



City of New Bedford

IN COMMITTEE

September 22, 2016


The Honorable City Council
133 William Street
New Bedford, MA 02740

Dear Honorable Members of the City Council:

The Committee on Ordinances at a Meeting held on Tuesday, September 20, 2016, considered a Communication/Email, Councillors Bousquet and Martins, submitting, an email from Eddie Johnson, President, CLEAN, regarding, the cleanup of toxic contamination of the Parker Street dump site and also submitting a proposed Ordinance to the City of New Bedford, Article I, Section 12-11, for submission to the City Council, relative to environmental protection and economic development. (Ref'd 8/18/2016)

On motion by Councillor Lopes and seconded by Councillor Winterson, the Committee VOTED: To recommend to the City Council that the Communication/Email from Eddie Johnson, President, CLEAN, regarding the cleanup of toxic contamination of the Parker Street dump site and the proposed Ordinance Relative to Environmental Protection and Economic Development be referred to the Mayor for his review. This motion passed on a Roll Call Vote of Yeas 8, Nays 1, with Councillor Morad opposed and Councillor Abreu not present for the vote.

IN COMMITTEE ON ORDINANCES


Councillor Steven Martins, Chairman

SM: dmb

IN CITY COUNCIL, September 22, 2016

Rule 42 Waived – Yeas 11, Nays 0.

Referred to the Mayor – Yeas 9, Nays 1.

Presented to the Mayor for Approval September 26, 2016.

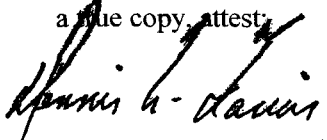
RETURNED UNSIGNED ON OCTOBER 20, 2016.

Dennis W. Farias, City Clerk

Dennis W. Farias, City Clerk

Dennis W. Farias, City Clerk

a true copy, attest:



City Clerk

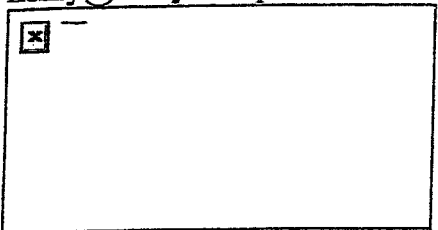
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Subject: Fwd: Background Information On Eddie L. Johnson -"CLEAN's" Proposed Environmental Justice Ordinance For The City of New Bedford-Re WGBH's 8/15/16 Interview With New Bedford Mayor Jon Mitchell.

Attachments: ATT00003.htm; image001.png;
Draft_EJ_Ordinance_for_City_of_New_Bedford_(A0164648).DOCX; ATT00004.htm

Please list on consent

Henry Bousquet CEC
Ward 3 City Councilman
New Bedford, MA
508-989-7487 *after 3pm*
henry@henrybousquet.com



Begin forwarded message:

From: Eddie Johnson <jheljhnsn6@aol.com>
Date: August 15, 2016 at 7:34:49 AM EDT
To: elsa_partin@WGBH.org
Subject: Background Information On Eddie L. Johnson -"CLEAN's" Proposed Environmental Justice Ordinance For The City of New Bedford-Re WGBH's 8/15/16 Interview With New Bedford Mayor Jon Mitchell.

Elsa, as per My Conversation with WGBH Public Radio earlier & WGBH's Radio Interview with New Bedford's Mayor Jon Mitchell today 8/15/16.

**Eddie L. Johnson, President
"CLEAN"-(Citizen Leading Environmental Action Network)-(Non-Profit Environmental Advocacy Organization)**

For the last Ten (10) plus years "CLEAN" have advocated & lobbied Federal, State & Local Government for the Cleanup up of Toxic Contamination on a 144 acres Toxic Contaminated Parker St. Dump Site.

This Toxic Contaminated Site is where the only High School, New Bedford High & Keith Middle school a \$70 million plus school was erected on a Toxic Contaminated Garbage Dump Site.

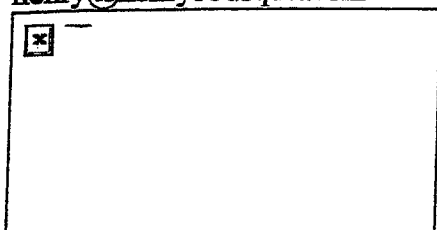
Charles Johnson

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The Site is still being monitored and Cleaned under the Jurisdiction and watchful eye of The Federal EPA, The Commonwealth's DEP & The Massachusetts Dept. of Public Health.

This site have negatively impacted, the City of New Bedford, Students, homeowners & Businesses alike.

New Bedford's Present Mayor Jon Mitchell is Anti-Environmental Justice, as per attached Environmental Justice Ordinance Submitted by "CLEAN"

-----Original Message-----

From: Eddie Johnson <jheljhnsn6@aol.com>

To: elsa_partin <elsa_partin@WGBH.org>

Sent: Mon, Aug 15, 2016 7:06 am

Subject: "CLEAN's" Proposed Environmental Justice Ordinance For The City of New Bedford

Eddie

<https://m.facebook.com/pages/Citizens-Leading-Environmental-Action/806234092780334>

Cell 774-930-2962 Home# (508) 990-2090

-----Original Message-----

From: Eddie Johnson <jheljhnsn6@aol.com>

To: veady <veady@clf.org>

Cc: AKreiger <AKreiger@AndersonKreiger.com>

Sent: Fri, Jul 29, 2016 7:05 pm

Subject: "CLEAN's" Proposed Environmental Justice Ordinance For The City of New Bedford

Hi Veronica,

Attached please find a copy of the city of the Environmental Justice Ordinance that was submitted to City Council & Mayor Jon Mitchell.

I have spoken to the City council's Chairman of the Ordinance Committee Steve Martins.

I know that Steve is presently reviewing this matter.

I have no idea in which directions or the procedure that the City Council will take, and I will wait until I hear from Steve, which I am sure will be in the very near future.

Mayor Jon Mitchell from "CLEAN'S" past experiences, have totally rejected any and all forms of Environmental Justice for the City of New Bedford.

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From: Veronica Eady [veady@clf.org](mailto:veady@clf.org)  
To: Eddie Johnson [jheljhnsn6@aol.com](mailto:jheljhnsn6@aol.com)  
Sent: Fri, Jul 29, 2016 1:56 pm  
Subject: EJ Ordinance

Hi Eddie,

Would you be willing to share with me a copy of the EJ ordinance? You have already shared it with the city council, right? I'd love to have a look.

Thanks!

Veronica

**Veronica Eady**

Vice President and Massachusetts Director  
Conservation Law Foundation

62 Summer Street  
Boston, MA 02110

**P:** 617-850-1730  
**C:** 857-218-2188  
**E:** [veady@clf.org](mailto:veady@clf.org)

For a thriving New England

3

**THE CITY OF NEW BEDFORD, MASSACHUSETTS**

**PROPOSED GENERAL ORDINANCE OF THE CITY OF NEW BEDFORD**

**ARTICLE I, SECTION 12-11**

**FOR SUBMISSION TO THE CITY COUNCIL**

WHEREAS, it is important to the City Council to achieve an appropriate balance between environmental protection and economic development in the City of New Bedford, and the risk levels established by this ordinance are intended to strike that balance;

WHEREAS, certain types of industrial activities, including those releasing pollutants into air, water or land, create a significant potential that residents of the New Bedford will be subject to material, cumulative, adverse impacts on health or the environment of the communities in which they live;

WHEREAS, regulation of the siting of such activities is an effective means to protect New Bedford residents from material, cumulative, adverse impacts on health or the environment, and serves to place appropriate limits on the amount of additional pollution that the siting of such activities can add to the current level of pollution in the region;

WHEREAS, the Environmental Justice Permit ("EJ Permit") required by this ordinance will substantially promote the protection of New Bedford residents from material, cumulative, adverse impacts on health or the environment;

WHEREAS, this ordinance is intended to have no impact on state or federal statutory requirements regarding the issuance of permits concerning health, the environment, planning or zoning;

WHEREAS, on February 11, 1994, the President of the United States issued Executive Order No. 12898 entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-income Populations," stating that 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, Puerto Rico, and the Mariana Islands;

WHEREAS, a panel of the National Academy of Public Administration for the United States Environmental Protection Agency (EPA) published a report in July 2003 entitled, "Addressing Community Concerns: How Environmental Justice Relates to Land Use Planning and Zoning." Based on the research described in that report, the Panel recommended the following:

State and local executive and legislative branches of government must demonstrate leadership to address Environmental Justice concerns. They should use their full legal authorities to enact appropriate legislation, issue policies, develop guidance, and develop accountability measures to ensure that, at both levels of government, core government functions are authorized and required to address Environmental Justice. They should also enhance opportunities for meaningful public participation in all government decisions that have environmental and public health impacts.

