



**Albuquerque-Bernalillo County Air Quality Control Board  
Prof. Cliff Villa, UNM School of Law  
Nov. 10, 2021**

## “Wrong on the Facts, Wrong on the Law”: Civil Rights Advocates Excoriate EPA’s Most Recent Title VI Misstep

by Luke W. Cole

*Editors’ Summary: The Select Steel decision marked the first administrative Title VI complaint that EPA decided on the merits. The complaint challenged the State of Michigan’s decision to grant a permit to the Select Steel Corporation for a steel mini-mill in Flint, Michigan. EPA ruled that Michigan did not violate Title VI because the permit decision would have no adverse impact and, thus, no disproportionate impact, on the surrounding community. This Dialogue examines the background and context for the Select Steel decision. It then analyzes the decision itself as well as EPA’s approach in deciding the Select Steel case. The Dialogue ends with a critique of EPA’s decision and rationale, arguing that the Agency’s decision was both factually and legally incorrect.*

On October 30, 1998, the U.S. Environmental Protection Agency (EPA) decided on the merits the first of more than 30 administrative Title VI complaints pending before the Agency. That decision, *St. Francis Prayer Center v. Michigan Department of Environmental Quality*,<sup>1</sup> concerned the state of Michigan’s decision to grant a permit to the Select Steel Corporation for a steel mini-mill in Flint, Michigan (thus, the case is popularly known as the *Select Steel* decision). EPA ruled that Michigan had not violated Title VI because, EPA found, the permit decision would have no “adverse” impact—and, therefore, no disproportionate adverse impact—on the surrounding community.<sup>2</sup> The decision came in the context of a firestorm of criticism surrounding EPA’s handling of Title VI complaints and stoked the flames of controversy. This Dialogue will examine the background and context for the *Select Steel* decision, the decision itself, and the strong critique of the decision made by environmental justice and civil rights advocates.

### Background: The Title VI Logjam

Title VI of the Civil Rights Act of 1964 prohibits discrimination by entities that receive federal financial assistance.<sup>3</sup> Although Title VI itself requires a showing of discriminatory intent, each federal agency, including EPA, has promulgated Title VI regulations that only require a showing of discriminatory impact.<sup>4</sup> Title VI has become a new tool used

by the environmental justice movement to challenge the discriminatory siting of facilities, as civil rights complainants have begun filing administrative complaints with EPA’s Office of Civil Rights (OCR) to address situations of perceived disproportionate impact.

The *Select Steel* complaint was the 53d environmental justice Title VI administrative complaint filed with EPA. Since September 1993 when the first complaints were filed, the Agency has been struggling to figure out how to resolve them, and has thus far had difficulty finding its footing in what has turned out to be a political minefield. It took almost a year after the first complaints were filed for EPA to assign dedicated staff to resolve the complaints,<sup>5</sup> and another three-and-a-half years for EPA to issue internal guidance to EPA staffers on how to resolve the complaints.<sup>6</sup> Many of the complaints—40 of the 87 filed by September 30, 1999—have been rejected on procedural grounds, such as a lack of federal financial assistance or failure to file within the 180-day statute of limitations.<sup>7</sup> Eighteen complaints are currently under investigation by EPA, and another 25 have been filed and are pending EPA’s decision on acceptance or rejection. Many of the complainant groups (as well as the alleged violators) have submitted hundreds of pages of briefing and evidence as part of EPA’s processing of their complaints, and EPA has conducted site visits in a half-dozen cases.

5. Luke W. Cole, *Civil Rights, Environmental Justice and the EPA: The Brief History of Administrative Complaints Under Title VI of the Civil Rights Act of 1964*, 9 J. ENVTL. L. & LITIG. 309, 392 (1994).

6. U.S. EPA, INTERIM GUIDANCE FOR INVESTIGATING TITLE VI ADMINISTRATIVE COMPLAINTS CHALLENGING PERMITS (Feb. 5, 1998) (available from the ELR Document Service, ELR Order No. AD-3660) [hereinafter INTERIM GUIDANCE].

