to low income and minority communities. Connecticut is the only state out of the five that does not have an Advisory

group comprised of external stakeholders. Again, this lack of external influence from EJ communities effectively blocks out the potential for policy advocacy or innovation filtering into the agency. Instead, the agency has set up local advisory boards where the EJ office can conduct outreach to communities on specific EJ issues. Despite the lack of an Advisory Group, the agency's EJ coordinator maintains a good relationship with EJ communities. There is no mechanism in place to address key distributive environmental injustices such as disproportionate facility siting:

*"In Hartford, the program suffered a major setback recently when, despite support from the environmental equity program, the Environmental Protection Department granted a permit to expand the regional landfill over neighbors' opposition. "The D.E.P. couldn't find any regulatory reason not to grant the permit," Ms. Pestana said. "The community is upset about it. That's one of the reasons it's been difficult to get people out in Hartford -- they're disappointed with that decision. "She added that her program pushed the department to require more stringent regulation of the operator, and a permit for expansion would not be issued until some compliance issues were resolved." (Tuhus, 1996)*

The reasons behind this seeming lack of progress on EJ goals can be attributed to several factors. The political climate in the state has remained relatively conservative and stable over time thus there has been little opportunity or support to modify the agency's EJ approach. Also, the state's environmental justice communities are slowly beginning to mobilize larger scale efforts beyond their local hubs in cities like New Haven and Hartford in order to advocate for more aggressive actions. The statewide Connecticut Coalition for Environmental Justice lobbied for the passage of EJ legislation in 2002 that would've shifted the agency's EJ policies. Their efforts were unsuccessful because of a lack of political support from the legislature. The opposition from political leadership in the state may be frustrating attempts at making EJ efforts more aggressive. Connecticut's policy, although one of the earliest, is the most stunted in terms of addressing environmental injustice.

## Policy Implementation

This chapter focuses on the factors that help shape the ultimate effectiveness of EJ policies in each state. According to political scientists Sabatier and Mazmanian (1983) there are a variety of conditions necessary for effective policy implementation:

1. Is the policy conceptually clear (issue definition)
2. Does the policy specify clear directives and organizational structures (implementation tools, levels of policymaking)
3. Does the policy have recognized leadership committed to the policy (political ideology)
4. Does the policy issue have active constituency groups and policy “entrepreneurs” within government that can support the policy throughout the implementation stage (i.e. Advisory groups and legislative oversight, Interest groups)
5. Is there sustained executive priority given to the policy and its goals – are there any conflicting policies or changing conditions that weaken implementation – (resources, level of policy making)

The following indicators suggest how effectively implementation of environmental justice policies is carried out by the five states. These factors will be compared across the five states to indicate implementation effectiveness and lay the foundation for further policy evaluation in the following chapter. The following table summarizes key factors shaping policy implementation in all five states.

**Table 15: Cross – Case Comparison of Implementation Conditions**

	<b>NJ</b>	<b>NY</b>	<b>CA</b>	<b>MA</b>	<b>CT</b>
<b>1. Issue definition</b>	Environmental Equity – Now Environmental Justice	Environmental Justice	Environmental Justice – defined through legislation	Environmental Justice	Environmental Equity
<b>2. Implementation tools</b>	<u>EE policy</u> = Screening model for permit impacts <u>EJ Exec Order</u> = Petitioning process from self identifying EJ communities	Required public outreach for permit applicants, permit screening	Cal/EPA Pilot Projects for each policy goal & Action Plan	MEPA permitting triggers outreach, increased review, brownfields	Targeted enforcement and compliance
<b>3. Level of policy-making</b>	1998 – 2002 Limited to NJDEP 2004 Governor’s EO	Limited to NYDEC	Legislation – Governor’s OPR  Cal/EPA secretariat –	Limited to EOEA	Limited to CTDEP

	– multiple agencies - mostly NJDEP		agencies & boards		
<b>4. Political Ideology</b>	1994 -1999 <b>Republican</b> , 2000- present <b>Democratic</b>	1995- 2006 <b>Republican</b>	1994-2002 <b>Democratic</b> , 2003 - present <b>Republican</b>	1994 – 2002 <b>Democratic</b> , 2003 - present <b>Republican</b>	1995- present <b>Republican</b>
<b>5. Interest group</b>	Statewide & Regional Alliances > 20 organizations	Statewide and NYC Alliance > 20 organizations	Regional Alliances > 40 organizations	Regional Alliance = Greater Boston <10 organizations	Statewide Alliance <10 organizations
<b>6. Resources</b>	1. 5 FTE – EJ Program Coordinator & assistant  Air Toxics research	5 FTE = 1 EJ coordinator & 1 Aid, 3 EJ program specialists, Workgroups with funding from EPA	12 FTE – EJ program coordinators - 6 pilot projects - EJ grants for communities	1.5 FTE – EJ program coordinator, Urban grants = \$5,977,838 FY’05	3 FTE – EJ Program Coordinator, 2 field staff

### 1. Issue definition – *clear directives*

Issue definition is a critical factor influencing the development of environmental justice policies. The way in which each state defined the scope of the problem shaped the strategies to address these issues. Ringquist (2002, p.380) concludes that unclear issue definition may be the limiting factor in the development of “*aggressive*” *environmental justice policies*.” Although Ringquist (2002) points to ambiguous issue definition as an impediment to states’ developing a clear agenda and policy for environmental justice, it seems each state settled on some version of the US EPA’s definition of the issue with all the policies including the language of “fair” or “equal” treatment of people taken directly from the US EPA’s definition. All five states developed a definition of environmental justice either prior to policy development or incorporated into the language of the policy itself. Table 16 below summarizes the definition of environmental justice used for each state’s policy. Although the USEPA began by defining the issues as environmental equity rather than justice they soon abandoned the term equity because of pressure from grassroots activists (Holifield, 2001, p.79).

**Table 16: State Environmental Justice Definitions**

State	Definitions
<b>NJ</b>	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.
<b>NY</b>	Environmental justice means the fair treatment and meaningful involvement of all people regardless of race, color, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.
<b>CA</b>	California law defines “Environmental Justice” as: “The fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of all environmental laws, regulations, and policies (Gov. Code Section 65040.12).”
<b>MA</b>	Environmental justice is based on the principle that all people have a right to be protected from environmental pollution and to live in and enjoy a clean and healthful environment. Environmental justice is the equal protection and meaningful involvement of all people with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies and the equitable distribution of environmental benefits.
<b>CT</b>	Environmental justice means that all people should be treated fairly under environmental laws regardless of race, ethnicity, culture or economic status.
<b>US EPA</b>	Environmental Justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.

These definitions seem to conform to a procedural notion of environmental justice. In addition to the definition of environmental justice, states had difficulty defining other terms such as – what constitutes an environmental justice community, what level of pollutants can be considered “disproportionate” impacts, and so on. Many of the states attempted to define these terms in their environmental justice policies. States are still in the process of clearly defining terms like cumulative or disproportionate impacts. Nevertheless, at this later stage of policy implementation, stakeholders are less focused on defining the terms and increasingly focused on goal setting and implementation mechanisms.

## **2. Implementation tools – *policy directives and organizational structure***

Each environmental justice policy includes strategies by which the state plans to implement policy goals. How did states organize and structure the implementation phase, what strategies and administrative channels were used? California developed an Action



Plan and an EJ Strategy detailing the primary EJ goals and objectives, the agencies responsible for each goal and the different phases of implementation. Other states left the planning of implementation strategies to the lead environmental agency's EJ program office (in NJ and CA implementation was also conducted in conjunction with interagency workgroups). New Jersey's policy specifies a petitioning process by which EJ communities self identify EJ issues and request state intervention. Through this petitioning process, the state develops an action plan to address EJ communities' concerns. In New York, permit applications are put through a screening process and applicants are required to do additional public outreach in areas identified as EJ areas.

Thus the major areas of state intervention occur through public participation processes in the state's permitting program. In California, Cal/EPA selected six pilot projects to implement the goals delineated in their EJ Strategy and Action Plan. The pilot projects are meant to serve as models by which to enact broader statewide reforms. Connecticut's EJ program primarily focuses on targeted enforcement and compliance actions in EJ areas, particularly in major cities like New Haven and Hartford. Massachusetts's environmental justice policy focuses on increased enforcement and compliance, brownfields redevelopment and enhanced public participation through their MEPA permitting process. The key objectives of each state's environmental justice policies are summarized in Table 17 below. The table groups similar policy objectives, coding them according to the types of strategies they represent. Public participation and outreach goals are the most prevalent in each state. How relevant and effective these strategies are to the problems of environmental injustice is examined more closely in the following chapter.

**Table 17: Key Objectives of State Environmental Justice Policies**

Categories of objectives:

Participation = **A**; Targeting enforcement & existing resources = **B**; Internal agency training & awareness = **C**; Cumulative/disproportionate impacts = **D**; Key strategy = **E**

State	Objectives
<b>NJ</b>	<ol style="list-style-type: none"> <li>1. Provide meaningful opportunities for involvement = <b>A</b></li> <li>2. Health &amp; environmental information in other languages, establish Spanish language websites. = <b>A</b></li> <li>3. Identify existing, proposed industrial/commercial facilities in low-income, minority communities for compliance, enforcement, remediation, siting &amp; permitting strategies = <b>B</b></li> <li>4. Develop and issue appropriately protective fish consumption advisories = <b>A</b></li> <li>5. Develop a strategy for fine particulate pollution esp. from diesel emissions = <b>D</b></li> <li>6. Convene a multi-agency task force = <b>A</b></li> <li>7. Reconstitute the Environmental Justice Advisory Council to the DEP = <b>A</b></li> <li>8. EJ communities may file a petition with Task Force requesting an Action Plan for relief = <b>E</b></li> </ol>
<b>NY</b>	<ol style="list-style-type: none"> <li>1. Establishing a hotline to field environmental justice concerns to the EJ office = <b>A</b></li> <li>2. Access to permit information online &amp; translation services for DEC policies = <b>A</b></li> <li>3. GIS maps to identify EJ areas = <b>D</b></li> <li>4. Require permit applicants to conduct enhanced public participation in EJ communities. = <b>E</b></li> <li>5. Educate the public about the permitting process in the regulatory system of DEC = <b>A</b></li> <li>6. Establish 2 workgroups to study: a) disproportionate impacts as a part of environmental impact statements, b) how to incorporate health data in environmental review process = <b>D</b></li> <li>7. Train DEC staff on EJ = <b>C</b></li> <li>8. Target enforcement and compliance in EJ areas = <b>B</b></li> <li>9. Establish a technical grant assistance program for EJ communities = <b>A</b></li> </ol>
<b>CA</b>	<ol style="list-style-type: none"> <li>1. Develop guidance on precautionary approaches;</li> <li>2. Develop guidance on cumulative impacts analysis; = <b>D</b></li> <li>3. Improve tools for public participation and community capacity building; and = <b>A</b></li> <li>4. Ensure EJ considerations within the Governor's Environmental Action Plan.</li> <li>5. Implement pilot projects for each strategy (cumulative impacts, etc.) = <b>E</b></li> </ol>
<b>MA</b>	<ol style="list-style-type: none"> <li>1. Increasing Public Participation/Outreach = <b>A</b></li> <li>2. Minimizing Risk - target compliance, enforcement and technical assistance = <b>B</b></li> <li>3. Encouraging Investments - in economic growth in these neighborhoods</li> <li>4. Infusing State Resources – brownfields redevelopment, grants, etc. = <b>E</b></li> </ol>
<b>CT</b>	<ol style="list-style-type: none"> <li>1. Enhance communication &amp; education opportunities for EJ communities. = <b>A</b></li> <li>2. Encourage community participation in the CTDEP's ongoing operations and programs = <b>A</b></li> <li>3. Foster a heightened awareness of environmental equity issues among staff and provide training on the environmental issues affecting low-income and minority communities. = <b>C</b></li> <li>4. Work with federal, state and municipal agencies on environmental equity issues.</li> <li>5. Diversify racial/ethnic makeup of staff to better reflect and represent constituency. = <b>C</b></li> <li>6. Employ a staff person responsible for ensuring that EE principles are incorporated into all the Department's policies and programs. = <b>E</b></li> </ol>

### **3. Level of policymaking – sustained executive priority**

The level of government in which EJ policies are enacted is important because it can determine the effectiveness and scope of the policy's implementation. The positioning of EJ policies within the state's bureaucracy determines which functions of

the state can be brought to bear in EJ cases. Because environmental justice is so multifaceted, various state powers and strategies are required to make a significant impact in EJ communities.

Four of the five state policies were initially issued as administrative policies in the respective environmental management agencies of each state. If a policy is limited administratively to the environmental agency, many related issues at the heart of environmental injustices will not be actionable under such a policy (i.e. land use planning, public health, etc). If policies are enacted at higher levels of government but lack support from the leadership, they also risk becoming ineffectual. Interviews with state staff and EJ activists in Connecticut, New York and Massachusetts mentioned the possibility of proposed new EJ legislation as an important next step in furthering EJ goals that are currently limited to environmental agencies or existing mandates.

In California, the legislature enacted several EJ policies and mandated implementation via the Governor's Office of Planning and Research (OPR) and Cal/EPA. Under the Republican administration, Cal/EPA primarily drove the EJ policy similar to the other states. In New Jersey, the EJ policy was initially enacted as an administrative order within the environmental agency (NJDEP) but under a new administration the Governor enacted an Environmental Justice Executive Order (EO) with a multi-agency task force. Although multiple agencies fall under the EO, the implementation of the policy is primarily led by the environmental agency. By limiting the jurisdiction of EJ policies, states cut off their ability to effectuate broadscale change in EJ communities.

#### **4. Political Ideology – *recognized leadership committed***

As stated in the Methods Chapter under “Case Selection”, all five states exhibit a liberal political leaning that favors environmental protection policies generally. Even in states with Republican governors, issue voting still leans quite liberal relative to other states throughout the nation. The five states are all considered “Blue” states traditionally found in the Northeast and Pacific regions. This liberal tendency is also linked to a greater commitment to environmental issues. Democrats tend to vote more in favor of environmental and social justice issues. These political ideologies can impact the emphasis and scope of environmental justice policies as evidenced by the more conservative “environmental equity” policies in Connecticut and New Jersey where Republican Governors were in place.

In California and Massachusetts, the EJ policies originated in Democratic administrations and were later taken over by Republican governors. In both cases, environmental justice movement advocates in each state perceived a decline in the commitment of the state to implement EJ policies. These multiple case studies further the notion set forth in the New Jersey case, that significant shifts in policy approaches, in the policy initiation phase, represent shifts in political ideology rather than a natural evolution of a policy over time. In the policy implementation phase, this political ideology seems to matter less in terms of resulting in desired policy outcomes.

State EJ coordinators suggested that the commitment of the leadership within state government to this issue was crucial to its success and further implementation regardless of political affiliation. Without the support of the leadership, the state policies were essentially viewed as dead issues. It seems that party ideology is a significant factor

initially in the development of the policy but in terms of effectiveness of implementation, whether it's a Democrat or a Republican administration, matters less than the leadership's interest in the issue once it is enacted.

### **5. Interest group organizations – *active constituency groups***

The primary interest groups involved in environmental justice policymaking in each state were environmental justice activists from the burgeoning EJ movement in predominantly low income and minority communities. These groups serve as an important catalyst for getting EJ onto the state's agenda and then overseeing its implementation. When environmental justice policies were proposed, the main opponents tended to be industry groups reliant on permitting facilities in EJ areas. The mainstream environmental movement represented by groups such as the Sierra Club was not involved for the most part in the development of EJ policies. Each state has an active environmental justice movement represented mostly by non-profit organizations and individuals living in EJ communities.

All the states have regional or statewide environmental justice organizations. California has by far the largest number and most organized environmental justice groups of the five states with dozens of groups throughout the state and thousands of members. The strength of the EJ movement in California is evidenced by their ability to push through EJ legislation and attract external funding for their own research and advocacy work. Connecticut probably has the most under-developed EJ constituency with only two or three environmental justice groups organized in their major cities. The presence of these stakeholders plays a critical role in holding states accountable to EJ goals and pushing for future EJ policies or reforms.

## **6. Resource allocation** – *sustained executive priority*

Generally, adequate resources are important for policy implementation to be carried out effectively. Other factors also impact policy outcomes, such as how policy implementation and resources are managed. On the other hand, policies lacking resources altogether, whether in the form of funding or staff, will be difficult to implement. The amount of resources denotes, to some degree, the level of a state's commitment to and capacity for achieving policy goals. State resources can include staff dedicated to EJ policies/programs as well as funding both internal, for state driven reforms or research, and external, for community assistance grants, research or direct investments.

All five states have full time employees that coordinate or direct an Environmental Justice Office or Program within the state government. New Jersey and Massachusetts have only the EJ Program coordinator along with one half time or full time assistant. New York and Connecticut have an EJ program director along with three or four full time support and program staff (from other environmental programs such as permitting, enforcement or legal counsel). California has by far the greatest number of staff people dedicated specifically to EJ work throughout the various departments, agencies and boards under Cal/EPA. There are over a dozen staff people from the EJ Director in the Cal/EPA secretary's office to program staff in the Air Resources Board and other agencies working on pilot projects.

Each state had some form of funding allocated either for internal or external EJ projects or research. In New Jersey, the DEP used grant funding and in house technical experts to conduct air toxics modeling projects in two EJ communities. In New York, the DEC offers grant opportunities to EJ communities and they have invested in developing

their own permit-screening model. Massachusetts' EOEPA offers grants to urban communities and awards additional points to EJ communities applying for certain state grants (i.e. brownfields projects). Cal/EPA funded six pilot projects to research how to implement their major EJ goals, although funding for these projects is not sufficient to extend the research beyond where it currently stands. Additionally, the state offers a small grant program for projects in EJ communities. California's EJ policies are the best funded in the nation both in terms of staff and funding for research and grants but they also have the largest EJ populations and state bureaucracy relative to the other states.

External funding from the federal government is also a significant catalyst for state level action. The infusion of resources from higher levels of government can increase a state's capacity and motivation to make policy innovations. New York, New Jersey and Connecticut each received \$100,000 in funding from US EPA's State Environmental Justice Grants (SEJG) to develop their internal capacity to address EJ issues. New Jersey used the funding to create a permit-screening model and strengthen their Advisory group while New York used the funding to conduct workgroups researching disproportionate impact and health studies. Connecticut's EJ program used the SEJG grant to create a model for improved public participation processes in EJ communities.

In all five states EJ program coordinators mentioned the need for increased funding and resources to implement policies more effectively. In states like New Jersey, where a multi-agency task force is charged with carrying out EJ initiatives but lacks staffing or funding, the accountability of the agencies becomes a critical question.