**I Will keep you posted.**

**Eddie**

<https://m.facebook.com/pages/Citizens-Leading-Environmental-Action/806234092780334>  
**Cell 774-930-2962 Home# (508) 990-2090**

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WHEREAS, the EPA has recognized the importance of local governments' exercising local police powers to protect local populations from excess levels of pollution and that it does not have the authority to make local permitting or land use decisions;

WHEREAS, Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts states: "The people shall have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment; and the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air, and other natural resources is hereby declared to be a public purpose;"

WHEREAS, the Massachusetts Executive Office of Energy and Environmental Affairs (EOEEA) established an Environmental Justice Policy to help address the disproportionate share of environmental burdens sometimes experienced by lower-income people and communities of color who also often lack environmental assets in their neighborhoods, which Policy is designed to protect those populations from pollution as well as promote community involvement in planning and environmental decision-making to maintain and/or enhance the environmental quality of those neighborhoods;

WHEREAS, the Commonwealth of Massachusetts is a Home Rule jurisdiction;

WHEREAS, Massachusetts municipalities have broad powers to protect the health of their citizens pursuant to Massachusetts General Laws Chapter 111 and otherwise; and

WHEREAS, this ordinance is intended to implement an added measure of protection of all New Bedford residents from activities that have the potential to further degrade the air, water or land or exacerbate community health impacts;

Now, therefore,

BE IT ORDAINED by the City Council of the City of New Bedford, Commonwealth of Massachusetts, that the General Ordinances of the City of New Bedford be amended to add Article I, Section 12-11 as follows:

Article I, Section 12-11. ENVIRONMENTAL JUSTICE.

Environmental Justice ("EJ") 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 health and environmental laws, regulations and policies. Fair treatment means that no group of people, including racial, ethnic or socioeconomic groups, should bear disproportionately high and adverse human health or environmental effects.

The purpose of this ordinance shall be to provide Environmental Justice to all citizens of New Bedford by insuring that Proposed Projects will not have a material, cumulative, adverse impact on the health or environment of the communities in which they are located.

12-11.1 DEFINITIONS.

For the purpose of this section 12-11, the words and phrases defined shall have the meaning set forth below, unless a different meaning is clearly indicated by the context, and words and phrases left undefined shall have their ordinary meaning.

- A. **“Air Quality Modeling”** means CTSCREEN and AERMOD as described in Appendix W to 40 C.F.R. ch. I Part 51 – "Guideline on Air Quality Models." The EJ Examiner may use any modeling described in Appendix W to analyze EJ Permit applications.
- B. **“Community”** means the area surrounding the Proposed Project encompassing a one-mile radius.
- C. **“Comprehensive Information”** means relevant information on the Proposed Project and its location, including but not limited to the type of facility to be operated, the regulated activities to be conducted at the Proposed Project, a list of Hazardous Material expected to be released from or stored at the facility, and a detailed analysis of human health and environmental risks to the surrounding Community as the result of normal operations or in the event of an accident or malicious act at the Proposed Project.
- D. **“Criteria Air Pollutant”** means an air pollutant listed by the EPA Administrator pursuant to Section 108(a) of the Clean Air Act, 42 U.S.C. Section 7408(a).
- E. **“Cumulative”** means the aggregation of all of the health or environmental impacts experienced by a Community, including existing background level impacts and additional impacts from existing or Proposed Projects.
- F. **“EJ Examiner”** means a person with a background in a health-related or environment-related field of engineering or science designated by the Mayor to apply Environmental Justice standards to the applications required under this section. The EJ Examiner shall be an employee of the City.
- G. **“EJ Permit”** means a permit or conditional permit issued pursuant to this section 12-11.
- H. **“Excess Cancer Risk”** means a cancer risk in excess of one in 1,000,000. This may be determined, when applicable, by referring to data in EPA's IRIS (Integrated Risk Information System) database, found on line at <http://www.epa.gov/iris/index.html>, and risk assessment procedures described in EPA's Guidelines for Carcinogen Risk Assessment, March 2005, EPA/630/P-03001F, or the most current update of that guidance, or by reviewing the statistically significant standardized incidence ratios available in the Massachusetts Cancer Registry, City/Town Supplement: <http://www.mass.gov/dph/mcr>.

- I. **“Excess Risk in the Event of an Accident or Malicious Act”** means an unreasonable risk that an accident or malicious act will cause exposure to chemical concentrations or other pollutants beyond the facility's property line at levels exceeding a Final, Interim, or Proposed Acute Exposure Guideline Level (AEGL), Level 2, 4 hour, as established by EPA and listed at <http://www.epa.gov/oppt/aegl/index.htm>, as determined by the Areal Locations of Hazardous Atmospheres at <http://epa.gov/emergencies/content/cameo/aloha.htm>.
- J. **“Excess Risk of Health Effects”** means a risk to the Community of a health effect significantly higher than the risk to the general population of New Bedford for that health effect. Such excess risk may exist because the Community is particularly vulnerable to particular health effects, or because the cumulative impacts of the Proposed Project with other impacts in the Community will cause a higher risk of health effects than exists in the general population of New Bedford. In determining whether a Proposed Project will cause an Excess Risk of Health Effects, the EJ Examiner may, where appropriate, consider whether there is a hazard quotient exceeding 1.0 as determined by Air Quality Modeling and data contained in EPA's IRIS (Integrated Risk Information System) database, <http://www.epa.gov/iris/index.html> or as described in Appendix W to 40 C.F.R. ch. I Part 51 – “Guideline on Air Quality Models.”
- K. **“Hazardous Material”** means material including but not limited to, any material, in whatever form, which, because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment, when improperly stored, treated, transported, disposed of, used, or otherwise managed. The term shall not include oil. The term shall also include all those substances which are included under 42 U.S.C. § 9601(14).
- L. **“Hazardous Air Pollutant”** means an air pollutant listed in Section 112(b) of the Clean Air Act, 42 U.S.C. § 7412(b), and 40 C.F.R. 63, Subpart C.
- M. **“Interested Party”** means any person or legal guardian of a person who owns property, lives, works at or attends a school, daycare, elder care or special needs facility, or who regularly recreates on conservation land or in a public park or playground, in the Community.
- N. **“Proposed Project”** means any proposed facility or activity to be wholly or partly located within the City of New Bedford and required by EPA or the Massachusetts Department of Environmental Protection (“DEP”) to do any one or more of the following:
- i) Obtain a permit under Title V of the Clean Air Act or its implementing regulations published at 40 C.F.R. Part 70; or

- ii) Obtain a permit as a Major Source under the Clean Air Act, unless such permit is solely obtained in relation to the construction or demolition phase of a Proposed Project and is in effect for no more than a total of 180 days, regardless of whether the days are consecutive or not; or
- iii) Obtain a permit as a Synthetic Minor Source under the Clean Air Act; or
- iv) Provide notification that they store one or more Extremely Hazardous Substance other than sulfuric acid or nitric acid in quantities that exceed the Threshold Planning Quantity as those terms are defined in Section 302(a) of the Emergency Planning and Community Right to Know Act, 42 U.S.C. § 11002(a); or
- v) File a Toxic Release Inventory Report pursuant to Section 313 of the Emergency Planning and Community Right to Know Act, 42 U.S.C. § 11023; or
- vi) Obtain a Permit for the treatment, storage, or disposal of hazardous waste pursuant to Section 3005 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6925; or
- vii) Provide a Notification of Hazardous Waste Activity indicating Large Quantity Generator status pursuant to Section 3010 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6930, unless such Notification is made solely in relation to the cleanup of historic soil contamination during the construction or demolition phase of a Proposed Project and shipments of contaminated soil are limited to a period of no more than a total of 180 days, regardless of whether the days are consecutive or not; or
- viii) Obtain a license or permit to operate a solid waste landfill, incinerator or transfer station pursuant to M.G.L. c. 111, § 150A; or
- ix) Obtain a permit, license, or approval for coastal development or use pursuant to M.G.L. c. 91; or
- x) Obtain a permit or approval for water pollution control pursuant to M.G.L. c. 21, §§ 26-53.

A pre-existing facility or activity is not a Proposed Project, regardless of whether it triggers any permit, approval, license, notification or other requirement in Section 12-11.1(N)(i) through (x). An expansion or alteration of a pre-existing facility or activity is a Proposed Project only if, in addition to meeting the other criteria of this Subsection N, the expansion or alteration would involve a significant, material and fundamental change in the use of the facility or the nature of the activity conducted at the facility. In such a case, the Proposed Project is only the expansion or alteration,

not the entire pre-existing facility or activity.

Notwithstanding any other provision in this section 12-11, a facility or activity shall not be deemed a Proposed Project under Section 12-11.1(N) if it received all permits or licenses and filed all reports or notifications referenced in this Section 12-11.1(N) before January 1, 2013.

12-11.2. APPLICATION FOR ENVIRONMENTAL JUSTICE PERMIT; APPLICATION FEE.

No person or entity shall construct or operate a Proposed Project, or the part of the Proposed Project in New Bedford, without an EJ Permit. Failure to comply with any of the terms of a conditional EJ Permit shall constitute a violation of this section.

The EJ Examiner shall develop an EJ Permit application and renewal forms, which forms shall be available at the City Clerk's Office.

The EJ Permit application and renewal forms shall include, at minimum, requirements that the applicant provide Comprehensive Information regarding the Proposed Project and that the application be verified and signed by the applicant. It also shall state the application fee that is required.

The application and renewal fees for an EJ Permit shall be set by the City Council in consultation with the EJ Examiner. Such application fee shall not exceed \$1,000 for any Proposed Project. Such renewal fee shall not exceed \$750.