7. 40 C.F.R. §7.120(a) (federal funds requirement); *id.* §7.120(b)(2)

1998: 80 ppb

2008: 75 ppb

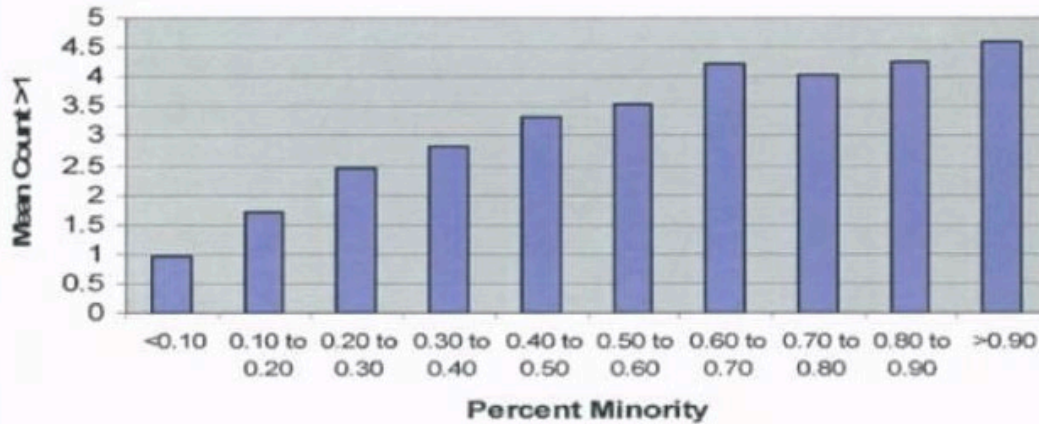
2015: 70 ppb

Flint: 130 ppb

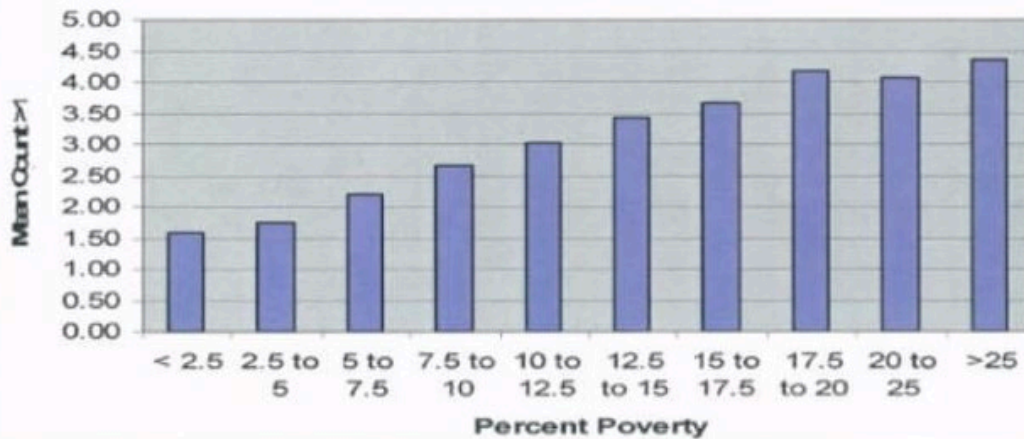
Luke W. Cole is the Director of the California Rural Legal Assistance Foundation’s Center on Race, Poverty, and the Environment in San Francisco, California. The author thanks Quita Sullivan, Julie Hurwitz, and Ross Richard Crow for input on an earlier version of this Dialogue.