### Model of State EJ Policy Implementation

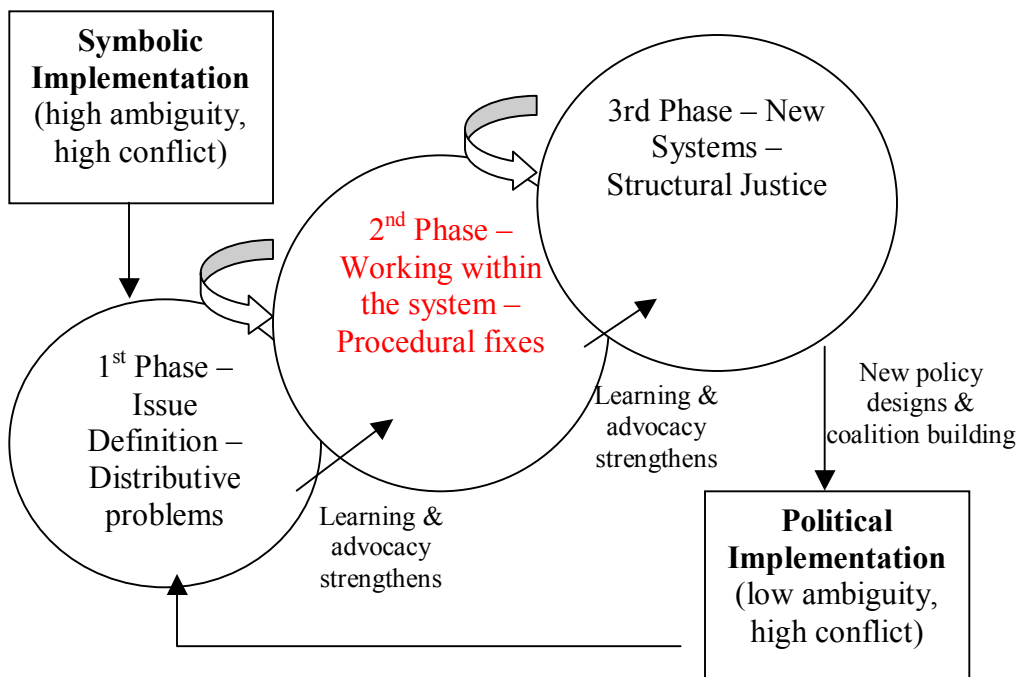
Building on Matland's (1995) ambiguity-conflict matrix, EJ policies are placed on the continuum of "Symbolic implementation" to "Political implementation." Along this continuum, states address different levels of distributive, procedural and structural forms of environmental injustice. In the evolution of policy implementation, learning by key political actors including policy entrepreneurs like EJ advocates and state agencies drive towards new policy designs with less ambiguity and greater levels of distributive, procedural and structural forms of injustice addressed. Unlike Matland's (1995) matrix, policy implementation hinges not simply on the level of conflict and ambiguity but also the level of iterative learning by key policy actors such as EJ advocates and state agencies. In this way policies are not confined to stated goals but are evaluated based on a more comprehensive appraisal of policy relevance and societal value founded in Fischer's critical logic model.

All five EJ policies studied start with high levels of ambiguity and conflict. Ringquist (2002) established in his examination of state EJ policies that in fact these policies suffer from unclear problem and issue definition (ambiguity high) and they typically involve some form of redistributive policy mandate. These policies can pose significant challenges to powerful industry groups that rely on environmental regulatory systems to conduct business profitably, to state bureaucracies that are resistant to shifting mechanisms for regulating industry or redistributing wealth, and for urban development patterns which are entrenched in a system of structural injustice based on housing, economic and social segregation.



Thus, EJ policies begin at the symbolic stage as rhetorical statements of environmental justice goals. Through the implementation process, policy actors move issues to various stages of environmental justice based on their evolving sense of the problem, generation of new policy tools and increased coalition strength and advocacy. These policy actors move from a superficial understanding of EJ as a simple distributive problem with shallow procedural fixes to a more nuanced understanding of how distributive problems are linked to deeper procedural and structural injustices. This evolution thus implies some level of learning that can lead to EJ policies that are more relevant to the problem of environmental injustice (problem definition is less ambiguous) and produce more just, equitable outcomes for society. Once policies reach the political implementation phase they still require a great deal of political power, sympathetic agencies and political leadership as well as resources to attain successful implementation of contentious values implicit in environmental justice goals.

**Figure 17: State Environmental Justice Policy Implementation Model**



### First Phase – Issue Definition & Procedural Justice

The enactment of largely “symbolic” EJ policies, that is, policies with high degrees of ambiguity and conflict, means that the implementing agencies often required more guidance on defining the issues and strategies related to vague environmental justice policy goals. Despite an ambiguous start, policy actors recognized the significant strides made towards the recognition of EJ as an important policy issue. *“Ten years ago EJ activists we were fighting the fight around does environmental injustice exist, and now we’ve progressed to the level of how do we implement it”* (YF/CA interview, 5/16/06).

In this first phase, state agencies emphasize staff training and awareness building as part of issue definition tasks. Almost all the states with the exception of Connecticut formed an external body of stakeholders with representatives from EJ communities to advise the agencies on how to define and implement EJ goals. These internal agency tactics aid implementing agencies in their efforts to better define problems and strategies associated with environmental injustice.

One of the first tasks implementing agencies grappled with in the implementation phase was issue definition for terms such as disproportionate impact or environmental justice community. Most states grappled with operationalizing the terms of the policy and creating strategies and organizational capacity for implementation. States like Massachusetts, New York and New Jersey began by mapping or quantifying disproportionate burdens and EJ communities as a baseline exercise for understanding environmental justice issues in simple distributive terms. This under-conceptualization of environmental injustice as a simple problem of burden allocation led to narrow

implementation strategies like an emphasis on environmental permitting processes rather than an evaluation of burden production.

EJ activists in this first phase begin to form broader regional and statewide alliances in response to the state's increasing institutionalization of EJ issues. Activists in this phase recall the early days of working with the state, grappling over terms versus where they are today, debating how to implement EJ goals more effectively.

*“Everyone talks about EJ now, they can mean completely different things, but I think everyone has a gut sense of the fact that some communities are more impacted than others and that we should be taking some level of action to address those issues”* (DT/CA interview, 5/16/06).

The bulk of the strategies in this early part of implementation are confined to environmental management agencies and issue definition measures focused on environmental injustice as a distributive problem. California, New Jersey and New York began to examine the problem of distributive injustice in the form of disproportionate and cumulative environmental impacts in EJ communities by committing to studying cumulative impacts and their environmental permitting processes. The ambiguity and contentiousness of EJ as a valid problem for state action is still fairly high in this first phase of implementation, thus the need to create the procedural fixes in the second phase.

**Table 18: Phase 1 of State EJ Policy Implementation Model**

<b>PHASE 1: Issue Definition and Distributive Problems</b>	
<b>Administrative bureaucracy forms around new policy</b>	<ul style="list-style-type: none"> <li>○ EJ staff hired &amp; EJ office created</li> <li>○ Environmental Justice terminology defined and introduced to agency staff</li> <li>○ Internal agency EJ training to raise staff's awareness of EJ issues, toxic tours with community groups, etc.</li> <li>○ Acquisition of external funding – US EPA, federal government funding to bolster state studies, advisory groups or public participation measures (State Environmental Justice Grants from US EPA)</li> </ul>
<b>Issue Definition tasks centered on distributive problems</b>	<ul style="list-style-type: none"> <li>○ Definitions of environmental justice communities – who's impacted</li> <li>○ Definitions of what constitutes disproportionate impacts</li> <li>○ Identification of specific EJ areas and EJ interest group stakeholders</li> <li>○ Quantifying &amp; mapping EJ areas with demographic and pollution data</li> <li>○ Direct existing resources like grants or research projects to study EJ issues or EJ communities</li> </ul>

<b>EJ Movement</b>	<ul style="list-style-type: none"> <li>○ The environmental justice movement begins to mobilize more local groups into regional and state level stakeholders – becomes a formal interest group (i.e. joins state's EJ Advisory Group); formation of regional or state level coalitions</li> </ul>
<b>Opportunities for distributive justice</b>	<ul style="list-style-type: none"> <li>○ Compliance and enforcement “sweeps” where the agency targets their enforcement efforts to polluting industries in a particular EJ community</li> <li>○ Target direct funding to EJ communities - EJ grants</li> <li>○ Target research to EJ communities for future policymaking – pilot projects</li> <li>○ Increase clean up of contaminated sites in EJ communities</li> <li>○ Increase monitoring of pollution in EJ communities</li> <li>○ Increase environmental amenities to EJ communities</li> <li>○ Increase capacity of EJ staff and office</li> <li>○ Funding allocated to research EJ related problems like cumulative impacts</li> <li>○ Incorporate health based assessments and interventions in burdened communities</li> <li>○ Using discretionary power under existing environmental management system: <ul style="list-style-type: none"> <li>▪ Lower pollution thresholds for new permits in EJ areas based on the precautionary principle or cumulative impact analysis</li> <li>▪ Reduce or eliminate production of pollution through cleaner alternatives, new technologies or moratoriums</li> <li>▪ Require more stringent pollution standards from existing polluters in EJ areas</li> <li>▪ Research and implement mechanisms for incorporating cumulative impact analysis into existing regulatory reviews like permitting or site remediation</li> </ul> </li> </ul>

## PHASE 2: Working Within the System & Procedural fixes

In the second phase of implementation, states turn to procedural fixes after examining and confirming in many instances, the presence of disproportionate environmental burdens in EJ communities. States focus on process oriented strategies and attempt to work within their existing regulatory structures to address contentious distributive EJ concerns. In this phase, states examine environmental management approaches like permitting, staying within their existing regulatory and legal structures and limiting their interventions to procedural changes to these systems.

States in the “Symbolic Implementation” level of the policy matrix focus their attention on procedural issues, changing public participation rules and guidelines within their agencies. These procedural measures occur to varying degrees among the states, but they represent the bulk of the efforts undertaken to date by all five states. These procedural modifications represent the “low-hanging” fruit for state action because they are goals that can be implemented within the existing structure of the agency without

significant resources or shifts in power arrangements within the state bureaucracy. As noted previously under the *Procedural Justice* section, states generally implement public participation practices at lower levels of power sharing along Arnstein's (1969) ladder of participation. This means that although the states' efforts around information access and participation are increasing, it has not reached the level of "meaningful" input regarded by EJ activists as the most beneficial to EJ goals. All the procedural fixes implemented as a result of EJ policies are not resulting in more justice or equitable outcomes in the form of more power sharing in decision-making or in the distribution of burdens.

All five states implemented some initial public participation measures internally in environmental agencies but these procedural fixes are not linked to distributive justice goals. For example, states like New York require permit applicants who are in overburdened EJ communities to implement a public participation plan but this participatory requirement does not impede or structure the nature of the permit decision or outcome. Thus states have not resolved how to link meaningful participation to substantive outcomes even within the narrow purview of their environmental management agencies.

In this second phase of implementation, EJ activists have an increased presence in the state's policy making through the increased public participation efforts that opened up and their coalition building efforts at the state and regional levels. But these activists face the difficult choice of whether to continue to advocate for changes through the administrative channels that have opened up with EJ policies or to completely bypass that system and seek alternative mechanisms outside the state to push for deeper structural changes. Activists in this phase have also opted for incorporating state level specialists

or advocates within the EJ movement. Most EJ activists express frustration with the weak levels of participation and procedural justice implicit in state EJ policies. Rochon and Mazmanian's (1993) research suggests that the best way to change policy is for EJ advocates to stick with an approach that involves them in the policy process over the long term. In most cases, EJ activists will most likely opt for some combination of oppositional and cooperative movement strategies to influence the design of new policies or the implementation of existing ones.

Many of the procedural tactics emphasized by state environmental agencies can be implemented within their existing mandates without disturbing the status quo of the regulatory system. Strategies that would increase the state's intervention and the power of EJ communities in decision making influencing the distribution and production of burdens have not been implemented due to the highly contentious nature of increasing regulatory burdens on powerful economic interests in states. In the second phase of implementation, the ambiguity about EJ as a distributive problem has decreased but the contentiousness and ambiguity related to how to address the problem both in distributive and procedural terms is still high.

**Table 19: Phase 2 of State EJ Policy Implementation Model**

<b>PHASE 2: Working within the System - Procedural fixes</b>	
<b>Procedural fixes</b>	<ul style="list-style-type: none"> <li>○ Formation of external stakeholder advisory groups within environmental agency</li> <li>○ Increased access to agency staff, particularly through the new EJ office staff</li> <li>○ Increased accessibility to agency data and documents through translations into other languages or access to data online</li> <li>○ Increased number of public meetings or hearings</li> <li>○ Modified public meeting venues in communities or later in the evening</li> <li>○ Improved notification procedures to give communities notice of agency business</li> <li>○ Identification of key EJ communities and leaders for better outreach</li> <li>○ Required or voluntary guidance for permit applicants to do more community notice and outreach regarding their proposals in EJ communities</li> <li>○ Creation of reports and guidance documents on how to conduct public participation in EJ communities</li> </ul>
<b>EJ Movement</b>	<ul style="list-style-type: none"> <li>○ EJ movement frustrated by lack of just outcomes as a result of increased procedural tactics.</li> </ul>

	<ul style="list-style-type: none"> <li>○ The movement opts for long-term involvement in the policy process through combination of <u>oppositional and cooperative strategies</u>.</li> </ul>
<b>Opportunities for greater procedural justice</b>	<ul style="list-style-type: none"> <li>○ Implementation of alternative participatory models – instead of public hearings, citizen juries, informal consultations, and local advisory councils</li> <li>○ Power sharing in decision making – citizen review boards - that can influence decision outcomes of the state</li> <li>○ Sharing data creation and dissemination tasks with the community through community based participatory research projects</li> <li>○ Empowering EJ advisory groups with funding and decision making power</li> </ul>

### PHASE 3: New Systems & Structural Justice

In the third phase of implementation the structural implications of environmental injustice are recognized and addressed as part of the state's EJ policies. Distributive problems are recognized as a manifestation of deeper inequities in low income and minority communities that will require more fundamental procedural and structural interventions to achieve environmental justice.

In this last phase, state agencies must go beyond their existing regulatory structures and consider environmental justice more holistically. California and New Jersey are the only two states that show any progress towards this later phase of policy implementation. Each of these states has recognized environmental injustice as a structural problem and attempted to implement broader reaching policies with multiple agency mandates. These two states have also begun to consider alternative mechanisms for interacting with industries and reducing environmental burdens such as the precautionary principles.

Unfortunately most of the states stagnate at the second phase of implementation, working entirely within their existing mandates and regulatory structures without consideration of alternative mechanisms for achieving deeper levels of procedural, distributive and structural justice. For example, rather than confining EJ strategies to

environmental agencies, states should look to all the agencies with the power to control economic investments, land use planning, housing markets, public infrastructure and public health which all impact the formation of environmental injustice. Citizens in EJ communities would share decision-making power and have access to resources in order to participate in more deliberative forms of community participation.

The last phase of implementation represents long-term goals that will require political mobilization and grassroots efforts in order to pressure state government and industry into making more fundamental changes. In this phase of implementation, the levels of ambiguity regarding how to tackle environmental injustice are lessened although not entirely diminished but the level of conflict is heightened due to the redistributive nature of structural changes. In this phase, political organizing and coalition building become critical to achieving more profound environmental justice outcomes in a new cycle of policy design and implementation. These actions have largely not been implemented in any of the states with EJ policies. Even in the most advanced states like California, EJ advocates are struggling to work with states under existing mandates to force more far reaching EJ goals.

**Table 20: Phase 3 of State EJ Policy Implementation Model**

<b>PHASE 3: New Systems &amp; Structural Justice</b>	
<b>Change fundamental approach of environmental management</b>	<ul style="list-style-type: none"> <li>○ Reduce rather than redistribute burdens through precaution, technology, etc.</li> <li>○ Favor cumulative impacts over risk based assessments in determining interventions – including environmental, health, social and economic indicators</li> <li>○ Create community or citizen review boards where community people help make decisions about environmental health risks, permitting and resource management.</li> <li>○ Implement precautionary principles within regulatory system               <ul style="list-style-type: none"> <li>○ Life cycle product recycling, waste reduction</li> <li>○ Non-toxic alternatives in production and manufacturing</li> <li>○ Require industry to prove “no harm” prior to any permitting</li> <li>○ Permitting standards based on more precautionary standards</li> </ul> </li> </ul>
<b>Consider broader interventions at</b>	<ul style="list-style-type: none"> <li>○ Review and revise local land use planning and zoning laws to protect vulnerable communities and make communities more sustainable</li> <li>○ Target economic, infrastructure, and community development investments to</li> </ul>



<b>multiple levels of government</b>	burdened communities ○ Promote sustainability, smart growth measures such as affordable housing, public health, public transit system, economic opportunities
<b>EJ movement</b>	○ Notions of EJ encompass more universal ideals of justice beyond particularistic issues (sustainability, precaution, etc); ○ Broader organizing tactics (not just protest at the local grassroots, but interaction with the state at multiple levels) ○ Broader coalitions of social justice activists to unite around poor, disenfranchised people exploited by similar political & economic forces throughout the world
<b>Deepen democratic, deliberative practices within government</b>	○ Increase representation of people from EJ communities within government, elected offices at the local and state level ○ Create opportunities for EJ communities to participate in research - design, collect and analyze information about their communities through community based research projects and technical assistance grants ○ Adopt alternative public participation methods

### Conclusion

The development of environmental justice policies followed diverse trajectories in each of the five states. The diversity in political contexts, administrative structures and policy agendas structured the implementation and effectiveness of each of the environmental justice policies. Issue definition seems to be relatively similar across most states with most focusing on distributive and procedural notions of environmental justice. The more conservative, early versions of policies intentionally used the term equity rather than justice to narrow the state's intervention in matters of social justice. The impact of the various implementation strategies will be examined more closely in the following chapter. The level of executive priority or government attention given to each of the policies seemed to influence the relevance of policies, with broader mandates produced by higher levels of government. Despite this distinction, EJ policies were largely limited to the purview of environmental management agencies in the implementation phase, even when broader mandates existed across multiple agencies. This effectively limited the extent of strategies states used to achieve EJ goals. Also when the political administrations of these agencies shifted so too did the commitment to implementation.

The multiple case analysis supports the notion that political ideology in the state shapes the original design of the EJ policies with more liberal leaning, Democratic administrations favoring broader environmental justice mandates than Republican administrations. Despite these initial design differences, political ideology does not seem to impact effectiveness of implementation. The strength of the EJ interest group coalitions and level of resources allocated to EJ policies positively impacts the effectiveness of EJ policies' implementation. Nevertheless, once states enact an EJ policy they tend to follow a similar trajectory, focusing first on EJ as a narrow distributive problem in their environmental management schemes. States then turn primarily to weak procedural measures to address these distributive injustices. Few states recognize the deeper structural issues associated with environmental injustice. Most states seem to be stuck at the second phase of policy implementation where they recognize the distributive problems inherent in EJ issues but don't get beyond weak procedural fixes or their existing regulatory or legislative approaches to address these problems fully.

The two more advanced states, New Jersey and California, acknowledge and begin to examine environmental injustice as a structural issue but again, neither state overcomes the high levels of contentiousness related to the distributive and structural issues related to environmental injustice. All throughout the policy implementation process state agencies and EJ advocates learn from experimentation with different policy tools (i.e. petitioning processes, pilot projects, research studies, etc.). As a result of this learning, they reduce the ambiguity associated with key strategies and build coalitions to advocate for greater change.

**CHAPTER 8.**  
**A COMPARATIVE ANALYSIS OF MULTIPLE STATE**  
**ENVIRONMENTAL JUSTICE POLICIES**

While the preceding chapter focused on the diverse contexts and trajectories of EJ policies across the five states, this chapter turns to the question of how effective and relevant these policies are in relation to different forms of environmental justice. In the Camden case study, it was clear that New Jersey's EJ policies failed to consider the broad range of issues underlying cases of environmental injustice. The narrowly constructed policies failed to address even the most basic and egregious cases of distributive injustice. The multiple case studies serve as a mechanism for a broader examination of how EJ policies impact various manifestations of environmental injustice under different political contexts, using perhaps different implementation strategies.

### Policy Evaluation

The primary evaluation technique for the multiple case studies is based on Fischer's critical evaluation framework, where EJ policies and programs are evaluated for how relevant they are to the problem of environmental injustice and whether they have instrumental value for society (Fischer, 2003). In order to evaluate the relevance and impact of these policies, I rely on the perspective of key stakeholders; principally, state government officials charged with EJ policy implementation and environmental justice stakeholders (activists, advocates, community representatives) whose communities are the target of EJ policies. The following examination of the multiple case studies analyzes how state EJ policies address and impact distributive, procedural and structural forms of environmental injustice.

Each state set out a distinct set of policy goals, not all of which reflect the three forms of environmental injustice explicitly. All five policies refer to some type of procedural justice in the form of meaningful involvement, public participation or

outreach. All five policies also refer to some type of distributive justice with references to state functions, which influence the distribution of environmental burdens and amenities including, permitting, enforcement and compliance. Fewer policies explicitly recognize or address the deeper issues associated with structural and institutional injustice.