Each applicant for an EJ Permit or an EJ Permit renewal shall provide the City Clerk with a complete verified application. Within 10 days of receiving the application for the EJ Permit or the EJ Permit renewal, the City Clerk will review the application to ensure that it purports to include Comprehensive Information regarding the Proposed Project, it is verified by the applicant's signature, and the application fee has been paid. If these conditions have not been met, the application form will be deemed incomplete, and the City Clerk will so notify the applicant. If the application is complete, the City Clerk shall forward the materials to the EJ Examiner for consideration.

An EJ Permit shall be valid for 3 years from the date of issuance. It may be renewed for additional three-year terms.

Receipt of an EJ Permit does not eliminate or replace the requirement for any other federal, state or local permit, license or approval.

12-11.3. NOTICE TO PUBLIC.

Within 10 days of receipt of an application for an EJ Permit or an EJ Permit renewal from the City Clerk, the EJ Examiner shall, at the applicant's expense, provide written notice, in English and such other language(s) as are appropriate for the surrounding community, of the request for an EJ Permit or renewal by United States mail to:

- i) The owners or operators of any residences, community councils, schools, hospitals, elder care or special needs facilities, daycare centers, public parks, playgrounds or conservation land located in the Community; and
- ii) All readily ascertainable addresses within one quarter of a mile of the Proposed Project.

The EJ Examiner shall also give notice through the City's website of all applications for EJ Permits or renewals.

Within 20 days of receipt of an application for an EJ Permit or renewal from the City Clerk, the EJ Examiner shall make all Comprehensive Information submitted by the applicant available to the public on the City's website and at the EJ Examiner's Office or City Hall during normal City business hours. During this same period, the EJ Examiner shall consult with the Board of Health and may consult with any City Health or Environmental official regarding the application.

Any person may submit information regarding either the Proposed Project or the Community to the EJ Examiner, and the EJ Examiner shall consider all such information in the decision on an EJ Permit or renewal.

The EJ Examiner may also, on his own initiative, consult any person or source that he deems relevant and reliable concerning any EJ Permit application or renewal application. When the EJ Examiner consults any person or source on his own initiative as part of his review, he shall document the information obtained from that person or source that is relevant to the EJ Permit or renewal application.

Any person shall have a reasonable opportunity during normal City business hours to examine any information that has been submitted concerning the EJ Permit or renewal application for a Proposed Project, including any information documented by the EJ Examiner on his own initiative. The EJ Examiner shall be responsible for collecting and storing any information relating to the application and for maintaining a copy of the entire file in an organized fashion reasonably accessible to the public.

12-11.4. ENVIRONMENTAL JUSTICE STANDARDS AND FACTORS.

In reviewing an EJ Permit application or a renewal application, the EJ Examiner shall determine whether a Proposed Project will have a "material, cumulative, adverse impact" on the health or environment of the Community (including noise or odors, but not including aesthetics). A Proposed Project will have a "material, cumulative, adverse impact" on the health or environment of the Community when its construction or operation would cause any of the following effects:

- i) A public nuisance;
- ii) An Excess Cancer Risk;
- iii) An Excess Risk in the Event of an Accident or Malicious Act;
- iv) An Excess Risk of Health Effects; or
- v) An Air Pollution Nuisance as described under 310 CMR 7.01 *et seq.*

In reviewing an EJ Permit or renewal application, the EJ Examiner may consider the following information:

- A. Demographic information about the Community, including demographic maps and environmental maps from:**
 - 1. the Planning or Community Development offices of the City of New Bedford or EPA;
 - 2. MASS GIS EJ Maps located at:
<http://www.mass.gov/anf/research-and-tech/it-serv-and-support/application-serv/office-of-geographic-information-massgis/>.
- B. Information on the pollution burden borne by the Community from sources within and outside the Community, including:**
 - 1. Number of pollution sources that potentially affect the Community;
 - 2. Proximity of the sources to the Community;
 - 3. Emission information, including total toxic emissions and total criteria air pollutant emissions;
 - 4. Major roads and traffic routes that affect the Community;
 - 5. Parks and greenbelts that may be affected;
 - 6. Areas of lead contamination;
 - 7. Number of currently licensed, registered, closed, or deregulated solid waste management or transfer facilities, superfund sites and hazardous waste sites;
 - 8. Air, water and soil quality data collected by the City of New Bedford, the Commonwealth of Massachusetts, DEP, EPA or other entities;
- C. Information on the vulnerability of the Community to particular health impacts and the prevalence of disease in the Community, including cancers, asthma and heart disease, including:**
 - 1. Information on the presence of sensitive receptors in the Community, including residences, schools, hospitals, elder care or special needs facilities, daycare centers, public parks, playgrounds or conservation land.
 - 2. Information on the vulnerability of the population of the Community to particular health impacts.

D. Information on the impacts of the Proposed Project, including:

1. The Comprehensive Information provided by the applicant.
2. Impacts of increases in the emission of hazardous air pollutants caused by the Proposed Project and the air dispersion characteristics of the Proposed Project.
3. Impacts of increases in the emission of hazardous water or soil pollutants caused by the Proposed Project and the dispersion characteristics of the pollutants.
4. Whether the Proposed Project itself would cause or contribute to Excess Cancer Risk, Excess Risk in the Event of an Accident or Malicious Act or Excess Risk of Health Effects.
5. Material Safety Data Sheets filed with the DEP pursuant to Mass. Gen. Laws Chapter 111F, Section 16.
6. Other information provided by applicant or others about the impacts of the Proposed Project.

E. Research and Outside Sources.

As part of the EJ Examiner's administrative duties, the EJ Examiner shall collect pollution data for the City. The EJ Examiner may rely upon that information or any reliable research or outside source data, including the following, in reviewing any EJ Permit application:

1. the Toxic Release Inventory (TRI), which is available on EPA's website and which measures cumulative, adverse environmental impact from toxic releases to air, water and land by various facilities;
2. the release of OSHA carcinogens on the TM database, which is available on EPA's website and which measures on-site releases by various facilities;
3. the number of superfund sites on EPA's Envirofacts database or other databases;
4. actual measured air quality from monitors operated by a federal, state or local governmental agency or private entity; and
5. the number of facilities reporting releases of criteria pollutants as listed on Massachusetts DEP or EPA databases.

WHEREAS, the EPA has recognized the importance of local governments' exercising local police powers to protect local populations from excess levels of pollution and that it does not have the authority to make local permitting or land use decisions;

WHEREAS, Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts states: "The people shall have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment; and the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air, and other natural resources is hereby declared to be a public purpose;"

WHEREAS, the Massachusetts Executive Office of Energy and Environmental Affairs (EOEEA) established an Environmental Justice Policy to help address the disproportionate share of environmental burdens sometimes experienced by lower-income people and communities of color who also often lack environmental assets in their neighborhoods, which Policy is designed to protect those populations from pollution as well as promote community involvement in planning and environmental decision-making to maintain and/or enhance the environmental quality of those neighborhoods;

WHEREAS, the Commonwealth of Massachusetts is a Home Rule jurisdiction;

WHEREAS, Massachusetts municipalities have broad powers to protect the health of their citizens pursuant to Massachusetts General Laws Chapter 111 and otherwise; and

WHEREAS, this ordinance is intended to implement an added measure of protection of all New Bedford residents from activities that have the potential to further degrade the air, water or land or exacerbate community health impacts;

Now, therefore,

BE IT ORDAINED by the City Council of the City of New Bedford, Commonwealth of Massachusetts, that the General Ordinances of the City of New Bedford be amended to add Article I, Section 12-11 as follows:

Article I, Section 12-11. ENVIRONMENTAL JUSTICE.

Environmental Justice ("EJ") 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 health and environmental laws, regulations and policies. Fair treatment means that no group of people, including racial, ethnic or socioeconomic groups, should bear disproportionately high and adverse human health or environmental effects.

The purpose of this ordinance shall be to provide Environmental Justice to all citizens of New Bedford by insuring that Proposed Projects will not have a material, cumulative, adverse impact on the health or environment of the communities in which they are located.

12-11.1 DEFINITIONS.

For the purpose of this section 12-11, the words and phrases defined shall have the meaning set forth below, unless a different meaning is clearly indicated by the context, and words and phrases left undefined shall have their ordinary meaning.

- A. **"Air Quality Modeling"** means CTSCREEN and AERMOD as described in Appendix W to 40 C.F.R. ch. I Part 51 – "Guideline on Air Quality Models." The EJ Examiner may use any modeling described in Appendix W to analyze EJ Permit applications.
- B. **"Community"** means the area surrounding the Proposed Project encompassing a one-mile radius.
- C. **"Comprehensive Information"** means relevant information on the Proposed Project and its location, including but not limited to the type of facility to be operated, the regulated activities to be conducted at the Proposed Project, a list of Hazardous Material expected to be released from or stored at the facility, and a detailed analysis of human health and environmental risks to the surrounding Community as the result of normal operations or in the event of an accident or malicious act at the Proposed Project.
- D. **"Criteria Air Pollutant"** means an air pollutant listed by the EPA Administrator pursuant to Section 108(a) of the Clean Air Act, 42 U.S.C. Section 7408(a).
- E. **"Cumulative"** means the aggregation of all of the health or environmental impacts experienced by a Community, including existing background level impacts and additional impacts from existing or Proposed Projects.
- F. **"EJ Examiner"** means a person with a background in a health-related or environment-related field of engineering or science designated by the Mayor to apply Environmental Justice standards to the applications required under this section. The EJ Examiner shall be an employee of the City.
- G. **"EJ Permit"** means a permit or conditional permit issued pursuant to this section 12-11.
- H. **"Excess Cancer Risk"** means a cancer risk in excess of one in 1,000,000. This may be determined, when applicable, by referring to data in EPA's IRIS (Integrated Risk Information System) database, found on line at <http://www.epa.gov/iris/index.html>, and risk assessment procedures described in EPA's Guidelines for Carcinogen Risk Assessment, March 2005, EPA/630/P-03001F, or the most current update of that guidance, or by reviewing the statistically significant standardized incidence ratios available in the Massachusetts Cancer Registry, City/Town Supplement: <http://www.mass.gov/dph/mcr>.

