

# Environmental Justice in Maryland

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The views expressed in this report are those of the Environmental Law Clinic of the University of Maryland Francis King Carey School of Law. Although the ELC represents clients on environmental justice issues, this report does not represent the views of the ELC's clients. Nor does it represent the views of the University of Maryland Francis King Carey School of Law or the Clinical Law Program.

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## Introduction

Globally, there is increasing recognition that the poor are most vulnerable to the impacts of environmental degradation, including threats to water and food supplies from climate change, harm from importation and disposal of toxic waste, and unsustainable exploitation of natural resources. Many of the concerns raised by leaders and citizens of developing countries were recently echoed by Pope Francis when he called for the international community to give greater consideration to the needs and concerns of the poor within the debate on global environmental policies.<sup>1</sup>

In the United States, environmental justice is emerging as a central priority for national environmental protection efforts. In August 2011, seventeen federal agencies, including the Environmental Protection Agency and the Departments of the Interior, Agriculture, Health and Human Services, Energy, Labor, Housing and Urban Development, Education, and Commerce, committed to update their strategies for incorporating environmental justice into their programs, policies, and activities.<sup>2</sup> The agencies also committed to provide meaningful opportunities for the public to comment on their environmental justice plans and efforts, and to publish “Annual Implementation Progress Reports” to inform the public on the status of their environmental justice strategies.<sup>3</sup>

In light of the growing international and national attention on environmental justice, the Environmental Law Clinic (ELC) developed this report to assess Maryland’s progress in achieving environmental justice and to recommend specific steps to advance that goal. The following report provides (1) a brief background on the environmental justice movement in the United States; (2) a summary of the State of Maryland’s environmental justice efforts; (3) current environmental justice concerns in Maryland identified through the ELC’s research; and (4) recommended actions that the state and environmental organizations can take to advance the goal of environmental justice in Maryland.

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<sup>1</sup> Francis, *Laudato Si’* [Encyclical Letter on Care for Our Common Home], secs. 49, 51–52 (May 24, 2015), available at: [http://w2.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco\\_20150524\\_encyclica-laudato-si.html](http://w2.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20150524_encyclica-laudato-si.html).

<sup>2</sup> Memorandum of Understanding on Environmental Justice and Executive Order 12898, 3 (August 4, 2011), available at: <http://www.epa.gov/oecaerth/environmentaljustice/resources/publications/interagency/ej-mou-2011-08.pdf>.

<sup>3</sup> *Id.* For additional information on federal agency plans and activities since creation of the MOU, see U.S. EPA, Federal Interagency Working Group on Environmental Justice, <http://www.epa.gov/environmentaljustice/interagency/>.

## I. Environmental Justice Background

Communities of color and low-income communities in the United States are often disproportionately burdened by environmental and public health hazards, and enjoy fewer benefits from environmental programs and natural resources.<sup>4</sup> Additionally, communities impacted by environmental disparities frequently suffer from social and economic disparities that derive from the same underlying causes.<sup>5</sup> The accumulation of environmental, social, and economic problems in communities, and the lack of health promoting infrastructure has detrimental effects on public health and quality of life.<sup>6</sup> Environmental disparities in the United States are largely the result of past and present unfairness in the design and implementation of environmental laws, regulations, policies, and programs at the national, state, and local levels.<sup>7</sup>

The modern environmental justice movement emerged in 1982 when residents of Warren County, North Carolina, along with national civil rights leaders and environmental activists, protested against the state's placement of a hazardous waste landfill in the predominantly poor, rural, African American county.<sup>8</sup> That controversy was followed by two landmark studies analyzing the distribution of waste facilities in the United States. In 1983, the United States General Accounting Office issued a report that documented the disproportionate siting of hazardous waste landfills in predominantly African American communities in the Environmental Protection Agency's Region IV, which covers states in the southeast.<sup>9</sup> In 1987, the Commission for Racial Justice of the United Church of Christ found disturbing correlations between race and hazardous facilities nation-wide: communities with the most commercial hazardous waste facilities had the highest composition of people of color, and three out of five African American and Hispanic Americans lived in communities with toxic waste sites.<sup>10</sup>

In 1991, the First People of Color Environmental Leadership Summit convened hundreds of advocates in Washington, D.C. to discuss goals and strategies for pursuing environmental

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<sup>4</sup> See U.S. Environmental Protection Agency, Plan EJ 2014, 1 (September 2011).

<sup>5</sup> See Robert R. Kuehn, *A Taxonomy of Environmental Justice*, 30 ENV. L. REP. 10681, 10699 (2000).

<sup>6</sup> Sacoby M. Wilson, *Environmental Justice Movement: A Review of History, Research, and Public Health Issues*, 16 U.S.C. JOURNAL OF PUBLIC MANAGEMENT & SOCIAL POLICY 19, 36 (2010).

<sup>7</sup> See Kuehn, *supra* note 5, at 10688–93.

<sup>8</sup> See Wilson, *supra* note 6, at 20.

<sup>9</sup> See U.S. Gen. Accounting Office, *The Siting of Hazardous Waste Landfills and Their Correlation With Racial and Economic Status of Surrounding Communities* 1 (1983).