The New Jersey case studies demonstrate how the EJ Executive Order recognizes all three forms of environmental injustice to some extent. But the implementation of this policy in places like Camden provides little relief in the way of any of the three forms of injustice. Even under the category of procedural justice, which is a central focus of the policy, residents in EJ communities like Camden perceive little progress in gaining any voice or power over environmental decision-making in their community. I expect that the policy weaknesses pointed out in the earlier chapters – narrow problem definition and policy implementation strategies, lack of statewide institutionalization, and an emphasis on weak procedural fixes to address distributive problems - will prevent EJ policies across all the states from effectively achieving environmental justice. At the heart of this failure to address environmental injustice is an unwillingness to challenge entrenched economic interests in a way that could positively impact distributive, procedural and structural environmental justice. Only states with strong EJ movement activity, a commitment to broader EJ mandates and progressive governments will be able to begin to overcome these barriers to structural injustice. The following analysis examines how these three forms of injustice are addressed and impacted by each states' EJ policies.

### Distributive Justice

A distributive form of environmental justice would go beyond equally distributing burdens to decreasing or eliminating these burdens for everyone (First National People of

Color Leadership Summit, 1991). One EJ activist sums up this notion of distributive justice, *“The end result of EJ shouldn’t mean that everyone gets polluted equally, it should be that everybody gets polluted a lot less than they are now and they haven’t gotten close to doing this.”* (GB/MA interview, 5/2/05) This conceptualization of distributive justice is a central tenet of the EJ movement.

*“From the perspective of grassroots activists, however, characterizing the problem as a matter of achieving an “equitable” redistribution of pollution represented a distortion of their [grassroots EJ movement’s] agenda. Not only did they insist that their goal was to prevent pollution rather than redistribute it, but many activists also criticized the EPA’s reliance on flawed risk analysis models.”* (Holifield, 2001, p.79)

Thus strategies for alleviating distributive injustices require more than just shifting burdens around to finding ways to alleviate the burdens altogether, particularly in those communities that are most vulnerable and disadvantaged.

Distributive injustice in the form of disproportionate impacts from environmental burdens in low income and minority communities is at the heart of many EJ conflicts. These disproportionate burdens led communities, researchers and government institutions to search for ways to define, assess and alleviate these distributive problems. Examples of distributive injustice in the form of disproportionate environmental burdens include: concentrations of solid and hazardous waste facilities, stationary sources of air pollution like incinerators, power plants, chemical plants; mobile sources of air pollution such as truck and automobile traffic, contaminated land, superfund sites, polluted waterways and drinking water sources (Bryant, 1995).

These environmental burdens add to and are linked with other socio-economic burdens in these communities like the lack of access to healthcare, transportation, or economic opportunities. There is a wealth of research describing the problem of distributive injustice in EJ communities throughout the five states. In California, where

the greatest amount of research has been conducted, significant correlations between the concentration of pollution burdens and several health problems (asthma, low birth weights, etc.) in low income and minority communities have been found (Morello-Frosch, Pastor & Saad, 2001). At the inception of the environmental justice movement, communities and researchers were focused primarily on fighting or documenting these disproportionate environmental burdens (Szasz and Meuser, 1997). Most states got involved in EJ policy making in the late 1990s early 2000, when the existence of disproportionate impacts was generally established with empirical evidence and research.

Thus states began EJ policy making by identifying environmental injustice in largely distributive terms. One of the state functions at the center of this distributive problem is a media based environmental management system that permits pollution on a case-by-case basis according to technically based standards. Within this system there is no mechanism for considering the overall pollution burden within a specific geographic boundary or the differential impacts on various segments of the population. These pollution standards do not account for the health impacts of chemicals on more vulnerable populations like children or the synergistic/cumulative impacts of several chemicals from several sources.

*“Both state and federal environmental protection efforts have long been suspect owing to their reliance on medium-based strategies to control pollution...permitting may be the regulatory tool most in need of integration. Permits are used to limit specific pollutant releases into individual environmental media [soil, air, water] but often target narrow concerns without any consideration of possible impact on other programs or media.” (Rabe, 2000, p.37)*

Rather than reform regulatory structures like media-based permitting, state environmental policies focused more heavily on weak procedural mechanisms such as “improving” public participation in the permitting process.

State EJ policies largely overlooked an important contributor to the problem of disproportionate environmental burdens in poor, minority neighborhoods. The concentration of pollutants is linked to decision making at the local level through municipal zoning and land use planning and at the state and federal levels through policies related to economic development, transportation and infrastructure investments. Although disproportionate impacts are related to various levels of decision-making, environmental justice policies are primarily under the limited jurisdiction of state level environmental management agencies. Thus, EJ policies do not effectively address some of the underlying mechanisms that lead to distributive injustices.

Environmental agencies generally become involved in distributive EJ issues through their regulatory functions after the fact or rather, after the pollution problem has occurred (i.e. site remediation) or the facility has been sited (i.e. local land use planning). Most EJ policies focused on issuing pollution permits, enforcing environmental laws, preserving environmental amenities, and cleaning up or managing contamination. These functions serve as an indicator of the state's effectiveness in addressing distributive injustice. In my analysis of distributive justice, I note how states recognize distributive forms of injustice and then how their policies respond to the distributive aspects of environmental burdens or benefits in EJ communities. Did states redistribute resources like grant funding, greenspace enhancements, or staff to EJ communities? Did states modify standard operating procedures or permitting standards based on disproportionate impacts? Did the state adopt measures to reduce or eliminate pollution burdens in EJ communities? I evaluate the impact of EJ policies on distributive injustice by examining how the policies influence key indicators linked to distributive decision making powers



of the state. These indicators include: 1. How the state assessed distributive problems, 2. Environmental permitting 3. Cumulative/disproportionate impacts 4. Enforcement and compliance and 5. Resource allocation for environmental amenities.

The narrow purview of most EJ policies within the existing environmental management systems of the state limit the ability of these policies to fully address distributive injustice because it is tied to different levels of decision making in government and also to multiple functions of the state. Furthermore, the ability of environmental management agencies to shift the way they distribute pollution is tied to a wholly different model of industry regulation which none of the policies attempt to modify. Thus I expect that while states may acknowledge the problem of disproportionate environmental burdens in low income and minority communities, they do not fundamentally change the way they make decisions impacting the distribution of environmental burdens.

### Distributive Justice Analysis

**Table 21: Distributive Justice in Environmental Regulatory System**

	<b>NJ</b>	<b>NY</b>	<b>CA</b>	<b>CT</b>	<b>MA</b>
<b>1. Assessment</b>	Screening Model	GIS maps of EJ areas & burdens	Air Toxics Studies in “Hot Spots”	NA	GIS maps of EJ areas & burdens
<b>2. Permitting</b>	EJ petition areas = increased participation & review	Permits screened & public outreach required in EJ areas	Voluntary outreach for CEQR permits in EJ areas	Process & standards unchanged	MEPA process = Voluntary outreach in EJ areas
<b>3. Cumulative Impacts (CI)</b>	Holding listening sessions in ‘06	Workgroup recommendations but no consensus	Pilot project modeling CI methods	NA	NA
<b>4. Enforcement Compliance</b>	Enforcement sweeps applied in 3 EJ areas	“Inspection sweeps” in EJ areas	Enforcement increased in targeted EJ areas	Enforcement increased in targeted EJ areas	Enforcement actions in 2 EJ areas
<b>5. Resource allocation</b>	1.5 FTE* \$100,000 air toxics pilot project	5 FTE \$250,000 small EJ grants	~10 FTE 6 Pilot Projects Small EJ grants	3 FTE	1.5 FTE Greenspace funding

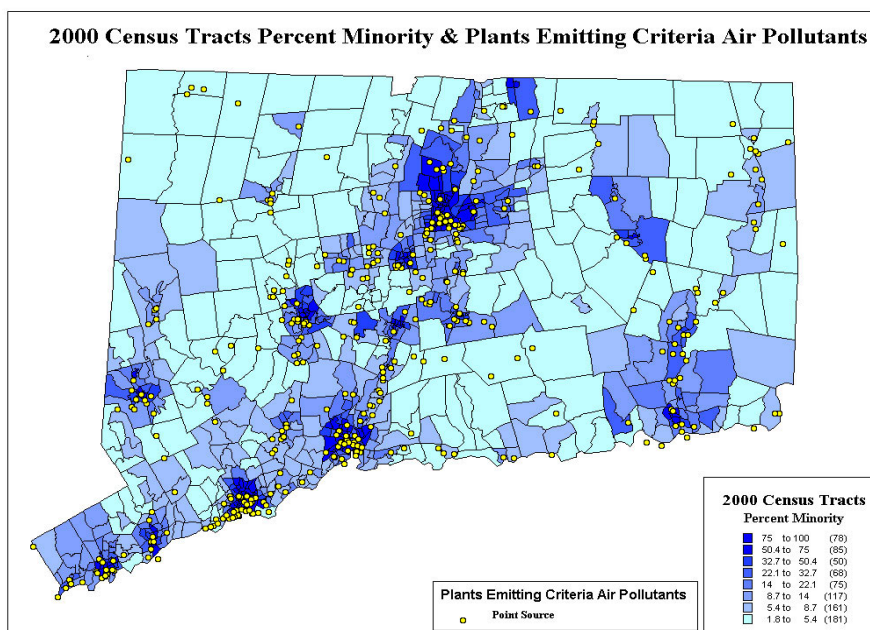
			(~\$300,000)		
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\* FTE = Full Time Employee

## 1. Assessing the Burdens

In most cases states began the process of policy making with an exercise in mapping or identifying the disproportionate environmental burdens across the state along with socio-economic information. In states like California and Massachusetts, studies of disproportionate impacts existed prior to the creation of the EJ policies and helped spur state policy making. In New York and New Jersey, mapping or identifying the burdens became one of the first goals of the original policies. Connecticut is unique in that it resisted identifying burdens in EJ areas despite requests from EJ communities. Below are maps of environmental justice communities in Connecticut, Massachusetts and New York.

**Figure 18: Connecticut Environmental Justice Map**



From US EPA, [http://www.environmental-justice.org/ej\\_maps/airpoll\\_minority.html](http://www.environmental-justice.org/ej_maps/airpoll_minority.html)

Figure 19: Massachusetts Environmental Justice Map

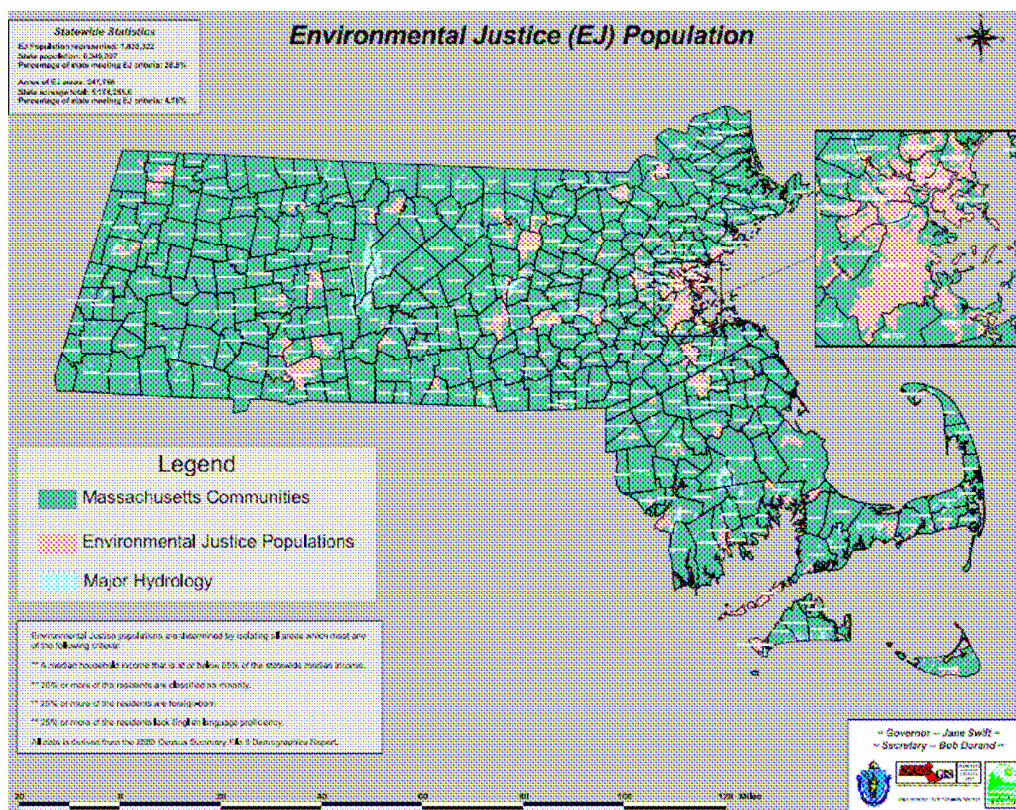
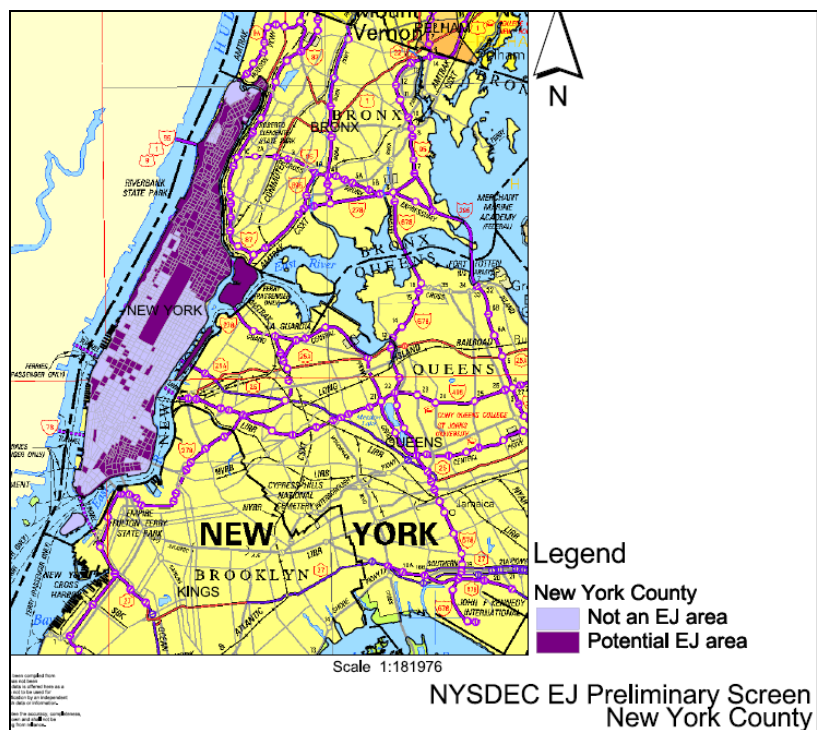


Figure 20: New York Environmental Justice Map



From NYSDEC, [http://www.dec.ny.gov/docs/permits\\_ej\\_operations\\_pdf/newyorkco.pdf](http://www.dec.ny.gov/docs/permits_ej_operations_pdf/newyorkco.pdf)

## **2. Permitting**

Permitting is one of the primary ways by which the state contributes to the disproportionate presence of polluting facilities in poor, minority communities.

Permitting decisions have been some of the most contested functions of the state in EJ cases (e.g. St. Lawrence Cement Co.). Permitting is one of the key vehicles by which the state intervenes in the marketplace to ensure environmental protection by regulating industrial activity. State environmental agencies generally have little involvement in guiding the selection of a site but once selected, they set the terms and conditions by which industries operate in these locations. One way to get at the question of distributive justice is by looking at the number of permits issued in various regions of the state. But in order for states' environmental justice policies to impact the distribution or number of permits, the permitting process would first have to be substantively modified as a result of EJ policy directives.

The permitting process would also have to modify the standard operating procedures for permitting decisions based on EJ considerations. In order to know whether EJ policies impacted the distribution of permits, the first step is to ask if the state made any changes to their permitting processes. I expect that while permitting is a key element to addressing the distributive aspects of environmental injustice, the state will be reluctant to change their regulatory approach without explicit policy and legislative directives that allow for the consideration of disproportionate and cumulative impacts of pollution in low income and minority communities. Without this explicit commitment to shifting regulatory approaches, risk adverse environmental agencies will avoid direct

challenges to powerful economic interests in the state who want less, not more regulatory restrictions on industrial activity. As is evident by the limited scope of existing EJ policies, states have not yet committed to restructuring the way they address environmental burdens via permitting, thus I expect that permitting decisions will not change significantly with the institutionalization of EJ policies and the distribution of environmental burdens in general will not alter significantly as a result.

Permitting was one of the core concerns identified by stakeholders interviewed in all five states. One of the first interview questions was *“if a permit for a facility comes up for review in an environmental justice area that is disproportionately impacted, can the state deny the permit on the basis of environmental justice?”* The answer from every EJ program coordinator and EJ activist was - No - there was no way to deny a permit under the existing terms of the EJ policies and permitting regulations in the states.

1. *“No - we can’t deny the permit but we provide the information to the applicants and the public to help make those decisions – their permit gets reviewed here [EOEA] for EJ impacts and then goes to the agency like DEP for final decision”* (TC/MA interview, 2/14/06)
2. *“The permitting is the same...they do all this modeling but we haven’t seen any results, the air pollution is the same, the water pollution hasn’t changed...”* (JN/NJ interview, 3/27/05)
3. *“Because the DEC has no authority when it comes to siting issues, if it’s sited properly and then it meets the environmental regulations and laws, we have to permit it, we can’t say – no, you can’t go there...”* (MK/NY interview, 2/24/06)
4. *“The EJ office will be very good about getting people involved but in the end they will be frustrated when they find out that the DEP can’t say no [to permits], they have no way to say no”* (KM/CT interview, 5/2/06)

Each state has a slightly different permitting process and thus different strategies for intervening in this process. Most states have some level of regulatory discretion to interpret mandates like the Clean Air Act. States can set standards more stringently than the “federal floor” and they can require additional reviews or more thorough impact

analysis, particularly if they have what's called a "mini-NEPA" similar to the federal National Environmental Policy Act (NEPA).

*"NEPA requires environmental impact review for federal actions with a significant impact on the environment...In a nutshell, the process under state mini-NEPA statutes looks like this: once a company files a formal application with the agency, the agency evaluates the project for its potential effect on the environment usually using an Environmental Assessment...If the project will have a potentially significant effect on the environment, state law directs the agency to prepare an Environmental Impact Statement."* (Cole and Foster, 2001, p.108)

Usually mini-NEPAs are only triggered for larger permits but it does give states some leeway in terms of conducting a comprehensive Environmental Impact Statement (EIS) process to consider more factors than a traditional media based permit. All the states with the exception of New Jersey have a mini-NEPA at the state level.

New York and Massachusetts's EJ policies specifically target their mini-NEPA permitting process. In New York, all permits under the mini-NEPA or the State's Environmental Quality Review Act (SEQR) are screened by type or media (Air, Hazardous waste, etc.) and then run through a GIS model to identify potential impacts in EJ areas. Additional public participation procedures would apply to permits in EJ areas, but if the permit applicant conducted the additional outreach and met all the technical requirements of the permit, nothing stood in the way of the permit being approved.

*"You can go through the permitting process and still make whatever decision you were going to make in the first place...there's no requirement that you use the mapping or anything that came out of that enhanced participation to actually modify what you're trying to do..."* (GK/NY interview, 4/27/06)

While the procedural requirements represent an additional regulatory hurdle for applicants wanting to locate facilities in EJ areas, the permitting change really supports procedural rather than distributive justice because it adds a provision for increased participation without consideration of the permit's impact on EJ areas. Archival research



and interviews produced no evidence that these mini-NEPA processes, even when modified by the EJ policies, result in any changes to permit decisions in EJ communities.