- I. **“Excess Risk in the Event of an Accident or Malicious Act”** means an unreasonable risk that an accident or malicious act will cause exposure to chemical concentrations or other pollutants beyond the facility's property line at levels exceeding a Final, Interim, or Proposed Acute Exposure Guideline Level (AEGL), Level 2, 4 hour, as established by EPA and listed at <http://www.epa.gov/oppt/aegl/index.htm>, as determined by the Areal Locations of Hazardous Atmospheres at <http://epa.gov/emergencies/content/cameo/aloha.htm>.
- J. **“Excess Risk of Health Effects”** means a risk to the Community of a health effect significantly higher than the risk to the general population of New Bedford for that health effect. Such excess risk may exist because the Community is particularly vulnerable to particular health effects, or because the cumulative impacts of the Proposed Project with other impacts in the Community will cause a higher risk of health effects than exists in the general population of New Bedford. In determining whether a Proposed Project will cause an Excess Risk of Health Effects, the EJ Examiner may, where appropriate, consider whether there is a hazard quotient exceeding 1.0 as determined by Air Quality Modeling and data contained in EPA's IRIS (Integrated Risk Information System) database, <http://www.epa.gov/iris/index.html> or as described in Appendix W to 40 C.F.R. ch. I Part 51 – “Guideline on Air Quality Models.”
- K. **“Hazardous Material”** means material including but not limited to, any material, in whatever form, which, because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment, when improperly stored, treated, transported, disposed of, used, or otherwise managed. The term shall not include oil. The term shall also include all those substances which are included under 42 U.S.C. § 9601(14).
- L. **“Hazardous Air Pollutant”** means an air pollutant listed in Section 112(b) of the Clean Air Act, 42 U.S.C. § 7412(b), and 40 C.F.R. 63, Subpart C.
- M. **“Interested Party”** means any person or legal guardian of a person who owns property, lives, works at or attends a school, daycare, elder care or special needs facility, or who regularly recreates on conservation land or in a public park or playground, in the Community.
- N. **“Proposed Project”** means any proposed facility or activity to be wholly or partly located within the City of New Bedford and required by EPA or the Massachusetts Department of Environmental Protection (“DEP”) to do any one or more of the following:
- i) Obtain a permit under Title V of the Clean Air Act or its implementing regulations published at 40 C.F.R. Part 70; or

- ii) Obtain a permit as a Major Source under the Clean Air Act, unless such permit is solely obtained in relation to the construction or demolition phase of a Proposed Project and is in effect for no more than a total of 180 days, regardless of whether the days are consecutive or not; or
- iii) Obtain a permit as a Synthetic Minor Source under the Clean Air Act; or
- iv) Provide notification that they store one or more Extremely Hazardous Substance other than sulfuric acid or nitric acid in quantities that exceed the Threshold Planning Quantity as those terms are defined in Section 302(a) of the Emergency Planning and Community Right to Know Act, 42 U.S.C. § 11002(a); or
- v) File a Toxic Release Inventory Report pursuant to Section 313 of the Emergency Planning and Community Right to Know Act, 42 U.S.C. § 11023; or
- vi) Obtain a Permit for the treatment, storage, or disposal of hazardous waste pursuant to Section 3005 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6925; or
- vii) Provide a Notification of Hazardous Waste Activity indicating Large Quantity Generator status pursuant to Section 3010 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6930, unless such Notification is made solely in relation to the cleanup of historic soil contamination during the construction or demolition phase of a Proposed Project and shipments of contaminated soil are limited to a period of no more than a total of 180 days, regardless of whether the days are consecutive or not; or
- viii) Obtain a license or permit to operate a solid waste landfill, incinerator or transfer station pursuant to M.G.L. c. 111, § 150A; or
- ix) Obtain a permit, license, or approval for coastal development or use pursuant to M.G.L. c. 91; or
- x) Obtain a permit or approval for water pollution control pursuant to M.G.L. c. 21, §§ 26-53.

A pre-existing facility or activity is not a Proposed Project, regardless of whether it triggers any permit, approval, license, notification or other requirement in Section 12-11.1(N)(i) through (x). An expansion or alteration of a pre-existing facility or activity is a Proposed Project only if, in addition to meeting the other criteria of this Subsection N, the expansion or alteration would involve a significant, material and fundamental change in the use of the facility or the nature of the activity conducted at the facility. In such a case, the Proposed Project is only the expansion or alteration,

not the entire pre-existing facility or activity.

Notwithstanding any other provision in this section 12-11, a facility or activity shall not be deemed a Proposed Project under Section 12-11.1(N) if it received all permits or licenses and filed all reports or notifications referenced in this Section 12-11.1(N) before January 1, 2013.

12-11.2. APPLICATION FOR ENVIRONMENTAL JUSTICE PERMIT; APPLICATION FEE.

No person or entity shall construct or operate a Proposed Project, or the part of the Proposed Project in New Bedford, without an EJ Permit. Failure to comply with any of the terms of a conditional EJ Permit shall constitute a violation of this section.

The EJ Examiner shall develop an EJ Permit application and renewal forms, which forms shall be available at the City Clerk's Office.

The EJ Permit application and renewal forms shall include, at minimum, requirements that the applicant provide Comprehensive Information regarding the Proposed Project and that the application be verified and signed by the applicant. It also shall state the application fee that is required.

The application and renewal fees for an EJ Permit shall be set by the City Council in consultation with the EJ Examiner. Such application fee shall not exceed \$1,000 for any Proposed Project. Such renewal fee shall not exceed \$750.

Each applicant for an EJ Permit or an EJ Permit renewal shall provide the City Clerk with a complete verified application. Within 10 days of receiving the application for the EJ Permit or the EJ Permit renewal, the City Clerk will review the application to ensure that it purports to include Comprehensive Information regarding the Proposed Project, it is verified by the applicant's signature, and the application fee has been paid. If these conditions have not been met, the application form will be deemed incomplete, and the City Clerk will so notify the applicant. If the application is complete, the City Clerk shall forward the materials to the EJ Examiner for consideration.

An EJ Permit shall be valid for 3 years from the date of issuance. It may be renewed for additional three-year terms.

Receipt of an EJ Permit does not eliminate or replace the requirement for any other federal, state or local permit, license or approval.

12-11.3. NOTICE TO PUBLIC.

Within 10 days of receipt of an application for an EJ Permit or an EJ Permit renewal from the City Clerk, the EJ Examiner shall, at the applicant's expense, provide written notice, in English and such other language(s) as are appropriate for the surrounding community, of the request for an EJ Permit or renewal by United States mail to:

- i) The owners or operators of any residences, community councils, schools, hospitals, elder care or special needs facilities, daycare centers, public parks, playgrounds or conservation land located in the Community; and
- ii) All readily ascertainable addresses within one quarter of a mile of the Proposed Project.

The EJ Examiner shall also give notice through the City's website of all applications for EJ Permits or renewals.

Within 20 days of receipt of an application for an EJ Permit or renewal from the City Clerk, the EJ Examiner shall make all Comprehensive Information submitted by the applicant available to the public on the City's website and at the EJ Examiner's Office or City Hall during normal City business hours. During this same period, the EJ Examiner shall consult with the Board of Health and may consult with any City Health or Environmental official regarding the application.

Any person may submit information regarding either the Proposed Project or the Community to the EJ Examiner, and the EJ Examiner shall consider all such information in the decision on an EJ Permit or renewal.

The EJ Examiner may also, on his own initiative, consult any person or source that he deems relevant and reliable concerning any EJ Permit application or renewal application. When the EJ Examiner consults any person or source on his own initiative as part of his review, he shall document the information obtained from that person or source that is relevant to the EJ Permit or renewal application.

Any person shall have a reasonable opportunity during normal City business hours to examine any information that has been submitted concerning the EJ Permit or renewal application for a Proposed Project, including any information documented by the EJ Examiner on his own initiative. The EJ Examiner shall be responsible for collecting and storing any information relating to the application and for maintaining a copy of the entire file in an organized fashion reasonably accessible to the public.

12-11.4. ENVIRONMENTAL JUSTICE STANDARDS AND FACTORS.