<sup>10</sup> Commission for Racial Justice, United Church of Christ, *Toxic Wastes and Race In the United States: A National Report on the Racial and Socio-Economic Characteristics of Communities with Hazardous Waste Sites* xiii–xiv (1987).

justice nationally and globally.<sup>11</sup> The seventeen “Principles of Environmental Justice” developed at the Summit articulated an ambitious vision for environmental justice and helped catalyze the movement.<sup>12</sup> The attention focused on environmental justice issues and advocacy to address systemic problems in the regulatory structure led to the establishment of the Environmental Protection Agency’s Office of Environmental Equity in 1992 (later renamed Office of Environmental Justice), and the National Environmental Justice Advisory Council in 1993. In 1994, President Clinton signed Executive Order 12898 requiring federal agencies to, *inter alia*, develop environmental justice strategies to address disproportionate human health and environmental effects of their actions on people of color and low-income people.<sup>13</sup> The

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<sup>11</sup> See Wilson, *supra* note 6, at 21.

<sup>12</sup> *Id.* Specifically, the principles state:

1) Environmental Justice affirms the sacredness of Mother Earth, ecological unity and the interdependence of all species, and the right to be free from ecological destruction; 2) Environmental Justice demands that public policy be based on mutual respect and justice for all peoples, free from any form of discrimination or bias; 3) Environmental Justice mandates the right to ethical, balanced and responsible uses of land and renewable resources in the interest of a sustainable planet for humans and other living things; 4) Environmental Justice calls for universal protection from nuclear testing, extraction, production and disposal of toxic/hazardous wastes and poisons and nuclear testing that threaten the fundamental right to clean air, land, water, and food; 5) Environmental Justice affirms the fundamental right to political, economic, cultural and environmental self-determination of all peoples; 6) Environmental Justice demands the cessation of the production of all toxins, hazardous wastes, and radioactive materials, and that all past and current producers be held strictly accountable to the people for detoxification and the containment at the point of production; 7) Environmental Justice demands the right to participate as equal partners at every level of decision-making, including needs assessment, planning, implementation, enforcement and evaluation; 8) Environmental Justice affirms the right of all workers to a safe and healthy work environment without being forced to choose between an unsafe livelihood and unemployment. It also affirms the right of those who work at home to be free from environmental hazards; 9) Environmental Justice protects the right of victims of environmental injustice to receive full compensation and reparations for damages as well as quality health care; 10) Environmental Justice considers governmental acts of environmental injustice a violation of international law, the Universal Declaration On Human Rights, and the United Nations Convention on Genocide; 11) Environmental Justice must recognize a special legal and natural relationship of Native Peoples to the U.S. government through treaties, agreements, compacts, and covenants affirming sovereignty and self-determination; 12) Environmental Justice affirms the need for urban and rural ecological policies to clean up and rebuild our cities and rural areas in balance with nature, honoring the cultural integrity of all our communities, and provided fair access for all to the full range of resources; 13) Environmental Justice calls for the strict enforcement of principles of informed consent, and a halt to the testing of experimental reproductive and medical procedures and vaccinations on people of color; 14) Environmental Justice opposes the destructive operations of multi-national corporations; 15) Environmental Justice opposes military occupation, repression and exploitation of lands, peoples and cultures, and other life forms; 16) Environmental Justice calls for the education of present and future generations which emphasizes social and environmental issues, based on our experience and an appreciation of our diverse cultural perspectives; 17) Environmental Justice requires that we, as individuals, make personal and consumer choices to consume as little of Mother Earth's resources and to produce as little waste as possible; and make the conscious decision to challenge and reprioritize our lifestyles to ensure the health of the natural world for present and future generations.

<sup>13</sup> Exec. Order No. 12898, 59 Fed. Reg. 7,629 (Feb. 11, 1994).

Executive Order also created the Interagency Working Group on Environmental Justice to assist and coordinate the agencies' efforts.<sup>14</sup>

## II. Maryland's Environmental Justice Efforts

The State of Maryland's efforts to address environmental injustice began with the establishment of the Maryland Advisory Council on Environmental Justice (MACEJ) in 1997.<sup>15</sup> MACEJ was created to study environmental justice issues in Maryland and to recommend solutions to the Governor and General Assembly.<sup>16</sup> As part of its study, MACEJ held over 75 small open meetings, and five larger workshops in Washington County, Baltimore City, Wicomico County, and Prince George's County.<sup>17</sup> In 1999 MACEJ published a report of its findings and recommendations.<sup>18</sup>

MACEJ identified a litany of concerns about disproportionate environmental burdens in communities of color and low-income communities. Those concerns included lead-paint, ground level ozone, other air pollution from truck exhaust and bus idling, highway placement, noise, traffic, brownfields, landfills, superfund sites, medical waste sites, toxics and toxic dump sites, petroleum facilities, unequal provision of sanitation and waste services, contaminants in fish, pesticide poisoning, and failures to enforce environmental regulations in low-income communities.<sup>19</sup> The report also noted several concerns related to the health effects of disproportionate environmental burdens, including high rates of respiratory illnesses such as asthma and cancer.<sup>20</sup>

In addition to disproportionate environmental burdens, the MACEJ report discussed community concerns about racial bias in state decision-making, failures of zoning and comprehensive plans to consider environmental harms, limited opportunities for public input on state environmental decision-making and transportation policies, and "the limited capacity or ability of low-income groups to affect decision-making processes."<sup>21</sup> The report also noted that "people of color and low-income people have not played a role in developing the general policies

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

<sup>15</sup> Maryland Advisory Council on Environmental Justice, *Environmental Justice in the State of Maryland* 1–2 (1999).