There are only two instances when interviewers identified permits that were turned down due to EJ related issues. In New Jersey, the Wheelbarator case in Newark, cited in the New Jersey case study chapter, outlines how the NJDEP rejected the sludge processing plant's permit. The reasons given were primarily the municipality's reluctance to allow the facility to be sited in the community and the unclear mandates of the federal Executive Order that was issued the previous year. In Connecticut, a large coal fired power plant applied to restart their operations in an EJ community in New Haven. The facility met all its permit requirements but EJ activists and the local municipality opposed the permit on the grounds of environmental injustice. The CTDEP Commissioner eventually denied the permit using his executive privilege as commissioner. In both cases, the EJ policies were not the main trigger for denying the permits; rather it was local opposition, fear of federal mandates and executive privilege that resulted in the permit denials.

In California, two agencies under Cal/EPA, the South Coast Air Quality Management District (AQMD) and the Air Resources Board (ARB) were ahead of the rest of the state in terms of adopting EJ policies. According to a study by the National Association of Public Administrators, these agencies “*integrated environmental justice issues into their substantive requirements, allocation of grant funds and decision making criteria for development of permits*” (National Academy of Public Administration, 2002, p.85-86). These two agencies in particular aggressively targeted research to study disproportionate burdens. The AQMD EJ policy specifically set out the task of:

*“development of a new review regulation for facilities that emit air toxics and strengthen the existing rule for facility-wide limits on toxic air contaminants to require certain types of facilities apply best available control technology for toxic emissions” (SCAQMD, 2000).*

While these particular agencies have done extensive reviews of their regulatory programs, the overall regulatory structure for permitting remains unchanged by environmental justice policies. Cal/EPA is now in the process of trying to find a consistent way to integrate disproportionate impacts into their regulatory systems but EJ activists expressed frustration over the slow progress of implementation:

*“In terms of reducing the disproportionate impacts on our communities – there’s not really any permitting changes – you hear a lot about streamlining permits for industry so they don’t have to wait...but in terms of anything else, I haven’t really seen any progress on the permitting to say that its protected our communities in any type of way...” (HC/CA interview, 4/19/06)*

Many of the EJ program coordinators recognized the limitations on their existing permitting processes. One problem is the issue of local siting. While states issue permits for facilities to operate, they have no jurisdiction over the decision about where that facility should be located within the state. Facility siting is left largely in the hands of local governments via planning and zoning decisions, and industries, neither of which has actively pursued EJ policies. In California, the Air Resources Board has issued guidance to local municipalities with recommendations on how to prevent disproportionate and cumulative impacts of environmental burdens in low income and minority communities. Currently, this guidance document is a voluntary set of measures municipalities can adopt and thus far only one municipality has chosen to take up some of the recommended measures (California Air Resources Board, 2005).

Interviews with permitting staff in state agencies also reveals the lack of institutionalization of EJ concerns in the standard permitting procedures of the state:



*“Not too many of them [permit reviewers] know about the Executive Order, but they’re not to blame, we are waiting for instructions, we’ve been waiting for a long time, and we anticipated that something was going to come from upstairs, a protocol document stating what the process should be, because we’re not just talking about the public review process, we’re talking about policy revision or development of new policy, but how do we do it...how do we review permits differently...the permitting staff doesn’t have anything right now, they may know about EJ but they cannot take it on themselves...they have to hear it from management.” (BY/NJ interview, 6/10/05)*

One of the main obstacles to changing the permitting system is the strong economic pressure from industry reliant on this regulatory system. Often states don’t intervene to a greater degree in the marketplace because they fear legal challenges from powerful industries or because they fear economic decline. This problem of the relationship between regulators and industry arose in an interview regarding permitting:

*“From the managers to assistant commissioners down to permitters and supervisors - you can see it by the way they react – when industry comes in, they are jumping, when the public comes in everybody just crawls like a snail...But it shouldn’t be like that...it just seems to me that we’re much more happy to welcome industry on the one hand, but when it comes to the public we’re more scared...and I’m worried about that...that’s why I take this thing [EJ policy] seriously, some of the social problems have to do with policy, that even when we try better the lives of people, it gets watered down and this is what we see here.” (BY/NJ interview, 6/10/05)*

Interviews with EJ activists and state officials clearly point to a disappointing assessment of the states’ permitting processes and outcomes. Even the most policy aggressive state agencies within Cal/EPA, with the greatest financial and political backing, have not implemented formal, comprehensive changes to permitting processes or structures. States are playing around the edges of permitting by stretching their existing authority on a case-by-case basis or enhancing procedural justice associated with permitting but stopped short of substantive changes to permitting programs and standards.

In order for permitting to support distributive justice, state EJ policies would have to strengthen regulatory provisions that tighten standards and reduce the overall burden on communities. Permitting would also benefit from provisions, which deny or significantly modify applications on the basis of cumulative or disproportionate burdens. State environmental management agencies could impose stricter standards, require improved technologies to reduce pollution emissions, require alternatives to toxic production practices or deny permits that further exacerbate distributive injustice.

### **3.Cumulative Impacts**

One of the most pressing issues for environmental justice noted by both state staff and EJ activists was the consideration of cumulative impacts in EJ areas. Cumulative impacts, along with disproportionate impacts, are indicative of a distributive justice problem in EJ communities. *“For the [state] EJ policy to be effective it must have cumulative impact studies to consider how to reduce disproportionate impacts.”* (GB/MA interview, 5/2/06) Cumulative impacts looks at how the concentration and combination of pollution impacts human health and the environment. Under existing environmental management systems, pollution burdens are evaluated and regulated chemical-by-chemical and on an individual facility basis. Multiple chemicals, from multiple sources or media are not part of the way states issue permits, enforce regulations or set pollution standards. This is an area that all the state officials interviewed agreed needed more action in order to make real changes in EJ communities.

*“... most of the regulations are based on either a single facility or a single chemical, but the issue that the communities face in the context of cumulative impact, is that there are so many facilities within the neighborhood and multiple things happening*

*and largely the regulations are not set up to control that aspect of that...” (SP/CA interview, 3/1/06)*

EJ communities are chronically exposed to a disproportionate level of cumulative pollution but are frustrated by a state system of regulation that does not acknowledge or regulate this total pollution burden.

In many EJ cases, the state may deem pollution emanating from one facility is acceptable and does not pose a significant human health impact (based on scientifically based models of toxicity, dose and exposure). But community residents evaluate the impact of this single facility in more holistic terms. They experience that facility in conjunction with many other facilities emitting a host of pollutants together with pollution from sources that are unregulated by the state (e.g. mobile emissions from automobiles) and impacting an already vulnerable population (poor health of residents, lack of access to healthcare, large elderly or child populations, etc.). In the Camden case study, residents raised these issues in their arguments against the St. Lawrence Cement Company permit.

Although states recognize the conflict between their current regulatory models and demands for cumulative impacts consideration, they have not determined a mechanism for incorporating cumulative and disproportionate impacts analysis into environmental management systems. New Jersey, New York, and California are all considering models or recommendations for incorporating cumulative or disproportionate impacts analysis into their regulatory processes but none have arrived at a methodology:

*“...The permitting also does not consider cumulative impacts. But – how do you bring cumulative impacts into our decision making process, when one moment you say how do you ascertain if you have sufficient information for cumulative impacts, do you have a methodology, do you have the tools? But that is the reason that we have said*

*we have to test it out on a pilot project basis, how is this going to be managed...*”  
(SP/CA interview, 3/1/06)

Most States are still grappling with how to define what constitutes a cumulative impact, how can it be measured (i.e. what geographic units should be delineated) and what’s the best way to incorporate it into a regulatory framework (only in permitting process). State agency officials complain about the uncertain dimensions of cumulative impacts.

*“...the definition counts and the definition is difficult - what do you think cumulative impact is, what counts in the cumulative impact assessment. That’s why if you look at our [state agencies’] definitions they may differ, if you look at the air programs definition they make a clear distinction if it is an emission discharge – it has three components, exposure, risk and emissions. When we do not have the information to ascertain this proportionality based on risk, can we ascertain it based on exposure? Can we ascertain it based on emissions...this was the line of thinking of even arriving at the definition state agency definition...”* (SP/CA interview, 3/1/06)

State agencies also fear industry would challenge permit revisions or denials based on cumulative impact analysis unless there was a scientific model to back up the agency in court. Early in the development of California’s pilot projects, one industry group, *California Council for Environmental and Economic Balance* (CCEEB) commented on their concerns regarding the proposed definition of cumulative impacts, which included socio-economic factors:

*“The first primary concern is the issue of socioeconomic factors...things like health insurance, nutrition, shelter, all very important issues to communities... But the question is: Should they be considered in the definition of multi-media cumulative impacts? There's not data in peer-reviewed studies to support inclusion of those factors in the definition...Now, at least some of the EJ organizations when they talk about cumulative impacts and what kind of measures they'd like to see down the road, they talk about things like if there's too much cumulative impacts in an area, they would say there should be no new permits, that existing permit levels should be ratcheted down...But when we start hearing discussions about no new permits in an area, which would mean a new facility wouldn't go forward, or if an existing company wanted to expand an operation, they wouldn't get that permit if there was too much of a problem from cumulative impacts in that area, that makes the definition critical. It shouldn't be based on speculation. It shouldn't be fuzzy. It should be*

*objective and it should be based on sound science.*” (Meeting Transcripts, CCEEB representative, Public meeting of Cal/EPA, IWG, 2/16/2005, p.40)

Cumulative impacts also present a special problem for environmental justice communities who tend to be suspicious of the states’ strict adherence to risk based standard setting for environmental pollution. For example, in California the pilot project aimed at cumulative impact analysis reached a stalemate around the issue of how to assess cumulative impacts. The state took a scientifically grounded risk based modeling approach to air pollution (only considered criteria and hazardous air pollutants) and EJ community representatives pushed for a more comprehensive “impacts” based approach that includes consideration of a wide variety of exposures (multiple media) and socio-economic indicators in EJ communities. Residents protested the agency’s attempts at limiting the cumulative impact study.

*“Wilmington community members were not just interested in the cumulative impacts from air pollution, but of all pollution sources in the Wilmington area, such as water, soil, solid waste, and hazardous waste contamination.”* (Cal/EPA, Wilmington Pilot Project Update, May 31, 2007).

This conflict around cumulative impacts also reflects the technocratic bias inherent in environmental management systems that directly conflicts with the experiential based rationale employed by residents. *“Scientific and technological determinations have become the primary standards by which substantive regulatory decisions affecting environmental quality are reached”*(Fischer, 2000, p.91). The environmental justice movement in response to this technocratic bias has embraced the practice of popular epidemiology and community based participatory research as a mechanism to challenge the dominant discourse of scientific expertise prevalent among environmental agencies. These risk-based models have kept in place and legitimized a system of environmental regulations, which, despite evidence of disproportionate

burdens, continues to assert that permitted activities represent minimal harm to EJ communities.

*“Rather than merely accepting information provided by scientists and other technical experts – often engaged by industry or government to assure citizens that they should have little to worry about toxic exposures – the movement assists communities in a variety of way to collect and interpret their own information.”* (Fischer, 2000, p.121)

Residents in communities with pilot projects question the legitimacy of the scientific research and experts in determining cumulative impacts and burdens:

- *The old way of doing it, of relying on quantitative risk assessments with all of its fallacies, has not protected these communities.* (Meeting transcripts, Mr. Penny Newman of CCAEJ, Public meeting of Cal/EPA, IWG, 2/16/2005, p.48)
- *We are our experts in our own communities. We come here, not only asking you to help, but also asking you to be educated and to listen to what's really going on.* (Meeting transcripts, Cynthia Babich, Director of the Del Amo Action Committee Public meeting of Cal/EPA, IWG, 2/16/2005, p.70)
- *I want to talk also a little bit about peer review and sound science and life choices. These are supposedly neutral terms. But access to sound science, supposedly, or peer-reviewed science is very limited for the communities that I work with. They don't have the resources to conduct their own peer-reviewed scientific studies. They don't have resources to hire experts to evaluate others' studies or risk assessments. The whole basis of environmental justice is to get the community to help define and find solutions to the problems that they face. And to disregard community expertise as speculation is very -- that's a very value-based determination. It's sort of saying, "Well, science is the truth. And what you're experiencing is speculation."* (Meeting transcripts, Caroline Farrell, Center on Race, Poverty and Environment, Public meeting Cal/EPA, IWG, 2/16/2005, p.85)

Some EJ communities in California have struck out on their own, enlisting academics, scientists and community residents in efforts to establish their own cumulative assessments based on both risk assessment and more qualitative measures of vulnerability. In an effort to increase their leverage for greater policy changes and also as a means of empowerment, communities in Southern California and in the San Francisco Bay area created two collaborative research projects to conduct community based cumulative impacts assessment. Communities for a Better Environment, a non-profit

group based in LA, began by mapping the distribution of air pollution (Toxic Release Inventory), hazardous waste sites and pesticide exposures in conjunction with demographic data and epidemiological data (cancer, asthma, etc.). This data was pulled together based on the following model:

*“Using data on pollution exposures and combining it with cancer toxicity information, allows us to look upstream and understand how policy changes, and better organizing capacity can improve community health by reducing exposures to environmental hazards... we look toward the environmental and socioeconomic factors that shape distributions of people and pollution”* (Communities for a Better Environment, 2004).

These community-based, participatory research efforts are fueling activists’ demands for greater policy changes to the state’s regulatory systems.

Despite the uncertainty surrounding questions of cumulative impact analysis, there are a variety of opportunities that exist for both EJ advocates and the state to tackle this complex problem. One of the first hurdles is the issue of defining the problem, which community activists in California successfully navigated through the state’s bureaucracy; Cal/EPA defines cumulative impacts as:

*“exposures, public health or environmental effects from the combined emissions and discharges, in a geographic area, including environmental pollution from all sources, whether single or multi-media, routinely, accidentally, or otherwise released. Impacts will take into account sensitive populations and socio-economic factors, where applicable and to the extent data are available”* (Cal/EPA, 2005).

The scope of the cumulative impacts problem must include some consideration of the social, economic and health factors that make communities vulnerable or particularly sensitive to environmental burdens. Communities for a Better Environment in California has taken up this research challenge and democratized the process by which research questions are framed, designed, carried out and analyzed. This research offers a viable

alternative to the state's standard modeling of cumulative risks, which are often hampered by a lack of sufficient scientific data for multiple sources of risk.

Additionally, the National Environmental Justice Advisory Council (NEJAC) issued a report in 2004 outlining a framework for cumulative risk assessment to be adopted by the US EPA and state agencies. Their recommendations pointed to some key strategies states could adopt including: institutionalize a "bias for action", utilize existing statutory authority, overcome regulatory fragmentation, incorporate concept of vulnerability into decision making, implement targeting or screening tools, increase capacity and resource needs of implementing agencies (NEJAC, 2004). Embedded in these overarching themes are strategies such as pollution prevention and toxics reduction measures, product substitution, diesel reduction, waste minimization, community based participatory research and more aggressive intervention strategies.

EJ communities in New Jersey and California are also seeking new public policy solutions to the question of what to do about cumulative impacts in their communities. Some of the actions they seek include moratoriums on new pollution sources, more stringent regulation of major pollution sources and major pollutants from multiple media, mandatory pollution prevention and toxics substitution laws, local land use planning measures such as green buffers and anti-noxious facility siting provisions, targeting public health and environmental interventions in vulnerable communities and adoption of multi-media permitting and regulations. These are just some of the potential actions to address cumulative impacts, but to achieve these, activists will have to make a cogent argument to state agencies and political leaders in order to shift the current paradigm and overcome economic opposition to more stringent regulations.



The consensus from the interviews and meeting transcripts with environmental justice activists throughout all five states is that they perceive little, if any progress on distributive justice in terms of cumulative impacts,

*“...to have a really effective EJ policy you not only need a place for meaningful input, but you also need to look at cumulative impacts... I don't see the state having a plan to get at cleaning up the bad things...”* (GB/MA interview, 5/2/05)

The disproportionate conditions on the ground in EJ communities identified five to ten years ago, prior to EJ policies, persist and there is no mechanism institutionally in place to prohibit or relieve further distributive injustices in the form of disproportionate and cumulative pollution burdens in EJ communities. EJ communities express frustration that despite all the policies and studies there has still not been any real attempt by states to open up the regulatory process to alternative mechanisms for eliminating or reducing these injustices.

*“...so if they [industry] bring a permit that's already 90% cooked, even if they do all the public participation things right –they [state agency] still have no intention of looking at it from a cumulative impact perspective or from a precautionary perspective – Here's the permit, we're going to let you come to as many meetings as you can stand and then we're going to give the permit...”* (DK/CA interview, 5/16/06)

#### **4. Enforcement & Compliance**

Enforcement and compliance are functions of the state meant to check industry's ability to pollute or usurp natural resources. It is one of the primary functions of environmental regulatory agencies and is critical to ensuring the regulatory system of controls placed on polluting industries are maintained and legitimized. In areas where a concentration of regulated entities exists, if states are not vigilant in enforcing environmental rules and standards, burdened communities are vulnerable to further environmental degradation. Environmental justice communities in the past have charged

states with lax enforcement and compliance efforts in low income and minority communities while taking a zero tolerance approach in more well off communities because the public pressure is greater in communities with greater resources.

Many of the environmental controls placed on industries are self-monitored and self reported, putting the burden of checking this system on state monitoring and compliance efforts or on public vigilance (hotlines, etc.). Several of the states' EJ policies include targeted enforcement and compliance efforts in EJ areas.

MA: *"Minimizing Risk - target compliance, enforcement and technical assistance"*

NJ: *"Identify existing and proposed industrial and commercial facilities in communities of color and low-income communities **for compliance, enforcement, remediation, siting & permitting strategies will be targeted.**"*

NY: *"Target enforcement and compliance in EJ areas"*

Enforcing compliance with existing laws can usually be conducted by the state without significantly upsetting the balance of power between capital interests and the public's interests but the manner and degree to which these regulatory powers are enforced can impact this balance of power. Enforcement and compliance efforts are typically limited by scarcity of resources and competing economic and public interests. A state agency does not have the human or financial resources to ensure 100% compliance. Furthermore, powerful industries can defend themselves from aggressive enforcement efforts by paying the relatively small fines or engaging the state in protracted legal cases. Also, large industries can pressure governments to lessen their regulatory oversight for the sake of economic development similar to permitting. This struggle between economic interests and regulatory oversight of industry and EJ compete for prominence on the government's agenda. One interviewee highlights these conflicts:

*"Environmental justice is hollow in [NJ] when it comes to going up against some of the corporate giants...when it comes to requiring them [Major Corporations] to*

*spend hundreds of millions of dollars to clean up, EJ goes out the window... here's the ugly part of DEP, DEP loves to pick on small polluters, the mom and pop small polluters, gas stations, South Asian immigrants who own an Exxon station who's oil tank is leaking, they love to show off their enforcement efforts there, so if you have a small enemy sometimes you can get DEP to come in and beat up on them ...the thing about the 3 companies [under litigation] is that they clearly have the ability to pay for the clean up that's needed but they also have the clout to fight the clean ups that are needed..."(JM/NJ interview, 4/26/04)*

This interviewee expresses a clear distrust of government's relationship with industry and the lack of willingness on the part of government to act on behalf of environmental justice when faced with powerful political and economic forces on the side of industry. The lack of aggressive enforcement actions involving these powerful actors goes to the heart of the environmental justice policy's legitimacy and the state's commitment to EJ for those without access to this power. In both cases of permitting and enforcement functions of the state, stakeholders perceive an unwillingness to substantively shift the status quo system of environmental management because of the powerful influence of industries. In order to force state agencies to consider more aggressive actions, EJ activists have attempted to use various oppositional strategies including litigation and public protests. In some cases, litigation and media attention is enough to force public agencies to be more responsive to calls for action against polluters.