In reviewing an EJ Permit application or a renewal application, the EJ Examiner shall determine whether a Proposed Project will have a "material, cumulative, adverse impact" on the health or environment of the Community (including noise or odors, but not including aesthetics). A Proposed Project will have a "material, cumulative, adverse impact" on the health or environment of the Community when its construction or operation would cause any of the following effects:

- i) A public nuisance;
- ii) An Excess Cancer Risk;
- iii) An Excess Risk in the Event of an Accident or Malicious Act;
- iv) An Excess Risk of Health Effects; or
- v) An Air Pollution Nuisance as described under 310 CMR 7.01 *et seq.*

In reviewing an EJ Permit or renewal application, the EJ Examiner may consider the following information:

- A. Demographic information about the Community, including demographic maps and environmental maps from:**
 - 1. the Planning or Community Development offices of the City of New Bedford or EPA;
 - 2. MASS GIS EJ Maps located at:
<http://www.mass.gov/anf/research-and-tech/it-serv-and-support/application-serv/office-of-geographic-information-massgis/>.
- B. Information on the pollution burden borne by the Community from sources within and outside the Community, including:**
 - 1. Number of pollution sources that potentially affect the Community;
 - 2. Proximity of the sources to the Community;
 - 3. Emission information, including total toxic emissions and total criteria air pollutant emissions;
 - 4. Major roads and traffic routes that affect the Community;
 - 5. Parks and greenbelts that may be affected;
 - 6. Areas of lead contamination;
 - 7. Number of currently licensed, registered, closed, or deregulated solid waste management or transfer facilities, superfund sites and hazardous waste sites;
 - 8. Air, water and soil quality data collected by the City of New Bedford, the Commonwealth of Massachusetts, DEP, EPA or other entities;
- C. Information on the vulnerability of the Community to particular health impacts and the prevalence of disease in the Community, including cancers, asthma and heart disease, including:**
 - 1. Information on the presence of sensitive receptors in the Community, including residences, schools, hospitals, elder care or special needs facilities, daycare centers, public parks, playgrounds or conservation land.
 - 2. Information on the vulnerability of the population of the Community to particular health impacts.

D. Information on the impacts of the Proposed Project, including:

1. The Comprehensive Information provided by the applicant.
2. Impacts of increases in the emission of hazardous air pollutants caused by the Proposed Project and the air dispersion characteristics of the Proposed Project.
3. Impacts of increases in the emission of hazardous water or soil pollutants caused by the Proposed Project and the dispersion characteristics of the pollutants.
4. Whether the Proposed Project itself would cause or contribute to Excess Cancer Risk, Excess Risk in the Event of an Accident or Malicious Act or Excess Risk of Health Effects.
5. Material Safety Data Sheets filed with the DEP pursuant to Mass. Gen. Laws Chapter 111F, Section 16.
6. Other information provided by applicant or others about the impacts of the Proposed Project.

E. Research and Outside Sources.

As part of the EJ Examiner's administrative duties, the EJ Examiner shall collect pollution data for the City. The EJ Examiner may rely upon that information or any reliable research or outside source data, including the following, in reviewing any EJ Permit application:

1. the Toxic Release Inventory (TRI), which is available on EPA's website and which measures cumulative, adverse environmental impact from toxic releases to air, water and land by various facilities;
2. the release of OSHA carcinogens on the TM database, which is available on EPA's website and which measures on-site releases by various facilities;
3. the number of superfund sites on EPA's Envirofacts database or other databases;
4. actual measured air quality from monitors operated by a federal, state or local governmental agency or private entity; and
5. the number of facilities reporting releases of criteria pollutants as listed on Massachusetts DEP or EPA databases.

The EJ Examiner shall publish bi-annual reports identifying statistical pollution data for the entire City, including, to the extent available, a breakdown of such data by neighborhood.

12-11.5. ADMINISTRATIVE REVIEW BY EJ EXAMINER.

The EJ Examiner shall issue an EJ Permit or renewal for any Proposed Project that will not have a material, cumulative, adverse impact on the health or environment of the Community. The EJ Examiner may issue a conditional EJ Permit or renewal for any Proposed Project that will not have such a material, cumulative, adverse impact as long as the conditions are complied with but would have such an impact without such compliance. The EJ Examiner shall deny an EJ Permit or renewal to any Proposed Project that will have such a material, cumulative, adverse impact.

An EJ Permit or renewal shall issue only if the applicant demonstrates to the EJ Examiner by a preponderance of the evidence that the construction or operation of the Proposed Project will not cause any material, cumulative, adverse impact to the Community over the 3-year term of the EJ Permit or renewal permit.

In considering the EJ Permit or renewal application, the EJ Examiner shall consider all information submitted by the applicant or any other person concerning that application. Within 45 days following the EJ Examiner's receipt of the EJ Permit or renewal application from the Town Clerk, but not sooner than 30 days after that date, the EJ Examiner shall issue a written decision on the application, including findings and conclusions addressing the relevant factors and standards described in this section.

Conditions in an EJ Permit or renewal may include, but are not limited to, limitations on the scope of the project, project materials, equipment, pollution controls and transportation. The EJ Examiner may require a bond or other acceptable form of surety to insure compliance with the conditions.

Upon issuance of the decision by the EJ Examiner, such decision will be mailed by certified mail by the EJ Examiner to the applicant. The decision shall also be posted on the City's website. The EJ Examiner shall forward a copy of the decision to the City of New Bedford Board of Health and the City of New Bedford EJ Board of Appeals.

12-11.6. APPEAL PROCESS.

Within 30 days of the EJ Examiner's decision on an EJ Permit or renewal, or within 30 days of the deadline for the EJ Examiner to issue a decision if the EJ Examiner has failed to act: 1) the applicant, or 2) any owner or operator of any school, daycare, elder care or special needs facility, conservation land, public park or playground in the Community; or 3) any group of 10 or more Interested Parties, may file an appeal in writing with the City of New Bedford EJ Board of Appeals appealing the decision. Any such written appeal must be accompanied by a filing fee to be established by the City Council in consultation with the EJ Examiner. Notice of the appeal, with a copy of the written appeal, shall be filed with the City Clerk within such 30 days. The appeal shall allege that the EJ Examiner's decision exceeds his authority and any facts pertinent to the issue, and shall state the relief requested. The appellant shall attach to the appeal a copy of the decision appealed from, bearing the date of that decision.

If the appeal is filed by someone other than the applicant, the appellant shall name the applicant as an appellee and shall notify the applicant of the appeal within the 30-day period.

12-11.7. EJ BOARD OF APPEALS.

The EJ Board of Appeals shall consist of five persons designated by the Mayor with the approval of the City Council, to serve for terms of three years each. City residents shall be afforded preference for appointment to the Board. The members of the EJ Board of Appeals shall consist of one public environmental health professional (or an attorney with relevant experience), one environmental engineering professional (or an attorney with relevant experience), one representative of the New Bedford business community and two community representatives who are City residents with background knowledge and experience with EJ issues. The EJ Board of Appeals may adopt rules of practice and procedure as necessary. The EJ Examiner shall provide administrative resources to the EJ Board of Appeals including, but not limited to, handling correspondence, issuing notices, compiling necessary data, and services relating to hearings.

Within 20 days of any written appeal, the EJ Examiner shall collect the record of all materials received or reviewed concerning the EJ Permit or renewal application at issue and provide a copy of that written record to the EJ Board of Appeals, the appellant, and the applicant if the applicant is not the appellant.

Within 30 days of the filing of a written appeal, the EJ Board of Appeals shall conduct an evidentiary hearing on the record and shall, by majority vote, affirm, reverse or modify the EJ Examiner's decision. The EJ Board of Appeals shall issue a written decision within 14 days of any vote and shall send a copy of such decision by certified mail to the appellant and the applicant, if the applicant is not the appellant. The Board shall also send a copy of the decision to the EJ Examiner. If the EJ Board of Appeals does not render and mail a written decision within 90 days following the filing of the appeal, the Board shall be deemed to have affirmed the decision of the EJ Examiner, unless an extension is granted by the Board for good cause, with the assent of the appellant and the applicant if the applicant is not the appellant.

Any decision by the EJ Board of Appeals shall be deemed a final administrative decision of the City for purposes of appeal.

12-11.8. ADMINISTRATIVE POLICIES AND PROCEDURES.

The EJ Examiner and the EJ Board of Appeals shall develop administrative policies and procedures as necessary to implement this section.

12-11.9. ENFORCEMENT.

Any violation of this section may subject the violator to civil or criminal penalties, including a fine of up to \$100 per day of violation.

Whenever the EJ Examiner determines that any person or entity has violated or is in violation of this section, the EJ Examiner may:

1. Engage in the Non-Criminal Disposition Process described in Sections 17-18 of these ordinances; or
2. Request that the New Bedford Police Prosecutor bring a criminal complaint in a court of competent jurisdiction.

The City and the EJ Examiner may also engage in any other enforcement mechanism permitted by law.

12-11.10. ANNUAL REPORTING REQUIREMENT.

The Mayor or his designee shall file an annual report to the City Council providing the number of EJ Permit applications filed for Proposed Projects, the disposition of those applications by the EJ Examiner and, if applicable, the EJ Board of Appeals, and enforcement actions regarding EJ Permits undertaken by the City within the preceding 12 months.

12-11.11. SEVERABILITY.

If any provision of this Article I, Section 12-11 is held to be unconstitutional or otherwise unlawful, this Section shall not affect the validity, force or effect of any other provision of Article I, Section 12.

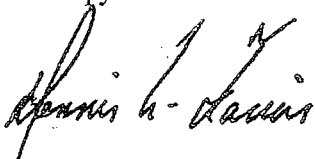
12-11.12. EFFECTIVE DATE.