<sup>16</sup> *Id.*

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

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 15–16, 20–22.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 16.

that govern the siting of [locally undesirable land uses], pollution standards, community participation, and neighborhood land use patterns...”<sup>22</sup> MAJEC further identified broader social and economic justice issues including crime, wealth inequality, low wages, poor working conditions, rat infestation, vacant homes, and dilapidated housing as environmental justice concerns.<sup>23</sup>

The MACEJ report recommended a comprehensive set of actions to help address environmental injustice in the state. Specific recommendations included an executive order directing state agencies to incorporate environmental justice considerations into their operations, the creation of an Office of Environmental Justice housed in the Maryland Department of the Environment (MDE) with the necessary budget and staff, and the establishment of a standing environmental justice commission.<sup>24</sup> The report also included broader recommendations for more effective collection and use of information on communities, pollution, and health.<sup>25</sup> However, to date, over 15 years later, Maryland has not implemented most of the MAJEC recommendations.

In response to the recommendation that the state create an “ongoing Environmental Justice/community policy-making commission”<sup>26</sup> Maryland did establish the Commission on Environmental Justice and Sustainable Communities (CEJSC or Commission) in 2001. CEJSC is broadly charged with (1) Advising state government agencies; (2) Reviewing and analyzing the impact of current state laws and policies; (3) Assessing the adequacy of state and local government laws; (4) Coordinating with the Children’s Environmental Health and Protection Advisory Council; (5) Developing criteria to assess whether communities in the state may be experiencing environmental justice issues; and (6) Recommending options to the Governor regarding environmental justice.<sup>27</sup> Maryland law requires that the Commission be made up of diverse stakeholders, including state and local elected officials, environmental advocates, health experts, business representatives, state agency officials, and members of affected communities concerned with environmental justice.<sup>28</sup>

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<sup>22</sup> *Id.* at 15.

<sup>23</sup> *See id.* at 15–16, 20–22.

<sup>24</sup> *Id.* at 2–3.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> MD. CODE ANN., ENVIR. § 1-701 (West 2015).

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

Although an advisory commission like CEJSC could have an essential role in achieving environmental justice, a 2013 review of the Commission and its work identified many limitations and challenges. The review noted that Commission members had full-time jobs, limiting their time and ability to follow through on the Commission’s work.<sup>29</sup> CEJSC was only staffed by a single MDE employee, who was also tasked with serving as MDE’s liaison to the state legislature from 2008.<sup>30</sup> The review also identified the potential for conflicts between the goals of CEJSC and the interests of the six state agencies represented on the Commission.<sup>31</sup>

CEJSC’s recommendations and projects have mostly languished. For example, the Commission worked to “develop an indicator tool to identify areas in the state that are environmentally and economically stressed.”<sup>32</sup> In its 2005 Annual Report CEJSC recommended state funding to continue to develop a “Community Profile Tool.”<sup>33</sup> However, that tool was never completed because of insufficient time and resources.<sup>34</sup> Similarly, the Environmental Benefits District program initiated by the Commission never generated clear plans or results in the selected neighborhoods.<sup>35</sup>

The review concluded that the Commission has lacked “continuity in goals and strategies” and that many Commissioners felt that “there has not been any significant measurable change in either policy or action in the state.”<sup>36</sup> Ultimately, the inherent limitations of an all-volunteer, advisory commission and the lack of progress in addressing environmental injustice in Maryland demonstrate the need for a more concerted state government effort.

In recent years, in response to a campaign by communities and advocates, MDE has initiated a workgroup to study potential policies to address cumulative impacts of multiple pollution sources on communities through the environmental permitting process.<sup>37</sup> Several

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<sup>29</sup> Rebecca Rehr et al., *The Maryland Commission on Environmental Justice and Sustainable Communities: A Review*, 24 JOURNAL OF HEALTH CARE FOR THE POOR AND UNDERSERVED, 129, 135 (Feb. 2013).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 136.

<sup>32</sup> *Id.* at 134.

<sup>33</sup> Commission on Environmental Justice and Sustainable Communities, 2005 Annual Report 11–12 (2005).

<sup>34</sup> Rehr, *supra* note 29, at 134.

<sup>35</sup> *Id.* at 135. The purpose of the Environmental Benefits District program was to “identify areas in the state that are environmentally and economically stressed and use the EBD label to encourage state and local representatives, as well as state agencies, to target resources in these areas to improve health outcomes and overall quality of life for residents.” *Id.* at 134.

<sup>36</sup> *Id.* at 137.

<sup>37</sup> See Md. Dep’t of the Env’t, Cumulative Impact Workgroup, [http://www.mde.maryland.gov/programs/CrossMedia/EnvironmentalJustice/EJinMarylandHome/Pages/Cumulative\\_Impacts\\_Workgroup.aspx](http://www.mde.maryland.gov/programs/CrossMedia/EnvironmentalJustice/EJinMarylandHome/Pages/Cumulative_Impacts_Workgroup.aspx).

legislators, environmental organizations, and community groups have also advocated for legislation in the Maryland General Assembly to require MDE to address cumulative impacts, separately from the workgroup.<sup>38</sup> However, it remains unclear if those efforts will result in any change to state law, policy, or practice, or any meaningful progress towards environmental justice in the future.

### **III. Environmental Justice Issues in Maryland**

The ELC's research, including reviews of published studies and interviews with environmental and community advocates,<sup>39</sup> revealed a large number of environmental justice issues and concerns. Those concerns include disparities from the impacts of air pollution and the distribution of Toxic Release Inventory (TRI) sites, leaking underground storage tanks, and watershed restoration funds. Many of the issues identified by the ELC's research are consistent with the concerns raised in the 1999 MACEJ report.