It's interesting to note that in most of the states where enforcement actions are targeted, the state takes the approach of enforcement sweeps in select EJ communities. These sweeps, like the one conducted in Camden, NJ usually involves smaller operating facilities clustered in a small area. In the Camden case, residents asked for an expansion of the regulatory oversight of the local scrap metal operations (new air regulations) and larger fines to deter any type of environmental violation in the future. Both of these

requests were denied. The state does not take the broader approach of aggressively targeting the largest, most polluting industries throughout the state, which together may represent a larger environmental impact on EJ communities than the smaller facilities. State officials and EJ activists recognize the limited resources to target many of these facilities but the selection of smaller operations for enforcement actions seems to support the notion that the state is selectively targeting weaker economic forces for enforcement actions. Another interviewee recounts an example of targeted enforcement in a state with a clear directive to address enforcement issues in their EJ policy:

*“One of the things the policy is supposed to do is enhanced enforcement in EJ neighborhoods and we have been contacted by the Department of Environmental Protection to say if you know of any really bad environmental violations in EJ communities, let us know and we’re interested in doing something about it - so they have actually reached out to us about that...I’ve been working with a group in [EJ community] where a facility has been out of compliance...they’ve been out of compliance with the law for years and years and years, and it took us an extraordinary amount of time to finally get the DEP to issue an enforcement action against them even though it was an EJ community. They finally did it, but we had to go to get the local state Senator and Rep from that community to talk to the Commissioner of DEP and then get the commissioner to take a walking tour [of the EJ community], with some people from the community and then they issued the enforcement order against the company. So it was great that they did that, but it seems like a long torturous path to get them to do it...it’s one of those things that sort of highlights one of the problems with the whole EJ thing...oh yeah we’re going to do enforcement in your neighborhood, but when the enforcement is about something that might stop a business from doing business then all of a sudden they say - I’m not sure we want to do that because imagine we put that business out of business” (GB/MA interview, 5/2/06)*

In this example, EJ activists used tactics such as a tour of the areas and appeals to political decision makers to bring attention to the problem. But these efforts were not institutionalized as part of the EJ policy to make it easier for other communities to achieve better enforcement and compliance.

All five states implemented some form of enforcement and compliance effort with regards to their EJ policies. State officials, cited enforcement and compliance measures among the best examples of ways in which their EJ policies were being implemented.

*“In our enforcement program, we’ve been identifying where violations are occurring and then if they occur in a low income or minority community, we’ve been flagging those”* (MK/NY interview, 2/24/06) *“...the [regulatory] impacts have been more on the funding and targeting resources in EJ areas and enforcement actions.”* (TC/MA interview, 2/16/06)

Despite the disillusionment with the level of enforcement efforts in EJ areas, some interviewees from EJ communities cited “enforcement sweeps” conducted by the state as one of the concrete measures taken as a direct result of EJ policies. In most cases though, communities didn’t feel these enforcement efforts went far enough. The polluting facilities, even when they are in compliance, represent a hardship to EJ communities. The enforcement efforts alone, even when carried out, are not sufficient to address the existing distributive injustices that persist due to the system of permitting still in place.

*Roy Jones of the Camden Community Recovery Coalition said [regarding the enforcement sweep conducted by NJDEP], ‘It’s definitely a first good effort, but it’s the long-term effort we’re looking at.’* (Hajna, 2002)

## **5. Resource Allocation**

State environmental agencies also impact distributive justice through the allocation of resources and benefits. Environmental agencies in the past were criticized by EJ activists for focusing the bulk of their resources on protecting already pristine environments while environmentally degraded environments such as those in urban areas received less attention and funding. It is also important to note the level of resources dedicated to environmental justice initiatives or to EJ communities in general as an

indicator of how the state is correcting the distributive imbalance in terms of environmental amenities in EJ communities.

California has the largest allocation of funding for EJ projects both for pilot projects being conducted across several agencies under Cal/EPA as well as small grants for EJ projects in communities. Although California has dedicated funding to pursue EJ goals, state staff and EJ advocates note that resources are still limited and more funding will be required to apply the policies across a large state bureaucracy, facing large EJ problems.

*“I am limited by two things, one is resources or getting new resources and... the areas of least progress have been in the context of cumulative impacts where more resources are needed.”* (SP/CA interview, 3/1/06)

*“Majority of the issues that are difficult to implement have to do with resources being limited - for example with doing the diesel retrofits and more brownfields projects.”* (TC/MA interview, 2/14/06)

Government officials also suggested redistributing existing resources to implement EJ goals within their agency programs. For example, in Massachusetts, the EJ staff cited the brownfields redevelopment funding as an example of targeted EJ funding, *“There’s also an emphasis on brownfields clean up projects – but here again the resources are limited so we can’t do more...”* (TC/MA interview, 2/14/06) The state also targeted resources to EJ communities by awarding more of their existing greenspace or smart growth grants to EJ communities as a way to support EJ goals. For example, Massachusetts provides funding to qualified EJ communities under their “Urban Self Help Program” which funds recreation and open space projects throughout the state. Technical assistance and small grants programs are another mechanism to distribute resources directly to EJ communities. These grants allow communities to hire experts to

help them navigate the state's regulatory systems, conduct independent community based research projects, and build their organizing capacity. Although none of the states provided technical assistance grants, California and New York offer small grants (~\$25,000/ organization/ year) to EJ communities for EJ related projects.

State EJ policies were not fully funded through the implementation phase, which severely curtailed the ability of states to fully realize EJ goals or experiment with implementation strategies. Furthermore, states did not significantly redistribute resources to directly support resource strapped EJ communities engage in environmental decision making. EJ activists must lobby more aggressively for EJ mandates that are fully funded and supported by the state and for direct access to funding that can help level the playing field in terms of environmental decision making.

#### Procedural Justice Analysis

As evidenced in the previous chapter, procedural justice in the form of public participation is a large component of every state's EJ policy. Procedural justice in the form of "meaningful involvement" and public participation is acknowledged as central to achieving environmental justice by both the state policies and the EJ movement. This ubiquitous commitment to participation by states is tied to the rise of regulatory rule making in federal agencies, which produced pressure for increased legal institutionalization of public participation activities (Renn, Webler, & Wiedemann, 1995, p.18). This is evidenced by the US EPA's issuance of multiple reports and guidance documents linking EJ to improved public participation processes (USEPA, 2000).

This study examines the quality of participation and the level of procedural justice achieved by EJ policies, taking the communities' perspectives of their participation

experiences as central in evaluating policies' impacts. EJ activists were asked to reflect on how their interactions with the state and public participation processes in general changed since the inception of EJ policies. Did participation efforts result in changing state actions or decisions, discovering new alternatives, reshaping attitudes or forging new relationships for example? Environmental justice activists conceded that public participation and meaningful involvement are important goals but that they are merely starting points for a deeper change:

*"...In our minds public participation was a no-brainer, no one opposed it, everybody thought it should be early and meaningful...but the bottom line is who's making the decisions, and at what point are you starting from to begin the debate"* (DT/CA interview, 5/16/06)

This activist raises the central question of how participation is tied to meaningful involvement and decision-making power.

The state EJ policies refer vaguely to participation, *"Improve tools for public participation"* (Cal/EPA policy) and *"Encourage community participation in the CTDEP's ongoing operations and programs"* (CTDEP EE Policy). And almost all include a definition of "meaningful participation" in their environmental justice definitions adopted from the USEPA's definition:

*"Meaningful Involvement means that: (1) potentially affected community residents have an appropriate opportunity to participate in decisions about a proposed activity that will affect their environment and/or health; (2) the public's contribution can influence the regulatory agency's decision; (3) the concerns of all participants involved will be considered in the decision-making process; and (4) the decision-makers seek out and facilitate the involvement of those potentially affected"* (US EPA, <http://www.epa.gov/compliance/resources/faqs/ej/index.html#faq2>).

While this definition includes the potential for participation to influence decision making, it does not set out the terms by which these goals of participation can be effectively



achieved in light of unequal access to power and resources of participants in decision making processes.

*“A democratic process is inclusive not simply by formally including all potentially affected individuals in the same way, but by attending to the social relations that differently position people and condition their experiences, opportunities, and knowledge of the society” (Young, 2000, p.83).*

One example of how this meaningful involvement was limited by material inequalities is in California, where the state attempted to conduct pilot projects set up Local Advisory Groups (LAGs). Residents complained of their inability to participate in the LAG process due to their lack of access to resources available to industry and state representatives. Residents were being asked to participate in a lengthy process with no support system while industry and state representatives were bringing significant technical resources to the table along with being paid to participate in meetings.

*“And I guess, for me, it was in the context of expanding the CalEPA's thinking about public participation and acknowledging the disparity between the various stakeholders that come around the table....so that if we seek to achieve public participation, if we don't acknowledge those disparities, it's not going to ever be genuine, authentic, real, and the way we all want it to be.” (Meeting Transcripts, Diane Tavorkian, California Environmental Justice Advisory Committee, October 6, 2005, p.176).*

States adopting the rhetoric of ‘meaningful’ participation without creating real opportunities for communities to engage in the states’ decision making processes on an equal footing are simply reinforcing structural inequalities rather than procedural justice.

The interviews with EJ activists from all five states reveal that the level of participation implied by EJ policies is quite low on the Arnstein (1969) ladder of participation. EJ communities recognize states’ efforts to increase access to meetings and outreach but with few opportunities to engage in meaningful dialogue that could result in influencing state action or decision-making. In fact, the increased attention to

participation processes seems to be fueling EJ activists' disenchantment and frustration because these attempts are not tied to any shift in the decision making power of the state, rendering participation efforts hollow.

*"And, really, we don't want to dialogue with anybody anymore. We want some action. We don't want no more discussions and talking and all this -- we don't want nothing to do with just talk, talk, talk, you know. We're tired of talking. It's like in the mean time -- if your family was sitting under these things, I'm sure you wouldn't be talking. You would probably be running with them somewhere else, because you would have the resources to do that. You wouldn't want to talk."* (Meeting Transcripts, Ms. Downing, Public meeting, California Environmental Justice Advisory Committee October 6, 2005, p.184)

One of the first indicators that the environmental justice policies did not in fact encourage more deliberative and empowering forms of participation was the continued reliance on public hearings as a format for capturing participation. Although agencies changed some of the logistical details of these hearings, holding hearings in the evenings, holding them in affected communities rather than agency headquarters, using facilitators or offering language interpreters – the fundamental flaw of these processes still held true. According to Renn (1995, p.25), the ineffectiveness and confrontational nature of the public hearing format for public participation is due to the timing of their use and the structure of the discourse. Public hearings are: 1.usually held late in the process when public input can be minimal, 2. very few people can speak at the hearing, 3. communicative bias of experts or decision makers seated above the public, 4. held to satisfy legal requirements rather than promoting public participation, 5. bias of outcomes in favor of economic interests with minimal impact of public input. In the Camden case study, residents described several examples of disastrous public hearings where residents left feeling defeated and disillusioned.

*“On the one hand they are [NJDEP] opening up the process, but by itself it’s not good enough. Because it’s so frustrating when people give testimony on the terrible conditions they face, the DEP records it but then they don’t make decisions any differently...they might make some small technical changes but that’s it...this type of participation is negative because people get disillusioned when they get ignored and it’s disempowering...DEP can meet us to Death!” (OP/NJ interview, 4/4/06)*

Many activists describe improved access to information or an increased number of public meetings but they do not see their input considered in the state’s decision making and the state still holds all the power to structure discussions and set the terms of participation.

In California, EJ activists echoed these sentiments when referring to the pilot projects set up by Cal/EPA under the EJ policy:

*“...they [Cal/EPA] created meetings to get local input, they answered everyone’s questions and gave out information, but the basic goals and decisions related to the projects did not change...everyone agreed on the criteria we [EJ Advisory Group] came up with but the implementation is not in place, so you can have all the public participation processes in the world but ultimately if there are no mechanisms in place to change the decision making with community input then it really doesn’t matter.” (YF/CA interview, 5/16/06)*

Activists were particularly upset about the manner in which the state selected and designed pilot projects without the EJ communities’ participation.

*“I think that we try to express in the recommendations [to the state], we need to start from community based assessments, so I thought that the pilot projects gave us that opportunity, it was a chance to do that, to look at what’s going on in a community and how can we fix what’s wrong with it from a pollution perspective and how can we plan for the future with real residents and organizations...they [Cal/EPA] won’t even agree to a diverse stakeholder process.” (DK/CA interview, 4/19/06)*

EJ activists tried to formalize the role of LAGs in the formation of the state’s pilot projects. They wanted to participate in such a way as to give EJ communities an opportunity to shape pilot project goals and methods and also their ultimate impact.

*“A lot of our groups proposed a formalization of the structure [local advisory groups for pilot projects] so that the state had more accountability to this body of stakeholders and residents, and that was wholeheartedly rejected [by the state].” (YF/CA interview, 5/16/06)*

The formalization of the LAG groups was an attempt to set up a participatory process whereby residents could become more empowered in the state's EJ strategies.

*“And then we saw that ARB put together a pilot program before ever having a community meeting and announced what they were going to try to do to and address it, which never showed up in any of the things the community outlined “(Meeting Transcripts, Penny Newman of CCAEJ, Public meeting, California Environmental Justice Advisory Committee October 6, 2005, p.95).*

Because the state did not formalize the LAGs, they were relegated to an advisory role that could only react to already formed research projects and agendas, leaving communities with no formal decision making power. In the end many EJ activists questioned the value and legitimacy of continued participation in state processes:

*But they [Cal/EPA] don't care. Because they're not going to listen. Because that's what DTSC (Department of Toxic Substances Control) and them does. They sit there and put on a pretense of listening to you, letting you go through years of suggestions. And you, in your mind, as a community person, thinking, we're a part of the process. We're going to make change. And they ignored them all. That's what's happening here. And we have all had experience with that. And we come here time after time and sit and play this game. In the mean time, my former neighbors and friends are dying. (Meeting Transcripts, Ladonna Williams, Public meeting, California Environmental Justice Advisory Committee, October 6, 2005, p.198)*

A Massachusetts activist summed up the question of whether the state improved public participation, *“meaningful input is ok but the outcome of decisions need to change with that input and it's frustrating to give input otherwise”* (GB/MA interview, 5/2/06).

In Connecticut, environmental justice activists expressed particular frustration with public participation in the permitting process. In the public hearing process for permit reviews, each party presents its case to a hearing officer, including the permit applicant and the state. The public can only “intervene” in this process through a formal application process, otherwise their comments are relegated to the end of the hearings and are controlled by hearing officers. In order to enter into the “intervenor process” EJ

communities must have a legal or scientific expert submit an application on their behalf. This is the only way they can introduce evidence, cross-examine other parties' witnesses, and formally request further review by the state before a final permit decision. The intervenor process effectively disadvantages EJ communities because they generally do not have the resources to hire professional experts to testify on their behalf. Even if they are able to secure such resources, there is no assurance that the state will grant EJ communities "intervenor" status.

*"... say you want to oppose a permit, typically the public or citizen groups file intervenor papers where they become a party to the process so they have all the rights and privileges the applicant has, they have the same presentation time, they are privy to any documents coming into the DEP...even once you become an intervenor, the process is very stacked against you because you have to go out with your own money to hire scientists to counter the scientists that the applicant has hired who's going to tell you that the pollution is acceptable or their process is going to work and the average group that's in the inner city and poor doesn't have the means to hire anyone...so you can't win" (KM/CT interview, 5/2/06)*

This permitting process marginalizes EJ communities due to resource and technical inequalities.

The CTDEP's intervenor process exemplifies the "technocratic environmentalism" Fischer describes, "...the firm belief that good science can show us the way." (Fischer 2000) This scientific policy discourse alienates and disadvantages EJ communities, rendering their participation mute in the face of more powerful agents. According to Cole and Foster (2001, p.109),

*"Bureaucrats in state and local environmental agencies respond to pressure and when deciding between the desires of a community and those of a company, they often favor the interest that puts the most pressure on them. Low income and communities of color enter the decision making process with fewer resources than other interests in the decision making process. These communities have less time, less information and less specialized knowledge about the legal, technical and economic issues involved."*

These California and Connecticut examples highlight the negative consequences of participation that ignores power imbalances. This is a particularly important issue in low income and minority communities where environmental conditions are also tied to political and social disenfranchisement of entire communities.

*“While many environmental laws promise public participation to varying degrees, in decision-making processes, they leave in place, as do many formal administrative processes, the underlying social relationships of its participants.”*(Cole and Foster, p.104)

EJ activists interviewed echoed universally expressed frustration with public participation processes. If participation does not get the results EJ goals imply, why then do states push public participation goals to the forefront of their EJ programs? Public input processes fall within the large discretionary power of states and is often mandated through environmental statutes. When State EJ program directors were asked about their progress on public participation goals, they cited it as one of the areas of most progress.

- *“Progress has been made in the area of public participation “* (CA)
- *“I think the biggest successes have been...increased communication between the community and the department, and just that alone has been worth it because it puts a face to the community in which the impacts occur”* (NJ)
- *“Primary successes has been the regional outreach teams – we received an award from the EPA for these – so certainly its been one of the most successful efforts to implement the policy on the ground”* (MA)

Two of the EJ coordinators recognized the limits of their public participation efforts and expressed regret that more could not be done to impact changes.

*“For example, when I came on board you’d never before heard of having meetings in the evening or making information translated, so to a great extent we have improved, we have acknowledged environmental justice is an important issue that needs to be considered in our decision making, and that means we have to have better public participation and we have to actively go out to seek input...but public participation is also a double edged sword too, in the sense that it might be hard to say that we want to get input and then the expectation is that everything will change, but that’s not the only part of it..., in the decision making process, we must consider the input from the industry too and the regulations, and that’s where I’ve seen the frustration and*

*disappointment being expressed, that we only pay lip service but we do not necessarily really mean what we say...*" (SP/CA interview, 3/1/06)

In order for states to achieve some level of deliberative and meaningful participation, state EJ coordinators need to take a closer look at the types of dialogue their participation efforts are encouraging and the models of participation their EJ programs set up. These coordinators could help ensure access of less powerful groups in decision making processes; supply technical and professional support to disadvantaged groups or supply political information that may be of use to EJ groups. State EJ coordinators can serve an important role in linking EJ communities not just to more meetings, but also to more meaningful opportunities to influence decision-making.

Looking at an example from Cal/EPA and their ongoing dialogue with EJ communities we see an example of how one state representative views the ongoing work of dialogue with communities:

*"There are days when I look at where we start. I remember coming down and -- is Jesse here? ...I remember the first Ports and Goods Movement conference. And Jesse Marquez, he started off the day talking with a list of demands. Well, I was so depressed. But I just felt like going home and saying, 'This is just impossible.' But by the end of the next day at lunchtime Jesse came up and said, 'See, I can be constructive, and make comments here.' So, you know, again you can go from despair to great hope. But what I got out of that was that Jesse was recognizing the need to basically go all the way, but also the recognition that we're going to have to make these improvements in steps. And I think to me that was reassuring, and that sustains me to say we're doing the right thing."* (Meeting Transcript, Cal/EPA Environmental Justice Advisory Committee, Public Meeting, November 15, 2005)

This state representative is expressing the fear that the communities' demands seemed too overwhelming at first and impossible to satisfy. Through dialogue, what seemed like an insurmountable list, turned into incremental steps towards a joint resolution based on deliberation over time. State EJ strategies like LAGs could be more effectively leveraged to bring communities' into decision-making processes. The LAGs could have been set up

early in the pilot projects to give EJ communities the opportunity to shape the research agenda, identify priorities for action, review research outcomes and develop collaborative strategies for mitigating environmental injustices.