This ordinance shall take effect on January 1 of the year following its adoption by the City of New Bedford.

IN CITY COUNCIL, August 18, 2016

Referred to the Committee on Ordinances.
a true copy attest:

Dennis W. Farias, City Clerk



City Clerk

The EJ Examiner shall publish bi-annual reports identifying statistical pollution data for the entire City, including, to the extent available, a breakdown of such data by neighborhood.

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An EJ Permit or renewal shall issue only if the applicant demonstrates to the EJ Examiner by a preponderance of the evidence that the construction or operation of the Proposed Project will not cause any material, cumulative, adverse impact to the Community over the 3-year term of the EJ Permit or renewal permit.

In considering the EJ Permit or renewal application, the EJ Examiner shall consider all information submitted by the applicant or any other person concerning that application. Within 45 days following the EJ Examiner's receipt of the EJ Permit or renewal application from the Town Clerk, but not sooner than 30 days after that date, the EJ Examiner shall issue a written decision on the application, including findings and conclusions addressing the relevant factors and standards described in this section.

Conditions in an EJ Permit or renewal may include, but are not limited to, limitations on the scope of the project, project materials, equipment, pollution controls and transportation. The EJ Examiner may require a bond or other acceptable form of surety to insure compliance with the conditions.

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Any decision by the EJ Board of Appeals shall be deemed a final administrative decision of the City for purposes of appeal.

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Whenever the EJ Examiner determines that any person or entity has violated or is in violation of this section, the EJ Examiner may:

1. Engage in the Non-Criminal Disposition Process described in Sections 17-18 of these ordinances; or
2. Request that the New Bedford Police Prosecutor bring a criminal complaint in a court of competent jurisdiction.

The City and the EJ Examiner may also engage in any other enforcement mechanism permitted by law.

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The Mayor or his designee shall file an annual report to the City Council providing the number of EJ Permit applications filed for Proposed Projects, the disposition of those applications by the EJ Examiner and, if applicable, the EJ Board of Appeals, and enforcement actions regarding EJ Permits undertaken by the City within the preceding 12 months.

12-11.11. SEVERABILITY.

If any provision of this Article I, Section 12-11 is held to be unconstitutional or otherwise unlawful, this Section shall not affect the validity, force or effect of any other provision of Article I, Section 12.

12-11.12. EFFECTIVE DATE.

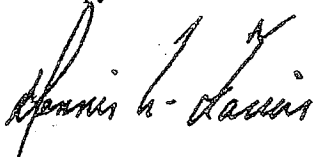
This ordinance shall take effect on January 1 of the year following its adoption by the City of New Bedford.

IN CITY COUNCIL, August 18, 2016

Referred to the Committee on Ordinances.

Dennis W. Farias, City Clerk

a true copy attest:



City Clerk

Angelic Taylor

From: Eddie Johnson [jheljhnsn6@aol.com]
Sent: Monday, September 19, 2016 6:24 PM
To: Steve Martins; Steven Martins
Cc: AKreiger@AndersonKreiger.com; veady@clf.org; claire@toxicsaction.org; richard@ace-ej.org; wells.sharon@epa.gov; john@ace-ej.org; ellie.donovan@state.ma.us; cstrupczewski@verizon.net; obvdcb@yahoo.com; harcgnb@gmail.com; kav704@yahoo.com; atomolonis@s-t.com; Jspillane@s-t.com; mlawrence@s-t.com; taylor@wbsm.com; Councillor Henry Bousquet; Henry G. Bousquet; lopesjoseph@hotmail.com; Joseph Lopes; Naomi Carney; Naomi Carney; NBWard1Councilor@aol.com; Linda Morad; Anne Louro; Brenda A. Rousseau; Christina R. Connelly; Cindy Sylvia; Elizabeth M. Marques; Filipe Palma; Jeanne Safioleas; Jonathan Carvalho; Jonathan Nunes; Joseph Kaufman; Kelly A. Andrade; Lisa Presby; Mikaela A. McDermott; MLawrence@s-t.com; Nicole Torres; Seretha Marlowe; Sharon M. Thomas; Mayor Jon Mitchell; Eric Cohen; Ian Abreu; Kerry Winterson; Naomi Carney; DCNB2005@aol.com; Brian Gomes; Councillor Brian Gomes; James D. Oliveira; joliveira@gnbwib.org; Dana Rebeiro; Dana Ribeiro; Christina R. Connelly; Neil Mello; Angelic Taylor; DEPT HEADS; millie.garcia-serrano@massmail.state.ma.us; Michele Paul; Raymond R. Holberger
Subject: Title VI of the Civil Rights Act of 1964 Implementation of Title VI & The US EPA's Enforcement of Title VI Pertaining To Environmental Justice For The City of New Bedford, Massachusetts

To: Honorable Steve Martins, Chairman
The City of New Bedford's City Council's Ordinance Committee.

From: Eddie L. Johnson, President
"CLEAN"- (Citizens Leading Environmental Action Network)
<https://m.facebook.com/pages/Citizens-Leading-Environmental-Action/806234092780334>
Cell 774-930-2962

Re: Title VI of the Civil Rights Act of 1964 Implementation of Title VI & The US EPA's Enforcement of Title VI Pertaining To Environmental Justice For The City of New Bedford, Massachusetts

Chairman Martins,

Please accept this official United States Environmental Protection Administration Rules, Regulations & Requirements Environmental Justice document, data and official public information to be voted upon, discussed and placed on filed by the City Council's Ordinance Committee, for Tuesday September 20, 2016.

Thanking you in advance for any consideration given to this "CLEAN" (Citizens Leading Environmental Action Network) request.