Disproportionate exposure to environmental harms contributes to health disparities in many communities of color and low-income communities.<sup>40</sup> Although Maryland has made meaningful progress in addressing health disparities, significant problems remain. African Americans in Maryland are more likely to die from heart disease, cancer, and stroke.<sup>41</sup> African Americans in the state are also 1.1 times more likely to suffer from asthma, and 2.3 times more likely to die from asthma, compared to whites.<sup>42</sup> There are many factors, including lifestyle and access to medical care, that can adversely affect health outcomes and exacerbate symptoms of conditions like asthma. However, environmental factors, such as pollution and the lack of health promoting infrastructure in many communities, most likely contribute to the health disparities in Maryland.

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<sup>38</sup> See S.B. 706, 431st Sess. (Md. 2014); S.B. 693, 432nd Sess. (Md. 2015).

<sup>39</sup> The ELC conducted structured, confidential interviews with staff members from 21 environmental advocacy organizations in the state, and met with individuals with expertise in environmental justice, public health, and community engagement in Maryland. The ELC also identified many environmental justice concerns from community leaders, residents, and organizations that participated in listening sessions organized by the D.C., Maryland, and Virginia Environmental Justice Coalition.

<sup>40</sup> See Gilbert C. Gee & Devon C. Payne-Sturges, *Environmental Health Disparities: A Framework Integrating Psychosocial and Environmental Concepts*, 112 ENV'T. HEALTH PERSPECT. 1645, 1645 (2004); Devon C. Payne-Sturges & Gilbert C. Gee, *National Environmental Health Measures for Minority and Low-income Populations: Tracking Social Disparities in Environmental Health*, 102 ENVTL. RESEARCH 154, 166–67 (2006).

<sup>41</sup> Md. Dep't of Health and Mental Hygiene, *Maryland Chartbook of Minority Health Disparities Data*, Third Edition 15 (Dec. 15, 2012).

<sup>42</sup> *Id.* at 31.

Socioeconomically disadvantaged and African American communities in Maryland bear a disproportionate burden of cancer risk from air toxics exposure.<sup>43</sup> A 2005 study found that census tracts with the “highest quartile defined by proportion of African Americans were three times as likely to be high risk compared with the lowest quartile” and census tracts “in the lowest quartile of median household income were 100 times more likely to be high risk than were those in the highest quartile.”<sup>44</sup> The study found that those disparities are primarily driven by on-road and non-major stationary sources (area sources) of air toxics.<sup>45</sup>

Many community leaders and environmental organization staff members expressed concerns regarding air pollution disparities, including concentrations of air pollution sources in specific communities and negative health effects such as cancer and asthma. The south-Baltimore neighborhood of Curtis Bay in particular was often mentioned as an example of a community with many existing sources of pollution, including toxic air emissions, and in which a significant new source is planned.<sup>46</sup>

People of color and low-income people in Maryland are also more likely to live in close proximity to TRI facilities.<sup>47</sup> Harmful chemicals typically emitted from TRI facilities can lead to increased risk of low birth weight, asthma, and cancer in exposed populations.<sup>48</sup> Furthermore, those low-income groups in the state living near TRI facilities are more likely to be medically underserved.<sup>49</sup> The combination of higher exposures to toxic pollution and the lack of access to medical care likely contribute to health disparities in those communities.<sup>50</sup>

Racial and socio-economic disparities also exist in the distribution of unremediated leaking underground storage tanks in Maryland.<sup>51</sup> Census tracts with higher percentages of non-

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<sup>43</sup> Ben Apelberg, et al., *Socioeconomic and Racial Disparities in Cancer Risk from air Toxics in Maryland*. 113 ENVTL. HEALTH PERSPECTIVES 693, 695 (2005).

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 696. Maryland adopted stricter vehicle emissions standards in 2007. See Maryland Department of the Environment, Maryland Clean Cars Program, <http://www.mde.maryland.gov/programs/air/mobilesources/cleancars/pages/index.aspx>. However, it is not yet known what, if any impact those standards have had on the disparities identified in the 2005 study.

<sup>46</sup> Students and residents in Curtis Bay, as well as environmental and human rights organizations have been working to stop a proposed waste-to-energy incinerator in the neighborhood for several years. See Timothy B. Wheeler, *Trash-burning power project hits new snag*, BALTIMORE SUN, Feb. 22, 2015.

<sup>47</sup> Sacoby Wilson, et al., *Being Overburdened and Medically Underserved: Assessment of this Double Disparity for Populations in the State of Maryland*, ENVTL. HEALTH 13:26, 9 (2014).

<sup>48</sup> *Id.* at 2.

<sup>49</sup> *Id.* at 9.

<sup>50</sup> *Id.* at 3.

<sup>51</sup> Sacoby Wilson, et al., *Assessment of Spatial Disparities in the Burden of Underground Storage Tanks in Maryland*, 6 ENVTL. JUSTICE 219, 224 (2013).

white residents, persons in poverty, and persons with less than a high school education tend to be closer to leaking underground storage tanks.<sup>52</sup> Leaking underground storage tanks have potentially far-reaching environmental and public health impacts because they can allow various contaminants, including carcinogens, to enter the ground water, soil, and air.<sup>53</sup>

A 2014 study also raised concerns about disparities in state watershed restoration programs.<sup>54</sup> The study found that “predominantly non-white areas of the state received few to no wetlands projects” through Maryland’s Non-tidal Wetlands Mitigation program.<sup>55</sup> The study also concluded that there were clear disparities based on race and poverty in the distribution of watershed restoration funds under the state’s Clean Water Act Section 319 program.<sup>56</sup> The lack of investment of Clean Water Act resources in areas with many environmental burdens is “highly problematic and disruptive to efforts to make these communities healthier and more sustainable (ecologically, socially, and economically).”<sup>57</sup>

Climate change is also a significant environmental justice concern in Maryland. As the Environmental Protection Agency’s recently released Clean Power Plan notes, “[l]ow-income communities and communities of color already overburdened by pollution are disproportionately affected by climate change and are less resilient than others to adapt to or recover from climate-change impacts.”<sup>58</sup> The plan also recognizes the importance of pursuing climate change policies in ways that avoid disproportionately burdening low-income people and ensure that the benefits are shared broadly across society.<sup>59</sup>

Many interviewees also expressed concerns regarding the fairness of state and local decision-making processes when it comes to decisions impacting communities of color and low-income communities. Those concerns included inadequate outreach and information to residents about proposals that could adversely impact their neighborhoods. Several interviewees also observed that communities often lack the resources necessary to obtain information and

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<sup>52</sup> *Id.* at 223.