1. Letter from Ann E. Goode, U.S. EPA, Office of Civil Rights, to Father Phil Schmitter, Sister Joanne Chiaverini, St. Francis Prayer Center, and Russell J. Harding, Michigan Department of Environ-

**Figure 1: Relationship Between Cumulative Impact and Percent Minority**



**Figure 2: Relationship Between Cumulative Impact and Poverty**



from Dr. Nicky Sheats  
November 3, 2021



## **INTEGRATED DEVELOPMENT ORDINANCE**

City of Albuquerque Code of Ordinances  
Chapter 14 – Zoning, Planning, and Building  
Article 16

### **2020 IDO ANNUAL UPDATE – EFFECTIVE DRAFT**

#### **OFFICE OF THE MAYOR/CAO**

Timothy M. Keller, Mayor  
Sarita Nair, Chief Administrative Officer  
Lawrence Rael, Chief Operating Officer

#### **CITY COUNCIL**

(24<sup>th</sup> Council)

|                             |                                              |
|-----------------------------|----------------------------------------------|
| Lan Sena, District 1        | Pat Davis, District 6                        |
| Isaac Benton, District 2    | Diane Gibson, District 7                     |
| Klarissa Peña, District 3   | Trudy Jones, District 8                      |
| Brook Bassan, District 4    | Don Harris, District 9                       |
| Cynthia Borrego, District 5 | Stephanie Yara, Director of Council Services |

#### **PLANNING DEPARTMENT**

Brennon Williams, Director  
Jolene Wolfley, Associate Director  
James Aranda, Deputy Director & Zoning Enforcement Officer  
Bobby Griego, Deputy Director

Planning Department, Plaza del Sol Building, 600 Second Street NW 87102  
Main Reception Desk (3<sup>rd</sup> Floor) **Telephone:** 505-924-3860 **Fax:** 505-924-3339  
Zoning (5<sup>th</sup> floor) **Telephone:** 505-924-3850 **Fax:** 505-924-3847  
TTY users may call either phone number listed above via 711



**6-4: General Procedures**

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application shall be considered abandoned, and any application fees that have been paid and have not been expended during initial review shall be refunded.

6-4(G)(4) No development application shall be reviewed for compliance with this IDO or scheduled for a public meeting or hearing by any decision-making body until it is determined to be complete.

6-4(G)(5) On determining that the application is complete, the Planning Director shall accept the application for review in accordance with the procedures and standards of this IDO.

**6-4(H) CUMULATIVE IMPACTS ANALYSIS REQUIREMENTS**

6-4(H)(1) A cumulative impacts analysis is required prior to approval of a Site Plan – EPC for any development in the Railroad and Spur Small Area that meets the criteria in Subsection 14-16-5-2(F)(1). The cumulative impacts analysis shall be submitted as part of the application materials and is subject to the application completeness requirements of Subsection 14-16-6-4(G).

6-4(H)(2) The cumulative impacts analysis shall include all of the following:

6-4(H)(2)(a) A list of other uses listed in Subsection 14-16-5-2(F)(1)(c) that are within 660 feet in any direction of the subject property.

6-4(H)(2)(b) A Traffic Impact Study, pursuant to Subsection 14-16-5-2(F)(2)(c).

6-4(H)(2)(c) A list, estimated amount, and storage location of hazardous materials, as defined by federal regulation, to be used for operations, including but not limited to fuels.

6-4(H)(2)(d) A summary of sewer and storm water discharge, including volumes.

6-4(H)(2)(e) A Letter of Availability from the ABCWUA, including estimate of volume of water to be used annually for operations.

6-4(H)(2)(f) The operating hours of the facility, including but not limited to times when there may be delivery or movement of freight vehicles to and from the property and activities that generate noise and occur outdoors.

6-4(H)(2)(g) A list of and copies of all permits required for the use.

6-4(H)(3) The cumulative impacts analysis shall identify any efforts to avoid, minimize, or mitigate any impacts as outlined in Subsections 14-16-5-2(F)(2) and 14-16-6-4(H)(2) and/or propose civic or environmental benefits that outweigh the expected impacts.