Eddie L. Johnson, President

~~~~~  
<https://www3.epa.gov/region9/ej/title-vi.html>

<https://blog.epa.gov/blog/2016/09/ej-hudejstrategy/>  
Finding a Home for Environmental Justice: HUD Seeks Input on EJ Strategy Update



- **You are here:** [EPA Home](#)
- [Environmental Justice](#)
- Title VI of the Civil Rights Act of 1964

# Title VI of the Civil Rights Act of 1964

## Title VI - Law and EPA's Regulations

### EPA's Office of Civil Rights

You will need Adobe Reader to view some of the files on this page. See [EPA's PDF page](#) to learn more about PDF, and for a link to the free Adobe Reader.

Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000d to 2000d-7) (PDF) (13 pp, 23K) prohibits recipients of federal financial assistance from discriminating on the basis of race, color, or national origin in their programs or activities. Title VI itself prohibits intentional discrimination.

Under [EPA's Title VI implementing regulations](#), EPA-funded agencies are prohibited from taking acts, including permitting actions, that are intentionally discriminatory or have a discriminatory *effect* based on race, color, or national origin.

## EPA's Program to Implement Title VI of the Civil Rights Act of 1964

Title VI of the Civil Rights Act of 1964 is a federal law that prohibits discrimination on the basis of race, color, or national origin in all programs or activities receiving federal financial assistance. Title VI itself prohibits intentional discrimination. The Supreme Court has ruled, however, that Title VI authorizes federal agencies, including EPA, to adopt implementing regulations that prohibit discriminatory effects as well as intentional discrimination. Frequently, discrimination results from policies and practices that are neutral on their face, but have the *effect* of discriminating. Facially-neutral policies or practices that result in discriminatory effects violate EPA's Title VI regulations unless it is shown that they are justified and that there is no less discriminatory alternative.

Title VI allows persons to file administrative complaints with federal departments and agencies alleging discrimination by [financial assistance recipients](#). The Office of Civil Rights has the responsibility within EPA to process and review Title VI administrative complaints.

## EPA's Guidance on Title VI

For example, as part of its obligations under Title VI, recipients of EPA financial assistance must provide meaningful access to Limited English Proficient (LEP) persons. To help recipients of EPA financial assistance satisfy its Title VI obligations, EPA issued:

- [Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons \(LEP Recipient Guidance\) \(PDF\)](#) (12 pp, 226K)
- [Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs \(PDF\)](#) (11 pp, 6.3M) (Public Involvement Guidance)
- [Draft Guidance for Investigating Title VI Administrative Complaints Challenging Permits](#) (Draft Revised Investigation Guidance)
- [Advancing Environmental Justice through Title VI \(Draft\) \(PDF\)](#) (11 pp, 647K) focusing on Title VI and its integration with Plan EJ 2014, sets forth goals, strategies, and activities that will assist in building a robust Title VI civil rights program. This implementation plan was developed by the Office of Civil Rights (OCR), in consultation with the Office of Environmental Justice and the Office of General Counsel.

## Title VI Settlements

You can find settlement agreement information at EPA's [Title VI Settlements](#) site.

## Area Navigation

### EJ Home

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- [Funding Sources for Communities](#)
- [EJ Grants](#)
- [Los Angeles Enforcement Collaborative](#)
- [Title VI of the Civil Rights Act](#)
- [Tools & Resources](#)
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Last updated on 4/27/2016

# Environmental Justice in Action

ACHIEVING ENVIRONMENTAL JUSTICE IN OVERBURDENED COMMUNITIES



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[COMMENT POLICY](#)

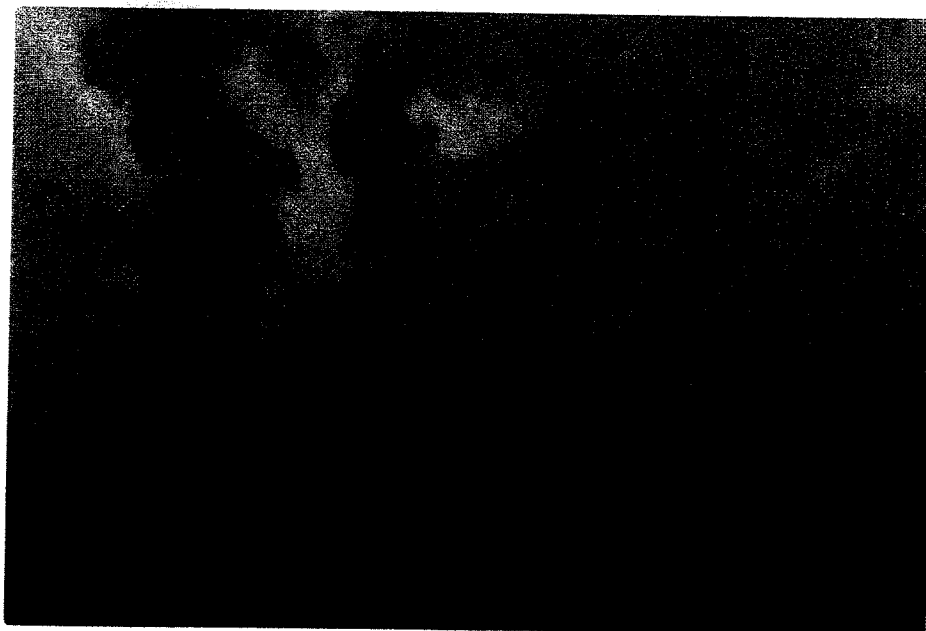
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[RSS](#)

SEP 8, 2016

## Finding a Home for Environmental Justice: HUD Seeks Input on EJ Strategy Update

[4 Comments](#)



*About the Author: James Potter is the Environmental Justice Coordinator for the Department of Housing and Urban Development. Jim is the co-chair of the Goods Movement Committee of the Federal Interagency Working Group on Environmental Justice (EJ IWG) and has participated on the EJIWG since 2006.*

The ongoing housing and economic crisis has touched every family across the United States – but for low-income and minority communities, this crisis has been particularly devastating. At the Department of Housing and Urban Development (HUD), we believe that all communities deserve equal protection from health hazards, equitable access to the federal decision-making process, and a healthy environment where they can work, live, and play.

HUD, a member of the [Federal Interagency Working Group on Environmental Justice \(EJ IWG\)](#), is charged by [Executive Order 12898](#) to develop a strategy for incorporating the principles of environmental justice into our work. We have made it a priority to update our strategy regularly, in order for us to meet with environmental justice stakeholders, get their input, and keep the strategy relevant to the needs and requests of those communities facing environmental justice issues.

It is now time for our [current strategy](#) to be updated.

### Our Other Blogs

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[Our Planet, Our Home](#) (2,310)

[Español](#) (239)

[It All Starts with Science](#) (607)

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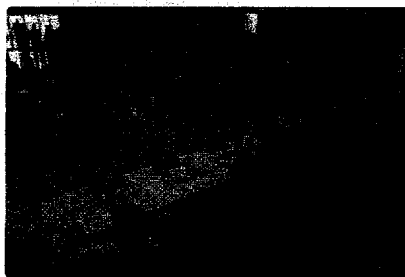
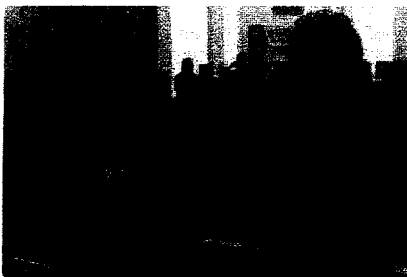
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We want our new strategy to reflect the needs and challenges of the communities disproportionately burdened by environmental injustices; therefore, we are organizing a series of public outreach meetings across the country. In order to make a plan that can have lasting positive impacts, we need to hear from you! We ask community residents and environmental justice advocates to tell us what we are doing right and what we can do to improve our work. This will be a first-hand opportunity to speak directly to the federal staff who work every day to ensure that environmental justice and equitable development are incorporated into everything that we and our grant recipients do.

These outreach meetings will be held across the country at HUD field offices during the first half of September.

- Detroit, Michigan: September 8, 2016
- Charleston, West Virginia: September 13, 2016
- Boston, Massachusetts: September 16, 2016

These meetings will be held in each city at 10:00 a.m. Photo identification will be required of participants to access the building. We know that we must speak with those most impacted by our programs and actions as we look to the future of our work creating strong, sustainable, inclusive communities and quality affordable homes for all. During the listening sessions, we will be asking about what this strategy means to attendees, how they've been affected by climate change and what environmental justice looks like to them.



If you're located in one of the cities listed, please come talk to us. You will help us make a better plan so that we can craft strategies that have meaningful impacts for your community. If you are unable to attend the meetings however, there will be additional opportunities for you to contribute to our update. These meetings are just the start. Join EPA's [EJ Listserv](#) to receive current information on the release of the public comment period.

The updated EJ Strategy will be available for public comment later this fall. An announcement in the Federal Register will be followed by public notices so that anyone interested in our environmental justice work can provide suggestions. Feel free to [contact me via email](#) or telephone at 202.402.4610 if you have additional questions regarding the listening tour, the public comment period, or the update to our EJ strategy in general.

Access to affordable housing impacts us all. But I know that this challenge impacts us differently, which is why I am honored to be a part of these upcoming listening sessions. I look forward to meeting with all of you and discussing the ways that we can engage with you and your communities to promote the principles of environmental justice in all of the work that we do at the Department of Housing and Urban Development. I believe that with your help, we

[water](#) [Water Quality](#) [water quality](#) [WaterSense](#) [Watersheds](#) [What you can do](#)

## Popular

05.09.2012 [Carpet Beetles are Welcome in my House if it Means not...](#) (83,390)

08.03.2015 [6 Things Every American Should Know About the Clean Power...](#) (17,285)

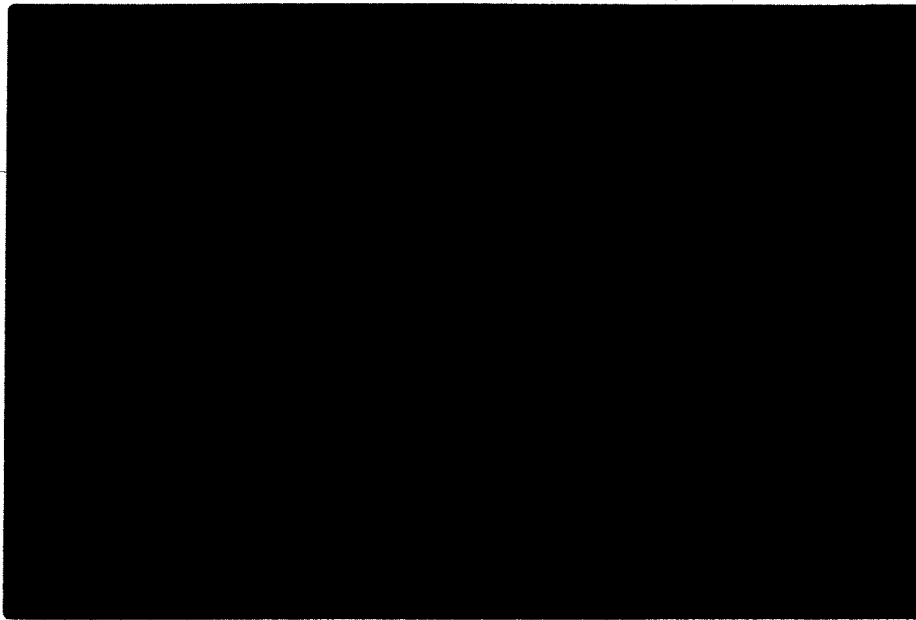
05.27.2015 [Reasons We Need the Clean Water Rule](#) (12,639)

09.11.2009 [Where Does My Electricity Come From?](#) (9,549)

06.22.2016 [TSCA Reform: A Bipartisan Milestone to Protect Our Health...](#) (7,999)

## Archives

will be able to design a strategy that does truly incorporate the principles of environmental justice and equitable development.



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*Editor's Note:* The opinions expressed here are those of the author. They do not reflect EPA policy, endorsement, or action, and EPA does not verify the accuracy or science of the contents of the blog.

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« Bubbling Up: Methane from Reservoirs  
Presents Climate Change Challenge

'Wow, they did all that?' – Nebraska  
Teacher, Students Earn National  
Honors for Community Efforts »

## 4 Comments



Michael | Web Design Studio Pro

SEP 08, 2016 @ 14:12:40

REPLY

I will really enjoy very much with this kind of meeting. I believe all of us need to attend to support.



Marvin S. Robinson, II

SEP 08, 2016 @ 20:36:23

REPLY

We need yall HUD EJ Listening Tour: to come to Kansas City, Kansas our people are suffering so bad, it's almost to complicated to try and convey: the local officials just released a new HOUSING PLAN and never mentioned VETERANS, not once.