<sup>53</sup> *Id.* at 219–220.

<sup>54</sup> Matthew A. Dernoga et al., *Environmental Justice Disparities in Maryland’s Watershed Restoration Programs*, 45 ENVTL. SCIENCE & POLICY 67 (2015).

<sup>55</sup> *Id.* at 70.

<sup>56</sup> *Id.* at 70–73. The Section 319 program provides funding to states to address nonpoint source pollution. *Id.* at 68.

<sup>57</sup> *Id.* at 77.

<sup>58</sup> U.S. Environmental Protection Agency, Carbon Pollution Emissions Guidelines for Existing Stationary Sources: Electric Utility Generating Units 44 (August 3, 2015), *available at*: <http://www2.epa.gov/sites/production/files/2015-08/documents/cpp-final-rule.pdf>.

<sup>59</sup> *Id.* at 79.

effectively raise concerns to government decision-makers. Finally, there was a common perception that the procedures for public involvement do not always result in meaningful consideration of community comments and concerns.

The ELC's discussions and meetings with environmental organizations and environmental justice and community advocates also identified a multitude of other environmental justice concerns. Those concerns included:

1. Water pollution contaminating fish, which could disproportionately impact low-income individuals who depend on subsistence fishing;<sup>60</sup>
2. Lack of access to green spaces and recreation facilities along rivers or the coast;
3. Lack of funding for environmental justice focused advocacy;
4. Failure to remediate environmental harms in low-income communities and communities of color;
5. Potential disparate impacts on low-income communities and communities of color from nutrient trading<sup>61</sup> and hydraulic fracturing;
6. Improperly disposed-of trash, illegal dumping, and insufficient resources to address those problems in many communities in Baltimore City;
7. Siting of landfills in low-income areas;
8. Disparities in the detection of violations and enforcement of pollution control laws; and
9. Inadequate and unsafe housing.

The results of the ELC's research demonstrate that there are significant environmental justice issues present in Maryland. Furthermore, the environmental disparities identified likely contribute to health disparities in the state. Therefore, it is imperative that state act to address environmental injustice.

#### **IV. Recommendations**

Environmental disparities remain a significant issue in Maryland, and the state has made little progress in achieving environmental justice. Maryland should adopt a more systematic and transparent approach to addressing environmental justice issues, including requiring each state agency to develop an environmental justice strategy and regularly report on its progress. The

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<sup>60</sup> See also Chesapeake Bay Program, Chesapeake Bay Angler Interviews: Identifying Populations at Risk for Consuming Contaminated Fish in Three Regions of Concern (March 29, 2005).

<sup>61</sup> A report by the Center for Progressive Reform also examined the potential environmental justice impacts of nutrient trading on low-income and minority communities. See Center for Progressive Reform, Fairness in the Bay: Environmental Justice and Nutrient Trading (Aug. 2012).

state should also create an Office of Environmental Justice to coordinate and support environmental justice efforts, expand community representation on the CEJSC, and develop new policies to address and prevent environmental injustice.

Environmental advocacy organizations can play an important role in advancing environmental justice in Maryland by encouraging government action to address the environmental issues and priorities of communities of color and low-income communities. In order for environmental groups to effectively play that role, they should ensure that the priorities of those communities are incorporated into the organizations' advocacy programs and activities, and work to improve diversity within their organizations.

## **A. State Actions**

Maryland has taken few tangible steps, and made little progress in addressing environmental justice issues. Moreover, state agencies are largely reactive—responding to outside pressure and efforts—rather than proactive in developing solutions.<sup>62</sup> The state needs to implement a more proactive and systematic approach that allows for greater transparency and accountability. Over many years, MACEJ and CEJSC have recommended specific actions as a foundation for advancing the goal of environmental justice in Maryland. The recommendations that follow are largely based on those previous recommendations, as well as insights from environmental justice advocates and examples from the federal government and other states.

### **1. Require Agencies to Develop Strategic Plans and Implementation Reports**

Maryland should require all state agencies to develop strategies to incorporate environmental justice into their programs, policies, and activities. Strategic plans are an important starting point for systematically and transparently identifying specific actions that each agency must take to address environmental injustice. There are many models available for

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<sup>62</sup> For instance, CEJSC recommended action to address cumulative impacts in 2003, but MDE's workgroup on cumulative impacts was not formed until 2014 in response to legislative attention on the issue. *See* Md. Dep't of the Env't, Cumulative Impact Workgroup, [http://www.mde.maryland.gov/programs/CrossMedia/EnvironmentalJustice/EJinMarylandHome/Pages/Cumulative\\_Impacts\\_Workgroup.aspx](http://www.mde.maryland.gov/programs/CrossMedia/EnvironmentalJustice/EJinMarylandHome/Pages/Cumulative_Impacts_Workgroup.aspx); Commission on Environmental Justice and Sustainable Communities, Final Annual Report 2003, 2.