# Newark, NJ (July 2016)

History (3) Text

## Title

**AN ORDINANCE AMENDING TITLE 41, ZONING AND LAND USE REGULATIONS, REVISED GENERAL ORDINANCES OF THE CITY OF NEWARK, NEW JERSEY, 2000, AS AMENDED AND SUPPLEMENTED, BY ADDING A NEW CHAPTER 19 ENTITLED "ENVIRONMENTAL JUSTICE AND CUMULATIVE IMPACTS" TO PROVIDE ADDITIONAL INFORMATION TO THE NEWARK ENVIRONMENTAL COMMISSION, CENTRAL PLANNING BOARD AND ZONING BOARD OF ADJUSTMENT AND TO REQUIRE ADDITIONAL DOCUMENTATION FROM DEVELOPMENT APPLICANTS IN ORDER TO BUILD AN IMPROVED BASIS OF INFORMATION ON WHICH TO CREATE SOUND ENVIRONMENTAL AND LAND USE POLICY.**

## Body

**WHEREAS**, the City of Newark ("the City") seeks to promote the health and welfare of those who live, work, do business, and visit within the City, and to protect the quality of the urban environment for the benefit of current and future generations; and

**WHEREAS**, conditions affecting the existing structures built, natural and social environments in Newark have an impact on human health and welfare, and may in some cases contribute to illness or mortality if left unaddressed; and

**WHEREAS**, existing environmental conditions reflect a history of industrial use that includes a number of sources of pollution such as: a dense transportation network including highways, a major seaport and airport, and rail hubs; regional infrastructure for transporting and incinerating solid waste and processing wastewater; current industrial and commercial uses with significant environmental impacts from operations and contaminated properties, all of which may have an adverse impact on human health and the environment; and

**WHEREAS**, patterns of racial, ethnic and economic inequality in the United States result in the geographic concentration of environmentally hazardous land uses and sources of pollution that disproportionately burden the health of low-income communities and communities of color, including communities in Newark, which outcome is known as environmental injustice, and which has been addressed in federal and state policy through Presidential Executive Order 12898, State of New Jersey Executive Order #96 (February 18, 2004), and State of New Jersey Executive Order #131 (February 5, 2009); and

**WHEREAS**, the City is one of approximately fifty communities identified by the U.S. Environmental Protection Agency ("EPA") as "environmentally overburdened, underserved, and economically distressed" as part of EPA's "Making a Visible Difference in Communities" strategic priority; and

**WHEREAS**, the City has been recognized by the New Jersey Department of Environmental Protection as an area where there are "disproportionate impacts from multiple sources of pollution;" and

**WHEREAS**, measurements to determine "non-attainment" with federal ambient air quality standards are taken at the regional level such that it is possible for particular neighborhoods or groups of neighborhoods to experience high levels of exposure to criteria pollutants even if the concentration of those pollutants is deemed acceptable for the region as a whole; and

**WHEREAS**, the combined total effect of many sources of pollution, from stationary sources such as power plants to mobile sources such as cars and trucks creates a cumulative impact that may be more harmful to human health than the impact of any one source of pollution in isolation; and

## Newark, NJ (July 2016)

**f. Environmental Review Checklist ("Checklist")** - Shall mean an informational document covering specific environmental impact information, as specified herein, that must be submitted by Covered Applicants in addition to other required submissions for major site plan approval from the Newark Central Planning Board or approval of a variance from the Zoning Board of Adjustment. This document shall provide information to be used by the Newark Environmental Commission, City staff and members of the Central Planning Board and Zoning Board of Adjustment to improve public understanding of the potential cumulative environmental impacts of proposed development and provide a basis for more informed policy decisions on municipal land use. This Checklist will be in the format attached hereto as Exhibit A.

# Making it Stick: Local Environmental Review Statutes

KRISTEN BURBY

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## I. INTRODUCTION

Newark, New Jersey, is a bustling city located on the Newark Bay, just outside of New York City. It is home to many large companies such as Prudential Insurance, Merck, and Zoetis and universities such as New Jersey Institute of

[ENVIRONS \(ucdavis.edu\)](http://ucdavis.edu)



# New Jersey (Sept. 2020)

## CHAPTER 92

AN ACT concerning the disproportionate environmental and public health impacts of pollution on overburdened communities, and supplementing Title 13 of the Revised Statutes.