The most surprising finding is the perseverance of EJ communities to continue to engage in participation processes after decades of little change, they continue to try to find solutions and new avenues for improving decision outcomes that impact their lives:

*We're here today to work with you because you say that you want to address the environmental injustices in our community and you want to have another -- a brighter day for the future where we go forward in a spirit of cooperation and working with our communities. And we are receptive to that idea -- that's why we are participating in the process. Okay. But our patience is running very short, because another thing that you have to understand is that in many cases the agencies and your staff have been rubberstamping these disproportionate impacts that we are experiencing from these companies simply because of the corruption in the political process. And I'm sure you know what I'm talking about, so let's not play dumb this morning. So we want to work with you though, and hopefully you are serious about making some change. But in the final end, we've come to you with our issues and concerns and you set up this process to want to change. We want to work with you to make that happen, but we want to see some results. We don't want to see the continuing same old nonsense where you are bringing us up here and you're saying you're concerned about public participation, yet you hear us and then you go forward and do what you want to do. Or we continue to be the recipient of these polluting facilities, and the companies and others take the money and run and we left with the asthma and the health problems. So we want to work through this process to stop that and make some real environmental justice happen. But if you're not serious about it, believe me, we're going to be active in our communities to stop any operations in our communities that continue to disproportionately impact us by any means necessary like Brother Malcolm X said" (Meeting Transcript, Dr. Henry Clark of West County Toxics Coalition, California Environmental Justice Advisory Committee, Public meeting, November 16, 2005, p.79)*

According to EJ activists, procedural justice has not yet been realized via the states' environmental justice policies because the states' public participation processes do not offer meaningful opportunities to impact decision-making, shape understandings of problems, or explore alternatives. Increased access to information and opportunities for



participation have arisen as a result of EJ policies but more profound and meaningful forms of participation have not developed.

### Structural Justice Analysis

Structural injustice manifests in the socio-spatial patterns that underpin the disparate environmental conditions EJ communities struggle against. Laura Pulido (2000, p.12) dissects the relationship between disproportionate impacts in low income and communities of color and “*the role of structural and hegemonic forms of racism in contributing to such inequalities.*” In her article, Pulido (2000) highlights how the historical patterns of racism played out in geographic and economic terms in Southern California, laying the foundation for the distributive injustices that we recognize today as environmental injustices.

*“...The constraints imposed on individuals in poor communities of color result not only from social phenomena or forces such as racial bias, in the housing market for instance, but also from institutional mechanisms that operationalize the social constraints.”* (Cole and Foster, 2001, p.104)

If the root causes of environmental injustice lie in structural patterns of society, how can state intervention begin to counter these historically ingrained patterns? In fact, states played a critical role in legitimating these racialized patterns in the past through: state sanctioned redlining practices that excluded people of color from the suburbs; subsidizing white flight and suburbanization through discriminatory mortgage lending practices and highway subsidies; urban renewal programs that led to the ghettoization of the inner city; and standard environmental management practices that sanctioned the concentration of pollution production in disadvantaged communities while local land use planning protected wealthier, whiter suburbs from such incursions. These patterns were described in detail in the Camden case study and other studies have shown similar

patterns in places like Southern California. Thus the state is implicated in creating the conditions for structural environmental injustices to occur and they play an equally central role in helping to counter the impacts of structural environmental injustices.

How do states address or acknowledge structural forms of injustice in their EJ policies? Structural issues are tied to larger functions of the state that can cut across various agencies within the state's bureaucracy. For example, these functions can include; how a state encourages economic investment, investment in affordable housing, transportation infrastructure projects, land use planning efforts, and also the larger system of environmental protection. When examining the environmental justice policies for references to structural injustice, broader issues linking to economic and social conditions may be the best indicators by which to evaluate EJ policies' influence. These indicators can include issues such as the "precautionary principle", pollution prevention, land use planning, affordable housing development, and shifting economic and decision-making power to environmental justice communities either through direct funding assistance (grants to communities) or power sharing on decision making bodies. These are just some examples of how state policies can address structural environmental injustices. Only California's EJ policy and New Jersey's Environmental Justice Executive Order explicitly recognize the link between environmental injustice and structural inequalities.

The precautionary approach is one way states can address structural injustice because it attempts to address pollution problems at their root by looking at the patterns of production and consumption in our society and also at the role of government in relation to industry. Under traditional environmental management practices, industry is able to shirk negative environmental externalities onto society's most vulnerable

populations through the system of production and environmental regulation that permits pollution in a piecemeal fashion.

*“...the general approach of environmental management is to intervene only after the event...The preference is for environmental clean ups and ‘end of pipe’ solutions rather than preemptive or proactive interventions...the only general problem admitted under the standard view is the so-called ‘market failure’ which occurs because firms can externalize costs by free use of the environment for procuring resources for waste disposal...it then becomes the role of the state to evolve a regulatory framework that either forces firms to internalize the external costs or to mandate standards that firms must meet with respect to environmental impacts and the like..” (Harvey, 1997, p.71)*

The precautionary principle shifts the burden of pollution prevention onto industry and uses the state system to err on the side of public health and safety. According to these principles there is a "reverse onus" which says that the burden of proof for safety belongs on the proponent of a chemical or technology.

In an EJ context, the precautionary approach shifts the balance of power in favor of impacted communities, and allows them some measure of power in the face of industry and state systems.

*“The precautionary approach turns traditional environmental policy on its head. Instead of asking, “How much harm is allowable?” the precautionary approach asks us to consider, “How little harm is possible?” The precautionary approach urges a full evaluation of available alternatives for the purpose of preventing or minimizing harm precautionary policy puts the burden on government and the corporate sector to show that preventive action is not needed, instead of the other way around. This represents a shift in power. Furthermore, a precautionary approach requires government and the corporate sector to engage the affected community in a respectful discussion of available alternatives, with the goal of selecting the least-damaging alternative. For most communities, this too represents an important shift in power.” (Montague, 2003)*

The Cal/EPA adopted the precautionary approach as part of its Environmental Justice Strategy. Although Cal/EPA made a commitment to addressing precautionary approaches, both state officials and EJ activists acknowledge that little has been done to

advance this goal due to a general lack of consensus regarding how to fully implement these measures statewide.

*“...We are doing this [precautionary approach] actually, in the sense that we know what it is but I do not see how to accomplish this in a permitting context...Because the precautionary approach doesn't fit well with permitting, since its too late by the time you get to permitting to address this issue, it's almost on a different scale from permitting...on a programmatic level it makes sense. So for example, if you're talking of solvents, you can make things safer, for pesticide use you can use substitutes that are less toxic...From a programmatic standpoint, you can set a regulation that in ten years you'll use a safer substitute for certain things, but to say that for a permit applicant, its really difficult to issue that kind of thing” (SP/CA interview 3/1/06)*

Despite this reluctance, the precautionary approach has already been adopted and implemented by several government entities including the City of San Francisco and the European Union. *“At the EU level, following its adoption into the Maastricht Treaty (Treaty of the European Union) under Article 130, and into Article 174 of the Amsterdam Treaty, the precautionary principle has increasingly been used as a philosophy for regulation”* (Lofstedt, 2004, p.246). These governments have taken up the challenge of applying the precautionary principles to aggressively pursue pollution prevention, toxics substitution and pollution reduction strategies.

EJ activists in California want the precautionary approach applied broadly to prevent permitting or other agency decisions that have a cumulative or disproportionate impact on communities but the state resists this broader application of the precautionary approach. Environmental justice activists noted two major factors impeding the full implementation of deeper environmental justice goals: lack of political will reflected in the states' leadership and economic pressures to back off more aggressive state intervention.

- *“...here was a case the DEP was suppose to do something and they just didn't do it [help pass an EJ bill] ... was it because they thought it should be [the department of] transportation or they didn't want to spend the money...but it's*

*just another example of how there's not a strong will to do these things which would be so meaningful for a community like ours..." (LB/CT interview, 5/2/06)*

- *"...I can just guess that industry doesn't like it [EJ bill that was killed in the legislature], [the state says] oh we don't want to slow down or stop economic development in the Commonwealth." (GB/MA interview, 5/2/06)*
- *"...I think there's a number of obstacles to it [rejecting permits in EJ areas], one is that industry would fight it tooth and nail and I don't know that there's the political will to do something like that either...for those kinds of changes to happen it would take a huge push and a level of commitment to doing it, and that would be legislative changes...that's not where the NY legislature or the Governor is...and the direction of the department [DEC] is under the guise of the Governor so that's kind of where we are..." (GK/NY interview, 4/27/06)*

Many of the EJ activists interviewed viewed these economic and political obstacles as a sign of the impediments to deeper structural changes needed to achieve environmental justice in poor, minority communities.

*"...[the EJ policy] forced the DEP to pay more attention to EJ than it otherwise would have, to target more resources, more staff time, more energy to trying to figure out what to do with a community like WFS...but where they fall short is that there are still tremendous economic and political pressures to keep dumping in communities like WFS, ...where poor people, communities of color are because where else are you going to allow companies to acquire land cheaply and put in really nasty stuff that more affluent whiter communities don't want, that would be a major change in how we do business in this country and I have not seen the EPA or DEP do anything to upset that business as usual dynamic...the challenge is could they really use their regulatory authority by looking at cumulative harms or using the precautionary approach to permitting...would they [government] ever do something that would be so fundamental that they could really change the patterns that we're so entrenched in now" (OP/NJ interview, 4/4/06)*

The links between economic and political power and environmental injustices are clear to environmental justice activists but the question remains, how willing is the government to use its state-sanctioned powers to counter these forces for the sake of environmental justice? Existing environmental justice policies seem to do little to upset the status quo and rely on their existing systems to respond to superficial forms of environmental justice. If the EJ movement hopes to achieve environmental justice, they will need to form broader movement coalitions that can link environmental with social

and economic justice goals. A more powerful movement may be able to counter the economic interests of industry and may also hold greater sway with public agencies under political power.

One way states can impact structural inequalities tied to EJ includes financial investments and incentives that aid poor, blighted EJ communities develop economically. Unfortunately, because EJ policies are often limited to environmental management agencies or are only implemented via environmental regulatory systems, states are not effectively linking economic and environmental improvements in EJ communities. One EJ staff person reflects on the magnitude of change the environmental agency is asked to work on as part of environmental justice:

*“There are a multitude of issues that DEP is not responsible for. We’re just not. We’re not responsible for education, we’re not responsible for health services in a community, and we’re not responsible for the building of infrastructure within a community, what gets built, what doesn’t get built. And we can work on our issues, that we are responsible for, and we’re responsible for many, but that’s not going to make this community look like Princeton, or give them the jobs that Princeton has, or give them those benefits. And that’s not fair. Its not fair to them because they have to work on so many issues - activists, advocates, grassroots organizers, have to work on so many different levels to get what they need, its tough on them but that’s the way it is.”* (MD/NJ interview, 4/6/03)

This staff person is describing the deeper social and economic conditions that underlie environmental justice problems but that are not being addressed by existing environmental justice policies.

New Jersey and California’s EJ policies had more leeway to impact structural inequalities because their EJ policies were not limited to environmental agencies. These policies included other state agencies and functions such as economic development, transportation, and health. Despite this opportunity, both environmental justice policy strategies have remained relatively contained within the environmental management

agencies and within existing regulatory statutes. Environmental justice advocates are thus raising the stakes and seeking more radical steps from government in order to achieve environmental justice on the ground.

*“What it takes to really make change on the ground or anywhere else is that you have to have the power... permitting decisions are made in terms of where companies are located whether they get the permit or not ... if you don’t have elected people in power over the decision makers when decisions are made, more than likely those decisions are not going to be made in your interest...so we are building a movement to be able to elect people that will represent us...electing more people from the movement getting more people in positions of authority and power to make decisions and holding those decision makers accountable to fairly represent EJ communities...because these are power equations we’re talking about and we are not there at the table... so it’s power and we just have to organize and mobilize our people , get more people power to get what we need...”* (HC/CA interview, 4/19/06)

Thus the EJ movement is looking to mobilize political strategies to garner greater levels of state intervention. This mobilization must include broader coalitions of people involved in social justice activism, environmental movement, the anti-toxics and labor movements. These broader coalitions may be able to garner the state’s attention and push for improved economic and environmental conditions.

While the state policies have not fully recognized the structural nature of environmental injustice, EJ activists are very cognizant of the structural implications of the issues they face as poor, minority communities.

*“We’re addressing issues of poverty, and racism and poor schools, and lack of access to services along with the pollution that’s impacting the communities, and I think the agencies are starting to get that they have to look at it more comprehensively and it’s very challenging and in general I think they think its too hard...I mean we think its hard too...but that’s what it’s going to take for our communities to have a real quality of life impact...”* (DT/CA interview, 5/16/06)

EJ activists see these environmental issues within the broader socio-economic realities that shape their communities and their lives. Thus environmental justice policies must also begin to reflect the full breadth of the problems and seek appropriate solutions.

## Conclusion

The multiple case study comparisons produce a rich picture of the relevance and effectiveness of EJ policies in all five states. According to interviews with EJ activists and stakeholders in all five states, EJ policies do not capture the full scope of environmental injustices faced by EJ communities. Instead policies tend to focus on environmental injustice as a distributive problem. The majority of state strategies are likewise limited to weak procedural strategies that are not relevant to or impact distributive, procedural or structural injustice. Whether it's disproportionate impacts or meaningful participation, EJ communities are finding themselves living under the same conditions years after the enactment of state EJ policies.

Most EJ policies are limited to the jurisdiction of their respective environmental management agencies where responses to environmental injustices are also limited. Even within the limited purview of environmental regulatory systems, EJ policies are only working within existing regulatory powers to address environmental injustices instead of extending their authority or looking for alternatives to their standard regulatory practices. These limitations seem to all point back to unwillingness on the part of the state to recognize or fundamentally challenge economic interests. Therefore, EJ policies are rendered largely symbolic and ineffective in the face of environmental and economic burdens that negatively impact low income, and minority communities.

The failure of environmental justice policies to impact EJ communities seems to be mobilizing the EJ movement to seek greater levels of state action through grassroots organizing, community based research and political advocacy. EJ leaders increasingly recognize the connections between broader structural changes that are needed to impact



multiple forms of injustice. State representatives are also beginning to recognize the full complexity and scope of work required to make real changes on the ground. The impetus for more effective EJ policies may come in the form of greater EJ movement mobilization that can spur profound political and policy shifts in states across the country.

**CHAPTER 9.**  
**CONCLUSION**

### Summary of Findings

The proliferation of state-initiated environmental justice policies over the last decade brings into focus the important role states play in achieving environmental justice in low income and minority communities throughout the nation. The Camden case study vividly illustrates how distributive environmental injustices are tied to deeper forms of procedural and structural inequalities. In this case study the state is complicit in the development of these injustices over decades of state institutionalized racism or disenfranchisement. But the role of the state and the three dimensions of environmental injustice are not fully recognized or effectively addressed by the state's EJ policies. Instead, the state identifies a distributive problem and attempts to address it via weak procedural strategies with little or no connection to structural inequalities that gave rise to these environmental injustices.

The case study of New Jersey's EJ movement illustrates how the increasing institutionalization of EJ issues by the state also impacted the EJ movement itself. The largely fragmented and grassroots EJ movement in the state began to organize efforts at regional and statewide levels, partly in response to the state's increasing engagement with the movement in their efforts to develop an EJ policy. While grassroots EJ groups traditionally focused on locally based, particularistic issues like unwanted polluting facilities in Camden, the movement increasingly adopted more universal goals and strategies as they began to collaborate and organize at regional and statewide levels. This increased mobilization at higher scales of action helped establish and reinforce principles of collaboration based on consensus that favored more democratic forms of participation and empowerment.

While New Jersey's policies impacted the development of the EJ movement, the effectiveness and relevance of policies themselves came into view. In the New Jersey case study of EJ policy implementation over a ten-year period, one can see the evolution of divergent policy approaches grounded in different political administrations. The more conservative Republican administration created a limited equity policy that focused on weak procedural tactics to quell opposition to contentious environmental permitting decisions. The following EJ policy developed under a more liberal Democratic administration led to a more comprehensive EJ policy that recognized the three dimensions of environmental injustice but did not go much beyond the original policy in addressing these injustices.

The multiple case studies further support the conclusion that political ideology influences EJ policies only insofar as it shapes the initial policy statement and definitions. In terms of implementation of EJ policies and improving conditions on the ground – political ideology matters less than political leadership and will. Other policy factors such as the level of executive commitment, interest group strength and resource allocation also seem to impact the effectiveness of policy implementation. The greater the executive priority, interest group power and resources dedicated to EJ policies the more effective they are. This is one of the reasons why the California and New Jersey policies are ahead of other states in terms of their implementation.

The multiple case studies also reveal a similar trajectory in the way EJ policies evolve through the implementation phase. EJ policies begin as largely symbolic policies that emphasize environmental injustice as a distributive problem of disproportionate environmental burdens. Thus they under-conceptualize the problem of environmental

injustice and limit their policies to environmental management systems of the state. As states further define the terms of this distributive problem, they develop largely procedural responses to address environmental injustice. These procedural fixes are limited to weak, symbolic forms of participation that are not tied to meaningful, deliberative dialogue or decision-making. Most EJ policies are stuck in this second phase, working within their environmental management systems with public participation strategies that do not impact conditions on the ground. California and New Jersey are the only two states that have evolved slightly beyond this phase to begin to recognize the links between distributive injustice and deeper forms of procedural and structural injustice. While these states recognize these critical links, they have not overcome the political and economic opposition to stronger state intervention that can address entrenched structural inequalities.

The multiple case studies, bolstered by the in depth New Jersey cases, reveal the failure of EJ policies to recognize a larger conceptualization of environmental injustice and to achieve even a modicum of environmental justice on the ground. This failure is rooted in the states' unwillingness to fundamentally challenge capital interests and shift the way they carry out environmental mandates, involve disenfranchised communities, and remedy economic and social inequalities.

EJ activists interviewed in all five states expressed frustration over the states' lack of progress on improving conditions in their communities despite years of implementing EJ policies. These activists are increasingly turning to political organizing and coalition building to pressure the state to take a more aggressive stand on EJ issues. In New Jersey, EJ activists are joining with the labor movement, the mainstream environmental

movement and other social justice activists to call on the Governor to help poor, minority communities prosper economically and environmentally. In California, activists are enlisting their own experts and residents to conduct community based research and using this research to leverage political pressure for legislation aimed at regulatory reform. In all the states, EJ activists recognize the necessity to mobilize broader coalitions of activists concerned with social justice and sustainability, and ecological and economic viability. Thus the EJ movement along with more progressive state governments are drawing on a wider array of strategies and mobilizing tactics to achieve environmental justice.

#### Policy Implications of Research

The failure of even the most advanced EJ policies to make significant improvements in environmental justice communities signals the need for a wholesale reevaluation and shifting in state approaches. It is clear that current policies are not fully capturing the nature of EJ problems and states are simply unwilling or unable to make the dramatic changes necessary to improve the situation. Looking forward, many state EJ program coordinators recognize the stalemate they've reached under current policies. These coordinators will need to leverage their limited positions within state government to channel a renewed commitment to more inclusive and alternative strategies beyond the procedural fixes currently available to EJ communities. Another avenue being pursued by EJ activists and some state agencies is the passage of EJ legislation aimed at enhancing their regulatory authority to intervene more directly in EJ communities. States must also make more of the state agencies and local or regional decision makers accountable for implementing effective EJ strategies.

*“I’m hoping that in the near future, we will be able to get some type of legal authority to extend the requirements beyond DEC...one frustration that I have or something that I think is really necessary for EJ to continue for the whole movement to trickle down to the local government...because it obviously started in the grassroots arena and then it got to the federal government in the early 90s and got to the states in the late 90s and we’re still it’s been trickling down slowly to the local government” (MK/NY interview, 2/24/06)*

Ultimately, a political strategy must be considered to counter the structural inequalities at the heart of environmental injustices. Therefore, the EJ movement together with allies in other social justice and environmental movements will need to mobilize more progressive state leadership on this issue. Both state policy entrepreneurs and EJ activists have to mobilize political pressure, prime a series of potential recommendations for implementation and press more comprehensive EJ policies. Below are some suggestions for future state EJ policies at various levels of government:

#### *States*

- Pass EJ legislation or policies that are broader and encompass multiple state functions requiring hiring of staff, resource allocation and accountability measures for agencies like the health, transportation, and economic development departments.
- Target resources across these multiple agencies to EJ communities, including housing, greenspace, health monitoring and healthcare access, economic investment for residents, site remediation, and community development projects.
- Establish dedicated funding for EJ communities to do their own research, monitoring or improvement projects via direct investments.
- Open up the state’s decision-making process to EJ communities via alternative means of public participation including mediated dialogues, informal consultations, local and regional advisory groups or community boards.