agencies to use as starting points for their plans, including those developed by federal agencies since 2011,<sup>63</sup> examples from other states,<sup>64</sup> and the draft plan developed by MDE in 2001.<sup>65</sup>

At a minimum, the strategies should identify disproportionately high and adverse human health or environmental effects of the agencies' actions on people of color and low-income people, and the steps that the agency will take to address those effects. The strategies should include specific and measurable objectives and outcomes to facilitate program evaluation. Additionally, the strategies should examine the agencies' existing regulations and policies, and consider whether changes are needed. Agency strategies should be developed in consultation with CEJSC and with public input.<sup>66</sup>

State agencies should be required to implement their environmental justice strategies and regularly prepare reports that address and measure the agency's success in meeting the specific objectives and outcomes. Those reports should also be provided to CEJSC and the public for review and comment. By preparing strategic plans and regularly reporting on the implementation of those plans, agencies can ensure transparency and accountability.

## **2. Create an Office of Environmental Justice**

Maryland should create an Office of Environmental Justice (OEJ) with the mandate, necessary authority, and resources to lead the state's efforts to achieve environmental justice. The defined roles of the OEJ should include, at a minimum:

1. Reviewing state agency strategic plans and implementation reports and supporting the agencies' development of those documents;
2. Coordinating and supporting the work of CEJSC;

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<sup>63</sup> See e.g. U.S. Environmental Protection Agency, Plan EJ 2014, *available at*:

<http://www.epa.gov/environmentaljustice/plan-ej/index.html>; U.S. Department of Agriculture, Environmental Justice Strategic Plan 2012-2014, *available at*: [http://www.dm.usda.gov/hmmd/FinalUSDAEJSTRATScan\\_1.pdf](http://www.dm.usda.gov/hmmd/FinalUSDAEJSTRATScan_1.pdf).

<sup>64</sup> See e.g. California Environmental Protection Agency, Intra-agency Environmental Justice Strategy, *available at*: <http://www.calepa.ca.gov/EnvJustice/Documents/2004/Strategy/Final.pdf>; California Environmental Protection Agency, Environmental Justice Action Plan, *available at*:

<http://www.calepa.ca.gov/envJustice/ActionPlan/Documents/October2004/ActionPlan.pdf>; Massachusetts Executive Office of Energy and Environmental Affairs, Draft Environmental Justice Policy, *available at*: <http://www.mass.gov/eea/grants-and-tech-assistance/environmental-justice-policy.html>

<sup>65</sup> See Maryland Commission on Environmental Justice and Sustainable Communities, Annual Report 2001, Appendix D, *available at*:

[http://www.mde.maryland.gov/programs/CrossMedia/EnvironmentalJustice/EJImplementationinMaryland/Pages/programs/multimedialogs/environmental\\_justice/implementation/ej\\_reports.aspx#2001](http://www.mde.maryland.gov/programs/CrossMedia/EnvironmentalJustice/EJImplementationinMaryland/Pages/programs/multimedialogs/environmental_justice/implementation/ej_reports.aspx#2001).

<sup>66</sup> See Memorandum of Understanding, *supra* note 2, 3.

3. Organizing workshops or listening sessions in communities of color and low-income communities to identify issues and geographic areas of concern;
4. Developing policies and strategies for cross-agency collaboration to address issues that are interconnected and implicate the authority and expertise of multiple agencies; and
5. Leading the development of better information resources for agencies to identify areas with environmental disparities.

A state OEJ could also encourage and support local jurisdictions' environmental justice efforts. City and county governments play essential roles in protecting the health and welfare of communities. Local decision-making on land use and community planning, zoning, and public works projects provides many opportunities to address and avoid environmental injustices. An OEJ at the state level could provide expertise and resources to help local governments develop their own plans and ordinances for incorporating environmental justice considerations into their actions.

### **3. Restructure CEJSC to Expand Community Representation**

Maryland should restructure CEJSC to make it a more effective mechanism for community input on environmental justice issues and state policies, programs, and activities. Under current law, only two out of the Commission's twenty members must "represent affected communities concerned with environmental justice."<sup>67</sup> Having such a small number of community representatives serving on the Commission gives environmental justice communities little influence in its recommendations, priorities, and activities. Moreover, it is difficult for two individuals to effectively represent the diverse perspectives on environmental justice in communities across the state.<sup>68</sup> Community leaders and residents from environmental justice communities should constitute the majority of the Commission. Expanding community

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<sup>67</sup> MD. CODE ANN., ENVIR. § 1-701.

<sup>68</sup> See Rehr, *supra* note 29, at 133 ("One respondent discussed previous symposia sponsored by the CEJSC and open meetings as particularly successful strategies in moving the environmental justice movement forward in Maryland and stressed the importance of including residents in impacted communities in these conversations. Community members who attended were able to shed light on issues the Commissioners either did not know about, or did not know the extent to which the problems permeated communities"). Since 2004 CEJSC has shifted away from projects focused on engaging communities and identifying environmental justice issues. *Id.* at 134.

representation on CEJSC will help it identify environmental justice issues and solutions and ensure that its work is driven by the communities most affected by environmental injustice.<sup>69</sup>

#### **4. Incorporate Environmental Justice into Decision-making**

Maryland should make meaningful policy changes to better incorporate environmental justice and health impacts into state decision-making. Detailed analysis of all potential policy changes is beyond the scope of this report. However, the following discussion presents several options, including (a) requiring cumulative impacts analysis in permitting decisions, (b) modernizing and broadening the Maryland Environmental Policy Act (MEPA), (c) ensuring meaningful early consultation with communities, (d) investing in health promoting infrastructure and sustainable development in environmental justice communities, and (e) better incorporating environmental justice information resources into decision-making.