**BE IT ENACTED** by the Senate and General Assembly of the State of New Jersey:

C.13:1D-157 Findings, declarations relative to impact of pollution on overburdened communities.

1. The Legislature finds and declares that all New Jersey residents, regardless of income, race, ethnicity, color, or national origin, have a right to live, work, and recreate in a clean and healthy environment; that, historically, New Jersey's low-income communities and communities of color have been subject to a disproportionately high number of environmental and public health stressors, including pollution from numerous industrial, commercial, and governmental facilities located in those communities; that, as a result, residents in the State's overburdened communities have suffered from increased adverse health effects including, but not limited to, asthma, cancer, elevated blood lead levels, cardiovascular disease, and developmental disorders; that children are especially vulnerable to the adverse health effects caused by exposure to pollution, and that such health effects may severely limit a child's potential for future success; that the adverse effects caused by pollution impede the growth, stability, and long-term well-being of individuals and families living in overburdened communities; that the legacy of siting sources of pollution in overburdened communities continues to pose a threat to the health, well-being, and economic success of the State's most vulnerable residents; and that it is past time for the State to correct this historical injustice.

The Legislature further finds and declares that no community should bear a disproportionate share of the adverse environmental and public health consequences that accompany the State's economic growth; that the State's overburdened communities must have a meaningful opportunity to participate in any decision to allow in such communities certain types of facilities which, by the nature of their activity, have the potential to increase environmental and public health stressors; and that it is in the public interest for the State, where appropriate, to limit the future placement and expansion of such facilities in overburdened communities.

C.13:1D-158 Definitions relative to impact of pollution on overburdened communities.

2. As used in this act:

"Department" means the Department of Environmental Protection.

"Environmental or public health stressors" means sources of environmental pollution, including, but not limited to, concentrated areas of air pollution, mobile sources of air

## New Jersey (Sept. 2020)

C.13:1D-160 Requirements for permit applicants.

4. a. Beginning immediately upon the adoption of the rules and regulations required pursuant to section 5 of this act, the department shall not consider complete for review any

**“Overburdened community” means any census block group, as determined in accordance with the most recent United States Census, in which: (1) at least 35 percent of the households qualify as low-income households; (2) at least 40 percent of the residents identify as minority or as members of a State recognized tribal community; or (3) at least 40 percent of the households have limited English proficiency.**

the environmental or public health stressors already borne by the overburdened community as a result of existing conditions located in or affecting the overburdened community;

(2) Transmits the environmental justice impact statement required to be prepared pursuant to paragraph (1) of this subsection, at least 60 days in advance of the public hearing required pursuant to paragraph (3) of this subsection, to the department and to the governing body and the clerk of the municipality in which the overburdened community is located. Upon receipt, the department shall publish the environmental justice impact statement on its Internet website: and

## New Jersey (Sept. 2020)

paragraph (3) of subsection a. of this subsection.

c. Notwithstanding the provisions of any other law, or rule or regulation adopted pursuant thereto, to the contrary, the department shall, after review of the environmental justice impact statement prepared pursuant to paragraph (1) of subsection a. of this section and any other relevant information, including testimony and written comments received at the public hearing, deny a permit for a new facility upon a finding that approval of the permit, as proposed, would, together with other environmental or public health stressors affecting the overburdened community, cause or contribute to adverse cumulative environmental or public health stressors in the overburdened community that are higher than those borne by other communities within the State, county, or other geographic unit of analysis as determined by the department pursuant to rule, regulation, or guidance adopted or issued pursuant to section 5 of this act, except that where the department determines that a new facility will serve a compelling public interest in the community where it is to be located, the department may grant a permit that imposes conditions on the construction and operation of the facility to protect public health.

d. Notwithstanding the provisions of any other law, or rule or regulation adopted pursuant thereto, to the contrary, the department may, after review of the environmental

**Acts (2021)**

**Chapter 8**

AN ACT CREATING A NEXT-GENERATION ROADMAP FOR  
MASSACHUSETTS CLIMATE POLICY.