#### *Environmental Management Agencies*

- Create community advisory boards in EJ communities with EJ resident representatives – empowered to weigh in on environmental decision making processes like permitting or brownfields development
- Pass regulatory reforms that allow states to place more stringent controls on pollution permits in EJ communities, ratcheting down pollution in EJ areas where disproportionate, cumulative pollution sources exist.
- Pass multi-media regulatory reforms that target pollution reduction measures in “hot-spot” EJ areas.

- Require pollution prevention measures, best available technology, pilot mobile source emission reductions (diesel retrofits, electrification, etc.) and increase monitoring in EJ areas.
- Place a moratorium on new or expanded pollution sources in overburdened areas.
- Adopt the precautionary approach to environmental decision-making by promoting toxics substitution, risk reduction and hazard identification by industry.

#### *Local level*

- Pass local land use ordinances that restrict industrial development near residential areas; require green buffers between existing industrial and residential areas; require odor and light pollution controls of industry near existing residential populations; require energy efficient, green building standards for new developments; deny nuisance industrial development in EJ areas; increase greenspace and tree plantings.
- Set up community advisory boards to weigh in on policies and come up with plans or alternatives for communities.
- Promote green technologies that link employment opportunities with sustainable product development and green business practices.

#### *Federal level*

- Invest in affordable housing, infrastructure improvements, and community development initiatives that are environmentally friendly.
- Provide greater healthcare access to vulnerable EJ populations.
- Mandate multi-media pollution reduction and pollution prevention in most polluting industries across the country .
- Pass federal EJ legislation that prohibits permitting of polluting industry with a disparate impact in EJ communities (regardless of discriminatory intent) and promotes environmental and economic amenities in EJ areas.
- Support research and development on new, clean industrial processes that prevent pollution.
- Develop cumulative impact analysis for environmental decision making.

#### Research implications

The findings of these case studies point to several robust areas of future research. While the role of state policy making seems central in the face of little federal action on this subject, the literature would benefit from increased attention to different scales of government intervention effecting environmental justice. How are cities either directly or indirectly addressing environmental justice issues? What is the role of local and regional governments in perpetuating and mitigating environmental injustices? How would



renewed federal attention to EJ help relieve environmental injustice in all states not just the most progressive?

State institutionalization of environmental justice also portends significant impacts on the grassroots EJ movement. As the state increasingly engages activists to little effect, how will the movement evolve strategies to make government more accountable to EJ goals? The New Jersey case study suggests that activists can transition to increased levels of political action with positive results, but the potential pitfalls of political organizing remain a reality for this burgeoning movement. Will the EJ movement be able to retain its grassroots, radical stance as their circle of influence widens and their attentions turn to more universal scales of action – can their goals go universal while remaining radical and empowering? Also, with the globalization of traditional polluting industries to developing countries, many of the local distributive burdens associated with environmental injustice in the US today are related to local and regional public works facilities (waste management stations, sewage treatment plants, etc.) or consumption patterns (i.e. driving). This shift of distributive burdens resulting from consumption patterns rather than industrial production practices also present new challenges in the way the EJ movement and the state intervene in the policy process and marketplace. The ultimate challenge is can the EJ movement mount a vigorous enough campaign to drive more aggressive government intervention?

The ability of government policies to significantly improve the environmental and economic conditions that plague low income and minority communities throughout the world will depend on a more progressive and innovative state pushed by the mobilization of a viable grassroots movement for social and ecological justice.

## APPENDIX A

### **NEW JERSEY ENVIRONMENTAL JUSTICE ALLIANCE**

The New Jersey Environmental Justice Alliance (NJEJA) is a statewide umbrella, all-volunteer organization comprised of nearly 40 groups (as of this writing) and individuals. NJEJA has three regional components organized geographically within the state—Northern, Central and Southern—to encourage and support local struggles. NJEJA meets quarterly. The regional groups are encouraged to meet quarterly and more often, as necessary. There is an 11-member Steering Committee, which conducts business and makes recommendations to the alliance between quarterly meetings.

#### **Mission Statement**

*The New Jersey Environmental Justice Alliance (NJEJA) is an alliance of New Jersey-based organizations and individuals working together to identify, prevent, and reduce and/or eliminate environmental injustices that exist in communities of color and low-income communities. NJEJA will support community efforts to remediate and rebuild impacted neighborhoods, using the community's vision of improvement, through education, advocacy, the review and promulgation of public policies, training, and through organizing and technical assistance.*

#### **Preamble**

The New Jersey Environmental Justice Alliance (NJEJA) recognizes that we need to share expertise, resources, and support one another in the struggle to secure environmental justice for all the residents of New Jersey.

NJEJA recognizes that human and environmental health are equally important to achieving and sustaining a high quality of life for all who live in the state. NJEJA will draft new regulations, laws, and public policies that seek to eliminate and prevent the disproportionate imposition of environmental hazards on and the violation of the civil rights of low-income and communities of color.

NJEJA understands that individuals and organizations committed to eliminating threats to human and environmental health may come from different professions, racial and ethnic backgrounds, and economic levels.

The Alliance embraces this diversity and abundance of experience and perspectives. NJEJA will use them to work in a mutually supportive manner to eliminate the threats to human and environmental health.

Therefore, NJEJA partners pledge to work together within the spirit of cooperation as set forth in the following Principles of Collaboration.

## **Principles of Collaboration**

Membership is open to all who support the goals and philosophy of the Alliance, as stated in the Vision Statement and Mission.

NJEJA advocates true democracy and empowerment. The Alliance will respect the rights to self-determination of and take guidance from the communities most affected by environmental and health disparities and risks. Supporting the leadership, goals, objective, and strategies will do this, and measurements for success established by the affected communities.

NJEJA partners shall also:

- Respect the autonomy of its respective partner organizations, including their right to have different positions on strategies and actions to achieve justice;
- Not publicly undermine the Alliance, for example, by making negative statements to the media about the Alliance;
- Disclose, internally, potential conflicts of interest that might negatively affect the Alliance;
- Create a mechanism to address internal conflicts between/among partner organizations/individuals that might disrupt the Alliance and jeopardize its work;
- Identify and share resources with one another, whenever possible;
- Seek technical assistance, administrative and other types of support from other Alliance partners for their organization;
- Support one another in fundraising, popular education (about environmental justice and related issues), staff and volunteer development, and organizational capacity-building activities, whenever possible.

## **Goals**

1. Build a statewide alliance of organizations and individuals to address environmental injustices and interrelated concerns, such as health impacts and discrimination.
2. Promote the “Precautionary Principles.” The Precautionary Principle requires governmental entities and companies to foresee and forestall problems, develop new ways of operating to avoid problems, and to set goals for health, well-being and justice.
3. Advocate for and support mechanisms that empower communities (affected by disproportionate pollution burdens) to be part of environmental decision-making.

4. Challenge government entities (federal, state and local), corporations and mainstream organizations to be more accountable for reducing environmental pollution; remediation of contaminated sites; enforcing, creating and implementing laws, regulations and policies fairly; respecting the right of residents in communities of color and low-income communities to enjoy a safe, healthy, productive, and sustainable environment.
5. Call on traditional environmental organizations to adopt the EJ Movement's definition of the "environment" as being the places where we live, work, play, pray, and go to school and develop programs that respond to EJ concerns.
6. Support community-based capacity building and the EJ Movement in New Jersey. To build capacity, government must provide groups with power, money and information. Power means setting up decision-making so local groups have more weight in decisions that will affect them and their constituencies. Money means cash to really participate in decisions. And information means getting information to people at all stages of decisions (including the earliest possible stages, when alternatives are being considered.)
7. In addition to building the capacity of local groups to participate in decisions, government must use the very best practices for finding out what citizens want. This means using consensus conferences, citizen juries, study circles, and other modern techniques for making democracy really work.
8. Provide education and training about environmental justice (EJ) issues.
9. Lobby for the creation of a more comprehensive, community-driven, inter-agency policy. The revision can be done through the issue of an Executive Order by the governor and/or through passage of legislation.
10. Push for adoption of new regulations regarding facility siting and pollution permits. The analysis of cumulative impacts from multiple pollution sources must be part of the siting and permit processes. Active participation by affected communities must be part of the decision-making.

## **APPENDIX B**

### **ENVIRONMENTAL JUSTICE EXECUTIVE ORDER**

WHEREAS, the State of New Jersey is committed to ensuring that all of its citizens receive equal protection under the law; enjoy a healthy environment; and given opportunities for consistent input into governmental decision-making; and

WHEREAS, New Jersey's communities of color and low-income communities have historically been located in areas of the State having a higher density of known contaminated sites as compared to other communities, with the accompanying potential for increased environmental and public health impacts; and

WHEREAS, studies by the Centers for Disease Control and Prevention (CDC) and other federal agencies have documented that the prevalence of childhood asthma is increasing, and that this increase is linked in part to poor air quality, and that prevalence is far higher for Black and Latino/Hispanic communities; and

WHEREAS, the Federal government has underscored the importance of Environmental Justice in Executive Order 12898 and created the National Environmental Justice Advisory Council to integrate environmental justice into the Environmental Protection Agency's policies, programs, initiatives and activities; and

WHEREAS, the State of New Jersey is committed to ensuring that communities of color and low-income communities are afforded fair treatment and meaningful involvement in decision-making regardless of race, color, ethnicity, religion, income or education level; and

WHEREAS, the State of New Jersey is further committed to promoting the protection of human health and the environment, empowerment via public involvement, and the dissemination of relevant information to inform and educate, especially in people of color and low-income communities; and

WHEREAS, the State of New Jersey is committed to enabling our older urban and suburban centers to be made more attractive and vital, creating a broader range of choices and more livable communities for families and businesses in New Jersey, consistent with the State Development and Redevelopment Plan and principles of Smart Growth; and

WHEREAS, the cumulative impact of multiple sources of exposure to environmental hazards in low-income and people of color communities, and the roles of multiple agencies in addressing the causes and factors that compromise environmental health and quality of life in these communities require an interagency response; and

WHEREAS, the Department of Community Affairs (DCA), the Department of Environmental Protection (DEP), the Department of Health and Senior Services (DHSS), and the Department of Law and Public Safety (DL&PS) have entered into collaborative

interagency work to address environmental health and quality of life issues in communities of color and low income, such as in the City of Camden and other urban, suburban, and rural communities;

NOW, THEREFORE, I, JAMES E. McGREEVEY, Governor of the State of New Jersey, by the virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. All Executive Branch departments, agencies, boards, commissions and other bodies involved in decisions that may affect environmental quality and public health shall provide meaningful opportunities for involvement to all people regardless of race, color, ethnicity, religion, income, or education level. Programs and policies to protect and promote protection of human health and the environment shall be reviewed periodically to ensure that program implementation and dissemination of information meet the needs of low-income and communities of color, and seek to address disproportionate exposure to environmental hazards.
2. DEP and DHSS shall recognize the need to communicate significant public health and environmental information in languages other than English, by establishing Spanish-language websites.
3. The DEP will use available environmental and public health data to identify existing and proposed industrial and commercial facilities and areas in communities of color and low-income communities for which compliance, enforcement, remediation, siting and permitting strategies will be targeted to address impacts from these facilities.
4. Recognizing that there is greater reliance on subsistence fishing among communities of color and low-income communities, DEP, DHSS, and the Department of Agriculture, shall work together to develop and issue appropriately protective fish consumption advisories and provide effective risk communications, education programs and public information services with an objective of consistency with neighboring states, to the greatest extent possible.
5. Recognizing the significant health implications of fine particulate pollution, such as premature death and asthma, especially for urban communities, DEP and the Department of Transportation (DOT) shall develop a coordinated strategy for reducing the public's exposure to fine particulate pollution in affected communities, particularly from diesel emissions from stationary and mobile sources
6. The Commissioner of DEP and Commissioner of DHSS, or their appointed designees, shall convene a multi-agency task force, to be named the Environmental Justice Task Force, which will include senior management designees, from the Office of Counsel to the Governor, the Attorney General's office, the Departments of Environmental Protection, Human Services, Community Affairs, Health and Senior Services, Agriculture, Transportation, and Education. The Task Force shall be an advisory body, the purpose of which is to make recommendations to State Agency heads regarding actions to be taken to address environmental justice issues consistent with agencies' existing statutory and regulatory authority. The Task Force is authorized to consult with, and expand its membership to, other State agencies as needed to address concerns raised in affected communities.

7. The Commissioner of DEP shall reconstitute the existing Environmental Justice Advisory Council to the DEP, whose mission shall be to make recommendations to the Commissioner and the Environmental Justice Task Force in fulfillment of this Executive Order. The Advisory Council shall consist of fifteen (15) individuals and shall meet quarterly. The Council shall annually select a Chairperson from its membership and shall have a minimum composition of one third membership from grassroots or faith-based community organizations with additional membership to include membership from the following communities: academic public health, statewide environmental, civil rights and public health organizations; large and small business and industry; municipal and county officials, and organized labor.
8. Any community may file a petition with the Task Force that asserts that residents and workers in the community are subject to disproportionate adverse exposure to environmental health risks, or disproportionate adverse effects resulting from the implementation of laws affecting public health or the environment.
  - a. Petitions shall be signed by fifty (50) or more residents or workers, provided that at least twenty-five (25) are residents, in the affected community;
  - b. The Task Force shall identify a set of communities from the petitions filed, based on a selection criteria developed by the Task Force, including consideration of state agency resource constraints;
  - c. The Task Force shall meet directly with the selected communities to understand their concerns. If desired by any of the selected communities, the DEP and DHSS Commissioners shall establish a public meeting in which the Environmental Justice Task Force shall hear from the petitioners and evaluate the petitioners' claims. Where the petitioners assert claims that lie predominantly within the jurisdiction of an agency other than the Task Force Chair, the chair shall include a senior management representative from the relevant agency as a member of the Task Force;
  - d. The Task Force shall develop an Action Plan for each of the selected communities after consultation with the citizens, as well as local and county government as relevant, that will address environmental, social and economic factors that affect their health or environment. The Action Plan shall clearly delineate the steps that will be taken in each of the selected communities to reduce existing environmental burdens and avoid or reduce the imposition of additional environmental burdens through allocation of resources, exercise of regulatory discretion, and development of new standards and protections. The Action Plan, which shall be developed in consultation with the Environmental Justice Advisory Council, will specify community deliverables, a timeframe for implementation, and the justification and availability of financial and other resources to implement the Plan within the statutory and regulatory jurisdiction of the Departments of the State of New Jersey. The Task Force shall present the Action Plan to the relevant Departments, recommending its implementation;
  - e. The Task Force shall monitor the implementation of each Action Plan in the selected communities, and shall make recommendations to the Departments as necessary to facilitate implementation of the Action Plans. Departments shall implement the strategy to the fullest extent practicable in light of statutory and resource constraints;

- f. As an integral part of each Action plan, DEP and DHSS shall jointly develop a strategy to identify and reduce the most significant environmental and public health risks facing each of the selected communities through chronic health disease surveillance, health monitoring, data gathering, community education and public participation;
  - g. The Task Force shall identify and make recommendations concerning legislative and regulatory changes appropriate to achieve the purposes of this Order as well as the purposes of any particular Action Plan; and
  - h. The Task Force shall prepare and publicly release a report concerning the status of the Action Plans within eighteen (18) months following the establishment of the Task Force.
9. All agencies will assist as appropriate in implementing this Order and achieving its purposes. The actions mandated as a result of this Executive Order shall be accomplished within the bounds of, and consistent with, the legislative purpose supporting the relevant agency's existing statutory and regulatory authority.
10. Nothing in this Executive Order is intended to create a private right of action to enforce any provision of this Order or any Action Plan developed pursuant to this Order; nor is this Order intended to diminish any existing legal rights or remedies.
11. This Executive Order shall be in effect for five years from its effective date.
12. This Executive Order shall take effect immediately. GIVEN, under my hand and seal this 19<sup>th</sup> day of January in the Year of Our Lord, Two Thousand and Four and of the Independence of the United States, the Two Hundred and Twenty-Eighth.

Governor

Attest:

Chief Counsel to the Governor



## REFERENCES

- Agyeman, J. Bullard, R.D., and Evans, B. (Eds.). (2003). *Just Sustainabilities: Development in an Unequal World*. Boston: The MIT Press.
- American Lawyer Media. (December 31, 2002). South Camden Citizens in Action et al v. NJDEP
- Amy, D. J. (1984). Why Policy Analysis and Ethics Are Incompatible. *Journal of Policy Analysis and Management*, 3, 4.
- Anner, J. (1996). *Beyond Identify Politics: Emerging social justice movements in communities of color*. Boston: South End Press.
- Annie E. Casey Foundation. (June 13, 2001). *A Path Forward for Camden*. Retrieved January 21, 2006 from, <http://www.aecf.org/publications/data/camdenrpt.pdf>
- Arnstein, S. (1969). A ladder of citizen participation. *JAIP*, 35, 4
- Ashford, N. A. and Rest, K. M. (March 1999). Section III in *Public Participation in Contaminated Communities*. Center for Technology, Policy, and Industrial Development, Massachusetts Institute of Technology. Retrieved July 21, 2005 from <http://web.mit.edu/ctpid/www/tl/TL-pub-PPCC.html>
- Beck U. (1986). *Risk society: Towards a new modernity*. New York: Sage.
- Berry, F.S. & Berry, W. D. (June 1991). Specifying A Model of State Policy Innovation. *The American Political Science Review*, 85, 2.
- Berry, W.D., Ringquist, E.J., Fording, R.C. and Hanson, R.L. (1998). Measuring Citizen and Government Ideology in the American States, 1960-93. *American Journal of Political Science*, 42, 1.
- Brulle, R. J. (2000). *Agency, democracy, and nature: The U.S. environmental movement from a critical theory perspective*. Cambridge, MA: MIT Press.
- Brulle, R.J. & Pellow, D. N. (2006) Environmental Justice: Human health and Environmental Inequalities, *Annual Review of Public Health*, 27.
- Bryant, B. I. (1995). *Environmental justice: issues, policies, and solutions*. Washington, D.C.: Island Press.
- Bullard, R.D. (1983). Solid waste sites and the Houston black community. *Sociological Inquiry*, 53.

- Bullard, R.D. (1990). *Dumping in Dixie: Race, Class and Environmental Quality*. Boulder, CO: Westview Press.
- Bullard, R. D. (Ed.). (1993). *Confronting Environmental Racism: Voices from the Grassroots*. Boston: South End Press
- Bullard, R. D. (2005). *The Quest For Environmental Justice: Human Rights and the Politics of Pollution*. Berkeley: University of California Press.
- Buttel, F. (1987). New directions in environmental sociology. *Annual Review of Sociology*, 13.
- Cal/EPA. (May 31, 2007). *Environmental Justice Action Plan, Wilmington Pilot Project Update*. Retrieved September 23, 2006, from <http://www.calepa.ca.gov/EnvJustice/Documents/2007/Wilmington.pdf>
- Cal/EPA. (March 25, 2005). *EJ Action Plan Pilot Projects Addressing Cumulative Impacts and Precautionary Approach Report*. Retrieved June 7, 2006, from [http://www.calepa.ca.gov/EnvJustice/ActionPlan/PhaseI/March2005/CI\\_PA.pdf](http://www.calepa.ca.gov/EnvJustice/ActionPlan/PhaseI/March2005/CI_PA.pdf)
- California Air Resources Board. (April 2005). *Air Quality and Land Use Handbook: A Community Health Perspective*. Retrieved June 8, 2006, from <http://www.arb.ca.gov/ch/landuse.htm>
- Cobb, R. W. and Elder, C. D. (1972). *Participation in American politics: The dynamics of agenda setting*. Boston: Allyn & Bacon.
- Cole, L.W. and Foster, S.R. (2001). *From the ground up: Environmental Racism and the Rise of the Environmental Justice Movement*. New York: New York University Press.
- Cole, L.W. and Farrell, C. (2005). Structural racism, structural pollution and the need for a new paradigm. *Journal of Law & Policy*, 20.
- Communities for a Better Environment. (September 2004). *Building a Regional Voice for Environmental Justice Collaborative*. Retrieved October 2, 2006, from <http://www.cbecal.org/publications/newpublication.pdf>
- Corburn, J. (2003). Bringing Local Knowledge into Environmental Decision Making: Improving Urban Planning. *Journal of Planning Education and Research*, 22.
- Cushman, J. H. Jr. (1998, May 10). Pollution policy is unfair burden, states tell EPA. *New York Times*, Sunday Edition.
- Edelman, M. (1964). *The Symbolic Use of Politics*. Champaign, IL: University of Illinois Press.