Many communities and advocates have called on the General Assembly to enact legislation requiring MDE to consider cumulative impacts from new and existing sources of pollution in its permitting decisions. The accumulation of multiple sources of pollution in communities is a central environmental justice concern. However, the permitting process typically considers each source of pollution individually. The Maryland General Assembly has considered several bills to require MDE to incorporate cumulative impacts into its permitting decisions in recent sessions, but none have become law. MDE is currently hosting a workgroup to investigate administratively and economically feasible options.<sup>70</sup> Following through with those efforts to require meaningful consideration of cumulative impacts in permitting decisions will significantly improve environmental and public health protections for overburdened communities.

Modernizing and broadening the scope of MEPA would also promote environmental justice in the state. MEPA requires state agencies to prepare environmental effects reports (EERs) for certain actions that could significantly affect the quality of the environment.<sup>71</sup> The EER provides information to the public and facilitates participation in the decision-making

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<sup>69</sup> The state could also consider removing the six state agency representatives from CEJSC and creating a separate group similar to the Federal Interagency Workgroup on Environmental Justice. *See* U.S. Env'tl. Protections Agency, Federal Interagency Workgroup on Environmental Justice, <http://www.epa.gov/environmentaljustice/interagency/>.

<sup>70</sup> Md. Dep't of the Env't, Cumulative Impact Workgroup, [http://www.mde.maryland.gov/programs/CrossMedia/EnvironmentalJustice/EJinMarylandHome/Pages/Cumulative\\_Impacts\\_Workgroup.aspx](http://www.mde.maryland.gov/programs/CrossMedia/EnvironmentalJustice/EJinMarylandHome/Pages/Cumulative_Impacts_Workgroup.aspx).

<sup>71</sup> MD. CODE ANN., NAT. RES. § 1-304(a) (West).

process.<sup>72</sup> However, MEPA applies only to “requests for legislative appropriations or other legislative actions...,” and excludes permits, regulations, and other actions that can significantly impact the environment.<sup>73</sup> In comparison, the National Environmental Policy Act (NEPA) applies to a broader array of federal actions that could significantly affect the environment, including, *inter alia*, projects conducted, permitted, approved, financed, or assisted by a federal agency, as well as new and revised rules, regulations, and policies.<sup>74</sup>

MEPA has proven difficult to enforce, with judicial decisions in the 1970s severely limiting the ability of citizens to challenge state agency compliance with the law.<sup>75</sup> Additionally, since MEPA was passed in 1973 there have been many advances in health impact assessment that could be used to improve the EER analysis.<sup>76</sup> The Maryland General Assembly could make MEPA a more effective tool for promoting environmental justice by broadening its applicability, providing for citizen enforcement, and incorporating new methods for considering environmental and public health impacts.

Maryland should also develop policies to enhance public participation in state decision-making. In particular, communities should receive information about potential impacts on their environment, health, and quality of life from activities conducted or approved by the state as early in the planning process as possible. Moreover, state policies should ensure meaningful, early consultation with impacted communities. Ensuring that communities have information and opportunities to raise questions and concerns early in the process will allow state and local decision-makers to better consider the actual impacts of the proposed action on the community, and to find ways to avoid or mitigate those impacts.

The State of Maryland should also continue to develop strategies to invest in health promoting infrastructure and sustainable development in environmental justice communities. Many communities that are disproportionately burdened by pollution also suffer from social and

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<sup>72</sup> *Id.* at § 1-302.

<sup>73</sup> *Id.* at § 1-301(d).

<sup>74</sup> 40 C.F.R. § 1508.18 (West). Many EPA actions, however, are exempt from NEPA procedures. *See e.g.* 15 U.S.C.A. § 793 (West) (exempting all actions under the Clean Air Act from NEPA procedures); 33 U.S.C.A. § 1371 (West) (exempting most actions under the Clean Water Act from NEPA procedures).

<sup>75</sup> *See Pitman v. Washington Suburban Sanitary Comm'n*, 279 Md. 313, 319, 368 A.2d 473, 477 (1977) (holding that MEPA’s definition of proposed state action does not encompass requests for appropriations made at the county level); *Mayor & City Council of Baltimore v. State*, 281 Md. 217, 229–31, 378 A.2d 1326, 1332–33 (1977) (holding that noncompliance with MEPA provides no basis for declaring an enactment of the General Assembly void, or enjoining agency actions pursuant to a legislative directive).

<sup>76</sup> *See* Center for Disease Control, Healthy Places: Health Impact Assessment, <http://www.cdc.gov/healthyplaces/hia.htm>.

economic problems.<sup>77</sup> The state should build on lessons from its past and current programs, such as Environmental Benefits Districts and Health Enterprise Zones,<sup>78</sup> to target resources to improve the environment, health, safety, and quality of life in low-income communities and communities of color.

Finally, any policy approach for addressing environmental justice will require better incorporation of existing information sources and development of new data to better understand the links between environmental justice and public health in the state. EPA's recently released EJSCREEN mapping tool could be used to help inform facility siting decisions, inspection and compliance priorities, and investments that benefit the environment and public health.<sup>79</sup> Maryland should also consider replicating efforts from other states, such as California's biomonitoring program.<sup>80</sup> Incorporating information resources into decision-making and developing new resources will allow Maryland to make sound decisions.