*Be it enacted by the Senate and House of Representatives in  
General Court assembled, and by the authority of the same, as  
follows:*

SECTION 1. Section 1 of chapter 21N of the General Laws, as appearing in the 2018 Official Edition, is hereby amended by striking out the definition of “Direct emissions” and inserting in place thereof the following definition:-

Massachusetts (Mar. 2021)

An environmental impact report shall be required for any project that is likely to cause damage to the environment and is located within

“Environmental justice population”, a neighborhood that meets 1 or more of the following criteria: (i) the annual median household income is not more than 65 per cent of the statewide annual median household income; (ii) minorities comprise 40 per cent or more of the population; (iii) 25 per cent or more of households lack English language proficiency; or (iv) minorities comprise 25 per cent or more of the population and the annual median household income of the municipality in which the neighborhood is located does not exceed 150 per cent of the statewide annual median household income;

proposed project that would likely result in a disproportionate adverse effect on such population; and (ii) potential impact or consequence from the proposed project that would increase or reduce the effects of climate change on the environmental justice population. The secretary may require that an assessment be performed at any stage of the review process.



# Washington (May 2021)

**5141-S2.E AMH ENGR H1522.E**

**E2SSB 5141** - H AMD

By Representative Fitzgibbon

**ADOPTED AND ENGROSSED 04/10/2021**

1       Strike everything after the enacting clause and insert the  
2 following:

3       "NEW SECTION. **Sec. 1.** FINDINGS AND INTENT. (1) The purpose of  
4 this chapter is to reduce environmental and health disparities in  
5 Washington state and improve the health of all Washington state  
6 residents. This chapter implements the recommendations of the  
7 environmental justice task force established in section 221(48),  
8 chapter 415, Laws of 2019 entitled "Report to the Washington state  
9 governor and legislature, *Environmental Justice Task Force:  
10 Recommendations for Prioritizing EJ in Washington State Government*  
11 (October 2020)."

## Washington (May 2021)

24        NEW SECTION.    **Sec. 14.**    ENVIRONMENTAL JUSTICE ASSESSMENT. (1) (a)  
25    When considering a significant agency action initiated after July 1,  
26    2023, a covered agency must conduct an environmental justice  
27    assessment in accordance with this section to inform and support the  
28    agency's consideration of overburdened communities and vulnerable  
29    populations when making decisions and to assist the agency with the  
30    equitable distribution of environmental benefits, the reduction of  
31    environmental harms, and the identification and reduction of  
32    environmental and health disparities.

5        (b) Where applicable, use cumulative environmental health impact  
6    analysis, such as the environmental health disparities map or other  
7    data that considers the effects of a proposed action on overburdened  
8    communities and vulnerable populations;

(3) "Cumulative environmental health impact" means the combined,  
multiple environmental impacts and health impacts on a vulnerable  
population or overburdened community.

## Washington (May 2021)

1           (6) Based on the environmental justice assessment, each covered  
2 agency must seek, to the extent legal and feasible and consistent  
3 with the underlying statute being implemented, to reduce or eliminate  
4 the environmental harms and maximize the environmental benefits  
5 created by the significant agency action on overburdened communities  
6 and vulnerable populations. Consistent with agency authority,  
7 mission, and statutory responsibilities, the covered agency must  
8 consider each of the following methods for reducing environmental  
9 harms or equitably distributing environmental benefits:

10           (a) Eliminating the disparate impact of environmental harms on  
11 overburdened communities and vulnerable populations;

12           (b) Reducing cumulative environmental health impacts on  
13 overburdened communities or vulnerable populations;

# “Environmental Justice”

**EPA (2000): *Environmental justice* means –**

“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.”