- Faber, D. (1998). *The struggle for ecological democracy: Environmental justice movements in the United States*. New York: The Guilford Press.
- Faber D, and Krieg E. (Eds.). (April 2002). Unequal Exposure to Ecological Hazards: Environmental Injustices in the Commonwealth of Massachusetts. *Environmental Health Perspectives Supplements*, 110, S2.
- Field, R.C. (1998). Risk and justice: Capitalist production and the environment. In Faber D, and Krieg E. (Eds.), *The Struggle for Ecological Democracy: Environmental Justice Movements in the United States*. New York: The Guilford Press.
- First National People of Color Environmental Leadership Summit. (October 24-27, 1991). Washington D.C. Retrieved April 12, 2005, from <http://www.ejnet.org/ej/principles.html>
- Fischer, F. (2000). *Citizens, Experts and the Environment; The Politics of Local Knowledge*. Durham, NC: Duke University Press.
- Fischer, F. (2003). *Reframing Public Policy: Discursive Politics and Deliberative Practices*. New York: Oxford University Press.
- Forester, J. (1989). *Planning in the Face of Power*. Berkeley, CA: University of California Press.
- Forester, J. (1993). *Critical theory, public policy, and planning practice: Toward a critical pragmatism*. Albany, NY: State University of New York Press.
- Greene, J.C. (2001). Qualitative program evaluation. In Denzin, N.K. and Lincoln, Y.S (Eds.), *Collecting and Interpreting Qualitative Materials*. London: Sage Publications
- Guenther, A. (2003, February 18). *Suspicious, bitter past could doom Camden aid plan*. Courier-Post. Retrieved September 17, 2005 from, <http://www.courierpostonline.com/norcross/partthree.htm>
- Guston, D. (2004). Forget politicizing science. Let's democratize Science! *Issues in Science & Technology*, 21,1.
- Hajer, M.A. (1995). *The Politics of Environmental Discourse: Ecological Modernization and the Policy Process*. New York: Oxford University Press.
- Hajer, M. A. & Fischer, F. (Eds.). (1999). *Living With Nature: Environmental Politics as Cultural Discourse*. New York: Oxford University Press.

- Hajna, L. (2001, February 18). Camden residents, activists blast Whitman for approving cement plant. *Courier-Post* (Cherry Hill, NJ).
- Hajna, L. (2002, February 28). City residents voice concerns to DEP chief. *Courier-Post* (Cherry Hill, NJ)
- Hajna, L. (2006, March 24). Water repairs fail to reassure residents. *Courier-Post* (Cherry Hill, NJ)
- Harvey, D. (1997). The Environment of Justice. In A. Merrifield and E. Swyngedouw (Eds.), *The Urbanization of Injustice*. New York: NYU Press.
- Hazen, R. & Johnson, B. (February 4, 2002). *Basis and Background: Environmental Equity Screening Model*. New Jersey Department of Environmental Protection.
- Holifield, R. (2001). Defining Environmental Justice and Environmental Racism. *Urban Geography*, 22, 1.
- Howlett, M. & Ramesh, M. (1995). *Studying Public Policy: Policy Cycles and Policy Subsystems*. New York: Oxford University Press.
- Hunold, C. & Young, I.M. (1998). Justice, democracy and hazardous siting. *Political Studies*, 46, 1.
- Institute of Medicine. (1999). *Toward Environmental Justice*. Washington, D.C.: National Academy Press.
- Kriebel, D., Tickner, J., Epstein, P., Lemons, J., Levins, R., Loechler, E.L., et al. (September 2001). The Precautionary Principle in Environmental Science. *Environmental Health Perspectives*, 109, 9.
- Lake, R. (April 1996). Volunteers, NIMBY's and environmental justice: Dilemmas of democratic practice. *Antipode*, 28, 2.
- Lane, A. (2004, February 19). One tall order: Environmental justice for all. *Star-Ledger* (Newark, NJ)
- Larson, A. & Ingram, H. (1997). *Policy Design for Democracy*. Kansas: University Press of Kansas.
- Lofstedt, R. E. (2004). The Swing of the Regulatory Pendulum in Europe: From Precautionary Principle to (Regulatory) Impact Analysis. *The Journal of Risk and Uncertainty*, 28, 3.
- Lounsberry, T. (2002, March 13). Residents testify on DEP plan. *Courier-Post* (Cherry Hill, NJ)

- Low, N., & Gleeson, B. (1998). *Justice, society, and nature: an exploration of political ecology*. London: Routledge.
- Massey, D. & Denton, N. (1993). *American Apartheid: Segregation and the Making of the Underclass*. Cambridge, MA: Harvard University Press.
- Matland, R.E. (1995). Synthesizing the implementation literature: The Ambiguity-Conflict model of policy implementation. *Journal of Public Administration Research and Theory*, 5, 2.
- Mazmanian, D.A., and Sabatier, P.A. (1983). *Implementation and public policy*. Glenview, IL: Scott Foresman.
- McNichol, D. (2001, January 17). Whitman's views to be put to test at hearing EPA job requires different spin. *Star-Ledger*, (Newark, NJ).
- Medoff, M. H. (1997). The political implications of state political ideology: a measure tested. *The American Journal of Economics and Sociology*, 56, 2.
- Mennis, J. (2005). The distribution and enforcement of air polluting facilities in New Jersey. *Professional Geographer*, 57, 3.
- Meyer, S. M. (2002). *The Economic Impact of Environmental Regulation*. MIT Project on Environmental Politics and Policy. Retrieved December 10, 2005 from, <http://web.mit.edu/polisci/mpepp/Reports/eier.pdf>
- Montague, P. (2004, March 4). Testing the Governor's Commitment to Environmental Justice. *Garden State EnviroNews*. Retrieved March 24, 2005, from [www.rachel.org](http://www.rachel.org)
- Morello-Frosch, R., Pastor Jr., M., & Saad, J. (2001). Environmental justice and southern California's riskscape: The distribution of air toxics exposures and health risks among diverse communities. *Urban Affairs Review*, 36, 4.
- National Academy of Public Administration, A Report by a Panel of the. (June 2002). *Models for Change: Efforts by Four States to Address Environmental Justice*. Academy Project Number 1969.
- National Environmental Justice Advisory Council (NEJAC). (2004). *Ensuring Risk reduction in communities with multiple stressors: Environmental justice and cumulative risks/impacts*. Retrieved April 11, 2005, from <http://www.epa.gov/Compliance/resources/publications/ej/nejac/nejac-cum-risk-rpt-122104.pdf>

- National Public Radio (broadcast). (July 23, 2004). Living on Earth. Interview by Chris Ballman. Retrieved April 26, 2005 from, <http://www.loe.org/shows/shows.htm?programID=04-P13-00030#feature6>
- New Jersey Department of Environmental Protection (NJDEP). (1999). Administrative Order No. 1999-05.
- New Jersey Department of Environmental Protection. (February 8, 2000). Administrative Order 2000-01.
- New Jersey Department of Environmental Protection, (December 21, 2001). *Draft Environmental Equity Policy*. Section NJAC 7:1F Expanded Community Participation Process for Environmental Equity, Subchapter 1. General provisions, Section 7:1F-1.3.
- New Jersey Department of Environmental Protection, (August 2005). *Camden Waterfront South Air Toxics Pilot Project Report*. Retrieved February 4, 2006, from <http://www.state.nj.us/dep/ej/camden/docs/finalreport.pdf>
- New Jersey Environmental Justice Task Force. (January 12, 2006). *Camden Waterfront South Report*. Retrieved February 4, 2006, from [http://www.nj.gov/dep/ej/docs/camden\\_report20060223.pdf](http://www.nj.gov/dep/ej/docs/camden_report20060223.pdf)
- New Jersey Department of Health and Senior Services. (2001). *Annual Report: Childhood Lead Poisoning in New Jersey*, Trenton, NJ.
- New Jersey Department of State, Office of the Business Ombudsman. (July 1995). *The STARR Report: Strategy to Advance Regulatory Reform*, Trenton, NJ.
- New Jersey Environmental Justice Alliance. (October 2005). *People's Assembly Report*. Trenton, NJ. Retrieved February 6, 2006, from <http://www.njeja.org/PDF/assembly2005.pdf>
- New York Times, (2001, April 21). *Federal Judge Halts Opening of Slag Plant*. Section B; Page 4; Column 6; Metropolitan Desk.
- Orlofsky, Judge Stephen. (April 19, 2001). *United States District Court ruling in South Camden Citizens in Action v. New Jersey Department of Environmental Protection* ("SCCIA I"), 145 F. Supp.2d 446 2001.
- Pace, D. (2005, December 16). Air-quality study underscores one plight of the poor. . *Star-Ledger* (Newark, NJ)
- Pellow, D. N. (2000). Environmental inequality formation: Toward a theory of environmental injustice. *American Behavioral Scientist*, 43.

- Peterson, I. (1992, August 29). New Jersey is the Garbage State No More. *The New York Times*.
- Plater, Z. (1998). *Environmental Law and Policy: Nature, Law and Society* (2nd ed.). St. Paul, MN: West Group.
- Polletta, F. (2002). *Freedom Is an Endless Meeting: Democracy in American Social Movements*. Chicago: University of Chicago Press.
- Pomar, O. (November/December 2002). *Fighting for Air*. National Housing Institute, Issue #126, Retrieved March 10, 2006, from <http://www.nhi.org/online/issues/126/camdenair.html>
- Potoski, M. and Woods, N. (2002). Dimensions of state environmental policies: air pollution regulation in the United States. *Policy Studies Journal*, 30, 2.
- Pressman, J. L. and Wildavsky, A. (1984). *Implementation* (3<sup>rd</sup> Ed.). Berkeley: University of California Press.
- Public Law Research Institute (2007). *Environmental Justice for All: A Fifty State Survey of Legislation, Policies and Cases*, (3<sup>rd</sup> Ed.). UC Hastings College of Law.
- Pulido, L. (2000). Rethinking environmental racism: White privilege and urban development in Southern California. *Annals of the Association of American Geographers*, 90,1.
- Rabe, B. (2000). Power to the States: The Promise and Pitfalls of Decentralization. In Vig, N. and Kraft, M.E., 5<sup>th</sup> ed. (Eds.), *Environmental Policy: New Directions for the Twenty-First Century*. Washington, DC: CQ Press.
- Renn O, Webler T, & Wiedemann P. (Eds.) (1995). *Fairness and competence in citizen participation: Evaluating models for environmental discourse*. Boston: Kluwer Academic Publishers.
- Ringquist, E.J. & Clark, D.H. (2002). Issue definition and the politics of state environmental justice policy adoption. *International Journal of Public Administration*, 25, 2-3.
- Roberts, R. Gregory. (October 1998). Environmental justice and community empowerment: Learning from the Civil Rights Movement. *The American University Law Review*, 48.
- Rochon, T. R. and Mazmanian, D.A. (1993). Social movements and the policy process. *The Annals of the American Academy of Political and Social Science*, 528.

- Sapat, A., Vos, J.J. and Thai, K.V. (2002). Environmental injustice: An emerging public policy issue. *International Journal of Public Administration*, 25, 2&3.
- Schlosberg, D. (2003). The Justice of environmental justice: Reconciling equity, recognition, and participation in a political movement. In A. Light and A. De-Shalit (Eds.), *Moral and Political Reasoning in Environmental Practice*. Cambridge, MA: MIT Press.
- Schnaiberg A, & Gould, K. (1994). *Environment and Society: The Enduring Conflict*. New York: St. Martin Press.
- Scholtes, P.R., Streibel, B.J., and Joiner, B.L. (2003). *The Team Handbook*, 3<sup>rd</sup>. ed. Oriel Inc.
- Shralow, B. (2000, April 2). Camden still struggles to regain lost glory. *Courier-Post*. Retrieved March 11, 2006, from <http://www.courierpostonline.com/125anniversary/camhistory.html>
- South Coast Air Quality Management District (SCAQMD). (March 2000). *An Air Toxics Control Plan for the Next Ten Years*. Retrieved February 22, 2006, from [www.aqmp.gov/aqmp/atcp.html](http://www.aqmp.gov/aqmp/atcp.html)
- Stilwell, E. (2000, October 5). Cement plant target of protest. *Courier-Post* (Cherry Hill, NJ)
- Szasz, A. & Meuser, M. (1997). Environmental inequalities: Literature review and proposals for new directions in research and theory. *Current Sociology*, 45, 3.
- Taylor, D. (1993). Environmentalism and the politics of inclusion. In Bullard, R.D. (Ed.), *Confronting Environmental Racism; Voices from the Grassroots*. Boston: South End Press.
- Tickner, J. & Raffensperger, C. (1999). *The precautionary principle in action: A handbook*, 1<sup>st</sup> ed. Science and Environmental Health Network.
- Tuhus, M. (1996, June 30). Battling Dumpsites in Poor Neighborhoods. *New York Times*.
- United Church of Christ. (1987). *Toxic Waste and Race in the United States*. NY: Public Data Access.
- US Census Bureau. (2004). American Community Survey, State Rankings. Retrieved June 2, 2005, from [www.census.gov](http://www.census.gov)
- US Environmental Protection Agency. (February 2000). *The Public Participation and Accountability Subcommittee of the National Environmental Justice Advisory Council*. Report EPA-300-K-96-003. Washington D.C.: Government Printing Office.



- Walsh, J. (2005, November 30). Waterfront South residents present complaints at Camden hearing. *Courier-Post* (Cherry Hill, NJ), Section B, p 1B.
- Williams, B.A. & Matheny, A.R. (1995). *Democracy, Dialogue, and Environmental Disputes*. New Haven, CT: Yale University Press.
- Whyte, W.F., Greenwood, D., and Lazes, P. (1989). Participatory Action Research: Through Practice to Science in Social Research. *American Behavioral Scientist*, 32, 5.
- Yin, R. K. (2003). *Case Study Research: Design and Methods*. 3<sup>rd</sup> ed. Thousand Oaks, CA: Sage Publications.
- Young, I. M. (1990). *Justice and the politics of difference*. Princeton, NJ: Princeton University Press.
- Young, I. M. (2000). *Inclusion and democracy*. New York: Oxford University Press.

## Curriculum Vita

### ANA ISABEL BAPTISTA

#### **EDUCATION**

**Ph.D.**, Planning and Public Policy Program, 2008  
Rutgers University, New Brunswick, New Jersey  
Dissertation: "Just Policies? A Multiple Case Study of State Environmental Justice Policies"

**Master of Arts**, Environmental Studies 2000  
Brown University, Providence, Rhode Island

**Bachelor of Arts**, Environmental & Evolutionary Biology & Environmental Studies, 1998  
Dartmouth College, Hanover, New Hampshire  
Double Major, Environmental & Evolutionary Biology and Environmental Studies

#### **TEACHING EXPERIENCE**

**Adjunct Assistant Professor of Urban Planning**  
Columbia University, Urban Planning Program  
Planning A6792: *Environmental Justice* (graduate), Fall 2007,  
Advising graduate students on their Master's thesis, Spring 2008

**Teaching Assistant**  
Rutgers University, Urban Planning and Policy Development  
Urban Planning 628: *Advanced Qualitative Methods* (graduate), Spring 2006, Instructor: Julia S. Rubin

**Instructor**  
Rutgers University, Urban Planning and Policy Development  
Urban Planning 591: *Environmental Justice in American Cities* (graduate), Summer 2005

**Instructor**  
Rutgers University, Department of Urban Studies  
Urban Studies 233: *Introduction to Urban Studies* (undergraduate), Spring 2005

**Teaching Assistant**  
Rutgers University, Department of Urban Studies  
Urban Studies 233: *Introduction to Urban Studies* (undergraduate), Spring 2003, Fall 2004  
Instructors: Briavel Holcomb & Frank Popper

**Adjunct Instructor**  
Brown University, Environmental Studies Program  
Environmental Studies Seminar (graduate), Fall 2001

## **RESEARCH EXPERIENCE**

### **Environmental Justice Community Intern, 2004**

Ironbound Community Corporation & US EPA Region II, Newark, NJ

Compiled state and federal air quality data using spatial and descriptive analysis to identify air quality hot spots in Newark, NJ. Authored report with findings and recommendations.

### **Graduate Assistant, 2003 - 2004**

Rutgers University, Dr. Clinton J. Andrews

Developed research protocol and data collection for case studies of small industrial firms' social networks and related environmental performance. Research formed the basis for paper entitled, "*Agent Based Modeling of Industrial Ecosystems*", funded by a US EPA STAR grant.

### **Research Assistant, 2003**

Rutgers University, National Center for Neighborhood and Brownfields Redevelopment

Coordinated community outreach and research related to brownfields redevelopment project in Trenton, NJ. Dr. Hank Mayer, principal investigator

### **Research Assistant, 2002**

Rutgers University, New Jersey Sustainable State Institute

Developed indicators and sustainability measures for the Report on Sustainability distributed to New Jersey stakeholders. Dr. Joy Hecht, principal investigator

## **RELEVANT PROFESSIONAL EXPERIENCE**

**Community Planning & Environmental Justice Coordinator, *Ironbound Community Corporation***, Newark, NJ, 2004- Present

**Urban Project Director, *Association of NJ Environmental Commissions***, Trenton, NJ, 2005

**Senior Environmental Planner & Policy Analyst, *Office of Strategic Planning and Policy, Rhode Island Department of Environmental Management***, 2000-2002

**Project Manager, *Center for Environmental Studies, Brown University***, Providence, RI, 1999

**Assistant Environmental Liaison, *US Senator John H. Chafee***, Providence, RI, 1999-2000

## **PUBLICATIONS**

"Grounded Theory and Multi-agent Simulation for a Small Firm" Clinton J. Andrews, Ana Baptista and Shawn Patton, in T. Terano et al. eds., *Agent-Based Simulation*, Springer, 2005.

"Environmental Justice in America: A New Paradigm" by Edwardo Lao Rhodes. 2004. Book Review, *Journal of the American Planning Association*, Vol. 70, 3.

“East Ferry Street Neighborhood Improvement Plan” By Brian McGrath, Martha Lamar, and Ana Baptista. Plan created for the Ironbound Community Corp. with funding from the Wachovia Foundation.

“The Air We Breathe: An Assessment of Air Quality Hot Spots in Newark, NJ”, 2004, Report Funded by the US EPA, Region II, Community Environmental Justice Internship

“Environmental Equity in Rhode Island: Progress Report.” Rhode Island Department of Environmental Management, July 2002, <http://www.dem.ri.gov/pubs/eeqprog.pdf>

“Providence Neighborhood Information Guide”, Livable Providence 2000 Community Briefing Papers, [http://www.brown.edu/Research/EnvStudies\\_Theses/summit/](http://www.brown.edu/Research/EnvStudies_Theses/summit/)

Koh, Gary, Norbert E. Yankielun and Ana I. Baptista (1996) “Snow cover characterization using multi-band FMCW radars.” *Hydrological Processes*, 10: 1609-1617.