## **B. Environmental Organizations**

Environmental advocacy organizations can play a vital role in advancing environmental justice in Maryland by applying their expertise and resources to help improve state policies and support communities facing environmental justice problems.<sup>81</sup> However, to be more effective in playing that role, organizations must better incorporate the environmental concerns and priorities of communities of color and low-income communities into their advocacy agendas and other programs. Organizations should also work to improve diversity within their leadership, staff, and membership.

Environmental justice advocates and people of color have long criticized the environmental movement's failure to acknowledge issues prevalent in communities of color,

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<sup>77</sup> See Kuehn, *supra* note 5, at 10699; Wilson, *supra* note 6, at 36.

<sup>78</sup> The purpose of Health Enterprise Zones is to "target State resources to reduce health disparities, improve health outcomes, and reduce health costs and hospital admissions and readmissions in those zones." Md. Dep't of Health and Mental Hygiene, Health Enterprise Zones, <http://dhmh.maryland.gov/healthenterprisezones/SitePages/Home.aspx>.

<sup>79</sup> U.S. Environmental Protection Agency, EJSCREEN: Environmental Justice Screening and Mapping Tool, <http://www2.epa.gov/ejscreen>.

<sup>80</sup> See Biomonitoring California, <http://www.biomonitoring.ca.gov>. The program tracks chemicals in a representative sample of Californians to develop a better understanding of chemical exposures and inform public health and environmental policies.

<sup>81</sup> Although these recommendations focus on how environmental organizations can do more to help achieve environmental justice, it is also important to note that there is a great need to develop and support grassroots organizations focused on environmental justice, health, and racial equity. See Robert D. Bullard and Robert Garcia, *Diversifying Mainstream Environmental Groups is not Enough*, *Parks & Recreation Magazine* (July 1, 2015), <http://www.parksandrecreation.org/2015/July/Diversifying-Mainstream-Environmental-Groups-Is-Not-Enough/>.

such as poor sanitation, overcrowding, and social injustice, as “environmental” problems.<sup>82</sup> Several environmental organizations interviewed by the ELC noted that social and environmental issues are often viewed as divorced in Maryland, with environmental issues seen as exclusively the pursuit of more privileged individuals.

Very few organizations interviewed had developed mechanisms or processes for identifying the environmental priorities and issues in communities of color and low-income communities and incorporating those priorities and issues into the organization’s mission. A great majority of the organizations interviewed identified ways that their work benefitted overburdened communities directly or based on benefits shared by all. Many of the organizations also discussed outreach efforts to engage communities of color and low-income communities in their programs and activities. However, few organizations have made it a priority to identify the environmental concerns of those communities and include their concerns in the organizations’ agendas.

The ELC’s interviews also identified steps that environmental organizations have taken to improve their engagement with communities of color and low-income communities. A number of environmental organizations are participating in the D.C., Maryland, and Virginia (DMV) Environmental Justice Coalition, a group that includes community leaders, researchers, advocates, and other groups “working on environmental justice and social justice issues, to inspire deeper participation in the broader political arena and undertake research and action to provide a safe, healthy environment for communities of color, and/or low-income populations.”<sup>83</sup> A few organizations have also held listening sessions in communities of color and low-income communities or partnered with community leaders and non-environmental groups to help address environmental justice issues in specific neighborhoods.

Environmental organizations have also been widely criticized for their lack of diversity.<sup>84</sup> A recent Green 2.0 report on diversity in national environmental organizations based on a survey of 191 “conservation and preservation organizations” found a troubling lack of diversity,

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<sup>82</sup> Dorceta E. Taylor, *The State of Diversity in Environmental Organizations* 30 (July 2014).

<sup>83</sup> See *Community Engagement, Environmental Justice, and Health*, DMV Environmental Justice Coalition, <http://www.ceejh.org/dmv-ej-coalition>.

<sup>84</sup> Taylor, *supra* note 82, 30–33.

particularly in leadership positions.<sup>85</sup> The ELC's discussions with environmental advocacy organizations in Maryland were consistent with those concerns.

Most of the individuals interviewed characterized their organizations as not very diverse, and generally perceived the environmental advocacy community in Maryland as homogenous. Organizations reported significant gender diversity on their boards of directors and some socioeconomic and professional diversity, but overall little racial and ethnic diversity. Several organizations stated that they recognize the need to diversify their boards, and noted that they have tried to do so in the past but have had little lasting success. One organization had a different view, responding that diversity is not necessary in a board of directors given that the purpose of the board is to raise money and keep the organization running.

Overall, organizations reported more socioeconomic and geographic diversity among members than racial diversity. Some organizations noted that the composition of their membership base stems from the demographics of their jurisdiction. One organization, however, noted that their membership base is very diverse based on the extensive outreach work that it does in communities of color and low-income communities. Many of the surveyed organizations described their volunteer bases as diverse with regard to race, socioeconomic status, geography, age, and gender.

Environmental advocacy organizations play an essential role in advancing important policies to protect the environment and public health. Although some organizations have done significant work to advance environmental justice in Maryland, much more is needed. By better incorporating the environmental concerns and priorities of communities of color and low-income communities into their programs and increasing diversity, environmental groups can play a significant role in achieving environmental justice.

## **Conclusion**

Achieving environmental justice continues to be a significant challenge in Maryland. The state's efforts over more than 15 years have produced very little progress in addressing environmental disparities in communities of color and low-income communities. However, current national efforts and a growing awareness of environmental justice offer a unique opportunity to rethink Maryland's approach to this important issue and create a strategy for meaningful progress.

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<sup>85</sup> *Id.* at 45–58.