## Presidential Documents

**Title 3—**

**The President**

**Executive Order 12898 of February 11, 1994**

**Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations**

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

**Section 1-1. Implementation.**

**1-101. Agency Responsibilities.** To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands.

**1-102. Creation of an Interagency Working Group on Environmental Justice.** (a) Within 3 months of the date of this order, the Administrator of the Environmental Protection Agency ("Administrator") or the Administrator's designee shall convene an interagency Federal Working Group on Environmental Justice ("Working Group"). The Working Group shall comprise the heads of the following executive agencies and offices, or their designees: (a) Department of Defense; (b) Department of Health and Human Services; (c) Department of Housing and Urban Development; (d) Department of Labor; (e) Department of Agriculture; (f) Department of Transportation; (g) Department of Justice; (h) Department of the Interior; (i) Department of Commerce; (j) Department of Energy; (k) Environmental Protection Agency; (l) Office of Management and Budget; (m) Office of Science and Technology Policy; (n) Office of the Deputy Assistant to the President for Environmental Policy; (o) Office of the Assistant to the President for Domestic Policy; (p) National Economic Council; (q) Council of Economic Advisers; and (r) such other Government officials as the President may designate. The Working Group shall report to the President through the Deputy Assistant to the President for Environmental Policy and the Assistant to the President for Domestic Policy.

(b) The Working Group shall: (1) provide guidance to Federal agencies on criteria for identifying disproportionately high and adverse human health or environmental effects on minority populations and low-income populations;

(2) coordinate with, provide guidance to, and serve as a clearinghouse for, each Federal agency as it develops an environmental justice strategy as required by section 1-103 of this order, in order to ensure that the administration, interpretation and enforcement of programs, activities and policies are undertaken in a consistent manner;

(3) assist in coordinating research by, and stimulating cooperation among, the Environmental Protection Agency, the Department of Health and Human Services, the Department of Housing and Urban Development, and other agencies conducting research or other activities in accordance with section 3-3 of this order;

(4) assist in coordinating data collection, required by this order;

(5) examine existing data and studies on environmental justice;





State of New Mexico  
*Office of the Governor*

Bill Richardson  
*Governor*

**EXECUTIVE ORDER 2005-056**

**ENVIRONMENTAL JUSTICE EXECUTIVE ORDER**

**WHEREAS**, the State of New Mexico is committed to affording all of its residents, including communities of color and low-income communities, fair treatment and meaningful involvement in the development, implementation, and enforcement of environmental laws, regulations, and policies regardless of race, color, ethnicity, religion, income or education level;

**WHEREAS**, the State of New Mexico is further committed to promoting the protection of human health and the environment, empowerment via public involvement in the development, implementation, and enforcement of environmental laws, regulations, and policies, and the dissemination of information related to the environment to inform and educate, especially in people of color and low-income communities;

**WHEREAS**, environmental justice issues exist in New Mexico, as they do in other states, causing concern and creating problems for some communities, businesses and households that bear the impacts of air and water contamination, noise, crowding, reduced quality of life, and depressed land and housing values – many of which could be mitigated by better siting decisions and processes;

# **Colonias Dev't Council v. Rhino Env't'l Services (N.M. 2005)**

NMED must consider environmental justice issues such as the “the cumulative effects” of garbage dumps in part because of the purpose of the Solid Waste Act waste to protect “public health” and “welfare.”

# **N.M. Att’y Gen. No. 08-03 (2008)**

“... The Air Quality Control Act also provides sufficient statutory authorization, like the Solid Waste Act, for the promulgation of regulations involving the consideration of public health and welfare....”

# **N.M. Att’y Gen. No. 08-03 (2008)**

“Therefore, pursuant to the Rhino roadmap,” the promulgation of regulations under the Air Quality Control Act “will allow Board staff, in the future, to assign weight to public testimony regarding environmental justice principles.”

**Friends of Buckingham v. VA Air Pollution Control Board,  
947 F.3d 68 (4<sup>th</sup> Cir. 2020).**

Striking down CAA permit for Atlantic Coast Pipeline, court found that the board failed in its statutory duty to consider the “character and degree of injury” that the proposed pipeline might pose to the health of the local population.



**Friends of Buckingham v. VA Air Pollution Control Board,  
947 F.3d 68 (4<sup>th</sup> Cir. 2020).**

**“[E]nvironmental justice is not  
merely a box to be checked....”**