The SEWER SYSTEM is getting ready to be UPGRADED for about \$200 Million Dollars and the people in charge do NOT think that PUBLIC INVOLVEMENT or PUBLIC ENGAGEMENT is important. they went to a bunch of regular Neighborhood Associations that a lot really struggling residents / and urban dwellers inside zip Code 66101, 66102 or 66104 never even ATTEND or go, to. ENVIRONMENTAL JUSTICE has led those who admire this particular tool of INCLUSION even though we're in the LOW- To- Moderate Income populations and we use to have a significant Black African American population, we already cannot afford to live our area, or homes and now here, comes a new \$200 MILLION Dollar SEWER SYSTEM Upgrade and they do not think that neither VETERANS nor Low to Moderate Black residents should not only be included with JOBS that will be CREATED in our OWN area (COMPLETELY) disregarding HUD's SECTION 3 of the C.R.A. Federal outlays.

It's just tragic, the way the POOR are being done and when yall have the chance to have LISTENING SESSIONS, skipping over our area, that use to be a beautiful community: just makes the BURDENS and HARDSHIPS more for us, that do know, to call and keep worring the PRAYER LINES.

The people in leadership and decision making authority do not think that POOR Blacks need jobs, which helps triggers a ricochet of unrelenting VIOLENCE, all while our area is drapped with TOXIC WASTE and then when NEW DOLLARS are being identified for IMPROVEMENTS, even for SEWERS, the PEOPLE in charge have already CONCLUDED, that the Black Low-to-Moderate resident / dwellers AMERICAN CITIZENS should have no part of the work, to help sustain bills from the UTILITY COMPANIES increases.

THANK YOU from this Veteran who proudly earned an Honorable Discharge from the U.S. Navy only to be both inaudible and invisible from the people in charge of PROJECT, PROGRAM after PROJECT. Again, at least we can still PRAY and hope that GOD will keep hearing the hearts of the LEAST of THEM.

Marvin S. Robinson, II

QUINDARO RUINS / Underground Railroad- Exercise 2017



Communiqua

SEP 09, 2016 @ 03:49:14

REPLY

Awesome blog. Really it is an interesting and informative article. Thanks for sharing this post.



Peter Brooks **Exit**

SEP 16, 2016 @ 16:25:16

REPLY

Hello from Vallejo, California where the Ecocem/Orcem cement company wants to put their new cement factory 1,320 feet from our elementary school.

Grace Patterson Elementary School is in a minority, low-income neighborhood that already suffers from twice the state average for asthma.

Ecocem/Orcem's draft environmental impact report says 300 diesel 18-wheel trucks a day will use the facility driving through a residential neighborhood.

The DEIR also says we can expect 70 Tons of cement dust and NOx to come from Ecocem/Orcem and the proposed port Vallejo Marine Terminal.

Ecocem/Orcem will buy pollution credits...but how does that help the people at ground zero?



# EPA's Title VI - Policies, Guidance, Settlements, Laws and Regulations

- Civil Rights Home
  - EPA's Title VI Policy
  - Policies and Guidance
  - Civil Rights Information and Publications
  - Title VI Settlements and Decisions
  - The Laws and Regulations We Enforce
- 

## EPA's Title VI Policy

The U.S. Environmental Protection Agency (EPA) has made improving its civil rights program a priority and recognizes that its enforcement of Title VI of the Civil Rights Act of 1964 (Title VI) is an important tool in its efforts to protect against discrimination and ensure that recipients of EPA financial assistance do not discriminate in implementing programs and activities. On January 29, 2013, EPA released two draft policy papers via its website for public comment. The first paper, *Adversity and Compliance With Environmental Health-Based Thresholds* (PDF) (5 pp, 216 K, [About PDF](#)), proposes to change the way EPA assesses “adversity” by having the Agency refrain from applying a “rebuttable presumption” in certain Title VI investigations. The second paper, *Roles of Complainants and Recipients in the Title VI Complaints and Resolution Process* (PDF) (4 pp, 52 K, [About PDF](#)), discusses EPA’s clarification of the roles of complainants and recipients in the Title VI complaint process. Consistent with its goal to promote transparency, EPA initially posted these documents on its website and sent notification of the posting to stakeholders who previously had expressed an interest in agency activities. On April 26, 2013, EPA published these documents in the Federal Register with a 30-day comment period in an effort to further expand the potential audience who may see these documents. Also, EPA hosted outreach sessions via teleconference with interested stakeholders concerning these two draft policies on April 30, 2013 and May 14, 2013.

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## Policies and Guidance

On June 27, 2000, EPA published two draft Title VI guidance documents in the Federal Register for public comment, the *Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs* (Draft Recipient Guidance) (PDF) (53 pp, 668 K, [About PDF](#)) and the *Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits* (Draft Revised Investigation Guidance).

The June 27, 2000 Draft Recipient Guidance, written at the request of the state stakeholders, and intends to offer suggestions to assist state and local recipients in developing approaches and activities to address potential Title VI concerns. EPA's Office of Civil Rights (OCR) accepted public comments on the guidance through August 28, 2000. On March 4, 2005, based on public

comments received and due to a large percentage of public involvement complaints filed, OCR published in the Federal Register the revised version of the Draft Recipient Guidance entitled Draft Final Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs ("Draft Final Recipient Guidance"). The Draft Final Recipient Guidance was developed for recipients of EPA assistance implementing environmental permitting programs. It discusses various approaches, and suggests tools that recipients may use to enhance the public involvement aspects of their current permitting programs. It also addresses potential issues related to Title VI of the Civil Rights Act of 1964 (Title VI) and EPA's regulations implementing Title VI at 40 C.F.R. Part 7. After addressing the public comments received on this document, EPA published in the Federal Register, on March 21, 2006, the final version entitled Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Recipient Guidance)(PDF) (11 pp, 6 MB, About PDF).

The issue of the applicability of Title VI to Federally-recognized tribes is currently under review at EPA. Executive Order 13084 (issued May 14, 1998) also directs agencies to consult with tribes prior to the development of policies that significantly or uniquely affect their communities. In 1999, EPA engaged in a consultation process with federally recognized tribes, which included a letter to Tribal Leaders requesting their views on Title VI implementation issues.

On August 11, 2000, President Clinton signed Executive Order 13166 (PDF) (3 pp, 248 K, About PDF) entitled, "Improving Access to Services for Persons with Limited English Proficiency." The Executive Order requires Federal agencies to examine the services they provide, identify any need for services to limited English proficient (LEP) persons, and develop and implement a plan to provide those services so that LEP persons can have meaningful access to them. The Executive Order also requires Federal agencies work to ensure that recipients of Federal financial assistance provide meaningful access to their LEP applicants and beneficiaries.

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## Civil Rights Information and Publications

- Alternative Dispute Resolution
- The Facts on Title VI of the Civil Rights Act of 1964

Information about the June, 2000 Title VI draft guidance documents

- Frequently Asked Questions (FAQ) (PDF) (8 pp, 25 K, About PDF)
- Fact Sheet (PDF) (2 pp, 13 K, About PDF)(2 pp, 13K, About PDF)

## Title VI Policy Documents

- Full text of Federal Register notice (PDF) (53 pp, 668 K, About PDF)
- The document also is available at the EPA Federal Register site
- EPA press release on the publication of the draft guidance documents
- Process for Revising EPA's Interim Guidance for Investigating Title VI Administrative Complaints Challenging Permits
- Executive Order 13166 entitled, "Improving Access to Services for Persons with Limited English Proficiency (PDF)" (3 pp, 227 K, About PDF)
- Department of Justice policy guidance document to help Federal agencies implement EO 13166, entitled "Enforcement of Title VI of the Civil Rights Act of 1964-National Origin



Discrimination Against Persons with Limited English Proficiency (PDF)." (3 pp, 146 K, About PDF)

## Other Publications

- Procedures for Hearings Conducted Pursuant to 40 CFR Part 7--Nondiscrimination in Programs and Activities Receiving Federal Assistance from the U.S. Environmental Protection Agency (PDF) (18 pp, 115 K, About PDF)
- Attorney General's memorandum on "The Use of the Disparate Impact Standard in Administrative Regulations under Title VI of the Civil Rights Act of 1964" (PDF) (2 pp, 107 K, About PDF)
- EO 13084 on Consultation with Tribal Governments
- Presidential Memorandum on Alternative Dispute Resolution
- EPA's Conflict Prevention and Resolution Center (PDF) (2 pp, 49 K, About PDF)
- EPA Memorandum: Cumulative Risk Assessment Guidance-Phase I Planning and Scoping (PDF) (2 pp, 25 K, About PDF)
- US Commission on Civil Rights: Getting Uncle Sam to Enforce Your Civil Rights (brochure)

## Environmental Justice

- Title VI and Environmental Justice at EPA
- Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations."
- Presidential Memorandum (PDF) (2 pp, 45 K, About PDF) accompanying Executive Order 12898
- The Model Plan for Public Participation (PDF) (20 pp, 464 K, About PDF) developed by the Public Participation and Accountability Subcommittee of the National Environmental Justice Advisory Council

## Internet Links

- EPA's Office of Environmental Justice (OEJ)
- U.S. Department of Justice Civil Rights Division Coordination and Review Section [Exit](#)
- Brownfields Homepage
- EPA Grant Information System query form

Last updated on April 20, 2016



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# Title VI of the Civil Rights Act of 1964

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Last updated on Wednesday, April 27, 2016

EPA's Office of Civil Rights

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